TABLE OF CONTENTS

Foreword

CHAPTER ONE

USE, ADDICTION, AND WITHDRAWAL

A. Introduction

- § 1. Historical background
- § 2. What constitutes a "narcotics case"
- § 3. Users and addicts
- § 4. Recognizing the addict
- § 5. Addiction and withdrawal

B. The Drug User as a Client

- § 6. In general; reliability
- § 7. Curative and treatment programs
- § 8. Using a fact sheet
- § 9. Form of fact sheet

C. Interviewing the Client

- § 10. Time and place of interview § 11. Conducting the interview
- § 12. Attitudes of attorney

CHAPTER TWO

PRETRIAL CONSIDERATIONS AND PROCEDURES

A. Severance

- § 13. Statement of codefendant
- § 14. Incompatibility or complexity of defenses
- § 15. Multiple offenses
- § 16. Motion for severance

B. Pretrial Discovery

- § 17. In general
- § 18. Federal Rules of Criminal Procedure; Rule 16(a)
- § 19. Federal Rules of Criminal Procedure; Rule 16(b)
- § 20. Disclosure of witnesses
- § 21. Federal Rules of Criminal Procedure; Rule 17(c)
- § 22. Laying the groundwork for a discovery motion

- § 23. The "confidential informer"
- § 24. Government witnesses; identity and statements
- § 25. Statements or confessions of defendant
- § 26. Statements and confessions of codefendants
- § 27. Government reports and memoranda
- § 28. Investigative reports
- § 29. Grand jury minutes
- § 30. Moving papers
- § 31. Prosecution's right to discovery

C. Bill of Particulars

- § 32. In general
- § 33. Moving papers

CHAPTER THREE

OFFENSES RELATING TO POSSESSION OF NARCOTICS

A. Introduction

- § 34. In general
- § 35. Possession and control under Drug Abuse Prevention and Control Law, in general
- § 36. What constitutes illegal narcotic
- § 37. —Drug Abuse Prevention and Control Law
- § 38. State statutory provisions
- § 39. Effect of chemical alteration of drug
- § 40. Distinction between sale and possession
- § 40.1. Statutory controls
- § 41. Disassociate defendant and drug
- § 42. Lawful possession

B. Elements of Possession

- § 43. In general
- § 44. Degree of control
- § 45. Intent or scienter
- § 46. Awareness of substance as narcotic
- § 47. —Example; knowledge of possession
- § 48. Instructions as to knowledge
- § 49. Time of possession
- § 50. Federal law on presumptions and burden of proof
- § 51. Attempted possession

C. Constructive Possession

- § 52. In general
- § 53. The casual seller
- § 54. Proximity
- § 55. Weight and sufficiency of evidence
- § 56. Credibility of complaining witness
- § 57. Specific locale of possession

- § 58. —Business premises
- § 59. —Motor vehicles
- § 60. —Presumptions and burden of proof
- § 61. Legality of motor vehicle search
- § 62. Where another person is involved

D. Multiple Defendants

- § 63. In general
- § 64. —Example; narcotics in apartment
- § 65. —Example; mere fact of defendant's presence

E. Amount or Quantum of Drug Involved

- § 66. In general§ 67. Sufficiency of quantity
- § 68. Insignificant quantity

F. Matters in Defense or Mitigation

- § 69. In general

- § 70. Abandonment
 § 71. Chain of custody
 § 72. Dependency or addiction as defense
 § 73. Religious or ceremonial drugs

CHAPTER FOUR

OFFENSES RELATING TO THE SALE, TRANSFER. IMPORTATION, OR EXPORTATION OF NARCOTICS

A. Introduction

- § 74. In general
- § 75. What constitutes sale
- § 76. Possession with intent to sell
- § 77. Admissibility of other sales

B. Nature or Type of Sale or Transfer

- § 78. Distinction between "direct sale" and "observation sale"
- § 79. Attacking observation sales
- § 80. Three-party transactions
- § 81. Corroboration in principal-agent sales

C. Matters in Defense or Mitigation

- § 82. Sufficiency of complaint
- § 83. Age of purchaser § 84. Induced sales
- § 85. Authorized sales

D. Federal Controls

- § 86. In general
- § 87. Drug classifications
- § 88. Marijuana

- § 89. Regulations involving import and export of narcotics
- § 90. Nature and purpose of possession
- § 91. Trial tactics and strategy

