

# ***Our Courts Arizona*** **The Rule of Law**

**PRESENTER:**

Good morning ladies and gentleman.

I'm \_\_\_\_\_, and I'm a judge on the \_\_\_\_\_ court.

I want to thank your program chair for inviting me to talk with you about the rule of law. I'm here on behalf of a state court activity called *Our Courts Arizona*, and I hope you'll find it informative, thought-provoking, and enjoyable.



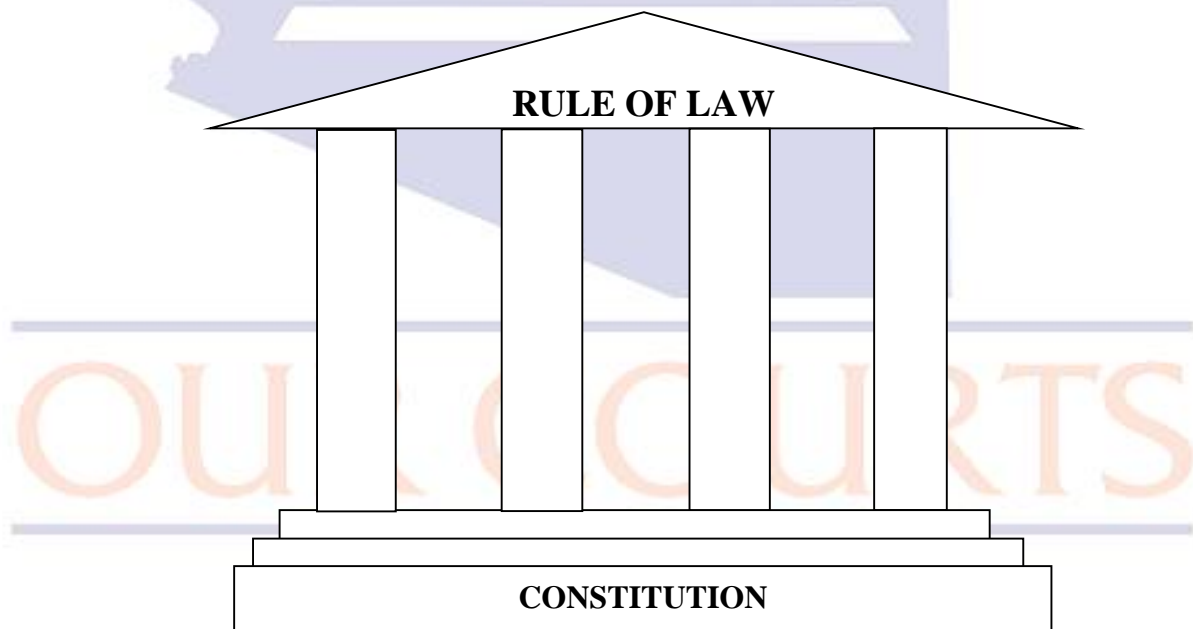
# DEFINING THE RULE OF LAW

Everyone here knows what “laws” are, right? Governments make rules that pertain to many aspects of the lives of the people, including traffic, crime, contracts, property, and many other things.

Most folks assume that the “Rule of Law” refers to those rules, but it does not. It refers to *how are we ruled?*

Nazi Germany had rules, it had laws, but it did not have the Rule of Law because Nazi Germany was ruled by Hitler and the Nazi party, and they had unlimited power to make whatever laws they wanted to establish complete control over the German people. They had unlimited power to take, life, liberty, and property at their whim. They had laws, but the rulers were above the law, not subject to it.

In contrast, we in America, we are ruled by laws, we have a government of laws, and no one is above the law, not even the people we elect to serve in our government. And that’s what we’re going to explore today.



Our courts ensure that the laws govern us and that no one is above the law. Today, we are going to consider what happens in the courtroom from various perspectives.

First, I'm going to divide you all up as follows:

1. Those of you in this middle area, you will be the plaintiffs in our case.
2. Those of you in this area to my left, you will be the defendants.
3. Those of you here to my right, you will be the jury.
4. And those of you toward the back, you will be the public.

I will need your help to make this a bit more interesting. I have some sheets of paper here that have information about the plaintiff, defendant, the jury, and others, and I'll need volunteers to read this information when I call for it. I'll be asking the volunteers to read what is on the sheets and to speak loudly enough for others to hear.

