Detailed Volume Table of Contents

Chapter 1

Pretrial Criminal Trial Proceedings

§ 1:1	Laws governing trials in federal courts, generally
§ 1:2	The Federal Constitution
§ 1:3	The United States Code
§ 1:4	The Federal Rules of Criminal Procedure, generally
§ 1:5	The Federal Rules of Evidence
§ 1:6	Applicability of Federal Rules of Evidence
§ 1:7	Local rules of court
§ 1:8	Computing and extending time
§ 1:9	Determining law applicable to pending case
§ 1:10	The determination of foreign laws
§ 1:11	Proceedings on remand
§ 1:12	The law of the case
§ 1:13	Stare decisis
§ 1:14	Arrest warrant or summons on complaint
§ 1:15	The grand jury
§ 1:16	The indictment and information
§ 1:17	Improper (constructive) amendment of indictment
§ 1:18	Joinder of offenses and of defendants
§ 1:19	Joint trial of separate cases
§ 1:20	Relief from prejudicial joinder
§ 1:21	Arrest; upon warrant or summons upon indictment or information, or for failure to appear ir another district
§ 1:22	Initial appearance of defendant
§ 1:23	Procedures at initial appearance of defendant
§ 1:24	Release from custody; supervising detention
§ 1:25	The preliminary hearing
§ 1:26	The arraignment
§ 1:27	Entering a plea
§ 1:28	Considering and accepting a guilty or nolo contendere plea
§ 1:29	Voluntariness of the plea
§ 1:30	Determining the factual basis for a plea
§ 1:31	Plea agreement procedure
§ 1:32	Judge's participation in plea negotiations
§ 1:33	Withdrawing a guilty or nolo contendere plea
§ 1:34	Pleadings and pretrial motions, serving and filing papers
§ 1:35	Notice of government's intent to use certain evidence
§ 1:36	Notice of an alibi defense
§ 1:37	Notice of an insanity defense
§ 1:38	Notice of a public-authority defense
§ 1:39	Disclosure of ownership of nongovernmental corporate party or organizational victim
2 T.O.	Disclosure of ownership of hongovernmental corporate party of organizational vicinii

- § 1:40 Depositions
- § 1:41 Deposition of detained material witness
- § 1:42 Regulation of discovery
- § 1:43 Government's disclosures
- § 1:44 Government's production of witness's statement
- § 1:45 Defendant's disclosures
- § 1:46 Subpoenas
- § 1:47 Pretrial conference
- § 1:48 Place of prosecution and trial
- § 1:49 Transfer from the district for plea and sentence
- § 1:50 Transfer from district for trial

The Conduct of the Trial

- § 2:1 The conduct of the trial, generally
- § 2:2 The courtroom
- § 2:3 Security measures
- § 2:4 Seating of counsel, parties, and witnesses
- § 2:5 Bench conferences during jury trials
- § 2:6 In camera proceedings
- § 2:7 Reading law to the jury
- § 2:8 Death, absence, or disability of judge during trial or after verdict
- § 2:9 Effect of death of defendant while case is pending
- § 2:10 The conduct of the parties
- § 2:11 Liability of participants in the trial for libel and slander
- § 2:12 Arrangements for the news media
- § 2:13 The exclusion of the public
- § 2:14 The order of closure of court proceedings and documents
- § 2:15 Partial closing of the courtroom
- § 2:16 Screening admission to the courtroom
- § 2:17 The exclusion of the defendant's family
- § 2:18 Technology in the courts
- § 2:19 Taking pictures, broadcasting, and televising the proceedings
- $\S~2{:}20$ Testifying by telephone or closed-circuit television
- § 2:21 Controlling conduct of persons near the courtroom
- § 2:22 Controlling offensive language
- § 2:23 Misconduct of spectators and others
- § 2:24 Coaching of witness by spectator
- § 2:25 Controlling attire in courtroom
- § 2:26 Influencing, assaulting, or harassing a judge, juror, or witness
- $\S~2:27$ Influencing judge by injuring family member
- § 2:28 Obstruction of court orders and criminal investigations
- § 2:29 Preserving the record
- § 2:30 Transcribing the testimony
- § 2:31 Lost or destroyed records
- $\S~2:32$ The meaning of error
- § 2:33 Harmless error
- § 2:34 Cumulative error
- § 2:35 Plain error
- § 2:36 The invited-error doctrine

The Conduct of the Judge

§ 3:1	General conduct of the judge
§ 3:2	The right to a fair and impartial judge
§ 3:3	The change of judges
§ 3:4	The judge's disciplinary responsibilities
§ 3:5	The judge's misconduct and disability
§ 3:6	The judge's right and duty to expedite the trial
§ 3:7	The presence of the judge
§ 3:8	Duty of the judge to preserve order
§ 3:9	Remarks of the judge; testimony and rulings
§ 3:10	Remarks on matters of law and common knowledge
§ 3:11	Judge's conduct toward counsel
§ 3:12	Judge's conduct toward the parties
§ 3:13	Judge's control of the examination of witnesses
§ 3:14	Judge's conduct toward witnesses
$\S 3:15$	Admonishing witness about perjury
§ 3:16	Admonishing witness about self-incrimination
§ 3:17	Checklist: Proper action of the judge in controlling the examination of witnesse
§ 3:18	Calling of witnesses by the judge
§ 3:19	Interrogation of witnesses by the judge
§ 3:20	Exclusion of improper testimony on the court's own motion
§ 3:21	Independent investigations by the judge
§ 3:22	Objections to misconduct of the judge
§ 3:23	The judge as witness
$\S 3:24$	Summing up and comments by the judge

Chapter 4

§ 3:26 Judicial immunity

The Conduct of the Attorney

§ 3:25 Ex parte communications about pending proceedings

§ 4:1	The general conduct of the attorney
§ 4:2	Need for counsel to be admitted to practice in the court
§ 4:3	The lawyer's trial conduct
§ 4:4	Checklist: Suggested rules of conduct for attorneys
§ 4:5	The lawyer's dealings with the client
§ 4:6	The lawyer's duty of confidentiality
§ 4:7	The lawyer's dealings with opposing party and counsel
§ 4:8	The lawyer's dealings with judges and court officials
§ 4:9	The lawyer's dealings with those other than clients
§ 4:10	Other restrictions on the trial lawyer's conduct
§ 4:11	Contempt by the attorney
§ 4:12	Discipline of attorney for improper conduct
§ 4:13	Checklist: Grounds for disciplining attorneys
§ 4:14	The attorney as a witness
§ 4:15	Vouching for a witness
§ 4:16	Ability of counsel to bind his client
8 4.17	Right of counsel to make decisions for defendant

Publicity Before and During Trial

- § 5:1 The effect of publicity on the trial, generally
- § 5:2 Juror hearing and reading news accounts of the trial
- § 5:3 Continuance during trial because of publicity
- § 5:4 Determining impact of publicity upon jury during trial
- § 5:5 Admonishing the jury regarding publicity
- § 5:6 Checklist: The Sheppard rules regarding the conduct of the trial
- § 5:7 Judicial control of those speaking or writing about the proceedings
- § 5:8 Gag orders against parties and their attorneys
- § 5:9 The right of the accused to speak publicly about pending charges
- § 5:10 The right of an attorney to speak publicly about pending cases
- § 5:11 Checklist: Restricted subjects under Model Rule 3.6 upon attorney's right to speak publicly about pending cases
- § 5:12 Checklist: Matters proper for discussion by attorney under Model Rule 3.6

Chapter 6

Motions During Trial, Default, and Dismissal

- § 6:1 Motions during trial, generally
- § 6:2 Motion procedure
- § 6:3 Motion to suppress evidence
- § 6:4 Motion deadline
- § 6:5 Evidence on motions
- § 6:6 Ruling on motions
- § 6:7 The motion in limine
- § 6:8 Dismissal of indictment, information, or complaint

Chapter 7

Continuances

- § 7:1 Continuances, generally
- § 7:2 Unpreparedness of a party
- § 7:3 Absence or illness of a party
- § 7:4 Absence of counsel
- § 7:5 Prejudice, excitement, and surprise
- § 7:6 Absence of a witness
- § 7:7 Absence of documents or papers
- § 7:8 Admissions to avoid a continuance
- § 7:9 The application for the continuance
- § 7:10 The hearing and order for the continuance
- § 7:11 Denial of continuance as denial of right to counsel

Chapter 8

Trial by the Court

§ 8:1 Nonjury trials, generally

- § 8:2 Procedure in nonjury trials
- § 8:3 Admissibility of evidence
- § 8:4 The judge's findings

Chapter 9

Trial Before a Magistrate Judge

- § 9:1 The appointment of a magistrate judge
- § 9:2 The magistrate judge's jurisdiction, powers, and duties
- § 9:3 Proceedings before a magistrate judge
- § 9:4 Petty offenses and other misdemeanors

Chapter 10

The Province of Court and Jury

- § 10:1 Questions of law and fact, generally
- § 10:2 Invasion of province of jury
- § 10:3 Mixed questions of law and fact
- § 10:4 Credibility of witnesses, weight, and credibility of evidence
- § 10:5 Presumptions and inferences
- § 10:6 Character and conditions of things
- § 10:7 Amount, extent, and value
- § 10:8 Reasonableness
- § 10:9 Nature of conditions
- § 10:10 Necessity
- § 10:11 Justification, probable cause, and probability
- § 10:12 Character and status of persons
- § 10:13 Authority
- § 10:14 Physical condition
- § 10:15 Mental state
- § 10:16 Infants
- § 10:17 Sanity
- § 10:18 Intoxication
- § 10:19 Assent, volition, and consent
- § 10:20 Acts and conduct
- § 10:21 Occurrence or performance
- § 10:22 Nature
- § 10:23 Rights, duties, and liabilities
- § 10:24 Property rights and ownership
- § 10:25 Construction of language
- § 10:26 Intention, motive, and belief

Chapter 11

Rights and Obligations of Defendant

I. THE RIGHTS OF THE DEFENDANT

- § 11:1 The rights of the defendant, generally
- © West, a Thomson business, 4/2003

§ 11:2	The right to separate trial
§ 11:3	The right to a bill of particulars
§ 11:4	The right to a list of the government witnesses in capital cases
§ 11:5	The right to investigative, expert, and other services
§ 11:6	Right to conflict-free representation
§ 11:7	The right to retain deportable alien witnesses
§ 11:8	The presumption of innocence
§ 11:9	Instructions on the presumption of innocence
§ 11:10	Reasonable doubt
§ 11:11	Instructing on reasonable doubt
§ 11:12	The competency of the accused
§ 11:13	The right to testify and its waiver
§ 11:14	The right to remain silent
§ 11:15	Instructing on the right to remain silent
§ 11:16	The right to counsel and its waiver
§ 11:17	The right to competent counsel
§ 11:18	The right to conflict-free counsel
§ 11:19	The right of self-representation
§ 11:20	Procedure when counsel has been waived
§ 11:21	The pro se defendant with standby assistance
§ 11:22	The presence of counsel
§ 11:23	Right to change counsel
§ 11:24	Right of accused to confer with the attorney
§ 11:25	Presence of the accused
§ 11:26	Waiver of presence of accused
§ 11:27	Right to enforce plea agreement
-	

II. THE OBLIGATIONS OF THE DEFENDANT

§ 11:28	The obligations and duties of the defendant, generally
§ 11:29	The disruptive defendant
§ 11:30	Trial in the absence of the accused
§ 11:31	The defendant in handcuffs, shackles, etc.
§ 11:32	The defendant in prison garb
§ 11:33	The obvious use of special security measures
§ 11:34	The defendant who intends to commit perjury
§ 11:35	The use of the defendant's alias

Chapter 12

Defensees in Criminal Cases

§ 12:1	Defenses and their waiver
§ 12:2	Entrapment as a defense
§ 12:3	Presenting the defense of entrapment
§ 12:4	Determining the predisposition of the defendant
§ 12:5	Takeback entrapment
§ 12:6	Entrapment by estoppel
§ 12:7	Government sting operations
§ 12:8	Evidence admissible in entrapment cases
§ 12:9	Instructing on entrapment
§ 12:10	Coercion, compulsion, or duress as a defense
§ 12:11	Intoxication as a defense

§ 12:12	Drugged condition as a defense
§ 12:13	Instructing on intoxication or drugged condition
§ 12:14	Self-defense
§ 12:15	Alibi as a defense
§ 12:16	Notice of alibi
§ 12:17	Instructing on alibi
§ 12:18	Insanity as a defense
§ 12:19	Definition of insanity
§ 12:20	Notice of insanity and expert evidence of mental condition
§ 12:21	Evidence of insanity
§ 12:22	Burden of proving insanity
§ 12:23	Instructing on insanity
§ 12:24	Double jeopardy
§ 12:25	Multiple prosecutions for like offenses
§ 12:26	Collateral estoppel
$\S 12:27$	Prosecution barred by statute of limitations
§ 12:28	Selective and discriminatory prosecution
§ 12:29	Pretrial diversion
§ 12:30	Impossibility as a defense
§ 12:31	Mistake as a defense
§ 12:32	Ignorance of the law as a defense
§ 12:33	Advice of counsel as a defense
§ 12:34	Reliance on expert tax advice as a defense
§ 12:35	Good-faith misunderstanding of the law
§ 12:36	Official interpretation of law as a defense
§ 12:37	Defense based on public authority
§ 12:38	Outrageous conduct as a defense
§ 12:39	Vindictiveness as a defense
$\S 12:40$	Consent as a defense
12:41	Necessity as a defense
§ 12:42	Justification as a defense
§ 12:43	Withdrawal from conspiracy
§ 12:44	Liability for crimes beyond the scope of the conspiracy
\$12:45	Abandonment as a defense
§ 12:46	Defense to crime of solicitation
§ 12:47	Defense of manufactured federal jurisdiction

Chapter 13

Conduct of the Prosecution

§ 13:1	The United States attorney and the conduct of the case
§ 13:2	Special responsibilities of a prosecutor
§ 13:3	The duty to reveal evidence or information to the defense (<i>Brady</i> rule)
§ 13:4	Government's disclosure
§ 13:5	The duty to disclose statements of witnesses
§ 13:6	Information not subject to disclosure; the work-product rule; the prosecution's work product
§ 13:7	Duty to disclose plea agreement with prosecution witness
§ 13:8	The duty to disclose surveillance location
§ 13:9	Loss or destruction of evidence by the prosecution
§ 13:10	Making a witness unavailable
§ 13:11	Communications by prosecutor with represented accused

