

APPENDIX V

DEFINITIONS OF WORDS USED IN THE *JLM**

A.L.R.: stands for American Law Reporter; a reference book that aids your legal research by referring you to cases and legal writings on particular topics. The different editions of A.L.R. are indicated by numbers. For example, A.L.R. refers to the first edition, and A.L.R.2d refers to the second edition.

Acquit (acquittal): When a jury or court finds a defendant not guilty of a crime, the jury or court **acquits** the defendant. The jury or court's decision is called an **acquittal**.

Adjournment: Delaying or temporarily stopping a court *session* that is already in progress. For example, a judge may call an adjournment due to a holiday, after which the court *session* will continue.

Administrative agency: A political body created by the state or *federal* government to carry out the laws. For example, the New York's Department of Corrections is an administrative agency that carries out the laws passed by the New York state legislature relating to prisons.

Administrative law judge: An administrative law judge (ALJ) is a representative of an administrative agency. The ALJ *hears* cases related to the *administrative agency* (for example, the Social Security Administration) when disputes arise between the agency and a person whom the agency's decision affects. The ALJ has the power to take testimony and decide issues of *evidence*, like a judge who *hears civil* and *criminal* cases in a court of law.

Admissible evidence: *Evidence* that can legally be introduced at a trial; the evidence must be relevant and not, for example, unfairly *prejudicial*, based on *hearsay*, or *privileged*.

Affidavit: A written or printed statement of facts that is made *voluntarily* by a person who swears to the truth of the statement before a public officer, such as a *notary public*.

Affidavit of service: A sworn statement saying that legal papers have been delivered to, or *served* upon, the other party in a lawsuit.

Affirm: When the *appellate court* agrees with the decision of the trial court, the appellate court affirms the decision of the trial court. When this happens, the party who lost in the trial court and *appealed* to the *appellate court* is still the loser in the case.

Affirmative defense: A defense the *defendant* offers to justify his *criminal* act. When a *defendant* asserts an affirmative defense, he means that even if the *allegations* against him are true, he should still be found not guilty. Affirmative defenses include self-defense, *coercion*, insanity, and *duress*.

Aggravated felony: A type of *felony* offense that involves serious bodily injury or the use of a dangerous weapon. It also means that a harsher *sentence* may be imposed. In the context of immigration, aggravated *felony* has a different meaning. Please refer to the Immigration and Consular Access Supplement to the *JLM* for more information about immigration.

* Words that are defined elsewhere in this Appendix are printed in *italics*.

Aggravating factors: In deciding whether to impose a *sentence*, a judge and *jury* consider certain “aggravating factors,” which are defined by *statutes*. Aggravating factors require a harsher punishment. Some examples of aggravating factors are murder committed for money, robbery committed by someone out on bail, or assault perpetrated for racist reasons.

Allege: To claim or to charge that someone acted, or that something happened, but that act or occurrence has yet to be proven. When you allege something, you make an allegation.

Amendment (for example, 14th Amendment): Any change that is made to a law after it is written originally. In the United States Constitution, an amendment is a law added to the original document that further defines the *rights* and duties of individuals and the government.

Annotation: A remark, note, or comment on a section of legal writing, which is intended to explain and clarify the passage.

Appeal: To complain to a higher court that the *judgment* of a lower court was wrong or that the lower court made an error. For example, if you lose in the trial court, you may *appeal* to the *appellate court*.

Appellate Court: A court that reviews the decision of the lower court on *appeal*. It has the authority to *affirm*, *reverse*, or *remand* the decision of the lower court.

Appellate Term: One of the two types of *intermediate appellate courts* in New York State. The appellate term is housed within the New York Supreme Court and initially handles all of the appeal cases coming from lower courts such as county courts, town courts, district courts, civil courts, etc.

Appellate Division: One of the two types of *intermediate appellate courts* in New York State. New York State is divided up into territorial departments, and each department has an Appellate Division that serves as its *intermediate appellate court*. The *Appellate Division* handles appeals from the *Appellate Term* and the New York Supreme Court.

Arbitrator: An *impartial* person who, in a special *proceeding* called arbitration, decides a dispute between parties, who have chosen arbitration instead of trial. Arbitration is sometimes required by law.

Authorities: Legal sources affecting how your case is decided. Authorities include cases and *statutes*. If neither cases nor *statutes* exist, secondary sources such as law reviews may be considered authorities.

Beyond a reasonable doubt: The standard by which the government must prove every element (part) of its case in a *criminal trial*. It is the most demanding *burden of proof*.

Burden of proof: A party’s duty in a trial to prove a fact or facts at issue to convince the *jury* of the truth of the party’s claim. If a party does not fulfill this duty, all or part of the case must be dismissed. In *civil* cases, juries must decide whether the *plaintiff* proved the case by a *preponderance of the evidence*; in other words, the plaintiff’s burden of proof in *civil* suits is a *preponderance of the evidence*. In *criminal* cases, juries must decide whether the government proved its case *beyond a reasonable doubt*; in other words, the government’s burden of proof is *beyond a reasonable doubt*. *Beyond a reasonable doubt* is a higher burden of proof than a *preponderance of the evidence*, meaning it is more difficult to satisfy.

Certiorari, Writ of (cert.): An order by an *appellate* (higher) *court* declaring that it will review the decision of a lower court. “Certiorari *granted*” means that the appellate court decided to approve a *petition* for certiorari and review the trial court’s decision. “Certiorari denied” means that the appellate court decided not to approve a *petition* for certiorari and, thus, not to review the lower court’s decision. Some courts, such as in New York, simply call certiorari “leave to *appeal*.”

