

APPENDIX V

DEFINITIONS OF WORDS USED IN THE *JLM**

A.L.R.: This stands for American Law Reporter, which is a reference book that helps 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*. This decision by the *jury* or court 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 government body created by the state or *federal* government to carry out the laws. For example, New York State'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*. To be admissible, the evidence must be *relevant* and not unfairly *prejudicial*, based on *hearsay*, or *privileged*.

Affidavit: A written statement that is made voluntarily by a person who swears to the truth of the statement. The swearing of truth must be in the presence of 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 lower court, the appellate court affirms the decision of the lower court. When this happens, the *party* who lost in the lower 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. All definitions are adapted and paraphrased from those listed in BLACK'S LAW DICTIONARY (11th ed. 2019) and BOUVIER LAW DICTIONARY (Desk ed. 2012).

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 that something happened, but the claim still needs to be proven. When you allege something, you make an allegation.

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. For example, the Fourth Amendment to the Constitution gives you the right to be free from unreasonable searches and seizures.

Annotation: A remark, note, or comment on a section of legal writing, which is meant 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 lower 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 the lower courts, including 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. An authority can either be binding (the court deciding your case must follow it) or persuasive (the court deciding your case may follow or choose to rely on it but does not have to).

Beyond a reasonable doubt: The standard by which the government must prove every element (part) of its case in a *criminal trial*. Under this standard, the prosecutor must persuade the *jury* that there is no other logical explanation for the *evidence* presented during *trial* other than the conclusion that *defendant* is guilty. The *evidence* must be so convincing that the *jury* is virtually certain of the *defendant's* guilt. It is enough for the prosecution to show that the *defendant* is “probably” or “most likely” guilty. If there is *evidence* that causes the *jury* to have any doubt about even a single element of the crime or about the *defendant's* guilt in general, then it must return a *verdict* of not guilty. This is the most demanding *burden of proof*.

Burden of proof: A *party's* duty in a *trial* to prove 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 a *civil case*, the *jury* 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 a *criminal case*, the *jury* 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 harder 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 lower 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” and indicates that the cited source supports something similar to the statement just made. *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 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*. For more information, review *JLM*, Chapter 2, “Introduction to Legal Research,” and Chapter 5, “Choosing a Court and a Lawsuit: An Overview of the Options.” Chapter 2 also includes a list of which states are covered by each circuit.

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.

Concurrence/concurring opinion: A judge who agrees with the result of the *majority opinion* in a given case but disagrees with the reasoning behind it may write a separate concurring opinion. Similar to *dissenting opinions*, concurring opinions are not binding on future courts. However, concurrences can be used by lawyers as persuasive *authority*.

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 lower 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 a person or law enforcement agency with 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 decision in a *civil case* stating the *rights* of the *parties* or expressing the court's view on a certain part of the law without ordering *relief* to either side.

Defendant: The *party* against whom a lawsuit is brought.

Denial: A rejection, as in rejecting an application, *motion*, or *petition*. A denial can also be an assertion that the statement offered is untrue. For example, someone may deny a statement made about him that he 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 their *opinion*, about a *question of law* that is not critical to the case's outcome. The plural form of *dictum* is "*dicta*." *Dicta* generally comment on something beyond the issue that is in front of the court to decide. Because *dicta* may be unrelated to the issue being decided, they are not law and are not binding on later courts. A *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 *dicta*, but they do not have to do so. In other words, *dicta* are not binding *precedent*.

- To figure out if something the court says is *dictum*, ask yourself: "If this statement was not in the *opinion*, would the court have decided the case in the same way?" If the answer is yes (the court's *opinion* still makes sense without the statement), then the statement is probably *dictum*. If the answer is no (the court's *opinion* does not make sense without the statement), 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: The part of a *trial* or *hearing* when the lawyer questions a *witness* for the *party* that the lawyer is representing in attempting to prove their side of the case.

Discipline/disciplinary proceeding: Punishment for violation of rules. At the disciplinary proceeding, a person or committee decides what punishment is appropriate.

Discovery: The process of obtaining information about your case in preparation for a *trial*. For more information, see *JLM*, Chapter 8, "Obtaining Information to Prepare Your Case: The Process of Discovery."

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.

¹ Latin phrases are italicized in legal writing. If you submit any motions, briefs, complaints, or other documents to the court, you should italicize any Latin phrases that you use.

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 *majority opinion* in a given case may explain their reasons for disagreeing in what is known as a dissenting opinion. Similar to a *conurrence*, a dissent is not considered the law and is, therefore, not binding on future courts.