§ 13:12	The use of perjured testimony
§ 13:13	Payments to witnesses as bribery
§ 13:14	Duty to disclose an informer
§ 13:15	The duty to produce an informer as witness
§ 13:16	Calling a witness who refuses to testify
§ 13:17	Immunity of prosecutor for official acts
§ 13:18	The prosecuting attorney as a witness
§ 13:19	Improper comments in presence of jurors
§ 13:20	The <i>Petite</i> policy of the department of justice
§ 13:21	Prosecutional misconduct as ground for reversal
§ 13:22	Release by prosecution of publicity about a criminal charge
§ 13:23	The court's supervisory powers over the prosecutor

Contempt of Court

§ 14:1	Power of court to punish for contempt
§ 14:2	Civil and criminal contempt
§ 14:3	Direct and indirect contempt
§ 14:4	Checklist: Acts which may constitute criminal contempt
§ 14:5	Refusal to testify as contempt
§ 14:6	False answers as contempt
§ 14:7	Procedure in direct, criminal contempt
§ 14:8	Disposition after notice
§ 14:9	Burden of proving criminal contempt
§ 14:10	Jury trial in contempt proceedings
§ 14:11	Requirement of hearing before different judge
§ 14:12	The record in a contempt case
§ 14:13	Punishment for contempt
8 14:14	Punishment for refusal to testify after grant of immunity

Chapter 15

The Jury Trial

§ 15:1	The right to a fair and impartial jury
§ 15:2	The required number of jurors
§ 15:3	Procedures in selecting the jury, generally
§ 15:4	Selecting alternate juror(s)
§ 15:5	The anonymous jury
§ 15:6	Qualifications for jury service
§ 15:7	Selecting jurors in tax-evasion cases
§ 15:8	Discrimination because of sex, race, etc.
§ 15:9	Juror orientation; use of handbooks
§ 15:10	Right to list of prospective jurors
§ 15:11	Impaneling the jury
§ 15:12	The conduct of the voir dire examination
§ 15:13	Questioning the jurors
§ 15:14	Questioning about bias and racial prejudice
§ 15:15	The use of hypothetical questions
§ 15:16	Questions about the law

§ 15:17	Duty of jurors to answer truthfully
§ 15:18	Selection of alternate jurors
§ 15:19	Qualifying jurors for the death penalty
§ 15:20	Challenging jurors, generally
§ 15:21	Order of exercising challenges
§ 15:22	Peremptory challenges, generally
§ 15:23	Use of peremptory challenges to exclude jurors because of race
§ 15:24	Checklist: Race-neutral reasons held to justify use of peremptory challenge
§ 15:25	Use of peremptory challenges to exclude jurors because of gender
§ 15:26	Right of court to excuse jurors
§ 15:27	Swearing the jury
§ 15:28	Immunity of jurors

Chapter 16

Challenging a Juror for Cause

§ 16:1	Ground for challenge for cause, generally
§ 16:2	Making the challenge for cause
§ 16:3	Passing on challenges for cause
§ 16:4	The effect of the ruling on the challenge
§ 16:5	Prejudice and bias, generally
§ 16:6	Economic and social prejudice
§ 16:7	Familial relationship
§ 16:8	Social and business relationships
§ 16:9	Professional relationships
§ 16:10	Previous knowledge of the facts
§ 16:11	Previous connection with the case
§ 16:12	Preconceived opinion
§ 16:13	Bias against a person involved in the case
§ 16:14	Bias against circumstantial evidence
§ 16:15	Prejudice against crime, liquor, gambling, etc.
§ 16:16	Political, religious, and racial prejudices
§ 16:17	Prejudice against death penalty
§ 16:18	Other prejudices and biases
§ 16:19	Familiarity with or attitude toward law-enforcement personnel

Chapter 17

The Conduct of the Jury During the Trial

§ 17:1	The conduct of the jury during the trial
§ 17:2	Treatment of juror's improper conduct
§ 17:3	Juror's personal liability for misconduct
§ 17:4	Sequestration of jury during trial
§ 17:5	Removing juror and replacing with alternat
§ 17:6	Use of intoxicants or drugs
§ 17:7	Jurors reading or hearing accounts of trial
§ 17:8	Reception of evidence out of court
§ 17:9	Acceptance of favors by jurors
§ 17:10	The competence of the juror
§ 17:11	Attention to proceedings

§ 17:12 Jurors taking notes
§ 17:13 Questions by jurors
§ 17:14 Communications with jurors before and during trial
§ 17:15 The juror as a witness
§ 17:16 Dealing with alleged jury tampering
§ 17:17 The right to recall a witness to answer a juror's question
§ 17:18 Nullification as just cause for dismissing juror

Chapter 18

Opening Statements

- § 18:1 The nature of the opening statement
- § 18:2 Right to make an opening statement
- § 18:3 Opening statement and limiting evidence
- § 18:4 Improper remarks of prosecutor in opening statement

Chapter 19

Order of Proof

- § 19:1 Order of producing testimony in criminal cases
- § 19:2 Right to open and close
- § 19:3 Introducing evidence during cross-examination
- § 19:4 Rebuttal testimony
- § 19:5 Surrebuttal
- § 19:6 Reopening case

Chapter 20

The Burden of Proof

- § 20:1 The burden of proof, generally
- § 20:2 The burden of proving the corpus delicti
- § 20:3 The burden of proving the place of commission of crime
- § 20:4 The burden of proving the presence of the defendant
- § 20:5 The burden of proving the crime within the limitation period
- § 20:6 The burden of proving a negative
- § 20:7 The burden of proving exceptions or exemptions
- § 20:8 The burden of proof in aiding and abetting cases
- § 20:9 The burden of proof in accessory-after-the-fact cases
- § 20:10 The burden of proof in misprision of felony
- § 20:11 The burden of proving attempted crime
- § 20:12 The burden of proving substantial step required to show attempt
- § 20:13 The burden of proving conspiracy
- § 20:14 The burden of proving withdrawal from conspiracy
- § 20:15 The burden of proving money laundering
- § 20:16 The burden of proving income tax fraud
- § 20:17 The burden of proving intent or knowledge
- § 20:18 The burden of proving solicitation
- § 20:19 The burden of proving possession
- § 20:20 The burden on the defendant, generally

§ 20:21 The burden of proving alibi
§ 20:22 Instructing on the burden of proof
§ 20:23 The burden of proving drug conspiracy

Chapter 21

Proving the Identity of the Accused

- § 21:1 Problems regarding identity of accused, generally
- § 21:2 Burden of proving identity
- § 21:3 Evidentiary hearing to determine admissibility of identification
- § 21:4 The suggestiveness of the identification procedure
- § 21:5 Crime site identifications
- § 21:6 Using photographs to identify the accused
- § 21:7 Use of photo array to identify accused
- § 21:8 The lineup
- § 21:9 The showup
- § 21:10 In-court identification based on improper out-of-court identification
- § 21:11 Improper out-of-court identification followed by an identification with an independent origin
- § 21:12 Pretrial identification after illegal arrest
- § 21:13 Out-of-court identifications as hearsay
- § 21:14 Presence of counsel at the identification
- § 21:15 Identification by voice
- § 21:16 The admissibility of voiceprint evidence
- § 21:17 Fingerprints
- § 21:18 Footprints and tracks
- § 21:19 The use of dogs (bloodhound evidence)
- § 21:20 Expert testimony as to reliability of eyewitness identification
- § 21:21 Instructing on identity

Chapter 22

Proof of Facts

- § 22:1 Situations where proof is excused before trial
- § 22:2 Situations where proof is excused during trial
- § 22:3 Methods of proving facts
- § 22:4 Proof of birth or age
- § 22:5 Proof of death
- § 22:6 Proof of marriage
- § 22:7 Proof of intoxication
- § 22:8 Proof of weight
- § 22:9 Proof of incompetency

Chapter 23

The Use of Stipulations

- § 23:1 The nature of the stipulation
- § 23:2 The use of stipulations to control the trial
- § 23:3 The use of stipulations to excuse proof of facts
- § 23:4 The construction and enforcement of stipulations

- $\S~23:5$ Relief from stipulations
- § 23:6 Admissibility of evidence as to stipulated fact

Witnesses

§ 24:1	Compelling attendance of witnesses
§ 24:2	The subpoena
§ 24:3	Failure of witness to testify
§ 24:4	Refusal of witness to testify
$\S 24:5$	Compensation of witness
§ 24:6	Subpoena of person in foreign country
$\S 24:7$	Habeas corpus ad testificandum
§ 24:8	Material witnesses
§ 24:9	Witness-protection program
§ 24:1	0 Limiting the number of witnesses
$\S 24:1$	1 Influencing or harassing a witness (tampering)
§ 24:1	2 Retaliating against a witness, victim, or an informant
§ 24:1	3 Bribery of witnesses
§ 24:1	4 Right to interview witnesses
§ 24:1	5 Right to confer with witness on the stand
$\S 24:1$	6 Control and restraint of a witness
§ 24:1	7 Witness in prison garb or shackles
§ 24:1	8 Exclusion and separation of witnesses
§ 24:1	9 Witnesses subject to exclusion rule
§ 24:2	0 Effect of violation of rule
$\S 24:2$	1 Swearing of witnesses
§ 24:2	2 Use of an interpreter
§ 24:2	3 Liability of witnesses
§ 24:2	4 Perjury
§ 24:2	5 Subornation of perjury
§ 24:2	6 Testimony of probation and parole officers

Chapter 25

The Competency of Witnesses

§ 25:1	Competency of witnesses, generally
§ 25:2	Need for objection as to incompetency
§ 25:3	Time for objecting to competency
§ 25:4	Determining the competency of witness to testify
§ 25:5	Competency of felon to testify
§ 25:6	Competency of child to testify
§ 25:7	Determining competency of child to testify
§ 25:8	Competency of spouse to testify for or against other spouse
§ 25:9	Competency of participants in trial
§ 25:10	Competency of grand juror
§ 25:11	Competency of mentally or physically handicapped person
§ 25:12	Competency of deaf-mute
§ 25:13	Competency of narcotics addict
§ 25:14	Instructing on addict-informer's testimony

xxii

§ 25:15 Effect of religious beliefs or opinions
§ 25:16 Competency of accomplice to testify
§ 25:17 Instructing as to accomplice's testimony
§ 25:18 Competency of paid informer
§ 25:19 Competency of informer hired under contingent-fee arrangement
§ 25:20 Competency of witness who has been hypnotized

Chapter 26

Compelling Production of Documents

- § 26:2 Subpoena duces tecum
- § 26:3 The motion to quash or modify a subpoena
- § 26:4 Effect on admissibility
- § 26:5 Use of document by requesting party

Chapter 27

The Right to Confront Witnesses

- § 27:1 The right to confront witnesses, generally
- § 27:2 Waiver of right to confront witnesses
- § 27:3 Testimony at former trial or hearing
- § 27:4 Hearsay and the right to confront witnesses
- § 27:5 Use of television or videotape as violation of right to confront witnesses
- § 27:6 The incriminating confession of a codefendant

Chapter 28

The Admissibility of Evidence

- § 28:1 The admissibility of evidence, generally
- § 28:2 Requirement of authentication or identification
- § 28:3 The competency of evidence
- § 28:4 The materiality of evidence
- § 28:5 The relevancy of evidence
- § 28:6 The exclusion of relevant evidence (FRE 403)
- § 28:7 Exclusion of evidence because of variance
- § 28:8 Exclusion of evidence for noncompliance with reciprocal discovery requirement
- § 28:9 Admissibility of evidence of stipulated fact
- § 28:10 Admissibility of negative evidence
- § 28:11 Evidence on collateral issues
- § 28:12 Evidence that may prejudice the jury
- § 28:13 Self-serving declarations
- § 28:14 The doctrine of curative admissibility
- § 28:15 Authentication of telephone conversations
- § 28:16 Custom and usage
- § 28:17 Evidence of a person's habit
- § 28:18 Race, color, nationality, wealth, or poverty
- § 28:19 Income-tax returns
- § 28:20 Evidence of the defendant's background

Evidence of lack of prior arrests § 28:21 § 28:22 Relevancy of events surrounding a crime § 28:23 The state of mind of the accused § 28:24 Evidence that incriminates one other than accused § 28:25 Confessions by others which exculpate the accused § 28:26 Reenactment of the crime § 28:27 Statistical evidence to show probability of defendant's guilt § 28:28 Family relationships of victim § 28:29 Cooperation agreements § 28:30 Criminal profiles § 28:31 Evidence of membership of defendant in a gang § 28:32 Corporate existence

Chapter 29

Illegally Obtained Evidence, Wiretapping, and Confessions

§ 29:1	Illegally obtained evidence, generally
§ 29:2	Evidence obtained by eavesdropping
§ 29:3	Wiretapping evidence
$\S 29:4$	Mobile tracking devices
$\S 29:5$	Use of illegally obtained evidence to impeach defendant
§ 29:6	The nature of confessions and admissions
$\S 29:7$	Requirements for admissibility of confession
§ 29:8	Corroboration of confession
§ 29:9	The protection of constitutional rights in obtaining confession
§ 29:10	The voluntariness of a confession
§ 29:11	Determining the admissibility of confession
§ 29:12	Expert testimony as to credibility of confession
\$29:13	Burden of proving voluntariness of confession
§ 29:14	Use of force
\$29:15	Use of threats
§ 29:16	Use of polygraph tests
\$29:17	Use of drugs
§ 29:18	Use of artifice or deception
§ 29:19	Use of hope of benefit or reward
\$29:20	Promise of immunity
§ 29:21	Age, character, and mental condition of accused
§ 29:22	Drugged or intoxicated condition
§ 29:23	Confession made while under arrest or in custody
§ 29:24	Confession following illegal arrest
§ 29:25	Confession in the absence of counsel
\$ 29:26	Incriminating statements to fellow prisoners
\$ 29:27	More than one confession by accused
\$ 29:28	Confessions by others which inculpate accused
\$ 29:29	Use of entire confession
§ 29:30	Instructing about confessions
, _0.00	