Cf.: A signal used in legal writing that means “compare” but that still supports the statement to which it cites. *Cf.* directs the reader to another case or article to compare, contrast, or explain differing views.

Circuit Court of Appeals: The United States has thirteen *federal* judicial circuits. Eleven of these circuits are referred to by number (the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits). The other two circuits are the D.C. Circuit and the Federal Circuit. Each of the thirteen circuits has a court of *appeals* known as the U.S. Court of Appeals for that particular circuit. These courts are one level below the U.S. Supreme Court. Twelve of these circuits are split up by geographical region, meaning they decide cases brought in *federal* courts in particular states.

- For example, the U.S. Court of Appeals for the Second Circuit (2d Cir.) decides cases brought in federal court in New York, Connecticut, and Vermont, while the Fifth Circuit (5th Cir.) decides cases brought in federal court in Texas, Louisiana, Mississippi.

The Circuit Court of Appeals reviews *appeals* of decisions made by *federal district courts*.

- For example, let’s say you bring a lawsuit in the U.S. District Court for the Southern District of New York (S.D.N.Y.) and lose. If you want to appeal that decision, you would file your appeal in the U.S. Court of Appeals for the Second Circuit (2d Cir.).

The Circuit Courts of Appeals can also review some decisions made by administrative agencies, such as by immigration agencies. The U.S. Court of Appeals for the Federal Circuit is unique because the cases that it *hears* are not limited to a particular geographical region. The Federal Circuit *hears* appeals in special kinds of cases that are generally not relevant to the issues discussed in the *JLM*. See the front inside cover of the *JLM* for a diagram of the structure of the U.S. judiciary. For more information, review Chapters 2 (“Introduction to Legal Research”), and 5 (“Choosing a Court and a Lawsuit: An Overview of the Options”) of the *JLM*.

Civil (“civil trial,” “civil case,” or “civil action”): In general, all types of actions that are not *criminal*. Civil actions are brought by a private party to protect a private right. The *burden of proof* and the procedural rules in a civil trial may be different from those in a *criminal* trial.

Class action: A lawsuit in which the *plaintiffs* represent and sue on behalf of all the people in the same situation as the *plaintiffs* and with similar legal claims. See Chapter 16 for an explanation of class actions.

Clear and convincing evidence: A *burden of proof* that requires more convincing evidence than a *preponderance of the evidence*, but not as much as *beyond a reasonable doubt*. This *burden of proof* is used in certain types of immigration proceedings. Please refer to the Immigration and Consular Access Supplement to the *JLM* for more information.

Clemency (mercy, leniency): Kindness that is shown toward a criminal act. It is often used to describe the act of a state governor in which he or she *commutes* or reduces a *sentence*.

Coerce/coercion: To force someone to do something. A confession of a *defendant* that is coerced may be *held inadmissible* by a court. Coercion is defined as force—physical or mental—that overcomes a person’s free choice in doing something. Coercion can be an *affirmative defense*.

Collateral (attack or appeal): To make a collateral appeal means to bring a *civil proceeding* to challenge an error in an earlier *proceeding* with the purpose of obtaining a ruling on the alleged *error*. This takes place in a different *proceeding* than a direct appeal from the earlier case.

Commuted sentence: A *sentence* that is reduced.

Concurrent sentences: When a person is *convicted* of several *criminal* charges, the judge can order that the person's *sentences* run at the same time (concurrently) rather than one after another (consecutively). For example, if you are sentenced to six months for assault and nine months for robbery, you would have to serve fifteen months total under consecutive sentencing; however, if the judge orders your sentences to run concurrently, you only have to serve nine months total.

Contingent fee: A method of fee payment describing how a lawyer may agree to represent a client. The *plaintiff* who *retains* (hires) the lawyer only pays the lawyer if the *plaintiff* wins the case. The lawyer accepts an agreed-upon percentage of the money *judgment* the *plaintiff* wins. For example, most lawyers who are paid like this charge a 33% contingency fee, which means that if you win \$1000, the lawyer will keep \$330 plus his or her expenses for things like phone calls and photocopies. Some lawyers may charge you for their expenses even if you lose your case. Lawyers generally may *not* charge contingent fees in *criminal* cases.

Convict: To find a *defendant* guilty of the crime he or she has been accused of committing.

Counsel: A lawyer (attorney).

Court of Appeals: In New York, the Court of Appeals is the highest level appellate court that can review your case. It reviews the decision of the *appellate division*, which reviewed the trial court decision.

Counterclaim: In a *civil proceeding*, a *defendant* who is sued may then bring suit against the person suing him or her. This suit brought by the *defendant* against the *plaintiff* is called a counterclaim.

Criminal ("criminal case," "criminal proceeding," or "criminal trial"): A case in which the government brings a charge against a person for a crime the person is accused of committing. The *burden of proof* and the procedural rules in a criminal *trial* may be different from those in a *civil trial*. See the definition of *beyond a reasonable doubt*.

Cross-examination: At a trial or *hearing*, when the lawyer for the opposing party questions a witness. Cross-examination takes place after the direct examination. The lawyer usually asks questions that require a yes or no answer. Each party has a *right* to cross-examine the other party's witnesses.

Custody (Custodian): Being "in custody" means that police officers or law enforcement authorities have control over you. It may refer to arrest, actual imprisonment, or a temporary restraint of liberty at the station house. A custodian is the person or law enforcement agency with the control over a person.

