

Index

ABANDONMENT

- Appeal, absconding defendant, 24:39
- Evidence, search and seizure
 - See also Warrantless Search and Seizure
- Evidence, search and seizure, 9:38-9:44
- Preservation of error, 18:154, 18:155
 - See also Preservation of Error

ABSENCE

- Arraignment, absence at, 4:15
- Guilty plea, 17:42-17:46
 - See also Guilty Plea
- Missing witness. See Jury Charge
- Need for counsel, 2:10
- Predicate felony statement, 22:128
- Resentencing, 22:181
- Sentencing, 22:172
- SORA hearing, 23:77
- Trial, absence at. See Parker Warnings

ABSTENSION DOCTRINE

- Writ of prohibition, applicability to, 23:17

ABUSE, SEXUAL

- See Sexual Abuse

ABUSE AND NEGLECT PROCEEDINGS

- See Child Abuse

ABUSE OF DISCRETION

- Adjournment, request for, denial
 - See also Adjournment
- Adjournment, request for, denial, 19:52
- Appealing discretionary ruling, 24:88
- CPL 440.10 motion, evidentiary hearings, denial of, 23:61

ABUSE PROCEEDINGS

- Effective assistance of counsel, right to, 2:55

ACCESSORY AFTER FACT

- Not an accomplice, 14:57

ACCIDENTS

- MV-104 report, 8:119
- Photographs, use to rebut act was accident, 18:97
- Reports, discovery of, 8:119

ACCOMPLICE

- Accessory after fact, not an accomplice, 14:57
- Assistance with crime alone insufficient, 14:44, 14:45
- Conviction, permissible as accomplice when charged as principal, 14:53

ACCOMPLICE—Cont'd

- Cooperation agreement with prosecution and testimony against, defendant's, 22:170
- Corroboration of testimony, 14:47-14:51
 - Accessory after fact, 14:57
 - Connection of defendant to crime, 14:50
 - Establishment of all elements of crime, 14:51
 - Independent evidence, 14:47-14:51
 - Connection of defendant to crime, 14:50
 - Police agent as accomplice, 14:48
 - Proof of crime or commission by defendant, 14:51
 - Witness as accomplice, 14:47
- Corroboration of testimony, jury charge
 - Specific required, 14:55-14:56
 - Matter of law, accomplice described, 14:55
- Corroboration of testimony, jury charge, 19:147
- Criminal liability, 14:41-14:57
- Defendant as, bill of particulars, 8:122
- Defined, 14:41-14:46
 - Assistance with crime alone insufficient, 14:45
 - Liability, 14:46
 - Unintentional act, 14:45
 - Presence at crime insufficient, 14:43
 - Shared mental state requirement, 14:42
- Described, matter of law, 14:55
- Joinder, effects of verdicts inconsistent, 14:30
 - Repugnance, claim of, 14:30
- Jury charge, 14:54-14:56
 - Matter of law, accomplice described, 14:55
 - Presence at crime insufficient to prove guilt, 14:42
 - Question of fact, accomplice status as, 14:56
 - Witnesses as accomplices, 14:56
- Jury charge, 19:147
 - Intent of principal, must share, 19:147
 - Missing witness charge, 19:188
 - Presence at crime insufficient to prove guilt, 19:147
- Lesser included offense
 - Accomplice testifying for prosecution, 16:15
 - Green/Glover two-prong test, prosecution, accomplice testifying for, 16:15
- Manslaughter, unintentional act, 14:45
- Pleading, indictment to state role as principal or accomplice, 14:52-14:53
- Police agent as accomplice, 14:48
- Presence at crime scene insufficient to prove guilt, 14:43

ACCOMPLICE—Cont'd

- Presence at crime scene insufficient to prove guilt, 19:147
- Principal versus, 14:40
- Proof, 14:45
- Robbery, corroboration of testimony, 14:50
- See also Acting in Concert
- See also Codefendants
- Shared mental state requirement, 14:42

ACCUSATORY INSTRUMENTS

- Allegations in, prosecutor's proof or judge's charge varying from, defense objection, 3:76
- Amendment of, 3:65-3:76
 - Factual errors, 3:59
 - Prosecution's amendment, 3:65
 - Reflecting new charge of lesser included, 17:10
 - Superior court instruments, 3:70-3:76
 - Superseding of local court instrument, 3:59, 3:69
- Appeal of, 3:79, 3:81
- Bill of particulars, application, 8:121
- Charges
 - Combination of, from different instruments, plea, 17:1
 - Inadequate, survives guilty plea, 17:81
 - Inconsistent, guilty plea to charges, 17:35
 - Multiple. See subhead: Multiple charges
- Codefendants, 14:37, 14:38
- Commencing criminal action
 - Accusatory instrument filing date, 13:4
 - Local criminal court, 3:1, 3:2, 3:6-3:12
 - Complaint/information, 3:1
 - Superior court, sealed indictment, exception, 3:2
- Complaint
 - Felony, 3:8, 3:12, 3:18, 3:34
 - See also Felony Complaint
 - Misdemeanor, 3:10, 3:11, 3:32, 3:33
 - See also Misdemeanor Complaint
- Consolidation of two or more separate instruments
 - Grounds for, 14:37, 14:38
 - For single trial, 14:11
- Continuing criminal action
 - Local criminal court, prosecutor's information in, 3:1
 - Superior court
 - Indictment, 3:1
 - Special information, 3:1
 - Superior court information, 3:1
- Counsel, right to upon filing, 9:138
- Counts, large number in, allocution excepted, 17:26
- Cross-complaint, 1:16

ACCUSATORY INSTRUMENTS—Cont'd

- Defective
 - All elements of crime not alleged, 1:50
 - Latent, 3:27
 - Provisos, 3:49
- Defendant, copy to, 4:17, 9:137
- Description and function, 3:1-3:29, 17:4
- Dismissal
 - Improper for curable defect, conditions, 3:77
 - Insufficiency as grounds, 3:61-3:64, 3:77
 - Speedy trial time not tolled by, 3:78
 - Without prejudice, 3:77
- Not supported by defects of form, 3:59
- Dismiss, motion to
 - Deficient instrument as grounds
 - Court review, 3:63
 - Failure to move waives issue on appeal, 3:79
 - Issue preserved, guilty plea does not waive, 3:79
 - Omnibus motion, part of, 3:61
 - Time, extension of time, 3:62
- Factual errors, 3:59
- Filed in
 - Local criminal court, commencing action, 3:1, 3:2, 3:6-3:12
 - Superior court, continuing action, 3:1
 - Exception, sealed indictment commencing action in, 3:2
- Filing
 - Criminal action commenced by, 3:3
 - Defined/importance of, 3:3
 - Implications for issues
 - Right to counsel, 3:3
 - Speedy trial, 3:3
 - Statute of limitations, 3:3
 - New instrument, 17:10
 - Order of protection on, 3:4
 - Stage in progress of criminal case, 1:50
- Form, defects in will not support dismissal, 3:59
 - Incorrect citation, 3:59
 - Typographical error, 3:59
- Forms
 - Indictment
 - Approval of waiver of, 3:84
 - Waiver of, 3:83
 - Special information, sample, 3:85
 - Superior court information, sample, 3:82
 - Supporting deposition, Demand for, 3:86
 - Traffic ticket cases, motion applicable to
 - Notice of motion to dismiss, 3:91
 - Supporting deposition, 3:86
- Guilty plea, effect
 - Failure to adequately charge criminal offense, survives guilty plea, 17:81

ACCUSATORY INSTRUMENTS—Cont'd

- Indictment, 3:14, 3:29
 - See also Indictment
 - Charges in, 3:14
 - Misdemeanor indictment, 3:9
- Information
 - Local court. See Local Court Information
 - Prosecutor's, 3:1, 3:8, 3:31, 3:68
 - See also Prosecutor's Information
 - Special information, 3:1, 3:51
 - See also Information subhead: Special information
 - Superior court information, 3:16, 3:50
 - See also Superior Court Instruments subhead: Information
- Less than full, prosecutor's consent required to plead to, 17:4
- Long-form information, 3:58, 3:68
- Multi-count, overlapping guilty verdicts, 20:18
- Multiple charges, 4:47
 - Credit for jail time served, 4:47
 - Nominal bail, 4:47
- Petition in lieu of, juvenile delinquents, 21:2
- Plea bargaining on
 - See also Plea Bargaining
 - Requiring defendant to plead to entire, 17:8
 - Right to plead to entire, 17:4, 17:5
 - Murder 1st degree, exception, 17:5
- Provisos vs. exceptions, 3:49
- Read at arraignment, 4:17
 - Waiver, 4:17
- Statutory speedy trial
 - Commencement with instrument filing, 13:27
 - Later instrument
 - Different basis, new commencement date, 13:56
 - Higher charge, new commencement date, 13:55
 - Indictment dismissed, new one voted, 13:53
 - Lesser charge, new commencement date, 13:54
 - New charges on same transaction, same date, 13:57
 - Same charge, original commencement date, 13:52
 - Prosecution unreadiness on day of trial, 13:81
- Sufficiency of, 3:25-3:60
 - Standards of, 3:25
 - CPL Articles 100 and 200, 3:25
- Superseding indictments, 3:15
- Superseding instrument, 3:15, 3:59, 3:69, 3:72
- Superseding local instruments, 3:68
- Superseding traffic ticket, 3:68
- Title may be misleading, 3:1

ACCUSATORY INSTRUMENTS—Cont'd

- Types, 3:1
 - Indictment
 - Sealed indictment, 3:2
 - Typographical error, dismissal not supported, 3:59
 - Waiver of indictment, 3:17-3:23

ACCUSER

- Defendant's right to confront, 17:37

ACD

- See Adjournment in Contemplation of Dismissal (ACD)

ACQUITTAL

- Civil remedies, 1:88
- Failure to render verdict is no verdict, 20:15
- Insanity, effect of acquittal due to, 15:57
- Jury verdict, double jeopardy prevents retrial, 1:88
- Mental disease or defect, 15:57
- New indictment in retrial, acquittal on top count/conviction on lesser charge, 24:126
- Prosecution's summation, improper implication, 18:202

ACTING IN CONCERT

- Drug sales, 12:19
- See also Accomplices
- Uncharged crimes, permissible use in proving guilt, 12:19

ADDICTION-RELATED CRIMES

- Sandoval rules, 11:25, 11:31
- See also Controlled Substances Offenses
- See also Drug

ADDRESS

- Defendant
 - Attorney-client privilege, 2:39
- Pedigree questioning. See Mapp Statements
- Police officers, 19:191
- Sex Offender Registration Act, reporting address change under, 23:77, 23:85
- Subpoena, 8:93
- Verifiable address, bail, 4:66

ADJOURNMENT

- Adjournment slips, statutory speedy trial, 13:33
- Affidavit of engagement, 19:44
- After arraignment, grounds, 1:57
- Bail application, 4:66
 - Defendant jailed on, 4:66
- Defendant obtaining counsel, 2:15
- Defendant's request, denial, 19:45
 - Prosecution's request where two proceedings scheduled for same time, 19:50
- Defense request for, 19:44-19:50

ADJOURNMENT—Cont’d

- Discretionary grant, 19:45
- Health, based on defendant’s, 19:46
- Indictment amended, 19:48
- Indictment amended, 3:75
- Mitigating prejudice, 19:51
- Not guilty plea, 4:24
 - Reasons to adjourn, 4:24
- Preliminary hearings, 5:12, 5:20
 - See also Preliminary Hearings
- Prosecution’s request, 19:51
- Reason for, 19:43
- Religious grounds asserted, 19:50
- Remedy for error, 18:208
- Right to obtain counsel, 4:20
- Sentencing, adjournment for, guilty plea, 17:62
- Statutory speedy trial, implications for
 - Defense request or consent
 - Adjournment slips signed by both counsel, 13:33
 - Codefendants, consent by one, no consent by other, 13:38
 - Defense record-keeping, 13:19
 - Prosecution conditioning consent to adjournment on waiver of, 13:96
 - Unanticipated fact beyond prosecution control, 13:40
- Prosecution unreadiness on day of trial, 13:81

ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD)

- ACD not a conviction, 22:43
- Arrest and prosecution “deemed a nullity” on dismissal, 22:43
 - False arrest and imprisonment, available, 22:42
 - Malicious prosecution, barred, 22:42
- Bail returned, 4:77
- Community service, as part of, 22:40
 - Defendant’s waiver of right to sue officer or complainant, 22:41
- Defendant’s record, effect on, 22:43
- Defendant’s waiver of right to sue officer or complainant, 22:41
- Described, 22:40
- Designated felony offense, 21:24
- Excludable time, 13:33
- Excludable time, 22:43
- False arrest and imprisonment, available, 22:42
- Family court, 21:24
- Family offense charge, 22:37
- Fingerprints not retained by police, 22:40
 - Prosecution letter requesting case be restored after, 22:225
- Forms
 - In abstentia, affidavit requesting ACD, 17:93

ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD)—Cont’d

- Granted, permissible conditions, defendant in programs, 22:40
 - Dispute resolution, 22:40
- Granted with order of protection, 22:40
- Hearing, 21:22
- Juvenile delinquent status, 21:26
- Malicious prosecution barred, 21:55
- Marijuana charge, exception, 22:39
- Parties agreement, not motion necessary for disposition, 22:39
 - Marijuana charge, exception, 22:39
- Restoration of charge, 22:44
- Terms and conditions explained to defendant, 22:41

ADMINISTRATIVE JUDGES

- See Judge
- See Judicial Hearing Officers

ADMINISTRATIVE SEARCHES

- Unreasonable searches and seizures, prohibition against, 9:90

ADMISSIBILITY OF EVIDENCE

- Admissibility of uncharged crimes under Molineux, 12:21, 12:22
 - Inextricably intertwined crimes, 12:21
 - Intent, 12:21
 - Molineux triggered, 12:22
- Alibi, preclusion, 8:78
- Arraignment, statements made during, 4:30
- Assessment of, 2:70
- Civil rules, application of
 - Competence evidence, 18:3
 - Fairness, exclusion of evidence, 18:7
 - Materiality, 18:6
 - Relevance, 18:4
- Clear prejudice to party, exclusions, 18:7
- Competence evidence, 18:3
- Cross-examination of defendant, 15:75
- Defense. See Defense
- Defenses, effect of on, 15:72
 - Cross-examination of defendant, 15:75
 - Defense’s case, 15:76
 - Entrapment defense, hearsay evidence, 15:76
 - Prior crimes, defendant’s, prosecution’s introduction, 15:73
 - Rebuttal testimony, 15:74
 - State of mind, defendant’s, impact of testimony, 15:76
- Demonstrations, 18:76
- Effective assistance of counsel, poor assessment of admissibility, 2:70
- Experiments, 18:76

ADMISSIBILITY OF EVIDENCE—Cont'd

- Expert testimony, 18:138-18:146
 - See also Expert Testimony
- Fairness
 - Exclusion of evidence, 18:7
 - Subject to connection, 18:8
- In limine motion, 18:162
- In limine motion, 7:19
- Jury confusion, exclusions, 18:7
- Photographs. See Photographs
- Prior crimes. See Crime subhead: Prior crimes
- Probative value, relevant evidence, 18:4
- Prompt complaint evidence, 18:16
- Prosecution's notice prior to use of evidence as precondition. See Discovery
- Public documents, 18:15
- Real evidence, 18:87
 - See also Real Evidence
- Rebuttal testimony by prosecution, 15:74
- Recordings, legality requirement, 18:104-18:115
 - See also Recordings
- Relevance, 18:4, 18:5
- Self-defense. See Self-Defense subhead: Admissibility
- State of mind, 18:5
- Suppression. See Suppression of Evidence
- Tests, 18:76
- Videotapes
 - See also Videotapes

ADMISSION

- Confession and, distinguished, suppression issue, 9:102
- Entrapment defense requirement, 15:42
- Grand jury testimony, defendant's use as admission, 6:39
- Guilty plea, 17:24-17:30
 - See also Guilty Plea subhead: Allocution
 - Admissions all elements of crime as part of guilty plea, 17:24
 - Withdrawn, 18:74
 - Without admission of facts, Alford plea, 17:34
 - See Guilty Plea subhead: Alford plea
- Photographs in conjunction with, as evidence, 18:100, 18:101
 - See also Photographs
- Silence normally inadmissible, 9:138
- Vicarious admissions, 18:57, 24:125

ADOLESCENT OFFENDERS

- Presumption that felony will be heard in Family Court, 21:63

ADULTERY

- Impeachment allowed, Sandoval rules, 11:27

ADVERSE INFERENCE

- Charge, 19:148

ADVISEMENT OF RIGHTS

- Arraignment, 4:15-4:27, 4:18-4:22
 - Indictment arraignment, 4:28
 - Right to counsel, 4:19, 4:20
 - Right to preliminary hearing, 4:21
- Defendant's
 - Right to counsel, 2:2
- Guilty plea, 17:37, 17:38
- Right to appeal, duty to advise defendant, 24:15, 24:16

ADVOCATE-WITNESS RULE

- See Attorney-Client Conflict of Interest

AFFIDAVIT AND AFFIRMATION

- Affidavit for, 9:87
- Bill of particulars, defense motion to compel, 8:126
 - Supported by, Rosario disclosure, 8:46
- Errors, affidavit of, 24:23
- Juror's
 - Illness, impeachment of verdict barred, 20:36
 - Unauthorized visit to crime scene, motion to set aside verdict, 20:37
- Motion to
 - Dismiss accusatory instrument, deficient, 3:60
 - Set aside verdict, juror related, 20:36, 20:37
- Oath and affirmation. See Oath and Affirmation
- Omnibus motion and supporting affidavit/affirmation, 7:9
 - Motion supported by defendant's affidavit, 7:10, 7:12
- Sufficiency of supporting papers, 7:10
 - Defense counsel's detailed affirmation, 7:10, 7:12
- Sandoval motion, 11:38
- Search warrant
 - Affidavit for
 - See also Search Affidavits
- Unsigned, as People's evidence, 7:10

AFFIRMATION

- See Affidavit and Affirmation

AFFIRMATIVE DEFENSE

- Burden of proof, prosecution's, 15:3
- Failure to appear, unavoidable, 4:81
- Operability of weapon defense, Robbery 1st degree, 15:65
- Ordinary versus, 15:3

AGE

- Advanced, interest of justice dismissal, 7:23
- Child, capacity to testify, 6:20, 18:36
- Competency to testify, 18:36
- Date of offense determines minor's age and treatment, 21:7
- Infancy defense, age requirement, 15:32

AGE—Cont'd

Years

- Ages 7 through 15. See Juvenile Delinquents
- Ages 13 through 15. See Juvenile Offenders
- Ages 16 through 18. See Youthful Offenders

AGENCY

- Dual defenses, 15:71
- Establishment, 15:73
- Federal employee, 8:48
- Jury charge on possession of drugs required, 19:139
- Overview, 15:64
- Police agent
 - Corroboration not required, 14:48
- Police agent, 8:48, 9:196
 - Child protective worker, 9:114
- Possession of drugs, no defense to, 19:149
- Private person, statement to, 9:160
- Recording of conversation, 9:114
- School employee, 9:10
- Security guard, 9:11

AGGRAVATED HARASSMENT

- Harassment, generally. See Harassment
- Including prior as element of offense, 22:145

AGGRAVATED UNLICENSED OPERATION

- Including prior as element of offense, example, 22:145
- Lesser offense, 22:94
- License suspension, 4:32
- Plea bargaining, limitations on, 17:58

AGGREGATION

- Larceny, 3:44

AGREEMENTS

- Voluntary disclosure, 8:90

AGUILAR-SPINELLI TEST

- Search warrants, supporting affidavits
 - See also Search Warrants
- Search warrants, supporting affidavits, 9:87

AIDS

- Defendant with, interest of justice dismissal granted, 7:23
- Victim infected with HIV, defendant required to provide blood samples, 8:39

ALCOHOL AND ALCOHOLISM

- Alcohol abuse, questions on crimes or conduct caused by, Sandoval rules, 11:25
- Driving while ability impaired
 - See Driving While Ability Impaired (DWAI)
- Driving while intoxicated
 - See Driving While Intoxicated (DWI)
- Intoxication
 - See Intoxication

ALCOHOL AND ALCOHOLISM—Cont'd

Intoxication—Cont'd

- See Intoxication Defense
- See also Addiction-related Crimes
- See also Sandoval Rules

ALFORD PLEA

- Collateral consequences, 17:38
- Collateral estoppel doctrine applicable to, 22:211
- Described, 22:98
- Guilty plea without admission of facts, 17:34
 - See also Guilty Plea
- Sandoval rules and, 11:23
- Use as predicate conviction, 22:98

ALIAS

- Improper use by prosecution, suggesting prior arrest, barred, 11:28
- Use of, bad act, Sandoval rules, 11:27
- Use of false names, inquiry for impeachment allowed, Sandoval rules, 11:27, 11:28
- Valid use of different name, 11:28

ALIBI

- Admission precluded, 8:78
- Available to defendant, described, 1:43
- Burden of proof, prosecution's, 15:35
 - Failure to provide notice, 15:37
- Defense notice to prosecution
 - Required, 1:45
- Defense notice to prosecution, 8:75
 - Defendant, no notice where alibi witness is, 8:75
 - Demand and notice of defense, 8:75, 8:78
 - Failure to provide notice, 8:78
 - Forms, 8:134
 - Demand for, 8:133
 - No notice where alibi witness is defendant, 8:75
 - Rebuttal witness, 8:75
 - Response to prosecution demand, 8:75, 8:78
 - Service of notice, 8:75
- Defined, 15:33
 - False alibi evidence for guilt prohibited, 15:39
 - Grand jury, at, 15:35
- Evidence constituting defense
 - Grand jury, at, 6:54, 6:55
- False alibi evidence for guilt prohibited, 15:39
- Grand jury, at, 15:35
- Identification, jury charge, 19:168
- Jury instructions on People's burden
 - See also Jury Charge
- Jury instructions on People's burden, 15:41
- Justification and alibi defense, assault and weapons possession, 15:72
- Listing persons to provide testimony, 15:36
- Pretrial notice to prosecution, 15:101

INDEX

ALIBI—Cont'd

- Medical history, 9:205
- Pretrial notice to prosecution, 15:36-15:38
- Questioning alibi witnesses, 15:40
 - Prosecution to provide list, 15:37
- Rebuttal witness, 8:75
 - Prosecution's reply, 8:75
 - Service of notice, 8:75
- Recognition by statute, 15:34

ALIEN

- Deportation
 - See also Deportation
- Deportation, 22:211

ALLEN CHARGE

- Requirements, jury unable to reach verdict, 19:150

ALLOCUTION

- Guilty plea, 17:25-17:30
 - See also Guilty Plea subhead: Allocution
- Records, child's ability to testify as sworn witness, regarding, grand jury proceedings, 6:20

AMERICANS WITH DISABILITIES ACT

- Community service, 22:34
- Jury service, 19:107

AMICUS CURIAE

- Appeal, 24:41

AMNESIA

- Mental disease or defect, 15:62

ANDERS BRIEF

- Appeal
 - Procedures, 24:67
 - Dismissal motion on defendant's inaction, 24:38
 - Leave to appeal application to Appellate Division judge, 24:103
 - Settlement of transcript for record on appeal, appellate attorney's motion, 24:29
- Appellate Division departments, 24:67
- Defined, 24:67
- Faulty brief, effective assistance of counsel determination, 24:98
- Valid waiver of appeal noted in, 24:5

ANTAGONISTIC DEFENSES

- See Defense

APPEAL

- Absconding; dismissal, 24:39
- Absence of
 - Appellate issues. See Anders Brief
- Abuse of discretion, ruling reversible for, 24:88

APPEAL—Cont'd

- Accusatory instrument
 - Defective, issue waived on appeal, motion to dismiss not filed, 3:79
 - Issue preserved, guilty plea does not waive, 3:79
- Affidavit of errors, filing, 24:23
- After conviction, 1:85
- Amicus curiae, 24:41
- Appellate attorney, 24:24-24:35
 - See also Appellate Attorney
 - Client's right to file pro se brief, 2:14
- Appellate delay, 24:63
 - Court reporter's delay, 24:30
- Defendant's arguments against, mostly unsuccessful, 24:63
- Due process, 24:64
 - Alleged deprivation of, long delay, 24:64
 - Retrial, speedy trial rights applied to, 24:65
 - Speedy trial, 24:65
- Effective assistance of counsel, 24:66
- Long-delayed appeal, 24:63
 - Coram nobis proceeding, 24:99
 - Federal habeas corpus relief, 24:64
 - Ineffective assistance of counsel, no constitutional deprivation finding of, 24:99
 - Prosecution penalized if too long, 24:65
 - Unreasonable, dismissal of charge, 24:65
 - Years-long, 24:66
- Prosecution penalized, 24:65
- Appellate review, meaningful not possible, conviction set aside, 3:81
- Bail, 24:43
 - Excessive local court determinations, superior court review, 24:2
 - Prosecutor, appeal by, 24:43
- Bail, 4:58
 - Prosecutor, appeal by, 4:58
- Bench trial, effect of
 - See also Trial, Bench Trial
- Bench trial, effect of, 19:77
- Brady violations, 24:75
- Briefs. See Briefs
- Charts
 - Harmless error analysis, 24:90
 - Legal sufficiency of evidence, 24:84
 - Path of, 24:52
- Checklists
 - Assigned appeals, 24:131
 - Court of Appeals, Checklist for appeals to, 24:132
 - Local court without stenographer, appeals from, 24:133
- Circumstantial evidence, appeal standard, 19:77
- City court, appeal from, 24:22

APPEAL—Cont'd

- Client involvement, 24:36-24:38
- Codefendants, joint representation of, 2:49
- Collateral proceedings, 23:70-23:73
 - CPL 440.20 motion, prosecution appeal of, 23:71
 - CPL 440.40 motion, defense appeal of, 23:72
 - CPL 440.10 motion to vacate judgment
 - Prosecution's appeal of, 23:71
 - Defense, appeal by, 23:72-23:73
 - CPL 440.10 motion, 23:72
 - Leave to appeal CPL 440 motion denied, 23:73
 - Prosecution, motion by
 - CPL 440.10 motion, 23:71
 - CPL 440.20 motion, 23:71
- Compensation, assigned counsel, limited appellate review, 2:21
 - Appeal only through administrative judge, 2:21
- Competency to proceed, standard of review, 24:74
- Conflict of interest, 2:49
 - Attorney/client, 2:49
- Constitutional violation, CPL 440.10 motion, ineffective assistance of counsel, 23:47
- Conviction on retrial after hung jury on first trial, appeal on sufficiency of evidence at first trial, 24:129
- Conviction, reversal of
 - Action upon, 24:108, 24:111
 - Court reporter's delay of trial record, motion for summary reversal, 24:30
 - Effect on other convictions where plea involved, 24:114
 - Concurrent jail time, 24:115
 - Guilty plea conditioned on concurrent sentences, 24:115
 - Fees paid, return of, 24:113
 - Incomplete record, motion for summary reversal, 24:34
 - Multiple charges, effect on, 24:115
 - Order for release, 24:108
 - Plea bargaining, effect, 24:115
 - Release of defendant, papers prepared for, 24:108
 - Vacatur of conditions, 24:108
- Cost of transcripts, 24:28
- Court refusal on application to employ expert, 2:31
- Court reporter's delay, motion for reversal, 24:30
- Courts, Court of Appeals
 - See Appellate Division
 - See Court of Appeals
- CPL 330 and 440 motions, 24:79
- CPL 440.10 motion (to vacate judgment)
 - Collateral proceedings, 23:72-23:73
 - See also subhead: Collateral proceedings

APPEAL—Cont'd

- CPL 440.10 motion (to vacate judgment)
 - Cont'd
 - Constitutional violation, ineffective assistance of counsel, 23:47
 - Review of evidence outside record
 - Consolidation of CPL 440.10 motion and direct appeal, 23:33
 - Denial of motion, 23:33
 - Inappropriate CPL 440.10 motions, 23:33
 - Recording of issues by motion, 23:33
 - Rosario rule, issue of nondisclosure of, 23:32
 - Stipulation to expand record on appeal, 23:33
 - Sufficiency of record for appeal, 23:33
 - Unavailability of appeal, 23:33
- Decision to appeal, initial, 24:14-24:23
 - Affidavit of errors, filing, 24:23
 - After simple guilty plea, 24:14
 - City court, appeal from, 24:22
 - Client desire, 24:14
 - Court appealed to, 24:21
- Defendant
 - Decision, 2:36
 - Involvement, 24:36
 - Denial of suppression of key evidence, 24:14
 - Duty to advise defendant, 24:15
 - Harsh and excessive sentence, 24:14
 - Justice or city court, appeal from, 24:22
 - No transcript with lower court, 24:23
 - Notice of appeal, 24:17
 - Filing, 24:17
 - Late notice, 24:19
 - Preservation of right to appeal, 24:17
 - Notice of right to appeal, defense duty to advise client, 24:15
 - Transcript, lower court having no, 24:23
- Defendant as issue on, 19:26
- Defense attorney, joint representation of codefendants, 2:49
- Dehors the record, 24:31
- Delay. See subhead: Appellate delay
- Demonstration of appealable issue to rebut presumption of regularity, 24:35
- Department of Motor Vehicles ruling, appeal from, 1:34
- Deportation of defendant, dismissal on, 24:39
- Direct appeal
 - Competency to stand trial, 24:7
 - CPL 440.10 motion, 23:31-23:33, 23:33
 - Issues outside record unreviewable, 24:9, 24:31
 - Motion to set aside verdict, defense appeal on denial of, 20:45
 - Waiver, general, survival of issues, 24:7

APPEAL—Cont'd

- Discretionary ruling, review of, 24:88
- Dismissal
 - Absconding, 24:39
 - Defendant's inaction, 24:39
 - Deportation of defendant, 24:39
- Dismissal, appeal by prosecutor, 7:28
- Motion denied, guilty plea bars appeal, 7:28
- Pretrial hearings, reopening of, 7:49
 - New evidence after hearing, rehearing on, 7:30
 - Rosario material, failure to provide, 7:49
 - Suppression hearings, 7:46
- Pretrial motions, 7:7
 - Failure to move for pretrial hearing, conviction on, 7:7
- Reopen denied, appeal from, 7:30
 - Made at trial if necessary, 7:8
 - To renew, 7:45
- Suppression hearings, reopening of, 7:46
 - Inadequacy of hearing evidence, 7:47
 - Second attorney's, motion to reopen, 7:48
- Witnesses at pretrial hearing, importance of calling all, 7:30
- Effective appellate review, 24:34, 24:35
- Effective assistance of counsel, 2:55, 2:84, 24:66, 24:80
 - See also Effective Assistance of Counsel subhead: Appeal
 - Direct appeal, 2:84
 - Guilty plea and sentencing, 2:77
- Excessive sentencing, harsh and, 24:76
- Ex parte proceedings, 24:27
- FOIL request, denial of, 8:115
- Forms
 - Affidavit of service, 24:136
 - Argument, notice of, 24:165
 - Assigned counsel, notice of motion and affirmation to be relieved as, 24:150
 - Certificate granting leave to appeal from CPL 440.10 order, 23:169
 - Community supervision, letter of Corrections Department and, 24:158
 - Coram nobis motion, 24:169, 24:170
 - Corrections Department and community supervision, letter of, 24:159
 - Court of Appeals, assignment of counsel with, motion for, 24:167
 - Court of Appeals, seeking leave go before
 - Denial of leave to appeal, letter to defendant advising, 24:155
 - Sample leave letter to New York Court of Appeals, 24:152
 - Sample letter opposing leave to New York Court of Appeals, 24:152

APPEAL—Cont'd

- Forms—Cont'd
 - CPL 440.10 motion, prosecutor's answer to, 23:166
 - CPL 440.10 order
 - Certificate granting leave to appeal from, 23:169
 - Denial of CPL 440.10 motion, 23:171
 - Notice of appeal from, 23:170
 - CPL 470.45 order, 24:161
 - Criminal Justice Services, letter to New York State Division of, 24:158
 - Defense response to motion to dismiss, 24:145
 - Denial of, sample letter to defendant advising, 24:155
- Dismissal
 - Defense response to motion to, 24:145
 - Prosecution's motion for, 24:144
- Dispositional hearing, appeal notice after, 23:186
- Exhibits, demand for, 24:140
- Initial letter to client regarding, 24:142
- Late service for notice of appeal, motion for, 24:157
- Motion for stay, 24:163
- Motion for summary reversal, 24:146
- Notice of appeal
 - CPL 440.10 order, appeal from, 23:170
 - Late service for, motion for, 24:157
 - Motion for late service of, 24:157
 - Prosecution notice of appeal, 24:147
- Notice of appeal and affidavit of service, 24:136
- Notice of argument, 24:165
- Notice of entry, 24:151
- Notice of right to, 24:135
- NYS Division of Criminal Justice Services, letter to, 24:158
- Poor person relief, attorney certification of eligibility for, 24:138
- Poor person status on appeal, trial court order granting, 24:137
- Proposed order, motion to settle record and, 24:143
- Prosecution CPL 450.50 statement, 24:148
- Prosecution notice of appeal, 24:147
- Prosecution's motion to dismiss appeal, 24:144
- Release and vacatur of conditions, order for, 24:156
- Remittitur
 - Order upon, 24:154
 - Release and vacatur of conditions upon, order for, 24:156
- Risk letter to appellate client, 24:162
- Sample criminal appeal data form, 24:141
- Sealing order, CPL 160.50, 24:160

APPEAL—Cont'd

Forms—Cont'd

Settle record and proposed order, motion to, 24:143

Stay

Affirmation in opposition to application for, 24:164

Motion for, 24:163

Order granting, 24:166

Stipulation discontinuing appeal, 24:149

Subpoena for trial court record, 24:168

Waiver of, 24:134

Fugitive disentitlement doctrine, 24:39

Grand jury minutes, 6:77, 24:27

Standard of review, 24:71

Grand jury proceeding, 6:75-6:100

See also Grand Jury Proceedings subhead: Appeal

Grounds

Anders brief vs., 24:67

Bail, excessive, 24:2

Competency to stand trial, 24:7

Constitutional rights, 24:7

Criminal conviction, 24:1

Evidence

Key, denial of suppression, 24:14

Issues

Outside record, no grounds, 24:9, 24:31

Knowing, intelligent, and voluntary guilty plea, question of, 24:7

No grounds. See Anders Brief

Sentence

Harsh sentence, 24:6, 24:14, 24:32

Legality of sentence, 24:7

Speedy trial, 24:7

Suppression issue resolved against defendant, 24:65

Waiver

Indictment, jurisdictional issues, 24:7

Guilty plea, 17:37, 17:73-17:84

See also Guilty Plea

Conditioned on appeal, improper, 17:81

Habeas corpus order, 24:104

Harmless error and

Generally, 24:87

Harsh and excessive sentencing, 24:76

Inaction, defendant's or defense's, prosecution motion to dismiss, 24:39

Initial appeal

Appellate attorney, 24:24-24:35

See also Appellate Attorney

Client involvement, 24:36-24:38

Court appealed to, 24:21

Decision to appeal, 24:14-24:23

See also subhead: Decision to appeal

APPEAL—Cont'd

Initial appeal—Cont'd

Post-initial appeal process, 24:100-24:135

Right of appeal, 24:1-24:7

See also subhead: Right of appeal

Interest of justice

Jurisdiction with unpreserved error, 24:89

Interlocutory, 24:2

Issues, 24:63-24:67

Anders brief in absence, 24:67

See also Anders Brief

Appellate delay, 24:63

Effective assistance of counsel on appeal, 24:94-24:99

Grounds for appeal. See subhead: Grounds

Jurisdiction, 1:87

Jury issues, 24:70

Justice or city court, appeal from, 24:22

No transcript with lower court, 24:23

Juvenile delinquency adjudication, 21:25

Knowing, intelligent, and voluntary guilty plea

Nature of plea questioned, 24:7

Voluntary waiver, 24:5

Leave to appeal, 24:100-24:105

Application for, 24:100

Appellate attorney, required application by, 24:103

Representation for purposes of, 24:105

Granting of, unlikely, 24:100

Motion practice before Court of Appeals, 24:106

Seeking leave, 24:100

Legal sufficiency versus weight of evidence, 24:81, 24:83, 24:84

Lesser included offenses, 16:50

Local court errors, effect of, 24:66

Molineux ruling, 12:43, 24:73

Moot

Collateral consequences, 24:63

Death, 24:42

Deportation, 24:40

Motion to

Dismiss by prosecution, 24:39

Set aside verdict

Defense appeal on denial of, 20:45

Prosecution appeal, 20:44

Non-inclusory counts, 24:77

No "standard" colloquy, 24:5

Notice of appeal, filing, 24:17

Notice of, filing

Within 30 days of

Conviction, 24:17

Late notice, 24:19

Preservation of right to appeal, 24:17

Probation violation, appeal from, 24:20

APPEAL—Cont'd

- Notice of, filing—Cont'd
 - Risk of appeal, letter to client, 24:18
- Objection preserved for, 18:172
- Oral argument, 24:62
- Order of protection, 22:66
- Parole, 23:123
- Parole revocation, 23:133
- Perfection of appeal upon stay, 4:84
- Plea bargain conditioned on waiver of, 17:61
- Post-conviction appeal, 1:85
- Prejudicial error defined, 24:87
- Preservation for appeal, 24:68
 - Error, preservation of. See Preservation of Error
 - Interest of justice exceptions, 24:89
 - Requirement, 24:89
 - Retroactivity, 24:92
- Preservation required with legal sufficiency, 24:84
- Pretrial omnibus motion papers, part of record on appeal, 7:1
- Prison, disciplinary proceedings, 23:143
- Process
 - Appellate attorney, 24:24-24:35
 - Client involvement, 24:36-24:38
 - Decision to appeal, 24:14-24:23
 - Initial appeal, 24:1-24:42
 - Post-initial appeal process, 24:100-24:135
 - Right of appeal, 24:1-24:7
 - Waiver of right of appeal, 24:3-24:8
- Process, post-initial appeal, 24:100-24:135
 - Leave to appeal to Court of Appeals, 24:100-24:105
 - Retrial after appeal, 24:114-24:135
- Reversal of conviction
 - Action on, 24:108, 24:111
 - Effect on other convictions where plea involved, 24:114-24:122
- Prosecution, appeal by, 1:86
 - Dismissal, 24:51
 - Failure to perfect timely appeal, 24:51
 - Procedural errors, 24:51
 - Untimely notice of appeal, 24:51
- No appeal
 - Order of preclusion, 24:44
 - Trial order of dismissal, 24:45
- Procedure
 - Expedited procedure, 24:49
 - Failure to follow procedure, dismissal on, 24:51
 - Notice of appeal and brief, service on defense, 24:48
 - Time to appeal, 24:47
- Prosecution, response to defense appeal, 24:42
- Prosecutorial misconduct, 24:78