Chapter 30

The Miranda Rights

§ 30:1 The Miranda warning

- § 30:2 Waiver of Miranda rights
- § 30:3 Checklist: Situations where the Miranda warnings are not required
- § 30:4 The routine booking exception
- § 30:5 When a person is "in custody" for purposes of *Miranda* warnings
- § 30:6 Miranda rights—Right to cut off questioning

Chapter 31

Admissions, Presumptions, and Inferences About the Accused

- § 31:1 Presumptions about the accused, generally
- § 31:2 Withdrawn guilty plea, nolo contendere, and plea discussions as admissions
- § 31:3 The use of a proffer agreement
- § 31:4 Presumptions arising from possession of stolen goods, narcotics, etc.
- § 31:5 Presumptions and inferences arising from the conduct of the accused
- § 31:6 The presumption that everyone intends the natural consequences of his own acts
- § 31:7 Silence of the accused
- § 31:8 False exculpatory statements
- § 31:9 Flight or escape
- § 31:10 Attempted suicide
- § 31:11 Instructing on consciousness of guilt
- § 31:12 Threats or injury to witness
- § 31:13 Destruction of evidence
- § 31:14 Sudden wealth following crime
- § 31:15 Instructing about presumptions

Chapter 32

Proof of Other Bad Acts by the Accused

- § 32:1 Proof of other bad acts by the defendant
- § 32:2 Notice to defendant of intention to introduce bad-act evidence
- § 32:3 Right of witness to explain bad act
- § 32:4 Evidence that is inextricably intertwined with the charged offense
- § 32:5 Determining admissibility of other bad acts
- § 32:6 Remoteness of other bad acts
- § 32:7 Other bad acts that show motive
- § 32:8 Other bad acts that show knowledge
- § 32:9 Other bad acts that show intent
- § 32:10 Other bad acts to show state of mind
- § 32:11 Other bad acts to negate innocent intent, accident, or inadvertence
- § 32:12 Other bad acts to show predisposition when defense is entrapment
- § 32:13 Other bad acts to establish identity
- § 32:14 Other bad acts that show common scheme, plan, or design
- $\S~32{:}15~$ Other bad acts to show modus operandi
- § 32:16 Other bad acts to impeach defendant's testimony
- § 32:17 Other bad acts to disprove alibi
- § 32:18 Other bad acts to show opportunity
- § 32:19 Other bad acts that show ability and experience to commit the crime
- § 32:20 Evidence of similar crimes in sexual assault cases (FRE 413)

- $\S~32{:}21~$ Evidence of similar crimes in child molestation cases (FRE 414)
- § 32:22 Evidence of other bad acts in RICO prosecution
- § 32:23 Instructing about other bad acts committed by defendant
- § 32:24 Evidence that suggests other criminal offenses
- § 32:25 "Tools of the trade" evidence

The Prohibition Against Illegal Searches and Seizures

- § 33:1 The prohibition against illegal searches and seizures
- § 33:2 Extent of protection against searches and seizures
- § 33:3 The reasonable expectation of privacy
- § 33:4 Exceptions to exclusionary rule
- § 33:5 The independent-source doctrine
- § 33:6 The inevitable-discovery rule
- § 33:7 The good-faith exception
- § 33:8 The fruit-of-the-poisonous-tree doctrine
- § 33:9 The attenuated-basis exception
- § 33:10 Searches by state and federal officers
- § 33:11 The silver-platter doctrine
- § 33:12 Surgery to remove bullet from accused
- § 33:13 Admissibility of evidence obtained in search by private individual

Chapter 34

The Suppression of Illegally Seized Evidence

- § 34:1 Motion to suppress evidence illegally seized
- § 34:2 The standing necessary to invoke the privilege against unlawful search and seizure
- § 34:3 Motion to return property

Chapter 35

Search Warrant Procedure

- § 35:1 Search warrant procedures
- § 35:2 Search warrant based upon informant's information
- § 35:3 The anticipatory warrant
- § 35:4 The sneak-and-peak warrant
- § 35:5 Authority to issue warrant
- § 35:6 The description of the property to be searched
- § 35:7 Persons or property to search or seize
- § 35:8 Seizure of specimen pursuant to warrant
- § 35:9 Obtaining a warrant
- § 35:10 Issuing the warrant
- § 35:11 Reasonableness of search
- § 35:12 The knock-and-announce requirement
- § 35:13 Search at nighttime
- § 35:14 Entry of private residence

xxvi

- § 35:15 Executing and returning the warrant
- § 35:16 The Franks hearing

Chapter 36

Search and Seizure Without a Warrant

§ 36:1	Search and seizure without a warrant
§ 36:2	Search and seizure based upon collective knowledge
§ 36:3	Admissibility of evidence obtained through search by private individual
§ 36:4	Electronic tracking devices
§ 36:5	Pen register orders
§ 36:6	Mail covers
§ 36:7	Use of dogs to sniff narcotics
§ 36:8	Surveillance from aircraft
§ 36:9	Search with thermal imager
§ 36:10	Border searches
§ 36:11	Searches at sea
§ 36:12	Airport searches
§ 36:13	Articles in plain view
§ 36:14	Warrantless search of private residence
§ 36:15	The exigent-circumstances doctrine
§ 36:16	Search of premises pursuant to arrest warrant
§ 36:17	Search of hotel or motel room
§ 36:18	Search of premises by observations from outside
§ 36:19	Abandoned property
§ 36:20	Search of trash and garbage receptacles
§ 36:21	The protective-sweep exception
§ 36:22	Search of the curtilage
§ 36:23	The open-fields doctrine
§ 36:24	Search of probationer's or parolee's home without a warrant
§ 36:25	Search or detention of mail
§ 36:26	Warrantless search of business premises
§ 36:27	Warrantless search of homicide scene
§ 36:28	Profile as basis for search
§ 36:29	Search and seizure pursuant to lawful arrest
§ 36:30	Search pursuant to arrest in hot pursuit
§ 36:31	When a "seizure" of a person occurs
§ 36:32	The plain-touch exception
§ 36:33	Strip searches
§ 36:34	Body-cavity searches
§ 36:35	Search of automobile without a warrant
§ 36:36	Seizure pursuant to pretextual stop
§ 36:37	Vehicular checkpoint stops
§ 36:38	Search of motor home or houseboat
§ 36:39	Search of trunk, compartments, briefcase, luggage, etc. of vehicle

Chapter 37

§ 36:40

Search Without Warrant and with Consent

§ 37:1 Search without warrant with consent of accused

Search of vehicle while impounded

- § 37:2 Search with consent of third person
- § 37:3 Determining the scope of the consent given
- § 37:4 The voluntariness of the consent

Citizen-Police Encounters

- § 38:1 The three tiers of citizen-police encounters
- § 38:2 Consensual encounters
- $\S 38:3$ Investigative (Terry) stops
- § 38:4 Temporary stop of automobile

Chapter 39

Objections to Evidence

- § 39:1 Objections to evidence, generally
- § 39:2 Right to object to improper testimony and conduct
- § 39:3 Preserving claimed error
- § 39:4 Need for objection to improper evidence after motion in limine
- § 39:5 The timeliness of the objection
- § 39:6 Stating the grounds for the objection
- § 39:7 Hearing the objection
- § 39:8 Ruling on the objection
- § 39:9 Waiver of the objection
- § 39:10 Motion to strike inadmissible evidence
- § 39:11 The offer of proof

Chapter 40

The Admission of Evidence

- § 40:1 Admitting evidence, generally
- § 40:2 Ruling on the admissibility of evidence
- § 40:3 Conditional admission of evidence
- § 40:4 Restricting use of admitted evidence
- § 40:5 Withdrawal of evidence
- § 40:6 The weight given particular kinds of evidence
- § 40:7 Custody of exhibits
- § 40:8 Error in admitting evidence

Chapter 41

Circumstantial Evidence

- § 41:1 Admissibility of circumstantial evidence, generally
- § 41:2 Uses of circumstantial evidence
- § 41:3 Instructing on circumstantial evidence

xxviii

The Direct Examination of Witnesses

§ 42:1	The direct examination, generally
§ 42:2	The witness's firsthand knowledge
§ 42:3	The form and content of the question
§ 42:4	The use of a narrative statement
§ 42:5	Leading questions
§ 42:6	Checklist: Situations where leading questions are permitted
§ 42:7	Questions that call for the conclusion of a witness
§ 42:8	Requirements for the witness's answer
§ 42:9	The responsiveness of the answer
§ 42:10	The treatment of the unresponsive answer
§ 42:11	The treatment of volunteered statements
§ 42:12	Examining an adverse party
§ 42:13	Cautioning a witness about perjury

Chapter 43

Assisting the Witness with Memoranda

§ 43:1	Using memoranda, generally
§ 43:2	Present recollection refreshed
§ 43:3	Writings used to refresh witness's memory
§ 43:4	Right of adverse party to use the writing
§ 43:5	Past recollection recorded

Chapter 44

The Privilege Against Self-Incrimination

§ 44:1	Testimony that tends to incriminate the witness
§ 44:2	Duty of court to warn witness of privilege
§ 44:3	Extent of privilege against self-incrimination
§ 44:4	Privilege of corporations and other groups
§ 44:5	Blood tests and other nontestimonial evidence
§ 44:6	Records required by law
§ 44:7	Books and documents
§ 44:8	Invoking the privilege against self-incrimination
§ 44:9	Ruling upon existence of privilege against self-incrimination
§ 44:10	When privilege against self-incrimination is lost
§ 44:11	Striking direct testimony when privilege is invoked
§ 44:12	Use of lie detector (polygraph) tests
§ 44:13	Witness immunity
§ 44:14	The Kastigar hearing
§ 44:15	Court-ordered witness immunity
§ 44:16	Prosecution of witness who has been granted immunity
§ 44:17	Coercing a witness to testify as a violation of the privilege against self-incrimination

The Impeachment of Witnesses

§ 45:1	The impeachment of witnesses, generally
§ 45:2	Impeachment on collateral issues
§ 45:3	Who may impeach a witness (impeaching one's own witness)
§ 45:4	Laying the foundation for impeaching a witness
§ 45:5	Credibility of witnesses, generally
§ 45:6	Impeaching a witness for bias
§ 45:7	Impeaching a witness for hostility or favoritism toward a party
§ 45:8	Evidence of character and conduct of witness
§ 45:9	Residence or occupation of witness
§ 45:10	Testimony of narcotics addict
§ 45:11	Religious beliefs or opinions
§ 45:12	Expert testimony as to the credibility of a witness
§ 45:13	Testimony false in part

Chapter 46

§ 45:14 The mentally impaired witness

Cross-Examining a Witness

§ 46:1	The right to cross-examine a witness
§ 46:2	The scope of the cross-examination
§ 46:3	Matters affecting the witness's credibility
§ 46:4	Testing the witness's knowledge or accuracy
§ 46:5	Form of questions on cross-examination
§ 46:6	Use of leading questions
§ 46:7	Right to bring out witness's address
§ 46:8	Manner of conducting the cross-examination
§ 46:9	Improper restrictions on defendant's right to cross-examine
§ 46:10	Effect of denial of right to cross-examination
§ 46:11	Effect of refusal to answer on cross-examination
§ 46:12	Waiver of right to cross-examination
§ 46:13	Cross-examining the accused
§ 46:14	Cross-examining an accomplice
§ 46:15	Cross-examining a government witness

Chapter 47

Using a Prior Inconsistent Statement to Impeach a Witness

§47:1	The prior inconsistent statement
\$47:2	The prior inconsistent statement exception to hearsay rule
§47:3	Laying a foundation for a prior inconsistent statement
§47:4	Extrinsic evidence of witness's prior inconsistent statement
§47:5	Prior expressions of opinion
§ 47:6	Use of testimony before the grand jury to impeach a witness
§ 47:7	Silence as prior inconsistent statement

TABLE OF CONTENTS

§ 47:8 Determining whether prior statement is inconsistent
§ 47:9 Witness's right to explain prior inconsistent statement
§ 47:10 Instructing as to prior inconsistent statement
§ 47:11 Right to show prior consistent statements

Chapter 48

Prior Convictions to Impeach Witness

- $\S~48:1$ Impeachment by proof of prior conviction
- § 48:2 The balancing test in determining admissibility
- § 48:3 Admissible crimes: Felonies
- § 48:4 Admissible crimes of dishonesty or false statement
- § 48:5 Manner of proving prior conviction
- § 48:6 Effect of pardon, annulment, parole, appeal, reversal, and extenuating circumstances
- § 48:7 Time limit
- § 48:8 Juvenile adjudications
- § 48:9 Instruction on limited purpose of evidence of prior conviction guilty plea

Chapter 49

Redirect and Recross-Examination

- § 49:1 Scope of redirect examination
- § 49:2 Form and content of questions on redirect examination
- § 49:3 Refreshing the witness's memory on redirect examination
- § 49:4 Explaining and correcting testimony on redirect examination
- § 49:5 Rehabilitating a witness
- § 49:6 Right of recross-examination

Chapter 50

Privileged Communications and Information

- § 50:1 The nature of privileges
- § 50:2 Claiming the privilege
- § 50:3 Waiving the privilege
- § 50:4 Ruling on the existence of the privilege
- § 50:5 The husband and wife privilege
- § 50:6 The existence of the marital relationship
- § 50:7 Exceptions to the husband-wife privilege
- § 50:8 Privileged communications between attorney and client
- § 50:9 The joint-defense privilege
- § 50:10 Duty of lawyer to preserve client's confidences and secrets
- § 50:11 The duty to disclose the name of the client
- § 50:12 The duty to disclose fees
- § 50:13 Existence of attorney and client relationship
- § 50:14 Confidential nature of the communication
- § 50:15 Exceptions to the attorney-client privilege
- § 50:16 The lawyer's work-product privilege
- § 50:17 Confidential communications by corporate officers and employees
- § 50:18 Claiming the attorney-client privilege

§ 50:19	Waiving the attorney-client privilege
§ 50:20	Termination of the attorney-client privilege
§ 50:21	The physician-patient privilege
§ 50:22	The psychotherapist-patient privilege
§ 50:23	Privileged communications by client to public accountant
§ 50:24	Privileged communications to clergyman
§ 50:25	Privileged communications to journalists
§ 50:26	Privileged information
§ 50:27	The scholar's privilege
§ 50:28	Secrets of state and other official information
§ 50:29	The bank-examination privilege
§ 50:30	The deliberative-process privilege
§ 50:31	Presidential-communications privilege
§ 50:32	The speech or debate congressional privilege
§ 50:33	The Classified Information Procedures Act
§ 50:34	Other matters not privileged