Damages: The money awarded by a court to a person who has suffered loss, injury, or harm, either to the person's body or to property.

De minimis: A term used to describe something that is insignificant or small, and thus ignored by the law and the courts. For example, you experienced a *de minimis* injury if your car was bumped by another car, and you will not be successful if you try to sue the person who bumped you for assault.

Declaratory judgment (Declaratory relief): A court's decision in a civil case declaring the *rights* of the parties or expressing the court's *opinion* on a certain part of the law, without ordering *relief* for either side.

Defendant: The party against whom a lawsuit is brought.

Denial: A rejection, as in rejecting an application, motion, or *petition*. Also, denial can be an assertion that the statement offered is untrue, as someone who denies a statement made about him that he has committed a crime.

Determinate sentence: A prison *sentence* that sets a fixed period of incarceration, as opposed to an *indeterminate sentence*, which sets a range of possible periods of incarceration.

Dictum (plural: Dicta): A Latin¹ word for an observation, remark, or statement made by a judge in his or her *opinion*, about a *question of law* related to the case, but that is not critical to the case's outcome. Dictum generally extends beyond the issue before the court to decide. As dictum may be unrelated to the issue being decided, it is not law and is not binding on later courts. Dictum is not the legal basis for the judge's decision on a litigated issue. Later judges can choose to follow the legal analysis found in dictum, but they do not have to. In other words, dictum is not binding *precedent*. The plural form of dictum is "dicta."

- To figure out if something the court says is dictum, ask yourself: "if this statement was not in the opinion, could the court have decided the case in the same way?" If the answer is yes (the court's opinion would still make sense without the statement), then the statement is probably dictum. If the answer is no (without the statement, the court's opinion does not make sense), then the statement is probably not dictum. Keep in mind that people often disagree on whether a particular statement in an opinion is dictum. In fact, because dictum is not binding on later courts, lawyers often argue in court that a particular statement is or is not dictum, depending on whether or not they want the court to follow the statement.

Direct examination: At a trial or *hearing*, when the lawyer questions a *witness* for the *party* that the lawyer is representing in attempting to prove his or her side of the case.

Discipline (Disciplinary proceeding): Punishment for violation of rules. At the *proceeding*, a person or committee decides what punishment is appropriate.

Discovery: In preparation for a trial, the process of obtaining information about your case. See Chapter 8 for more information.

Discretion: The power of a legal body, such as a court or agency, to act or decide in a situation in which the law provides no precise answers. For example, the judge may have discretion to create remedies for you if the law does not say precisely how to do so.

Disposition: The disposition of a case refers to how the case was decided or settled. It can also be used to refer to a particular issue in a case (for example, the result of one of the motions in a case).

Dissent (Dissenting opinion): A judge who disagrees with the decision of the *majority* of the other judges on the same appellate court. He or she writes the reasons for disagreeing in what is known as a dissenting *opinion*. The dissenting opinion is not the main opinion of the case nor is it considered the law.

¹ Latin phrases are *italicized* in legal writing. Therefore, if you submit any motions, briefs, complaints, etc. to the court, you should *italicize* any Latin phrases you use.

District Court(s): The United States has 94 *federal* district courts. These courts are *trial* courts. If you lose in district court, you may be able to *appeal* the decision to the *Circuit Court of Appeals* for your circuit (which is the *intermediate appellate court* in the federal system). Some states have state courts called “district courts.” (For example, some of Louisiana’s state courts are called “district courts.”). So, when you see the name “district court,” make sure to check whether it is a *federal* or state court. This can be very confusing because the name of a particular federal district court will include the state it is located in (for example, the “Eastern District of Louisiana” is one of the *federal* district courts in that state). One big clue to look for is if you see “United States” or “U.S.” in the name of the court (such as, “U.S. District Court for the Eastern District of Louisiana.”). If you see that, then the court is *federal*. See Chapter 2 of the *JLM* (“An Introduction to Legal Research”) for more information.

Due process (Constitutional right to due process): You have two types of due process rights. Your *right* to **procedural** due process means government proceedings must treat you fairly. It limits the ways the government can take away your property, liberty, and life. Your *right* to **substantive** due process prevents government interference with other *rights* individuals have that the government cannot take away—rights such as privacy, speech, and religion. Many Chapters in the *JLM* deal with these two types of due process.

Duress: A threat of harm that causes a person to do some act that the person otherwise would not have done. Duress can be an *affirmative defense*. Threats of imprisonment and injury are examples of duress.

Entitled: Having a legal right.

Evidence: Anything presented to a court that proves, or helps to prove, the claim of a party. Evidence can be presented orally by *witnesses*; or through documents, physical objects, or any means to help prove a point.

Ex rel. (Ex relatione): A Latin phrase meaning “by or on the relation of.” A lawsuit “*ex rel.*” is brought by the government if a private party (someone not acting as a government official) interested in the matter asks the government to bring suit. For example, if Smith asks the government to bring a lawsuit against Jones, the case would be written as “State *ex rel.* Smith v. Jones.”

Exclude from evidence: The use of legal means to keep certain *evidence* from being considered in deciding the case.

Exculpate: To free from blame. For example, “*exculpatory evidence*” is *evidence* that shows the innocence of the *defendant*. A prosecutor is required to disclose such *evidence* to the defendant. For more information about the prosecutor’s disclosure duty, see Part C of Chapter 8 of the *JLM*.