APPEAL—Cont'd

- Protective order, 8:13
- Reaction defective, waiver of appellate claim of, 14:20
- Record on appeal. See Appeal, Record on Appeal
- Relief available in appellate court, 24:65, 24:66
- Remittal required where trial court fails to address issue, 24:67
- Restitution to crime victim, 22:77
 - Prosecutor, appeal by, 22:196
- Resentencing, appellate court discretion, 22:194
- Sentencing court held mistaken belief, 22:193
- Youthful offender status denied by sentencing court, conferred by appellate court, 22:195
- Retrial after. See Trial
- Return of case to lower court, 24:111-24:135
- Reversal of conviction. See subhead: Conviction
- Right of appeal, 1:85, 24:1-24:7
 - No pre-conviction right, 24:2
 - Notice of, 24:15
 - Waiver, on guilty plea, 24:3-24:8
- Risk of appeal, letter to client, 24:18
- Rosario violations, 24:75
- Sandoval rules, 11:31, 11:51-11:54, 24:73
 - See also Sandoval Rules
- Sentence served, 22:182
- Sentencing
 - Sentence. See Sentence
- Sex Offender Management and Treatment Act (SOMTA), 23:119
- Sex Offender Registration Act, 23:84, 23:103
- Speedy response to appellate client's letter, 2:37
- Speedy trial, 24:65
 - Constitutional speedy trial, preservation for appeal, 13:20
 - Statutory speedy trial, 13:45, 13:51, 13:80
 - Absent and unavailable defendants, bench warrants and, 13:36
 - People's failure to appeal, 13:44
- Standards for appellate review, 24:68-24:93
- Stay of sentence pending appeal, 24:10-24:13
 - See also Stays
 - Initial appellate review, grant of stay after, 24:13
 - Surrender upon affirmance, 24:12
- Stipulation discontinuing appeal
 - Client insistence on appeal, 24:67
- Sufficiency versus weight of evidence, 24:81, 24:82, 24:84
- Supplemental brief
 - Defendant, involvement in appellate process
 - Pro se submissions, 24:38
 - Disparaging pro se arguments, finding for appeal, 24:96, 24:97

APPEAL—Cont'd

- Supplemental brief—Cont'd
 - Defendant, involvement in appellate process—Cont'd
 - Pro se submissions, 24:38—Cont'd
 - Frivolous claims, defendant right to submit, 24:97
 - No absolute right to file, 24:42
 - Separate submission of frivolous claims, 24:97
 - Suppression and hearing issues, 24:72
 - Suppression motion by defense, denial, 9:169
 - Suppression ruling, 9:6
 - Supreme Court, United States, review by, 24:104
 - Transcripts
 - Cost of, 24:28
 - Lower court having no, 24:23
 - Uncharged crimes, 12:43
 - Waiver of
 - Right of appeal, 24:3-24:8
 - Weight versus legal sufficiency of evidence, 24:81, 24:82, 24:84
 - Writ of prohibition
 - Error of law, writ not supported, 23:10
 - Habeas corpus
 - State habeas corpus procedure, 23:23
 - Sufficiency of appeal, 23:21
 - Seeking of writ by prosecution
 - Denial of writ where appeal available, 23:16
 - Youthful offender, status as, discretion to grant, 21:83

APPEAL, RECORD ON APPEAL

- Agreement on content, appellant and respondent, 24:26
- Appellate Division departments, individual rules, 24:24
- Assembly by appellate attorney, 24:26
 - See also Appellate Attorney subhead: Record on appeal
- Reconstruction hearing, 24:29
- Reversal based on court reporter's delay, motion, 24:30
- Settling transcript, motion, 24:29
- Collateral proceeding on issues not part of, 24:33
- Contents, 24:26
 - Agreement/disagreement between appellant and respondent, 24:26
- Court settlement of content on disagreement, 24:26
- Criminal cases, 24:26
- Defendant's presence at proceedings, part of, 24:31
- Defined, 24:26
- De hors the record, issues, 24:31
- Development of facts not in record, CPL 330.30 motion, 20:23

APPEAL, RECORD ON APPEAL—Cont'd

- Ex parte proceedings, 24:27
- Fourth Department Appellate Division
 - Rules, 24:58
- Stipulated record, 24:26
- Inadequacy, defendant's burden of proof to establish, 24:35
- Indictment included in, 24:26
- Indigents, no bound record required, 24:26
- Issues outside record
 - Alleged facts, matters reliant on, 24:9
 - Collateral proceeding, 24:33
 - Harsh and excessive sentence, exception, 24:32
 - Unreviewable on direct appeal, 24:9, 24:31
- Jury selection transcript, request for, 24:26
- Limited voluntary waiver, 24:6
- Missing record or parts of record, reconstruction hearing relief, 24:29, 24:35
- Motions by appellate attorney
 - See also Appellate Attorney
 - Settling transcript, 24:29
 - Summary reversal based on court reporter's delay, 24:30
- Off-the-record items not included, 24:26
- Preliminary hearing transcript, request for, 24:26
- Proceedings of court below included in, 24:26
- Quash subpoena, motion to, appealability, 8:113
- Recollection of witness, used to refresh, 24:64
- Reconstruction hearing relief, incomplete record, 24:29, 24:35
 - Defendant's presence recorded, 24:29
 - Demonstration of appealable issue to rebut presumption of regularity, 24:35
- Reconstruction of record
 - Reconstruction hearing, 24:29, 24:35
- Resettling, 24:29
- Retrial
 - Limited discovery due to equal access to record, 24:128
 - Rosario, defense access to record under, 24:128
- Settling/correcting of, 24:29, 24:35
- Silent record, no waiver presumed, 24:5
- Transcripts
 - Incomplete record, relief, 24:29
 - Inconsequential errors, remittitur not required, 24:29
 - Jury selection transcript, request for, 24:26
 - Part of record, 24:26
 - Preliminary hearing transcript, request for, 24:26
 - Reconstructing record, 24:29
 - Settling transcript, motion, 24:29
- Trial record unclear, 24:34
- Verdict sheet included in, 24:26

APPEAL, RECORD ON APPEAL—Cont'd

Witness loss ameliorated by record availability, 24:64

APPEAL, RIGHT OF

Absence of appellate issues, 24:67

See also Anders Brief

Absent statutory authorization, no pre-conviction right, 24:2

Competency to stand trial, 24:7

Conditions, 24:1, 24:2

Defendant's right to file for leave to appeal

Convicted defendant, 24:1

Direct appeal

Competency to stand trial, 24:7

Issues outside record unreviewable, 24:9, 24:31

Notwithstanding waiver, 24:7

Excessive bail determinations by local court, 24:2

Harsh and excessive grounds, 22:146

Limitation, 24:2

Matters outside record unreviewable, 24:9, 24:31

Notice of right to appeal, 24:15

Pre-conviction right, none absent statutory authorization, 24:2

Statutory exception, excessive bail determination, 24:2

Preservation for appeal

Application of preservation doctrine, 24:121

Constitutional speedy trial, guilty plea, 13:20

Motions to set aside verdict

Development of facts not in record, 20:23

Interest of justice, 20:29

Repugnance issue, bench trial, 20:10

Notice of appeal, 24:17

Oral severance application, 24:125

Second trial objections must be preserved, 24:121

Statutory speedy trial, bench warrant for absent defendant, 13:36

Retrial. See Trial

Sentence

Harsh and excessive, 24:6

Legality, 24:7

Waiver of right as condition of, 24:4

Speedy trial, 24:7

Due process and appellate delay, 24:64

Waiver

Guilty plea, 24:3-24:8

Appellate attorney role, 24:3

Survival of right, 24:7

Waiver, defendant's voluntary, 24:4-24:7

Anders brief, note of valid appeal in, 24:5

Appealability of judgment unaffected by, 24:4

Condition of sentence or plea bargain, 24:4

Constitutional suppression issues, 24:6

APPEAL, RIGHT OF—Cont'd

Waiver, defendant's voluntary, 24:4-24:7

—Cont'd

Defendant's understanding and acceptance of waiver, required, 24:5

Harsh and excessive sentencing, 24:6

Issues

Subject to, 24:6

Surviving, 24:7

Judge acceptance expected, 24:5

Knowing, intelligent, and voluntary waiver required, 24:5

Limited waiver on record, 24:6

Silent record, no waiver presumed, 24:5

APPEARANCE

Arraignment, securing defendant's appearance in court, 4:10

Affirmative defense, unavailability, 4:81

Bail, effect on, 4:52, 4:66

Bail jumping, 4:81, 4:82

Bench warrants, 4:52, 4:66, 4:78

Unavoidable, with subsequent voluntary appearance, 4:81

Arrest photograph admitted to show, at time of arrest, 18:94

COVID-19 pandemic and virtual court appearance, 1:89

Defendant's, Wade hearing, 9:229

First court appearance

See also Arraignment

First court appearance, 4:15

Indictment arraignment, defendant at, 4:28

Lineups, defendant's appearance in, discovery issues, 8:40

Material witness order, 8:95

Nonappearance, bench warrant delayed for 48 hours for, 4:7

Persistent absence; nonappearance, 4:7

Released defendant, required appearance of, 4:78

See also Appearance Bond

See also Appearance Ticket

Virtual court appearance, 1:89

APPEARANCE BOND

Bail bond, secured, partially secured or unsecured, 4:60

APPEARANCE TICKET

Defined, 1:49

Denial of, 4:5

Fingerprinting defendant, 1:48

Fingerprinting defendant, 4:23

Issuance of, 4:11

Not an accusatory instrument, 3:1

Penalty for not appearing, 4:81

APPEARANCE TICKET—Cont'd

Statutory speedy trial commencement date,
13:26, 13:49

APPELLATE ATTORNEY

Anders brief, 24:67
See also Anders Brief
Decision to submit, 24:5
Notification of court and defendant, 24:67
Withdrawal on basis of, 24:67
Assigned or retained, 24:24-24:35
Desire of attorney to be assigned, 24:24
Client/attorney communication on appeal
Discussion of issues, 24:36
Collateral proceeding, issues in, 24:33
Compensation, 24:25
Copy to, 22:182
Court of Appeals, representation of defendant at,
24:107
Criminal appeals
Indigent defendants, 24:24
Most appeals assigned, 24:24
Dehors the record, issues, 24:31
Effective assistance. See Effective Assistance of
Counsel subhead: Appeals
Entry into appeals case. See Attorney subhead:
Appeal
First steps for. See Attorney subhead: Appeal
Frivolous arguments of defendant, no obligation
to raise, 24:95
Submission to court of client's intentions,
24:97
Ineffective assistance of counsel. See Effective
Assistance of Counsel subhead: Appeal
Information to prosecute appeal, 24:24
Issues outside record on appeal unreviewable,
24:31
Harsh and excessive sentence, exception,
24:32
Improper to argue, 24:31
Leave to appeal application, making, 24:103
Motions
Summary reversal based on
Court reporter's delay of record, 24:30
Incomplete record, 24:35
Record on appeal, assembly
Bound record, 24:26
Criminal cases, 24:26
Defendant's presence at proceedings as part of,
24:31
Filing with brief, 24:26
Incomplete record, reconstruction hearing
relief, 24:29, 24:35
Indigents, 24:26
Jury selection transcript, request for, 24:26

APPELLATE ATTORNEY—Cont'd

Record on appeal, assembly—Cont'd
Motion papers
Filing with county clerk's office, 24:29
Resettlement of transcript, 24:29
Preliminary hearing transcript, request for,
24:26
Reconstruction hearing, incomplete record,
24:29, 24:35
Settling transcript, motion, 24:29
Responsibilities, 24:24-24:35
Client involvement vs., 24:36-24:38
Stipulation discontinuing appeal
Advising defendant to sign, 24:67
Defendant insistence on appeal vs. (Anders
brief), 24:67
Transcripts for record on appeal, 24:26-24:29
Waiver of right of appeal on guilty plea, determi-
nation, 24:3

APPELLATE DIVISION

Abuse of discretion; review standard, 24:88
Civil cases, appellate rules in, 24:54
Departments of
Court record, separate rules, 24:26
Filing of appeals, separate rules, 24:24
Dissenting judge, application for leave to appeal
made to, 24:100
Electronic filing of appellate documents, 24:53
First Department rules, 24:55
Fourth Department
Application to file pro se supplemental brief
within 35 days, 24:39
Rules, 24:58
Stipulated record on appeal, 24:26
Time spent as added compensation of assigned
counsel, 2:22
No rule by other departments, 2:22
Joint Appellate Division Rules, 24:52
Leave to appeal made to dissenting judge, 24:100
Mode of proceedings error, 24:91
Motion to, 24:51
Preservation of error, 24:89
Exception, 24:90
Interests of justice review, 24:89
Mode of proceedings error, 24:91
Pro se supplemental brief, application, 24:39
Within 35 days, 24:39
Reversal power greater than trial court's power to
set aside verdict, 20:28
Second Department rules, 24:56
See also Court of Appeals
Third Department rules, 24:57

APPELLATE REVIEW

Accusatory instrument, defect in as basis for
appeal, 3:81

APPELLATE REVIEW—Cont'd

- Contempt finding, of, 23:151
- Interest of justice, dismissal motion, 7:28
- Jury selection, Batson determination review, 19:127
- Rationale needed for judge's suppression rulings, 19:72
- Sentences, 24:8
- Severance motion, denied, acting in concert charge, 14:27
- Uncharged crimes, 12:43

ARBITRATION

- Not required in criminal representation, 2:29

ARMED FELONY OFFENSE

- Larceny, 21:37
 - Infancy not always defense, 21:28
 - Plea bargaining, 21:37
 - Prosecutor's consent to transfer to Family Court, 21:55
 - Prosecutor's consent to transfer to Family Court, 21:50
- Sentence, higher minimum, 22:17
- Youthful offender, ineligible for youthful offender treatment, 21:69

ARRAIGNMENT

- Absence, 4:15
- Accusatory instrument read, 4:17
 - Copy to defendant, 4:17
 - Not guilty plea, 4:24
 - Reasons to adjourn, 4:24
 - Right to obtain counsel, 4:20
 - Waiver of reading, 4:17
- Adjournment
 - Length of time for, 1:57
- Adjournment after arraignment, grounds, 1:57
 - Disposition, 1:57
 - Preliminary hearing, 1:57
 - Pretrial conference, 1:57
- Admissibility of statements made during, 4:30
- Advisement of rights, 4:15-4:27, 4:18-4:22
 - Admissibility of statements made during arraignment, 4:30
 - Right to counsel, 4:19, 4:20
 - Adjournment to obtain, 4:20
 - Right to preliminary hearing, 4:21, 4:22
 - Sufficiency of accusatory instrument, 4:22
- Arrest warrant, 4:13
 - Application, 4:44, 4:66
 - Pre-arraignment bail, 4:45
 - New laws effective 2020, 4:1, 4:2
 - Reconsideration of bail status during indictment, 4:28
 - Right to counsel attaching prior to arraignment, 4:30

ARRAIGNMENT—Cont'd

- Attorney
 - Advisement of rights. See subhead: Advisement of rights
 - Not present, bail status review may be requested, 1:55
- Bail
 - Set, 1:49
 - Status review may be requested, conditions, 1:55
- Charges read, 4:17
 - Felony charges, 4:28
- Defendant
 - Remaining incarcerated after, preliminary hearing required, 3:18
- Defined, 4:15
- Delay, statement admissible, 9:138
- Extradition proceeding, 4:88
- Failure to appear in court, 4:14
 - Advisement, charges, 4:28
 - Attorney given 2 days notice before, 4:28
 - Generally, 4:28
 - Notification of defendant, 4:28
 - Place of, 4:28
 - Pre-arraignment bail, 4:45
 - Preliminary hearing, 4:21, 4:22
 - Procedure, 4:28
 - Reconsideration of bail status, 4:28
- Indictment arraignment
 - Plea on felony charge
 - Guilty plea, waives right to indictment, 3:16
 - Not guilty plea, case held for grand jury action, 3:16
- Initial, court's obligation to inform defendant of right to preliminary hearing at, 5:8
- Initial steps, 4:15-4:27
- Juvenile offender, prosecutor's request for removal to Family Court after local court, 21:50
- Least restrictive alternative for securing order, 4:2
- Local court, initial court appearance, 1:53
- Mental health issues at arraignment, 4:29
- Misdemeanors, disposition, 4:24
- New laws effective 2020, 4:1, 4:2
- Notice pursuant to CPL 710.30, served at, 1:56
 - Time for, 1:56
- Omnibus motion, time for, 3:61
- Plea entered, 1:54
 - Guilty plea
 - Followed by sentencing, conditions, 1:54
 - Not guilty plea
 - Recommended, 1:54
 - Requirement, 1:54

ARRAIGNMENT—Cont'd

- Plea entered, 4:15-4:27, 4:23-4:26
 - Guilty plea, 4:23
 - Disposition on, 4:25
 - Followed by sentencing, conditions, 4:25
 - Not guilty plea, 4:23
 - Adjournment on, 4:24
 - Traffic violations by mail, 4:26
- Pre-arraignment bail, 4:45
 - Maximum amounts, 4:45
- Process described, 4:15
- Purpose of bail, 4:1
- Qualifying offenses, 4:4
- Recognizance application
 - See also Release on Own Recognizance (ROR)
- Recognizance application, 4:15
- Securing defendant's appearance in court, 4:10
- Securing order, 4:2
 - Guilty plea, 4:25
- Sentencing at arraignment, 1:54
- Service of CPL 710.30 notice, 4:27
- Special information. See Arraignment on Special Information
- Speedy trial
 - Constitutional, delay between indictment and arraignment, 13:86
 - Statutory, notice of readiness at arraignment on indictment, 13:59
- Stage in progress of criminal case, described as, 1:53
- Sufficiency of accusatory instrument, 4:22
- Summons, issuance of, 4:12
- Time for, defendant
 - Held in custody, 1:53
 - Released
 - Stationhouse bail, 1:53
 - Without bail, 1:53
- Time for, generally, 4:16
 - Disposition, 4:24
 - Pre-arraignment bail, 4:45
 - Sentencing, 4:25
- Without representation at, omnibus motion filed within 45 days of counsel's first court appearance, 7:2
 - Grand jury, motion to dismiss, 7:17
 - Omnibus motion, 7:2

ARRAIGNMENT ON SPECIAL INFORMATION

- Constitutional challenge improper, 22:147
- Defendant's
 - Admission of prior conviction, effect, 3:24
 - Denial of prior conviction, effect, 3:24
- Time/place for, 3:24

ARREST

- Arraignment, time for, defendant held in custody, 1:53
- Bail set by police ("stationhouse bail"), 1:49
 - Arraignment, time for, 1:53
- Bargained-for sentence and arrest on new charge before being sentenced; pronouncing sentence, 22:164
- Citizen's arrest, 1:45
 - "Deemed a nullity," ACD, 22:43
 - ACD, subsequent civil suit, 22:42
- Discovery, precondition to, 8:41
- Domestic violence case, mandatory arrest, 1:46
- Fingerprinting, 1:48
- Geographical area of employment, stop and arrest outside of officer's, 9:45
- Handcuffs, use of for showups not equivalent to arrest, 9:191
- Home, arrest at, 9:38
- Impeachment, 11:29, 18:4
- Intent to turn over illegal property, arrest of person before, temporary innocent possession defense, 15:66
- Juvenile offenders, grand jury acting before arrest, 21:31
- License suspension in .08% DWI cases, mandatory; arrest for DWAI, 4:36
 - Issuance of, 4:13
 - Recognizance application, 4:15
 - Summons in lieu of, 4:13
- No right to, 9:138
- Nullity, 11:29
- Peace officer, citizen's arrest, 1:45
- Peace officer, citizen's arrest, 9:45
- Petty offense, 1:41
- Photographs, 1:48
 - Defendant, photograph of, admissibility, 18:94
 - See also Photographs
- Presentence arrest on new charge, court disregard of pre-sentence agreement, 22:162
 - ACD, following dismissal, 22:41
- Dismissals, 22:36
- Pleas to violations, 22:38
- Validity of new arrest must be established, 22:162
- Probable cause requirement, 9:27
 - Automobile, warrantless stop and search, probable cause, 9:50
 - Outside New York State, arrest made, 9:70
 - Search incident to arrest, 9:31
- Questioning defendant prior to arrest, 1:44
 - Miranda rights, failure to advise, effect, 1:44
- Questions, arrest related
 - Sandoval rules, 11:29
- Release, conditions, 1:49
 - Appearance ticket, 1:49

ARREST—Cont'd

- Release, conditions, 1:49—Cont'd
 - Bail, 1:49
 - Recognizance application
 - See also Release on Own Recognizance (ROR)
 - Without bail, first court date, 1:53
 - Report, Rosario disclosure, 8:46
 - Resisting, physical force used against police officer prohibited, justification defense, 15:31
 - Search and seizure
 - Automobile, warrantless stop and search, probable cause
 - See also Automobiles
 - Warrantless police intrusion. See Warrantless Police Intrusion
 - Speedy trial
 - Constitutional, delays
 - Between arrest and trial, 13:86
 - Stay-away order of protection, violation, 1:46
 - Suppression of statement based on arrest at resident; Payton case, 9:149
 - Turnover arrest, 1:45
 - Unlawful, spontaneous statements in response to, inadmissible, 9:122
 - Warrantless arrest
 - See also Warrantless Police Intrusion
 - Warrantless arrest, 9:27
 - Automobile, warrantless stop and search, probable cause, 9:50
 - Fourth level intrusion, warrantless police intrusion, 9:27
 - Warrant of arrest
 - Arrest with and without warrant, 1:45-1:47
 - Signed by local criminal court judge, 1:47

ARSON

- Deadly physical force use to prevent justifiable, 15:12

ARTICLE 78 PROCEEDINGS

- Exhaustion requirement, 23:12
- See also Freedom of Information Law
- See also Writ of Prohibition
- Writ of prohibition, 23:11

ASPHYXIATION

- Physician's testimony, victim asphyxiated corroborated by photograph, 18:100

ASSAULT

- Alibi and justification defense, assault and weapons possession, 15:72
- Injuring police officer, justification defense, 15:31
- Assault 3rd degree, injuring police officer, justification defense, 15:31

ASSAULT—Cont'd

- Bootstrapping charge of, 3:48
- Intent
 - Cause serious physical injury, victim's photograph to show, 18:99
- Lesser included offenses
 - Assault 2nd degree
 - Attempts, 16:28
 - Assault 3rd degree as lesser included offense, 16:16, 16:24
 - Intoxicated defendant, 16:24
 - Recklessness, 16:24
- Sentence, consecutive with murder conviction sentence, 22:25

ASSIGNED COUNSEL

- See Attorney subhead: Assigned counsel

ASSISTANCE OF COUNSEL

- See Effective Assistance of Counsel

ASSISTANT DISTRICT ATTORNEY (ADA)

- See District Attorney

ATTEMPT

- Attempted Murder. See Murder
- Completed crime, no conviction for both attempt and, 16:30
- Impossibility with attempted crime defense, 15:69
- Lesser included offenses, 16:25-16:31
 - Attempting an attempt crime, 16:26
 - Degree, reduction in, 16:28, 16:29
 - Assault 2nd degree, 16:28
 - Recklessness, 16:29
 - Strict liability crimes, exception for, 16:28, 16:29
 - Strict liability crimes, 16:28, 16:29
 - Waiver of objection, 16:31
- Reckless crime, not commission of, 16:29
- Strict liability crimes, 16:28, 16:29

ATTENUATION DOCTRINE

- See Suppression

ATTORNEY

- Absent, bail status review request, 1:55
- Advisory role of, 2:36
- Appellate attorney, 24:24-24:35
 - See also Appellate Attorney
- Arraignment. See Arraignment
- Assigned
 - Appellate attorney, 24:24
 - Criminal appeals, 24:24
- Collateral proceedings, CPL 440.10 motion, 23:59
- Compensation. See Counsel
- Defendant advisement of right to, 2:2

ATTORNEY—Cont'd

Assigned—Cont'd
 Indigent defendants
 Appeals, 24:24
 Article 18-B provisions, 2:18-2:23
 County provision for, 2:18
 Smaller county provision for, 2:18
 Poor person, 2:26
 County reimbursement, 2:26
 Partial fee agreements, 2:27
 Transcript, obtaining and payment for, 2:24
 Right to, 2:2
 Standby counsel, pro se defendant, 2:12
 Removal of, 2:13
 Transcript, obtaining and payment for, 2:24
 Unpaid fees, retained attorney assigned due to, 2:51
 Work beyond scope of original assignment, county compensation, 2:19
 Formal assignment from judge for, 2:19
 Attorney-client
 Conflict of interest, 2:42-2:49
 See also Attorney-Client Conflict of Interest
 Privilege, 2:39-2:41
 See also Attorney-Client Privilege
 Relationship, 2:36-2:46
 See also Attorney-Client Relationship
 Change of attorney, adjournment sought for, defense request, 19:47
 Client file, obtaining, 2:34
 Commencement of case, no questioning in absence of counsel, 9:139
 Critical stages, defendant entitled to counsel at, 9:139
 No questioning before commencement, 9:139
 No waiver of rights, 9:146
 Waiver of rights allowed if representation for other charges, 9:146
 Communication with client, 2:35, 2:37
 Checklist, 2:35
 Improper to bar, 2:41
 Compensation. See Counsel
 Consultation with client, 2:41
 Contempt of court, 18:209
 Contempt. See Contempt
 Courtroom clothing, 19:54
 Defense attorney. See Defense Attorney
 Defined, 2:37
 Discharged
 Malpractice, no liability, 2:87
 Discussion with defendant, request to testify before grand jury, 6:37
 Disloyal attorney, ineffective assistance of counsel, 2:83
 Ethics. See Ethics

ATTORNEY—Cont'd

Fees, Compensation. See Counsel
 Gag orders, 19:53
 Grand jury notice, 6:33-6:38
 Grand jury proceedings, representation of witnesses at, 6:15
 Indigent defendants, 4:19
 Judgment of, deference to, 2:37
 Law guardians, providing representation, 2:19
 Law office searches, 9:96
 Ceasing interrogation, 9:135
 Insufficient request, 9:132
 Prosecution prohibited from introducing as evidence, 9:137
 Legal notice, attorney as recipient of, 2:38
 Malpractice, 2:87
 See also Malpractice
 Municipal and local ordinances, matters prosecuted by, 1:14
 New attorney, court's inquiry with defendant requesting, 2:46
 Notice to, 2:38
 Obtaining client file, 2:34
 Private, conflict of interest cases, 2:18
 Professional responsibility. See Ethics
 Retained, 2:29-2:40
 See also Retainer
 Scope of representation, limitations, 2:34
 See also Counsel
 See also Effective Assistance Counsel
 See also Law Firm
 Subpoenas, power to issue, 8:91
 Vicarious admission, 18:57, 24:125
 Waivers
 Mental competency and waiver of counsel, 2:7
 Pre-appeal, 24:3
 Withdrawal from representation, 2:51
 See also Defense Attorney subhead: Withdrawal from representation
 Work product. See Attorney's Work Product

ATTORNEY-CLIENT CONFLICT OF INTEREST

Advocate-witness rule, 2:43
 Alleged conflict, Gomberg hearing, 2:45
 Appeal, 2:49
 Article 18-B provisions for representation of indigent defendants, 2:18
 Communication during trial, 2:41
 Cross-examination of defendant, 18:51
 Defendant's choice of counsel vs., 2:44
 Determination of existence of conflict, 2:45
 Effective assistance of counsel resulting from, 2:83
 Gomberg hearing, 2:45
 Guilty plea, 2:77, 17:68

ATTORNEY-CLIENT CONFLICT OF INTEREST—Cont'd

- Hearing, 2:45
- Joint representation and, 2:49
 - Codefendants, 2:47
- Prosecution witness represented by defense attorney, informed consent required, 2:42
- Prosecution witness, simultaneous representation of defendant and, 2:48
- Prosecutor, application to, 7:21
- Representation in spite of, 2:44
 - Knowing and intelligent decision, 2:44
- Simultaneous representation of defendant and prosecution witness, 2:48
- Substantial relationship to conduct of defense, proof, 2:49
- Substitution of counsel, 2:42, 2:43, 2:46
 - Client approval of substitution of attorney form, 2:54
- Withdrawal from representation, irreconcilable conflict, 2:51
- Witness; advocate-witness rule, 2:43

ATTORNEY-CLIENT PRIVILEGE

- Address of defendant, 2:39
- Communications not discoverable, 8:36
 - Defendant's interview with investigator hired by defense counsel, 8:36
- Confidences, 2:39
- Consultation, 2:41
- Judge's duty to inquire, 2:42
- Limitations, 18:23
- Minor interruptions, 2:41
- Non-defendant raising, 18:31
- Right of, 2:39
- Scope of, 18:23
- Waiver, 18:33
- Work product, 18:23
- Work product, 8:36, 8:53

ATTORNEY-CLIENT RELATIONSHIP

- Advisory capacity of attorney, 2:36
- Barring communication, 2:41
- Case strategy by counsel, 2:37
 - Legal notice, 2:38
- Counsel's role, 2:38
- Defendant's choices, 2:36-2:44
- Effective assistance of counsel, 2:55
- Incapacitation of defendant, decision-making by attorney, 2:44
- Judgment of attorney, deference to, 2:37
- Legal notice, attorney as recipient of, 2:38
- Poor relationship, withdrawal from representation due to, 2:51
- Removal of attorney by court, 2:50
- Unorthodox tactics, client approval, 2:73

ATTORNEY-CLIENT RELATIONSHIP —Cont'd

- Waiver of certain client rights, limitation on attorney, 2:43
- Withdrawal from representation, poor relationship as reason, 2:51

ATTORNEY GENERAL, NEW YORK STATE

- Assistant attorney general acting as district attorney, 1:10
- Constitutional challenges, notice of, 15:89
- Judge, representation of, 23:13
- Jurisdiction, 1:10
- Matters prosecuted by, 1:10
- Organized Crime Task Force, 1:10
- Service upon in writ of prohibition, 23:13
- Subpoena power, 1:10

ATTORNEY'S WORK PRODUCT

- Defined, 8:53
- Discovery, 8:53-8:59
 - Court's review where disclosure disputed, 8:59
 - Investigator interview, defense notes of, 8:58
 - Memoranda, 8:54, 8:57
 - Rosario material, 8:46, 8:53
 - Sources of information attributed, 8:56
 - Witness interview, notes on, 8:55
- Rosario disclosure, 8:46, 8:47, 8:53
- Witness interview, notes on, 8:55

AUDIBILITY

- See Recordings, Admissibility

AUDIO-VISUAL COVERAGE

- See Cameras in Courtroom

AUTOMOBILES

- Appeal from DMV ruling, 1:34
- Computer reenactment automobile accidents, admissibility of, 18:77
- Driving while ability impaired. See Driving While Ability Impaired (DWAI)
- Driving while intoxicated. See Driving While Intoxicated (DWI)
- GPS installed, 9:46
- Ignition interlock device, probation condition, 22:49
- Presumption of possession of, 9:76
 - Stale information negating probable cause, 9:52
 - Warrantless stop and search, 9:66
- Radar, testimony, 18:131, 18:146
- Restricted, ROR, 4:63
- Subpoena for Department of Motor Vehicles records, 8:102
- Theft, juvenile offenders, lesser crime, plea bargaining, 21:37

AUTOMOBILES, WARRANTLESS STOP AND SEARCH

- Driver, ordered out of vehicle, permitted, 9:55
- Driving while intoxicated, 9:60-9:65
 - Chemical test, 9:62-9:64
 - Suppression of test results, 9:64
 - Two-hour rule for administering, 9:63
 - Field test, 9:61
 - Horizontal gaze nystagmus test, 9:65
 - Preliminary breath test, 9:61
 - Roadside test, 9:61
 - Screening test, admissibility of, 9:61
 - Stale information negating probable cause, 9:52
- Impounding vehicle, 9:66
 - Pretext inventory to find contraband impermissible, 9:66
 - Danger, to protect police from potential, 9:66
 - False claims of stolen property, to protect police against, 9:66
 - Impounding vehicle, 9:66
 - Inevitable discovery doctrine, 9:66
 - Motivation, prosecution's burden to show, 9:66
 - Normal routine, inventory outside, 9:66
 - Place of taking, 9:66
 - Police department regulations relevant, 9:66
 - Owner's property, to protect, 9:66
 - Propriety of, prosecution's burden to show, 9:66
- Inevitable discovery doctrine. Inventory searches, below
- Justification, 9:46
- Legal standard for stopping vehicle, 9:46
- Length of detention, 9:48
- Mistake, 9:46
- Overview, 9:46
- Parked cars, 9:57
- Passengers ordered out of vehicle, 9:56
- Person, search of or arrest, when crime committed, 9:53
- Pretext stop rendering search unlawful, 9:59
 - Legally search, to, 9:46
 - Length of detention, 9:48
 - Nexus required between probable cause and resulting arrest, 9:50
 - Potential alternative, 9:51
 - Proof beyond a reasonable doubt need not equal, 9:51
 - Stale information negating, 9:52
- Proof beyond a reasonable doubt, probable cause need not equal, 9:51
- Reasonable suspicion requirement for stop of, 9:46

AUTOMOBILES, WARRANTLESS STOP AND SEARCH—Cont'd

- Roadblocks, 9:58
- Sensing diagnostic module, 9:83
- Taxicab, speeding, stopping and frisking passengers, presumption against abandonment of evidence, 9:41
- Impounding vehicle, 9:66
- Limitations on search based on, 9:54
- Pretext stop rendering search unlawful, 9:59

AUTOPSY

- Business record, 18:23
- Exhumation of body, 8:27
- Reports, 18:100, 18:139
- Reports, 8:48

BAD ACTS

- Crimes. See Crime
- Inquiry for impeachment and defendant's decision to testify, 11:26-11:28
- Prior crimes. See Crime
- Sandoval Rules. See Sandoval Rules

BAD FAITH, PROSECUTOR

- Cross-examination, 18:46
- Higher degree, speedy trial, 13:54
- Summation, 18:201

BAIL

- ACD granted, return of bail, 4:77
- Adverse determination, application delay in lieu of, 4:66
- Affordable, reduction to, 4:71
- Bail application, 4:59
- Court record, 4:48
- Excessive, review of, 4:75
 - Habeas corpus proceedings, 4:76
- Flight of defendant, effect, 4:47
- High, misuse, 4:48
- Increase, possibility of, 4:72
- Judge's determination, arraignment, 4:44
- Maximums set by desk sergeant, 4:45
- Nominal, 4:47
- Police station, minor offenses set, 4:44
- Property posted with court, 4:61
- Reduction, 4:66, 4:71
- Review, on indictment, 4:72
- Revocation, 4:73, 4:74
- Setting, 4:44, 4:47, 4:48, 4:60
- Appeal, 24:43
 - Excessive local court determinations, superior court review, 24:2
 - Prosecutor, appeal by, 24:43
- Appeal, 4:58
 - Prosecutor, appeal by, 4:58
- Appearance bond, secured, partially secured, or unsecured, 4:60

BAIL—Cont'd

- Application
 - Arraignment, application at, 1:55
- Application, 4:44, 4:59, 4:66
- Adjournment, 4:66
 - Defendant jailed on, 4:66
- Arraignment, application at, 4:44, 4:59, 4:66
- Change of, request for, 4:71
 - Notice to prosecution, 4:71
 - Written, 4:71
- Change of, true change of circumstances, 4:71
- Defendant record prior to, 4:66
- Delay, 4:66
 - Adverse determination and, compared, 4:66
- Denial, 4:52, 4:71
- Double predicate felon, 4:68
- Information, incomplete, 4:66
- Oral bail application, 4:59
- Poor, effect, 4:66
- Prejudice in future, 4:71
- Preparation for, checklist, 4:66
- Remission of bail, 4:79, 4:80
- Telephone, justice courts, 4:66
- Arraignment. *See* Arraignment
- Assignment of bail as payment to retained attorney, 2:30
- Attorney not present at arraignment, review, bail status request, 1:55
- Bail project, court advisement, 4:66
- Bench warrants, effect, 4:52, 4:66
- Bond premiums, 4:62
- Bonds, secured, partially secured, or unsecured, 4:60
 - Appearance bond, 4:60
 - Effect, 4:66
 - Generally, 4:60
 - Insurance company bail bond, 4:60
 - Pre-arraignment, 4:45
 - Return of, 4:77
 - Surety bond, 4:60
- Conditions of, 4:51
 - Bail between conviction and sentencing, 4:82
 - Failure to follow, bail revoked, 4:73
 - No constitutional right to bail, 4:49
- Court advised by pretrial release office or bail project, 4:66
- Credit cards, bail charged on, traffic violations, 4:60
 - All types, 4:60
- Alternative forms, request, 4:60
 - Request and notice to prosecution, 4:71
 - True change of circumstance, 4:71
- Defendant evaluation, 4:66
- Delay of application, oral request, 4:66
- Effect, 4:52, 4:66