Judicial Notice

§ 51:1	The meaning of judicial notice
§ 51:2	Facts that are judicially noticed
§ 51:3	When judicial notice is discretionary or mandatory
§ 51:4	Method of ascertaining fact that is judicially noticed
§ 51:5	Making a record of facts judicially noticed
§ 51:6	Opportunity to be heard
§ 51:7	Time of judicial notice
§ 51:8	Admissibility of evidence to rebut a judicially noticed fact
§ 51:9	Judicial notice of laws
§ 51:10	Facts concerning the court
§ 51:11	Facts about government, etc.
§ 51:12	Cities, towns, and villages and geographical facts
§ 51:13	Location
§ 51:14	Population
§ 51:15	Historical and economic facts
§ 51:16	Intoxicating liquors
§ 51:17	Scientific and statistical facts
§ 51:18	Language and abbreviations
§ 51:19	Human health, habits, and behavior
§ 51:20	Natural phenomena
§ 51:21	Facts about business, its customs and practices
§ 51:22	Transportation, streets, and highways
§ 51:23	Checklist: Other facts judicially noticed
§ 51:24	Instructions on judicial notice

Chapter 52

Presumptions

- $\S 52:1$ The nature of presumptions
- § 52:2 Reasonableness of the presumption

xxxii

52:3	Irrebuttable presumptions
52:4	Rebuttable presumptions
52:5	Inferences
52:6	Presumption on presumption; inference on inference
52:7	Conflicting presumptions
52:8	Effect of controverting evidence on presumptions
52:9	Procedure in establishing presumed fact
52:10	Admissibility of evidence to rebut a presumed fact
52:11	Regularity, generally
52:12	Public officers, acts, and proceedings
52:13	Foreign laws
52:14	Presumptions about individuals
52:15	Checklist: Presumptions about people
52:16	Sanity
52:17	Suicide or accidental death
52:18	Presumption of death after seven years absence
52:19	Presumption of validity of marriage
52:20	Presumptions arising from the conduct of the party
52:21	Legitimacy
52:22	Knowledge of law
52:23	Presumptions about domicile
52:24	Possession and ownership of property
52:25	Presumption of continuance of a condition
52:26	Delivery of letter
52:27	Delivery of telegram
52:28	Presumptions about gifts and services
52:29	Will
52:30	Submissions of presumptions to the jury
	52:4 52:5 52:6 52:7 52:8 52:9 52:10 52:11 52:12 52:13 52:14 52:15 52:16 52:17 52:18 52:19 52:20 52:21 52:22 52:23 52:24 52:25 52:26 52:27 52:28 52:29

Chapter 53

Real and Demonstrative Evidence

§ 53:1	Real and demonstrative evidence distinguished
§ 53:2	The use of real evidence, generally
§ 53:3	The burden on the prosecution to produce tangible articles at trial
§ 53:4	Tangible articles having some bearing on the transaction in question
§ 53:5	Admissibility of weapons
§ 53:6	Tangible articles in same condition
§ 53:7	Connecting tangible articles to accused
§ 53:8	Admissibility of sound recordings
§ 53:9	Admissibility of maps, drawings, and diagrams
§ 53:10	Blackboards and charts
§ 53:11	Admissibility of static models and casts
§ 53:12	Effects of marks, etc., on demonstrative evidence
§ 53:13	Exhibition of skeleton, bones, etc.

Chapter 54

Photographs, Motion Pictures, Etc.

§ 54:1 Admissibility of photographs

- § 54:2 Authentication of photographs
- § 54:3 Photographs of premises and objects
- § 54:4 Photographs of persons
- § 54:5 Posed photographs
- § 54:6 Admissibility of motion pictures and videotapes
- § 54:7 Bank surveillance cameras
- § 54:8 Admissibility of X-ray photographs

The View

- § 55:1 The use of the view in criminal cases
- § 55:2 Request for a view
- § 55:3 Conduct of the view
- § 55:4 The nature of the view

Chapter 56

Documentary Evidence

- § 56:1 General requirements relating to documentary evidence
- § 56:2 Procedure in offering and admitting documents in evidence
- § 56:3 Remainder of related writing or recorded statement
- § 56:4 When authentication of documentary evidence is excused
- § 56:5 Proof of authenticity
- § 56:6 Authentication of domestic public documents under seal
- § 56:7 Authentication of domestic public documents
- § 56:8 Authentication of foreign public documents
- § 56:9 Authentication of certified copies of public records
- § 56:10 Authentication of official publications
- § 56:11 Authentication of newspapers and periodicals
- § 56:12 Authentication of trade inscriptions and the like
- § 56:13 Authentication of acknowledged documents
- § 56:14 Authentication of commercial paper and related documents
- $\S~56:15$ Authentication of documents presumed under acts of congress to be authentic
- § 56:16 Authentication of certified domestic records of regularly conducted activity
- § 56:17 Authentication of foreign records of regularly conducted activity
- § 56:18 Authentication of public records or reports
- § 56:19 Authentication of witnessed documents
- § 56:20 Authentication of letters and other private writings
- § 56:21 Authentication of telegrams, telex, and electronic mail
- § 56:22 Authentication of maps, plats, and surveys
- § 56:23 Authentication of ancient documents or data compilations
- § 56:24 Authentication of a process or system
- § 56:25 Admissibility of patents and related documents
- § 56:26 Authentication of mortality tables
- § 56:27 Authentication of scientific books
- § 56:28 Effect of alteration of document

Chapter 57

The Best Evidence Rule

§ 57:1 The best-evidence rule, generally

xxxiv

57:2	Situations calling for the "best evidence"
57:3	Situations where the "best evidence" is not required
57:4	Admissibility of duplicates
57:5	Admissibility of other evidence of contents
57:6	Secondary evidence of public records
57:7	Summaries
57:8	Testimony or written admission of party
57:9	Functions of judge and jury
57:10	Copies as primary or secondary evidence
57:11	Nature of secondary evidence to be used
57:12	Admissibility of computer printouts

Chapter 58

Opinion Evidence, Generally

- Requirement that witness testify as to facts § 58:2 Facts distinguished from opinions
- § 58:3 Admissibility of opinions, in general Opinions concerning the ultimate issue
- Opinion with respect to mental state of defendant

Chapter 59

Nonexpert Opinion Evidence

§ 59:1	The use of nonexpert opinion evidence, generally
§ 59:2	Examining the nonexpert witness regarding an opinion
§ 59:3	Nonexpert opinion of emotions, state of mind, etc.
§ 59:4	Nonexpert opinion on physical condition
§ 59:5	Voice identification
§ 59:6	Speed
§ 59:7	Value of personal property and services
§ 59:8	Nonexpert opinion on sanity or competency
S FO.O	NT

- § 59:9 Nonexpert opinion on intoxication or drugs
- The age of a person
- § 59:11 Checklist: Other matters on which a nonexpert may state an opinion

Chapter 60

Expert Testimony and Opinion Evidence

The use of expert testimony, generally
Checklist: The basic requirements for expert testimony to be admissible
Checklist: Mechanics available to assist court and jury with scientific evidence
Court-appointed experts
Qualifications required of expert witnesses
Determining in advance the admissibility of expert testimony
Matters about which an expert may testify
Matters to which an expert witness must testify
Expert testimony in sexual-abuse cases
Expert testimony on modus operandi

§ 60:11	Expert testimony on the meaning of terms
§ 60:12	Examining the expert
§ 60:13	Disclosure of facts or data underlying expert opinion
§ 60:14	Determining the sufficiency of the foundation for the expert's opinion
§ 60:15	Need for general acceptance of the principle underlying scientific testimony
§ 60:16	Cross-examining the expert
§ 60:17	Using a treatise to cross-examine expert witnesses
§ 60:18	Weight to be given expert testimony
§ 60:19	Expert testimony on speed
§ 60:20	Expert opinion as to narcotic addiction
§ 60:21	Questioned documents
§ 60:22	Fingerprints, palmprints, and footprints
§ 60:23	The admissibility of DNA identification evidence
§ 60:24	Ballistics
§60:25	Bloodstains
§ 60:26	Blood tests
§ 60:27	Intoxication
§ 60:28	Use of operating models
§ 60:29	Miscellaneous scientific tests
8 60.30	Expert opinions on questions of law

Proof of Handwriting

- § 61:1 Proof of handwriting, generally § 61:2 Use of nonexpert witness
- § 61:3 The expert handwriting witness
- § 61:4 Admissibility of exemplars

§ 60:31 The hypothetical question

Chapter 62

Experiments, Demonstrations, and Tests

- § 62:1 Experiments and demonstrations, generally
- § 62:2 The person conducting the experiment
- § 62:3 Subject matter of experiment or demonstration
- § 62:4 Courtroom demonstrations

Chapter 63

Medical Testimony

- § 63:1 The testimony of the medical witness, generally
- § 63:2 The direct examination of a physician or surgeon
- § 63:3 Cross-examining the doctor
- § 63:4 Hospital and doctor's records

Chapter 64

Hearsay Evidence

§ 64:1 Admissibility of hearsay evidence

xxxvi

§ 64:2	Definitions relating to hearsay evidence
§ 64:3	Inapplicability of the hearsay rule to certain statements
§ 64:4	Verbal acts having independent legal significance
§ 64:5	Admission by party opponent
§ 64:6	Admission by adoption of statement of another
§ 64:7	Statement by agent or other authorized person as hearsay
§ 64:8	Hearsay within hearsay
§ 64:9	Conduct as hearsay
§ 64:10	Necessity for objection to hearsay evidence
§ 64:11	Weight of hearsay admitted without objection
§ 64:12	Attacking and supporting credibility of declarant
§ 64:13	Affidavits
§ 64:14	Hearsay evidence as violation of right of confrontation
§ 64:15	Statement of coconspirator as hearsay
§ 64:16	Silence as adoption of statement
§64:17	Admissibility of codefendant's guilty plea
§ 64:18	Composite picture or sketch of the accused

Chapter 65

Hearsay Exceptions: Generally

- § 65:1 Exceptions to the hearsay rule, generally § 65:2 The res gestae rule
- § 65:3 Threats
- § 65:4 Admissibility of 911 telephone calls

Chapter 66

Hearsay Exceptions: Availability of Declarant Immaterial

§ 66:1	Exceptions to the hearsay rule where the declarant may be available
§ 66:2	Present sense impressions (spontaneous declarations)
§ 66:3	Spontaneous declaration by a child
§ 66:4	Excited utterance
§ 66:5	Then-existing mental, emotional, or physical condition
§ 66:6	Statements of knowledge or intent
§ 66:7	Statements of existing state of mind
§ 66:8	Statement of existing mental condition
§ 66:9	Statement of motive, plan, or design
§ 66:10	Statement as to then-existing pain and bodily health
§ 66:11	Statements for purpose of medical diagnosis or treatment
§ 66:12	Recorded recollection
§ 66:13	Records of regularly conducted activity (business records)
§ 66:14	Absence of entry in records of regularly conducted activity
§ 66:15	Public records and reports, generally
§ 66:16	Federal official records statute
§ 66:17	Coroner's verdict
§ 66:18	Autopsy report
§ 66:19	Certificate of public chemist, inspector, or analyst

§ 66:20	Weather reports
§ 66:21	Police reports
§ 66:22	Records of vital statistics, generally
§ 66:23	Absence of public record of entry
§ 66:24	Records of religious organizations
§ 66:25	Marriage, baptismal, and similar certificates
§ 66:26	Family bibles and other records
§ 66:27	Records of documents affecting an interest in property
§ 66:28	Statements in documents affecting an interest in property
§ 66:29	Statements in ancient documents
§ 66:30	Market reports and commercial publications, generally
§ 66:31	Mortality and life-expectancy tables
§ 66:32	Almanacs, tables, and computations
§ 66:33	Census reports
§ 66:34	Learned treatises
§ 66:35	Reputation concerning personal or family history
§ 66:36	Reputation concerning boundaries or general history
§ 66:37	Reputation as to character
§ 66:38	Judgment of previous conviction
§ 66:39	Judgment as to personal, family, or general history or boundaries
§ 66:40	Surveys and polls
§ 66:41	Web postings as hearsay
8 66.42	Other exceptions to the hearsay rule

Hearsay Exceptions: Declarants Unavailable

§ 67:1	Using hearsay when the declarant is unavailable
§ 67:2	Former testimony
§ 67:3	Statement under belief of impending death (dying declaration)
§ 67:4	Statements against interest, generally
§ 67:5	Statements against pecuniary and proprietary interest
§ 67:6	Statements against penal interest
§ 67:7	Statement of personal or family history
§ 67:8	Other exceptions

Chapter 68

Testimony at Former Trial or Proceeding

§ 68:1	Use of testimony from former trial
§ 68:2	Unavailability of witness
§ 68:3	Proving the former testimony

Chapter 69

Businesss Entries, Records, and Reports

§ 69:1	Use of business records, generally
§ 69:2	Records of regularly conducted activity (the hearsay exception)
§ 69:3	Requirements for admission of business records

xxxviii

- § 69:4 The federal business records act
- § 69:5 Foreign records of regularly conducted activity

Chapter 70

Evidence of Reputation and Character

- § 70:1 Evidence of character and reputation, generally
- § 70:2 Evidence of character (reputation) of accused
- § 70:3 Method of proving character
- § 70:4 Cross-examining a character witness
- § 70:5 Character (reputation) of victim
- § 70:6 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition

Chapter 71

The Use of Depositions at the Trial

- § 71:1 The use of depositions at the trial, generally
- § 71:2 Evidence depositions in criminal trials

Chapter 72

Mistrial

- § 72:1 The nature of a mistrial
- § 72:2 Grounds for declaring a mistrial
- § 72:3 Placing defendant in jeopardy by declaring a mistrial
- § 72:4 The effect of prosecutorial misconduct
- § 72:5 Discharge for inability of jury to arrive at verdict
- § 72:6 Insufficient grounds for mistrial

Chapter 73

Judgment of Acquittal

- § 73:1 Motion for judgment of acquittal
- § 73:2 Determining the right to judgment of acquittal
- § 73:3 Reservation of decision on motion for judgment of acquittal
- § 73:4 Motion for judgment of acquittal after discharge of jury
- § 73:5 Conditional ruling on grant of motion for judgment of acquittal
- § 73:6 Waiver of objection to denial of motion for judgment of acquittal