Facially: Appearing on the surface. Something may seem to be true on the surface, but turn out to be false upon further investigation. This word comes up often when a court is trying to decide if a *statute* violates the U.S. Constitution. There are two ways to argue a *statute* violates the U.S. Constitution. First, you can argue the text of the *statute* violates the Constitution. This is called a “facial challenge” to the *statute* (you argue the *statute* is unconstitutional “on its face.”). Second, you can argue a *statute* is unconstitutional because it affects a particular person or group of people in an unconstitutional way. This is called an “as applied” challenge. In a facial challenge, you argue the *statute* is always unconstitutional, because of the language it uses. In an “as applied” challenge, the *statute* may be constitutional when it is applied to someone else, but you argue the *statute* violates the Constitution when it is applied to you. So, when you challenge a *statute* through an “as applied” challenge, you argue the *statute* at least sometimes violates the Constitution (when it is applied to a particular person or group of people).

Federal: In the *JLM*, “federal” is used to describe a system of government, including courts and laws, organized under the United States Constitution. In contrast, “state” describes fifty separate and differing systems of government, including courts and laws, organized under the constitutions and statutes of each of the fifty states that make up the United States of America.

Felony: In many states, this is any crime that is punishable by imprisonment of more than one year in prison or is punishable by death. Felonies are crimes that are supposed to be more serious than *misdemeanors*.

Felony murder: In many states, this is an unintended death that occurs during the commission of a *felony* (such as armed robbery). In those states, anyone accused of the felony can automatically be charged with murder, too. This is called the “felony murder doctrine”).

File: To submit for recognition, as in “filing papers with the court.”

Footnote (Footnote Number): A number appearing in the body of a piece of legal writing that indicates that at the bottom of the page there is more information about the particular section or sentence next to which the number appears. The information at the bottom of the page is the footnote itself.² In legal citations, footnotes are usually abbreviated as ‘n.’—for example to refer to footnote number 7, you should use “n.7.” In the *JLM*, this information is especially useful for clarifying sentences in the text and providing cases to support the text.

Grant (as in “grant a motion”): To allow or permit. For example, when the court grants a *motion*, it allows what the *motion* was requesting.

Habeas corpus (writ of habeas corpus): This is a Latin term that refers to the form of relief that the court may grant, after an incarcerated person files a petition, to release the person from unlawful confinement or incarceration. The incarcerated person must prove that he or she was held in violation of his rights. The *habeas writ* can be sought in both state and federal courts. For more information, see Chapters 13 and 21 of the *JLM*. A *habeas* petition is a form of *collateral attack* on a conviction or sentence.

Hear (for example, “hear a motion”): To listen to both sides on a particular legal issue. For example, when a judge hears a case, he or she considers the validity of the case by listening to the arguments of the lawyers from both sides in the *litigation*.

Hearing officer: A person appointed to preside over a *hearing*. This person does not have to be a judge.

Hearing: A legal *proceeding* before a judge or *hearing officer* that is similar to a trial. In a hearing, the judge or *hearing officer* decides an issue of the case, but does not decide the *defendant’s* guilt or innocence.

Hearsay: Used to describe testimony in which a witness talks about something he or she does not know through personal experience, but that he or she has been told by others. (Hearsay is defined by Fed. R. Evid. 801(c) as a “statement other than one made by the declarant [the person testifying] while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”) Hearsay testimony generally is **not** *admissible* in court and may be excluded. But, many exceptions to the hearsay rule exist.

² This is an example of a footnote. If you were citing it, you would call it n.1.

Holding: The decision of a court on a *question of law* in a particular case. The court's holding is not the same thing as its "ruling." The court's "ruling" is typically procedural, such as denying a *motion*, dismissing a case, *reversing* the decision of the lower court, or ordering the defendant to pay money *damages*. The court's holding is generally more substantive, such as concluding that a *statute* allows a certain group of plaintiffs to sue for monetary *damages*, or deciding that a word in the U.S. Constitution has a particular meaning that resolves a plaintiff's lawsuit.

- It can be difficult to identify the holding in a court opinion. Some clues that you can look for are phrases like "We hold..."; "In conclusion,..."; "Therefore,..."; "For the reasons stated,..."; and similar language. Once you identify the holding, try and work backwards to figure out what reasons the court says justify its decision. Courts that decide similar cases in the future might be required to follow that reasoning, or at the very least, might think that reasoning is persuasive. See definition of *Precedent* below, and Chapters 2 ("Introduction to Legal Research"), and 5 ("Choosing a Court and a Lawsuit: An Overview of the Options") of the *JLM* for more information.

Immunity (as in "immunity from lawsuit"): When a person or governmental body cannot be sued (is immune from suit). For example, sovereign immunity means that you cannot sue certain parts of the government without the government's consent.

Impartial: Not favoring either side; fair and unbiased.

Inadmissible evidence: *Evidence* that cannot legally be introduced at trial.

Indeterminate Sentence: A prison *sentence* that does not set a fixed period of time for incarceration, but sets a minimum and a maximum period, so that the incarceration cannot last less than a certain period or more than a certain period. The length of incarceration is determined later, according to factors such as behavior in prison.

Indictment (pronounced "in-DITE-ment"): A written accusation presented by the grand jury charging a person with a particular crime or crimes. After the issuing of an indictment, the charges must be proven at trial in order for the defendant to be convicted.

Indigent person: A person who does not have enough money to hire a lawyer to defend him or herself. In most *criminal* cases, an indigent *defendant* is *entitled to counsel* provided by the state. Court costs may also be waived for an indigent *defendant*. To request the services of an attorney or a reduction or waiver of court filing fees, you must *file* poor person's papers, which is also called filing "*in forma pauperis*."