BAIL—Cont'd

- Credit cards, bail charged on, traffic violations, 4:60—Cont'd
- Felonies, 4:52
- Flight, 4:47
- Future prejudice, 4:71
- Jailed, evaluation interview, 4:66
- Misuse of bail, awareness and action, 4:48
- Not constitutional right, 4:49
- Oral application, 4:59
- Preparation for bail application, checklist, 4:66
 - Determination, 4:75
 - Status, request, 4:71
- Repeated, 4:52, 4:66
- Defendant
 - Failure to appear. *See* Bail Jumping
- Escape, repeated, 4:52
 - Class A, application in superior court, 4:68
 - Class E, § 750 maximum, 4:45
 - Denial possible, 4:52
 - Long criminal record, effect, 4:52
 - People's position on bail, 4:66
 - Possible flight, 4:47
 - Proceeding, 4:88
 - Review of bail status, 4:66, 4:72
 - Serious, effect, 4:52
 - Superior court sets, 4:68
- Extradition cases, 4:65
- Fines deducted from, 22:76
- Forfeiture, 4:79, 4:80
 - Hardship privilege, affidavit in support of, 4:96
 - Refusal hearing, sample letter to client regarding, 4:99
 - Slip, affidavit of lost, 4:98
- Forms
 - Assignment of bail to attorney, 2:100
- Function, 4:47
 - Impermissible, 4:48
- Generally, 4:44-4:65
- Grand jury dismissal, 4:58
- Habeas corpus proceedings, 4:76
- Hearing, 4:70
- Impermissible use, 4:48
 - Counsel's action, 4:48
 - Habeas corpus proceedings, 4:75, 4:76
 - Multiple charges, 4:47
 - Property posted with court, 4:61
 - House as bond collateral, 4:61
 - Review of, 4:75
- Indictment arraignment, review of bail status, 4:28
- Interview, jailed defendant, 4:66
- Least restrictive alternative omitted, 4:2
 - Release on bail between conviction and sentencing, 4:82

BAIL—Cont'd

- Minor offenses, bail set at police station, 4:44
- Maximum amounts, 4:45
- Misdemeanors, 4:66
 - Class A misdemeanor, § 500 maximum, 4:45
 - Class B or unclassified, § 250 maximum, 4:45
- Multiple charges, 4:47
 - Credit for jail time served, 4:47
- Murder charge, 4:68
- New laws effective 2020, 4:2
- Non-qualifying and qualifying offenses, 4:2
- Not preventive detention or pre-trial punishment, 4:48
- Obligor, examination of, 4:70
 - Less serious, bail set at police station, 4:44
 - Petty offenses, § 100 maximum, 4:45
 - Vehicle offenses, credit cards for, 4:60
- Police station, minor offenses bail set at, 4:44
 - Maximum amounts, 4:45
- Pre-arraignment posting, 4:45
 - Maximum dollar amounts, 4:45
- Preliminary hearings, 5:1, 5:16
 - Reduction of charges after hearing, reconsideration of bail application, 5:16
 - Set and posted after arraignment, 5:1
- Premiums on bond, 4:62
- Procedure, 4:66-4:85
- Property as alternate, 4:61
 - House as bond collateral, 4:61
 - Pledge for bail, 4:61
- Purpose, 4:47
 - Impermissible, 4:48
- Qualifying offenses, 4:2
- Reduction of, 4:66
 - Difficulty, 4:66
 - Habeas corpus proceedings, 4:76
 - Release of defendant, written order, 4:71
 - Setting bail compared, 4:66
 - Written order, all charges, 4:71
- Release on
 - Statutory speedy trial, defendant failure to reappear and chargeable time
 - Pretrial release, 13:82
- Release on, 4:44-4:65
 - Record check required with felony, 4:69
 - Restrictions on defendant, 4:63, 4:64
 - Terms set by local court, 4:67-4:70
 - Written order, all changes, 4:71
- Remission after forfeiture, 4:80
- Retained attorney, assignment of bail as payment to, 2:30
- Return of cash bail, 4:79
- Return of upon ACD, 4:77
 - Court's own determination, 4:75
 - Excessive bail, 4:75

BAIL—Cont'd

- Return of upon ACD, 4:77—Cont'd
 - Habeas corpus proceeding, 4:75, 4:76
 - Improper bail, 4:75, 4:76
 - Informality, 4:75
 - Oral review in chambers or court, 4:75
 - Superior court, application to, 4:75
 - Habeas corpus compared, 4:76
 - Informality of, 4:75
- Review of bail determination
 - Status review may be requested, conditions, 1:55
- Review of bail status, indictment arraignment, 4:28, 4:72
 - Application for, 4:66
 - Generally, 4:82
 - Grand jury minutes, use, 4:72
 - Increased bail, possible, 4:72
 - Revocation of bail, 4:72
- Revocation, 4:9, 4:73, 4:74
 - Felony conviction, and review, 4:82
 - Good cause, 4:73
 - Grounds for, 4:9
 - Intimidation of witness or victim by defendant, new felony, 4:74
 - New felony charge, 4:73, 4:74
 - Review of bail, after, 4:73
 - Sentencing, effect of, 4:71
 - Subsequent offense, 4:73, 4:74
- ROR in lieu of, 4:53
 - Bail between conviction and, 4:82
 - Revocation of bail, 4:71
- Setting
 - Arraignment judge sets, 1:49
 - Police ("stationhouse bail"), 1:49
- Setting, 4:47
 - Criteria, 4:51, 4:66
 - Form determined, 4:60
 - Impermissible practices, 4:48
 - Judicial determination, 4:44, 4:60, 4:67
 - Misuse, awareness, 4:48
 - Multiple charges, 4:47
 - People's consent, 4:66
 - Record check required with felony, 4:69
 - Reduction of bail compared, 4:66
 - Stages at which bail set, 4:46
- Stationhouse bail, 1:49
- Stationhouse bail, 4:37
- Statutory authority, 4:51
- Surety hearing, 4:70
- Telephone application, justice courts, 4:66
 - Credit cards, 4:60
 - Pre-arraignment bail, 4:45
- Types, 4:8, 4:60, 4:61
 - Appearance bond, 4:60

BAIL—Cont'd

- Types, 4:8, 4:60, 4:61—Cont'd
 - Cash, 4:60
 - Insurance company bail bond, 4:60
 - Partially secured, 4:8
 - Surety bond, 4:60
 - Three types of bail required, 4:8
 - Unsecured, 4:8
- Verifiable defendant address, effect, 4:66

BAIL JUMPING

- Affirmative defense, unavailability, 4:81
- Defined, 4:81
- Failure to appear within 30 days, 4:81
- Felony charge, 4:82
- Misdemeanor charge, 4:82
- Sentencing, 22:24

BAIL RECEIPTS

- Assignment of bail to attorney, 2:30

BALLISTICS EXPERT

- Assigned counsel compensation for, 2:25
- Rosario disclosure, 8:46

BARGAINED-FOR SENTENCE

- Overview, 22:157-CITE22:170

BATSON CLAIMS

- Jury selection and voir dire. See Jury Selection and Voir Dire
- Religious discrimination prohibited, 19:106

BATTERED PERSON SYNDROME

- Self-defense, 15:29

BATTERED WOMAN SYNDROME

- Victim's violent propensities, factor considered, appeal of harsh and excessive sentence, 22:186

18-B ATTORNEY

- See Attorney

BENCH TRIAL

- See Trial, Bench Trial

BENCH WARRANTS

- Bail, effect on, 4:52, 4:66
- Criminal proceeding only, 1:57
- Defense counsel's actions, 4:79
- Issuance on failure to appear, 4:52, 4:66, 4:79
- Nonappearance, bench warrant delayed for 48 hours for, 4:7
- Notice to defendant, 4:79
- Process issued by court, 1:30
- Statutory speedy trial
 - Chargeable time to People, 13:36
 - Prosecution's burden to execute, 13:36

BIAS AND PREJUDICE

- Code of Professional Responsibility provisions as to, 19:53
- Collateral, not, 18:63
- Curative jury instructions for prejudicial testimony, error remedy, 18:207
- Defendant's decision to testify, impact on. See Sandoval Rules
- Evidence, exclusion of, 18:7
- Gag orders, 19:53
- Judicial bias, 18:190-18:193
- Jury selection
 - See also Jury Selection and Voir Dire
- Jury selection, 19:99
 - Adjournment, 19:51
 - Peremptory challenges on racially discriminatory grounds prohibited, 19:97
 - Physical restraints used on defendant, court's statement on record, 19:28
- Witness, 18:57

BIFURCATED HEARING

- Identification of defendant, independent basis, 9:227

BILL OF PARTICULARS

- Accomplice, principal or both specification, 14:40
- Accusatory instrument, 8:121
- Advocacy, effectiveness of, 2:66
- Amendment of bill, requirements, 8:121
 - Accomplice, defendant as, 8:122
 - Charges in murder prosecution, 8:122
 - Conduct by defendant, substance of, 8:122
 - Location of criminal act, 8:122
 - Principal, defendant as, 8:122
 - Sexual acts allegedly performed with child, time and place, number of times, 8:122
 - time of offense, 8:123
- Defendant, particulars not entitled to, 8:124
- Defense may request, 1:72
- Defense motion to compel, 8:126
- Filing requirements, 8:126
 - Application to, 8:121
 - Function, 8:121
- Indictment
 - Duplicious, bill clarifying crimes to cure, 3:39
- Information, deficiency in not cured by, 3:28
- Items available to defense, 8:122
- Jury charge, 19:152
- Late bill, service of, 8:121
- Misdemeanor complaints, application to, 8:121
- Principal or accomplice specification, 14:40
- Procedure for securing, 8:126
 - Held to particulars in full, 8:125
 - Obligations, 8:122

BILL OF PARTICULARS—Cont'd

- Prosecution response to request, 8:126
- Protective order, 8:126
- Service of bill, 8:126
- Time for, 8:126
- Written refusal, time for, 8:126
- Prosecutor's information, application to, 8:121
- Protective order, 8:126
- Purpose, 8:121
- Securing, 8:126-8:128
- Service of, 8:126
 - Late bill, 8:126
- Time for, 8:126
- Variance at trial, 8:122

BITING

- Bite marks
 - Dental expert, 18:131
 - Photographs to compare defendant's bite marks, 18:102
- Uncharged crimes, permissible use, evidence of identity, 12:17

BLOOD

- Bloody trail leading to house, room search, warrantless police intrusion, 9:35
- Consent to blood test, 9:67
- Physician-patient privilege, 18:30
- Samples, discovery, 8:39, 8:40
 - Defendant required to provide, 8:39, 8:40
 - DNA tests, Brady material, 8:26, 8:28
 - Victim infected with sexually transmitted disease, defendant required to provide, 8:39
- Test upon court order, 9:67
- Type, expert testimony, 18:131
- Vehicular injury or death, blood test with, 9:67

BODY

- Bodily examination, 9:35
 - Compelling, grand jury proceedings, 9:208
- Bodily samples, sought by prosecution
 - Improperly, writ of prohibition, 23:9
- Defendant's, exhibition of
 - Jury inspection, 11:6
- Exhuming. *See* Exhumation
- Strip search, 9:37

BODY ORDER

- Court, issuance by, 1:30
- Court, issuance by, 8:103
- Federal inmate, 8:103

BOLSTERING

- 911 recordings, bolstering described, 18:121
- Courtroom identification of defendant, bolstering testimony prohibited, 9:212-CITE9:215
- Implicit, 9:213-9:215
- Prior inconsistent statements, 18:64

BOOTSTRAPPING

- Described, 3:48
- Felony, 19:195

BORDER SEARCHES

- Probable cause or without warrant, 9:12

BOYKIN RIGHTS

- Guilty plea, 17:37

BRADY MATERIAL

- Appellate standard of review of violations, 24:75
- Bad or good faith irrelevant with Brady analysis, 8:23
- Delayed disclosure, 8:28
 - Bad or good faith irrelevant, 8:23
 - Calibration records of breathalyzer in DWI prosecution, 8:26
 - Civil suit, pendency of complainant's, 8:26
 - Collateral information unrelated to crime charged, 8:28-8:33
 - Delayed disclosure, 8:28
 - Delay in, reversal, 8:33
 - DNA tests, failure to perform, favorable results speculative, 8:27
 - Exculpatory expert witness opinion in arson investigator's memorandum, accidental fire, 8:26
 - Good or bad faith irrelevant, 8:23
 - Guilty plea, Brady disclosure waived, 8:31
 - Incentive offered to witness, obligation to disclose, 8:24
 - Laboratory results not favorable to defense, 8:27
 - Mandatory, under New York State or U.S. constitution, 8:22
 - Misidentification of codefendant, 8:26
 - Obtaining disclosure, 8:32, 8:33
 - Ethical obligation of, to disclose, 8:22
 - Evidence in prosecutor's possession, 8:22
 - Record-keeping, 8:27
 - Police officer's testimony to grand jury, incorrect, 8:26
 - Police videotape. defendant after DWI arrest, 8:26
 - Prosecutor's evidence material to defendant's guilt or punishment, 8:22
 - Psychiatric history of decedent victim, 8:26
 - Sanctions for untimely disclosure, 8:33
 - Standard of review for Brady violation, 8:52
 - Statistical data, probably of DNA matching blood samples, 8:26
 - Telephone conversation, raising entrapment, drug case, 8:26
 - Time for, 8:28
 - Types of information, 8:26
 - Untimely, sanctions for, 8:33

BRADY MATERIAL—Cont'd

- Disclosure
 - Grand jury, 6:70
- Disclosure required
 - Witnesses
- Discovery by defendant, entitlement, 8:22
- DNA tests, 8:26, 8:27
- Exculpatory material, 8:22, 8:24
 - Favorable evidence, 8:22
 - Regarding witnesses, 8:24
- Good or bad faith irrelevant with Brady analysis, 8:23
- Guilty plea, waiver of violation by, 8:31
- New trial on grounds of violation, 8:30
- Photograph, 8:26
- Qualification as, material germane to case, 8:27
 - Specificity, 8:27, 8:30
- Relevant to central issues required, 8:29
- Reliability of evidence, determination, 8:25
- Request for
 - Prosecutor's turning over information
 - 911 recordings, 18:118
- Request for, 8:22
 - Prosecutor's turning over information, 8:27
- Sanctions for untimely disclosure, 8:33
- Standard of review for Brady violation, 8:52
- Time for disclosure, 8:28
- Untimely, sanctions for, 8:33
- Value of evidence to defense, determination, 8:25
- Video, 8:26
- Violation, new trial on grounds of, 8:30
 - Undisclosed information relevant to defense, 8:30

BREACH OF CONTRACT

- Withdrawal from representation, breach of contract of representation, 2:51

BREATHALYZER

- Admissibility, 18:146

BRIEFS

- Additional submissions, 24:61
- Anders brief, 24:5, 24:67
- Appeals, evidence of post-conviction rehabilitation appended to, 24:32
- Citations, 24:60
- Court of Appeals briefs, contents and format of, 24:109
- Generally, 24:60
- Improper service of brief by prosecution
 - Pro se supplemental brief, client disagreement with appellate attorney, 24:38
 - No absolute right of defendant to file brief, 24:39
- Reply brief, 24:60

BRIEFS—Cont'd

- Supplemental briefs, pro se submission by defendant, 24:38

BRUTON RULE

- Codefendant's inculpatory statements, conflict resolved by, 14:18
- Conspiracy, statement made in course of, 14:24
- Interlocking statements, 14:23
- Overview, 14:18-14:27
- Redacted statement, use as evidence, 14:19-14:24
 - Defective redaction, waiver of appellate claim of, 14:20
- Exculpatory statements also redacted, 14:22
- Interlocking statements, 14:23
- Prosecutors, 14:19-14:24
 - Defense participation in redaction, 14:20
- Severance, 14:22
- Testimony
 - Interlocking statements, 14:23
 - Vitiating redaction, 14:21
- Severance
 - Entitlement of defendant to, 14:18
- Motions for
 - Appellate review of denial of, 14:27
 - Appropriateness of, 14:34
- Redacted statement, use as evidence, 14:22
- Resolution of conflict, 14:18
- Violation as harmless error, 14:26

BURDEN

- Defendant's
 - Establish inadequacy of record on appeal, 24:35

BURDEN OF PROOF

- Beyond reasonable doubt, 19:196, 19:207
- Clear and convincing evidence, 1:96
- Constitutional challenges, 15:88
 - Alibi defense, 15:39
 - Ordinary defenses, 15:3
- CPL 440.10 motion to vacate judgment
 - Newly discovered evidence, 23:41
 - Procedural matters in trial court, 23:62
- Defense
 - Affirmative defenses. See Affirmative Defense
- Defense Attorney. See Defense Attorney
- Effective assistance of counsel, presumption overcome by defendant, 2:59
- Generally, 1:96
- Guilt, proving, 17:37
- Jury charge. See Jury Charge
- Jury instructions on, 15:80
 - Defense, prosecution's burden to disprove beyond a reasonable doubt, 15:31
 - Disprove beyond a reasonable doubt, 15:3

BURDEN OF PROOF—Cont'd

- Juvenile delinquent, dispositional hearing upon conviction, 21:24
- Mapp hearing, 9:71-9:80
 - Beyond reasonable doubt, 19:207
- Motions to set aside verdict, CPL 330.30
 - Need for prosecution's concession of allegations
 - Evidence, newly discovered, defense burden, 20:39
- Prejudicial effect of admitting prior offenses, 11:36, 11:37
- Preliminary hearings, at, 8:82
- Preponderance of evidence, 1:96
- Probable cause. See Probable Cause
- Prosecution's burden
 - Absent defendant, proving efforts to find, 13:36
 - Excludable post-readiness delays, establishment, 13:63
 - First trial testimony used at retrial, 24:125
 - Racial exclusion of jury members barred, Batson rationale, defense burden, 19:110
 - Beyond reasonable doubt, 19:196
 - Reasonable cause. See Reasonable Cause
 - Reasonable doubt
 - Jury charge. See Jury Charge subhead: Reasonable doubt
 - Traffic infraction, 1:31
 - Wade hearing, 9:225-9:230
 - Warrantless search and seizure, prosecution's burden, 9:83

BURGLARY

- Burglary 2nd degree, violent felony offense, 22:18
- Deadly physical force used to prevent, justifiable, 15:12
- Elements of burglary, 16:6
 - Lesser included offenses, 16:4
- Intoxicated defendant, lesser included offenses
 - Intent, 16:23
- Justification defense, applicability, 15:12
- Lesser included offenses, 16:3
 - Burglary 3rd degree, 16:4
- Missing witness, jury charge, counsel comments, 19:188
- Superfluous language in indictment or jury charge, 18:208
- Underlying crime, 3:74

BUSINESS RECORDS

- Computer records, 18:82, 18:158
- Documentary evidence, as, 18:78-18:85
- Foundation, required, elements of, 18:81
- Hearsay rule, exception to, 18:78-18:85
 - 911 recording, exception unavailable, 18:126

BUSINESS RECORDS—Cont'd

- Medical records, 18:80
- Social media, 18:85
- Text messages, 18:84

CALENDAR CONTROL

- Prosecutorial delays/failure to be ready for trial, interest of justice dismissal not warranted, 7:23

CAMERAS IN COURTROOM

- News. See News Media
- Statute repealed, 19:40
- Still photographs, 19:40

CANADA

- DMW websites, 4:33
- Reporting traffic infractions, 4:28

CAPITAL PUNISHMENT

- See Death Penalty

CARDONA HEARING

- Defined, 7:37

CAUSE, CHALLENGES FOR

- See Jury Selection and Voir Dire

CELLPHONES

- Business records, 18:83, 18:84
- Driver's licenses, sentencing, 22:94
- Search warrants, 9:93
- Text messaging. See Text messaging

CERTIFICATE OF DISPOSITION

- Issued, 1:88

CERTIFICATE OF RELIEF FROM DISABILITIES

- Award of, 22:209

CERTIFICATION

- Court of Appeal, brief signed, 24:109
- Merits of appeal, not required to certify, 24:24
- Sex Offender Registration Act, 23:79

CHAIN OF CUSTODY

- Recordings, use for admissibility, 18:107
- Unique evidence, 18:90
- Violation, blood sample, 24:122

CHARACTER

- Character witnesses. See Witnesses, Trial
- Defendant's, 18:46, 18:47
- Defendant's, 19:153
- Evidence, as, 12:3
- Judge as character witness, 18:47
- Juvenile offenders, defense motion for removal to Family Court, 21:46

CHARGES

- Accusation basis for criminal charge, 1:36

CHARGES—Cont'd

- Advising defendant
 - Accusations. See Accusatory Instruments
- Advising defendant, 4:15, 4:17
 - Advising defendant, 4:28
 - Indictment arraignment, 4:28
 - Multiple charges, 4:47
 - Preliminary hearing, 4:21
 - Credit for jail time, 4:47
 - Jail time served, credit for, 4:47
 - Reduction, all charges in written order, 4:71
 - Setting of, 4:47
 - Setting of bail, 4:47
- Bootstrapping, 3:48
- Codefendants
 - Jury instructions as to charges, 14:29, 14:30
 - Offenses, joinder of, 14:5-14:10
 - Third charge, joinable to, 14:9, 14:10
- Dismissal
 - Appellate delay unreasonable, 24:65
 - Inquiry as to Sandoval rules, 11:32
- Mandatory sentences for interest of justice dismissal for some charges, 7:23
- Multi-count indictment, bill of particulars clarifying charges, 3:39
- Multiple Charges
 - Duplicitous counts in indictments, rule against, 3:37-3:42
 - Purpose, 3:38
 - Repugnant verdicts
 - Mixed guilty/not guilty verdict, 20:2
 - Determination of mixed verdict, 20:4
 - Resulting from one incident, 1:51
 - Reversal of conviction, effect on other charges, 24:114
 - Concurrent jail time, 24:115
 - Speedy trial pretrial release, no release when held on one charge and awaiting trial on another
 - Underlying crime and intent to commit crime, 20:4
- New charges in statutory speedy trial
 - New statement of readiness required, 13:23
 - Same transaction, same commencement date, 13:57
- Plea bargain satisfying, 17:1
- Pretrial notice of, defendant's entitlement, 3:39
- Proof at trial, varying from allegations in indictment, 3:76
 - Indictment's functions compromised, 3:76
- Reconsideration, repugnant verdicts, 20:3
- Reduced, prosecutor's consent required to plead to, plea bargain, 17:4, 17:9
- Repugnant verdicts, charges reconsidered, 20:3
- Resolution without trial, 1:76

CHARGES—Cont'd

- Speedy trial provisions
- Homicide charges
 - Attempted Murder 2nd degree, coverage exception under CPL 30.30(3), 13:25
 - No coverage under statutory CPL 30.30 provision, 13:18, 13:25
- New charges
 - New charges on same transaction, same commencement date, 13:57
 - New statement of readiness required, 13:23
- Seriousness of charge and delay of constitutional provision, 13:88
- Statute of limitations
 - Misconduct in public office, 13:5
 - Time-barred action, timely brought charge, 13:11
- Two proceedings scheduled for same time, abuse of discretion, dismissal, 19:50
- Unrelated, defendant's statements, suppression, 9:144

CHARTS

- Accusatory instruments, sufficiency of instruments, 3:25
- ACD (adjournment in contemplation of dismissal), offenses subject to one-year, 22:39
- Agencies; obtaining information sources for defense, 1:78
- Appeals
 - Harmless error analysis, 24:90
 - Legal sufficiency of evidence, 24:84
 - Path of, 24:52
- Assigned counsel, compensation, 2:22
- Brady violation, standard of review for, 8:30
 - Automatic, 8:2, 8:3
 - Defense reciprocal discovery obligation, 8:6
- Burden of proof, standards of, 1:96
- Constitutional analysis for warrantless police intrusion, 9:14
- Defense rights: Constitutional and statutory provisions, 15:85
 - Ordinary, 15:3
 - Statutory, 15:3
- Drinking driving tests, 9:65
- Driver's license, points on, 22:94
- Drug felonies, maximum fines in, 22:79
- Drug Law Reform Acts, 22:183
- Field sobriety tests, 9:61
- Fines, 22:79
- Hardship privilege, 4:33, 4:37
 - Out-of-state licenses, hardship privilege; websites, 4:37
 - Temporary license suspension in .08 percent, 4:32
- Hearings, types of, 7:38
- Hearsay exceptions, 18:14

CHARTS—Cont'd

- Indictment, allegations to exceptions and provisos, 3:49
- Internet and websites sources for criminal law issues, 1:29
- Jury questions, procedure for responding to, 19:214
 - Challenge or removal, standards for, 19:89
 - Composition and selection, 19:83
 - General order of, 19:1
 - Peremptory challenges improper, test for determining, 19:109
 - Steps in, 19:1
- Juvenile delinquency; comparable Family Court Act and CPL provisions, 21:16
- Material witness proceeding; method of obtaining witness, 18:75
- Maximum sentencing, first offender, 22:39
- Miranda warnings, 9:118
- Molineux categories; evidence of uncharged crimes, 12:11
- Motion and hearing practice, use at trial of defendant's hearing testimony, burden of proof, 7:38
- New York Code, Rules and Regulations; list, 1:3
- Non-lawyer professionals, hourly compensation rate, 2:29
- Parole revocation hearing and guideline categories, 23:132
- Peremptory challenges improper, test for determining, 19:109
- Persistent sentencing, 22:126
- Predicate sentencing, 22:126
- Pretrial release from custody of incarcerated defendant, 13:82
- Probation, length of, 22:46
 - Common conditions, 22:60
 - Drug Law Reform Acts, 22:183
 - Fines, 22:79
 - Options, 22:1
 - Persistent sentencing, 22:126
 - Predicate sentencing, 22:126
 - Probation, 22:46
 - Common conditions, 22:60
 - Violation, 22:67
 - Sentencing, 22:67
 - Sequentiality requirement, 22:122
 - Violation, 22:67
- Prosecutorial misconduct on summation, types of, 18:201
- Sealing of records, types of, 23:156
- Sex Offender Registration Act
 - Burdens of proof, 23:78
 - Risk assessment instrument factors, 23:91
 - Risk assessment level, 23:84
 - Risk levels, 23:87

CHARTS—Cont'd

- Speedy trial periods, 13:22, 13:27
- State regulations, 1:3
- Statute of limitations, 13:11, 13:22
- Vehicular offenses, surcharge for, 22:84
- Warrantless police intrusion, DeBour-Hollman analysis, 9:14
- Websites for criminal law issues, 1:29
- Youthful offenders, categories of, 21:1

CHECKLISTS

- Advising the client, 2:88
- Appeals
 - Assigned appeals, 24:131
 - Court of Appeals, Checklist for appeals to, 24:132
 - Local court without stenographer, appeals from, 24:133
- Assigned appeals, 24:131
- Bail application, preparation for, 4:95
- Client, items to review with, 2:88
- Court of Appeals, Checklist for appeals to, 24:132
- CPL 440.10 motion, 23:164
- Defense trial preparation, 19:224
- DWI case, probable cause hearing and stop of automobile in; cross-examination of police officer, 9:234
 - Cross-examination of police officer, 9:233
 - Direct examination of police officer, 9:231
- Example of foundational questions for text message, 18:212
- Generally, 7:53
 - Subjects for, 7:54
- Guilty plea
 - Collateral consequences, checklist of, 17:86
 - Plea colloquy, likely questions during, 17:85
- Huntley hearings; cross-examination of police officer, 9:233
 - Probable cause hearing, DWI case; direct examination of police officer, 9:232
 - Probable cause hearing, stop of automobile in DWI case; cross-examination of police officer, 9:233
- Jury charge requests, 19:227
- Jury trial, steps in, 19:226
- Lesser included offenses, 16:52
- Letter to client regarding upcoming hearing, 9:235
 - Direct examination of police officer, 9:232
 - Stop of automobile in DWI case; cross-examination of police officer, 9:234
- Plea colloquy, likely questions during, 17:85
- Preparation for trial, 19:225
- Sentencing, 22:212
- Suppression of evidence, 9:234
 - DWI case, 9:232

CHECKLISTS—Cont'd

- Suppression of evidence, 9:234—Cont'd
 - Huntley hearings, 9:231-9:233
 - Letter to client regarding upcoming hearing, 9:235
- Verdict, procedure for defense counsel after, 20:46
- Witness, representing, 2:89

CHECKPOINTS AND ROADBLOCKS

- Generally, 9:58

CHEMICAL TESTS

- Driving while intoxicated. See Driving While Intoxicated
- Suppression, 9:62
- Two-hour rule, 9:63

CHIEF MEDICAL EXAMINER'S OFFICE

- Statements in possession of, Rosario material exclusion, 8:48

CHILD

- Abuse. See Child Abuse
- Accusatory instrument, verification by, condition, 3:60
- Endangering the welfare of a child
 - Continuing crime theory, and duplicitous indictment counts, 3:43
- Justification defense inapplicable, 15:7
- Service of subpoena on, 8:109
- Sex offenses. See Sex Offenses
- Testimony of, capacity to testify, 6:20
- Victim of or witness to crime, voir dire required, 3:60
- Vulnerable witness, 18:37
- Witness, 18:36
 - Closed-circuit television, 18:37
 - Grand jury proceedings, witness at, 6:20
 - Unsworn testimony, 6:20, 18:38
 - Voir dire, 18:36

CHILD ABUSE

- Effective assistance of counsel, right to
 - Abuse proceedings, 2:55
 - Custody cases, 2:55
- Molestation, multi-count indictment, bill of particulars clarifying charges, 3:39

CHILD PROTECTIVE SERVICES

- Discovery of records, 8:83-8:87

CHOICE OF EVILS DEFENSE

- See Necessity Defense

CIRCUMSTANTIAL EVIDENCE

- See Evidence

CITIZEN'S ARREST

- Allowed, 1:45

CITIZEN'S ARREST—Cont'd

- Peace officer, 1:45

CIVIL CASES AND PRACTICE

- Brady material, 8:25
- Collateral consequences. See Collateral Consequences
- Generally
 - CPLR application to criminal case, evidence, 18:4
 - Notice of entry, 23:103, 24:47
 - Prosecution lacks jurisdiction, 1:9
- Generally, 7:5
 - Reargue, motion to, 7:42
- Shoplifting penalty, 22:215
- Summary judgment if estoppel applies. See Collateral Estoppel
- Youthful offender, subsequent litigation, effect of adjudication on, 21:88

CIVIL DISOBEDIENCE

- Necessity defense, inapplicability, 15:30

CIVIL JUDGMENT

- Impeachment, 12:7
- Mandatory assessments, 22:88
- Restitution, 22:81

CIVIL MANAGEMENT

- Constitutionality, 23:106
- Forms
 - Initial letter to defendant in, 23:183
 - Letter to client on upcoming, 23:190
- Proceeding, 23:105
- Sex offenders, 23:113

CIVIL RIGHTS

- Loss of, guilty plea, 17:37

CLAYTON HEARING

- See Interest of Justice, Motion to Dismiss

CLEAN SLATE ACT

- Sealing of certain convictions, 23:158

CLEAR AND CONVINCING EVIDENCE

- Standard of proof, 1:96

CLERKS

- Appellate court clerk, incarcerated defendant's request for trial transcript to, 24:39
- Counsel check with, custody conditions for defendant, 4:79
- County court clerk's office, filing motion papers with, motion to settle transcript, 24:29
- Court of Appeals clerk, leave to appeal application through letter to, 24:100

CLIENTS

- Appeal by, speedy response to client letter, 2:37
- Attorney-client privilege, 2:39-2:41

CLIENTS—Cont'd

- Attorney-client relationship, 2:36-2:46
- Change of counsel, conflict of interest, 2:42
- Communication with counsel, 2:35, 2:37
 - Improper to bar, 2:41
 - Unconventional trial tactics, 2:73
- Confidentiality, right to, 2:39
- Conflict of interest, 2:42-2:57
- Consultation with counsel, 2:41
- Counsel and, 2:35-2:110
 - Advising client, 2:35
 - Quality of defense counsel, 2:55-2:87
 - Withdrawal from representation, 2:51
- Decisions by, 2:36-2:44
 - Incapacitated client, 2:44
 - No waiver by attorney of certain defendant rights, 2:43
- Defendants. *See* Defendants
- Defense attorney's duty of care. *See* Defense Attorney
- Effective assistance of counsel, right to, 2:55-2:87
- Incapacitation of, decision-making by attorney, 2:44
- Ineffective assistance of counsel. *See* Effective Assistance of Counsel
- Informed client, necessity of, 2:35
- Malpractice, 2:87
- Waiver of client rights, limitation on attorney, 2:43

CLINICAL RECORDS

- Subpoena issued for party seeking, 8:103

CLOSURE OF COURTROOM

- See* Courtroom Closure

CLOTHING AND OTHER ATTIRE

- Arrest photographs admitted to show at time of arrest, 18:94
- Attorneys, 19:54
- Defendant, 19:54
- Identification of defendant, suppression issue, 9:185
- Juror's, challenging, valid, 19:113
- Photographs to show, 18:94, 18:100
- Victim's family's attire, 19:54
- Witnesses, 19:54
 - Prosecution advice to, 19:54

CODEFENDANTS

- Accomplices. *See* Accomplices
- Accusatory instruments
 - Consolidation, grounds for, 14:37, 14:38
 - Joinder of offenses, 14:11
- Bruton rule, 14:18-14:27
 - Codefendant's inculpatory statements, conflict resolved by, 14:18

CODEFENDANTS—Cont'd

- Bruton rule, 14:18-14:27—Cont'd
 - Conspiracy, statement made in course of, 14:24
 - Interlocking statements, 14:23
 - Motions for severance, appellate review of denial of, 14:27
 - Severance, 14:18
 - Violations of, 14:26, 14:34
- Coercion, joinder of offenses, 14:8
- Common plan or scheme, 14:1
- Consolidation, 14:11
 - Converse of severance, 14:11
 - Defenses, 14:39
 - Grounds for, 14:37-14:39
 - Accusatory instruments separate, 14:37, 14:38
 - Defenses, 14:39
 - Offenses, 14:38
- Conspiracy, statement made in course of, Bruton rule, 14:24
- Cooperation agreement with prosecution and testimony against accomplice, defendant's, 22:170
- Defenses
 - Antagonistic defenses, severance, motion for, 14:32
 - Consolidation of defenses, 14:37, 14:38, 14:39
 - Mutually exclusive defenses, 14:33, 14:34
 - Severance, 14:34
- Discovery issues, 8:26
 - Non-testifying codefendant's, Rosario material exclusion, 8:47
- Grand larceny, joinder of offenses, 14:6, 14:8
- Joinder, effects of
 - Bruton rule, 14:18-14:27
 - Confrontation, admission of codefendant's plea allocution as violation of defendant's right to, 14:25
 - Conspiracy, statement made in course of, 14:24
 - Interlocking statements, 14:23
 - Pleading requirements, 14:25
 - Redacted statement, use as evidence, 14:19-14:24
 - Severance, 14:18, 14:27
 - Violation as harmless error, 14:26
- Disagreement over bench or jury trial, 14:13
- Dual jury trials, 14:14
 - Error, potential for, 14:14
- Impeachment rights of codefendant, limitations, 14:28
 - Prior convictions, use of, 14:28
- Jury instructions as to charges, 14:29, 14:30
- Objections by defense do not protect codefendants, 14:17
- Stipulation, ineffectiveness, 14:17

CODEFENDANTS—Cont'd

- Joinder, effects of—Cont'd
 - Peremptory challenges among codefendants, 14:16
 - Single party, treatment as, 14:16
 - CPL 200.20, exercise of discretion under, 14:38
 - Verdicts inconsistent, 14:30
 - Repugnance, claim of, 14:30
- Joinder of, effects of
 - Defendants, 14:1
 - Offenses, 14:5-14:10
- Lesser included offenses, Green/Glover two-prong test, relevance, codefendants' actions, 16:16
- Manslaughter, unintentional act, 14:45
- Objections, defense's, do not protect codefendants, 14:17
 - Actions, 14:17
 - Dismissal, trial orders for, 14:17
 - Jury charge, 14:17
 - Lesser included offenses, 14:17
 - Mistrials, motions for, 14:17
 - Silence of defendant, 14:17
 - Stipulation, ineffectiveness of, 14:17
- Offenses, joinder of, 14:5-14:10
 - Grounds, 14:6
 - Improperly joined charges, 14:8
 - Proof, one offense admissible to prove another, 14:7
 - Same criminal transaction, 14:6
 - Statutory definitions similar, 14:8
 - Third charge, joinable to, 14:9, 14:10
- One guilty/other not guilty, 20:8
 - Repugnant verdict for, 20:8
- Out-of-court identifications, 9:209
- Peremptory challenges among codefendants, 14:16
- Plea bargaining, 14:1
 - Discretionary treatment of codefendants, 17:23
- Preservation of error, separate objection, 18:160
 - Stipulation, 18:160
- Public interest served by joinder, 14:12
- Rape, joinder of offenses, 14:8
 - Severance, motion for, 14:33
- Robbery
 - Joinder of offenses, 14:6
 - Statutory definitions similar, 14:8
 - Two different days, same crime, 14:8
- Same criminal transaction, 14:1
 - Joinder of defendants, 14:1
 - Joinder of offenses, 14:6
 - Redacted statement, use as evidence, 14:19-14:24

CODEFENDANTS—Cont'd

- Sandoval ruling, inapplicability to, 11:60
 - Constitutional right of codefendant to cross-examine defendant, 11:60
- Severance, 11:60
- Sentence, 22:186
- Severance
 - Converse of consolidation, 14:11
 - Grounds for, 14:36-14:40
 - Motions for, 14:32-14:43
 - Antagonistic defenses as grounds for, 14:32
 - Bruton rule, violation of, 14:34
 - Colorable testimony, 14:35
 - Defense omnibus motion, part of, 14:32
 - Exculpatory statements by codefendant, 14:34
 - Impeachment questioning, lack of protection, 14:34
 - Irreconcilable conflict between defendants, 14:33
 - Mutually exclusive defenses, 14:33, 14:34
 - Omnibus motion, severance motion part of, 14:32
 - Prejudice as grounds, 14:32, 14:34
 - Sandoval protection, lack of, 14:34
 - Speculative testimony, 14:35
 - Tests for severance, 14:33-14:35
 - Tests for severance, 14:33-14:35
 - Appropriateness of severance, 14:34
 - Inappropriateness of severance, 14:35
- Statements
 - Inculpatory. See Bruton Rule
 - Use of, 14:25
- Trial
 - Bench or jury trial, disagreement over, 14:13
 - Dual or multiple jury trials, 14:14
 - Separate trial
 - Antagonistic defenses as grounds for, 14:32
 - Prejudice as grounds, 14:32