Chapter 74

Closing Arguments

- § 74:1 General rules governing closing arguments
- § 74:2 Right to make closing argument
- § 74:3 Court's control of closing arguments

§ 74:4 Use of charts, blackboards, etc. § 74:5 Time allowed for argument § 74:6 Right to open and close arguments § 74:7 Improper remarks of counsel § 74:8 Objecting to improper prosecution arguments § 74:9 Correcting improper conduct of counsel § 74:10 Comments about opposing party, counsel, or witness § 74:11 Comment on failure to call a witness § 74:12 Stating the personal opinion of counsel on the issues Comments on the law applicable to the case § 74:13 § 74:14 Appeals to sympathy, prejudice, or passion § 74:15 Comment on failure of accused to testify § 74:16 Comment on right to appeal, pardon, parole, or probation § 74:17 Vouching for government witnesses

Defense's jury nullification arguments

Chapter 75

§ 74:18

General Jury Instruction Principles

§ 75:1	Jury instructions, generally
§ 75:2	General principles relating to instructions
§ 75:3	Instructing at the beginning of the case
§ 75:4	Requests for instructions
§ 75:5	The jury instruction conference
§ 75:6	Advising counsel as to proposed instructions
§ 75:7	Objections to instructions
§ 75:8	Hearing objections to instructions
§ 75:9	Number of instructions
§ 75:10	Correcting erroneous instructions
§ 75:11	Supplemental jury instructions
§ 75:12	Summing up and comments by the judge
§ 75:13	Instructing on the elements of the offense
§ 75:14	Instructing on the defendant's theory of defense
§ 75:15	Instructing as to lesser offense
§ 75:16	Instructing when there is more than one defendant
§ 75:17	Mandatory and permissive inferences in instructions
§ 75:18	The unanimity instruction
§ 75:19	Instructing on the accused's failure to testify
§ 75:20	Instructing about informer's testimony
§ 75:21	Instructing about accused's testimony
§ 75:22	Instructions about accomplice's testimony
§ 75:23	Instructing about testimony of other witnesses
§ 75:24	Instructing as to probation, parole, or other possible dispositions
§ 75:25	Instructing on failure to call a witness
§ 75:26	The willful blindness instruction
§ 75:27	Instructing in conspiracy cases
§ 75:28	Instructing on the verdict of not guilty by reason of insanity
§ 75:29	Instructing on intent

Chapter 76

The Jury's Deliberations

§ 76:1 The jury's deliberations

§ 76:2	Use and discharge of alternate jurors
§ 76:3	Items taken by jury to jury room
§ 76.5	Selecting the foreman
§ 76.4 § 76:5	Rules governing arrival at verdict
~	
§ 76:6	Separation of jury during deliberations
§ 76:7	The hours of deliberation
§ 76:8	Using dictionaries or other books in jury room
§ 76:9	Presence of others in jury room during deliberations
§ 76:10	Exposure to material not in evidence
§ 76:11	Eavesdropping during deliberations
§ 76:12	Improper conduct of jurors
§ 76:13	Experiments by jurors
§ 76:14	Communications with jurors during deliberations
§ 76:15	Jury request to review evidence
§ 76:16	Giving additional instructions and assistance to the jury
§ 76:17	Dealing with deadlocked jury
§ 76:18	Asking for division of jurors
§ 76:19	Urging agreement
§ 76:20	The instruction urging agreement
§ 76:21	Verdict by chance or lot
§ 76:22	The hasty verdict
§ 76:23	Communications with jurors after the trial

Chapter 77

The Verdict

§ 77:1	General rules relating to verdicts
§ 77:2	The form of the verdict
§ 77:3	Unanimous and majority verdicts
§ 77:4	Special interrogatories in criminal cases
§ 77:5	Verdict against one of several coconspirators
§ 77:6	Finding defendant guilty of lesser offense
§ 77:7	Variance
§ 77:8	Inconsistent verdicts
§ 77:9	Jury recommendation as to sentence
§ 77:10	The rendition and recording of the verdict
§ 77:11	Sealed verdicts
§ 77:12	Polling the jurors
§ 77:13	Objecting to the form of the verdict
§ 77:14	Revising and amending verdicts
§ 77:15	Power of court to have jury reconsider verdict
§ 77:16	Impeachment of verdict
§ 77:17	Judicial comment on the verdict

Chapter 78

Judgment, Sentence, and Posttrial Proceedings

§ 78:1 The judgment and sentence, generally

FEDERAL TRIAL HANDBOOK 4th

§ 78:2	The presentence investigation
§ 78:3	The presentence report
§ 78:4	Notice of possible departure from sentencing guidelines
§ 78:5	Sentencing
§ 78:6	The opportunity to speak
§ 78:7	The defendant's right to appeal
§ 78:8	The judgment
§ 78:9	New trial
§ 78:10	Arresting judgment
§ 78:11	Correcting or reducing a sentence
§ 78:12	Staying a sentence or a disability
§ 78:13	Criminal forfeiture
§ 78:14	Revoking or modifying probation or supervised release

Detailed Volume Table of Contents

Chapter 1

Evidence and Procedure in Federal Courts, Generally

- § 1:1 Laws governing trials in federal court
- § 1:2 The U.S. Constitution
- § 1:3 The United States Code
- § 1:4 The Federal Rules of Civil Procedure
- § 1:5 The Federal Rules of Evidence
- § 1:6 Applicability of the Federal Rules of Evidence
- § 1:7 Determining applicable foreign law
- § 1:8 Federal common law
- § 1:9 Local rules of court
- § 1:10 Tribal laws

Chapter 2

The Relationship Between Federal and State Judicial Systems

- § 2:1 Problems arising out of the dual federal-state judicial system
- § 2:2 Jurisdiction as between the federal and state judicial systems

Chapter 3

State Law in Federal Courts

- § 3:1 Applicability of state law in federal courts—Erie v. Tompkins
- § 3:2 Checklist: Matters governed by federal law
- § 3:3 Checklist: Matters governed by state law
- § 3:4 Determining applicable state law
- § 3:5 Checklist: Rules for determining applicable state law
- § 3:6 The conflict of laws
- § 3:7 Checklist: What law normally governs in particular conflict-of-laws situations

Chapter 4

The Conduct of the Trial

I. GENERAL PRINCIPLES RELATING TO THE TRIAL

- § 4:1 The conduct of the trial, generally
- © West, a Thomson business, 9/2003

- § 4:2 The courtroom
- § 4:3 Seating of counsel, parties, and witnesses
- § 4:4 In camera proceedings
- § 4:5 Liability of participants in the trial for libel and slander
- § 4:6 Death, absence, or disability of the judge during trial

II. THE LAW THAT CONTROLS THE CASE ON TRIAL

- § 4:7 The law of the case
- § 4:8 Determining applicable law
- § 4:9 Determination of foreign law
- § 4:10 Proceedings upon remand

III. PRINCIPLES RELATING TO THE PARTIES AND THE ATTORNEYS

- § 4:11 The right of the parties to be present and its waiver
- § 4:12 The presence of and rights to counsel
- § 4:13 The conduct of the parties
- § 4:14 Exclusion of the plaintiff from trial
- § 4:15 Reading law to the jury
- § 4:16 A litigant's appearance in shackles
- § 4:17 Dealing with the pro se litigant
- § 4:18 The exclusion of the public
- § 4:19 The order of closure of court proceedings and documents
- § 4:20 The exclusion of a party's family

IV. CONTROLLING THE CONDUCT OF THE TRIAL

- § 4:21 Control of the proceedings by pretrial order
- § 4:22 Bench conferences during jury trials
- § 4:23 Limiting time for presentation of case
- § 4:24 Limiting the number of witnesses
- § 4:25 Influencing, assaulting, or harassing a judge, juror, or witness
- § 4:26 Influencing judge by injuring family member
- § 4:27 Obstruction of court orders

V. THE USE OF CAMERAS AND OTHER TECHNOLOGICAL EQUIPMENT IN THE COURTROOM

- § 4:28 Technology in the courts
- § 4:29 Taking pictures, broadcasting, and televising the proceedings
- § 4:30 Testifying by telephone or closed-circuit television

VI. THE PRODUCTION AND PROTECTION OF TESTIMONY AND OTHER EVIDENCE

- § 4:31 Preserving the record
- § 4:32 Transcribing the testimony
- § 4:33 Lost or destroyed court records
- § 4:34 Public's right of access to court records

VII. MAINTAINING PROPER CONDUCT IN THE COURTROOM

- § 4:35 Misconduct of spectators and others
- § 4:36 Coaching of witness by spectator

- § 4:37 Controlling the conduct of persons near the courtroom
- § 4:38 Controlling offensive language

VIII. CORRECTING MISTAKES MADE IN THE TRIAL

- § 4:39 The meaning of error
- § 4:40 Harmless error
- § 4:41 Cumulative error
- § 4:42 Plain error

Chapter 5

The Conduct of the Judge

- § 5:1 General conduct of the judge
- § 5:2 Checklist: Procedures available to federal court to protect its essential functions
- § 5:3 The judge's adjudicative responsibilities
- § 5:4 The judge's right and duty to expedite the trial
- § 5:5 The demeanor of the judge, generally
- § 5:6 The presence of the judge
- § 5:7 Duty of the judge to preserve order
- § 5:8 The judge's right to enforce a dress code
- § 5:9 The judge's voice and diction
- § 5:10 Remarks of the judge; testimony and rulings
- § 5:11 Remarks on matters of law
- § 5:12 The Judge's conduct toward the parties
- § 5:13 The Judge's conduct toward the witnesses
- § 5:14 Admonishing the witness about perjury
- § 5:15 Judge's conduct toward counsel
- § 5:16 The Judge's control of the examination of witnesses
- § 5:17 Checklist: Proper actions of the judge in controlling the examination of witnesses
- § 5:18 Calling of witnesses by the judge
- § 5:19 Interrogation of witnesses by the judge
- § 5:20 Exclusion of improper testimony on the court's own motion
- § 5:21 Independent investigations by the judge
- § 5:22 Objections to misconduct of the judge
- § 5:23 The judge as a witness
- § 5:24 Summing up and comment by the judge
- § 5:25 Ex parte communications about pending proceedings
- § 5:26 Judge urging settlement
- § 5:27 Judicial immunity
- § 5:28 The judge's disciplinary responsibilities
- § 5:29 Disqualification of a justice, judge, or magistrate
- § 5:30 Appointment of a technical advisor
- § 5:31 Substitution of the judge during trial

Chapter 6

The Conduct of the Attorney

- § 6:1 The general conduct of the attorney
- § 6:2 Need for counsel to be admitted to practice law

- § 6:3 Checklist: Grounds for disciplining an attorney
- § 6:4 The Rules of Professional Conduct
- § 6:5 The lawyer's trial conduct, generally
- § 6:6 Checklist: Suggested rules of conduct for attorneys
- § 6:7 The lawyer's dealings with the client
- § 6:8 The lawyer's duty of confidentiality
- § 6:9 The lawyer's dealings with opposing party and counsel
- § 6:10 The lawyer's dealings with judges and court officials
- § 6:11 The lawyer's dealings with those other than clients
- § 6:12 Release of publicity about pending civil case by lawyer
- § 6:13 Contempt by the attorney
- § 6:14 The attorney as a witness
- § 6:15 Vouching for a witness
- § 6:16 Discipline of an attorney for improper conduct
- § 6:17 Ability of counsel to bind his or her client
- § 6:18 Liability of the attorney for libel and slander
- § 6:19 Conflicts with the client arising during the trial
- § 6:20 The lawyer's duty of diligence

Motions During Trial, Default, and Dismissal

- § 7:1 Motions during trial, generally
- § 7:2 Motion procedure
- § 7:3 Evidence on motions
- § 7:4 The motion in limine
- § 7:5 Voluntary dismissal
- § 7:6 Involuntary dismissal
- § 7:7 Dismissal of counterclaim, cross-claim, or third-party claim
- § 7:8 Computation of time
- § 7:9 Motion to amend pleadings as matter of right
- § 7:10 Motion to amend pretrial order

Chapter 8

Continuances

- § 8:1 Continuances, generally
- § 8:2 Unpreparedness of a party
- § 8:3 Absence of a party
- § 8:4 Absence of counsel
- § 8:5 Prejudice, excitement, and surprise
- § 8:6 Absence of a witness
- § 8:7 Absence of documents or other evidence
- § 8:8 Admissions to avoid a continuance
- § 8:9 Continuance because of amendment in pleading
- § 8:10 The application for the continuance
- § 8:11 The hearing and order for the continuance

Chapter 9

Trial by the Court

§ 9:1 Nonjury trials, generally

- § 9:2 Procedure in nonjury trials
- § 9:3 Admissibility of evidence
- § 9:4 The need for findings
- § 9:5 Judgment on partial findings

Chapter 10

Trial Before a Master

- § 10:1 The appointment of the master
- § 10:2 Reference to a master
- § 10:3 The powers of a master
- § 10:4 The proceedings before a master
- § 10:5 The master's report

Chapter 11

Trial Before a Magistrate Judge

- § 11:1 The appointment of a magistrate judge
- § 11:2 The magistrate judge's jurisdiction, powers, and duties
- § 11:3 Proceedings before a magistrate judge
- § 11:4 Applicability of FRCP 53 to a magistrate judge

Chapter 12

The Province of Court and Jury

- § 12:1 Questions of law and fact, generally
- § 12:2 Invasion of province of jury
- § 12:3 Mixed questions of law and fact
- § 12:4 Credibility of witnesses; weight and credibility of evidence
- § 12:5 Preponderance of the evidence
- § 12:6 Presumptions and inferences
- § 12:7 Character and conditions of things
- § 12:8 Amount, extent, and value
- § 12:9 Reasonableness
- § 12:10 Nature of conditions
- § 12:11 Necessity
- § 12:12 Justification, probable cause, and probability
- § 12:13 Character and status of persons
- § 12:14 Authority
- § 12:15 Physical condition
- § 12:16 Mental state
- § 12:17 Infants
- § 12:18 Sanity
- § 12:19 Intoxication
- § 12:20 Assent, volition, and consent
- § 12:21 Acts and conduct
- § 12:22 Occurrence or performance
- § 12:23 Nature
- § 12:24 Rights, duties, and liabilities