Injunction (Injunctive relief): An order of the court that a person should immediately stop doing something, or should begin to do something it has stopped doing.

Intentional: On purpose. In general, to act with intention is to act with the conscious objective of bringing about a particular result. For certain crimes, intentional acts may have to be proven by the state.

Intermediate appellate court: The court above the trial court that reviews some decisions of the trial court, but that is lower than the final *appellate court* (such as the New York Court of Appeals). There are two intermediate appellate courts in New York State, the *Appellate Division* and the *Appellate Term*. These courts review decisions of the lower trial court (in New York it is confusingly called the New York Supreme Court), and their decisions are reviewed by the *New York Court of Appeals*. Generally, in the federal justice system, the *circuit court* is the intermediate appellate court; it reviews the decisions of the district courts, and its own decisions are reviewed by the U.S. Supreme Court in Washington, D.C.

Interrogatories: A set of questions. See Chapter 8 for an explanation of interrogatories and how they fit into the *discovery* process.

Involuntary: Describes an act that you did not intend to do.

Judgment: The final decision of a court that resolves a case and determines the parties' rights and duties.

Jurisdiction: The authority under which a court decides a case. A court must have subject matter jurisdiction over the kind of dispute (for example, only *criminal* courts can *hear criminal* cases) and personal jurisdiction over both sides. Put very simply, personal jurisdiction means that either you have agreed to come to that particular court or you have certain relationships with the state that allow them to bring you to court—for example, if you live in that state.

Jury: A jury is a group of people who will vote to decide the outcome of a case. The Sixth *Amendment* of the U.S. Constitution provides for a jury trial for *criminal* offenses. State constitutions also often contain the *right* to a jury trial. For some “petty offenses” (low-level offenses that do not carry *sentences* of more than six months), a *defendant* may not be *entitled* to a jury trial.

Lesser included offense: A crime that has some, but not all, of the elements of another, more serious, crime. It must also not have any elements that are different from the greater crime. A lesser included offense occurs when it is impossible to commit a crime without also committing a crime of a lesser degree. For example, manslaughter is a lesser included offense of murder. See Chapter 9 for more information.

Liable: To be obligated by the court to make compensation. For example, if the court decides that A must pay B \$100 for the injury A caused B, A is liable to B for \$100.

Litigate (Litigation): To participate in a *trial*. All the events in a *trial*, including the *trial* itself and *proceedings* prior to *trial* (sometimes called pre-trial proceedings), constitute litigation.

Majority (Majority opinion): An *opinion* signed by more than half of the judges of a court or panel; it constitutes the court's decision.

Mandamus (writ of mandamus): This is a Latin term that refers to a special kind of remedy that a court may grant. A mandamus is a court order commanding that a government official, institution (such as a prison or jail), or lower court do something that is one of the duties or responsibilities of the official, institution, or court.

- For example, if you apply for benefits from a government agency, and the agency does not make a decision on your application within the period of time it is supposed to, you might be able to ask a court to issue a *mandamus* requiring the agency review and decide your application. This is not the same as requiring the agency to make a particular kind of decision about your application, such as to approve or deny it. Instead, the *mandamus* order just requires the agency to complete a task that is one of its regular or routine duties (in this example, reviewing and deciding applications for benefits).

Material evidence: *Evidence* that is *relevant* and important to the legal issues being decided in a lawsuit.

Minor: Someone under the legal age of adulthood. In most states, the age of adulthood is eighteen years old. Being charged as a minor in a criminal case means there will be much lower penalties; however, this decision is up to the court's *discretion*.

Minutes: Transcript. The final copy of the *record* taken from the shorthand originally written by the court reporter.

Miranda (*Miranda v. Arizona*): A U.S. Supreme Court case setting forth the rights you should be informed about just after you are arrested. This case requires police officers to inform suspects in police custody of certain rights before their interrogation.

Misdemeanor: In general, misdemeanors are punishable by fine, penalty, or imprisonment of less than one year. In most states and under *federal* law, any offense that is not a *felony* is classified as a misdemeanor. Both felonies and misdemeanors are grouped into classes (for example, Class A, B, C, etc.) and the *sentencing* varies by the class. There may be procedural differences in how felonies and misdemeanors are handled by a court.

Misrepresentation: A written or oral statement that is an untrue statement of the facts.

Mistrial: If a fundamental error occurs during *trial* (for example, a court does not have *jurisdiction*, or a *jury* selection error or hung *jury* occurs) that cannot be corrected, a judge may decide the *trial* should not continue and declare a “mistrial.” A judge may also declare a mistrial if an extraordinary event takes place (like a juror’s or attorney’s death). Often, when a mistrial occurs, the accused may be tried again.

Mitigating factors: Factors that reduce your blameworthiness and that the *jury* or judge may rely upon to decide on a lower level of punishment. Examples of mitigating factors are you have no significant history of prior criminal activity, you committed the crime while you were under the influence of extreme mental disturbance, or you were very young when you committed the crime. Mitigating factors are sometimes defined by *statute*.

Moot: An issue or case is considered moot when it is no longer necessary for a court to render a decision about that issue or case because of a change in circumstances or passage of time. For example, if the law changes, then the case concerning that old law can (but not always does) become moot. Another example is a case about custody of a *minor*; if the *minor* becomes an adult, then that case becomes moot.

Motion: In *litigation*, a request that the judge take some sort of action, or make some sort of ruling.

Motion papers: Papers presented to court requesting that the judge make a decision. Typically, if a factual question is raised in motion papers, the court will hold a *hearing*.