COERCION

- Allen, 19:150
- Codefendants
 - Joinder of offenses, 14:8
 - Statutory definitions similar, 14:8
- Duress, 15:43
- Guilty pleas
 - Coerced, outside record on appeal, 24:33
 - Vacation over objection, 17:71
- Suppression of evidence
 - Involuntary statements inadmissible. See Defendant's Statements, Suppression

COLLATERAL

- Evidence. See Evidence
- House as bail bond collateral, 4:61

COLLATERAL CONSEQUENCES

Advice, 2:82
 Contempt. See Contempt
 Conviction. See Conviction, Collateral Consequences of
 Guilty plea, 17:38
 Interest of justice dismissal based on, 7:23
 Plea bargaining, considerations, 17:1
 Youthful offender adjudication, effect of, 21:85-21:88

COLLATERAL ESTOPPEL

Alford plea, applicable to, 22:211
 Application of doctrine in civil suits, 22:207
 Constitutional challenges, 15:99
 Described, 22:210
 Double jeopardy, 15:99
 Guilty plea and guilty verdicts after trial, applicable to, 22:198
 Malpractice action barred, 2:87
 Outley hearing inapplicable, 22:162
 Petty offense exception, 22:212
 Traffic infractions, 22:212

COLLATERAL PROCEEDINGS

Constitutional violation
 Evidence unconstitutional, CPL 440.10 motion, 23:37
 Federal habeas corpus, writ of prohibition, 23:25
 Separation of powers at issue, writ of prohibition granted, 23:5
 CPL 440.10 motion (to vacate judgment), 23:26-23:74
 CPL 440.20 motion (defendant's, to set aside sentence), 23:67
 CPL 440.40 motion (people's, to set aside sentence), 23:68, 23:69
 Hearing on motion, 23:64
 Issues outside record on appeal, 24:33
 Marijuana convictions, 23:66
 Writ of habeas corpus, 23:18-23:25
 Federal habeas corpus, 23:25
 Relief available, 23:19, 23:20
 Relief not available, 23:21
 State habeas corpus procedure, 23:22
 Writ of prohibition, 23:1-23:17
 Essential question as to whether defendant should be tried, 23:1
 Extraordinary remedy, 23:2-23:11
 Importance of, 23:1
 Order to show cause and petition, 23:13
 Prejudicial error, 23:1
 Procedure, 23:13
 Prosecution, writ sought by, 23:15, 23:16
 Appeal available, writ denied, 23:16
 Grounds lacking, writ denied, 23:16

COLLATERAL PROCEEDINGS—Cont'd

Writ of prohibition, 23:1-23:17—Cont'd
 Prosecution, writ sought by, 23:15, 23:16—Cont'd
 Reduction of charges without prosecutor's express consent, 23:15
 Relief available, 23:19, 23:20
 Remedy, sufficient alternative, bars, 23:5

COMMERCIAL DRIVER'S LICENSE

See Driver's License

COMMON LAW

Retroactivity, 24:92

COMMON PLAN OR SCHEME

Joinder of defendants, 14:1
 Uncharged crimes, admissible to show, 12:18
 Forgery, 12:18
 Similarity in crimes, 12:18

COMMUNITY SERVICE

ACD, 22:40
 Sentenced to as criminal sanction, 1:8
 Sentence, element of, described, 22:34
 Performance of work requirement, 22:34
 Traffic ticket, 22:73
 Welfare or, juvenile offenders, impact on, 21:46

COMMUNITY TIES, DEFENDANT'S

Bail, effect on, 4:66

COMPENSATION

Appellate attorney, 24:25
 Assigned counsel, 2:17-2:34

COMPETENCY

Appeal standard of review, 24:74
 Child witness, 18:36
 Defined, 2:44
 Direct appeal on, to stand trial, 24:7
 Generally, 18:3
 Mental health, generally, 15:50-15:63

COMPLAINANT

Appearances in proceeding, 1:62
 Attitude affecting prosecutor's discretion, 1:64
 Cross complaint, 1:16
 Defense, questioning by, 1:63
 Dropping charges, defense approach about, 1:65
 Interview by defense, 1:63
 Order of protection, 1:66
 Questioning by defense, 1:63
 Role of, 1:62-1:67
 Victim. See Victim

COMPLAINT

Accusatory instrument
 Commencing criminal action, 3:1

COMPLAINT—Cont'd

- Accusatory instrument—Cont'd
 - Filed in local criminal court, 3:1
 - Felony complaint, 3:34
 - Misdemeanor complaint, 3:32, 3:33
- Within 5 days, 4:55
 - Failure, mandatory ROR, 4:55

COMPLETING THE NARRATIVE

- Hearsay, 18:40
- Relevance, 18:41
- Uncharged crimes, 12:11, 12:19, 12:24, 12:27

COMPROMISE

- Sandoval compromise. See Sandoval

COMPULSORY PROCESS

- Adjournment, 19:44
- Document, subpoena of, 8:95
- Recalling witness, 18:67
- Subpoena. See Subpoena
- Use of subpoena, 8:83

COMPUTERS

- Business records, 18:82, 18:158
- Cross complaint filed, 1:16
- Discovery of computer and computerized records, 8:80, 8:100
- Drafts of statement, 8:43
- Email, search and seizure, 9:92
 - foundation, 9:90-9:94
- Evidence
 - Google maps, 18:77
 - reenactment, 18:77
- Global positioning system. See Global Positioning System (GPS)
- Internet. See Internet
- Law office search, 9:96
- Search and seizure, 8:100, 9:90-9:94
- Social media and networks. See Social Media and Networks
- Text messaging. See Text Messaging

CONDITIONAL DISCHARGE

- Community service as part of sentence, 22:34
- Conditions required of defendant, 22:33
- Local sentence, conditional release on, 22:10
- Period, definite, 22:33
 - Felony, three years, 22:33
 - Misdemeanor, one year, 22:33
- Probation, compared, 22:33
 - Parole officer, report to, not required, 22:33

CONDITIONAL EXAMINATION OF WITNESS

- See Witnesses, Trial

CONDITIONAL LICENSE

- Driving while intoxicated, 4:34

CONDUCT

- Criminal, induced or encouraged by public servant, entrapment defense, 15:42
- Illegal conduct by, irrelevant to search and seizure of abandoned property, 9:40
 - Mapp hearing, establishing legality of conduct, 9:71
- Improper. See Improper Conduct
- Judicial disqualification, bench trial, 19:66
- Prosecutor's conduct, objections to, 18:194-18:200

CONFERENCES

- Charging conference, holding, 19:138
 - Defendant's right to present, 19:86
 - Juror's conference, 19:86
- Sidebar
 - Lengthy objection, 18:167

CONFESSION

- Admission and, distinguished, 9:102
- Agent obtaining, 9:114
- Codefendant's, 14:18-14:27
- Expert testimony on confessions, admissibility of, 9:168
- False, expert
 - Fourth Amendment, potential for suppression under, 9:147
 - Attenuation, illegal entry by police and defendant's confession, causal connection missing, 9:151
 - Private testimony of inadmissible confession barred, 9:116
 - Concealment, youthful offender, to obtain confession, 9:113
 - Telephone call staged to secure full confession, deception, level of, 9:112
- False, expert, 18:139
- Interlocking, 14:23
- Molineux evidence admissible to explain confession by defendant, 12:20
- Suppression
 - Defendant's statements. See Defendant's Statements
- Testimony reference to, implicating defendants, redaction vitiated, 14:21

CONFIDENTIALITY

- Juvenile delinquency adjudication, 21:26
- Privileged communications, generally, 18:28-18:33
- Waiver, 2:40

CONFIRMATORY IDENTIFICATION

- Suppression issue, 9:197

CONFLICT OF INTEREST: EFFECTIVE ASSISTANCE OF COUNSEL

Attorney accused of crime, per se ineffective, 23:25
 Attorney-client, 2:42-2:59
 Attorney, filing complaint against, 2:42
 Complaint filed by client, 2:42
 Ineffective assistance of counsel, 2:83
 Judge, filing complaint against, 19:64
 Judicial disqualification, bench trial, 19:63
 Legal Aid Society and indigent defendant, 1:19
 Prosecutor, 1:12
 Prosecutor, 7:21
 Special prosecutor, 1:12
 Waivable versus nonwaivable conflict, 2:45
 Waiver, 2:44

CONFRONTATION

911 call and, 18:23, 18:122, 18:123
 Admission of codefendant's plea allocution as violation of defendant's right to, 14:25
 Autopsy report, 18:23
 Constitutional right, 18:23
 Coronavirus, effect on criminal law, 13:1
 COVID-19, effect on criminal law, 13:1
 Cross-examination. See Cross-examination
 Domestic violence complaint, 18:23, 18:122
 Hearsay and, 18:10, 18:23-18:26, 18:122
 Nontestimonial evidence, 18:23, 18:24
 Previous proceedings, testimony from, 18:25
 Testimonial versus nontestimonial evidence, 18:23, 18:24

CONFRONTATION RIGHT

Bruton rule, 14:18
 Codefendant's statements, 14:19, 14:25
 Interlocking statements, 14:23

CONSENT

Absent defense attorney and representation by codefendant attorney, 2:44
 Blood test, 9:67
 Implied consent, DWI, 9:63
 Mistrial, prosecution motion, defendant's failure to object, 18:185
 Parolee, search, 9:30
 Prosecution witness represented by defense attorney, defendant's informed consent, 2:42
 Recordings, admission, 18:104
 Warrantless police intrusion. See Warrantless Police Intrusion

CONSOLIDATION

Codefendants, 14:11
 Grounds, 14:37-14:39

CONSPIRACY

Hearsay exception for statement in conspiracy, 18:21
 Statement made in course of, Bruton rule, codefendants, 14:24, 14:25, 18:20

CONSTITUTIONAL CHALLENGES

Burden of proof, 15:88
 Challenge to statute
 not a "defense," but may shield client, 15:87
 Collateral estoppel, 15:99
 Constitutional issues, 15:86
 Double jeopardy, 15:97
 Equal protection defense, 15:68
 Ex post facto, 15:96
 Incorporation by reference prohibited, 15:95
 Infringement of right, assertion, 15:85-15:100
 Notice to attorney general required, 15:89
 Preemption, 15:94
 Presumptions, 15:88
 Prior conviction, 22:147
 Second Amendment issues, 15:100
 Selective prosecution defense, 15:68
 Self-incrimination, right against, 15:100
 Sentencing, excessive, 15:92
 Special information, 22:147
 State constitution as separate defense, 15:86
 Statute, challenge to, not defense, 15:85-15:100
 Types of, 15:90-15:96
 Unconstitutional as applied, 15:91
 Excessive sentencing, 15:92
 Vagueness challenge, 15:93
 Weapon possession; Second Amendment issues, 15:100

CONSTITUTIONAL ISSUES

Closed courtroom, 19:31
 Gag orders, 19:53
 Coronavirus, effect on criminal law, 13:1
 COVID-19, effect on criminal law, 13:1
 COVID-19 pandemic and virtual court appearance, 1:89
 Disclosure, mandatory, New York State or U.S. constitutions, 8:22
 Effective assistance of counsel, right to, 2:55
 Jury issue, not a, 9:83
 No constitutional right to, 4:49
 Where bail not required, 4:50
 Speedy trial
 Federal constitution, 13:16, 13:83
 New York law embodying federal right, 13:16, 13:83
 Right to, 24:7
 Speedy trial., 13:16, 13:83-13:95
 State constitutional interpretation, 1:5

CONSTITUTIONAL ISSUES—Cont'd

Suppression issues, defendant's voluntary waiver, 24:6

CONSTITUTIONAL RIGHTS

Extreme risk protection orders (ERPO), 23:152-23:155

Protection orders, extreme risk (ERPO), 23:152-23:155

Separation of powers issue, writ of prohibition granted, 23:5

Trade or exchange one right for another, 7:36

Violation of

Collateral proceedings

CPL 440.10 motion, 23:37, 23:46-23:50

Writ of prohibition, habeas corpus, 23:25

CPL 440.10 motion, 23:37, 23:46-23:50

Hearing, entitlement to, 23:48

Ineffective counsel, 23:46-23:50

CONSTRUCTIVE AMENDMENT, INDICTMENT

Formal motion not required, circumstances, 3:76

Proof at trial varies from indictment, conditions allowing, 3:76

CONTEMPT

Advanced age of defendant, interest of justice dismissal not compelled by, 7:23

Appellate review of contempt finding, 23:151

Attorney, 18:209

Civil versus criminal contempt. Criminal contempt, below

Criminal contempt

Civil versus, 23:144, 23:145, 23:150

Fine, 23:144

Mandate required, 23:147

Maximum punishment, 23:144

Order and mandate required, 23:147

Procedure with civil contempt, 23:150

Summary contempt, 23:146, 23:148, 23:149

Double jeopardy, 23:144

Fine, 23:144

Judiciary Law, under, 23:145

Mandate required, 23:147

Maximum punishment, 23:144

Order and mandate required, 23:147

Summary contempt, 23:146, 23:148, 23:149

Types of, 23:144

Double jeopardy, 15:97

Good time inapplicable with criminal contempt, 23:144

Judicial hearing officer, 23:144

Juror, 19:131

Probation violation, 22:4

Process issued by court, 1:30

Subpoena, 8:83

CONTEMPT—Cont'd

Summary contempt, 23:146, 23:149

Types of, 23:144

Witness, 2:4

CONTINUANCE

Adjournment. See Adjournment

CONTINUING OFFENSE

Defined, 3:43

Duplicious indictment, statutory prohibition for, 3:43-3:45

Statute of limitations, 13:8

CONTRABAND

Automobiles, warrantless stop and search, pretext inventory searches to find impermissible, 9:66

Normal routine, inventory outside, 9:66

Place of taking, 9:66

Police department regulations relevant, 9:66

Temporary innocent possession, 15:66

CONTROLLED SUBSTANCES OFFENSES

Drug indictment, repugnant verdict, 20:2

Mapp hearing, motion to reopen, 7:47

Marijuana. See Marijuana

Suspension of driver's license, 22:32

CONVERSATIONS

Testimony regarding meaning of, 18:135

CONVICTION

Accomplices

Jury charge, matter of law, accomplice described, 14:55

Statutory exception, 24:2

Accomplices, 7:7

Appellate, failure of pretrial motions, 7:7

New evidence after hearing, conviction on failure to seek rehearing, 7:30

Between sentencing and, defendant release, 4:82

Challenging prospective juror valid, 19:113

Class A felony, custody, 4:73

Collateral

Consequences. See Conviction, Collateral Consequences of

Matters, conviction on, uncharged crimes evidence, 12:1

Collateral proceedings

CPL 440.10 motion, 23:26, 23:29

Duress, 23:35

Constitutional speedy trial, post-conviction delay, 13:91

Conviction of petty offense, criminal conviction and, difference, 1:41

Defendant

Awareness of effect, 2:35

Death of, conviction vacated, 24:40

CONVICTION—Cont'd

- Defendant—Cont'd
 - Failure to pay fees, 2:51
- Duress, CPL 440.10 motion, 23:35
- Effective assistance of counsel. See Effective Assistance of Counsel
- Guilty plea
 - Equivalent to conviction, 17:37, 17:73
 - Reversal of prior convictions, 17:83
- Identification of defendant, suppression, 9:214
- Indigent defendant, assigned counsel on appeal, 24:24
- Juvenile delinquent, dispositional hearing upon conviction, 21:24
 - Adult, conviction as, 21:3
 - Family Court, defense motion for removal to, no purpose served by, 21:46
 - Nature of charge, effect varying with, 21:35
 - Lesser included offense, effect of conviction on, 21:36
 - Predicate felony, conviction qualifies as, 21:41
 - Punishment options on conviction, 21:38-21:40
 - Financial assessments may not be imposed, 21:40
 - Youthful offender adjudication, 21:39
- Lesser included offenses
 - Lesser charge, conviction on, 16:1
- Matters not developed on record, CPL 440.10 motion, 23:26, 23:29
- Motion to vacate conviction, 17:72
- New indictment in retrial, acquittal on top count/conviction on lesser charge, 24:126
- Nonexistent crime, 20:14
- Notice of appeal filed within
 - Late notice, 24:19
- Notice of appeal filed within 30 days, 24:17
- Poor person, assigned counsel on appeal, 24:24
- Postconviction motion, 1:84
- Pre-conviction right of appeal, none, 24:2
- Prior conviction and enhanced sentences. See Conviction, Prior Conviction and Enhanced Sentences
- Prior conviction. See Conviction, Prior Conviction
- Reversal
 - Action upon, 24:108, 24:111
 - Effect on other convictions where plea involved, 24:115
 - Concurrent jail time, 24:115
 - Guilty plea conditioned on concurrent sentences, 24:115
 - Failure to transcribe minutes, 24:30
 - Incomplete record, motion for summary reversal, 24:35
 - Multiple charges, effect on, 24:114

CONVICTION—Cont'd

- Reversal—Cont'd
 - Plea bargaining, effect, 24:115
 - Release of defendant, papers prepared for, 24:108
- Right of appeal, 24:1
 - No pre-conviction right, 24:2
- Set aside, meaningful appellate review not possible, 3:81
- Time when conviction occurs, 20:22
- Vacation of, motion for, 17:72
- Youthful offender, 21:75
 - Prior convictions, questions on, 21:78

CONVICTION, COLLATERAL CONSEQUENCES OF

- Collateral consequences. See Collateral Consequences
- Collateral estoppel. See Collateral Estoppel
- Disabilities, certificate of relief from, 22:209
- Driver's license revocation, 22:208
- Employment consequences, 22:206
- Enhanced punishment issues, 22:205
- Financial consequences, 22:211
- Guilty plea, consequences after, 22:198
- Immigration consequences, 22:204
- Immigration consequences, 2:76
- Ineffective assistance of counsel, 2:80
- Knowledge of consequences, 22:205-22:207
- Padilla and Peque; immigration consequences, 2:76
- Pending parallel proceeding, 22:210
- Pension rights, loss of, 22:211
- Pistol permit, 22:210
- Probation, revocation of, 22:198
- Trial, consequences after, 22:198
- Uncharged crimes used as evidence, 12:1
- Value of appeal, 24:64

CONVICTION, PRIOR CONVICTION

- Constitutional challenge, 22:147
- Enhancing degree of crime charged, 22:203
- Impeachment by, grand jury instructions, 6:59
- Sandoval rules. See Sandoval Rules

CONVICTION, PRIOR CONVICTIONS AND ENHANCED SENTENCES

- Alford plea, conviction after, 22:98
 - Court martial, offense equivalent to New York felony, 22:98
- Juvenile offender adjudication, 22:98
- Convictions not used to enhance sentence, 22:99
 - Improper waiver of indictment, conviction resulting from, 22:99
- Pardoned conviction, due to innocence, 22:99
- Unconstitutionally obtained conviction, 22:99

CONVICTION, PRIOR CONVICTIONS AND ENHANCED SENTENCES—Cont’d

- Convictions not used to enhance sentence, 22:99
 - Cont’d
 - Youthful offender adjudication, condition, 22:99
- Enhanced sentences requiring, on record, 22:97
 - Time limit on priors, within, 22:107
 - Incarceration tolls time period, 22:109
 - Prior conviction set aside, time served not tolling time period, 22:110
- Felony, qualifying defendant as predicate offender, 22:16
- Pre-plea hearing on prior convictions. See Sentencing
- Sentencing, defendants with/without priors compared, 22:124
- Sequentiality, 22:121-CITE22:123
 - Contemporaneous felonies, counting as one, conditions, 22:123
- Status changing, time of conviction status controlling, 22:104
- Time limit for mandatory enhanced felon categories, 22:108
 - Incarceration tolls time period, 22:109
 - Time served for conviction set aside, not tolling, 22:110

CONVICTION, PRIOR CONVICTIONS OR OFFENSES

- Defenses, 15:72
- Evidence of prior convictions or offenses
 - Associates of defendant, prior crimes of, 12:4
 - Exception to general rule, 12:1-12:5
 - Temporally remote convictions, 12:9
- Prejudice based on, Sandoval Rules
 - Burden of proof, effect of admitting prior crimes, 11:36, 11:37
 - Compromise, prejudice under, 11:46
 - Convictions, number of, 11:17
 - Inquiry, extensive into, 11:16
 - Measurement, potential prejudice basis of defendant’s
 - Two-part measurement of prejudice, 11:3
 - Evidentiary balance, 11:2
 - Number of convictions, 11:17
- Presentation of past crimes, 11:14
- “Staleness,” argument discouraging use of records, 11:9
- Uncharged crimes. See Uncharged Crimes
- Witnesses, with, Brady disclosure, 8:26

COOPERATION

- See Plea Bargaining

CORAM NOBIS PROCEEDING

- Appellate ineffectiveness, 23:47
- Ineffective assistance claims, 24:99

CORAM NOBIS PROCEEDING—Cont’d

- Vacating judgment. See CPL 440.10 Motion to Vacate Judgment

CORONAVIRUS PANDEMIC

- Effect on criminal law, 13:1

CORPORATION

- As defendant, officers and entity, 1:24

CORROBORATION

- Accomplice testimony, 14:47-14:51
- Additional proof with statement, 9:101
- Aguilar-Spinelli test for supporting affidavit, search warrants, 9:87
- Cross-corroboration, 14:47
- Cross-corroboration, 19:159
- Defendant’s statement, 19:158
- Identification testimony, 9:216
- Photographs used to corroborate testimony, 18:100
- Trial order of dismissal, 18:175

COUNSEL

- Adjournment, defendant obtaining counsel, 2:15
- Advising client, 2:35
- Appellate attorney. See Appellate Attorney
- Assigned counsel
 - Appellate attorney, 24:24
 - Appeals, 24:24
- Defendant advisement of right to, 2:2
- Indigent defendants, 1:17-1:20, 1:53
 - Choice of counsel barred, 2:15
 - Right to counsel, 2:2
- New assignment for good cause, 2:17
 - Court inquiry, 2:17
- Petty offenses, assigned counsel not merited, 2:2
- Poor person, 2:26
 - Court approval for, 2:27
 - Partial fee agreements, 2:27
 - Transcript, obtaining and payment for, 2:24
- Sex Offender Registration Act, 23:99
- Standby counsel, pro se defendant, 2:12
 - Removal of, 2:12
- Transcript, obtaining and payment for, 2:24
- Unpaid fees, retained attorney assigned due to, 2:51
- Assistance of, generally, 2:1-2:16
- Attorney-client conflict of interest, 2:42-2:57
- Attorney-client privilege, 2:39-2:41
- Attorney-client relationship, 2:36-2:46
- Case strategy by, 2:37
 - Absence of strategy, proof, 2:59
 - Ineffective, 2:59
 - Withdrawal from representation due to, 2:51

COUNSEL—Cont'd

- Change of
 - Defendant's, conflict of interest, 2:42
 - "Eleventh hour," 2:15
- Choosing, defendant's right, 2:15
 - Assignment for indigent defendant, choice barred, 2:16
- Client and, 2:35-2:110
 - Change of counsel, conflict of interest, 2:42
 - Consultation with client, 2:41
 - Effective/ineffective assistance of counsel, 2:55-2:87
 - Right to choice of counsel vs. conflict of interest, 2:44
 - Schooling of client, 2:35
 - Withdrawal from representation, 2:51
- Codefense counsel as second prosecutor, severance, 14:34
- Commencement of case, no questioning in absence of counsel, suppression, 9:143
- Communication with client, 2:35, 2:37
 - Improper to bar, 2:41
 - Unconventional trial tactics, 2:73
- Compensation. See Counsel, Compensation
- Contempt. See Contempt
- Critical stage, 2:3
- Critical stage, 9:138
 - Foreign citizens, 9:136
 - Lineups, at, suppression of identification issue, 9:189
 - Miranda warnings, 9:118
 - Post-indictment lineup, 9:189
 - Sixth Amendment satisfaction, 9:147
- Custody conditions, counsel check on with clerk, defendant's turning self in, bench warrant, 4:79
- Defense. See Defense Attorney
- Discharged, malpractice, no liability, 2:87
- Discouraging use of records, arguing "staleness" of defendant's prior convictions, 11:9
- Disqualification of defense counsel, 23:10
- Effective legal representation. See Effective Assistance of Counsel
- Entry into case. See Attorney
- Error by, sanctions, 18:208, 18:210
- Evidence of request for, improper, 18:34
- Failure to advise, as to jury charge, error, 16:39
- Familiarity with defendant and investigation, 2:75
- Files from previous attorney, obtaining; substitution of counsel, 2:54
- "Hybrid representation, " counsel and pro se, barred, 2:11
- Incapacitated client, decision-making for, 2:44
- Indigent defendants, 7:1

COUNSEL—Cont'd

- Ineffective legal representation. See Effective Assistance of Counsel
- Malpractice, 2:87
- Post-conviction CPL 440.10 hearing, defendant entitlement, 2:19
- Probation interview, not, 22:151
- Pro se, defendant's right to proceed, 1:20, 2:5-2:14
 - Right to counsel not surrendered, 2:6
- Quality of defense counsel, 2:55-2:87
- Representation and compensation, 2:17-2:34
- Representation for
 - Indigents, 2:18-2:23
 - Low income criminal defendants, 2:18
 - Smaller counties without certain resources, 2:18
- Retained
 - Breach of contract of representation, 2:51
 - Unpaid fees, retained attorney assigned due to, 2:51
- Right to, 2:1
 - Assignment not entitled, example, 2:2
 - Attorney-client privilege, 2:39-2:41
 - Collateral proceedings
 - CPL 440.10 motion, 23:59
 - Critical stages, 2:3
 - Execution of sentence, not critical stage, 2:3
 - Explained to defendant, 2:1
 - Filing, and implications for, 3:3
 - Sex offender proceeding, 2:19, 23:99
 - Sex Offender Registration Act, hearing under, 23:99
 - Witness, counsel for, 2:4
- Right to, 4:19
 - Adjournment to obtain counsel, 4:20
 - Advisement of, 4:19
 - First appearance, right to counsel at, 4:2
 - Free communication to obtain counsel, 4:19
- Role of, 2:37, 2:38
 - Scope of representation may be limited, 2:34
- See also Attorney
- Sentencing alternatives, proposing to court, 22:1
- Sex Offender Registration Act, hearing under; right to assigned counsel, 23:99
- Simultaneous representation of defendant and prosecution witness, 2:48
- Standby counsel, court assigned to pro se defendant, 2:12
 - Removal of, 2:12
- Statutory speedy trial, defendant without counsel, 13:39
- Substitution, 2:54
- Substitution of counsel, 2:42, 2:43, 2:46
 - Client approval of substitution of attorney form, 2:54

INDEX

COUNSEL—Cont'd

- Transcript of pretrial hearings, request for, 7:1
- Waiver of certain defendant rights barred, 2:43
- Waivers, pre-appeal, knowledge of, 24:3
- Withdrawal from representation, 2:51
- Witness, for, 2:4, 2:19, 6:15

COUNSEL, COMPENSATION

- Assigned counsel
 - Poor person, 2:26
 - Partial fee agreements, 2:27
 - Reimbursement of county, 2:26
 - Trial court role, 2:21, 2:22
 - Trial judge role, 2:20
 - Work beyond scope of original assignment, county compensation, 2:20
 - Formal assignment from judge for, 2:19
- Bail assigned as payment to retained attorney, 2:30
- Billing guidelines, generally, 2:23
- Disclosure of fees, 2:32
- FOIL provisions, 8:115
- Forms
 - Excess compensation of counsel, Application in support of, 2:93
 - Flat fee; retainer agreement, 2:98
 - Hourly fee; retainer agreement, 2:99
 - Order for defendant's payment of, 2:97
 - Retainer agreement, 2:98, 2:99
- Investigative services, 2:25
 - Approval discretionary, 2:23
 - Counsel, caution in reliance on investigator, 2:25
 - Described, 2:25
 - Financial need, not assignment, essential, 2:23
 - Omnibus motion containing application for, 2:30
 - Payment, 2:29
 - Ex parte application, hiding strategy, 2:30
 - Motion, 2:30
- Partial fee agreements, 2:27
- Quantum meruit, 2:33
- Resolving billing issues, 2:23
 - Absent local county rules, 2:23
- Retained attorney
 - Bail assigned as payment, 2:30
 - Disclosure of fees, 2:32
 - Fee prohibitions, 2:31
 - No "minimum nonrefundable fee" for representation, 2:31
- Retained attorney Quantum meruit compensation, 2:33
- Trial court role in, 2:21, 2:22
 - Employment of expert refused, appeal, 2:31

COUNSEL, COMPENSATION—Cont'd

- Trial court role in, 2:21, 2:22—Cont'd
 - "Extraordinary circumstances, " payment beyond maximum, 2:22
 - Time spent as, 2:22
 - Payment schedule subject to judge's rulings, 2:20
 - Appeal only through administrative judge, 2:20
 - Limited appellate review, 2:21
- Trial judge role in, 2:20
- Withdrawal from representation, fees as reason, 2:51

COUNSEL TABLE

- Individuals to be seated at, 19:55

COUNTY

- Reimbursement for assigned attorney
 - Assigned attorney, poor person, 2:26
 - Parent's obligation, legal representation, minor child, 2:28
- Partial fee agreements, 2:27

COUNTY ATTORNEY

- Office of, statements in possession of, Rosario material exclusion, 8:48
- Prosecutor in Family Court, 1:21

COUNTY CLERK

- Filing notice of appeal, 24:17

COUNTY COURT

- Clerk's office, filing motion papers with, motion to settle transcript, 24:29
- Stay of sentence and release pending appeal, 4:83

COURT

- Advising defendant of rights, 2:45
- Appellate courts, sentences of lower courts, reluctant to modify, 22:150
 - Sentencing delay, 22:178
- Appellate Division. See Appellate Division
- County Court. See County Court
- Family Court. See Family Court
- Grand jury minutes, inspection of
 - Court consent for defense attorney's, 6:61
 - Court's inspection, on defense motion, 6:64
- Guilty plea
 - Absentee plea, court permission, 17:46
 - Defendant's withdrawal, 17:65, 17:66
 - Court's discretion, 17:63
 - Withdrawal by court, 17:70
 - Coerced plea, vacation over objection, 17:71
 - Fraud as ground to vacate, 17:70
- Local criminal courts. See Local Court
- Plea bargain, court approval, 17:40
- Improper policy, 17:41

COURT—Cont'd

- Plea bargain, court approval, 17:40—Cont'd
 - Individual judge or prosecutor having own rules, 17:41
 - Method of securing, of sentence, 17:12
- Refusal to approve employment of expert, appeal, 2:31
- Variety of courts where crimes prosecuted, 1:25

COURT APPEARANCE

- See Appearance

COURT MARTIAL

- Double jeopardy, 15:97
- Equals New York felony, adjudication qualifying for, enhanced sentencing, 22:98
- Sex Offender Registration Act, defendant registration under, 23:82
- Uniform Code of Military Justice, 22:98

COURT OF APPEALS

- Briefs, contents and format of, 24:109
- Civil cases, leave to appeal, 24:104
- Constitutional decisions, 1:5
- Forms
 - Assignment of counsel with, motion for, 24:167
 - Leave to appeal, 24:155
 - Opposing leave to appeal to, sample letter, 24:153
- Leave to appeal to, 24:100-24:105
 - Appealability, 24:101
 - Application for, 24:100
 - Representation for purposes of, 24:105
 - Civil cases, 24:104
 - Granting leave unlikely, 24:100
 - Mixed question of law and fact, 24:102
 - Motion practice, 24:106
 - Representation of defendant, 24:107
 - Reviewability, 24:101
 - Seeking leave, 24:100
- Protections beyond federal decisions, 1:5
- Review of appeal by, 24:108
- Stay of sentence and release pending appeal, 4:83

COURT RECORDS

- Amount, 4:48
 - Bail application, obtained by defense prior to, 4:66
 - Denial of, 4:71
 - Unavailable, felony defendant jailed, 4:66
- Facts outside, motions to set aside verdict
 - Development of facts outside, preservation for appeal, 20:23
- Juror misconduct, 20:35-20:37
- Omnibus motion papers as part of record on appeal, 7:1

COURT RECORDS—Cont'd

- Reversible error in record, motion to set aside verdict, 20:26-20:34
 - Available grounds, 20:31-20:34
- CPL 330.30(1) motion, 20:26
- Matter of law, 20:26
- Unavailable issues to movant, 20:28-20:34

COURTROOM CLOSURE

- Compelling reasons for, 19:31-19:39
- Family, exclusion of, 19:37
- Hearing required, 19:32
- Influence trial, 19:31
 - Intimidate witness, 19:31
- Jury instructions, 19:137
- Media, right to be heard, 19:36
- Objection, defense, necessity to prevent waiver, 19:35
- Police officers' protection, 19:33
 - Undercover officers, 19:33
- Prosecution burden on request for, 19:34
- Public hearing, right to, 7:34
- Sex offense cases, privacy issues in, 19:41
- Sex offense victim testimony, 19:31
- Specific individuals, exclusion of, 19:37
- Witness anonymity, prosecution burden on request for courtroom closure, 19:33
- Witness embarrassment, 19:31
- Youthful offenders, closure discretionary, 19:39

COURTROOM IDENTIFICATION, SUPPRESSION

- See Identification of Defendant, Suppression

COURTROOM IDENTIFICATIONS

- Generally, 9:198-9:230

COURT STENOGRAPHERS

- Pretrial hearings requested from, 7:1
- See also Transcripts
- Transcript of
 - Jury selection, appellate attorney request for, 24:26

COVID-19 PANDEMIC

- Effect on criminal law, 13:1
- Virtual court appearance, 1:89

CPL 330.30 MOTION (TO SET ASIDE VERDICT, GROUNDS FOR)

- Collateral proceedings
 - Omissions from motion, 23:27
 - Purpose of motion, 23:27
 - Scope of, 23:31
 - Venue, 23:27
- See also Motions to Set Aside Verdict

**CPL 440.10 MOTION TO VACATE
JUDGMENT**

- Absent verdict, 20:17
- Appeal, prosecution's, 23:71
- Appeal unavailable, evidence outside the record, 23:32
- Basis of, 23:29
- Conduct outside of record, 23:39
- Consolidation of CPL 440.10 motion and direct appeal, 23:33
- Constitutional violation, 23:46-23:50
 - Hearing, entitlement to, 23:48
 - Ineffective assistance of counsel, 23:46-23:50
 - Appeal, 23:47
 - Hearing, entitlement to, 23:48, 23:49
- CPL 330.30 motion (to set aside verdict, grounds for)
 - Compared, 23:31
 - Omissions from, 23:27
- Defendant entitled to counsel at, 2:19
- Denial of, 23:33
- Described, 23:27
- Direct appeal unavailable, 23:29
- DNA testing, 23:54
- Due diligence, failure to show, 23:42
- Duress, 23:35
- Evidence
 - False, 23:36
 - Guilty pleas, withheld evidence or information, 23:55
 - Material evidence false, 23:36
 - Recantation evidence, 23:44
 - Newly discovered evidence, 23:44
 - Rosario rule, 23:33
 - Unconstitutional evidence, 23:37
- Evidence, newly discovered, 23:40-23:45
 - Burden of proof, 23:41
 - Defense burden, 23:41
 - Due diligence, failure to show, 23:42
 - Recantation evidence, 23:44
- Evidence outside record, 23:31-23:33
 - Appeal not available, 23:32
 - Consolidation of CPL 440.10 motion and direct appeal, 23:33
 - Denial of motion, 23:33
 - Inappropriate CPL 440.10 motions, 23:33
 - Rosario rule, issue of nondisclosure of, 23:33
 - Stipulation to expand record on appeal, 23:33
 - Sufficiency of record for appeal, 23:33
 - Consolidation of CPL 440.10 motion and direct appeal, 23:33
- Lower courts, record of issues not appearing in, 23:32
- Recording of issues by, 23:33

**CPL 440.10 MOTION TO VACATE
JUDGMENT—Cont'd**

- False evidence, 23:36
- Federal constitutional rights, violation of, 23:37
- Fraud, 23:35
- Grounds, 23:27
- Guilty pleas, 23:55
 - Factual basis, without, 23:55
 - Newly discovered evidence ground unavailable after, 23:55
 - Withheld evidence or information, 23:55
- Inappropriate CPL 440.10 motions, 23:33
- Judge
 - Duress by, 23:35
 - Fraud by, 23:35
 - Misrepresentation, 23:35
- Jurisdiction, 23:34
- Material evidence false, 23:36
- Mental impairment, 23:38
- Misrepresentation, 23:35
- Overview, 23:26-23:74
- Procedural matters in trial court, 23:56-23:65
 - Burden of proof, 23:62
 - Defendant's burden, 23:62
 - Delay, effect of, 23:58
 - Denial of motion allowed, 23:63
 - Documentary proof refuting allegations, 23:63
 - Evidentiary hearings, 23:61
 - Factual issues and vacating of judgment, 23:61
 - Hearing, necessity for, 23:61
 - No legal basis for motion, 23:63
 - Notice of motion and affidavit/affirmation, 23:57
 - Notice to prosecution, 23:57
 - Repeated motions improper, 23:60
 - Right to counsel, 23:59
 - Time for motion, 23:58
 - Vacating of judgment, 23:61
 - Written requirement, 23:57
- Prosecutors
 - Duress by, 23:35
 - Fraud by, 23:35
 - Misrepresentation, 23:35
- Recantation evidence, 23:44
 - Newly discovered evidence, 23:44
- Rosario rule
 - Evidence outside record, 23:33
 - Nondisclosure issue, 23:33
- Scope of, 23:31
- State constitutional rights, violation of, 23:37
- Time to bring, 23:30
- Trial court
 - Procedural matters, 23:56-23:65
 - Ruling of trial court, 23:65
- Unconstitutional evidence, 23:37