CHAPTER FIVE

SUPPRESSION OF EVIDENCE; THE EXCLUSIONARY RULE

A. Introduction

- § 92. General rules relating to the suppression of evidence
- § 93. Memorandum or brief
- § 94. The moving papers

B. The Exclusionary Rule

- § 95. In general
- § 96. Development of exclusionary rule; Mapp v Ohio
- § 97. Application to derivative or indirect evidence
- § 98. Impeachment of the defendant
- § 99. Application to evidence acquired by private citizen

C. Identification of Defendant

- § 100. In general

- § 101. Right to counsel § 102. Unfair practices; lineups § 103. Suggestive identification procedures
- § 104. Courtroom identification
- § 105. Photographs
- § 106. Sample cross-examination; independent in-court identification
- § 107. Waiver

CHAPTER SIX

SEARCH AND SEIZURE

A. Introduction

- § 108. In general
- § 109. What constitutes a search
- § 110. Who may object to search or seizure
- § 111. —Juveniles § 111.1. —Motor vehicle cases

B. Factors Determining Permissibility of Search

- § 112. In general
- § 113. Reasonableness of the search
- § 114. Stop and frisk
- § 115. Searches made upon consent
- § 116. —Miranda warnings § 117. —Who may consent

C. Person or Authority Conducting Search

- § 118. Private searches by individuals
- § 119. Searches by foreign authorities
- § 120. Immigration and customs searches
- § 121. Administrative inspections

D. Items and Places Subject to Search and Seizure

- § 122. Open fields
- § 123. Warrantless searches of motor vehicles and other mobile objects
- § 124. Seizure of words
- § 125. Abandoned property
- § 126. Other items subject to seizure

CHAPTER SEVEN

SEARCH WARRANTS AND PROCEEDINGS RELATED THERETO

A. Definition, Characteristics, and Use

- § 127. Definitions
- § 128. Historical background
- § 129. Nature and purpose

B. Issuance of Search Warrant

- § 130. In general
- § 131. Probable cause
- § 132. Supporting affidavits
- § 133. Description of place or object
- § 134. Timeliness of warrant

C. Execution of Search Warrant

- § 135. Time of execution
- § 136. Place of execution
- § 137. Manner of execution
- § 138. Emergency situations

CHAPTER EIGHT

ARRESTS AND SEARCHES INCIDENTAL THERETO

A. Introduction

- § 139. In general § 140. Range of area which may be searched
- § 141. Time and purpose of search and arrest
- § 142. Availability of warrant

B. Validity of Arrest

- § 143. In general
- § 144. Factors and elements affecting validity of arrest

§	145.	Commission	of	the	crime	in	the	officer's	presence

- § 146. General definition of probable cause in arrest cases
- § 147. Informers and probable cause
- § 148. Forcible entry without an arrest warrant
- § 149. Shocking conduct of police officer

C. Warrants of Arrest

- § 150. In general § 151. Forcible entry
- § 151.1. Felony arrests

CHAPTER NINE

WIRETAPPING AND ELECTRONIC EAVESDROPPING

A. Introduction

- § 152. In general
- § 153. Effect of Federal Communications Act of 1934
- § 154. Territorial extent of statutory bar § 155. Constitutional aspects
- § 156. The Katz case and the protection of people
- § 157. Electronic surveillance and tainted evidence

B. Omnibus Crime Control and Safe Streets Act

- § 158. In general § 159. Definition of wire and oral communication
- § 160. Orders permitting interception § 161. Procedure for interception of wire or oral communication
- § 162. Review of order and papers

CHAPTER TEN

CONFESSIONS AND ADMISSIONS

A. Introduction

- § 163. In general; definitions
- § 164. Distinction between confession and admission
- § 165. Admissibility and weight
- § 166. Derivative or indirect evidence

B. Voluntariness of Statement or Confession

- § 167. In general
- § 168. Force or violence
- § 169. Threats
- § 170. Statement that it would be beneficial for accused to tell the truth or to confess
- § 171. Promise or inducement of benefit, reward, or immunity
- § 172. —Promise or statement by private individual
- § 173. Humiliation of defendant