Negligence: To be negligent is to not behave as a reasonable person would under the same circumstances. This includes to do something that a reasonable person would not do, or to not do something thing a reasonable person would do. Negligence is often a standard in a case, meaning that a party needs to prove that the opposing party in the suit was negligent in order to win the case. For example, if you do not shovel your sidewalks all winter (and you live in a place where it snows), you may be negligent.

Notary (*Notary public*): A person who is authorized to fix his or her seal on certain legal papers in order to verify that a particular person signed the papers. This is known as notarizing the papers.

Notice (Notification): “Notice” has several meanings in the law. First, the law often requires that “notice” be given to an individual about a certain fact. For example, the government is required to provide “notice” to a *defendant* of the charges against the *defendant* in *criminal proceedings* or in *civil proceedings* in which an individual’s interests are involved. This means the government must give you a piece of paper explaining the charges. It also means that if you sue someone, you must give them “notice” through *service of process*. Second, “notice” is used in cases to refer to whether an individual was aware of something. For example, a *statute* may require that before an individual be *held liable* for *damages*, the individual have “notice” about a certain fact.

Objection: During a trial, the prosecutor or the defense attorney may disagree, based on the rules of the courtroom, with something opposing *counsel* says (for example, the way questioning is being conducted during testimony) or does (for example, the way *evidence* is presented). An attorney tells the court of his or her disagreement by saying “I object” or “objection.” The judge decides immediately after each objection whether to “sustain” (uphold) or “*overrule*” the objection. If the judge sustains an objection, it means the judge (based on his or her interpretation of the law) agrees with the attorney raising the objection and whatever is objected to must stop because it is against the rules. If an objection is *overruled*, it means the judge disagrees with the attorney raising the objection and whatever is objected to may continue.

Off the record: This is what the judge says when he or she wants to say something or wants to hold a discussion that he or she does not want to appear in the court *record*. For example, *plea* bargaining discussions between lawyers and the judge usually are held off the record.

Opinion: When a court decides a case, the court writes an explanation of how it reached its decision. This is an “opinion.”

Oral arguments: Spoken arguments made by the parties of a case that a judge may *hear* before reaching a decision and issuing an *opinion*. Oral arguments are often presented to appellate judges; see Chapter 9 for more information on the *criminal appeals* process.

Overrule: To *reverse*, reject or rule against. When a court’s later decision on a point of law conflicts with a prior decision by the same court, it “overrules” the prior decision. The earlier decision is no longer *precedent* because it has been *reversed*. A judge also “overrules” an attorney’s *objection* when he or she disagrees with that attorney and believes that the conduct objected to should be allowed.

Party: The people who are involved in the lawsuit on either side. For example, the defendant is a party. Multiple defendants can also collectively be considered one party.

Peace officer: Officers in various state agencies appointed to maintain order or “keep the peace,” including sheriffs, police officers, and state highway patrol.

Per se: A Latin phrase meaning “by itself” or “in itself.” For example, in considering a *habeas* petition, a court may consider a violation “*per se* prejudicial” and not require you to present further evidence to prove you were prejudiced (harmed) because the court has already assumed that you were prejudiced by the violation.

Peremptory strike or peremptory challenges: In selecting a *jury* for a *jury trial*, both the prosecution and defense can remove a potential juror from serving on the *jury* without providing a reason; each such removal is called a peremptory strike or challenge. The number of peremptory challenges for the prosecution and defense are fixed, and after the given number is used up, each side must then provide reasons for refusing a potential juror. Peremptory challenges are defined by state *statutes*.

Personal property: Everything that a person owns that does not fall under the definition of *real property*.

Petition: A formal, written request to the court to take action on a particular matter. The petition should contain all necessary information and be presented in the proper format.

Petitioner: The person who brings a lawsuit or an *appeal* by “petitioning” the court for *relief*.

Plaintiff: The person who brings a lawsuit.

Pleas: After being *indicted* for a particular crime, a *defendant* enters a plea of guilty, not guilty, or no contest. A plea of no contest, usually in a situation of a *misdemeanor* as part of a plea arrangement, means you are not denying or admitting the allegations against you on the *record* but that you accept the *sentence*. A plea of not guilty may lead to a trial. A guilty plea may be a requirement of “plea bargaining,” which takes place when the prosecutor and the accused negotiate a resolution to the case subject to court approval. Usually, a “plea bargain” includes a *defendant* pleading guilty in return for a lower *sentence*. A plea of guilty leads to a *sentencing hearing* at which the *defendant’s sentence* is decided by a judge.

Post-conviction relief: A *remedy granted* by a court after *conviction* that changes the terms of *conviction*, either by awarding a new *sentence* or trial, or by reversing the *conviction*. Examples of post-conviction relief include *habeas corpus* and, in New York, Article 440 motions.

Precedent: A case decided by a court that serves as the rule to be followed in similar later cases. For example, a case decided in the United States Supreme Court is precedent for all other courts—any rules established in that case become laws that must be followed by all other courts unless or until *overruled* by a later decision of the Supreme Court.

Prejudice, Prejudicial: When something happens that biases the jury against one of the parties in a case, there has been prejudice to that party’s case. For example, if there has been a long delay between your arrest and your final parole revocation *hearing*, *habeas corpus* may be *granted* because of the delay, which may have been prejudicial to your case.

Preponderance of the evidence: This is the *burden of proof* in a *civil* suit. To meet this *burden of proof*, there must be more *evidence* that the thing being proved happened than that it did not happen.