**CPL 440.10 MOTION TO VACATE
JUDGMENT—Cont'd**

Vacating of judgment, 23:34, 23:61
Youthful offender, predicate felon status, 21:82

CREDIBILITY OF WITNESS

Defendant's, 12:10
Impeachment, Sandoval rules on, 11:15
Defense, 15:75
Interested witness charge, 19:194
Prosecutor's conduct, objections, 18:195, 18:199
Rehabilitation of witness, 18:66
Vouching for, prosecutor's summation, improper, 18:202
Youthful adjudications do not affect, 11:18

CRIME

Accomplice's presence at insufficient, 14:43
Attempted. See Attempts
Cross-examination of defendant, 15:75
Prosecution's introduction, effect of defenses on, 15:73
Rebuttal testimony, 15:74
State of mind, defendant's, impact of testimony, 15:76
Felony and misdemeanor only, defined as, 1:37
Unclassified felonies and misdemeanors, statutes defining, 1:41
Investigation by police, conditions, 1:44
Nonexistent or hypothetical crime, 16:26, 17:33
Prior crimes, 1:6
Reckless crimes, attempts not commission of, 16:29
Uncharged crimes, permissible use in proving guilt
See also Uncharged Crimes
Inextricably intertwined crimes, 12:21, 12:24

CRIME SCENE

Counsel's view of scene, 2:25
Defendant's right to be present, jury taken to, 19:11
Flight from, jury charge, 19:166
Jury and jurors, visit to crime scene
Unauthorized visit, motion to set aside verdict, 20:37
Jury charge and viewing of, 19:207
Photographs of, admissible to clarify testimony, 18:101

CRIME VICTIM

Assistance fee, 22:87
Mandatory assessment, 22:80
Mandatory Surcharge/Penalty/Victim Fee, 22:87
Restitution to, 22:72
Restitution to crime victim, barring, 22:85
Waiver of surcharge, no, 22:85

CRIME VICTIM—Cont'd

Restitution to. See Restitution to Crime Victim

CRIMINAL

Appeals. See Appeal
Case, progress of, 1:35-1:93
Felony, proceedings differ from lower offenses, 1:68
Charges. See Charges
Concurrent sentence required, 22:22
Consecutive sentences, 22:25
Constitutional provisions, federal and state, 1:5
Contempt. See Contempt
Law
Applicability, to persons age, 1:23
Governing authority, 1:1-1:6
New York State statutes governing, 1:2
Legal resources, 1:28
Liability, accomplice's, 14:41-14:57
Negligence, lesser included offenses, state of mind defined, 16:19
Proceedings, commencement on finalized date of retrial order, 24:65
Record. See Criminal Record
Reference books, 1:28
Relief sought in criminal case, 1:8
State, prosecution by, 1:7
Types available, 1:8

**CRIMINAL JUSTICE SERVICES, DIVISION
OF**

Defendant record copy, bail application, 4:66

CRIMINAL MISCHIEF

Defense of premises, 15:11
Justification defense, 15:7

CRIMINAL OFFENSE

See Offense

CRIMINAL RECORD

Arrest record voided by Department of Criminal Statistics, ACD, 22:38
Bail, juvenile record, effect, 4:52
Discovery of criminal history records, 8:118
Harsh and excessive sentence on appeal, factor considered, 22:186
Juvenile delinquents, adjudication, no criminal record, 21:8
Juvenile offenders, 21:3
Witness's, defense right to, 8:52
Youthful offender status, to spare defendant, criminal record, 21:78

CRIMINAL TRESPASS

Elements of, 16:4
Burglary 3rd degree and, compared, 16:4
Lesser included offenses, 16:4
Criminal Trespass 3rd degree, 16:4

CRIMINAL TRESPASS—Cont'd

- Lesser included offenses, 16:4—Cont'd
- Elements of criminal trespass, 16:4
- Physical force justifiable to stop criminal, 15:11

CRITICAL STATE

- See Counsel

CROSS-EXAMINATION

- Allocution, codefendant's, 14:53, 18:20
- Bias, 18:57
- Confrontation, 18:10, 18:20, 18:23, 18:39, 18:41
- Defendant's
 - Impeachment, 18:51
 - Prior crimes, Sandoval governing degree of, 1:6
 - Right to testify and, Sandoval compromise resolving conflict, 11:49
- Effective/ineffective assistance of counsel, 2:84
- Expert witnesses, 18:143
- Extent permitted on previous crimes or bad acts, defendant's decision to testify based on cross-examination, 11:1
- Generally, 18:54
- Good-faith basis required, 18:56
- Good faith, need for on part of questioner, 18:55
- Grand jury testimony, defendant's, 6:44, 6:59
- Hearing practice, 7:35
- Huntley hearings, at, suppression issue, 9:166
- Huntley hearings; cross-examination of police officer, 9:233
 - Probable cause hearing, stop of automobile in DWI case; cross-examination of police officer, 9:233
- Impeachment, 18:57
 - Collateral matters, none on, 18:63, 18:64
 - Prior inconsistent statements, 18:59
- Impeachment of defendant's credibility, 15:75
 - Intoxication defense, 15:75
 - Limitations, 15:75
 - People's cross-examination of defendant, 15:75
- Intervention by trial judge in examination of witness, 18:70
- Opening the door, 18:158
- Police officer's testimony, 18:56, 18:57
- Preliminary hearings, 5:3, 5:6
- Preparation for trial, 19:225
 - Jury charge, 19:191
- Prior convictions, on, defendant's testimony before grand jury, 6:59
- Prior inconsistent statements, 18:62
- Prosecution witnesses', at
 - Grand jury proceedings, 5:6
 - Preliminary hearings, 5:3, 5:6
- Readback of instructions or testimony, balanced, jury deliberations, 19:217

CROSS-EXAMINATION—Cont'd

- Recross, scope of, 18:54
- Redirect, scope of, 18:54
- Scope of, 18:54
- Time limits to present case, 18:70
- Trial, cross-examination of defendant, 18:52
- Youthful offender, adjudication, effect of, 21:86

CRUEL AND UNUSUAL PUNISHMENT

- High minimum sentence inappropriate for defendant's minor record, argument for, 22:176
 - Defendant sentenced as predicate felon, 22:193
 - Offense carrying mandatory minimum, 22:193

CULTS

- Lifestyle evidence, permissible use, uncharged crimes, 12:29

CULTURE

- Culture defense, state of mind, 15:14

CURFEW

- ROR defendant, 4:63

CUSTODY

- Arraignment
 - Defendant held after, conditions, 1:69
 - Defendant held until, 1:49
- Cases
 - Assigned counsel, 2:19
 - Effective assistance of counsel, right to, 2:55
- Chain of custody
 - Recordings, use for admissibility, 18:107
 - Violation, blood sample, 24:122
- Conviction, Class A felony, 4:73
 - Bail, effect of repeated escape, 4:52
 - Turning self in, counsel check with clerk on condition, 4:79
- Defendant
 - Binding over for grand jury, 1:69
 - Questioning of, conditions, Miranda, 1:6
 - Relief from, habeas corpus, 23:19
- Defined by objective standard, 9:127
 - Occurring beyond police building, 9:128
 - Statements made in custody, Miranda warnings required, 9:119-9:134
- Escape from
 - Statutory speedy trial, chargeable time, 13:36
- Miranda warnings required. See Miranda Warnings
- Preliminary hearing right within
 - Continued custody after, conditions, 1:69
- Preliminary hearing right within, 4:21
 - Weekend or holiday, 4:21
- Proceedings, assigned attorney as law guardian, representation at, 2:19

CUSTODY—Cont'd

- Reasonable cause for, preliminary hearing determines, 1:69
- Defendant bound over for grand jury, 1:69
- Release from, immediate, habeas corpus, 23:19

DARDEN HEARING

- Described, 9:83
- Report by hearing judge, 9:82

DATAMASTER

- Admissibility, 18:146
- See also Driving While Intoxicated (DWI)

DATE

- Amendment of, in indictment, prejudicing defendant, 3:74
- Committed, determines age and treatment, 21:7
- Habeas corpus petition, date and court, previous application, 23:23
- Identification, date and location, specified in prosecution's notice, 8:62
- Offense
 - Amendment of indictment, prejudicing defendant, 3:74
- Sentencing date, 1:83
- Statutory speedy trial readiness, date prosecution announces, 13:17

DEAF PERSONS

- Jurors, as prospective, 19:107

DEATH

- Appeal, 24:40
- Attorney-client relationship, 2:39
- Autopsy. See Autopsy
- Blood test with vehicular injury or death, 9:67
- Codefendant, constitutional speedy trial, prejudicial delay, 13:90
- Defendant's, case on appeal, conviction vacated, 24:40
- Exhumation, 8:27
- Victim, photographs of, use, 18:98
- Witness, noncritical defense, constitutional speedy trial not prejudiced, 13:90

DEATH PENALTY

- Murder, imposed for, 22:5
- Procedure, 22:5

DECLARATIONS AGAINST INTEREST

- Hearsay exception, 18:20, 18:21
- Private persons, statements to, admissible, 9:114

DECLARATORY JUDGMENT

- Writ of prohibition and, 23:7

DEFECTIVE VERDICTS

- See Verdicts

DEFENDANT

- Absent attorney, required informed consent, 2:44
- Absent defendant, 13:34
- Arrest, 13:36
- Bench warrants by prosecution, 13:36
- Chargeable time, 13:36
- Defined, 13:36
- Due diligence by prosecution, 13:36, 13:66
- Meaning of absent, 13:34
- Post-readiness delay, 13:66
- Relief for prosecution from burden of due diligence, 13:36
- Statutory speedy trial issues, 13:34-13:37
- Time tolled for commencing criminal action, 13:6
- Accomplices. See Accomplices
- Accusatory instrument, copy to, 4:17
- Advice of counsel, 2:35
 - Speedy response by counsel to appellate defendant's letter, 2:37
- Appellate process, involvement in, 24:36-24:38
 - Attorney's responsibilities vs., 24:37, 24:38
 - Death, vacatur on, 24:40
 - Decision to appeal, 2:36, 24:36
 - Deportation, dismissal on, 24:39
 - Inaction on appeal, 24:39
 - Incarcerated defendant request for trial transcript, 24:39
 - Pro se submissions, supplemental brief, 24:38
 - Disparaging pro se arguments, finding for appeal, 24:96, 24:97
 - Frivolous claims, defendant right to submit, 24:97
 - No absolute right to file, 24:39
 - Separate submission of frivolous claims, 24:97
 - Stipulation discontinuing appeal, 24:67
- Arraignment on special information, 3:24
 - Denial/admission of prior conviction, effect, 3:24
- Arraignment. See Arraignment
- Attorney-client conflict of interest, 2:42-2:57
- Attorney-client privilege, 2:39-2:41
- Attorney-client relationship, 2:36-2:46
- Bail
 - Statutory speedy trial
 - Pretrial release, 13:82
- Bail, 4:44-4:65
 - Community ties and, 4:66
 - Court appearance, first, 4:15-4:30
 - Delay in grand jury, ROR, 4:57
 - Denial possible, 4:52
 - Evaluation for bail, 4:66
 - Failure to appear, effect, 4:52
 - Financial resources, effect, 4:47
 - Record prior to application for, 4:66

DEFENDANT—Cont'd

- Bail, 4:44-4:65—Cont'd
 - Community ties and, 4:66—Cont'd
 - Verifiable address, 4:66
 - Worthiness, 4:66
 - Indictment arraignment, 4:28
 - Advisement of charges, 4:28
 - Notice of need to appear, 4:28
 - Jail time served, credit for, 4:47
 - Multiple charges, 4:47
- Body of, exhibited to jury, 11:6
- Burden of proof. *See* Burden of Proof
- Change of counsel, conflict of interest, 2:42
- Character of
 - Evidence, character as, 12:1
- Character witnesses for, 19:154
 - Good character evidence not defense, 19:153
 - Jury charge, 19:154
- Codefendants
 - Gomberg hearing, 2:47
 - Joint representation of, 2:47
 - Appeal, 2:49
- Collateral proceedings, writ of prohibition, 23:1-23:17
- Confidentiality, right to, 2:41
- Conflict of interest. *See* Conflict of Interest
- Consent to police search. *See* Mapp Hearing
- Convicted, right of appeal, 24:1
- Cooperation agreement, 14:3
- Coram nobis petition. *See* CPL 440.10 Motion to Vacate Judgment
- Counsel, communication with counsel, 2:35, 2:37
 - Improper to bar consultation, 2:41
 - Unconventional trial tactics, 2:73
- Counsel, effective assistance of counsel, right to, 2:55
- Courtroom clothing, 19:54
- Criminal defendant, low income represented by
 - Legal Aid Society, 2:18
- Criminal record, ACD disposition, 22:43
- Cross-examination on prior crimes, Sandoval governing, 1:6
- Custody, 1:6, 23:19
- Death, conviction vacated, 24:40
- Decisions by, 2:36-2:44
 - Incapacitated defendant, 2:44
 - Waiver by attorney of certain defendant rights, none, 2:43
- Defenses. *See* Defense
- Deportation, dismissal of appeal, 24:39
- Discovery, entitlement. *See* Discovery
- Disruptive conduct of, restraints, 19:27-19:29
- Due diligence, issues, defendant could not “with due diligence” have been aware, effect on motions, 7:4

DEFENDANT—Cont'd

- Extradition from other jurisdiction, speedy trial, 13:67, 13:98
 - Defendant’s right to extradition within 180 days, 13:98
- Failure to testify, jury charge on, 19:160
- Felony defendant
 - Unincarcerated, not entitled to preliminary hearing, 5:1
- Fugitive defendant, time tolled for commencing criminal action, 13:6
- Grand jury
 - Bound over to, release, 6:25
 - Held for, conditions, 3:18
 - Testimony. *See* Grand Jury
- Guilty plea
 - Right of appeal on, 24:3-24:8
 - Withdrawal of, 17:63-17:72
- Guilty pleas, removal to Family Court following, 21:56
 - Lower offenses, grand jury request for juvenile delinquents charges rather than juvenile offender charge, 21:51
 - Removal to Family Court, 21:44
- Habeas corpus. *See* Habeas corpus
- Identification
 - Evidence, notice of, pursuant to CPL 710.30, 1:56
 - Grand jury evidence. *See* Identification
 - Police-initiated. *See* Wade Hearing
 - Suppression. *See* Identification of Defendant, Suppression
- Illness, defendant’s; trial delay or defendant exempt from appearance, 19:30
- Incapacitation of, decision-making by attorney, 2:44
- Indicted, grand jury proceeding with, motion to dismiss, 7:15
 - Issues defendant could not “with due diligence” have been aware, effect of, 7:4
 - With counsel or pro se representation, 7:2
 - Without representation at arraignment, 7:2
 - No opportunity for defendant to testify, 7:17
 - Notice to defendant, failure of, 7:17
 - Time limit, critical, 7:18
- Indictment, notice of, 4:28
- Indigent. *See* Indigent Defendant
- Informed defendant, pre-trial necessity, 2:35
- Irreparable harm to, writ of prohibition, 23:9
- Jailed. *See* Imprisonment
- Juvenile defendant, charged in Family Court, 1:23
- Juvenile offenders
 - See also* Juvenile Offenders

DEFENDANT—Cont'd

- Lesser included offenses, Green/Glover two-prong test, evaluation, defendant's statements, 16:17
- Level, involvement in crime, level, punishment not affected, 1:52
- Multiple defendants
 - Cases severed, 1:52
 - Level of involvement not affecting level of punishment, 1:52
 - Prosecuted together, 1:52
 - Punishment, level of, same, 1:52
 - Trials, Parker warnings, exception to
- Notice to, counsel's withdrawal from representation, 2:52
- Omnibus motion
 - Time for filing, 3:61
- Out-of-state defendant, time tolled for commencing criminal action, 13:6
- Overcharging (bootstrapping), described, 3:48
- Photographing, procedure for, 1:48
- Plea bargaining. *See* Plea Bargaining
- Prejudiced by amendment, 3:74
- Preliminary hearing, right to, 4:21
 - Bail, between sentencing and conviction, 4:82
- Pretrial hearing, 7:42-7:52
 - Presence at, 7:33
 - Affirmation of defense counsel, use of, 7:37
 - Burden of proof, 7:38
 - Transcript requests, 7:36
 - Use at trial, 7:36-7:38
 - Pretrial hearing transcript request, 7:36
 - Self-incrimination privilege, 7:36
 - Voluntariness of defendant's, 7:45
 - Burden of proof, 7:38
 - Defense counsel's affirmation, use of, 7:37
 - Suppression hearing, 7:36-7:38
- Prior conviction as evidence, 12:1, 12:4, 12:9
 - See also* Evidence
- Prior crimes
 - Cross-examination on, Sandoval governing, 1:6
 - Use in proving guilt, Molineux regulating, 1:6
- Pro se motions, 2:13
 - Defense awareness and discussion with defendant, 2:13
 - Defense refusal, court denial, 2:13
- Pro se representation
 - See also* Pro Se Representation
 - Defendant, omnibus motion, time for, 3:61
 - Right to, 1:20
- Questioning
 - In custody, conditions, Miranda, 1:6
 - Police questioning prior to arrest, 1:44
 - Miranda rights, failure to advise, 1:44

DEFENDANT—Cont'd

- Rap sheet, aid in preparing Sandoval motion, 11:37
- Recantation, witness' testimony, entitlement to hearing, 20:41
- Release
 - Defendant bound over to grand jury, 6:25
 - Without bail, time for arraignment, 1:53
- Release on
 - Own recognizance (ROR). *See* Release on Own Recognizance (ROR)
- Right of appeal. *See* Appeal
- Rights. *See* Defendant's Right to
- Right to be present. *See* Defendant's Right to Be Present
- Sandoval Rules. *See* Sandoval Rules
- Self-improvement, great, factor, harsh and excessive sentence on appeal, 22:186
 - Punishment increased by court, 22:160
- Self interest above society's, impeachment, 11:15
- Speedy trial, constitutional
 - Defendant attempt to avoid apprehension, 13:87
 - Delay by defendant, determination, 13:87
- Speedy trial, statutory
 - Absent or unavailable defendant, time exclusion issue, 13:34-13:37
 - Bench warrants, 13:36
 - Due diligence by prosecution, 13:66
 - Post-readiness delay, 13:66
- Codefendants, joinder for trial with, 13:37
 - Adjournment, consent by one/no consent by other, 13:38
 - Differing total time for codefendants, 13:38
- Defendant without counsel, 13:38
- Other proceedings, defendant's, not charged to People, 13:30-13:32
- Release pending trial, People failure to proceed, timely, 13:24, 13:67, 13:82
 - Exception to release rule, 13:82
- Statements by
 - Suppression. *See* Defendant's Statements, Suppression
 - Used as evidence, notice of, CPL 710.30, 1:56
- Voluntariness of defendant's
 - See also* Huntley Hearing
 - Failure to instruct grand jury on, 6:52
- Surrender to serve sentence, untimely perfection of appeal on stay, 4:84
- Testimony of
 - Defendant's decision. *See* Defendant's Decision to Testify
 - Defense obligation to notify prosecution, 6:32
 - First trial defendant testimony used by retrial prosecution, 24:125
 - Defendant objection, 24:125

DEFENDANT—Cont'd

- Testimony of—Cont'd
 - First trial defendant testimony used by retrial prosecution, 24:125—Cont'd
 - Prosecution's burden of proof, 24:125
 - Grand jury proceedings. See Grand Jury
 - Mentally ill defendant, 6:32
 - Opportunity to testify, 6:38
 - Prosecution's obligation to notify, 6:33
 - Request to testify, 6:39-6:43
 - Restraints used, defendant with history of assaultive behavior, 6:45
 - Right to, 6:1
- Unavailable defendant, statutory speedy trial issues, 13:34
 - Meaning of unavailable, 13:34
 - Time tolled for commencing action, 13:6
 - Unavailable defendant, defined, 13:36
- Uncharged crimes. See Uncharged Crimes
- Verdict, motions to set aside
 - Recantation of testimony, witness', entitlement to hearing, 20:41
- Waiver of certain rights barred, 2:43
- Youthful offender, eligibility for status, defendant's right, 21:72

DEFENDANT'S DECISION TO TESTIFY

- Effect of on trial, 11:38
- Jury charge on defendant's failure to testify
 - See also Jury Charge
- Jury charge on defendant's failure to testify, 19:160
- Need to, 11:5
- Right to testify, 2:36
- Sandoval rules, 11:1, 11:36, 11:37
 - See also Sandoval Rules subhead: Burden of proof

DEFENDANT'S RIGHT TO

- Address court before sentence imposed, 22:176
- Appeal. See Appeal
- Call witnesses, 18:39
- Confront accusers, 17:37
- Counsel, 4:19
 - Adjournment to obtain, 4:20
 - Free communication to obtain, 4:19
 - Knowledge of collateral effects of conviction, issue, 4:17
- Court advising defendant of rights, 2:45
- Deposition, supporting, officer's, traffic case, 3:7
 - Purpose, 3:7
- Hearing, challenging prior convictions in presentencing statement, 22:131
 - Conviction resulting from plea bargain, challenged, 22:132

DEFENDANT'S RIGHT TO—Cont'd

- Indictment by grand jury
 - Waiver, effect, 3:16
 - Barred for Class A felony, 3:18
- Preliminary hearing
 - Felony case, 1:69
- Present a defense, 18:39
- Prosecution by information, waived, effect, 3:10
 - Release, failing timely conversion of misdemeanor complaint into information, 3:11
 - Speedy trial time not tolled by dismissal of defective instrument, 3:78
- Testify, 18:50
 - Deciding whether to testify, 2:36
- Trial by jury
 - 12 person jury; misdemeanor indictment, 3:9
- Waived
 - Bench trial over jury trial, 1:80
- Ventimiglia hearing, right to attend, 12:3

DEFENDANT'S RIGHT TO BE PRESENT

- Appeal, as issue on, 19:26
 - Effect, 19:11
 - Jury instructions on, 19:25
- Bench conference with juror, 19:86
- Disruptive conduct, defendant's, effect, 19:27
- Exceptions. See subhead: Jury selection
- Hearings, during, 19:11
- Illness, defendant's; trial delay or defendant exempt from appearance, 19:30
- Instructions to jury, 19:11
 - Absence of defendant, 19:25
- Interpreter, right to presence of, 19:14
- Jury disqualification, in camera inquiry, defendant's presence not required, 19:129
- Jury selection, when defendant's presence required, 19:15
 - Bench conference with juror, 19:86
- Overview, 19:11
- Parker warnings
 - See also Parker Warnings
- Parker warnings, 19:18-19:24
 - Hearings, 19:11
 - Presence not required at some, 19:17
 - Post-trial hearings, 19:11
 - Pretrial proceedings, 19:17
 - Proceedings, presence not required at some, 19:17
 - Publicity, during questioning prospective jurors on, 19:11
- Plea, presence at, 17:42-17:46
 - See also Guilty Plea
- Readback of testimony, during, 19:11
- Scene of crime, jury viewing, 19:11
- Sentencing, presence at, 22:176
- Sidebar conferences, 19:13

DEFENDANT'S RIGHT TO BE PRESENT

—Cont'd

- Substantive matters, 19:11
- Supplemental instructions, during, 19:11
- Voir dire, during, 19:11
- Waiver of right, 19:11
 - Appellate review, precluding, 19:26
 - Bench conference with juror, 19:86
 - Counsel, by, 19:19
 - Knowing, voluntary and intelligent decision requirement, 19:18
 - Oral agreement, 19:19
 - Written agreement, 19:19

DEFENDANT'S STATEMENT

- Corroboration, 19:158
- Mediation, statement made in, 18:23
- Suppression of Evidence
 - See also Defendant's Statements, Suppression
 - Suppression of Evidence, 9:101-9:178

DEFENDANT'S STATEMENTS, SUPPRESSION

- Arrest at resident, suppression based on; Payton case, 9:149
- Attorneys, commencement of case, no questioning in absence of counsel
 - See subhead: Commencement of case
 - Right to. See subhead: Miranda warnings required
- Coercion, 9:109
- Commencement of case, no questioning in absence of counsel, 9:139
 - Accusatory instrument, commencement upon filing, 9:139
 - Critical stages, defendant entitled to counsel at, 9:139
 - No questioning before commencement, 9:139
 - No waiver of rights, 9:143
 - Waiver allowed if representation for other charges, 9:143
- Completeness, rule of, 18:70, 18:71
- Confession and admission distinguished, 9:102
- Confession distinguished, 9:102
 - Oral or written form, 9:102
- Consent, 9:107
- Controvert warrant, motion to, 9:111
- Cross-examination, 9:170
 - Isolation of youthful defendant without official concealment, 9:113
 - Telephone call staged to secure full confession, 9:112
 - Youthful defendant, concealing, improper, 9:113
- Derivative use, 9:170
- Described, 9:101

DEFENDANT'S STATEMENTS, SUPPRESSION—Cont'd

- Detention, suppression based on; Dunaway case, 9:148
- Drug use before making statement, admissibility, 9:146
- Dunaway case; suppression based on detention, 9:148
- Exculpatory circumstances, silence concerning, use at trial, 9:139
- Exculpatory part of statement, admissibility, 9:178
- Expert testimony on confessions, admissibility of, 9:168
- False confession syndrome, 18:139
- Force, statement obtained through, barred, 9:174
- Fourth Amendment, potential for suppression under, 9:147
 - Another person making statement seven hours after defendant's arrest, 9:152
 - Causal connection between statement and violation, statement inadmissible, 9:150
 - Fingerprint report presented between illegal arrest and statement, 9:152
 - Grand jury, youthful defendant's statement before well after questioning, 9:152
 - Illegal entry by police and defendant's confession, causal connection missing, 9:152
 - Intervening event supporting, 9:152
 - Miranda warnings given twice during eight-hour period between arrest and statement, 9:152
 - Causal connection between statement and violation, statement admissible, 9:150
 - Fruit of poisonous tree, violation as, 9:150
 - Miranda warnings, violation preceding, 9:151
 - Violation of amendment, suppression, 9:150
- Gestures and actions accompanying, 9:140
 - Pre-indictment suppression motion possible, 9:177
- Suppressed statements, use of, 9:176
- Youthful offender's statement made well after questioning, potential for suppression, 9:152
- Huntley hearings, 9:166
 - Cross-examination at, 9:166
- Force, statement obtained through barred, 9:174
- Grand jury proceedings, statements suppressed as result of hearing used at, 9:176
- Hearsay admissible, 9:166
- Miranda, statement violative of, using, 9:173
- Proof beyond a reasonable doubt, prosecution's burden, 9:166
- Reference to statement by defense, cross-examination to clarify issue, 9:166

**DEFENDANT'S STATEMENTS,
SUPPRESSION—Cont'd**

- Huntley hearings, 9:166—Cont'd
 - Suppression order issued, use of statement at trial limited, 9:170
 - Truth of statement irrelevant, 9:166
- Incriminating statements, prosecution's introduction of, 9:101
- Internal affairs, admissibility of statements to, 9:145
- Intoxicated defendant, suppression, 9:146
- Involuntary statements inadmissible
 - Huntley hearings to determine voluntariness. See subhead: Huntley hearings
 - Private persons, statements to. See subhead: Private persons, statements to
- Involuntary statements inadmissible, 9:107-9:110
 - Assistant district attorney, promise made by binding, 9:110
- Coercion, 9:109
 - Injuries to defendant while in custody, 9:108
 - Private persons, statements to, 9:116
 - Use of statement obtained through barred, 9:175
- CPL 60.45 provisions, 9:107
- Deception, level of, determining suppressibility, 9:112
- Injuries to defendant while in custody, 9:108
 - Psychological coercion, 9:109
- Law enforcement promise, impact on suppression, 9:110
- Notice to defense for using statement, prosecution's failure to give, objection statement involuntary, 9:107
- Private testimony of inadmissible confession barred, 9:117
- Voluntariness of statement, jury consideration, 9:167
- Jury disregarding defendant's statement as involuntary, 2:86
- Jury disregarding defendant's statement as involuntary, 9:167
- Miranda warnings required, defendant in custody, 9:119
 - Attenuation, warnings given twice in eight-hour period between arrest and statement, 9:152
 - Ceasing interrogation, 9:132
 - Insufficient request, 9:132
 - Prosecution prohibited from introducing as evidence, 9:137
 - Custody defined by objective standard, 9:127
 - Amount of time spent with police, 9:127
 - Constitutional rights, whether individual apprised of, 9:124
 - Cooperation, degree of, 9:127

**DEFENDANT'S STATEMENTS,
SUPPRESSION—Cont'd**

- Miranda warnings required, defendant in custody, 9:119—Cont'd
 - Custody defined by objective standard, 9:127—Cont'd
 - Freedom of action restricted significantly, whether individual's, 9:127
 - Nature of questioning, 9:127
 - Police officer's admission, defendant not free to leave, 9:128
 - Subjective beliefs of defendant and police not controlling, 9:128
 - Custody occurring beyond police building, 9:128
 - Inmate already in custody, questioning, 9:128
 - Deficient warnings, suppression, 9:119
 - Denial of motion, appeals, 9:169
 - Waiver of right, 9:169
 - Findings of fact required, 9:165
 - Fourth Amendment violation preceding, potential for suppression, 9:151
 - Inapplicable, Miranda, 9:129
 - "Pedigree"questioning, 9:134
 - Traffic stops, routine, 9:133
 - Inmate already in custody, questioning, 9:128
 - Interrogation split, before and after warnings, 9:126
 - Interpreting term interrogation expansively, 9:125
 - Not giving warning, suppression, 9:119
 - Notice for using defendant's statement, 9:160
 - "Pedigree"questioning, warnings not required, 9:134
 - Prosecution trial evidence, limitations, 9:137
 - Spontaneous statements admissible, 9:122
 - Testimony by defendant statement violative of Miranda, impeachment of defendant, 9:173
 - Timing, 9:164
 - Traffic stop, defendant required to pull car into safety zone, warnings required, 9:133
 - Understanding warnings irrelevant, 9:124
 - Unlawful arrest, spontaneous statements in response to, inadmissible, 9:122
 - Unpressured election to speak, defendant's right to make, 9:119
 - Rights, 9:122
 - Warning, statements admissible, 9:119
 - Multiagency cooperation, 9:114
 - Notice to defense, use of statement, 9:152
 - Contents of notice, 9:158
 - Exceptions to requirement, 9:160
 - Expert testimony on confessions, admissibility of, 9:168

**DEFENDANT'S STATEMENTS,
SUPPRESSION—Cont'd**

- Notice to defense, use of statement, 9:152
 - Cont'd
- Guilty plea waiving issue of timeliness, 9:157
- No notice, objection statement involuntary, 9:152
- Purpose, 9:152
- Time limit on prosecution strictly construed, 9:156
 - Failure to timely notice, impact, 9:156
 - Guilty plea waiving issue of timeliness, 9:157
- Preclusion issue, 9:157
- Sanctions for failure to give timely notice, 9:157
- Out-of-court exculpatory statement, admissibility, 9:178
- Overheard conversation, admissibility of, 9:123
- Payton case; suppression based on arrest at resident, 9:149
- Pre-indictment suppression motion possible, 9:177
- Prior inconsistent statements to impeach defendant's credibility, use as, 9:170
 - Agency, 9:114
- Coerced statements inadmissible, 9:116
- Declaration against interest, admissible as, 9:114
 - Informant, private person is, 9:114
 - Limiting instructions to jury, 9:172
 - Police agent, private person is, 9:114
 - Procedure, 9:172
- Procedural considerations, 9:154-9:178
- Public safety exception, 9:19
 - No waiver of rights, 9:143
 - Unrelated charges, statements on, admissibility, 9:144
 - Waiver of rights allowed if representation for other charges, 9:143
- Resident, suppression based on arrest at; Payton case, 9:149
- Search and seizure. See subhead: Fourth Amendment
- Self-incrimination privilege and prosecution's use of statements, 9:104
 - Custody, statement obtained while defendant in, 9:104
 - Improperly obtained statement, defense belief, 9:106
 - Notice to defense, 9:106
 - Transactional immunity, statement compelled, exception, 9:105
 - Trial, use at, 9:104
 - Voluntarily made statement, 9:104

**DEFENDANT'S STATEMENTS,
SUPPRESSION—Cont'd**

- Spontaneous statements admissible, 9:160
 - People's case in chief, use of statement to establish prohibited, 9:170
- Strict limitations on use of suppressed statements
 - Prior inconsistent statements, use as. See subhead: Prior inconsistent statements to impeach defendant's credibility, use as
- Suppression motion. See subhead: Motion to suppress
- Telephone, statement overheard, 9:123
- Unrelated charges, statements on, 9:144
- Unrepresented defendant, statements on unrelated charges admissible, 9:144
- Unsigned statement inadmissible, 9:103
 - Appeal, right of, waived, 9:169
 - Guilty plea, 9:169
 - Miranda warnings, statements admissible, 9:119
 - Represented defendant, no waiver of rights, 9:143

DEFENSE ATTORNEY

- Absent defense attorney and representation by codefendant attorney, defendant consent, 2:44
- Affirmation of defense counsel submitted in support of pretrial motion, 7:37
 - Pretrial motion, 7:38
 - Time within which to bring, 7:2
- Appeal, function of and issues. See Appellate Attorney
- Arraignment
 - Bail setting. See subhead: Bail
- Assigned. See Attorney subhead: Assigned
- Attorney informed, 4:28
 - Alternative forms, 4:60
 - Delay of, oral request, 4:66
 - Oral application, 4:66
 - Preparation for, checklist, 4:66
 - Request and notice to prosecution, 4:71
 - True change of circumstances, 4:71
 - Defendant evaluation, 4:66
 - Defendant notified, 4:79
 - Defense right to be heard, 4:59
 - Misuse, defense awareness and action, 4:48
 - Determination, 4:75
 - Superior court vs. habeas corpus, 4:76
 - Status, request, 4:72
- Burden of proof
 - Newly discovered evidence, 20:39
- Complainant, questioning, 1:63
- Defense counsel, grand jury
 - Consideration of lesser included offenses, advice by counsel, 16:32
- Investigation of, 2:63, 2:80

DEFENSE ATTORNEY—Cont'd

- Defense counsel, grand jury—Cont'd
 - Minutes, motion for inspection, 6:61-6:88
 - Proceedings, counsel's limited role, 6:40
- Detention misuse, awareness and action, 4:48
- Disqualification by judge, writ of prohibition denied, 23:10
- District attorney's office, employment by, withdrawal from representation, 2:51
- Dropping charges, complainant contacting attorney for; affidavit, 1:65
- Duty to advise defendant, 24:15, 24:16
 - All levels of offenses, 24:15
 - Failure, 24:15
 - Notice of right to appeal, 24:15
 - Waiver of right, duty to remain even where, 24:16
 - In writing, 24:15
- Effective assistance. *See* Effective Assistance of Counsel
- Entry Into Case. *See* Attorney
- Ethical issues, 1:21
- Improper conduct
 - Arguing, issues outside record on appeal, 24:31
- Malpractice, 2:87
 - See also* Malpractice
- Motions to dismiss
 - Speedy trial
 - See also* Speedy Trial
 - Combined constitutional and statutory grounds, 13:20
 - Constitutional grounds, 13:91, 13:92
 - Further prosecution precluded, constitutional grounds, 13:20, 13:83
 - Statutory grounds, 13:17, 13:19, 13:68-13:79
 - Traffic infractions, 13:26
- Motions to set aside verdict
 - Appeal by prosecution, 20:45
- Newly discovered evidence
 - Burden of proof, 20:39
 - Failure to show due diligence, 20:40
- Newly discovered evidence
 - Burden of proof, 20:39
 - Failure to show due diligence, 20:40
- Nonexistent crime, objection or motion before jury discharge, 20:14
- Omnibus motions
 - Statute of limitations time-barred action, motion to dismiss, 13:11
- Organizations, defense, list of, 1:18
- Preaccusatory representation, 2:61
- Pro se motions
 - Defense awareness and discussion with defendant, 2:13

DEFENSE ATTORNEY—Cont'd

- Pro se motions—Cont'd
 - Defense refusal, court denial, 2:13
- Reading of charges, waiver, 4:17
 - Application for, 4:55
 - Oral request by defense in prosecutor presence, 4:55
- Rehearing, motion for, new evidence after hearing, 7:42
- Repugnant verdicts, motion for preservation of repugnancy
 - Bench trial, 20:10
 - Jury trial, 20:10
- Retained
 - Breach of contract of representation, 2:51
 - Unpaid fees, retained attorney assigned due to, 2:51
- Retrial
 - Strategic decisions and ruling of first trial and, 24:125
 - Trial rulings, advantage of advancing unfavorable prior rulings as, 24:120
- Rosario material, prosecution witness' pretrial testimony, 7:1
- Second attorney, motion to reopen suppression hearing by, 7:48
 - Defense provided with, 7:1
 - Indigent defendant, free transcript for, 7:1
- See also* Appellate Attorney
- See also* Attorney
- See also* Counsel
- Statute of limitations time-barred action, raising issue in pretrial motion to dismiss, 13:11
- Client approval of substitution of attorney form, 2:67
- Testifying, 15:39
- Vicarious admissions, 18:57, 24:125
- Withdrawal from representation, 2:59-2:67
 - Application to withdraw, 2:66
 - Notice to defendant, 2:66
 - Trial court, made to, 2:66
 - Court permission for unilateral action, 2:67
 - Denial of permission, 2:67
 - Disagreements, strategic, 2:60
 - District attorney's office, employment by, 2:63
 - Divergence of client and attorney interests, 2:59
 - Ethical barrier, court permission, 2:67
 - Irreconcilable conflict of interest, 2:62
 - Order to show cause, 2:66
 - Reasons, 2:59
 - Poor relationship, 2:64
 - Strategy, 2:60
 - Retained counsel, breach of contract by, 2:65
 - Speedy trial vs., 2:67