§ 12:25 Property rights and ownership
§ 12:26 Construction of language
§ 12:27 Contracts
§ 12:28 Existence of a contract
§ 12:29 Validity of a contract
§ 12:30 Existence of a warranty
§ 12:31 Formation of a contract
§ 12:32 Intention, motive, and belief

Chapter 13

Contempt of Court

§ 13:1 Power of the court to punish for contempt § 13:2 Civil and criminal contempt § 13:3 Direct and indirect contempt Checklist: Acts which may constitute criminal contempt § 13:4 § 13:5 Refusal to testify as contempt § 13:6 False answers as contempt § 13:7 Procedure in criminal contempt § 13:8 Burden of proving criminal contempt § 13:9 Jury trial in contempt proceedings § 13:10 Requirement of hearing before different judge § 13:11 The record § 13:12 Punishment for contempt

Chapter 14

The Jury Trial

§ 14:1	The right to a jury trial, generally
§ 14:2	The advisory jury and trial by consent
§ 14:3	Procedures in selecting the jury
§ 14:4	Qualifications for jury service
§ 14:5	Discrimination because of sex, race, etc.
§ 14:6	Juror orientation; use of handbooks
§ 14:7	Impaneling the jury
§ 14:8	Determining the juror's impartiality
§ 14:9	The conduct of the voir dire examination
§ 14:10	Questioning the jurors
§ 14:11	Questioning about bias and racial prejudice
§ 14:12	Effect of pretrial publicity
§ 14:13	The use of hypothetical questions
§ 14:14	Questioning the jurors about insurance
§ 14:15	Questions about the law
§ 14:16	Duty of jurors to answer truthfully
§ 14:17	Effect of a juror's failure to divulge pertinent information
§ 14:18	Selection of alternate jurors
§ 14:19	Challenging jurors, generally
§ 14:20	Order of exercising challenges
§ 14:21	Peremptory challenges, generally
§ 14:22	The number of peremptory challenges

- § 14:23 Use of peremptory challenges based on race, religion, etc.
- § 14:24 Use of peremptory challenges to exclude jurors because of gender
- § 14:25 Right of the court to excuse jurors
- § 14:26 Swearing the jury
- § 14:23 Immunity of jurors

Chapter 15

Challenging a Juror for Cause

- § 15:1 Ground for challenge for cause, generally
- § 15:2 Making the challenge for cause
- § 15:3 Passing on challenges for cause
- § 15:4 The effect of the ruling on the challenge
- § 15:5 Prejudice and bias, generally
- § 15:6 Economic and social prejudice
- § 15:7 Familial relationship
- § 15:8 Social and business relationships
- § 15:9 Professional relationships
- § 15:10 Relationships with attorney
- § 15:11 Previous knowledge of the facts
- § 15:12 Previous connection with the case
- § 15:13 Connection with insurance company
- § 15:14 Preconceived opinion
- § 15:15 Bias against a person involved in the case
- § 15:16 Bias against circumstantial evidence
- § 15:17 Political, religious, and racial prejudices
- § 15:18 Prejudice against crime, liquor, gambling, etc.
- § 15:19 Other prejudices and biases

Chapter 16

The Conduct of the Jury During the Trial

- § 16:1 The conduct of the jury during the trial
- § 16:2 Treatment of a juror's improper conduct
- § 16:3 Dealing with alleged jury tampering
- § 16:4 Dismissal of juror for improper conduct
- § 16:5 Juror's personal liability for misconduct
- § 16:6 Sequestration of jury during trial
- § 16:7 Discharging a juror during trial
- § 16:8 A Juror's use of intoxicants or drugs
- § 16:9 Juror's reading or hearing accounts of trial
- § 16:10 Reception of evidence out of court
- § 16:11 Acceptance of favors by jurors
- § 16:12 The mental competence of the juror
- § 16:13 Attention to proceedings
- § 16:14 Jurors taking notes
- § 16:15 Questions by jurors
- § 16:16 Communications with jurors before and during trial
- § 16:17 Communications by lawyers with jurors before and during trial
- § 16:18 The juror as a witness

Opening Statements

- § 17:1 The nature of the opening statement
- § 17:2 Right to make an opening statement
- § 17:3 Opening statement and limiting evidence
- § 17:4 Directing verdict on opening statement

Chapter 18

Order of Proof

- § 18:1 Order of proof, generally
- § 18:2 Right to open and close
- § 18:3 Introducing evidence during cross-examination
- § 18:4 Rebuttal testimony
- § 18:5 Surrebuttal
- § 18:6 Reopening case
- § 18:7 Reopening case during or after final arguments
- § 18:8 Split trials

Chapter 19

The Burden of Proof

- § 19:1 The burden of proof, generally
- § 19:2 The burden of proof, of going forward, and the burden of persuasion
- § 19:3 The prima facie case
- § 19:4 Party having burden of proof
- § 19:5 Burden on the defendant
- § 19:6 Burden of proving negative averments
- § 19:7 Negligence actions
- § 19:8 The burden in actions in contract
- § 19:9 The invalidity of laws
- § 19:10 Defamation cases
- § 19:11 False imprisonment
- § 19:12 Burden of proving intentional emotional distress

Chapter 20

Proof of Facts

- § 20:1 Situations where proof is excused before trial
- § 20:2 Situations where proof is excused during trial
- § 20:3 Methods of proving facts
- § 20:4 Proof of birth or age
- § 20:5 Proof of death
- § 20:6 Proof of marriage
- § 20:7 Proof of intoxication
- § 20:8 Proof of weight

The Use of Stipulations

- § 21:1 The nature of the stipulation
- § 21:2 The use of stipulations to control the trial
- § 21:3 The use of stipulations to excuse proof of facts
- § 21:4 The construction and enforcement of stipulations
- § 21:5 Relief from stipulations
- § 21:6 Admissibility of evidence as to stipulated fact

Chapter 22

Subpoenas Ad Testificandum and Duces Tecum

- § 22:1 Subpoenas ad testificandum and duces tecum, generally
- § 22:2 The form of the subpoena
- $\S~22:3$ The issuance of the subpoena
- § 22:4 The service of the subpoena
- § 22:5 The protection of persons subject to subpoenas
- § 22:6 Quashing or modifying a subpoena
- § 22:7 Duties in responding to a subpoena
- $\S~22{:}8$ Contempt for failure to obey a subpoena
- § 22:9 Compensation of witnesses
- § 22:10 Subpoena of person in foreign country
- § 22:11 Habeas corpus ad testificandum

Chapter 23

Witnesses

- § 23:1 Influencing or harassing a witness
- § 23:2 Retaliating against a witness, victim, or an informant
- § 23:3 Bribery of witnesses
- § 23:4 Right to interview witnesses
- § 23:5 Right to confer with witness on the stand
- § 23:6 Control and restraint of a witness
- § 23:7 Exclusion and separation of witnesses
- § 23:8 Witnesses subject to exclusion rule
- § 23:9 Effect of violation of the rule
- § 23:10 Swearing of witnesses
- § 23:11 Use of an interpreter
- § 23:12 Liability of witnesses
- § 23:13 Perjury
- § 23:14 Subornation of perjury
- § 23:15 Right to confront witnesses in civil cases
- § 23:16 Effect of inconsistencies in a witness's testimony

Chapter 24

The Competency of Witnesses to Testify

§ 24:1 Competency of witnesses, generally

§ 24:2	Need for objection as to incompetency
§ 24:3	Time for objecting to competency
§ 24:4	Determining the competency of the witness to testify
§ 24:5	Competency of a felon to testify
§ 24:6	Competency of a child to testify
§ 24:7	Determining the competency of a child to testify
§ 24:8	Competency of a spouse to testify for or against the other spouse
§ 24:9	Competency of participants in trial
§ 24:10	The Dead Man's Act in a federal court
§ 24:11	Competency of a mentally or physically handicapped person
§ 24:12	Competency of a deaf-mute
§ 24:13	Competency of a narcotics addict
$\S 24:14$	Effect of religious beliefs or opinions
§ 24:15	Competency of a witness who has been hypnotized
§ 24:16	Competency of a witness omitted from discovery or pretrial order

The Admissibility of Evidence

§ 25:1	The admissibility of evidence, generally
§ 25:2	The competency of evidence
§ 25:3	The materiality of evidence
§ 25:4	Amending pleadings to conform to proof
§ 25:5	The relevancy of evidence
§ 25:6	The exclusion of relevant evidence
§ 25:7	Admissibility of negative evidence
§ 25:8	Evidence on collateral issues
§ 25:9	Evidence that may prejudice the jury
§ 25:10	Self-serving declarations
§ 25:11	The doctrine of curative admissibility
§ 25:12	Authentication of telephone conversations
§ 25:13	Custom and usage
$\S 25:14$	Race, color, nationality, wealth, or poverty
$\S 25:15$	Family relationships
$\S 25:16$	Physical and mental examinations of parties and others
$\S 25:17$	Income-tax returns
$\S 25:18$	Evidence of or comments about liability insurance
§ 25:19	Relevancy of conduct shortly before accident
§ 25:20	Subsequent or prior injuries to plaintiff
§ 25:21	Admissibility in civil action of evidence seized pursuant to illegal search or seizure
$\S 25:22$	Collateral-source evidence
§ 25:23	Admissibility of other crimes, wrongs, or acts
§ 25:24	Admissibility of propensity evidence in civil cases concerning sexual assault or child molestation
§ 25:25	Lie-detector tests and evidence of refusal to take

Chapter 26

Eminent Domain

§ 26:1 The procedure in eminent domain cases

- § 26:2 Damages for land taken
- § 26:3 The highest and best use
- § 26:4 Damages and benefits to land not taken
- § 26:5 The burden of proof

Chapter 27

Objections to Evidence

- § 27:1 Objections to evidence, generally
- § 27:2 Right to object to improper testimony and conduct
- § 27:3 Need for objection to improper evidence
- § 27:4 Need for objection to improper evidence after motion in limine
- § 27:5 The timeliness of the objection
- § 27:6 Stating the grounds for the objection
- § 27:7 Hearing the objection
- § 27:8 Ruling on the objection
- § 27:9 Waiver of objection
- § 27:10 Motion to strike inadmissible evidence
- § 27:11 Need for formal exception
- § 27:12 The offer of proof

Chapter 28

The Admission of Evidence

- § 28:1 Admitting evidence, generally
- § 28:2 Ruling on the admissibility of evidence
- § 28:3 Conditional admission of evidence
- § 28:4 Restricting use of admitted evidence
- § 28:5 Withdrawal of evidence
- § 28:6 The weight given particular kinds of evidence
- § 28:7 Custody of exhibits
- § 28:8 Error in admitting evidence

Chapter 29

Circumstantial Evidence

- § 29:1 Admissibility of circumstantial evidence, generally
- § 29:2 Instructing on circumstantial evidence

Chapter 30

The Direct Examination of Witnesses

- § 30:1 The direct examination, generally
- § 30:2 The witness's firsthand knowledge
- § 30:3 The form and content of the question
- § 30:4 The use of a narrative statement
- § 30:5 Leading questions

- § 30:6 Checklist: Situations where leading questions are permitted § 30:7 Questions that call for the conclusion of a witness § 30:8 Requirements of the witness's answer § 30:9 The responsiveness of the answer § 30:10 The treatment of the unresponsive answer § 30:11 The treatment of volunteered statements § 30:12 Examining a hostile party § 30:13 Cautioning a witness about perjury § 30:14 The witness's best recollection, belief, impression, etc. § 30:15 Examining a witness on the telephone or closed-circuit television
- Chapter 31

Assisting the Witness with Memoranda

- § 31:1 Using memoranda, generally § 31:2 Present recollection refreshed
- § 31:3 Writings used to refresh the witness's memory
- § 31:4 Right of an adverse party to use the writing
- § 31:5 Past recollection recorded

Chapter 32

The Privilege Against Self-Incrimination

- § 32:1 Testimony that tends to incriminate the witness
 § 32:2 Duty of court to warn witness of privilege
- § 32:3 Extent of privilege against self-incrimination § 32:4 Privilege of corporations and other groups
- § 32:5 Records required by law
- § 32:6 Books and documents
- § 32:7 Invoking the privilege against self-incrimination
- $\S~32:8$ Ruling upon existence of privilege against self-incrimination
- § 32:9 When privilege against self-incrimination is lost
- § 32:10 Striking direct testimony when privilege is invoked
- § 32:11 Consequences of asserting privilege against self-incrimination

Chapter 33

The Impeachment of Witnesses

- § 33:1 The impeachment of witnesses, generally
- § 33:2 Impeachment on collateral issues
- § 33:3 Who may impeach a witness (impeaching one's own witness)
- § 33:4 Laying the foundation for impeaching a witness
- § 33:5 Credibility of witnesses, generally
- § 33:6 Evidence of character and conduct of witness
- § 33:7 Residence or occupation of witness
- § 33:8 Showing the bias or interest of the witness
- § 33:9 Religious beliefs or opinions
- § 33:10 Intoxication of witness at time of event
- § 33:11 The mentally impaired witness

TABLE OF CONTENTS

- § 33:12 Expert testimony as to the credibility of a witness
- § 33:13 Testimony false in part

Chapter 34

Cross-Examining a Witness

- § 34:1 The right to cross-examine a witness
- § 34:2 The scope of the cross-examination
- § 34:3 Matters affecting the witness's credibility
- § 34:4 Testing the witness's knowledge or accuracy
- § 34:5 Form of questions on cross-examination
- § 34:6 Use of leading questions
- § 34:7 Right to bring out witness's address
- § 34:8 Questions that may embarrass or degrade the witness
- § 34:9 Manner of conducting the cross-examination
- § 34:10 Effect of denial of right to cross-examination
- § 34:11 Effect of refusal to answer on cross-examination
- § 34:12 Waiver of right to cross-examine

Chapter 35

Using a Prior Inconsistent Statement to Impeach a Witness

- § 35:1 The use of prior inconsistent statements to impeach a witness
- § 35:2 The prior inconsistent statement exception to hearsay rule
- § 35:3 Laying a foundation for a prior inconsistent statement
- § 35:4 Determining the inconsistency of a prior statement
- § 35:5 Extrinsic evidence of a witness's prior inconsistent statement
- § 35:6 Prior expressions of opinion
- § 35:7 A witness's right to explain a prior inconsistent statement
- § 35:8 Instructing as to a prior inconsistent statement

