

Index

281 Care Committee v. Arneson, 177

ABA Canons of Professional

Ethics, 97

Rule 3.3, 101

Rule 4.1, 102

Rule 6, 102

abolition, 42

Adams v. Williams, 51

Adams, Abigail, 37–39

Adams, John, 37-39, 41

adjudication

adversity, 85

deception and, 20-23

epistemological doubt and

radical, 86

reasonable, 89, 127

hand-washing and, 90, 91

line-drawing and, 88

necessary offices and, 90

pragmatism and, 87

Prisoner's Dilemma and, 88

role differentiation and, 86-87

truth and, 82

adultery, 229

Uniform Code of Military Justice

and. 233

advocacy, ideology of, 91-96

alcohol, 274-276

regulation of, 300

Alexander, Michelle, 54

Alito, Justice Samuel, 8, 148

Alvarez, Xavier, 6

Amendments

Equal Rights, 78

Fifth, 16

First, 7, 8, 16, 146, 192

campaigns and, 176-182

harmful speech and, 23

lying and, 3-9, 156, 164



Index

Amendments (cont.) Bonilla-Silva, Eduardo, 53 Fourteenth, 16, 20, 62, 65, 75-80 Boswell, James, 86-87 Fourth, 18, 56, 57, 60, 74 Bowers v. Hardwick, 255, 256 Nineteenth, 42 Breyer, Justice Stephen, 147, 156, Thirteenth, 42 173, 175, 187 Twenty-First, 275 Bronston v. United States, 10 American Law Institute, 227 Brown, Michael, 59 Amsterdam, Anthony, 100 Bryden, David, 223, 225, 229, 235 Archard, David, 217 Bundy Ranch, 59 arrest, resisting, 58 Burger, Warren E., 98 autonomy Bush, George W., 309 negative, 207 positive, 207 Campbell, Jud, 112 sexual Capers, Bennett, 54 blameworthiness and, 205-209 Carodine, Montre, 30 consent and, 195, 211-215 Castle Rock v. Gonzales, 19 defined (Green), 25, 206-208 Chaker v. Crogan, 164 fair labeling and, 220 Chesterfield, Lord (Philip law of sexual offenses and, Stanhope), 117-118, 124 209-210 Citizens United v. Federal Election limitations to, 208 Commission, 179 overcriminalization and, 220 Civil Rights Act of 1964, 48 rights, 195 Title VI, 280 variegated, 220 civil rights movement, 49 Civil War, 42 Clinton, Bill, 283, 285, 308 Bacon, Francis, 118 Bentham, Jeremy, 85 closet black beast myth, 47 deceitful identity, 302-307 black men, 35, 46, 76 gay, 255, 285, 305 blameworthiness, 205-209 military and, 16 grading moral, 219-222 illegal identity, 273 harmfulness and, 205 immigration, 29, 281, 292, 305, wrongfulness and, 205 Bok, Sissela, 309 Code of Federal Regulations Bolingbroke, 118 (45 CFR 98.71(a)(13)), 280



Index

Craig, Senator Larry, 259 coercion, 197 Colb, Sherry, 217 credibility confidentiality, lawyer/client, medieval divine sanction and, perjury and, 21, 97 trial by jury and, 108, 113 consent, 72-75, 195 ability to, 196, 246 trial by ordeal and, 107, 112 age of, 194, 203, 204, 238, 239, crimes, strict liability (public 242 versus non-public welfare coercion and, 212 offenses), 249 communicative/factual versus cross examination, 85 Curtis, Justice Benjamin, 35 prescriptive/normative, 212 Constitutional, 19, 34-42 deception and, 213 Dean, John, 92 deception-induced, 28 deceit and deception force and, 197 as national policy, 297 defined incapacity and, 212 presumed, 196, 212, 248 Eskridge, 254 Prisoner's Dilemma and, 88 evasive, and the harm principle, rape and, 26, 200 297-302 harms of, 83 statutory, 27 self-, 129 sexual autonomy and, 211–215 sexually transmitted disease uses of, 2 and, 27 decision, rectitude of (Wigmore/ subjective mental/psychological Bentham), 85 state versus Declaration of Independence, 36, 72 communicative/ Declaration of Sentiments (Seneca performative act, 211 Falls Convention, 1848), 43 transformative, 214 defamation, 25, 178 valid and invalid, 219, defined, 5 252 strict liability standard and, 5 vitiated, 236 Deferred Action for Childhood voluntary, 72-73 Arrivals (DACA), Constant, Benjamin, 79 310 - 312degeneracy laws, 258 contraceptives, 299 coverture doctrine, 62 deliberate ignorance, 103