DEFENSE ATTORNEY—Cont'd

- Withdrawal from representation, 2:59-2:67
 - Cont'd
 - Substitution of attorney form, client approval, 2:67

DEFENSE ORGANIZATIONS

- List of, 1:18

DEFENSES

- Adjournment, request for
 - See also Adjournment
- Adjournment, request for, 19:44-19:50
- Admissibility of evidence
 - Prior crimes
 - See subhead: Prior crimes, admissibility
 - Self-defense. See Self-Defense
- Affirmative defenses. See Affirmative Defense
- Agency defense
 - See also Agency
- Agency defense, 15:64-15:70
- Alibi evidence
 - See also Alibi
- Alibi evidence, 15:34
 - Alibi defense, 15:39
 - Jury instructions on, 15:80
 - Ordinary, 15:3
 - Ordinary defenses, 15:3
 - Statutory, 15:3
- Allocution, raised during, 17:29
- Antagonistic, codefendants, severance, 14:32
- Bill of particulars
 - May be requested, 1:72
- Burden of proof
 - Affirmative defenses. See Affirmative Defense
 - Beyond a reasonable doubt. See subhead: Proof beyond a reasonable doubt
 - Defendant's burden. See Affirmative Defense
- Character, evidence of good character no defense to charged offense, jury charge, 19:153
- Choice of evils defense
 - See also Necessity Defense
- Choice of evils defense, 15:30
- Claim of right, 15:70
- Codefendants. See Codefendants subhead: Defenses
- Common law
 - See also Due Process Defense and individual defenses, Agency Defense
- Common law, 15:4
 - Types of, 15:4, 15:64-15:70
- Constitutional challenges
 - See also Constitutional Challenges
- Constitutional challenges, 15:68, 15:85-15:100
- Constructive possession, 15:66
 - Admissibility of evidence, effect of defenses, 15:75

DEFENSES—Cont'd

- Constructive possession, 15:66—Cont'd
- Impeachment of defendant's credibility, 15:75
- Intoxication defense, 15:75
- Limitations, 15:75
- People's cross-examination of defendant, 15:75
- Cross-examination of defendant, 15:75
- Effect of defenses on, 15:72
 - Cross-examination of defendant, 15:75
 - Defense case, on, 15:76
 - Entrapment defense, hearsay evidence, 15:76
 - Prior crimes, defendant's, prosecution's introduction, 15:73
 - Rebuttal testimony, 15:74
 - State of mind, defendant's, impact of testimony, 15:76
 - Rebuttal testimony by prosecution, 15:74
- Discovery issues. See Discovery
- Discussion with client on possible, 15:1
- Drugs. See Drugs subhead: Defense to
- Dual defenses
 - See also Dual Defense
- Dual defenses, 15:71
- Due process, 15:67
- Duress
 - See also Duress
- Duress, 15:43
- Emergency defense
 - See also Necessity Defense
- Emergency defense, 15:30
- Entrapment defense
 - See also Entrapment Defense
- Entrapment defense, 15:42
- Equal protection, 15:68
 - Intoxication, 15:46
 - Mental disease or defect defense, expert evidence and opinion, 15:57
 - Defendant's burden, affirmative defense, 15:3
 - Venue, prosecution's burden to establish, 15:48
- Evidence
 - Admissibility. See subhead: Admissibility of evidence
 - Burden of proof. See subhead: Burden of proof
 - Intoxication
 - See also Intoxication Defense
 - Extreme emotional disturbance defense, psychiatrist as rebuttal witness, 15:74
 - Facts pointing to, defense waived knowingly, 15:1
 - Frame up, assertion of, admissibility under Molineux, effect of defense on, 12:21

DEFENSES—Cont'd

Grand jury proceedings. See Grand Jury Proceedings subhead: Defenses asserted at

Infancy defense, 21:11

Insanity defense, notice to prosecution required, 1:45

Intent, 12:13-12:18, 12:21

 Uncharged crimes, permissible use of, 12:13-12:18

 Admissibility under Molineux, effect of defense on, 12:21

Intoxication defense

 See also Intoxication Defense

Intoxication defense, 15:46

Items available to defense in, 8:122

Jurisdiction, 15:47

 Burden of proof, 15:80

 Court determination for submission to jury, 15:78

 Sufficiency of evidence, 15:79

 Insufficient evidence, no instructions, 15:84

 Lesser included offense, 15:83

 Lesser included offenses, 15:83

 Over defense objection, 15:81

 Quantum of evidence required for, 15:77

Jury charge. See Jury Charge subhead: Defenses

Justification defense

 See also Justification Defense

Justification defense, 15:5-15:31

Larceny-related prosecution, claim of right in, 15:70

Lesser included offenses and

 See also Lesser Included Offenses

 Grand jury advice by counsel, 16:32

 Jury charge, 16:41, 16:46

Lesser included offenses and, 15:55

Malpractice, 2:87

 Collateral estoppel, 2:87

 Discharged counsel, 2:87

Mental disease or defect defense

 See also Mental Disease or Defect Defense

Mental disease or defect defense, 15:50-15:63

 Justification defense, application to criminal mischief, 15:11

 Premises, defense of, deadly force prohibited, 15:11

Mitigating defenses, 6:56

 See also Mitigating Defense

Motions. See Motions

Mutually exclusive defenses, codefendants, motions for severance, 14:33, 14:34

Necessity defense

 See also Necessity Defense

Necessity defense, 15:30

DEFENSES—Cont'd

Not guilty plea

 Mental disease or defect defense

 See also Mental Disease or Defect Defense

Not guilty plea, 15:1

 Alibi defense, pretrial notice, 15:37

 Mental disease or defect defense, 15:54-15:56

 Mental disease or defect defense, 15:53

Notice to prosecution

 Alibi defense, pretrial notice

 See also Alibi

 Psychiatric evidence, use of

 Mental disease or defect defense

 See also Mental Disease or Defect Defense

Operability of weapon defense

 See also Operability of Weapon Defense

Operability of weapon defense, 15:65

 Justification defense, 15:31

Photographs, use to rebut defenses, 18:97

Preliminary hearing

 Length of, tension between prosecution and defense, 5:14

 Position at, 5:14

 Presentation by, 5:4

 Rights at. See Preliminary Hearing subhead: Defense

 Witnesses at, 5:4

Premises, defense of

 See also Premises, Defense of

Premises, defense of, 15:10-15:12

 Affirmative defense, defense's burden to establish, 15:3

 Alibi defense, 15:33

 Alibi defense, prosecution to provide list, 15:37

 Constitutional challenges, 15:88

 Cross-examination of defendant, 15:75

 Extreme emotional disturbance defense, psychiatrist as rebuttal witness, 15:74

 Mental disease or defect defense, 15:54-15:56

 Justification, 15:6

 Not guilty plea, 15:1

 Prosecution's, 15:74

 Prosecution's introduction, effect of defenses on, 15:73

 Venue, prosecution's burden to establish, 15:48

Psychiatric defense. See Psychiatric Defense

Psychiatric evidence, use of

 Notice to prosecution

 Mental disease or defect defense

 See also Mental Disease or Defect Defense

Renunciation, 15:44

DEFENSES—Cont'd

- Selective prosecution
 - See also Selective Prosecution Defense
- Selective prosecution, 15:68
- Self-defense
 - See also Self-Defense
- Self-defense, 15:5, 15:14-15:31
 - Entrapment defense, relevance in, 15:76
 - Justification defense, 15:73
 - Self-defense, 15:20
- Statute of limitations, 15:49
- Statutory, 15:2
 - Affirmative vs. ordinary defenses, 15:3
 - Jurisdiction, 15:47
 - Ordinary vs. affirmative defenses, 15:3
- Temporary innocent possession defense
 - See also Temporary Innocent Possession Defense
- Temporary innocent possession defense, 15:66
- Uncharged crimes, permissible use in proving guilt, admissibility under Molineux, effect of defense on, 12:21, 12:22
- Venue, establishing by preponderance of evidence, 15:48
 - Alibi defense, list of witnesses, 15:37
 - Operability of, 15:65
 - Temporary innocent possession defense, 15:66
- Waiver of, guilty plea, 17:37
- Weapons
 - Temporary innocent possession defense
 - See also Temporary Innocent Possession Defense
- Witness
 - Credibility of witness. See subhead: Credibility of witness
 - Rebuttal testimony. See subhead: Rebuttal testimony

DELAYS

- Automobile search, 9:48
- Bail application, 4:66
- Bench trial verdict, 20:20
- Detention of defendant, 9:25
- Grand jury action, ROR on, 4:57
- Search warrant, 9:91
- See also Adjournment
- Statutory speedy trial. See Trial, Statutory Speedy Trial

DELINQUENCY PROCEEDINGS

- Assigned attorney as law guardian, representation at, 2:19
- See also Juvenile Delinquents

DEMONSTRATIONS

- Admissibility of, 18:76

DEMONSTRATIVE EVIDENCE

- See Real Evidence

DENTAL EVIDENCE

- See Biting

DEPARTMENT OF MOTOR VEHICLES

- See Automobile
- See Chemical Tests
- See Driver's License
- See Driving Privileges
- See Driving While Ability Impaired
- See Driving While Intoxicated

DEPORTATION

- Consequence of conviction, interest of justice dismissal not justified, 7:23
- Defendant's, appeal dismissed, 24:39
- Early release, 22:14
- Fugitive disentitlement doctrine, 24:39

DEPOSITION

- Ancillary document to accusatory instrument, 3:29
- Described, 3:29
- Local court information, supplemented by, 3:29
- Traffic ticket, supporting deposition. See Traffic Ticket

DEPRAVED INDIFFERENCE

- Murder 2nd degree, juvenile offenders, 21:28
- Uncharged crimes, permissible use of as evidence, 12:25

DETAINEES

- Speedy trial
 - Interstate Agreement on Detainers, 13:98
- Warrantless police intrusion
 - See also Warrantless Police Intrusion
- Warrantless police intrusion, 9:25

DETENTION

- Bail impermissible as preventive, 4:48
- Custody. See Custody
- Mental health issues at arraignment, 4:29
- Misuse, attempts, 4:48
- Suppression of statement based on illegal detention; Dunaway case, 9:148

DIARY

- Discovery disallowed, 8:87
- In camera inspection, 8:86
- Rosario inapplicable, 8:47
- State of mind, 18:5

DIRECT APPEALS

- See Appeal

DIRECT EXAMINATION

- Huntley hearings; direct examination of police officer, 9:231
- Probable cause hearing, DWI case; direct examination of police officer, 9:232
- Opening the door, 18:158
- Readback of instructions or testimony, balanced, jury deliberations, 19:217
- Redirect, scope of, 18:54

DISABILITIES

- Community service, 22:34
- Jury service, 19:107
- Sentencing, certificate of relief from disabilities at time of, 22:209

DISCOVERY

- 2020 changes in law, 8:1
- Access orders, 8:18
- Accident reports, 8:119
- Affidavit and, discovery by defense, 9:89
 - Automobiles, inventory searches, application of inevitable discovery doctrine, 9:66
 - Courtroom identifications, 9:204
- Agreement between witness and law enforcement agency, 8:92
- Alibi defense, notice to prosecution
 - See also Alibi
- Alibi defense, notice to prosecution, 8:75
- Arrest as precondition, 8:41
- Attorney-client communications not discoverable, 8:36
 - Investigator interview, defendant's, 8:36
- Attorney work product
 - See also Attorney's Work Product
- Attorney work product, 8:53-8:59
- Automatic discovery, 8:3
- Autopsy reports, 8:48
- Bay, *People v.*, 8:10
- Bill of particulars and
 - See also Bill of Particulars
- Bill of particulars and, 8:121-8:128
- Blood samples, 8:39
- Brady material
 - See Brady Material
- Certificate of compliance, 8:7
- Changes in law in 2020, 8:1
- Child Protective Services records, 8:83
 - Misidentification of, evidence of, Brady disclosure, 8:26
 - Pendency of complainant's, Brady disclosure, 8:26
- Computer and computerized records, 8:100
 - Identity of, 8:88
 - Statements, Rosario material exclusion, 8:47
- CPL Article 245, generally, 8:1-8:21
- Criminal history records, 8:118

DISCOVERY—Cont'd

- Defense, entitlement to from *People*, 1:67
 - Request from prosecution in writing or by motion, 1:72
- Defense notice to prosecution
 - Alibi defense
 - See also Alibi
 - Psychiatric defense
 - See also Psychiatric Defense
- Defense notice to prosecution, 8:74-8:80
 - Alibi defense, 8:75
 - Psychiatric defense, 8:77
 - Sanctions, prosecutor's failure to comply, 8:78
 - Untimeliness, good cause exception, 8:79
- Defense reciprocal discovery, 8:6
- Delayed discovery; supplemental certificate, 8:7
- Diary, 8:87
- DNA evidence, obtaining, 8:42
- Due diligence, prosecution's failure to exercise; *People v. Bay* case, 8:10
- Eavesdropping, 8:73
- Evidence, non-testimonial, prosecution motion for, 8:37-8:40
- Exculpatory material. See Brady Material
- Fingerprints, 8:40
- Flow of information, 8:14
 - Alcohol and drug abuse patient records, motion and order to produce, 8:140
- Alibi, notice of, 8:134
 - Demand for, 8:133
- Bill of particulars, 8:138
- Certificate of compliance, 8:129
- Cover letter for, 8:130
- Demand for bill of particulars, 8:137
- Drug abuse patient records, motion and order to produce, 8:140
- Inspection of stolen property, notice under Penal Law 450.10, 8:136
- Mental health records, affirmation in opposition to disclosure of, 8:141
- Order to facilitate compliance, 8:132
- Protective order, 8:143
 - notice of motion for, 8:142
- Psychiatric evidence, notice of intent to proffer, 8:135
 - Affirmation in opposition to, 8:145
 - Motion to, 8:144
- Stolen property inspection, notice under Penal Law 450.10, 8:136
- Subpoena for witness's criminal record, 8:139
- Waiver of right to discovery, 8:131
- Witness's criminal record, subpoena for, 8:139
- Freedom of Information Law
 - See also Freedom of Information Law (FOIL)
- Freedom of Information Law, 8:115
- Good faith and, 8:94

DISCOVERY—Cont'd

- Governmental records, 8:99
 - Defense discovery, statements made to, 8:46
 - Minutes, obtaining; issues, 8:16
 - Police officer's testimony to, Brady disclosure, 8:26
- Grand jury
 - Defense discovery, statements made to, 6:46, 6:47
 - Proceedings, prohibitions, 6:6
- Guilty plea, 8:19
- Hearings, discovery at, 7:31
- Identifications, 8:66
- In camera examination. See In Camera Examination
- Initial prosecution disclosure, 8:4
- Issues, generally, 8:17
- Judge's role, 8:9
- Missing discovery, collateral proceeding on issues outside record on appeal, 24:33
- Motions for. See Discovery Motions
- Names of witnesses, discretionary disclosure, 8:89
- Noncompliance, remedies for prosecutor's, 8:15
- Nontestimonial evidence from defense, 8:8
 - Eavesdropping, regarding, 8:73
 - Subpoenas, manner of service and notice, 8:108
- Notice
 - Defense notice to prosecution. See subhead: Defense notice to prosecution
 - Prosecution's notice prior to use of evidence. See subhead: Prosecution's notice prior to use of evidence
- Objections, unequivocal, 8:128
 - Prosecution's, 8:92
- Open file discovery, 8:2
- Parole violation, where defendant charged with, 8:120
- Photographs, 8:40
- Physical evidence of oneself, compelled to give prosecution, 8:40
 - Disciplinary information, 8:17
 - FOIL, exemptions from, 8:115
 - Non-testifying police officer's statements, Rosario material exclusion, 8:47
 - Records and reports of, Rosario disclosure, 8:47
 - Rosario material issues, 8:47
 - Testimony to grand jury, Brady disclosure, 8:26
- Pornography, 8:100
 - Alibi defense, preclusion of admission, 8:78
- Preliminary hearings, 5:3, 5:4
 - Defense rights, 5:14
 - Discovery function, 5:3, 5:4

DISCOVERY—Cont'd

- Preliminary hearings, 5:3, 5:4—Cont'd
 - Rosario material turned over to defense, 5:14
- Preliminary hearings, use of, 8:82
- Preservation, 8:18
- Privileged communications, protection from, 18:33
- Procedure, 8:128
- Prosecution
 - Defense notice to prosecution. See subhead: Defense notice to prosecution
- Notices
 - Defense notice to prosecution. See subhead: Defense notice to prosecution
 - Prior to use of evidence. See subhead: Prosecution's notice prior to use of evidence
- Prosecution, 8:35
 - Attorney-client communications, 8:36
 - Motions by, 8:37-8:40
 - Obligations, 8:92
 - Permissible discovery, 8:41
 - Subpoenas, use of, 8:95
 - Witness interview, notes on, 8:55
- Prosecution, entitlement to from defense, 8:35
 - Drawings, 8:34
 - Experts' written reports, 8:34
 - Photographs, 8:34
 - Recordings, 8:34
- Prosecution, non-testimonial evidence from defense, motion for, 8:37-8:40
 - Appearance in lineup, 8:40
 - Blood samples, 8:39
 - Defendant infected with sexually transmitted disease, 8:39
 - Body materials, samples of, 8:41
 - Fingerprints, 8:41
 - Handwriting exemplars, 8:40
 - Photographs, 8:40
 - Physical evidence of oneself, 8:40
 - Physical examination, submission to, 8:40
 - Psychiatric examination, 8:38
 - Voice exemplars, 8:40
- Prosecution's notice prior to use of evidence, 8:60-8:72
 - Confirmatory identifications, exclusion, 8:67
 - Contents of notice, 8:62
 - Exclusions, 8:68
 - Failure to receive, suppression motion waiving, 8:64
 - Identifications, 8:66-CITE8:67
 - Oral notice, 8:63
 - Positive identification, witness' inability to make, 8:67
 - Preclusion, extent of, when good cause not shown for failure, 8:72

DISCOVERY—Cont'd

- Prosecution's notice prior to use of evidence, 8:60-8:72—Cont'd
 - Specification of evidence offered, 8:62
 - Statements excluded from, 8:68
 - Statements included in notice requirement, 8:68
 - Sum and substance of any statement, 8:62
 - Time for, 8:62
 - Timeliness, guilty pleas waiving, 8:65
 - Untimeliness, 8:71
 - Voluntary statement issues, 8:70
 - Failure to receive notice, suppression motion waiving, 8:64
 - Timeliness of notice, guilty plea waiving, 8:65
- Protective order, 8:13
 - Appellate review, 8:13
- Psychiatric defense
 - See also Psychiatric Defense
- Psychiatric defense, 8:77
- Psychiatric records, 8:84
- Reciprocal discovery, defense, 8:6
- Recordings, 8:34
- Recurring issues, 8:17
 - Sufficient refusal, requirements, 8:125
- Relationship between prosecutor and other agencies, 8:14
- Remedies for prosecutor's noncompliance, 8:15
 - Authorization, 8:41
 - Brady disclosure, untimely, 8:33
 - Prosecutor's failure to comply with defense notice, 8:78
- Reopening trial proof for newly discovered evidence, 19:8
- Retrial, limited discovery due to equal access to record, 24:128
- Rosario material
 - See also Rosario Material
- Sanctions
 - Motions. See Discovery Motions
- Self-defense
 - See also Self-Defense
- Self-defense, 15:27
- Spoliation. See Evidence
- Stage in the progress of a criminal case, described as, 1:72
- Stipulation in lieu of motions, discovery as, 7:1
- Stolen property inspection by defendant, Penal Law provisions
 - See also Stolen Property
- Stolen property inspection by defendant, Penal Law provisions, 8:81
- Subpoena for
 - See also Subpoena
- Subpoena for, 8:91-8:114

DISCOVERY—Cont'd

- Supplemental certificate; delayed discovery, 8:7
- Supplemental discovery, 8:11
- Suppression of evidence
 - Automobiles, inventory searches, application of inevitable discovery doctrine
 - See also Automobiles, Warrantless Stop and Search
 - Courtroom identifications
 - See also Identification of Defendant
- Time for, 8:41
 - Prosecution's notice prior to use of evidence, 8:62
- Timing of automatic discovery, 8:2
- Traffic matters, hearing regarding, 8:120
- Uncharged crimes, disclosure of previously, prosecutor's notice, 11:40
 - Request for disclosure of prior uncharged acts, part of Sandoval motion, 11:40
- Victim, discovery related to, 8:83-8:87
 - Brady violation, new trial, 8:30
 - In camera examination, 8:86
 - Child Protective Services records, 8:83
 - Deceased victim's body, examination for controlled substance presence, exclusion, 8:87
 - Demand for specific relief, 8:128
 - Diary, victim's, exclusion, 8:87
 - History of decedent victim, Brady disclosure, 8:26
 - Outside of trial, use of material, 8:85
 - Psychiatric records, 8:84
 - Records, 8:84
 - Guilty plea as waiver of Rosario violation, 8:51
 - Rape kit used for victim, 8:87
 - Requirement, 8:83
 - Sexual abuse cases, 8:83
 - Specific discovery, disallowed, 8:87
- Voiceprint evidence, 18:134
- Voluntary disclosure, 8:99
- Waiver, 8:20
- Wiretapping, 8:41
 - Agreement between witness and law enforcement agency, 8:92
 - Brady disclosure, 8:26
 - Counsel's note on interview of, 8:55
 - Criminal record of, defense right to, 8:52
 - Presentence report of, 8:52
 - Probation report of, 8:52
 - Rosario material, unqualified statements, 8:47
- Witnesses
 - Brady disclosure
 - See also Brady Material
 - Names of witnesses, discretionary disclosure.
 - See subhead: Names of witnesses

DISCOVERY—Cont'd

- Witnesses—Cont'd
- Subpoenas. See Subpoena
- Written reports, 8:34
- Stolen property inspection, Penal Law provisions, 8:81

DISCOVERY MOTIONS

- Procedure, 8:12
- Notice prior to use of evidence, failure to receive, suppression motion waiving, 8:64
- Types of, 8:12

DISCRETION

- Abuse of. See Abuse of Discretion
- Of the court. See Judicial Discretion

DISCRIMINATION

- Discriminatory prosecution, unconstitutional, 3:5
- Prosecutorial discretion not extending to, 3:5
- Racial exclusion of jury members barred
- See also Jury Selection and Voir Dire
- Racial exclusion of jury members barred
- Defense burden, 19:113

DISMISSAL

- Accusatory instruments
- Defects of form not supporting, 3:59
- Speedy trial time not tolled by, 3:78
- Appeal by prosecution, 24:45
- Charges, dismissal of
- Inquiry as to, Sandoval rules, 11:32
- No bill, grand jury decision for dismissal, 6:23
- Civil remedies, 1:88
- Improper where not ready for trial, 13:81
- Mental health commitment, 15:50
- Prima facie case. See Prima Facie Case
- Prosecute, failure to, 13:81
- Sealing of criminal records, 1:52
- Trial order of dismissal, 18:175-18:181
- Objecting to People's case as legally insufficient, 18:175

DISORDERLY CONDUCT

- Conviction under any subdivision, 3:65
- Plea to, 17:10

DISPOSITIONAL HEARING

- Juvenile delinquent, on conviction, 21:24
- Burden of proof, 21:24
- Juvenile offender, 21:36
- Hearing after guilty plea or verdict, 21:61
- Sex Offender Management and Treatment Act (SOMTA), 23:114

DISPUTE RESOLUTION

- Agencies, referral to, 1:78
- Defendant in, ACD granted, 22:40
- Referral to agencies for, 1:78

DISRUPTIVE BEHAVIOR

- Defendant absent, no attorney at trial, 2:10
- Defendant's conduct, effect on right to be present, 19:27
- Forfeiture of right, 19:27
- Court's statement on record, 19:28
- Judge's statement on record, 19:28

DISTRICT ATTORNEY

- Assistant attorney general acting as, 1:10
- Defense attorney's withdrawal from representation upon employment by office of, 2:63
- Disqualification, motion for, 7:21
- Indictment containing signature of, 3:35
- Promise made to defendant by binding, suppression of defendant's statements, 9:110
- Responsibilities as prosecutor, 1:9

DISTRICT COURT

- Misdemeanor conviction in, appeal to Appellate Term, 1:21, 1:86

DIVERSION

- Diversory programs, 1:92
- Judicial, 1:91

DNA

- Admissibility of evidence, 18:137
- Brady material, 8:27
- Comparison order, 8:21
- CPL 440.10 motion to vacate judgment, 23:54
- Databank registration, 22:75
- Amount of fee, 22:78
- Designated offenses, 22:75
- Defendant's blood, 8:42
- Designated offender, testing of, 22:75
- Expert testimony, subjects of, 18:137
- John Doe indictment, 13:9
- Obtaining DNA evidence, 8:42
- Restitution to crime victim; DNA registration and fee, 22:86
- See also Blood
- Speedy trial, 13:30, 13:40
- Statistical data, Brady disclosure, 8:26
- Statute of limitations, 13:9
- Statute of limitations, John Doe indictment, 13:9
- Youthful offender inapplicable, 22:75

DOCUMENTARY EVIDENCE

- Business records, 18:78-18:85
- Use of, 18:78

DOCUMENTS AND PAPERS

- Allegations of belief or personal knowledge in, 7:10
- Legal conclusions only, motion denied, 7:11
- Court issued subpoena for original document, discovery, 8:103
- Diary, victim's, excluded from discovery, 8:87

DOCUMENTS AND PAPERS—Cont'd

- Habeas corpus papers, relator's bail proposal, 4:76
- Hearsay rule, public document exception under, 18:23
- Minutes
 - See Court Stenographers
 - See Grand Jury Minutes
 - See Transcripts
- Omnibus motion and supporting affidavit/affirmation, 7:9
 - Issues addressed in, 7:9
 - Moving papers, allegations of belief or personal knowledge in, 7:11
 - Sufficiency of supporting papers, 7:10
 - Facts, not legal conclusions, essential, 7:11
 - Written notice, 7:9
- Public document exception under hearsay rule, 18:23
- See also Records
- See also Transcripts

DOGS

- Evidence of, 18:131
- Probable cause, 9:25
- Therapeutic comfort dog, 19:54

DOMESTIC VIOLENCE

- 911 operator, admissibility of answers to questions by, 18:23, 18:122
- Battered person syndrome, self-defense, 15:29
- Battered woman syndrome
 - See also Battered Woman Syndrome
 - Self-defense
 - See also Self-Defense
- Domestic Violence Survivors Justice Act, 22:184
- Double jeopardy, 15:97
- Evidence, opinion, 18:131
- Mandatory arrest, 1:46
- Molineux evidence, 12:14
- Resentencing and Domestic Violence Survivors Justice Act, 22:184
- See also Order of Protection
- Sentencing, 22:186
- Stay-away order of protection, violation of; mandatory arrest, 1:46

DOUBLE COUNTING

- Previous convictions, 3:48
- SORA factors, 23:92

DOUBLE JEOPARDY

- Acquittal by jury verdict, retrial on same offenses barred, 1:88
- Administrative sanction, 15:97
- Appeal, effect on, 24:1
- Attachment, 19:83
- Civil sanction, effect of, 15:97

DOUBLE JEOPARDY—Cont'd

- Collateral estoppel, 15:99
- Constitutional challenges, 15:97
- Contempt, 23:145
- Court martial constituting, 15:97
- Defined, 15:97
- Domestic violence, 15:71
- Duplicious counts in indictments, rule against, assuring against, 3:41
- Explained, 3:41
- Family Court proceedings, 15:97
- Federal prosecution and, 1:4
- Generally, 15:97
- Guilty plea, 17:74
 - Delayed death exception, 17:77
 - DWI-related cases, early guilty plea barred by, 17:75, 17:76
- Jeopardy attaching at trial, 19:83
- Mistrial, prosecution motion, grant triggering double jeopardy, 18:184
- Motion to set aside verdict not foreclosed by, 20:44
- Order of protection, 15:71
- Pretrial motion, 15:97
- Retrial
 - Appeal, after, 24:118
 - Bar of further prosecution on top count, 24:126
 - No bar to evidence on remaining charges in, 24:122
 - Untimely new indictment, double jeopardy motion, 24:127
- Retrial, resentencing, 24:130
- Sources of, 15:97
- Statutory, 15:98
- Statutory, 17:76
- Traffic tickets, 15:97
- Trial attaches, 19:83
- Trial order of dismissal, pre-verdict grant of motion for, 18:181
- Violation of, writ of prohibition, support of, 23:5

DRAWINGS

- Composite drawings of defendant, suppression, 9:194
- Discovery, 8:34

DRESS CODE

- See Clothing and Other Attire

DRIVER'S LICENSE

- Administrative hearing on suspension, 1:30
- Cellphones and texting, 22:94
 - CRD no effect, 22:209
- Chemical test refusal, 9:62
- Commercial driver's license, 4:32-4:38
- Conviction, collateral consequences of, 22:208
- Drug cases, license suspension in, 22:32

DRIVER'S LICENSE—Cont'd

- DWI case, license suspension, 4:32-4:38
- Hearing on chemical test refusal, 9:62
- Out-of-state license, 4:32
 - Suspension of, 4:37
- Points, 22:93
- "Problem driver" regulations, 22:95
- Restriction on, ROR, 4:63
- See also Driving Privileges
- Sentencing, 22:92-22:95
- Suspension of, mandatory, DWI cases, 4:32-4:38
 - Commercial driver's license, 4:32
 - DWAID, arrest for, 4:36
 - .08% DWI cases, 4:32
 - Exception, hardship, 4:34
 - Refusal to submit to test, 4:36

DRIVING PRIVILEGES

- Administrative hearing, 1:30
- Appearance date where driver pleads not guilty, 4:31
- Chemical test refusal with DWI, 9:62
 - DWI case, 9:63
 - Refusal to take test, 9:62
- Conditional license, 4:35
 - Out-of-state license, 4:32
- Drug cases, license suspension, 22:32
 - Drug cases, 22:32
- Hardship privilege, 4:34
 - Out-of-state license, 4:37
 - Prompt suspension, 4:32
- Out-of-state license, 4:32
- Prompt suspension, 4:32
- Refusal to take test, 9:62
- ROR, refrain from driving, 4:63
- Suspension for drug conviction, 22:32

DRIVING WHILE ABILITY IMPAIRED (DWAI)

- Fines, maximum/minimum, 22:79
- Lesser included offenses, Green/Glover two-prong test, reasonable jury finding, 16:13

DRIVING WHILE INTOXICATED (DWI)

- Alco-sensor test, 9:61
- Blood alcohol presumptions, 4:32
 - Hardship privilege, 4:37
 - Out-of-state licenses, hardship privilege; websites, 4:37
 - Temporary license suspension in .08 percent, 4:32
- Blood test upon court order, 9:67
 - Refusal, 9:62
 - Suppression of test results, 9:64
 - Two-hour rule for administering, 9:63
- Breathalyzer, foundation not required, 18:139

DRIVING WHILE INTOXICATED (DWI)—Cont'd

- Commercial drivers license, revocation of, 4:32-4:38
- Conditional license, 4:34
- Conviction under any subdivision, 3:65
- Drunk driving
 - Vehicle and Traffic Law, governing, 1:2
- DWAID, arrest for, 4:36
 - Driver's license, affidavit in support of defendant's application to retain license, 4:96
- Felony, mandatory surcharge, fee, fines, 22:83
 - Prior conviction not enhancing punishment, 22:111
 - Ten-year time period, 22:143
- Field test, 9:61
- Fines, maximum/minimum, 22:79
 - Mandatory surcharge, fee, fines, 22:83
- Generic offense of, notice of, 3:65
- Guilty plea barred by DWI-related cases, 17:75, 17:76
- Hardship privilege, 4:32
 - DWAID, arrest for, 4:36
 - Hardship cases exception, 4:34
 - Permissive suspension, 4:38
- Horizontal gaze nystagmus test, admissibility
 - Refusal to submit to test, 9:62
- Horizontal gaze nystagmus test, admissibility, 18:139
- Lesser included offenses, Green/Glover two-prong test, reasonable jury finding, 16:13
- Misdemeanor case, defense omnibus motion in, 7:62
- OASAS, 4:32
- Out-of-state conviction, effect, 22:143
- Permissive suspension, 4:38
- Persistent felony status, 22:120
- Plea bargaining limitations, 17:59
- Preliminary breath test, 9:61
- Prior conviction, constitutionality of, 22:147
- Problem driver, 22:93
- Prompt suspension law, 4:32
- Roadside test, 9:61
- Screening test, admissibility of, 9:61
- See also Intoxication
- Special information with felony, 22:144

DRUG LAW REFORM ACTS

- Resentencing, 22:183

DRUGS

- Addiction, questions concerning, Sandoval rules, 11:25
- Agency defense, 15:64-15:70
 - Excessive sentencing for sale of, constitutional challenge, 15:92

DRUGS—Cont'd

- Agency defense, 15:64-15:70—Cont'd
 - Temporary innocent possession, 15:66
 - Temporary innocent possession defense, 15:66
- Chain of custody, real evidence, 18:88, 18:89
 - See also Real Evidence
- Class A felony, no bail in local court, 4:68
- Defendant, drug use before making statement, admissibility, 9:146
- Defense to
 - Agency defense
 - See also Agency
 - Temporary innocent possession
 - See also Temporary Innocent Possession Defense
- Distinction between selling and, jury charge, 19:149
- Drug felony
 - Plea bargaining limitations, 17:56
- Drug Law Reform Acts, 22:183
- Examination of deceased victim's body for presence of, exclusion, 8:87
- License to drive, suspension on conviction, 22:32
- Marijuana, misdemeanor complaint and supporting deposition, insufficient evidentiary facts, 3:33
 - See also Marijuana
- Offenses
 - Felonies, 17:56
- Paraphernalia, no presumption of possession in automobile, 9:76
- Plain view, warrantless search and seizure, 9:42
 - Presumption of possession, 9:76
- Police officer's testimony
 - Jury charge. See Jury Charge
 - Street drug trade jargon or notations in drug dealer's ledger, expert testimony, 18:142
- Possession of drugs
 - Defendant charged with, chain of custody, 18:88
 - Temporary innocent possession defense
 - See also Temporary Innocent Possession Defense
- Presumption of possession, 9:76
- Presumption of possession of drugs, 9:76
 - Stale information negating probable cause, 9:52
 - Warrantless stop and search, 9:66
- Prosecutor's summation suggesting cause of informant's death, no proof, improper, 18:202
- Resentencing, 22:183
- Sale of and possession, distinction in jury charge, 19:149
- Seized drugs, motion to suppress, 7:11

DRUGS—Cont'd

- Suppression of evidence. See Suppression of Evidence
- Videotape created to show drug dealer's modus operandi, admissibility of, 18:127
- Willard Drug Treatment Campus sentence, 22:31

DRUG SALES

- Acting on concert, 12:19
- Agency defense
 - See also Agency
- Agency defense, 15:64-15:70
 - Defendant asserting role as buyer's agent not seller, 15:64-15:70
 - Excessive, for sale of, constitutional challenge, 15:92
- Cases
 - Prosecutor suggesting cause of informant's death without proof, 18:202
- Harsh and excessive sentences modified on appeal, 22:186
- Lesser included offenses, Green/Glover two-prong test, 16:9
- None on case, missing witness charge denied, 19:183
- Police officer's testimony
 - Drug trade jargon or notations in drug dealer's ledger, 18:142
- Single-photo identification by informant improper, identification of defendant, 9:180
- Uncharged crimes, permissible use of
 - Acting in concert, 12:19

DRUNK DRIVING

- See Driving While Intoxicated (DWI)

DUAL DEFENSE

- Agency and entrapment defense, 15:71
- Alibi and justification defenses, assault and weapons possession, 15:72
- Entrapment and agency defenses, 15:71
 - Rationale, 15:72
- Overview, 15:71
- Risks, 15:71
- Theory of case, undercutting, risks, 15:71

DUAL JURY TRIALS

- See Trial by Jury subhead: Codefendants

DUE DILIGENCE

- Collateral evidence, CPL 440.10 motion, failure to show due diligence, 23:42
- Discovery and prosecution's failure to exercise due diligence; People v. Bay case, 8:10
- Issues, defendant could not "with due diligence" have been aware, effect on motions, 7:4
- Newly discovered evidence, failure to show due diligence, 20:40

DUE DILIGENCE—Cont'd

Statutory speedy trial, absent defendant, prosecution's due diligence burden, 13:66

DUE PROCESS

Appellate delay, 24:64
 Alleged deprivation of due process, long delay, 24:64
 Habeas corpus relief, 24:64
 Speedy trial, 24:65
 Constitutional speedy trial, 13:16, 13:93-13:95
 Remedy, dismissal with prejudice, 13:84
 Time between commission of offense and commencement of trial, 13:16

DUE PROCESS DEFENSE

Entrapment defense and, 15:67
 Overview, 15:67
 Use of, 15:67

DUPLICITOUS COUNTS IN INDICTMENT

See Indictment

DURESS

Coercion, 15:43
 Overcoming person of reasonable firmness, 15:43
 Physical force, threatened use of, 15:43

DWAI

See Driving While Ability Impaired (DWAI)

DWI

See Driving While Intoxicated (DWI)
 See Intoxication

DYING DECLARATIONS

Hearsay exception, 18:18

EAVESDROPPING

Controvert warrant, motion to, 9:111
 Discovery, 8:73
 Generally, 9:98
 Notice regarding, 8:73
 Pen registers, 9:100
 Permissible discovery, 8:41
 Private taping of conversations, 9:99

EFFECTIVE ASSISTANCE OF COUNSEL

Admissibility of evidence, assessment of, 2:86
 Appeal, 24:94-24:99
 Appellate delay, long, 24:66
 Collateral proceeding on issue outside record, 24:33
 Disparaging defendant's pro se arguments, finding, 24:96, 24:97
 Failure to
 Advise client of right of appeal, 24:15
 Faulty Anders brief
 Ineffective assistance found, 24:98