	§ 175.	Use or administration of drugs or narcotics Methods of detention or interrogation; the "third degree" Fraud, deception, or trickery Determination of voluntariness; miscellaneous factors
C.	Procedu	ıral Safeguards
	§ 178.	In general
		Effect of delays
		Right to counsel
		—Juveniles
	§ 182.	Warnings and advice to accused of his rights; the Miranda Rule
		Sufficiency of warnings or advice
		What constitutes "custodial interrogation"
		Waiver
		Impeachment
	§ 187.	Legislative limitations
D.	Stateme	ents or Declarations
	§ 188.	In general; statements of accused
		Applicability of Miranda case
	§ 190.	Spontaneous declarations
		CHAPTER ELEVEN
		THE EXCLUSIONARY HEARING
A.	Prehea	ring Considerations and Strategy
	§ 191.	Interviewing the client
	§ 192.	—Functions of the client interview
	§ 193.	General questions for the client interview
	§ 194.	Questions involving the search of a vehicle
	§ 195.	Questions involving the search of a building
	§ 196.	Questions involving a search of the person Know the law
	§ 197.	Know the law
		Bill of particulars
	§ 199. § 200.	Motion to inspect grand jury minutes Motion to inspect client's statements
_	•	
B.		to Suppress or Exclude Evidence
	§ 201.	
	§ 202.	Sufficiency and return of motion
	§ 203.	Moving papers; form of motion
	§ 204.	Checklist to follow in determining how and whether to

make motion to suppress

§ 205. Advantages of motion § 206. Disadvantages of motion § 207. Withdrawal of motion § 208. Finality of motion; appeals

	C.	Nature,	Form,	and	Purpose	of	Hearing
--	----	---------	-------	-----	----------------	----	---------

- § 209. In general
- § 210. Conduct of hearing
- § 211. Purpose of hearing

D. Practice and Procedure at Hearing

- § 212. Presenting the case; order of proof
- § 213. Burden of proving valid search or seizure
- § 214. Burden of proving voluntariness of confession
- § 215. Presence of jury
- § 216. Identification evidence
- § 217. Sample presentation of case
- § 218. Strategy and tactics at suppression hearing
- § 219. Sample cross-examinations of officer involved in "on the scene questioning"
- § 220. Cross-examination: the Miranda warnings

E. Locating, Using, and Preparing Witnesses

- § 221. In general; accused as witness § 222. Police officers
- § 223. Locating witnesses
- § 224. Use of judicial discovery; preliminary hearing
- § 225. Establishing facts
- § 226. Independent or corroborative witnesses
- § 227. Interviewing the witnesses
- § 228. —Hostile witnesses
- § 229. Recording the interview; signed statements

CHAPTER TWELVE

CAPACITY TO COMMIT CRIME OR TO BE TRIED

A. Introduction

- § 230. In general
- § 231. Amnesia

B. Insanity at Time of Act

- § 232. In general
- § 233. Psychiatric examinations § 234. The right and wrong, or M'Naghten test
- § 235. The New Hampshire rule
- § 236. The Durham rule
- § 237. Irresistible impulse
- § 238. Diminished responsibility

C. Insanity at Time of Trial

- § 239. In general
- § 240. Tests or indicia of insanity
- § 241. Defense strategy

CHAPTER THIRTEEN

MENTAL ELEMENT; MENS REA

	T 4	- 1	4 *
Δ	Int	radii	ction
-	ALLE V.	LUUU	

- § 242. In general
- § 243. Application under narcotics statutes
- § 244. —Presumptions and proof
- § 245. Wilfulness
- § 246. Unintended consequences

B. Coercion or Duress

- § 247. In general
- § 248. Nature of danger or apprehension

C. Accused's Ignorance or Mistake

- § 249. In general; mistakes of fact
- § 249.1. —Accused's unawareness of certain facts
- § 250. Ignorance or mistake of law

D. Strict Liability

- § 251. In general
- § 252. Effect of ignorance or mistake

CHAPTER FOURTEEN

DEFENSES

A. Constitutional Safeguards

- § 253. In general
- § 254. Equal protection
- § 255. Validity of commitment laws
- § 256. Due process

B. Entrapment

- § 257. In general
- § 258. Distinction between detection and entrapment
- § 259. Defendant's willingness or intent
- § 260. By whom defendant is entrapped
- § 261. Purchase of contraband by officer
- § 262. Availability and assertion of entrapment as defense
- § 263. Proof of entrapment; sample questions
- § 264. Cross-examination

C. Legality of Transaction or Substance Involved

- § 265. In general
- § 266. Persons with professional immunity
- § 267. Good faith in professional or medicinal dispensation
- § 268. Proper medical standards and practices

D. Defenses Involving Possession Charges

- § 269. In general; knowledge and intent
- § 270. Quantities involved
- § 271. Sufficiency of dominion and control