1. I'll need one volunteer from among the plaintiffs.
2. I'll need two from among the defendants.
3. How about someone from the jury group? I need three jurors.

Thank you all.

So, let's begin.

## **THE TRIAL BEGINS**

The court will now come to order.

This is the case of *Michaels v. Alexander*. I am the presiding judge. Our procedure today will be unusual because we're going to talk about the principles that create the Rule of Law.

## **THE PARTIES & THE CLAIM**

First, I'd like to call on Michaels to tell us what happened and what he would like the court to do. The person who is Michaels? Will you tell us your first name? Please tell us what the first page of your folder says. You don't have to read it exactly, just tell us the story.

**MICHAELS:**

1. It was April last year.
2. I was walking back to my house from the corner store and I tripped on a water hose that was lying on a portion of the sidewalk.
3. I broke my hip and was rushed to the hospital in an ambulance.
4. They had to perform surgery.
5. I was in the hospital for a week.
6. I was out of work for a month.
7. I'm suing the owner of the house for negligently leaving that hose on the sidewalk.
8. I only had two weeks' paid vacation time, so I lost two weeks pay.
9. I also had a lot of pain and had to pay the medical bills.
10. I think the owner of the house should pay me for those things.



**PRESENTER:**

This is a case for premises liability negligence. Roughly (Insert #) \_\_\_\_\_ cases of negligence, including premises liability

negligence are filed in Arizona's trial courts every year. Negligence is when a person has a duty to others to exercise a certain degree of care to avoid putting others at risk of personal injury or financial loss, and does not fulfill that duty. Negligence is alleged in many different contexts; some are car accidents, construction accidents, falls, and many other circumstances, some of which we often refer to as "accidents."

Now it's Alexander's turn to tell us his/her story. Now I need Alexander. Will you tell us your first name? Please read what is on your card

**ALEXANDER:**

1. I rent the house I live in.
2. I was at home one day last October when the doorbell rang. When I went to the door, a man there handed me some papers and said I was being sued and my landlord was also being sued.
3. I had no idea what it was about. This was the first I had heard about it.
4. I read the paper and it said Michaels had tripped on a water hose on my sidewalk back in April.
5. I didn't know anything about it.
6. I know I didn't put the hose there because I have a bad back and can't lug those things around anymore.
7. My landlord, Dixon, hires someone to take care of the yard.

**PRESENTER:**

Alexander says his landlord, Dixon, was also sued. So let's hear from the landlord.

# DUE PROCESS

**DIXON:**

1. Judge, before we go any further, I'd like to talk with you privately.

**STOP UNTIL THE JUDGE ASKS YOU ANOTHER QUESTION.**

**PRESENTER:**

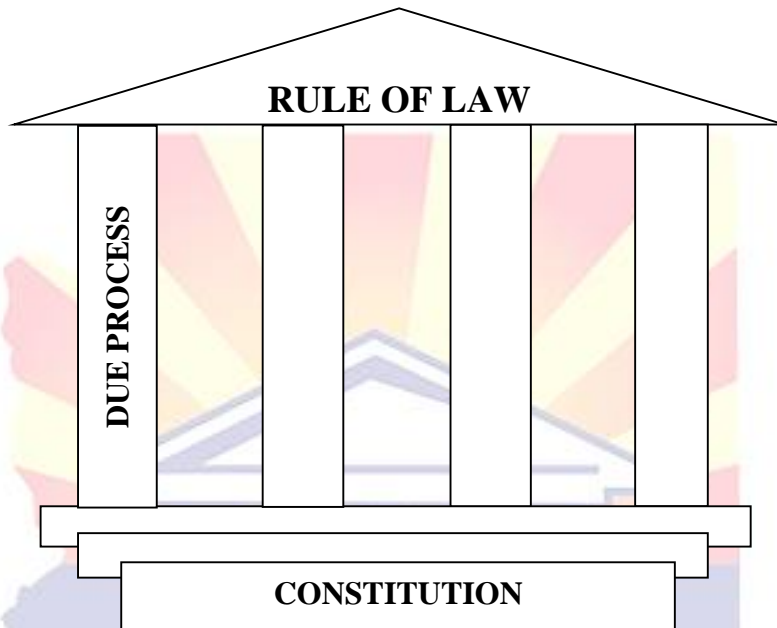
Michaels, would that be OK with you? Alexander? Public? Why or why not?