EFFECTIVE ASSISTANCE OF COUNSEL—Cont'd

Appeal, 24:94-24:99—Cont'd
 Frivolous claims assumption, procedure for, 24:97
 Post-appeal, 2:79
 Presumption in favor of attorney, 24:95
 Overcoming presumption, 24:95
 Pro se arguments
 Claims considered frivolous, procedure, 24:97
 Proper action of appellate attorney concerning, 24:97
 Protection of client's right to, 24:97
 Submission to court of client's intentions, 24:97
 Undermined by defense, 24:96
 Right to effective assistance
 Guilty plea and sentencing, 2:78
 Standard of review, 24:80
 Application of
 Contexts for, 2:69-2:110
 Bill of particulars, 2:82
 Burden of proof, defendant's, 2:75
 Collateral consequences; immigration, 2:76
 Colorable claims or defenses, pursuit of, 2:74
 Conflict of interest. See Conflict of Interest:
 Effective Assistance of Counsel
 Constitutional violation, CPL 440.10 motion, 23:46-23:50
 Conviction
 Collateral consequences, failure to advise client of, 2:81
 Prior conviction, ineffective earlier case, 2:82
 Reversal of, 2:69
 Court presumption of, 24:95
 Cross-examination, 2:84
 Cumulative error, 2:73
 Defendant's failure to testify, calling attention to, effective assistance denied, 19:160
 Defense, creative defense, 2:73
 Disciplinary action for ineffectiveness, 2:87
 Duty to question, 18:52
 Entering plea, recording advice given to defendant on, 17:39
 Expert witnesses, failure to obtain, 2:81
 Failure to investigate, 2:79, 2:82
 Familiarity with investigation, 2:77
 Federal standards, 2:76
 Generally, 2:69-2:110
 Grand jury investigation, 2:79, 2:80
 Grounds for questioning, 2:77-2:99
 Guilty plea
 Sentencing and, 2:77
 Waiver of ineffectiveness issue, 2:80
 Immigration; collateral consequences, 2:76

EFFECTIVE ASSISTANCE OF COUNSEL

—Cont'd

Ineffective assistance
 Addressing allegations of, 2:86
 Anders brief, faulty, 24:98
 Burden of proof, defendant's, 2:75
 Codefendant's attorney, 2:83
 Collateral consequences of conviction, failure to advise client, 2:81
 Collateral proceeding, 2:84
 Conflict of interest, 2:83
 Coram nobis proceeding, 24:99
 Court applications, failure in, 2:82
 Direct appeal, 2:84
 Disloyal attorney, 2:83
 Expert witness issues, 2:81
 Federal standards, 2:76
 File from former attorney, obtaining, 2:86
 Finding of, 2:80
 Grounds, 2:77-2:99
 Guilty plea, waiver by, 2:80
 Harmless error, 2:71
 Investigate, failure to, 2:79
 Jury charge, failure to request proper, 2:73
 Malpractice, 2:87
 "Meaningful representation" standard, 2:71
 Methods of raising issue, 2:84
 Motions, failure to bring, 2:82
 Motion to set aside verdict, 20:32
 Poor trial tactics, 2:83-2:86
 Preaccusatory representation, inapplicability in, 2:77
 Pretrial activity, failure in, 2:78, 2:79
 Prior conviction, 2:82
 Procedural considerations, 2:84-2:86
 Pro se representation, 2:8
 Review procedure for claims of, 24:99
 Sandoval issue, ineffective counsel, 2:82
 Sentencing as predicate felon, 2:82
 Single-error standard, 2:72
 SORA proceeding, 23:99
 Statutory speedy trial, failure to make motion to dismiss, 13:69, 13:97
 Unconventional tactics, 2:73
 Waiver of confidentiality by assertion of, 2:85
 Jury charge, failure to request proper, 2:73
 Loyalty of attorney, 2:83
 Malpractice, 2:87
 "Meaningful representation" standard, 2:71
 Mental health issues, 2:71
 Molineux evidence, 2:82
 Motion to set aside verdict, 2:77
 Perfunctory advocacy, 2:75
 Perjury, 2:74
 Plea offers, notice to defendant of, 2:77

EFFECTIVE ASSISTANCE OF COUNSEL

—Cont'd

Post-appeal, 2:79
 Preaccusatory representation, 2:77
 Presumption in favor of attorney, 24:95
 Overcoming presumption, 24:95
 Pretrial activity, 2:78, 2:79
 Procedural considerations, 2:84-2:86
 Questions regarding, 2:77-2:99
 Representation of defendant's interest, 2:42
 Requests to charge, improper, 2:88
 Right to, 2:67, 2:70
 Sentencing, 2:77
 Single-error standard, 2:72
 Test for, none, 2:71
 Trial tactics, poor, 2:83-2:86
 Unconventional tactics, 2:73

EMAIL

Privacy, expectation of, 9:92
 Privilege applies, 9:92

EMERGENCY CALLS

911 Recordings
 Admissibility
 Audibility, 18:120
 Relevance required for admission, 18:119
 Audibility and use of transcripts, 18:120
 Brady disclosure, 18:118
 Early request for, importance of, 18:117
 Hearsay rule, 18:120
 Application of principles, 18:122-18:126
 Bolstering described, 18:121
 Conditions for admissibility, 18:122
 Present sense impressions, 18:124
 Prior inconsistent statements, 18:125
 Qualification for exception under, 18:121
 Spontaneous declarations/excited utterance, admission into evidence, 18:122, 18:123
 Impeaching witness recollection, use of, 18:116
 Intoxication or sobriety of witness at time of crime, use as indicator, 18:116
 Obtaining production, court order for, 18:118
 Subpoena to produce, 18:118
 Probable cause, use to support or undercut, 18:116
 Relevance required for admission, 18:119
 Rosario disclosure, 18:118
 Routine destruction not viewed as lack of due diligence, 18:117
 Spontaneous declarations/excited utterance, admission into evidence, 18:122, 18:123
 Subpoenas, court-ordered, 18:118
 Timely pretrial request made to preserve and recording erased, jury instructions, 18:112

EMERGENCY CALLS—Cont’d

- 911 Recordings—Cont’d
- Transcripts, use of, 18:120
- Use of, 18:116, 18:118

EMERGENCY DEFENSE

- See Necessity Defense

EMERGENCY DOCTRINE

- Warrantless police intrusion, 9:19

EMERGENCY MEDICAL TECHNICIAN

- No privilege, 18:29

EMPLOYMENT

- Application, false statement on, inquiry as to, Sandoval rules, 11:27
- Challenging prospective juror’s employment, validity, 19:115
- Conviction, collateral consequences of, 22:206

ENHANCED CRIMES

- Constitutional challenge to prior conviction, 22:146
- Defenses, linking prior offender with current defendant, an issue, 22:146
- Double counting of prior conviction improper, 22:147
- Overview, 22:142-22:144
- Predicate offender/persistent offender compared, 22:143
 - Predicate/persistent offender status concerns sentencing only, 22:143
- Prior conviction, constitutional challenge to, 22:147
 - Felony, 22:144
 - Misdemeanor/violation, 22:145
 - Charged in current accusatory instrument, 22:145
- Prior conviction enhancing crime, 22:203
 - DWI enhanced to felony with prior DWI, 22:143

ENHANCED FELONY

- See Predicate Offenders

ENHANCED FELONY SENTENCES

- Discretionary category, 22:136-22:141
- Effect of enhanced status, 22:124
- Mandatory categories, 22:125-CITE22:136
- Prior felony charges, 22:105
- See also Sentence, Enhanced Felony

ENHANCED FELONY STATUS

- See Felony, Enhanced Felony Status

ENTRAPMENT DEFENSE

- Admission, commission of crime required, 15:42
- Dual defenses, 15:71
- Defense available to defendant, example, 1:43
- Due process defense and, 15:67

ENTRAPMENT DEFENSE—Cont’d

- Establishment, 15:42
- Entrapment defense at, 15:42
- Grand jury
 - Instructions on evidence constituting, 6:54
- Hearsay evidence, admissibility, 15:76
- Jury charge, 19:163, 19:174
- Opening the door, 18:158
- State of mind, defendant’s, relevance, 15:76
- Telephone conversation between defendant and informant, Brady disclosure, 8:26

EQUAL PROTECTION

- Cross-complaint, 1:16
- Defense, 15:68
- Disparate treatment, predicate felons, 22:113
 - Current charges not violating Penal Law definition, 22:113
- Selective prosecution, 15:68

ERROR

- Appeal
 - Lesser included offenses, appellate court remedy for trial error in, 16:51
 - Procedural errors in appeal by prosecution, dismissal, 24:51
- Constitutional violation, CPL 440.10 motion, ineffective assistance of counsel, 23:47
- Conviction, CPL 440.10 motion, 23:26-23:74
 - See also CPL 441.10 Motion to Vacate Judgment
- Defense request for adjournment, denial, 19:47
- Harmless error. See Harmless Error
- Jury charge. See Jury Charge
- Jury selection, 19:102
 - Jury charge, 19:196
 - Jury selection, 19:102
- Reversible error, 19:102
- Lesser included offenses
 - Jury charge, failure to advise counsel as to, 16:39
- Photographs, use to rebut defenses, 18:97
- Potential for, dual jury trials, 14:14
- Prejudicial, writ of prohibition remedy, 23:1
- Preservation of
 - See also Preservation of Error
- Recording previously ruled inadmissible, reference to, 18:113
- Remedies for error, 18:206
 - Adjournment, granting, 18:208
 - Civil sanctions not applicable, 18:210
 - Curative jury instructions, 18:207
 - Preclusion, 18:208
 - Prejudicial testimony, curative jury instructions, 18:207
 - Sanctions against counsel, 18:210
 - Monetary sanctions, 18:210

ERROR—Cont'd

- Remedies for error, 18:206—Cont'd
 - Startling testimony, curative jury instructions, 18:207
 - Stolen property lost before trial, prosecutor's failure to produce, 18:210
- Reversible
 - Judicial bias, 18:191
 - Jury charge
 - See also Jury Charge
- Reversible error in record, motions to set aside, 20:26-20:34
 - Available grounds, 20:31-20:34
 - CPL 330.30(1) motion, 20:26
 - Evidentiary rulings, review of, 20:27
 - Matter of law, 20:26
 - Review of evidentiary rulings, 20:27
 - Unavailable grounds, 20:28-20:34
- Spillover effect, 24:116
- Uncharged crimes, permissible use of in proving guilt
 - Molineux, *People v.*, 12:8
- Reversible error
 - Ventimiglia hearings, failure to obtain rulings, 12:37
- Verdicts, 20:2-20:10
 - Defective verdicts, 20:13-20:17
 - Delay in rendering, bench trial, 20:20
 - Kidnapping, dismissal of merged charge, 20:19
 - Overlapping counts, 20:18
 - Preservation of error
 - Bench trial, 20:10
 - Jury trial, 20:10
 - Repugnant verdicts, 20:2-20:10
- Witness willing to testify, prosecutor's belief, no error in calling, 18:200
- Writ of error coram nobis, constitutional violation, ineffective assistance of counsel, 23:47
- Writ of prohibition
 - Mere error of law does not support, 23:10
 - Prejudicial error, 23:1

ESSENTIAL ELEMENTS TEST

- Generally, 22:102

ESTOPPEL, COLLATERAL

- See Collateral Estoppel

ETHICS

- Advocate-witness rule, 1:21
 - Conflict of Interest, 2:43
- Advocate-witness rule, 7:21
- Attorney-client privilege, 2:39, 18:23, 18:30
- Codefendants, 2:45, 14:2
- Conflict of interest, Gomberg hearing, 2:45, 14:2
- Contact with complainant, 1:65, 2:84

ETHICS—Cont'd

- Counsel withdrawal from representation, ethical barrier, 2:67
- Defendant filing ethics complaint, 2:42
- Defense counsel contacting complainant, 1:65, 2:84
- Disqualification of prosecutor, 7:21
- Dropping charges, 1:65
- DWI cases, advice concerning chemical test, 9:62
- Effective assistance of counsel, 2:74
- Exculpatory information from prosecutor. See Brady Material
- Gag order, 19:53
- Generally, 1:21
- Judge's ethical obligations, 1:22
- Malpractice. See Malpractice
- Perjury, effective assistance of counsel, 2:74
- Prosecutorial discretion, 1:9
- Prosecutorial misconduct
 - Grand jury proceedings
 - See Grand Jury Proceedings
 - Trial, 18:195-18:201
- Recording of conversation by attorney, 1:21, 1:63
- Recording of conversation by attorney, 9:99
- Sanctions against counsel, 18:210

EVIDENCE

- 911 recordings, 18:116-18:126
- Abandonment or waiver, 18:154
- Accomplices, corroboration of testimony, 14:47-14:51
 - Independent evidence, 14:47-14:51
 - Insufficient corroborating evidence, 14:50
- Admissibility, 18:2-18:8
 - See also Admissibility of Evidence
- Admission against interest, 14:25, 18:20
- Adoptive admission, 9:103
- Advocate-witness rule, 1:21, 2:43
- Affidavit as People's evidence, 7:10
- Alco-sensor test, 9:61
- Appeals based on
 - Order of preclusion against prosecution appeal, 24:44
- Attorney, defendant's request for, 18:34
- Background evidence, 12:24, 12:25, 12:27-12:29, 18:13, 18:23
 - Limiting amount of, 12:25
- Best evidence rule, 18:81
- Bias, 18:57
- Bill of particulars. See Bill of Particulars
- Bolstering, 9:212
- Brady material. See Brady Material
- Character, 12:1, 18:46, 18:47
- Character, defendant's, 19:155
 - Direct versus, 19:157

EVIDENCE—Cont'd

- Character, defendant's, 19:155—Cont'd
 - Moral certainty charge for circumstantial proof, 19:157
- Circumstantial evidence
 - Appeal standard, 24:85
 - Motive, 24:85
- Collateral matters, 18:63, 18:64
 - Bias, 18:63
 - Rape shield law, 18:65
- Collateral proceedings. See subhead: CPL 440.10 motion
- Completeness, rule of, 9:178
 - Courtroom identifications, 9:205
- Computers, 18:77, 18:82
- Confrontation, 18:23-18:26
- Constitutional rights, invocation of, inadmissible, 18:34
- Conversations, meaning of, 18:135
- CPL 440.10 motion
 - Affidavit of nontestifying individual, 23:43
 - Burden of proof, 23:29
 - Evidence outside record, review of, 23:31-23:33
 - Appeal not available, 23:32
 - Consolidation of CPL 440.10 motion and direct appeal, 23:33
 - Denial of, 23:33
 - Inappropriate CPL 440.10 motions, 23:31
 - Lower courts, record of issues not appearing in, 23:32
 - Recording issues by motion, 23:32
 - Rosario rule, issue of nondisclosure of, 23:33
 - Stipulation to expand record on appeal, 23:33
 - Sufficiency of record for appeal, 23:32
- False material evidence, 23:36
- Guilty pleas, withheld evidence or information, 23:55
- Hearings, evidentiary, 23:61
- Motion unavailable after guilty plea, 23:45
- Newly discovered evidence, 23:40-23:45
 - Burden of proof, 23:41
 - Due diligence, failure to show, 23:42
 - Recantation evidence, 23:44
- Proof by preponderance of the evidence, 23:62
- Recantation evidence, 23:44
- Recording of issues by motion, 23:32
 - Rosario rule, issue of nondisclosure of, 23:33
- Stipulation to expand record on appeal, 23:33
- Sufficiency of record for appeal, 23:32
- Unconstitutional evidence, 23:37
- Cumulative, 19:184

EVIDENCE—Cont'd

- Defendant's burden to establish affirmative defense by, 15:3
 - Venue, prosecution's burden to establish, 15:48
- Defendant's post-conviction rehabilitation as evidence against harsh sentence, 24:32
- Defense. See Defenses
- Demonstrative evidence
 - See also Real Evidence
- Destruction or loss of evidence, 24:124
- Direct evidence, 19:157
 - Confession, 19:157
- Direct versus circumstantial evidence, 19:157
- Disclosure. See Discovery
- Discovery. See Discovery
- District attorney, 7:21
- DNA evidence, 18:137
- Documentary evidence
 - See also Documentary evidence
- DWI, performance tests, 9:60
- Exculpatory statements, 18:19
- Fingerprints, 18:135
- Google maps, 18:77
- Grand jury, 6:48-6:75, 6:71
 - See also Grand Jury Evidence
- Hearsay. See Hearsay
- Hypnosis, 18:128
- Identification. See Identification
- Impeachment. See Impeachment
- Judicial notice, 18:9
- Jury charge. See Jury Charge
- Jury rejection, mercy function, 20:7
- Legally sufficient evidence no bar to defense motion to set aside verdict, 20:42
- Lesser included offenses
 - Green/Glover two-prong test, reasonable finding
 - Right of jury to evaluate evidence, 16:14
 - Jury charge, lower only supported by evidence, 16:44
- Lifestyle evidence, 12:29
- Lost
 - Appeal, lost on, 24:30
- Marshaling evidence, 19:175
- Material evidence
 - Described, 18:6
 - Recordings, admissibility, 18:108
- Missing evidence charge, 19:176
- Molineux evidence. See Molineux Evidence
- New evidence, reopening of pretrial hearings based on, 7:42
 - Denial, 7:43
 - Inadequate, denial to reopen hearing based on, 7:47
- Insufficient additional facts, 7:43

EVIDENCE—Cont'd

- Newly discovered evidence, motion to set aside verdict, 20:21, 20:38-20:41
- CPL 330.30(3) motion, 20:38
- Defense burden, 20:39
- Failure to show due diligence, 20:40
- Recantation evidence, 20:41
- Non-fungible, 18:90
- Non-testimonial, defendant's body, exhibiting to jury, 11:6
- Opening the door, 18:158
 - Sandoval, 11:58
 - Uncharged crimes, 12:21
- Order of preclusion against prosecution, 24:44
- Overview, 18:1
- Past recollection recorded, 18:19
- Photographs, 18:91-18:102
 - See also Photographs
- Polygraph, 18:133
- Preliminary hearings, 5:12
 - See also Preliminary Hearing
- Pretrial hearings conducted by trial judge, bench trial
 - See also Trial, Bench Trial
- Pretrial hearings conducted by trial judge, bench trial, 19:70-19:72
 - Waiver of privilege, 19:49
- Prior conviction as evidence, 12:1
 - Associates of defendant, prior crimes of, 12:4
 - Exception to general rule, 12:1
 - Temporally remote convictions, 12:9
- Prior inconsistent statement, 18:59, 18:125
- Prior testimony, 18:74
- Privileged communications, 18:28-18:33
 - Application to discovery, 18:32
- Prompt complaint evidence, 18:16
- Prosecution's notice prior to use of evidence. See Discovery
- Prosecutorial misconduct, grand jury proceeding, use of
 - Perjured testimony, 6:71
 - Unbelievable evidence, 6:71
- Prosecutor's summation, objection to improper references
 - Attacking attorney rather than addressing evidence, 18:202
 - Matters not in evidence, 18:202
 - Quality of defense evidence, excess comment on, 18:202
- Public documents, 18:15
- Real evidence
 - See also Real Evidence
- Rebuttal evidence, 18:68
- Recantation, 20:41
 - Hearing entitlement, 20:41
 - Motion to set aside verdict, 20:21, 20:41

EVIDENCE—Cont'd

- Recantation, 20:41—Cont'd
 - Newly discovered evidence; CPL 440.10 motion, 23:44
- Recent fabrication, 18:105, 18:125
- Recognized treatises on evidence, recommendation to have in courtroom, 18:1
- Redaction
 - Generally, 18:86
 - Recordings, redaction where other crimes mentioned, 18:110
- Refresh recollection, 18:53
- Relevant
 - Described, 18:4
 - Expert testimony, admissibility, 18:139
 - Opening the door, 18:158
 - Recordings, admissibility, 18:108, 18:119
 - See also Recordings, Admissibility
- Retrial
 - Double jeopardy no bar to evidence on remaining charges, 24:123
 - Evidentiary rulings at one trial not binding in subsequent trial, 24:121
 - Loss of evidence, effect, 24:124
 - Permitted alternatives, 24:124
 - Preservation doctrine, application of, 24:121
- Rosario material. See Rosario Material
- Search and seizure. See Search and Seizure
- Self-defense. See Self-Defense
- Spoliation or destruction
 - Adverse inference, 18:117
- Spoliation or destruction, 8:26
- Spontaneous declarations/excited utterance, 18:122, 18:123
- State of mind, 18:5
- Stipulations
 - See also Stipulation
- Stolen property, 8:81
- Summary, 18:77
- Suppression of identification of defendant. See Identification of Defendant, Suppression
- Suppression. See Suppression of Evidence
- Tangible evidence
 - See also Real Evidence
- Testimonial evidence, 18:35-18:45
 - See also Witnesses
 - Prior proceedings, use of testimony from, 18:71
- Uncharged crimes, permissible use of
 - See also Uncharged Crimes
 - Acting in concert, 12:19
 - Admissibility. See Admissibility
 - Common plan or scheme, 12:18
 - Identity, 12:16, 12:19
 - Inextricably intertwined crimes, 12:21, 12:24
 - Intent, 12:13-12:18, 12:21

EVIDENCE—Cont'd

- Uncharged crimes, permissible use of—Cont'd
 - Lifestyle evidence, 12:29
 - Mistaken identity, claim of, 12:42
 - Modus operandi, 12:15, 12:17
 - Molineux, People v., 12:6-12:9
 - Probative worth of evidence, 12:8
 - Time lapse, barring of evidence, 12:9
 - Motive, 12:12, 12:13
 - Probative worth of evidence, 12:3
 - Time lapse, 12:9
- Unconstitutional, CPL 440.10 motion, 23:37
- Unique, 18:90
- Unreliable, recantation of testimony, 20:41
- Verdict, motion to set aside
 - Legally sufficient evidence no bar to, 20:42
 - Newly discovered evidence, 20:38-20:41
 - Recantation of testimony, 20:21, 20:41
 - Weight of evidence, no trial court power to set aside verdict against, 20:30
- Vicarious admission, 24:125
- Victim, display of injuries, 18:103
- Videotapes, use of
 - See also Videotapes
- Voiceprint, 18:134
- Weight of the evidence
 - Trial court, no power to set aside verdict against, 20:30
- Witnesses. See Witnesses

EXCITED UTTERANCE

- 911 calls and, 18:123
- Admission into evidence, 18:122
- Confrontation violation, 18:122, 18:123
- Hearsay exception, 18:16
- Requirements, 18:123

EXCLUSIONARY RULE

- Described, 9:1
- Parole proceedings, inapplicable to, 9:121
- Probation violation proceedings, inapplicable to, 9:121
- See also Suppression

EXCULPATORY DEFENSE

- Alibi evidence, 6:55
- Grand jury instructions on evidence constituting, 6:54, 6:55, 6:70
- See also Grand Jury Instructions

EXCULPATORY STATEMENTS

- Codefendants
 - Redaction, Bruton rule, 14:22
 - Severance, appropriateness of, 14:34
- Out-of-court, improper cautionary jury instructions, 19:206
- Part of statement not suppressed, admissibility, 9:178

EXCULPATORY STATEMENTS—Cont'd

- Redaction, Bruton rule, 14:22
- See also Brady Material

EXHIBITS

- See Real Evidence

EXHUMATION

- Obtaining, 8:87

EXIGENT CIRCUMSTANCES

- See Probable Cause

EX PARTE COMMUNICATIONS

- In camera examination. See In Camera Examination
- Judge disqualification, 19:68
- Prohibited, bench trial, 19:67

EXPERIMENTS

- Admissibility of, 18:76

EXPERT TESTIMONY

- Admission of, factors, 18:138
- Foundation, 18:139
- Generally accepted theory or technique in scientific community, 18:139
- Judicial discretion, 18:139
- Psychologist precluded from giving opinion testimony, 18:139
- Relevance, 18:139
- Specialized information, need of jurors for, 18:139
- Adverse expert's testimony, rebuttal, 18:129
- Attending trial, 18:129
- Computer reenactment and summaries of records, 18:77
- Confessions, admissibility of testimony on reliability of, 9:168
- Courtroom identifications, admission discretionary, 9:216
- Credentials subject to stipulation, 18:141
- Cross-examination, 18:143
- Dental expert's, photographs used to corroborate, 18:100
- Disallowing, 18:132
- Factors for admission of, 18:130
- Formal education not always necessary, 18:142
- Foundation for, 18:130
- Frye rule, 18:139
 - Hearsay, expert's reliance on, 18:140
- Hearsay, expert's reliance on, 18:140
- "Junk science" issues, 18:144
- Photographs used to corroborate, 18:100
- Police officer's testimony on street drug trade jargon or notations in drug dealer's ledger, 18:142
- Qualifying expert, stipulations used, 18:141, 18:142

EXPERT TESTIMONY—Cont'd

- Qualifying witness, 18:130
- Quash subpoena, motion to; expert witness's refusal to testify, 8:114
- Reference works for scientific issues, 18:130
- Refusal to testify, 8:114
- Scientific issues, reference works for, 18:130
- Statistics, 18:131
- Stipulations used for qualifying expert, 18:141, 18:142
- Subjects of, list, 18:131
- Summaries of records, 18:77
- Truthfulness, barring opinion as to, 18:137
- Use of, advisable or required, 18:129-18:144

EXPERT WITNESS

- Alcoholism, 18:131
- Assigned counsel compensation for, 2:25
- Brady disclosure, 8:26
- Child sexual abuse accommodation syndrome, 18:131
- Cross-examination, 18:143
- Dental expert, bite mark evidence, 18:131
- Discovery of written reports, 15:55
- DNA, 18:131
- Effective assistance of counsel issues, 2:81
- Employment of, assigned counsel's right, 2:25
 - Court's discretion, refusal, on appeal, 2:31
 - Reversal, 2:31
- Expert's hourly rate discretionary not statutory, 2:29
- False confession syndrome, 18:139
- Foundation, 18:138
- Identification, 18:131
- Psychiatrist, rebuttal witness, extreme emotional disturbance, 15:74
- Sequestration, 19:42
- Sex Offender Management and Treatment Act (SOMTA), 23:112
- Ultimate facts, 18:137

EX POST FACTO LAW

- Constitutional challenges, 15:96
- Generally, 22:3
- Resentencing, 22:182
- Sentencing, 22:3
- Statute of limitations, 13:3

EXPUNGEMENT

- See Sealing of Records and Transcripts

EXTRADITION

- Arraignment and bail, 4:88
- Arrest made outside New York State, 9:70
- Habeas corpus review, 4:91
- Initiation of proceeding, 4:87
- Interstate compact for return of parolees and probationers, 4:94

EXTRADITION—Cont'd

- Medical parole, 23:136
- Nature of proceeding, 4:86
- Postarraignment proceedings, 4:89
- Probation or parole, waiver as condition of, 4:93
- Speedy trial, 13:98
- Waiver, 4:93

EXTREME EMOTIONAL DISTURBANCE

- Murder charge, defense to, 15:56

EYEWITNESSES

- Identification of defendant, suppression
 - See also Identification of Defendant, Suppression
- Identification of defendant, suppression, 9:179-9:230
- Preliminary hearings, testimony at, 5:13

FACIAL EXPRESSIONS

- Challenging prospective juror's, valid, 19:113

FALSE ARREST AND IMPRISONMENT

- ACD disposition, subsequent civil suit for, 22:42

FALSE STATEMENTS

- Search warrant challenged by asserting affiant made, Mapp hearing
 - See also Mapp Hearing
- Search warrant challenged by asserting affiant made, Mapp hearing, 9:87
- See also Statements

FALSUS IN UNO

- Jury charge, 19:165

FAMILY

- Bail affected by defendant's family ties, 4:66
- Exclusion at trial, 19:37
- Friend or relative of incarcerated defendant, telephone call from to attorney. See Attorney
- Harsh and excessive sentence appeal, 22:186
- Shock probation, 22:186
- Prospective juror, relative of party, statutory disqualification, 19:94
- See also Parent

FAMILY COURT

- Double jeopardy implications, 15:97
- Fact-finding hearings, 21:62
 - Dispositional hearings, 21:61
- Grand jury indictment disallowed after case filed in Family Court, 21:61
- Guilty plea, disposition, 21:61
- Guilty verdict, disposition, 21:61
- Interest of justice, ground for removal, 21:53
 - Delays in, 21:43
 - Denial of, 21:48
 - One motion only permitted, 21:48
 - Pendency of motion, 21:49

FAMILY COURT—Cont’d

- Fact-finding hearings, 21:62—Cont’d
- Juvenile delinquents, 21:2
 - Exclusive jurisdiction, 21:15
- Juvenile offenders transferred cases to, 21:61
- Procedural considerations affecting removal to, 21:60-21:62
- Prosecutor’s consent not required, 21:43
- Superior court sits as local court for determination, 21:43
- Juvenile offender, removal or transfer case to
 - Defense motion for removal
 - See also subhead: Juvenile offender
 - Jurisdiction
 - See also subhead: Jurisdiction
 - Minor defendants charged in, 1:23
- Juvenile offender, removal or transfer case to, 21:3, 21:42-21:59
 - Consensual removal after guilty verdict, 21:59
 - Superior court’s, 21:47
 - Defense motion for removal, 21:43-21:49
 - Fact-finding hearings required, 21:62
 - Factors to be considered by court, 21:46
 - Grand jury minutes, transfer after inspection, 21:52
 - Guilty pleas, 21:64
 - Guilty verdicts, 21:61
 - Indictment, removal after, 21:60
 - Jurisdiction, 21:49, 21:61
 - Non-juvenile offender charges and, 21:57
 - Armed felony offenses, 21:55
 - Defenses, 21:46
 - Lower offenses, removal at grand jury’s request, 21:51
 - Murder 2nd degree cases, 21:59
 - Indicted and convicted, referred to barred, 21:59
 - Rape 1st degree cases, 21:59
 - Sodomy 1st degree cases, 21:59
 - Procedural considerations affecting, 21:60-21:62
 - Recommendation following guilty plea, 21:55
 - Request after local court arraignment, 21:50
 - Prosecutor’s consent and additional findings, crimes requiring, 21:55
 - Defendant not sole participant, 21:46
 - Exception if no reasonable cause, 21:47
 - Mitigating circumstances, 21:46
 - Proof, deficiencies in, 21:46
 - Punishment options upon conviction, 21:38
 - Time for, 21:43-21:49
- Records, access to, 8:107
- See also Order of Protection

FEDERAL CONVICTIONS

- Applicability of SORA, 23:82
- Consecutive sentencing, 22:29
- Enhanced sentencing, using, 22:102

FEDERAL FREEDOM OF INFORMATION ACT

- Disclosure under, 8:116

FEDERAL HABEAS CORPUS PROCEDURE

- See Habeas Corpus

FEDERAL PROSECUTION

- Double jeopardy and, 1:4
- Generally, 1:4

FEDERAL TREATIES

- Consul, right to; foreign citizens, 9:136
- Violations of, writ of prohibition supported, 23:5

FEES

- Compensation, Counsel Compensation. See Compensation
- Contingent fee basis not allowed in criminal matter, 2:31
- Convicted defendant’s failure to pay attorney fees, 2:61
- Conviction, reversal of; return of fees paid, 24:113
- FOIL provisions, 8:115
- Mandatory Surcharge/Penalty/Victim Fee, 22:81
- Partial fee agreements, 2:27
- Retained attorney
 - Criminal matter, no representation on contingent fee basis, 2:31
 - Letter of engagement, 2:29
 - No “minimum nonrefundable fee” for representation, 2:31
 - Prohibitions, 2:31
- Transcript of pretrial hearings, 7:1
 - Defendant testimony, request for transcript, 7:36
- Unpaid by convicted defendant
 - Assignment of retained attorney, 2:61
 - Withdrawal from representation, 2:61
- Withdrawal from representation, nonpayment, 2:61
- Writ of prohibition, filing fee improper for indigent, 23:14

FELLOW OFFICER RULE

- Police officer, 9:29

FELONY

- Advising defendant, 4:28
- Appeals
 - Duty to advise defendant, 24:15
 - Predicate felony status, value of appeal, 24:64

FELONY—Cont'd

- Armed felony offense
 - Armed robbery and larceny, juvenile offender
 - Juvenile offenders. See Juvenile Offenders
 - Youthful offender. See Youthful Offenders
- Armed robbery and larceny, juvenile offender, 21:37
- Youthful offender, 21:66
- Youthful offender, maximum sentence, 21:79
- Arraignment on indictment, 4:45
- Bail application in superior court, 4:68
- Bail revocation application, notice to defense, 4:73
- Bench warrants, effect, 4:52
 - Initial application, 4:68
 - New felony, revocation of bail, 4:74
- Criminal record, effect, 4:52
- Custody on conviction, 4:73
- Denial possible, 4:52
 - Serious felony charge and past failure to appear, 4:52
- Failure to appear, effect, 4:52
- Grand jury presentation, prosecution intent, 4:24
- Inability to meet, 4:47
- Indictment, notice to defendant, 4:45
- Initial bail application in superior court, 4:68
- New violent felony, bail revocation, 4:74
- People's position, required court inquiry, 4:66
- Pre-arraignment, 4:45
- Preliminary hearing, right, 4:21
- Presentation, notice by prosecution, 4:24
- Review of, 4:72
- Revocation, new charge, 4:74
- Revocation of bail, 4:74
- Arrest, warrantless arrest, 9:27
- Charge. See Felony Charge
- Class A felony
 - Statute of limitations commencement, no limitation, 13:3
- Class A felony, waiver of indictment prohibited, 3:21
- Class B, plea bargaining, 17:57
- Class C, plea bargaining, 17:57
- Class D, sentence, weekend jail sentence, 22:30
 - Sentence, weekend jail sentence, 22:30
- Class E
 - Disclosure, grand jury proceedings, 6:6
 - Unclassified felony, punishable as Class E, 1:41
- Classification of, 1:39
 - Use in sentencing, 1:39
- Complaint. See Felony Complaint
- Defendant. See Defendant subhead: Felony defendant
- Described as crime, 1:38

FELONY—Cont'd

- Enhanced felony status. See Felony, Enhanced Felony Status
- Felony-murder, concurrent sentences, robbery an element, 22:22
- Fines, maximum, 22:76
 - Higher-level, probation not available, 22:45
 - Lower-level, probation available, 22:45
- Fingerprinting, 1:48
- Gradation of, 16:4
- Grand jury
 - Deliberations not finding evidence for, effect, 3:8
 - Hearing, purpose, 1:70
 - Proceedings to determine sufficiency of evidence. See Grand Jury Proceedings
 - Vote to indict on charges other than those in, 6:35
- Grand jury, motion to dismiss, 7:18
 - Omnibus motion, 7:2
- Hearing. See Preliminary Hearing
- Indictment. See Indictment
- Jurisdiction, local court, 1:68
 - Superior court, trial in, 1:68
- Juvenile delinquents, 21:2
 - Armed felony offense, ineligibility for youthful offender treatment, 21:69
 - Class A felony, accusation of, 21:66
 - Class E felony, maximum sentence, 21:79
 - Complaint, proceedings on, 21:13
 - Enhanced felony sentencing, subsequent litigation, effect of adjudication on, 21:87
 - Family Court, exclusive jurisdiction in, 21:15
 - Jury trial, right to, 21:73
 - Larceny occurring during commission of, 21:34
 - Larceny occurring during commission of Murder 2nd degree, indictment, 21:34
 - Maximum sentence limited once status granted, 21:79
 - Out-of-state adjudication, effect on sentencing, 21:87
 - Persistent felony sentencing, subsequent litigation, effect of adjudication on, 21:87
 - Avoidance of, 21:82
 - Subsequent litigation, effect of adjudication on, 21:87
 - Privacy in proceedings unavailable in felony case, 21:71
 - Serious felony charges, felony-murder defendants, 21:29
 - Sex crimes, ineligibility for youthful offender treatment, 21:69
- Juvenile offenders. See Felony, Juvenile Offender Offense

FELONY—Cont'd

- Murder 2nd degree
 - Statute of limitations commencement, no limitation, 13:3, 13:10
 - Statutory speedy trial, CPL 30.30(3) applicability, 13:25
- Out-of-state. See Felony, Out-of-State
- Persistent felony. See Felony, Persistent Felony
- Persistent violent felony. See Felony, Persistent Felony
- Predicate and persistent felony offenses. See Felony, Predicate Felony
- Predicate felon. See subhead: Double predicate felon
- Predicate felony. See Felony, Predicate Felony
- Predicate violent felony. See Felony, Predicate Violent Felony
- Preliminary hearing
 - Purpose, 1:69
 - Time for, 1:69
- Preliminary hearing, 4:21
 - Not held, 4:56
- Punishment for, 1:38
- Release order, order of protection included in, 3:4
 - Remaining pending, conditions, 3:4
- See also Crime
- See also Misdemeanor
- See also Offenses
- Sentence, higher minimum, 22:17
- Sentencing, predicate and persistent. See Sentencing
- Sequential felonies, 22:121-CITE22:123
 - Defined, 22:121
 - Enhanced sentencing, requiring, 22:121
 - Persistent offender categories, requiring two or more felony convictions, 22:122
- Statutory speedy trial, dismissed indictment, new one voted, original commencement date, 13:53
 - Within 90 days requirement, 13:24
- Later instrument with different basis, new commencement date, 13:56
- 2nd degree murder
 - Attempted 2nd degree, CPL 30.30(3) coverage, 13:25
 - Reduction to misdemeanor, 13:54
- Sufficient evidence to charge, determination. See Grand Jury
- Trial, superior court, 1:68
- Unclassified felony, 1:41
- Violent felony offense. See Felony, Violent Felony Offense
- Violent vs. non-violent, explained, 1:39

FELONY, ENHANCED FELONY STATUS

- Categories, Persistent felony
 - See Felony, Persistent Felony subheads: Offender