CHAPTER FIFTEEN

LABORATORY ANALYSIS OF NARCOTICS AND DRUGS

A. Introduction

- § 272. In general
- § 273. Personnel, techniques, and procedures used

B. Amphetamines

- § 274. In general
- § 274.1. Particular types
- § 275. Methedrine
- § 276. Laboratory tests

C. Barbiturates

- § 277. In general
- § 278. Particular types
- § 279. Laboratory tests
- § 280. —Blood and urine tests

D. Cocaine

- § 281. In general § 282. Laboratory tests

E. LSD

- § 283. In general

- § 284. Color test § 285. ORD test § 286. Thin-layer chromatography § 287. Ultraviolet spectrophotometry
- § 288. Infrared spectrophotometry
- § 289. Reliability of tests

F. Marijuana

- § 290. In general; nature and characteristics
- The Beam test § 291.
- § 292. Duquenois-Levine test
- § 293. Reliability of Beam test and Duquenois test
- United Nations tests; tests by the Federal Bureau of Nar-§ 294. cotics
- § 295. Microscopic tests
- § 296. Detection within the body
- § 297. Olfactory detection

G. Opiates

- § 298. In general
- § 299. Heroin
- § 300. Morphine
- § 301. Other manufactured opiates
- § 302. Laboratory and chemical tests
- § 303. Microcrystalline tests
- § 304. Saliva and urine tests
- § 305. —Coloration effects
- § 306. Nalline test
- § 307. Reliability of tests

H. Peyote-Mescaline

- § 308. In general
- § 309. Testing procedures

I. Conclusion

§ 310. In general

CHAPTER SIXTEEN

EXPERT WITNESSES

A. Selection

- § 311. In general
- § 312. Selection techniques
- § 313. Retain the expert as soon as possible
- § 314. Number of experts
- § 315. Avoid the professional expert witness

B. Using the Expert

- § 316. Establishment of rapport and communication
- § 317. Familiarize yourself with your expert's qualifications
- Consultation between defense and prosecution experts § 318.
- § 319. Admissibility of testimony; qualifications
- § 320. Preparing the expert witness for trial
- § 321. Attitude and manner § 322. Report of expert witness
- § 322.1. Terminology

C. Compensation

- § 323. In general
- § 324. Payment by state
- § 325. —Moving papers
- § 326. Amount; contingent fees

D. Sample Questions

- § 327. Direct examination of defense expert
- § 328. Amphetamine cases
- § 329. Heroin cases

§ 330.	LSD cases
	Marijuana cases
	Cross-examination of law enforcement officer
	—Sample questions in cross-examination of police officer
	Conclusions

CHAPTER SEVENTEEN

INSTRUCTIONS

A. Defense Counsel's Requests to Charge

§ 335. Preparation and form

§ 336. Strategy in making requests

B. Sample Requests of Charges to Jury

§ 337. Addiction § 338. Agency

§ 339. Aiding and abetting

§ 340. Capacity

§ 341. Duress

§ 342. Entrapment

§ 343. Importing of drugs

§ 344. Good faith of physician § 345. Possession § 346. Possession with intent to sell § 347. Presumption of innocence § 348. Procurement by fraud and deceit

§ 349. Sales by physician § 350. Wilful sale

§ 351. Weight of testimony

C. Exceptions

§ 352. In general

§ 352.1. Stating ground

CHAPTER EIGHTEEN

SUMMATION

A. Introduction

§ 353. In general; nature and function

B. Advance Preparation

§ 354. Notes and memoranda

§ 355. Obtain the trial minutes

C. Manner of Presentation

§ 356. In general

§ 357. Avoid technical language and slang § 358. Personalize the defendant

- § 359. In general
- § 360. Proceed logically
- § 361. Strategy and content
- § 362. Attacking circumstantial evidence
- § 363. Emphasize the importance of your defense
- § 364. Anticipate the prosecution's arguments
- § 365. The conclusion

E. Sample Summation in Narcotics Case

§ 366. Typical effective summation

CHAPTER NINETEEN

SENTENCING THE NARCOTICS OFFENDER

A. General Policies and Considerations

- § 367. In general
- § 368. The special problem of marijuana
- § 369. Relationship of crime and violence to use of cannabis

B. Extent and Nature of Punishment or Sentence

- § 370. In general
- § 371. Sentencing provisions in state statutes
- § 372. Civil commitment
- § 373. Mandatory minimum sentences
- § 374. Inappropriately heavy sentences
- § 375. Controlled free dispensation to offender
- § 376. Addict needs treatment