## DISCUSSION

Dixon, I deny your request to meet privately. The 5<sup>th</sup> and 14<sup>th</sup> Amendments require that all proceedings be open and public and that whatever you have to say, all parties to the case are entitled to hear it.

This is one of the **Four pillars of the Rule of Law – Due Process of Law**. Before the government can use its power to deny anyone of life, liberty, or property, courts and government agencies must employ a fair and impartial process that ensures that the parties:

1. Receive adequate notice of the legal action
2. allows the parties to be heard (present witness & evidence)
3. confront opposing witnesses & evidence
4. be represented by a lawyer if they so choose
5. have an impartial fact-finder



**PRESENTER:**

I know that the jurors have some questions. Who has the folder marked Juror #1? Juror #1, what is your question?

**JUROR #1:**

1. Judge, I've been reading the community newspaper.
2. Last week there was an editorial that said this case was getting started this week, and that courts should throw out cases like this because they make household insurance rates go up.
3. And this week there were a lot of letters to the editor agreeing with the editorial. Most of them said people use accidents to try to get rich. He referred to the lady that spilled coffee on herself and got millions of dollars from McDonald's

4. One of the letters mentioned you and the other two judges in this district by name and said you are part of the problem and that voters should vote against all of you.

**PRESENTER:**

It sounds like there's a lot more interest in this case than I would have expected.

Let me ask everyone, it looks like a lot of people are interested in this case, and at least one person is telling people to vote against me and the other judges.

Does this create any sort of problem?

Should I consider what the editorial & the letters said?

What should judges do when they know that the case is the subject of public debate?

**DISCUSSION**

**PRESENTER:**

This is another example of Due Process of Law. Michaels, Alexander, and Dixon are all entitled to have the case determined by an impartial judge and impartial jury based on the evidence and the application of the law to the evidence.

Judges and juries are not permitted to consider information that is not in evidence in the courtroom.

And judges and juries must decide cases based only on the evidence and not on public sentiments and popular opinion.

# EQUAL PROTECTION OF LAW

## PRESENTER:

Smith, I see that you have something else you want to say.

## DIXON:

2. Judge, I just want you to know that I am a member of the state senate.

**STOP UNTIL THE JUDGE ASKS YOU ANOTHER QUESTION.**

## PRESENTER:

Public, what do you think about that? The state legislator has been elected by the people and has a lot of power and authority.

- Do you think this should affect the way I run the trial?
- Do you think this is something we should tell the jury?
- Do you think this is something the jury should consider when deciding the case?

## PRESENTER:

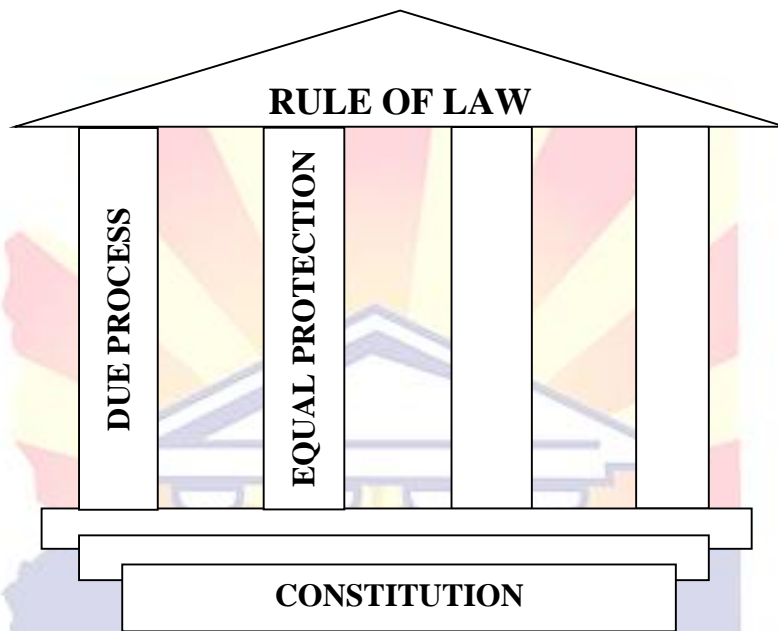
Ladies and gentlemen, I'm sure you all have heard about cases in which famous or rich people, or people with political power are involved in a lawsuit. When that happens, the judge is likely to be aware of that person's status. My questions are:

- Should the judge treat that person any differently?
- Should the jury treat that person any differently?