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 *JLM*, Chapter 2, “Introduction to Legal Research,” for more information.

Due process (for example, 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 life, liberty, and property, liberty. 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 of the *JLM* address 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): This Latin phrase means “by/on the relation of.” The government brings a lawsuit *ex rel.* if a private *party* (someone not acting as a government official) interested in the matter asks the government to bring suit and the government agrees. 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 *JLM*, Chapter 8, “Obtaining Information to Prepare Your Case: The Process of Discovery.”

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.

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 indicating that, at the bottom of the page, there is more information about the particular section or sentence that the number follows. 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 (for example, “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: 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 or her *rights*. The habeas writ can be sought in both state and *federal* courts. For more information, see *JLM*, Chapter 13, “Federal Habeas Corpus Petitions,” and *JLM*, Chapter 21, “State Habeas Corpus: Florida, New York, and Michigan.” 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 on both sides of 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.

² This is an example of a footnote. If you were citing it, you would call it n.3.

Hearsay: Used to describe testimony in which a *witness* talks about something they do not know through personal experience but have 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.” In general, hearsay testimony is not *admissible* in court and may be *excluded*. However, there are many exceptions to the hearsay rule.

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 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 to 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. For more information, see *JLM*, Chapter 2, “Introduction to Legal Research,” and *JLM*, Chapter 5, “Choosing a Court and a Lawsuit: An Overview of the Options.” See also *Precedent*.

Immunity (for example, “immunity from lawsuit”): When a person or governmental body cannot be sued (and is, therefore, 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 length of incarceration but sets a minimum and a maximum period, such that the incarceration cannot last less than the minimum and cannot last more than the maximum. The length of incarceration is determined later, according to factors such as behavior in prison.

Indictment (pronounced “in-DITE-ment”): A written accusation charging a person with a particular crime or crimes that is presented by a grand jury (a large group of people who decide whether the *evidence* against a person accused of a crime provides *probable cause* to allow the case to go forward). After an indictment is issued, the charges must be proven at *trial* for the *defendant* to be *convicted*.

Indigent person: A person who does not have enough money to hire a lawyer to defend himself. 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*” (“IFP”).

Injunction/injunctive relief: An order of the court that a person must immediately stop doing something or must begin to do something that they have 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 government.

Intermediate appellate court: The court above the *trial* court that reviews some of the *trial* court's decisions but that is lower than the final *appellate court*. 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 (which 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. For an explanation of interrogatories and how they fit into the *discovery* process, see *JLM*, Chapter 8, "Obtaining Information to Prepare Your Case: The Process of Discovery."

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 *rights* and duties of the *parties*.

Jurisdiction: Jurisdiction has two separate definitions. The first refers to the authority of a court to decide a case. If a court has the power to decide your case, the court has "jurisdiction." To have this authority, a court must have "subject matter jurisdiction" over the kind of case (for example, only *criminal* courts can *hear criminal cases*) and "personal jurisdiction" over both *parties*. "Personal jurisdiction" means either that you have agreed to come to that particular court or that you have certain relationships with the state that allow the opposing *party* to bring you to court in that state—for example, if you live in that state. The second definition refers to the geographic area in which a court may exercise its power to decide a case. For example, New York and New Jersey are different "jurisdictions" because New York courts only have authority to decide cases brought in New York.

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 gives you the *right* to have a *trial* by jury 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 prison *sentences* of more than six months), a *defendant* may not have the *right* to a jury *trial*.

Lesser included offense: A crime that has some of the elements of a more serious crime (but not all of the elements). 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 *JLM*, Chapter 9, "Appealing Your Conviction or Sentence," for more information.

Liable: When you are required by the court to make compensation. For example, if the court decides that Person A must pay Person B \$100 for the injury Person A gave to Person B, Person A is "liable" to Person B for \$100.

Litigate/litigation: When you participate in a *trial*. All the events in a *trial*, including the *trial* itself and *proceedings* prior to *trial* (sometimes called pre-trial proceedings), are included in litigation.

Majority/majority opinion: An *opinion* signed by more than half of the judges of a court or panel; it is the court's decision in a case.

Mandamus, Writ of: This is a Latin term that refers to a special kind of order 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 their duties or responsibilities.

- 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 look at 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.

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.

Minutes: Transcript. The final copy of the *record* taken from the shorthand originally written by the court reporter. It will have everything said on the record in the court room during your case.

