

TRIAL MANUAL 8 FOR THE DEFENSE OF CRIMINAL CASES

by Anthony G. Amsterdam and Randy Hertz

The *Trial Manual 8 for the Defense of Criminal Cases* is a guidebook for criminal defense lawyers at the trial level. It covers the information a defense attorney has to know, and the strategic factors s/he should consider, at each of the stages of the criminal trial process. It is organized for easy access by practitioners who need ideas and information quickly in order to jump-start their work at any given stage.

The allocation of material among the four volumes of the book is intended to facilitate defense attorneys' use of the book:

- ***Volume One*** (Chapters 1-16) provides an overview of criminal procedure and then focuses on the issues a defense attorney is likely to confront, and the steps s/he will need to take, at the early stages of a criminal case, including: the first steps to be taken to locate, contact and protect a client who has been arrested or summoned or who fears s/he is wanted for arrest; arguing for bail or other forms of pretrial release; conducting the initial client interview; developing a theory of the case; dealing with police and prosecutors; planning and overseeing the defense investigation; conducting the preliminary hearing; grand jury practice; handing arraignments; and plea bargaining. This volume also addresses the additional considerations that may arise when representing a client who is mentally ill or intellectually disabled.
- ***Volume Two*** (Chapters 17-27) begins with a checklist of matters for counsel to consider between arraignment and trial, and then focuses extensively on pretrial motions practice. In addition to discussing strategic and practical aspects of drafting motions and handling motions hearings and non-evidentiary motions arguments, this volume covers the substantive law and procedural aspects of each of the types of motions that defense attorneys commonly litigate in criminal cases: motions for discovery (along with a discussion of all other aspects of the discovery process); motions to dismiss the charging paper; motions for diversion or for transfer to juvenile court; motions for a change of venue or for disqualification of the judge; motions for severance or for consolidation of counts or defendants; and motions to suppress tangible evidence, to suppress statements of the defendant, and to suppress identification testimony. These chapters provide detailed information about federal constitutional doctrines and a large number of state constitutional rulings that confer heightened protections.
- ***Volume Three*** (Chapters 28-40) starts with the immediate run-up to trial: issues relating to the timing of pretrial and trial proceedings; interlocutory review of pretrial rulings; and the concrete steps that counsel will need to take to prepare for trial, including working with expert witnesses where appropriate. It then begins the book's coverage of the trial stage, discussing the decision to elect or waive jury trial; jury selection procedures and challenges before and at trial; general characteristics of trials; opening statements; evidentiary issues and objections; techniques and tactics for handling prosecution and defense witnesses; and trial motions. Issues, procedures, and strategies unique to bench trials are discussed in tandem with the parallel aspects of jury-trial practice.

- **Volume Four** (Chapters 41-49) concludes the coverage of the trial by discussing the renewed motion for acquittal; closing arguments; requests for jury instructions; objections to the court's instructions; and jury deliberations. This volume then discusses posttrial motions and sentencing and concludes with a short summary of appellate and postconviction procedures and a précis of the first steps to be taken in connection with them.

The structure and presentation of material are designed to facilitate the conversion of text into defense motions and other types of briefing. Three of the documents in the text are available for direct downloading from the ALI website: section 2.5's flow-chart of procedures in summary, misdemeanor, and felony cases; section 4.5's questionnaire for obtaining information pertinent to bail from the client; and section 6.15's checklist for interviewing the client. The bail questionnaire and the interview list are in Word format that can be edited and thus customized to an individual user's practice and/or turned into a form for use in taking notes in real time during client interviews. **The downloadable versions of these documents are available at www.ali.org/trial-manual.**

The conventions the book uses for gender pronouns are designed to be fully inclusive. As societal conventions for gender pronouns change, the book's terminology is updated.

ABOUT THE AUTHORS

Anthony G. Amsterdam is a University Professor and Professor of Law *Emeritus* at the N.Y.U. School of Law. He previously taught at the University of Pennsylvania and at Stanford. Throughout and following his fifty years of law teaching (which were preceded by a stint as an Assistant United States Attorney in the District of Columbia), he has engaged in extensive *pro bono* litigation in criminal, civil-rights, and civil-liberties cases. He has also served as counsel, as a consultant, or as a member of the board of directors or advisors for numerous public-defender and civil-rights organizations.

Randy Hertz is the vice dean of N.Y.U. School of Law. He has been at the law school since 1985, and regularly teaches the Juvenile Defender Clinic, 1L Criminal Law, Criminal Procedure, and a simulation course titled Criminal Litigation. Before joining the N.Y.U. faculty, he worked at the Public Defender Service for the District of Columbia, in the juvenile, criminal, appellate and special litigation divisions.