Index

democracy exculpatory no doctrine, 2, 153, 158, deception and, 22, 128 164 Department of Agriculture, 278 exonerating lie doctrine, 164 Department of Health and Human exploitation, sexual intercourse by Services (HHS), 278 (Model Penal Code, Department of Labor, 291 Section 213.3), 227, 231 deportation, 269, 301 expression, freedom of, 8 amnesty from (DACA), 311 extortion, defined (Hobbs Act), detention, 301 213 dissimulation (defined), 118 Don't Ask Don't Tell (DADT) policy, falsity 2, 16, 28-30, 255, 282-288, objective, 7 293, 296 perjury and, 10 Dougherty, Tom, 213, 217, 221 socially beneficial, 16 Douglas, Justice John Paul, 49-51 falsity, factual, fraud versus DREAM Act. 302 perjury and, 12 Dred Scott v. Sandford, 35 Feagin, Joe R., 53 Dunbar, Paul Laurence, 124 Federal False Statements Act, 23, 150-154, 155, 158-161 Early Head Start, 279 Federal Food and Drug Act, 249 federal public [benefit] programs, Ellenberger, Henri, 119 **Emancipation Proclamation**, 42 278, 280 equality, 40, 70 Federal Rules of Civil Procedure, fictive, 75 Rule 11, 94 practice (Eskridge), 287, 311 Feinberg, Joel, 205 racial, 48, 61 Finkelstein, Judge Ray, 88 Eskridge, William, 28-30, 122, Fisher, George, 111, 112, 114, Estrich, Susan, 217 Forell, Caroline, 35 evidence Franks, Mary Anne, 17-20, 22, 187, compelling, 74 314 fraud, 9-12, 82 preponderance of, 114 probable cause and, 56 criteria for, 11 unsupported, 47, 102 deception by act versus by withholding, 21, 82 omission, 222



Index

factum/inducement distinction, Hobbs Act, 213 198 Hoffman Plastic Compounds, Inc. v. maker of, 155 NLRB, 291 Freedman, Monroe, 21, 100, 102, Holder, Attorney General Eric, 294 106, 141 Freud, Sigmund, 135, 136 Holland v. McGinnis, 13 Human Sexual Inadequacy Fuller, Lon, 75 (Masters and Johnson), Garlow v. State Bar, 140 228 Garrison v. Louisiana, 178 hypocrisy, 116-128 Gertz v. Robert Welch, 4 discrete political system of Gilbert, Jeffrey, 110, 111 (Shklar), 137 Ginsburg, Justice Ruth Bader, 24, 151, 158-160 identity Gonzales, Jessica (Jessica criminalized (Eskridge), 29 Lenahan), 64-67 deceitful Gonzales, Simon, 64-67 child-abusers and, 304 pedophile priests and, 303 Green, Stuart, 25-28, 157 Griffin, Lisa Kern, 158 pluralism and, 307 Griswold v. Connecticut, illegal, 263-273 299 marginalized, 273 Guttmacher Institute, 244 Illinois v. Wardlow, 52 illusions Hamlet, 132, 139 optimal margin of, 135 harm positive, 132, 134 demonstrable, 12 immigrants material, 175 illegal, 267-273, 301 specific, 175 inadmissible aliens, 269, Harte-Hanks Communications. 276-281, 306 Inc. v. Connaughton, limiting, 292 178 undocumented, 29 Hasen, Richard, 189 Immigration and Nationality Act Head Start, 279 (INA), 268 Hernán, Vera, 53 Immigration and Naturalization Herring, Jonathan, 217 Service (INS), 291