Chapter 36

Prior Convictions to Impeach Witness

- § 36:1 Impeachment by proof of prior conviction
- § 36:2 Admissible crimes: Felonies
- § 36:3 Admissible crimes of dishonesty or false statement
- § 36:4 Manner of proving prior conviction
- § 36:5 Effect of pardon, annulment, parole, appeal, reversal, and extenuating circumstances
- § 36:6 Witness's right to explain extenuating circumstances
- § 36:7 Time limit
- § 36:8 Juvenile adjudications

Chapter 37

Redirect and Recross-Examination

- § 37:1 Scope of redirect examination
- © West, a Thomson business, 9/2003

- § 37:2 Form and content of questions on redirect examination
- § 37:3 Refreshing the witness's memory on redirect examination
- § 37:4 Explaining and correcting testimony on redirect examination
- § 37:5 Rehabilitating a witness
- § 37:6 Right to show prior consistent statements to rehabilitate a witness
- § 37:7 Right to recross-examination

Privileged Communications and Information

- § 38:1 The nature of privileges, generally
- § 38:2 Claiming the privilege
- § 38:3 Waiving the privilege
- § 38:4 Ruling on the existence of the privilege
- § 38:5 The husband and wife privilege
- § 38:6 The existence of the marital relationship
- § 38:7 Exceptions to the husband-wife privilege
- § 38:8 Privileged communications between attorney and client
- § 38:9 Duty of lawyer to preserve client's confidences and secrets
- § 38:10 Existence of attorney and client relationship
- § 38:11 Determining the existence of the attorney-client privilege
- § 38:12 Confidential nature of the communication
- § 38:13 The joint defense privilege
- § 38:14 Applicability of attorney-client privilege to tax advice
- § 38:15 Exceptions to the attorney-client privilege
- § 38:16 The duty to disclose the name of the client
- § 38:17 The duty to disclose fees
- § 38:18 The lawyer's work-product privilege
- § 38:19 Confidential communications by corporate officers and employees
- § 38:20 Applicability of attorney-client privilege to corporate shareholders
- § 38:21 Confidential communications to house counsel
- § 38:22 Claiming the attorney-client privilege
- § 38:23 Waiving the attorney-client privilege
- § 38:24 Termination of the attorney-client privilege
- § 38:25 The physician-patient privilege
- § 38:26 The psychotherapist-patient privilege
- § 38:27 Privileged communications by client to public accountant
- § 38:28 Privileged communications to clergyman
- § 38:29 Privileged communications to journalists
- § 38:30 Privileged information
- § 38:31 The scholar's privilege
- $\S~38:32$ Secrets of state and other official information
- § 38:33 Political vote
- $\S~38:34$ The speech or debate congressional privilege
- § 38:35 The bank-examination privilege
- § 38:36 The deliberative-process privilege
- § 38:37 Trade secrets
- § 38:38 Other matters not privileged

Chapter 39

Judicial Notice

§ 39:1 The meaning of judicial notice

§ 39:2	Facts that are judicially noticed
§ 39:3	When judicial notice is discretionary or mandatory
§ 39:4	Method of ascertaining fact that is judicially noticed
§ 39:5	Making a record of facts judicially noticed
§ 39:6	Opportunity to be heard
§ 39:7	Time of taking judicial notice
§ 39:8	Admissibility of evidence to rebut a judicially noticed fact
§ 39:9	Judicial notice of laws
§ 39:10	Facts concerning the court
§ 39:11	Facts about government, etc.
§ 39:12	Cities, towns, and villages and geographical facts
§ 39:13	Location
§ 39:14	Population
§ 39:15	Historical and economic facts
§ 3916	Intoxicating liquors
§ 39:17	Scientific and statistical facts
§ 39:18	Language and abbreviations
§ 39:19	Human health, habits, and behavior
§ 39:20	Natural phenomena
§ 39:21	Facts about business: Its customs and practices
§ 39:22	Transportation, streets, highways
§ 39:23	Checklist: Other facts judicially noticed

Chapter 40

Presumptions

§ 40:1	The nature of presumptions
§ 40:2	Reasonableness of the presumption
§ 40:3	Irrebuttable presumptions
§ 40:4	Rebuttable presumptions
§ 40:5	Inferences
§ 40:6	The burden of disproving a presumed fact
§ 40:7	Presumption on presumption; inference on inference
§ 40:8	Conflicting presumptions
§ 40:9	Effect of controverting evidence on presumptions
§ 40:10	Procedure in establishing presumed fact
§ 40:11	Applicability of state law as to presumptions
§ 40:12	The presumption of regularity, generally
§ 40:13	Public officers, acts, and proceedings
§ 40:14	Foreign laws
§ 40:15	Res ipsa loquitur
§ 40:16	Presumptions about individuals
§ 40:17	Checklist: Presumptions about people
§ 40:18	The presumption of sanity
§ 40:19	Presumption as to suicide or accidental death
§ 40:20	Presumption of death after seven years' absence
§ 40:21	Presumption of validity of marriage
§ 40:22	Presumptions arising from the conduct of the party
§ 40:23	Presumptions as to legitimacy
§ 40:24	Presumptions as to knowledge of law
§ 40:25	Presumption as to possibility of issue

§ 40:26 Presumptions about domicile § 40:27 Presumptions about possession and ownership of property § 40:28 Presumption of continuance of a condition § 40:29 Presumption of delivery of letter Presumption of delivery of telegram § 40:30 § 40:31 Presumptions about gifts and services § 40:32 Presumptions in negligence cases § 40:33 Presumptions about wills

Chapter 41

Real and Demonstrative Evidence

- § 41:1 Real and demonstrative evidence distinguished
- § 41:2 The use of real evidence, generally
- § 41:3 Tangible articles having some bearing on the transaction in question
- § 41:4 Tangible articles in same condition
- § 41:5 Admissibility of sound recordings
- § 41:6 Admissibility of maps, drawings, and diagrams
- § 41:7 Blackboards and charts
- § 41:8 Admissibility of static models and cases
- § 41:9 Effects of marks, etc. on demonstrative evidence
- § 41:10 Displaying personal injuries to the jury
- § 41:11 Exhibition of skeleton, bones, etc.
- § 41:12 Admissibility of braces, crutches, and other such devices

Chapter 42

Photographs, Motion Pictures, etc.

- § 42:1 Admissibility of photographs
- § 42:2 Authentication of photographs
- § 42:3 Photographs of premises and objects
- § 42:4 Photographs of persons
- § 42:5 Posed photographs
- § 42:6 Admissibility of motion pictures and videotapes
- § 42:7 Motion picture, videotape, and computer generated reenactment of event
- § 42:8 "Day-in-the-Life" videotapes
- § 42:9 Admissibility of x-ray photographs

Chapter 43

The View

- § 43:1 Right to view the premises
- § 43:2 Request for a view
- § 43:3 Conduct of the view
- § 43:4 The nature of the view

Chapter 44

Documentary Evidence

§ 44:1 General requirements relating to documentary evidence

§ 44:2	Procedure in offering and admitting documents in evidence
§ 44:3	Remainder of related writing or recorded statement
§ 44:4	When authentication of documentary evidence is excused
§ 44:5	Proof of authenticity
§ 44:6	Authentication of domestic public documents under seal
§ 44:7	Authentication of domestic public documents
§ 44:8	Authentication of foreign public documents
§ 44:9	Authentication of certified foreign records of regularly conducted activity
§ 44:10	Authentication of certified copies of public records
§ 44:11	Authentication of official publications
§ 44:12	Authentication of newspapers and periodicals
§ 44:13	Authentication of trade inscriptions and the like
§ 44:14	Authentication of acknowledged documents
§ 44:15	Authentication of commercial paper and related documents
§ 44:16	Authentication of documents presumed under acts of Congress to be authentic
§ 44:17	Authentication of certified records of regularly conducted activity
§ 44:18	Authentication of public records or reports
§ 44:19	Authentication of witnessed documents
§ 44:20	Authentication of telegrams, facsimile, and electronic mail
§ 44:21	Authentication of maps, plats, and surveys
§ 44:22	Authentication of other private writings
§ 44:23	Authentication of church records or family bible
§ 44:24	Authentication of ancient documents or data compilations
§ 44:25	Authentication of a process or system
§ 44:26	Admissibility of patents and related documents
§44:27	Authentication of mortality tables
§ 44:28	Authentication of scientific books
§ 44:29	Effect of alteration of document

Chapter 45

The Best-Evidence Rule

§ 45:1	The best-evidence rule, generally
§ 45:2	Situations calling for the "best evidence"
§ 45:3	Situations where the "best evidence" is not required
§ 45:4	Admissibility of duplicates
§ 45:5	Admissibility of other evidence of contents
§ 45:6	Secondary evidence of public records
§ 45:7	Summaries
§ 45:8	Testimony or written admission of party
§ 45:9	Functions of judge and jury
§ 45:10	Copies as primary or secondary evidence
§ 45:11	Nature of secondary evidence to be used
§ 45:12	Admissibility of computer printouts
§ 45:13	Admissibility of computer graphics

Chapter 46

Opinion Evidence, in General

§ 46:1 Requirement that witness testify as to facts

- § 46:2 Facts distinguished from opinions
- § 46:3 Admissibility of opinions, in general
- § 46:4 Opinions concerning the ultimate issue
- § 46:5 Other limitations on opinion evidence

Nonexpert Opinion Evidence

- § 47:1 The use of nonexpert opinion evidence, generally
- § 47:2 Examining the nonexpert witness regarding an opinion
- § 47:3 Nonexpert opinion of emotions, state of mind, etc.
- § 47:4 Nonexpert opinion on physical condition
- § 47:5 Voice identification
- § 47:6 Speed
- § 47:7 Value of personal property and service
- § 47:8 Nonexpert opinion on sanity or competency
- § 47:9 Nonexpert opinion on intoxication
- § 47:10 The age of a person
- § 47:11 Checklist: other matters on which a nonexpert may state an opinion

Chapter 48

Expert Testimony and Opinion Evidence

- § 48:1 The use of expert testimony, generally
- § 48:2 Checklist: The basic requirements for expert testimony to be admissible
- § 48:3 Checklist: Mechanics available to assist court and jury with scientific evidence
- § 48:4 Court-appointed experts
- § 48:5 Compelling an expert to testify
- § 48:6 Qualifications required of expert witnesses
- § 48:7 Determining in advance admissibility of expert testimony
- § 48:8 Need to disclose expert witnesses
- § 48:9 Matters about which an expert may testify
- § 48:10 Matters to which expert witness must testify
- § 48:11 The foundation for the expert's opinion
- § 48:12 Disclosure of facts or data underlying expert opinion
- § 48:13 Determining the sufficiency of the foundation for the expert's opinion
- § 48:14 Need for general acceptance of the principle underlying expert's opinion
- § 48:15 The applicability of the *Daubert* standards
- § 48:16 The hypothetical question
- § 48:17 Cross-examining the expert
- § 48:18 Using a treatise to cross-examine expert witnesses
- § 48:19 Weight to be given expert testimony
- § 48:20 Expert testimony on speed
- § 48:21 Expert testimony as to narcotics addiction
- $\S~48{:}22~~How~an~incident~occurred~(reconstruction~testimony)$
- § 48:23 Value of services
- § 48:24 Value of personal property
- § 48:25 Value of stocks and bonds
- § 48:26 Questioned documents
- § 48:27 Fingerprints and footprints

xxviii

§ 48:28 The admissibility of DNA-identification evidence **Ballistics** § 48:29 § 48:30 Blood stains § 48:31 Blood tests § 48:32 Intoxication § 48:33 Miscellaneous scientific tests § 48:34 Expert opinions on questions of law § 48:35 Expert opinion on amount of future loss of earnings

Chapter 49

Valuation of Real Estate

- § 49:1 Real estate valuation, generally
- § 49:2 Nonexpert opinion of value
- § 49:3 Owner's opinion of value
- § 49:4 Expert opinion of value
- § 49:5 Qualification of a real estate expert
- § 49:6 The cost of subject property
- § 49:7 Sales of comparable property
- § 49:8 Admissibility of unaccepted offers or condemnation settlements as proof of value
- § 49:9 An appraiser's value based in part on hearsay

Chapter 50

Proof of Handwriting

- § 50:1 Proof of handwriting, generally
- § 50:2 Use of a nonexpert witness
- § 50:3 The expert handwriting witness
- § 50:4 Admissibility of exemplars
- § 50:5 Using photographic copies as standards

Chapter 51

Experiments, Demonstrations, and Tests

- § 51:1 Experiments and demonstrations, generally
- § 51:2 The person conducting the experiment
- § 51:3 Subject matter of an experiment or demonstration
- § 51:4 Courtroom demonstrations
- § 51:5 Use of operating models

Chapter 52

Medical Testimony

- § 52:1 The testimony of the medical witness, generally
- § 52:2 The need for expert testimony in cases involving medical issues
- § 52:3 The qualifications required of expert medical witness
- § 52:4 The direct examination of a physician or surgeon

- § 52:5 Statements made for purposes of medical diagnosis or treatment
- § 52:6 The basis for the opinion testimony of a medical expert
- § 52:7 Hospital and doctor's records
- § 52:8 Cross-examining the doctor

Hearsay Evidence

- § 53:1 Admissibility of hearsay evidence
- § 53:2 Definitions relating to hearsay evidence
- § 53:3 Inapplicability of the hearsay rule to certain situations
- § 53:4 Verbal acts having independent legal significance
- § 53:5 Hearsay within hearsay
- § 53:6 Conduct as hearsay
- § 53:7 Necessity for objection to hearsay evidence
- § 53:8 Weight of hearsay admitted without objection
- § 53:9 Attacking and supporting credibility of declarant
- § 53:10 Affidavits

Chapter 54

Hearsay Exceptions, Generally

- § 54:1 Exceptions to the hearsay rule, generally
- § 54:2 The res gestae rule
- § 54:3 Threats
- § 54:4 Admissibility of 911 telephone calls

