**First versus Second Degree Murder**

**First degree murder**

* Involves a premeditated killing.
* In other words, the killer made a plan to kill the victim and then carried that plan out
* State laws categorizing murders into first, second and possibly third degrees generally require that first degree murders include three basic elements

**Willful**; (intent to end a human life)

**Deliberate**; (purposely) and

**Premeditated** (planned).

* In terms of **willfulness**, first degree murderers must have the specific intent to end a human life.
* Some states also require **"malice aforethought”** as an element
* This essentially means the same thing as acting with a premeditated intent to kill or extreme indifference to human life.
* Not all states divide murder into degrees. In some places, the top level murder crime is called by another name, such as **"capital murder."**

**Deliberation and Premeditation**

* Can only be determined on a case by case basis.
* Does not mean that the perpetrator must contemplate at length or plan far ahead of the murder.
* Time enough to form the conscious intent to kill and then act on it after enough time for a reasonable person to second guess the decision typically suffices.
* While this can happen very quickly, deliberation and premeditation must occur before, and not at the same time as, the act of killing.

**Enumerated First Degree Murders**

State laws often categorize specific types of killings as first degree. In these cases, the typical elements of specific intent to kill, deliberation and premeditation may not be required. These often include:

* the killing of a child by use of unreasonable force;
* certain killings committed in a pattern of domestic abuse;
* the murder of law a law enforcement officer, and
* homicides occurring in the commission of other crimes such as arson, rape, robbery or other violent crimes.
* This list merely illustrates some of the enumerated first degree murders.

**Second degree murder**

* The exact definition varies between jurisdictions.
* The criminal act (Actus reus) for both first and second degree murder is the same: the killing of another person.
* What separates the two is the perpetrator's **mental state** (Mens rea) at the time of the killing.
* Second degree murder does NOT require **premeditation**.
* Instead, there are three typical situations that can constitute second degree murder:
* A killing done impulsively without premeditation, but with malice aforethought
* A killing that results from an act intended to cause serious bodily harm
* A killing that results from an act that demonstrates the perpetrators depraved indifference to human life

**Law and Society Warm-Up: First or Second degree murder?**

**First-degree murder** is defined as an unlawful killing that is both willful and premeditated, meaning that it was committed after planning or "lying in wait" for the victim.

**Second-degree murder** is ordinarily defined as: 1) an intentional killing that is not premeditated or planned, nor committed in a reasonable "heat of passion"; or 2) a killing caused by dangerous conduct and the offender's obvious lack of concern for human life.

***Directions****:* Analyze the definitions above. Read each murder case to determine whether the crime was first or second degree murder.

**Case 1 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Adam and Bill are neighbors, and lately they've been having disagreements over the fence between their properties. Adam pays Bill a visit to discuss the matter, but gets angry in the process, pulls out a gun and shoots and kills Bill.

**Case 2 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Adam and Bill are neighbors, and lately they've been having disagreements over the fence between their properties. Adam pays Bill a visit to discuss the matter, but gets angry in the process, grabs a shovel and hits Bill on the head with all his strength.  Adam didn't explicitly intend to kill Bill when he hit him, but he did intend to hit him with the shovel, knowing that such a blow to the head carried with it a distinct possibility of death.

**Case 3 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Adam and Bill are neighbors, and lately they've been having disagreements over the fence between their properties. Adam pays Bill a visit to discuss the matter, but gets angry in the process, grabs his gun and fires in anger into a crowd of onlookers. Adam didn't necessarily mean to kill anyone, but also didn't give any thought to the harm that his actions could cause in the crowd.

**Case 4 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Adam and Bill went into a convenience store intending to rob it at gunpoint (which constitutes a felony). The clerk grabbed for the gun and as the two struggled, the gun goes off killing the clerk.