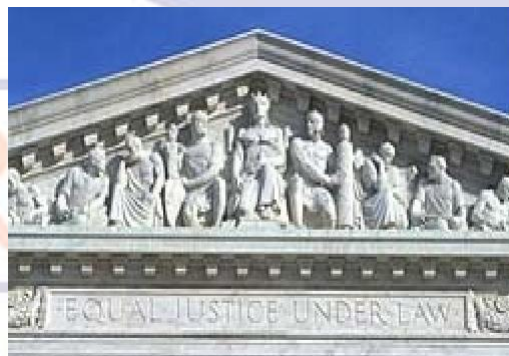
## DISCUSSION

Dixon, I will ensure that you will receive a fair hearing and that Michaels and Alexander will also receive a fair hearing. You see, the 14<sup>th</sup> Amendment to the U.S. Constitution says that our courts must

ensure that **every person within its jurisdiction receives equal protection of the law.**



In our courts, everyone is created equal, no matter how rich, or how famous, or how powerful. Everyone is equal before the law, and no one is above the law.



# GUARANTEED INDIVIDUAL RIGHTS

## PRESENTER:

I know there was another juror who had a question. Juror #2?

## JUROR #2:

1. When I came into the front entrance of the courthouse there was a large group of people with big signs – one fellow was speaking with a loudspeaker.
2. The signs said: “Impeach Dixon!” and “Dixon supports gay marriage!” and things like that.
3. Now I find out that Dixon is the landlord. Are those signs something I can consider?

## PRESENTER:

Let me ask the other jurors. You will all be coming and going from the courthouse in the next day or two,

- Do you think you should be considering what those signs and those people are saying about Dixon? Why? Why not?
- What if the signs said “Dixon is gay?” Is that something you think you would want to consider when you determine whether Dixon was negligent?
- Now here’s a harder question, do you think you can be fair and impartial and not allow those signs to influence you, either favorably or unfavorably toward Dixon?

**PRESENTER:**

Dixon, I see that there's something else you want to say:

**Read this when the judge asks you if there's something else you want to say:**

Yes, your honor.

I don't want to take any chances that the jurors might be influenced by those signs.

I'm asking you to issue an order forbidding those people from demonstrating during this trial.

**PRESENTER:**

Michaels & Alexander, what do you think? Is it OK if I order those folks to stop demonstrating during the trial?

**DISCUSSION WITH MICHAELS & ALEXANDER**

Public, what do you think? Is it OK if I order those folks to stop demonstrating during the trial?

**DISCUSSION**

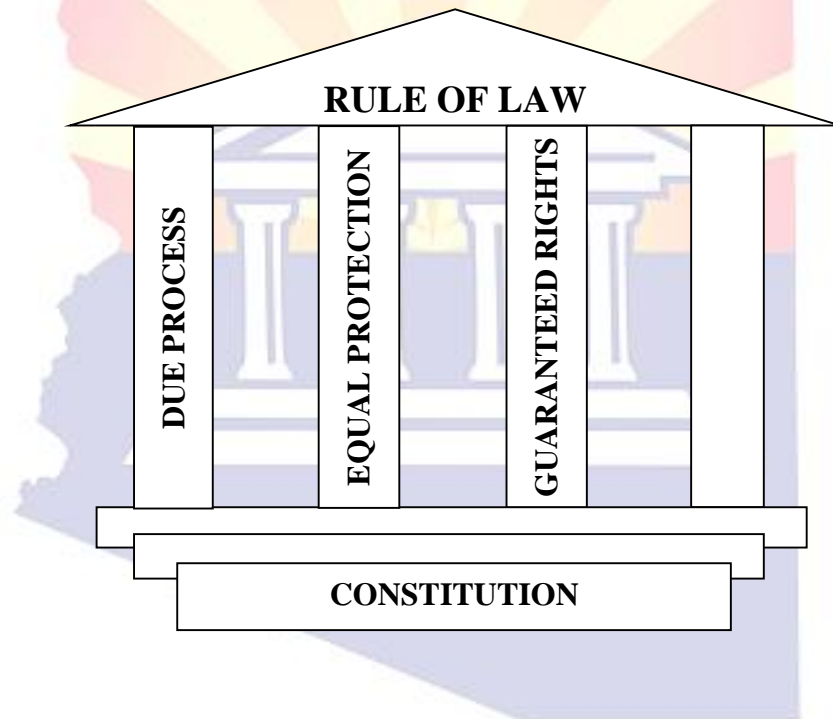
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Dixon, just as the principle of **EQUAL PROTECTION** ensures that you don't get favored treatment because of your status as an elected official, you are also entitled to a trial that is free of improper influence against you, and consideration of your opinions about gay rights and your own sexual preference would be improper. Those are the two sides of **EQUAL PROTECTION OF LAW**, no one is entitled to favored treatment and no one is denied fair and equal treatment.