Chapter 55

Hearsay Exceptions; Availability of Declarant Immaterial

- § 55:1 Exceptions to the hearsay rule where the declarant may be available
- § 55:2 Present sense impression (spontaneous declaration)
- § 55:3 Spontaneous declaration by a child
- § 55:4 Excited utterance
- § 55:5 Then existing mental, emotional, or physical condition
- § 55:6 Statements for purposes of medical diagnosis or treatment
- § 55:7 Statements of knowledge, intent, or state of mind
- § 55:8 Statement of mental feeling
- § 55:9 Statement of motive, plan, or design
- § 55:10 Statement as to pain and suffering
- § 55:11 Recorded recollection
- § 55:12 Records of regularly conducted activity
- § 55:13 Absence of entry in records of regularly conducted activity
- § 55:14 Public records and reports, generally
- $\S 55:15$ Federal official records statute
- § 55:16 Coroner's verdict
- § 55:17 Autopsy report

§ 55:18	Certificate of public chemist, inspector, or analyst
§ 55:19	Weather reports
§ 55:20	Police reports
§ 55:21	Records of vital statistics, generally
§ 55:22	Absence of public record of entry
§ 55:23	Records of religious organizations
§ 55:24	Marriage, baptismal, and similar certificates
§ 55:25	Family Bibles and other records
§ 55:26	Records of documents affecting an interest in property
§ 55:27	Statements in documents affecting an interest in property
§ 55:28	Statements in ancient documents
§ 55:29	Market reports and commercial publications, generally
§ 55:30	Mortality and life expectancy tables
§ 55:31	Almanacs, tables, and computations
§ 55:32	Census reports
§ 55:33	Learned treatises
§ 55:34	Reputation concerning personal or family history
§ 55:35	Reputation concerning boundaries or general history
§ 55:36	Reputation as to character
§ 55:37	Judgment of previous conviction
§ 55:38	Judgment as to personal, family, or general history or boundaries
§ 55:39	Surveys and polls
§ 55:40	Statistical studies
§ 55:41	Stopping distance
§ 55:42	The residual hearsay exceptions

Chapter 56

Hearsay Exceptions: Declarants Unavailable

§ 56:1	Using hearsay when the declarant is unavailable
§ 56:2	Former testimony
§ 56:3	Statement under belief of impending death
§ 56:4	Statement against interest
§ 56:5	Statement of personal or family history

§ 56:6 Forfeiture by wrongdoing

Chapter 57

Testimony at Former Trial or Proceeding

§ 57:1	Use of testimony from former trial, generall
§ 57:2	Identity of parties and issues
§ 57:3	Opportunity to cross-examine the witness
§ 57:4	Unavailability of a witness
§ 57:5	Proving the former testimony

Chapter 58

Business Entries, Records, and Reports

§ 58:1 Use of business records, generally

- § 58:2 Records of regularly conducted activity (the hearsay exception)
- § 58:3 Requirements for the admission of business records
- § 58:4 The federal business records act

Admissions by a Party Opponent

- § 59:1 Admissions by a party opponent, generally
- § 59:2 Adoption of statements of another as admission (adoptive admissions)
- § 59:3 Admissions by others authorized to make a statement
- § 59:4 Admissions by an agent or servant
- § 59:5 Admissions to avoid continuance
- § 59:6 Request for admissions pursuant to Rule 36 of Federal Rules of Civil Procedure
- § 59:7 Subject matter of an admission
- § 59:8 Withdrawal of an admission
- § 59:9 Procedure in proving an admission
- § 59:10 Judicial admissions
- § 59:11 Plea discussions, nolo contendere, and withdrawn plea of guilty
- § 59:12 Rebuttability of admissions
- § 59:13 Silence of a party as an admission
- § 59:14 Failure to reply to a written statement as an admission
- § 59:15 Use of an illegally obtained confession in a civil case

Chapter 60

Inferences Based upon Conduct of a Party

- § 60:1 Presumptions and inferences based upon conduct of a party, generally
- § 60:2 Failure to call a witness
- § 60:3 Failure to produce evidence
- § 60:4 Failure of party to testify
- § 60:5 Admissibility of compromise and offers to compromise
- § 60:6 Evidence of settlement by other defendant
- § 60:7 Subsequent remedial measures
- § 60:8 Payment of medical and similar expenses as an admission
- § 60:9 Disposal of property as an admission
- § 60:10 Destruction or suppression of evidence as admission
- § 60:11 Attempts to corrupt, influence, or harm witness, juror, or judge

Chapter 61

Evidence of Reputation and Character

- § 61:1 Character as an issue in civil cases
- § 61:2 Evidence of character and reputation, generally
- § 61:3 Method of proving character
- § 61:4 Cross-examining a character witness
- § 61:5 Evidence of other crimes, wrongs, or acts
- § 61:6 Sex-offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition

xxxii

Parol and Extrinsic Evidence

§ 62:1	Parol evidence, generally
§ 62:2	Types of writings affected by the rule
§ 62:3	Private writings
§ 62:4	Corporate records
§ 62:5	Public records and documents
§ 62:6	Persons affected by the rule
§ 62:7	Exceptions to the rule, generally
§ 62:8	Prior or contemporaneous writings (the collateral contract rule
§ 62:9	Subsequent parol agreements or modifications
§ 62:10	Incomplete contract or writing
§ 62:11	Date and subject matter
§ 62:12	Consideration
§ 62:13	Relationship, identity, and capacity of the parties
§ 62:14	Showing time, place, and mode of performance or payment
8 62:15	Construction of the instrument

Chapter 63

The Use of Depositions at the Trial

§ 63:1 The use of depositions at the trial, generally

§ 62:16 Evidence admissible in construction of instrument

§ 63:2 Perpetuating testimony

Chapter 64

Evidence that Tends to Show Due Care or Lack of Care

§ 64:1	Evidence that tends to show care or lack of care, generally
§ 64:2	Other accidents or injuries
§ 64:3	Proof of absence of other acts or injuries
§ 64:4	Other acts of negligence
§ 64:5	Proof of habits and routine practice
§ 64:6	Usual method or practice
§ 64:7	Safety rules, codes, etc. that establish standards of care
§ 64:8	Admissibility of manufacturer's design and safety manual
§ 64:9	Violation of statute as evidence of negligence

Chapter 65

Mistrial

§ 65:1	The nature of a mistrial
§ 65:2	Grounds for declaring a mistrial
§ 65:3	Disclosure of liability insurance
§ 65:4	Discharge for inability of jury to arrive at verdict

Judgment as a Matter of Law

- § 66:1 Judgment as a matter of law in actions tried by jury
- § 66:2 Making the motion for judgment as a matter of law
- § 66:3 Determining right to judgment as a matter of law
- § 66:4 Renewal of motion for judgment after trial
- § 66:5 Conditional rulings on grant of motion for judgment as a matter of law
- § 66:6 Denial of motion for judgment as a matter of law

Chapter 67

Damages

- § 67:1 General rules relating to damages
- § 67:2 Nominal damages
- § 67:3 Foreseeability of damages
- § 67:4 Compensatory damages, in general
- § 67:5 Certainty of damages
- § 67:6 Duty to minimize damages
- § 67:7 Punitive damages
- § 67:8 Punitive damages in contract cases
- § 67:9 The amount of punitive damages
- § 67:10 General and special damages
- § 67:11 Proof of damages
- § 67:12 Treatment of other payments received by plaintiff (the collateral source rule)

Chapter 68

Damages in Particular Kinds of Cases

- § 68:1 Damages for breach of contract
- § 68:2 Contract provisions for liquidated damages
- § 68:3 Damages in personal injury cases
- § 68:4 Damages for emotional distress
- § 68:5 Damages for future effects of injury
- § 68:6 Reducing future earnings to present value
- § 68:7 Effect of inflation in awarding damages
- § 68:8 Effect of income taxes in awarding damages
- § 68:9 Liability for aggravation of preexisting injury
- § 68:10 Damages in wrongful death actions
- § 68:11 Damages to personal property
- § 68:12 Damages to real estate
- § 68:13 Damages in antitrust cases
- § 68:14 Damages for patent and copyright infringement
- § 68:15 Liability for injuries to employees of common carriers
- § 68:16 Damages under the seaman's act
- § 68:17 Damages in admiralty cases
- § 68:18 Damages under the Death on the High Seas Act

xxxiv

§ 68:19	Damages for personal injury under federal maritime law
§ 68:20	Damages under federal tort claims act
§ 68:21	Liability of common carrier
§ 68:22	Damages for injuries in aircraft accident-Warsaw Convention
§ 68:23	Damages for tortious interference with prospective contractual relationships
§ 68:24	Hedonic damages
§ 68:25	Damages in other cases

Chapter 69

The Recovery of Attorney's Fees—Sanctions Against Parties and Attorneys

I. ATTORNEY'S FEES—THE AMERICAN RULE

§ 69:1	Recovery of attorney's fees and legal expenses
§ 69:2	The assessment of attorney's fees
§ 69:3	Attorney's fees in diversity cases
§ 69:4	The lodestar method of calculating attorney's fees
§ 69:5	The reduction of fee awards by the trial court

II. THE EXCEPTIONS TO THE AMERICAN RULE

ey's fees

III. SANCTIONS IMPOSED UPON ATTORNEYS AND PARTIES

§ 69:20	[Reserved]
§ 69:21	The right to notice and hearing before imposing fees and costs as sanctions
§ 69:22	Sanctions for spoliation of evidence
§69:23	[Reserved]
§ 69:24	Disqualification of witness for violation of discovery rules
§69:25	Wrongfully obtaining an injunction
§ 69:26	Assessment of costs against attorneys under 28 U.S.C.A. § 1927; vexatiously multiplying proceedings

IV. SANCTIONS FOR VIOLATIONS OF RULE 11

§ 69:27	[Reserved]
§ 69:28	The requirements of Rule 11 of the Federal Rules of Civil Procedure

- § 69:29 Imposing sanctions on attorneys under Rule 11 of the Federal Rules of Civil Procedure
- § 69:30 Determining the amount to be awarded under Rule 11

V. OTHER SANCTIONS

§ 69:31 Other sanctions imposed on attorneys

Chapter 70

Closing Arguments

- § 70:1 General rules governing closing arguments
- § 70:2 Right to make closing argument
- § 70:3 Court's control of closing arguments
- § 70:4 Use of charts, blackboards, etc.
- § 70:5 Time allowed for argument
- § 70:6 Right to open and close arguments
- § 70:7 Correcting improper conduct of counsel
- § 70:8 Comments about opposing party, counsel, or witness
- § 70:9 Comment on failure to testify or to produce witness or evidence
- § 70:10 Stating the personal opinion of counsel on the issues
- § 70:11 Comments on the law applicable to the case
- § 70:12 Appeals to sympathy, prejudice, or passion
- § 70:13 Remarks about liability insurance
- § 70:14 Arguments about damages, generally
- § 70:15 The per diem argument
- § 70:16 The Golden Rule argument

Chapter 71

Jury Instructions

- § 71:1 Jury instructions, generally
- § 71:2 General principles relating to instructions
- § 71:3 Instructing at the beginning of the case
- § 71:4 Requests for instructions
- § 71:5 The jury instruction conference
- § 71:6 Advising counsel as to proposed instructions
- § 71:7 Objections to instructions
- § 71:8 1 Timeliness of objection
- § 71:9 Hearing objections to instructions
- § 71:10 Number of instructions
- § 71:11 Correcting erroneous instructions
- § 71:12 Supplemental jury instructions
- § 71:13 Jury instructions in diversity cases
- § 71:14 Need for element-specific unanimity instruction
- § 71:15 The missing witness instruction
- § 71:16 Instructing on taxability of award
- § 71:17 Instructing on per diem injuries
- § 71:18 Golden-rule instructions
- § 71:19 Instructing on adverse inference from destruction of evidence

xxxvi

The Jury's Deliberations

§ 72:1	The jury's deliberations
§ 72:2	Items taken by jury to jury room
§ 72:3	Taking jury instructions to the jury deliberations
§ 72:4	Using dictionaries or other books in jury deliberations
§ 72:5	Selecting the foreman
§ 72:6	Separation of jury during deliberations
§ 72:7	Presence of others in jury room during deliberations
§ 72:8	Exposure to material not in evidence
§ 72:9	Eavesdropping during deliberations
§ 72:10	Discharging juror during deliberations
§ 72:11	Improper conduct of jurors
§ 72:12	Experiments by jurors
§ 72:13	Communications with jurors during deliberations
§ 72:14	Jury request to review evidence
§ 72:15	Giving additional instructions and assistance to the jury
§ 72:16	Dealing with deadlocked jury
§ 72:17	Asking for division of jurors
§ 72:18	Urging agreement
§ 72:19	The instruction urging agreement
§ 72:20	Rules governing arrival at verdict
§ 72:21	Quotient verdicts
§ 72:22	Compromise verdicts
§ 72:23	Verdict by chance or lot
§ 72:24	The hours of deliberation

 $\S~72{:}25~$ Communications with jurors after the trial

Chapter 73

The Verdict

§ 73:1	General rules relating to verdicts
§ 73:2	Double recovery
§ 73:3	Unanimous and majority verdicts
§ 73:4	Special verdicts
§ 73:5	Apparent inconsistencies among answers to special verdict questions
§ 73:6	General verdict accompanied by answer(s) to special interrogatories
§ 73:7	Apparent inconsistencies among answers to special interrogatories in connection with general verdict
§ 73:8	Variance
§ 73:9	The rendition and recording of the verdict
§ 73:10	Sealed verdicts
§ 73:11	Polling the jurors
§ 73:12	Objections to the form of the verdict
§ 73:13	Revising and amending verdicts
§ 73:14	Power of court to have jury reconsider verdict
§ 73:15	Impeachment of verdict
§ 73:16	Comments by judge to jury about verdict

The Judgment in Civil Cases

§ 74:1	The judgment
§ 74:2	Entry of judgment
§ 74:3	Judgment for specific acts, vesting title
§ 74:4	Judgment upon multiple claims or involving multiple parties
§ 74:5	Entry of judgment by default
§ 74:6	Amount of judgment
§ 74:7	Allowance of fees and costs
§ 74:8	Limiting costs by making offer of judgment
§ 74:9	Allowance of prejudgment interest
§ 74:10	Remittitur
§ 74:11	Construction and interpretation of judgments
§ 74:12	Construction of consent judgment or decree
§ 74:13	Enforcement of settlement agreement
§ 74:14	Declaratory judgments
§ 74:15	New trials; amendment of judgments
§ 74:16	Relief from judgment of order
§ 74:17	Stay of proceedings to enforce a judgment
§ 74:18	Other post-trial proceedings