Index

Immigration Reform and Control Levinson, Rose, 266 Act of 1986 (IRCA), 273, libel, per se, 4 276, 288, 290, 296 lie-perpetrator and lie-victim, 194 impersonation, 14 lies and lving art of, defined (Spalding), 22 In re Conduct of Jones, 140 In re Lynch, 140 by omission, 28 Individual Taxpayer Identifying campaign, 145, 176-190 Number (ITIN), 30, credentials and, 183, 188 288 - 293disclosure/disclaimer laws and, INS Form I-9s, 288 179 Internal Revenue Service (IRS), 289 First Amendment and, Code Section 6103, 290 176 - 182interrogations, 13 Constitutional, 17-20, 32-46 generative effect of, 32 Johnson, Samuel, 86-87, 106 purposes of, 40-42 defined Jones, Marion, 153 Franks, 17 Kahneman, Daniel, 186 Kant, 33 Kant, Immanual, 78 embedded in law, 33 Kennedy, Justice Anthony, 7, 11, governmental, 13-15, 23-25 147 about being the government, Kentucky Bar Ass'n v. Lyon, 140 165-176, 191 King, Jr., Martin Luther, 3 categories of, 143 *Kulturkampf* (anti-homosexual contexts threatening harm, 144 legal regime), 28 legally sanctioned, 13 to become the government, Lavender Scare, 258 176-190, 192 law enforcement to the government, 148-165, abuse, 18, 46-61 191 passivity, 18, 61-71 harms of, 148 like truth, 138-142 undercover, 2, 14, 261, 276 law schools, deception and, sexual identity, 15-16 317-320 under oath, 11 Lawrence v. Texas, 265, 267 lynching, as extra-legal mob Lerman, Lisa, 133 justice, 46



Index

Macbeth, 84, 127, 134–137 New York Times Co. v. Sullivan, 3-4 Lady, 140 New York Times, Inc. v. Sullivan, Machiavelli, 121 MacKinnon, Catherine, 35, Newport Naval Station, 261 Nietzsche, Friedrich, 45, 131, 132 40,71 malice no-drop policies, 62 actual, 4, 6 nondisclosure, 12 demonstratable, 4 Norton, Helen, 23-25 intentional, 25 Nunn, Senator Sam, 284, 308 marijuana, 301 Marshall, Justice Thurgood, 56, 73 oath, statements under, 17, 84 materiality Obama, Barack, 309 fraud and, 12 Offences against the Person perjury and, 10 Act 1861 (Great Britain), McFadden, Officer, 49 McIntyre v. Ohio Elections Comm'n, Ohio Democratic Party v. OEC, 181 178 outlaws Measure for Measure defined (Eskridge), 255, 274 (Shakespeare), 231 immigrant, 268, 271 Memorandum of Understanding sexual, 255, 261 (immigration status), 291 state-created, 274, 304, 308 Minnesota v. Crawley, 163 Minnesota v. Dickerson, 52 Papachristou v. City of misrepresentations Jacksonville, 50–51 extrinsic, 13 Peck, Colonel Fred, 283 People v. Hernandez, 204 intrinsic, 13 mob justice, 46 perjury, 9-12, 23, 82, 149, 189, moralism criminal law, 221 18 U.S.C. § 1621 and § 1623, 9 defined, 221 criteria for, 10 sexual (Dougherty), 221 divine vengeance and, 108 Murray v. U.S., 55 prosecuting, 109, 114, 128 purpose of prohibition on, 142 national security, 15 right to participate at trial and, Native Americans, 36, 38 107 - 116



Index

perjury (cont.) public policy statute (18 U.S.C. § 1623), 9, 11 deceit as a goal of, 282-296 subornation of, 105 reasons for, 282 Personal Responsibility and Work public-private distinction, 299 Opportunity Reconciliation Act of 1996 R.A.V. v. City of St. Paul, 163 (PRWORA), 272 racism, 18, 51-54, 57, 284 rape, 25-28, 47, 62, 67-71 pluralism hypocrisy and, 116-128 consensual sex assumption, 19 sexual, 221 deception and, 25, 197-202 pornography, possession of child, 249 expanding, 216-219 Presumed Incompetent. The impersonation, 196 Intersection of Race and fraudulent medical Class for Women in the procedure, 26, 196, 198, Academy (Gutiérrez y 199, 224, 229 Muhs et al.), 317 marital, 198, 224 Prince case, 203, 244 sexually transmitted Prison Rape Elimination Act of disease status, 27, 224, 2003 (PREA), 293-296 235-237, 253 application of standards, 294 spousal, 27, 199, 229-234 Privacy Act, 280 impersonation and, 232 probable cause, subjective marital status and intentions, intentionality and, 57 201 Professional Ethics. versus coercion, 252 Lies & Lawyers versus fraud deception, 252 (Time Magazine), 98 versus perjury deception, 252 Prohibition, 274-276, 300 defined California, 232 property ownership, 17, 34, 39 Colorado, 200 prosecutors, 14 protection (restraining) order, 19 Israeli Penal Law, 201 protection (restraining) orders, Section 345(a), 213 63 - 67Massachusetts, 200 PRUCOL (permanently residing in Model Penal Code, 201 the United States under Tennessee, 200 color of the law), 272 forcible, 248