However, the demonstrators also have rights. The First Amendment protects the right of free speech, and states that Congress shall make no law abridging the freedom of speech. The courts have applied this to mean that no government entity can abridge the freedom of speech, and that includes this court.

This is the third pillar of the Rule of Law:

## **GUARANTEED INDIVIDUAL RIGHTS**



So my task as the judge will be to protect Dixon's right to Equal Protection of the Law and to respect the demonstrators' guaranteed rights to free speech.

The way that we typically protect a party's right to Equal Protection is to talk with the jury about it, instruct the jurors that they are not permitted to consider the extraneous information in any way, and ask them whether they can and will be able to treat Dixon fairly and impartially without any influence from the demonstrations.

# SEPARATION OF POWERS

## PRESENTER:

We have one more pillar to talk about, and it looks like we have another jury question.

## JUROR #3:

I was listening to the radio this morning and I heard that Dixon is asking the governor to order you to dismiss this case.

## PRESENTER:

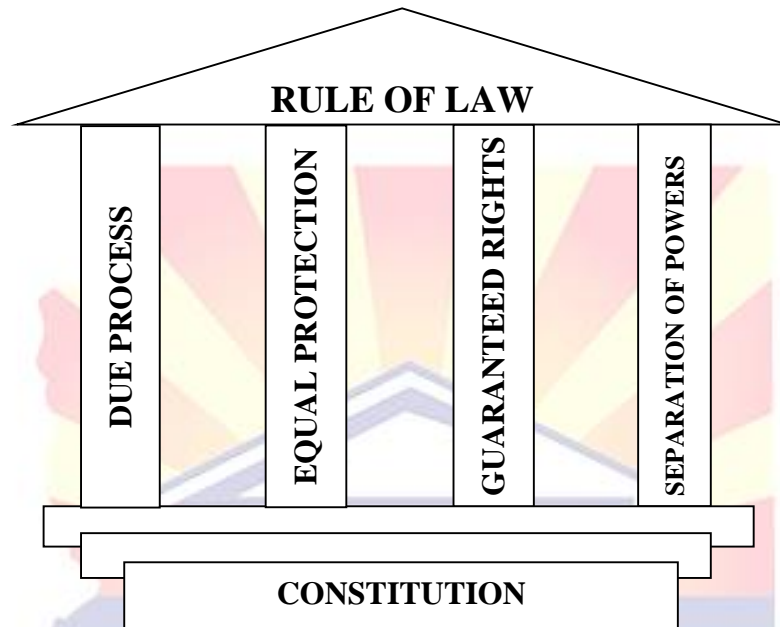
Could the governor do that? What do you think?

### DISCUSSION

This is the fourth pillar of the **Rule of Law**. When one person or one group of people has the power to control the making of the law, the enforcement of the law, and the justice system, the door is open to tyranny. There is nothing to stop that person or that group from making laws that favor them and oppress others.

The founders of our great nation knew this, so they wrote a Constitution that divides the powers of government into three separate, but equal branches of government. The Constitution gives different powers to each branch of government, and also makes each branch dependent on the other in various ways.

We call this **SEPARATION OF POWERS AND CHECKS & BALANCES**.



**PRESENTER:**

The Constitution gives the judicial branch of government the power to resolve cases that people and entities ask them to resolve. That is the duty and the obligation of our courts: to accept cases properly brought to them, conduct fair and impartial proceedings, and apply the law to the facts in accordance with the evidence.

The Constitution does not give the governor the power to intervene or to order the court to decide the case in a particular way.

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What would happen if the governor issued such an order?

What should the court do?

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Who would have the ultimate power to decide whether the Constitution allows the governor to do such a thing?

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**DISCUSSION**



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OUR COURTS

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ARIZONA