Presumption: Something that a court takes to be true according to the rules of the court or the laws of the *jurisdiction*. For example, in all *criminal trials*, a *defendant* is presumed innocent. Therefore a *jury* must believe the *defendant* is innocent unless there is sufficient *evidence* to demonstrate that the *defendant* is guilty. A rebuttable presumption is one that can be overcome by proof that it is not true in the case being considered by the court. For a presumption to be rebutted, the rebutter must meet the *burden of proof* (either by *preponderance of the evidence*, *clear and convincing evidence*, or *beyond a reasonable doubt*, depending upon the type of presumption). An irrebuttable presumption is one that the court always considers to be true, and cannot be rebutted by any amount of proof.

Privilege: A special legal right or exemption that allows certain people to not testify about information they learned from a specific source—for example, the attorney-client privilege and the spousal privilege. The attorney-client privilege means that the information exchanged between an attorney and his or her client is confidential, so an attorney may not reveal information regarding the representation of a client without the client’s consent. The spousal privilege means that information exchanged between spouses is also protected, and a spouse may not be required to testify against his or her spouse. There are narrow exceptions to these privileges.

Pro se: A Latin phrase meaning “for oneself”; someone who appears in court *pro se* is representing him or herself without the services of a lawyer.

Probable Cause: A reasonable ground for believing, based on existing facts, that a crime has been committed, or that an arrest or search is necessary. Generally, the police must show probable cause to have a judge issue an arrest, search, or eavesdropping warrant. Same as *reasonable cause*.

Proceeding: Courtroom or related matter that occurs during the course of a dispute or lawsuit, or any individual courtroom or related event that takes place during the course of the dispute or lawsuit.

Questions of fact: The issues of a case that deal with the facts, or, in other words, what actually happened. This is in contrast to the issues of a case that deal with the law. In a jury trial, the *jury* decides questions of facts. In the absence of a jury, the judge decides the questions of fact (as well as *questions of law*).

Questions of law: The issues of a case that deal with what the law means, or how the law is applied or should be applied to the facts of the case. A *jury* cannot decide questions of law; only the judge can.

Real property: Land, and whatever is built or grows upon land.

Reasonable cause: Same as *probable cause*.

Reckless: To act despite the fact that you are aware that your action creates a substantial and unjustifiable (large and unnecessary) risk of harm to others. For certain crimes, recklessness is the mental state that must be proved by the prosecution.

Record (as in the record of a trial): A written account of all of the *proceedings* of a trial, as transcribed by the court reporter. Errors made by the court that appear in the record can be *appealed*, while those that do not appear in the record must be *collaterally* attacked.

Regulation: A rule or order that manages or governs a situation, as in “prison regulation.” A regulation has the same effect as a law if the regulation is legally issued by an executive authority of government.

Relator: The person on whose behalf the state brings a claim, or who is permitted to bring a claim in the name of the state. See *ex rel*.

Relevant: A fact or circumstance that is important or helpful in the process of determining the truth of a matter is relevant. Something that is not important to determining the truth is “irrelevant.”

Relief: *Remedy* or benefit that a *plaintiff* or *petitioner* seeks from a court or that is awarded by a court to a plaintiff or petitioner. See *remedy*, as these terms are often used interchangeably.

Remand: When a case is sent back from the *appellate court* to the trial court for further action or *proceedings*.

Remedy: When a court decides a *criminal* or *civil* issue, it often issues an order so that a *right* recognized by the court may be enforced. For example, a court may find that a confession taken by the police was *coerced* in violation of a *defendant's* right. Under these circumstances, the remedy the court may order is to not allow the *defendant's* confession to be used by the prosecution in its case to the *jury*. Remedies can consist of damages, injunctive relief, other orders, or solutions that a judge may use his or her *discretion* to create. See *relief*.

Reply: The *plaintiff's* answer to the *defendant's* case, either in a written brief or, at trial, orally.

Reprieve: Temporary delay in carrying out a *criminal* punishment.

Respondent: The person against whom a lawsuit or *appeal* is brought. This person “responds” to the claims of *petitioner*. See *Defendant*.

Retain (as in “to retain counsel”): To hire, usually used with respect to hiring a lawyer.

Reversed: When an *appellate court* changes the decision of a lower court, it reverses the lower court’s decision. The party who lost in the trial court and then *appealed* to the appellate court is now the winner of the case.

Revoke (Revocation): To take back or cancel; the act of taking back or cancelling. For example, when the parole board revokes your parole, it cancels your parole and places you back in prison.

Right: A legal power that someone possesses. For example, if you are arrested, at the time of the arrest, you have the *right* to remain silent.

Right to an attorney: You have a *right* to the assistance of *counsel* (attorney) at any critical stage of your prosecution—meaning you have the *right to counsel* when adversarial *proceedings* have begun (in other words, after a formal charge has been *filed*, a preliminary *hearing* held, or during an *indictment* or an arraignment). This *right to counsel* is guaranteed by the Sixth *Amendment* to the Constitution, even if you cannot afford an attorney. In such cases, *counsel* is provided by the state. You also have the *right to counsel* during an interrogation, as guaranteed by the Fifth *Amendment* to the Constitution, which protects you from self-incrimination. You may also be *entitled* to an attorney in *proceedings* other than *criminal* prosecutions. See Chapter 9 on *criminal appeals* and Chapter 4 on finding a lawyer for more information.

Right to be free from arbitrary search and seizure: The Fourth *Amendment* to the Constitution provides this right. The police in many cases must have a search warrant (especially if police are going to search a person’s home). However, there are many exceptions to the requirement of a search warrant. If police locate *evidence* as a result of an illegal search, a judge may exclude the *evidence* from being heard or presented at trial.