Index

kits, backlog of, 69 Sessions, The, 228 marital exemption, 19, 62, 200 Sexual Offences Act 2003 (Section prison, 293-296 76 of Great Britain's), 235 prosecuting, 70 Shklar, Judith, 120-124, 125, 126, reporting, 19, 68 137, 138 statutory, 25, 27, 194, 202-204 Siegel, Reva, 78 simulation (defined), 118 as a liability offense, 238–242 as a regulatory offense, sincerity, politics of, 119 248 - 251civility and, 123 logic of, 246-248 sincere fictions (Hernán and mens rea requirement for, 243 Feagin), 53 paternalism and, 241 slaves, 37, 38 sexual autonomy and, 196 controlling, 42 wrongs and harms of, 242-246 counting, 40 underreporting, 68 Social Security Number (SSN), 289 reality, perception of, 129, 131 sodomy, 259, 264 Rehnquist, Justice William, 161 consensual, 259, 298 Root, Elihu, 129 homosexual, 298 Rule of Law, 307-312 laws, 297 prosecutions, 297 Sarat, Austin, 313 Uniform Code of Military Justice Scalia, Justice Antonin, 57, 65, 77 and, 264 Schauer, Frederick, 144 solicitation, sexual, 264 Schneckcloth v. Bustamonte, 72–73 Somin, Ilya, 35 school breakfast and lunch Sorrells v. United States, 89 Southern Development Co. v. Silva, programs, 279 Scott, William, 135 11 scrutiny, strict, 7 sovereignty, popular, 127 search Spaulding, Norman, 20-23, 187 consensual, 19, 73 speech false warrantless, 74 Second Restatement of Torts, 166 factual, 6 Secretary of Homeland Security, limited protection of, 4 311 harmful, 23 seduction, 197 protected, 5



Index

State of Israel v. Kashur, 201, 217, conflicting eyewitness, 111 226 misleading, 11 State v. Garnett, 203 sworn, 108, 149 statements presumption of truth in, 109 erroneous trend, unmasking (Ellenberger), free debate and, 4 119 factually correct, 4 Trilling, Lionel, 119, 137 false, 82 trust, double (Macbeth), 84 materially, 101 truth protected, 7, 8 as an unconditional duty to all Steffan v. Perry, 264 (Kant), 20 Stevens, Justice, 65 truth-telling, social value of (Bok), Stevens, Justice John Paul, 160 309 Stewart, Martha, 153 two-witness rule, 115 Stolen Valor Act, 5-8, 147, 174 Stone, Geof, 185 Uniform Code of Military Justice stop and frisk, 51 (UCMJ), 264, 283 Story, Joseph, 90 United States Code suffrage, 42 18 U.S.C. § 162, 11 18 U.S.C. § 1014, 154 Sullivan, James, 39 Sullivan, L. B., 3 18 U.S.C. § 709, 165 Supplemental Nutrition for Women 18 U.S.C. § 912, 165, 169 and Infant Children 28 U.S.C. § 1746, 10 (WIC), 278 United States v. Alvarez, 6, 11, 147, Susan B. Anthony List v. Ohio 149, 156, 171, 172, 173, Elections Comm'n, 177 175, 187 suspicion, reasonable, 18, 48 United States v. Arizona, 306 Sylvester, Arthur, 15 veracity, principle of, defined (Bok), Talmadge, Senator Herman, 92 308 Terry v. Ohio, 18, 49, 51 victimization, 314 testilying and blue lies (police violence against women, 18, 61-71 mendacity), 54 testimony, 96-103 black, 47 coaching witness, 21, 82 domestic, 19, 62



Index

voter deception, 24 Wells, Ida B., 47 Whren v. U.S., 57 Voting Rights Act of 1965, 48 Wigmore, John Henry, 85 warrants, 54 Wilson, Darren, 59 permissible deceptions witch-hunt strategy, 262 around, 14 search, 56 women, 35, 37-39, 46, 76 consent and, 73 controlling, 42 Warren, Justice Earl, 49 counting, 40 Watergate burglary and cover-up, 92 inequality and, 71 We the people, 17, 19, 32, 34-37, law enforcement and, 61-71 43, 72 Wood, Gordon, 116, 118 We Wear the Mask (Dunbar), 124 Wynn, Judge James. A., 172 Welfare Reform Act (PRWORA), 277, 279 Yung, Corey R., 68