Miranda (*Miranda v. Arizona*): A U.S. Supreme Court case that describes the rights you should be told 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 *sentences* vary by the class of the offense. 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*, a *jury* selection error occurs, or a *jury* can't agree on a *verdict*) that cannot be corrected, a judge may decide that 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 can be tried again.

Mitigating factors: Factors that reduce your blameworthiness, which the *jury* or judge may rely on 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 make 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 doing something that a reasonable person would not do or not doing something that 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 put his or her seal on certain legal papers 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 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 wants to say something or wants to hold a discussion that he 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 *JLM*, Chapter 9, “Appealing Your Conviction or Sentence,” 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 followed because it has been *reversed*. A judge also overrules an attorney’s *objection* when he 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* because the court has already assumed you were *prejudiced* by the violation.

Peremptory strike/peremptory challenges: In selecting a *jury* for a *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.

Plea: After being *indicted* for a particular crime, a *defendant* enters a plea of guilty, not guilty, or no contest. A plea of no contest (also called “*nolo contendere*”), which is usually entered for 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 State, 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 they are *overruled* by a later decision of the Supreme Court or a law passed by Congress.

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 a given thing happened than that it did not happen.

Presumption: Something that a court accepts as 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 a *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. Under the attorney-client privilege, the communications (written or spoken) between an attorney and his client are generally confidential, and an attorney may not reveal the content of those confidential communications to the court 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 spouse. Note, however, that there are exceptions to these privileges.

Pro se: A Latin phrase meaning “for oneself.” Someone who appears in court *pro se* is representing himself rather than being represented by 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. See ***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 *trial by jury*, the *jury* decides questions of facts. In the absence of a *jury*, the judge decides 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: See ***Probable cause.***

Reckless: To act in a certain way even though 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 (for example, the trial record): 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: The *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 also ***Remedy***, as these terms are often used interchangeably.

Remand: When a case is sent back from the *appellate court* to the lower 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*, and/or 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 orally at *trial*.

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 (for example, “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 lower 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 under the Fifth *Amendment* of the U.S. Constitution.

Right to an attorney: In a *criminal trial*, you have a *right* to be represented by a lawyer at any critical stage of your prosecution—meaning you have the right to an attorney 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 an attorney 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 an attorney during an interrogation under 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. For more information, see *JLM*, Chapter 9, “Appealing Your Conviction or Sentence,” and *JLM*, Chapter 4, “How to Find a Lawyer.”

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 *JLM*, Chapter 16, “Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law,” for more information on enforcing your civil *rights* in prison.

Right to freely practice your religion: You have the *right* to practice your religion under the First *Amendment* even though you are in prison. Prison officials may restrict your right to freely practice your religion only if the restriction imposed reasonably relates to the requirements of running the prison system. For more information on your right to freely practice your religion, see *JLM*, Chapter 27, “Religious Freedom in Prison.”

Right to remain silent: After a *defendant* is arrested, he has the *right* to not say anything under the Fifth *Amendment*. Police 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 has been *convicted* of a crime.

Sentencing hearing: After a *trial* is concluded and the *jury* has reached a *verdict*, the *defendant's sentence* still needs to be decided. The court will then hold a sentencing hearing, where the 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 things.

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”): The 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: When the *plaintiff* in a lawsuit or administrative *proceeding* agrees to withdraw his claim(s) in exchange for the *defendant* paying some amount of money and/or taking certain actions. The parties can agree to end the lawsuit before the judge or *jury* reach a verdict by reaching a settlement.

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. Statutes define *criminal* offenses.

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: Court reporter; the person who makes the court *record* by writing it in shorthand.

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 (for example, 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. For more information on tort actions, see *JLM*, Chapter 17, “The State’s Duty to Protect You and Your Property: Tort Actions.”

Trial: A *proceeding* that takes place before a judge (a “bench trial”) or a judge and a *jury* (a “jury trial”). 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. or versus): Means “against” and is used to distinguish between opposing *parties* in a case, as in *Doe v. Smith*.

Vacate: To set aside, ignore, not give any merit. When an *appellate court* vacates the *judgment* of a lower court, that means it has concluded that the decision was wrong. The *appellate court* will ignore the lower court’s decision so that it can decide the case as if it were seeing the case for the first time, or so that it can send the case back to the lower court to be looked at as if it were being decided for the first time.

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 (decision) of guilty or not guilty based on the *evidence* presented throughout the *trial* and in accordance with the legal questions submitted 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 do so) 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, waiving the *right* to a *trial* by *jury* or the *right* to be present at a *hearing* means to give up those *rights*.

Witness: A person that 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 the person who is detaining you to release you. A *mandamus* is another type of writ that a court can issue.