Right to be free from torture: The Eighth *Amendment* to the Constitution states that you have a *right* to be free from “cruel and unusual punishment.” State constitutions have similar provisions. See Chapter 16 for more information on enforcing your civil *rights* in prison.

Right to freely practice your religion: You have the *right* to practice your religion even though you are in prison. Prison officials may restrict your *right* to practice your religion only if the restriction imposed reasonably relates to the requirements of running the prison system. See Chapter 27 for more information on your religious freedom.

Right to remain silent: After a *defendant* is arrested, he or she has the *right* to not say anything. Police officers are required to inform a *defendant* of this *right* as part of the *Miranda* warnings given to an accused.

Sentence: The punishment imposed by the court or a judge against a defendant after he or she has been convicted of a crime.

Sentencing hearing: After a trial is concluded and the *jury* has reached a *verdict* (the *jury's* decision), the *sentence* of the *defendant* is still to be decided. Prior to sentencing, a *hearing* is held and a judge may review any *relevant* material before deciding on a *sentence*. These materials usually include a pre-sentencing report that often contains information such as the circumstances of the crime, and the educational and employment background of a *defendant*, among other factors.

Service (“to serve”): As used in legal language, the physical act of handing something over, or delivering something to a person, as in serving legal papers on a person.

Session (“in session”): That period of time during any given year in which a legal body (for example, a court, or the state legislature) carries on its usual business.

Settlement: A settlement is when the plaintiff in a lawsuit or administrative proceeding agrees to withdraw his claims in exchange for the defendant paying him some amount of money and/or taking certain actions. Settlement is a way for the parties to agree to end the lawsuit before the judge or the jury reach a verdict.

Standard (of proof): How the court will judge your evidence and decide your case. Certain situations require meeting a higher standard. In a *criminal* case, for example, the prosecution must show the court that you are guilty “*beyond a reasonable doubt*” for you to be convicted. Some other common standards of proof besides “*beyond a reasonable doubt*” include by “*clear and convincing evidence*” and by “*a preponderance of the evidence*.”

Statute: Laws passed by the U.S. Congress or state legislatures. *Criminal* offenses are defined by statutes.

Statute of limitations: A law that sets out time limitations within which different types of lawsuits or *criminal* charges must be brought. After the *statute* of limitations has “run” on a particular type of lawsuit, a *plaintiff* can no longer bring that lawsuit. For example, if the *statute* of limitations on a *tort* action is five years, the *plaintiff* cannot wait for five years and one day after the cause of action arises to bring the lawsuit. If the *plaintiff* waits that extra day, he or she can no longer sue.

Stenographer: The person who makes the court *record* by writing it in shorthand; same as the court reporter.

Subpoena: An official court document that requires a person to appear in court at a specific time and place. A particular type of subpoena requires an individual to produce books, papers, and other things.

Suppress (motion to suppress): To prevent *evidence* from being introduced at trial.

Tort: A legal term that means a “wrong” or “injury” inflicted on someone for which a *remedy* may be obtained in a *civil* case. Someone who destroys your property or injures you may have committed a tort. See Chapter 17 for more information on tort actions.

Trial: A *proceeding* that takes place before a judge or a judge and a *jury*. In a trial, both sides present arguments and *evidence*, which the court examines.

United States Law Week (U.S.L.W.): A reference book that contains newly-reported cases not yet printed in bound volumes.

v. (vs., versus): Means “against;” used to indicate opponents in a case, as in *Doe v. Smith*.

Vacate: To set aside, ignore, not give any merit. This term is used when an *appellate court* will vacate the *judgment* of a trial court if it concludes that the decision was wrong. It will ignore that decision so that the *appellate court* can decide the case as if they are seeing it for the first time, or so that it can send the case back to be looked at as if it is being viewed for the first time by the trial court.

Vague: Indefinite; not easy to understand; can be reasonably interpreted more than one way.

Verdict: At the end of a trial, a *jury* reaches a verdict (a decision) of not guilty or guilty based on the *evidence* presented at trial and in accordance with the legal questions presented to the *jury* by the court.

Verify: To confirm the authenticity of a legal paper by *affidavit* or oath.

Verified Complaint: A complaint where the allegations are sworn to by the plaintiff. A verified complaint tells the court that the plaintiff believes that the charges against the defendant have been investigated and found to be of substance. In federal court, a complaint generally does not have to be verified unless a rule or statute specifically states that a complaint must be verified. Typically, there is a verification page where a notary public or other officer certified to certifies that he/she administered an oath to the plaintiff and the plaintiff signed the affidavit in the notary's presence.

Voir dire: Before selecting a *jury* for a *trial*, the court and attorneys for each side ask the *jury* questions to determine which people are suitable jurors in that case. This questioning of jurors is called voir dire.

Voluntary: An act that a person freely carries out and is not forced to do.

Waive (Waiver): To give up a certain right. For example, a waiver of the *right* to a *jury* trial or the *right* to be present at a *hearing* means to give up those *rights*.

Witness: A person a *party* in a legal *proceeding* calls upon to *testify* for or against a party. They can give factual *evidence* (like what they saw, felt, heard, etc.) or can be experts about the subject matter at issue.

Writ: An order written by a judge that requires a specific act to be performed, or gives someone the power to have the act performed. For example, when a court issues a *writ of habeas corpus*, it demands that the person who is detaining you release you. A *mandamus* is another type of writ that a court can issue.