C. Presentencing Strategy and Procedures

- § 377. In general
- § 378. Right to counsel
- § 379. The presentence report
- § 380. —Contents
- § 381. Influencing the presentence report
- § 382. Making a case for mitigation of sentence
- § 383. Do not maintain innocence during sentencing
- § 384. Sociological and medical consultants
- § 385. Argue advantages of probation or suspension of sentence

D. General Factors and Elements in Determining Sentence

- § 386. The discretion of the judge
- § 387. Theories and goals in sentencing
- § 388. Severe punishment as deterrent
- § 389. Amount of drug involved

E. Personal Considerations in Determining Sentence

- § 390. In general
- § 391. Criminal record

§ 392.	Previous	drug	invo	lvement
§ 393.	Age			

§ 394. Employment record

§ 395. Marital status and history

§ 396. Ethnic considerations

§ 397. Family background

§ 398. Educational record

§ 399. Financial record

§ 400. Defendant's capacity for change

F. Postsentence Procedures and Techniques

§ 401. In general

§ 402. Motion for resentence

G. Parole, Probation, and Suspensions

§ 403. In general

§ 404. Exceptions to granting of probation

§ 405. Conditions of probation

§ 406. Parole

§ 407. Suspended sentences

§ 408. Split sentence

§ 409. Qualifications for split sentence

§ 410. Work release § 411. Conditions of work release

§ 412. Youthful offenders

H. Civil Commitment

§ 413. In general

§ 414. Fairness

§ 415. Record of unsuccessful treatment

§ 416. Crime and the addict

§ 417. Voluntary commitment

CHAPTER TWENTY

PARTICULAR FEDERAL OFFENSES, PROCEDURES, AND **SENTENCES**

A. General Federal Controls

§ 418. Basis of federal controls

§ 419. Application of state law

§ 420. Schedules of controlled drugs

§ 421. Distribution and dispensation

§ 422. Accuracy and propriety of schedules

§ 423. Refusal to testify—immunity and privilege

B. Prohibited Acts

§ 424. In general § 425. Prohibited acts "A"

	§ 426.	—Special parole terms —Penalty
	8 427. 8 428	Prohibited acts "B"
		Prohibited acts "C"
		—Communication facility
		—Penalty
C.	Sentene	cing
٠.		In general
		Distinction between peddlers and addicts
	§ 434.	Mandatory sentencing
	§ 435.	Continuing criminal enterprises
	§ 436.	Proceedings to establish prior convictions
		The Narcotics Rehabilitation Act of 1966
D.	Danger	ous Special Drug Offenders
	_	Special drug offenders
		Proving defendant to be dangerous special drug offender
		Notice to the court
		The hearing
	§ 442.	Sentence
	§ 443 .	Review of sentence
E.	Search	and Seizure
	§ 444.	Administrative inspections
	§ 445.	—Without warrant
	§ 446.	Issuance and execution of warrants
		No-knock
		Property subject to forfeiture
	§ 44 9.	—Authority for seizure
F.		and Export
		In general
	§ 451.	Manufacture or distribution for unlawful importation
	§ 452.	Possession on vessels, aircraft, and vehicles
		Statutory prohibitions
	3 404. 8 455	Multiple offenders
	g 4 00.	Attempts and conspiracies
		CHAPTER TWENTY-ONE
	JUVEN	ILE DELINQUENCY AND YOUTHFUL OFFENDER

S

A. Juvenile Delinquency Act

- § 456. Determination of a "juvenile" § 457. Purpose of statute § 458. Procedure under the statute § 459. Jurisdiction

- § 460. Sentencing § 461. Parole

B. The Youthful Offender

- § 462. In general
- § 463. Definition of a "youthful offender"
- § 464. Jurisdiction
- § 465. Probation
- § 466. Commitment to custody of Attorney General
- § 467. Terms of commitment
- § 468. Standard commitment
- § 469. Provisions other than standard commitment
- § 470. Release § 471. Previous time served
- § 472. Qualifications
- § 473. Pleading
- § 474. Warnings
- APPENDIX A. Uniform Narcotic Drug Act
- APPENDIX B. Narcotic Drugs Act (21 USCS)
- APPENDIX C. Drug Abuse Prevention and Control Act
- APPENDIX D. Drug Abuse Education Act
- APPENDIX E. Directory of Narcotic Addiction Treatment Agencies in the United States
- **APPENDIX F.** Aftercare Contract Agencies