FELONY, ENHANCED FELONY STATUS

—Cont'd

- Categories, Persistent felony—Cont'd
 - See Offense
- Effects of finding, 22:124
 - Plea offer cannot be to less than felony, 22:126
- Enhanced crimes, compared, 22:143
- Enhanced felony sentences. See Sentence
- Sequentiality required in all categories, 22:121
- Time limit for mandatory enhanced felony categories, 22:108
 - Incarceration tolls time period, 22:109
 - Time served for conviction set aside, not tolling, 22:110

FELONY, JUVENILE OFFENDER OFFENSE

- Armed felony offenses, prosecutor's consent to transfer to Family Court, 21:59
- Classification as, 21:3
- Convictions prior, conviction qualifies as predicate felony, 21:41
- Disqualification for Youthful offender status, 21:39
- Grand Jury, indictment by, 21:34
- Larceny occurring during commission of Murder 2nd degree, indictment, 21:34
 - Consensual removal to Family Court after guilty verdict, exception, 21:58
 - Criminally negligent homicide as verdict, 21:57
- Depraved indifference Murder 2nd, 21:34
- Guilty plea, no transfer to Family Court following, 21:56
- Indictment, 21:34
- Infancy not always defense, 21:28
- Intentional Murder 2nd degree, 21:28
- Larceny occurring during commission of crime, 21:34
- Non-juvenile offender charges, transfers after guilty verdict on, 21:57
- Prosecutor's consent to transfer to Family Court, 21:55
- Non-juvenile offender felony charged also, 21:34
- Predicate felony, conviction qualifies as, 21:41
- Predicate felony, juvenile offender conviction qualifies as, 21:41
- Preliminary hearing held or waived, 21:32
 - Lesser felony, reasonable cause found for, 21:33
 - Serious felony, reasonable cause found for, 21:33
- Punishment options upon conviction, disqualification for youthful offender status, 21:39
- Rape 1st degree, prosecutor's consent, transfer to Family Court, 21:59

FELONY, JUVENILE OFFENDER OFFENSE—Cont'd

- Reasonable cause to charge with, power of grand jury to request removal, 21:51
- Armed felony offenses, 21:28
- Arrest, grand jury acting before, 21:31
- Classification as juvenile offender, 21:3
- Commencing of case, 21:30
- Depraved indifference Murder 2nd, 21:28
- Felony-murder defendants, 21:29
- Filing felony complaint to commence case, 21:30
- Forms requesting, 21:50
- Grand jury action, 21:33
- Guilty verdict, consensual removal after, 21:59
- Infancy not always defense, 21:27
- Intentional Murder 2nd degree, 21:28
- Murder 2nd degree, exception for after guilty verdict, 21:59
- Prosecutor's consent, 21:55
- Robbery 3rd degree, 21:62
- Robbery 1st degree, 21:62
- Violent felony offenses, 21:28

FELONY, OUT-OF-STATE

- Analogous/not analogous to in-state felonies, 22:100
- Statutory conduct controlling, 22:101
 - Exception: persistent felony offender, 22:103
- Federal convictions, rule applicable, 22:102
- Enhanced sentencing, using, 22:100-CITE22:103
 - Burglary 3rd degree, New Jersey/New York compared, 22:101
 - Pre-plea hearing involving, 22:134
 - Theft, Federal/New York compared, 22:102
- Gonzalez test, qualifying for use in enhanced sentencing, 22:134

FELONY, PERSISTENT FELONY

- Constitutional challenge to prior conviction, 22:146
- Offender, 22:96-22:147
 - Current felony need not be defined by Penal Law, 22:120
 - Discretionary enhanced sentencing, 22:103
 - Enhanced felony status finding, effect, 22:124
 - Gonzalez rule not applicable, 22:103
 - Sentence mandatory, of class A-I felony, 22:124
 - Enhanced sentence, category, 22:97
 - Out-of-state conviction as prior, requirements, 22:103
 - Absent pardon on ground of innocence, 22:103
 - Indictment on new felony, 22:16

FELONY, PERSISTENT FELONY—Cont'd

- Offender, 22:96-22:147—Cont'd
 - Out-of-state conviction as prior, requirements, 22:103—Cont'd
 - Prison term more than a year was imposed, 22:103
 - Sequentiality, 22:103
 - Qualifying as, 22:16
 - Requirements for status, 22:114
 - Additional subjective criteria, 22:118
 - Penal Law felonies, felonies need not be, 22:120
 - State time in excess of 1 year, 22:115
 - Second child sexual assault offender, 22:112
 - Sequentiality required, 22:121
 - Ten-year period (in other categories), inapplicable, 22:119
- Penal Law felonies, felonies need not be, 22:120
- Second child sexual assault offender, 22:112

FELONY, PERSISTENT VIOLENT FELONY

- Defined, 22:106
 - Enhanced sentence, category, 22:97
 - Mandatory enhanced sentencing, 22:106
 - Maximum sentence, life, 22:124
 - Minimum sentences, 22:124
 - Sequentiality required, 22:121

FELONY, PREDICATE FELONY

- Constitutional challenge to prior conviction, 22:146
- Defined, 22:106
- Enhanced felony status finding, effect, higher minimum sentence, 22:124
- Mandatory enhanced sentencing, 22:106
- Plea bargaining restricted after, indictment on new felony, 22:16
- Qualifying as, 22:16
- Sentenced as, cruel and unusual punishment, 22:193
- Sentences, minimum higher, 22:16
 - Mandatory minimum, 22:16
- Sequentiality required, 22:121
- Juvenile offenders, conviction qualifies as, 21:41
- Offense, mandatory enhanced sentence, 22:97
 - Sequentiality required, 22:121

FELONY, PREDICATE VIOLENT FELONY

- Defined, 22:106
 - Enhanced felony status finding, effect, higher minimum sentence, 22:124
 - Mandatory enhanced sentencing, 22:106
 - Sequentiality required, 22:121
- Offense, mandatory enhanced sentence, 22:97

FELONY, VIOLENT FELONY OFFENSE

- Defined, 1:39
- Plea bargaining restricted, 22:18

**FELONY, VIOLENT FELONY OFFENSE
—Cont’d**

Sentence, higher minimum, 22:18

FELONY COMPLAINT

Accusatory instrument

Commencing criminal proceeding, 1:50, 3:10

Completed and signed by officer or victim,
3:12

Defined, 3:12

Deposition, supporting, filed with complaint,
3:34

Dismissed, preliminary hearing never held,
3:18

Hearsay allowed, 3:34

Local court instrument, 3:1

Replaced for prosecution by
Indictment, 3:12

Prosecutor’s information, 3:8, 3:12

Superior court information, condition, 3:12

Sufficiency of, 3:34

Grand jury vote, indicate on charges other than
in, 6:35

Guilty plea to entire, exception, 17:4

Resolution without trial, 1:76

FELONY HEARING

See Preliminary Hearing

FIDUCIARIES

Larceny by, statute of limitations, 13:5

FIFTH AMENDMENT

See Self-Incrimination, Privilege Against

FILE

See Attorney-Client Relationship

FILING

Accusatory instrument, 3:3-3:5

See also Accusatory Instruments

Speedy trial, 13:4, 13:27

FINANCIAL ASSESSMENTS

See Mandatory Assessments

FINES

Bail, court deducting fine from, 22:79

Contempt, civil versus criminal, 23:144

DWAI, maximum/minimum, 22:79

DWL, maximum/minimum, 22:79

Excessive, 22:80

Factors considered on imposition of, 22:80

Felony, maximum, 22:79

Misdemeanor, maximum, 22:79

Multiple fines, prohibition, 22:79

Fine part of, 22:76

Not prohibited under Vehicle and Traffic Law,
22:79

Sole punishment, 22:76

FINES—Cont’d

Types of financial charges, 22:78

FINGERPRINTS AND FINGERPRINTING

ACD disposition, defendant’s fingerprints not
retained by police, 22:41

Appearance ticket, where defendant given, 1:48

Appearance ticket, where defendant given, 4:23

Defendant, procedure for fingerprinting, 1:48

Discovery, 8:40

Evidence, 18:135

Felony charges, 1:48

Misdemeanor charges, 1:48

Procedure for fingerprinting defendant, 1:48

Report presented between illegal arrest and state-
ment, potential for suppression under

Fourteenth Amendment, 9:152

Sealing upon dismissal, 1:88, 1:93

FIRE

Expert witness’s opinion on cause of, Brady
disclosure, 8:26

FIREARMS

Ballistics report incorrect, motion to dismiss
indictment, 7:49

Pistol permit, See Weapon

Search and seizure, See Search and Seizure

Warrantless arrest and suspension of defendant’s
pistol permit, 1:45

FIRST AMENDMENT

Closed courtroom, 19:31

Gag orders, 19:53

FIRST DEPARTMENT

See Appellate Division subhead: First Depart-
ment

FLIGHT

Bail criteria, possible flight, 4:47

From scene, jury charge, 19:166

Probable cause, 9:38

FOREIGN CONVICTION

See Out-of-State Conduct

FOREIGN LANGUAGE

See Interpreter

FORFEITURE

Bail forfeiture, 4:80

Disruptive conduct by defendant, impact on
defendant’s right to be present in court,
19:27

Misconduct, by, 18:73

Post-seizure hearing, 1:61

Property forfeiture, 1:60, 1:61

Waiver compared, 19:18

Waiver versus, 1:94

FORGERY

- Forgery 2nd degree, sentence consecutive, grand larceny 4th degree, 22:19
- Uncharged crimes, permissible use of
 - Common plan or scheme, 12:18

FORMS

- 911 tapes, order to show cause, affirmation and subpoena for, 19:231
- Accusatory instruments
 - Indictment
 - Approval of waiver of, 3:84
 - Waiver of, 3:83
 - Special information, sample, 3:85
 - Superior court information, sample, 3:82
 - Supporting deposition, Demand for, 3:86
 - Traffic ticket cases, motion applicable to
 - Notice of motion to dismiss, 3:91
 - Supporting deposition, 3:86
- Adjournment in contemplation of dismissal (ACD)
 - In abstentia, affidavit requesting ACD, 17:93
- Adjournment requests, 13:101
- Affirmation of engagement, attorney's, 19:236
 - Parker warnings, 19:232
 - Waiver of right, 19:230
- Alcohol and drug abuse patient records, motion and order to produce, 8:140
- Alibi, notice of, 8:134
 - Demand for, 8:133
- Appeal
 - Affidavit of service, 24:136
 - Argument, notice of, 24:165
 - Assigned counsel, notice of motion and affirmation to be relieved as, 24:150
 - Certificate granting leave to appeal from CPL 440.10 order, 23:169
 - Community supervision, letter of Corrections Department and, 24:158
 - Coram nobis motion, 24:169, 24:170
 - Corrections Department and community supervision, letter of, 24:159
 - Court of Appeals, assignment of counsel with, motion for, 24:167
 - Court of Appeals, seeking leave go before
 - Denial of leave to appeal, letter to defendant advising, 24:155
 - Sample leave letter to New York Court of Appeals, 24:152
 - Sample letter opposing leave to New York Court of Appeals, 24:152
 - CPL 440.10 motion, prosecutor's answer to, 23:166
 - CPL 440.10 order
 - Certificate granting leave to appeal from, 23:169
 - Denial of CPL 440.10 motion, 23:171

FORMS—Cont'd

- Appeal—Cont'd
 - CPL 440.10 order—Cont'd
 - Notice of appeal from, 23:170
 - CPL 470.45 order, 24:161
 - Criminal Justice Services, letter to New York State Division of, 24:158
 - Defense response to motion to dismiss, 24:145
 - Denial of, sample letter to defendant advising, 24:155
 - Dismissal
 - Defense response to motion to, 24:145
 - Prosecution's motion for, 24:144
 - Dispositional hearing, appeal notice after, 23:186
 - Exhibits, demand for, 24:140
 - Initial letter to client regarding, 24:142
 - Late service for notice of appeal, motion for, 24:157
 - Motion for stay, 24:163
 - Motion for summary reversal, 24:146
 - Notice of appeal
 - CPL 440.10 order, appeal from, 23:170
 - Late service for, motion for, 24:157
 - Motion for late service of, 24:157
 - Prosecution notice of appeal, 24:147
 - Notice of appeal and affidavit of service, 24:136
 - Notice of argument, 24:165
 - Notice of entry, 24:151
 - Notice of right to, 24:135
 - NYS Division of Criminal Justice Services, letter to, 24:158
 - Poor person relief, attorney certification of eligibility for, 24:138
 - Poor person status on appeal, trial court order granting, 24:137
 - Proposed order, motion to settle record and, 24:143
 - Prosecution CPL 450.50 statement, 24:148
 - Prosecution notice of appeal, 24:147
 - Prosecution's motion to dismiss appeal, 24:144
 - Release and vacatur of conditions, order for, 24:156
 - Remittitur
 - Order upon, 24:154
 - Release and vacatur of conditions upon, order for, 24:156
 - Risk letter to appellate client, 24:162
 - Sample criminal appeal data form, 24:141
 - Sealing order, CPL 160.50, 24:160
 - Settle record and proposed order, motion to, 24:143
 - Stay
 - Affirmation in opposition to application for, 24:164

FORMS—Cont'd

- Appeal—Cont'd
 - Stay—Cont'd
 - Motion for, 24:163
 - Order granting, 24:166
 - Stipulation discontinuing appeal, 24:149
 - Subpoena for trial court record, 24:168
 - Waiver of, 24:134
- Article 78 petition challenging revocation of pistol permit, 22:228
- Automobile ownership, affidavit of, 22:227
- Bail
 - Assignment of bail to attorney, 2:100
- Bench warrant, 4:100
- Bench warrant, sample letter to client informing of, 4:97
- Bill of particulars, demand for, 8:138
 - Alcohol and drug abuse patient records, motion and order to produce, 8:140
- Alibi, notice of, 8:134
 - Demand for, 8:133
- Bill of particulars, 8:138
- Certificate of compliance, 8:129-8:145
- Cover letter for, 8:130
- Demand for bill of particulars, 8:137
- Drug abuse patient records, motion and order to produce, 8:140
- Inspection of stolen property, notice under Penal Law 450.10, 8:136
- Mental health records, affirmation in opposition to disclosure of, 8:141
- Order to facilitate compliance, 8:132
- Protective order, 8:143
 - notice of motion for, 8:142
- Psychiatric evidence, notice of intent to proffer, 8:135
 - Affirmation in opposition to, 8:145
 - Motion to, 8:144
- Stolen property inspection, notice under Penal Law 450.10, 8:136
- Subpoena for witness's criminal record, 8:139
- Waiver of right to, 8:131
 - Witness's criminal record, subpoena for, 8:139
- Business records certification, 18:215
- Certificate of disposition, 1:102
- Certification of business records, 18:215
- Civil management case
 - Initial letter to defendant in, 23:183
 - Letter to client on upcoming, 23:190
- Conflict of interest; letter to client regarding representation of multiple defendants, 14:59
- Constitutional challenge, notice to attorney general of, 15:102
- Cooperation with prosecution agreement, 14:58
- Coram nobis motion, 24:169, 24:170
 - Prosecutor's response to, 24:170

FORMS—Cont'd

- Counsel, motion for withdrawal as, 2:101
- Court of Appeals
 - Assignment of counsel with, motion for, 24:167
 - Leave to appeal, 24:155
 - Opposing leave to appeal to, sample letter, 24:153
- Defense in limine motion, 7:61
 - Misdemeanor case, defense omnibus motion in, 7:62
- Defense memorandum in support of a modified order of protection, 4:101
- Defense sentencing memorandum, 22:222
- Disabilities, application for certificate of relief from, 22:217
- Dispositional hearing, appeal notice after, 23:186
- Disposition, certificate of, 1:102
- Driver's license, affidavit in support of defendant's application to retain license; DWI cases, 4:96
 - Driver's license, affidavit in support of defendant's application to retain license, 4:96
- Drug abuse patient records; order to show cause, supporting affidavit and order to produce, 8:140
- Engagement, affirmation of, 19:236
- Enhancement of sentence, discretionary, 22:217
 - Presentence investigation report, motion to strike portions of, 22:228
- Evidentiary trial memorandum of law, example of, 19:229
- Excess compensation of counsel, Application in support of, 2:93
- Exhibit list, 18:216
- Fatality hearing, letter to client regarding, 1:96, 1:98
- Financial statements, defendant's, 2:90
- Flat fee; retainer agreement, 2:98
- Grand jury
 - Client-witness, letter to, 6:87
 - Defendant's request to testify
 - Sample formal request, 6:80
 - Sample letter request, 6:81
 - Immunity, waiver of, 6:84
 - Instructions, sample letter requesting, 6:79
 - Letter to defendant
 - Sample grand jury letter, 6:85
 - Sample letter confirming not testifying, 6:86
 - Notice of grand jury presentation, notice to defendant, 6:78
 - Notice of motion and affirmation, 6:83
 - Subpoena of witness, defense letter requesting, 6:82

FORMS—Cont'd

Guilty plea
 Absentee, 17:90
 ACD (adjournment in contemplation of dismissal), affidavit requesting ACD in abstentia, 17:93
 Letter to client after, sample, 17:92
 Letter to defendant before, sample, 17:91
 Motion to withdraw, affirmation and affidavit, 17:95
 Plea bargaining, notice of conditions of sentence promises, sample, 17:88
 Plea in satisfaction, 17:94
 Pre-plea probation investigation and report, waiver of, 17:87
 Probation investigation and report, waiver of pre-plea, 17:87
 Waiver of right by, 17:89
 Withdrawal of, motion for; affirmation and affidavit, 17:95
 Habeas corpus, writ and petition for, 23:171
 Hardship privilege, affidavit in support of, 4:96
 Refusal hearing, sample letter to client regarding, 4:99
 Slip, affidavit of lost, 4:98
 HIPAA form; release of information, 1:100
 Hourly fee; retainer agreement, 2:99
 Indictment
 Approval of waiver of, 3:84
 Waiver of, 3:83
 Initial interview of client, 2:91
 Initial letter to client, 2:92
 In limine motion, defense, 7:61
 Interview of client, initial, 2:91
 Investigative services
 Application for and order authorizing, 2:95
 Letter to investigator from attorney, 2:94
 Order authorizing, 2:95
 Joinder of defendants; cooperation with prosecution agreement, 14:58
 Jury request for information, 19:234
 Jury trial, waiver of, 19:235
 Legal fees
 Excess compensation of counsel, Application in support of, 2:93
 Flat fee; retainer agreement, 2:98
 Hourly fee; retainer agreement, 2:99
 Order for defendant's payment of, 2:97
 Retainer agreement, 2:98, 2:99
 Letter to client, initial, 2:92
 Letter to client regarding representation of multiple defendants, 14:59
 Local court, defense omnibus motion in, 7:60
 Affirmation in response to, sample, 7:57
 Affirmation in support of, 7:56
 Defendant's affidavit in support of, 7:59

FORMS—Cont'd

Local court, defense omnibus motion in, 7:60
 —Cont'd
 DWI misdemeanor case, 7:62
 Local court, defense omnibus motion in, 7:60
 Notice of motion, 7:55
 Stipulation in lieu of, 7:58
 Lost bail slip, affidavit of, 4:98
 Material witness order
 Attorney's affirmation in support of, 18:214
 Material witness warrant, application, order and affirmation, 18:214
 Memorandum of law, example of evidentiary trial, 19:229
 Mental health records, affirmation in opposition to disclosure of, 8:141
 Misdemeanor charge, motion to remove to superior court, 19:239
 Misdemeanor charge removal to superior court, motion for, 19:239
 Modification proceeding, letter requesting representation in, 23:174
 Motion for resentencing under DVSJA, 23:172
 Motions
 Certificate granting leave to appeal from CPL 440.10 order, 23:168
 New trial or judgment motion, notwithstanding verdict, 23:184
 Set aside verdict
 Notice of motion and affirmation to, 20:47
 Prosecutor's affirmation in response to CPL 330.30 motion, 20:48
 Traffic ticket conviction, defense motion to vacate, 23:167
 Vacate judgment, sample notice of motion and affirmation to, 23:165
 New trial or judgment motion, notwithstanding verdict, 23:184
 No prosecute statement, 1:101
 Notice under CPL 710.30
 Defendant's statement, use of, 9:236
 Identifications, 9:237
 Oral motion for trial order of dismissal, sample, 19:238
 Order after hearing on discretionary sentence enhancement, 22:221
 Order for hearing on discretionary sentence enhancement, 22:220
 Order of protection, defense memorandum in support of, 23:166
 Parker warnings, 19:232
 Witness, 19:237
 Pistol permit, Article 78 petition challenging revocation of, 22:228
 Enhancement of sentence, discretionary, 22:217
 Persistent history, sample statement of, 22:219

FORMS—Cont'd

- Pistol permit, Article 78 petition challenging revocation of, 22:228—Cont'd
- Second felony offender information and certificate, 22:218
- Plea bargaining, notice of conditions of sentence promises, sample, 17:88
- Poor persons
 - Attorney certification of eligibility for poor person relief, 24:138
 - Eligibility for poor person relief, attorney certification of, 24:138
 - Permission to proceed as, 24:139
 - Status on appeal, trial court order granting, 24:137
- Pre-plea probation investigation and report, waiver of, 17:87
- Presentence investigation report, motion to strike portions of, 22:228
- Presentence report and release order, affirmation seeking, 22:224
 - Defense letter objecting to proposed probation conditions, 22:214
 - Defense memorandum objecting to proposed probation conditions, 22:214
 - Objecting to proposed probation conditions, defense letter, 22:214
 - Standard condition of, 22:226
 - Terminate, motion to, 22:213
- Pretrial notice to prosecution, 15:101
- Prosecution letter requesting case be restored after, 22:225
- Prosecutor's response to coram nobis motion, 24:170
- Protective order, 8:143
 - notice of motion for, 8:142
- Psychiatric evidence, notice of intent to proffer, 8:135
 - Affirmation in opposition to, 8:145
 - Criminal record, witness, 8:139
 - Affirmation in opposition to, 8:145
 - Criminal record, witness, 8:139
 - Motion to, 8:144
 - Subpoena for witness's criminal record, 8:139
 - Witness's criminal record, subpoena for, 8:139
 - Motion to, 8:144
- Psychiatric examiner, order appointing, 23:189
- Psychiatric expert, order appointing, 23:185
- Psychologist/psychiatric
 - Application for and order granting services, 2:96
 - Expert, order appointing, 23:185
 - Order granting services, 2:96
 - Services, application for, 2:96

FORMS—Cont'd

- Recommendation for sentencing, letter requesting, 22:223
- CPL 370.15 notice, 22:228
- DVSJA, motion for resentencing under, 22:228
- Recommendation for sentencing, letter requesting, 22:219
- Resentencing under DVSJA, motion for, 22:228
- Release of information; HIPAA form, 1:100
- Release of information request, 1:99
- Remittitur
 - Order upon, 24:154
 - Release and vacatur of conditions upon, order for, 24:156
- Retainer agreement, 2:98, 2:99
- Sentencing
 - Dispositional hearing, appeal notice after, 23:186
 - New trial or judgment motion, notwithstanding verdict, 23:184
 - Psychiatric expert, order appointing, 23:185
- Set aside verdict, motion to
 - Notice of motion and affirmation to, 20:47
 - Prosecutor's affirmation in response to CPL 330.30 motion, 20:48
- Sex Offender Registration Act
 - Defense affirmation and memorandum on, 23:176
 - Findings of fact, conclusions of law, and order after SORA modification hearing, 23:181
 - Initial letter to defendant in SORA case, 23:173
 - Letter to client regarding Level 1 after SORA hearing, 23:174
 - Memorandum of law in support of modification, 23:179
- Modification
 - Letter requesting representation in proceeding, 23:182
 - Memorandum of law in support of, 23:179
 - Order granting, 23:181
 - Prosecutor's affirmation in opposition to, 23:180
 - Questionnaire, 23:177
 - Representation in proceeding, letter requesting, 23:182
- Notice of appeal from, 23:191
- Order correcting SORA designation, 23:175
- Proposed findings of fact, conclusions of law, and order after SORA modification hearing, 23:181
- Risk level, petition to modify, 23:178
- Sirois hearing, defense response to motion for, 18:213

FORMS—Cont'd

SIST

- Petition to terminate SIST conditions, 23:187
- Stipulation and order for SIST review, 23:188
- Special information, sample, 3:85
- Stipulation, example of written, 18:217
- Stipulation in lieu of motion, 7:58
- Subpoenas
 - Appeal, subpoena for trial court record, 24:168
- Superior court, motion to remove to misdemeanor charge to, 19:239
- Supporting deposition, Demand for, 3:86
- Traffic ticket cases, motion applicable to, dismiss, motion to, 3:91
- Traffic ticket cases, motion applicable to, Supporting deposition, Demand for, 3:86
- Traffic ticket conviction, defense motion to vacate, 23:167
- Trial order of dismissal, sample oral motion for, 19:238
- Trial process, letter to client explaining, 19:228
- Vacate judgment, sample notice of motion and affirmation to, 23:165
- Verdict sheet, 19:233
 - Witness, 19:237
- Waiver of indictment, 3:83
- Warrant, application for, 18:214
- Withdrawal as counsel, motion for, 2:101
- Witnesses
 - Grand jury
 - Letter to client-witness, 6:87
 - Subpoena of witness, defense letter requesting, 6:82
 - Material witness warrant, application, order and affirmation, 18:214
 - Witness's criminal record, subpoena for, 8:139

FOUNDATION

- Photographs, 18:92
- See also Evidence

FOURTH AMENDMENT

- Advocacy, effectiveness of, 2:82
- Defendant's statement, potential for suppression under Amendment
 - See also Defendant's Statements, Suppression
- Defendant's statement, potential for suppression under Amendment, 9:147-9:153

FOURTH DEPARTMENT

- See Appellate Division subhead: Fourth Department

FRAME UP

- Assertion of, admissibility under Molineux, effect of defense on, 12:21

FRANKS HEARING

- Affidavit underlying search warrant, challenging
 - See also Mapp Hearing
- Affidavit underlying search warrant, challenging, 9:78
- Time for holding, 7:37

FRAUD

- Collateral proceedings, CPL 440.10 motion, 23:35
- Guilty plea withdrawal by court, 17:70
- Medicaid fraud, prosecuted by Medicaid Fraud prosecutor, 1:10
- Sandoval rules. See Sandoval Rules subhead: Dishonesty

FREEDOM OF INFORMATION ACT

- Disclosure under federal, 8:116

FREEDOM OF INFORMATION LAW (FOIL)

- Administrative appeal of denial of request, 8:115
- Attorney's fees, 8:115
- Copying costs and attorney's fees, 8:115
- Court records, access to, 8:117
- Disclosure under, 8:115
- Exemptions from, 8:115
- Federal Freedom of Information Act and, 8:116
- Judicial review, 8:115
- Liberal construction of disclosure provisions, 8:115

FRISK

- Stop and, 9:26
- Vehicle occupants, 9:49
- Weapons, frisk for, 9:12

FRUIT OF THE POISONOUS TREE

- Fourth Amendment violation as, suppression of defendant's statement, 9:150

FRYE HEARING

- Defined, 7:37
- Hearsay, expert's reliance on, 18:140
- Scientific evidence, 18:139

FUGITIVE

- Disentitlement doctrine, 24:39

GAG ORDERS

- Overview, 19:53

GANGS

- Expert testimony, 18:131
- Lifestyle evidence, permissible use, uncharged crimes, 12:29

GENDER

- Exclusion from jury impermissible, 19:105

GEOGRAPHICAL JURISDICTION

- County jurisdiction, 15:47

GEOGRAPHICAL JURISDICTION—Cont'd

Police officer arrest, 9:45

GESTURES

Defendant's, suppression

See also Suppression of Evidence

Defendant's, suppression, 9:140

GLOBAL POSITIONING SYSTEM (GPS)

Automobile, 9:46

GOMBERG HEARING

Alleged conflict of interest, 2:45

Joint representation of codefendants, 2:47

GOOD CAUSE

New assignment of counsel for, 2:17

Omnibus motion, additional time in which to bring, 7:2

Revocation of bail, 4:73

GOOD FAITH

Brady analysis, good or bad faith irrelevant with, 8:23

Discovery issues, 8:94

Subpoenas for, good faith preliminary showing required, 8:94

Mistake of law or fact, 15:45

Probable cause, 9:46

Prosecutor's required

Prosecutor's conduct, 18:195

See also Objections Based on Prosecutor's Conduct

Questioning, 18:55

Request for adjournment, demonstrating, 19:44

Opening statement, 19:5

Sandoval rules, 11:46

Search warrant; good faith except not applicable in New York state courts, 15:86

GOVERNMENT

Enforcement with unequal hand, selective prosecution (equal protection) defense, 15:68

Grand jury investigation report of public official's misconduct or lack of misconduct, 6:3

Misconduct, factor, interest of justice dismissal, 7:23

Searches, 9:10

Statements in possession of another, Rosario material exclusion, 8:48

Subpoena duces tecum, court issued, 8:103

GOVERNMENTAL RECORDS

Discovery, 8:100

GRAND JURY

Brady material, 6:70

Charge held for, conditions, 3:18

GRAND JURY—Cont'd

Courtroom identification of defendant, compelling appearance at grand jury, 9:208

Decision, minimum vote required, 6:24

Decision within 45 days

Notice of intention for grand jury, 4:24

ROR on failure, application, 4:57

Decision within 45 days, 6:25

Defendant held for, conditions, 3:18

Defendant's rights, 6:1

Disqualifying grand juror, 6:5

Evidence. See Grand Jury Evidence

Factfinder, as, 6:9

Felony case must be submitted to, 1:70

Charge waived to grand jury, conditions

Not guilty plea on charge requires grand jury action, 3:16

Hearing to determine reasonable cause for felony charge, 1:70

Forms

Client-witness, letter to, 6:87

Defendant's request to testify

Sample formal request, 6:80

Sample letter request, 6:81

Immunity, waiver of, 6:84

Instructions, sample letter requesting, 6:79

Letter to defendant

Sample grand jury letter, 6:85

Sample letter confirming not testifying, 6:86

Notice of grand jury presentation, notice to defendant, 6:78

Notice of motion and affirmation, 6:83

Subpoena of witness, defense letter requesting, 6:82

Function, 6:2

Impanelment, 6:4

Instructions. See Grand Jury Instructions

Judge, county or Supreme Court, adviser to, 6:8

Membership, 6:2

Minutes. See Grand Jury Minutes

Misdemeanor charge, presentation of, 5:17

Overview, 6:1-6:27

Preliminary hearing and

Compared, 5:6, 5:7

Cross-examination of prosecution witnesses, 5:6

Function unimpaired by preliminary hearing, 5:7

Grand jury acts before preliminary hearing

Mandatory release exception, 5:12

Indictment

Case presented to grand jury for, conditions, 5:7

Returned before expiration of time, exception to mandatory release, 5:12

Misdemeanor charge, presentation of, 5:17

GRAND JURY—Cont'd

- Preliminary hearing and—Cont'd
 - Referral to grand jury, 5:21
 - Release of defendant, action after, 5:19
- Presumption charge at, 19:194
- Procedure, insufficient attention by defense attorney, 2:79, 2:80
- Proceedings. See Grand Jury Proceedings
- Public official's misconduct or lack of misconduct, report of, 6:3
- Purpose, 6:2
 - Screening device, 5:6
 - Ultimate decision on whether, and the crimes, prosecuted, 6:9
- Removal of grand juror, 6:5
- See also Grand Jury Proceedings
- Size, 6:2, 6:22, 6:24
- Statutory authority, 6:2
- Subpoena, use of, 6:12
- Testimony. See Grand Jury, Defendant's Testimony
- Use of testimony at trial, 18:74

GRAND JURY, DEFENDANT'S TESTIMONY

- Admissibility, 7:36
- Advising defendant not to testify, 6:38, 6:39
- Assaultive behavior, defendant with history of, restraints used, 6:45
- Cross-examination, 6:44, 6:59
- Defense counsel, limited role, 6:40
- Defense counsel's role, 6:39
- Form of testimony, 6:39
- Immunity, waiver of, 6:41
- Immunity, waiver of, 7:36
 - Lacking, proceeding dismissed, 7:17
- Impeachment, defendant choosing to testify, 6:43, 6:44
- Narrative statement, testimony in, 6:39
- Opportunity to testify
 - Failure to allow defendant to testify, 6:38
 - Motion to dismiss indictment within 5 days of arraignment, 13:5
- Prior to grand jury's vote, 6:38
- Questioning defendant, 6:39
- Repeated interruptions by prosecution, dismissal of proceeding, 6:39
- Request to testify
 - Attorney's discussion with defendant, 6:37
 - Written request requirement, 6:37
- Restraints used for defendant with history of assaultive behavior, 6:45
- Sandoval motions, 6:44
- Transcripts to be provided to defendant, 6:46
- Use of testimony at trial, 6:39
- Waiver not extending to unrelated pending charges, 6:42

GRAND JURY EVIDENCE

- Defense motion to dismiss proceeding, standard of review, 6:68-6:72
- Exculpatory evidence not required, 6:70
- Favorable to defendant, prosecution has no obligation to search for, 6:48
- Instructions on evidence constituting defense, 6:53-6:56
 - See also Grand Jury Instructions
- Preliminary hearing evidence in and, compared
 - Review of evidence, hearing not held, 5:11
- Presumption, statutory, no obligation to help defendant overcome, 6:48
- Prosecutorial misconduct, dismissal, defense motion, 6:69
- Standards, 6:48-6:75
- Subpoenaed records, 6:12
- Sufficiency of evidence
 - Waived by guilty plea, 17:79
- Trial, use of witnesses' grand jury testimony at, 6:26
 - Transcript of grand jury testimony, provision by prosecution, 6:47
- Unbelievable evidence, prosecutor's, bars indictment, 6:71

GRAND JURY INSTRUCTIONS

- Accurate instructions requirement, 6:51, 6:52
- Alibi evidence, 6:55
- Defense, evidence constituting. See subhead: Evidence constituting defense
- Evidence constituting defense, 6:53
 - Exculpatory defense, 6:54, 6:55, 6:70
 - Mitigating defense, 6:56
- Exculpatory defense, 6:54, 6:55
 - Alibi evidence, 6:55
- Impeachment by prior convictions, 6:59
- Less precision, acceptability, 6:52
- Limiting instructions, 6:58
 - Impeachment by prior convictions, 6:59
 - Molineux evidence, 6:60
- Mitigating defense, 6:56
- Molineux evidence, prior crimes, 6:60
- Omission of certain instructions, 6:52
- Presumption applicable to aid prosecution, 19:194
- Procedure, 6:50
- Voluntariness of defendant's statement, failure to instruct on, 6:52

GRAND JURY MINUTES

- Accuracy, 24:29
- Appeal, 6:77, 24:27
 - Standard of review, 24:71
- Court, limitations on use by, 6:65
- Defense motion to inspect, 3:8, 6:61-6:88
 - Court consent, 6:61

GRAND JURY MINUTES—Cont'd

- Defense motion to inspect, 3:8, 6:61-6:88
 - Cont'd
 - Court's inspection on, 6:64
 - Exceptions, 6:63
- Disclosure, 6:46, 6:47
- Disclosure, 8:46
- Indictment, motion to dismiss based on, 7:49
 - Motion to dismiss based on inspection of, 7:49
- Inspection of
 - Court consent, defense attorney's, 6:61
 - Court's inspection, on defense motion, 6:64
 - Defense motion to inspect, 6:61-6:88
 - Dismissal or reduction of charge on inspection, 6:75
 - Motion to dismiss based on inspection of
 - Prosecution right to appeal, 6:75
 - Release of minutes to defense, 6:62
 - Juvenile offender case, effect, 21:52
 - Limitations on use by court, 6:65
 - Police officer's testimony to, Brady disclosure, 8:26
 - Prosecution delay in turning over, speedy trial implications, 6:66
 - Release of minutes to defense, 6:62
 - Review of bail, 4:72
 - Rosario material, testimony, availability under, 6:63
 - SORA hearing, 23:100
 - Speedy trial time for prosecution's delivery, 13:67

GRAND JURY PROCEEDINGS

- Accusatory instruments filed after, 3:1
 - Indictment, misdemeanor charge, rare, 3:9
 - Prosecutor's information, 3:8
 - Sealed indictment commencing case, 3:2
 - "True bill" of indictment, 3:14
- Alibi evidence, 15:35
 - Self-defense evidence at, 15:28
- Appeal
 - Limited right, defendant's, 6:76
- Body of defendant, prosecution compelling exhibition, 9:207
 - Pre-indictment suppression motion possible, 9:177
 - Suppressed statements, use of, 9:176
 - Youthful, statement made before grand jury and after questioning in custody, attenuation likely, 9:152
- Case commences, grand jury action before, 21:31
 - Indictment by grand jury, 21:34
 - Disallowed after case filed in Family Court, 21:61
 - Lower offenses, removal at grand jury's request, 21:51

GRAND JURY PROCEEDINGS—Cont'd

- Case commences, grand jury action before, 21:31
 - Cont'd
 - Serious felonies, defendant held if reasonable cause found, 21:33
- Conducted in secret, 6:6, 6:7
- Confrontation violation, 14:53, 18:20
- Decision, 6:23-6:25
 - 45 days, decision within, 6:25
 - Delay and release, 6:25
 - Failure to reach, habeas corpus petition, 6:25
 - Release, obtaining, 6:25
 - Possible results, 6:23
 - Presence of voting members, 6:24
 - "True bill" of indictment, 6:23
 - Unanimity not required, 6:24
 - Vote, 6:24
- Defense
 - Attorney failures, 2:79, 2:80
 - Witnesses for, 6:16
- Defense motions
 - Dismiss proceeding, to. See subhead: Defense motion to dismiss
 - Minutes, inspection of. See Grand Jury Minutes
 - Reduction of indictment charge, 6:73
- Defense motion to dismiss, 6:68-6:72
 - Asserting grounds for dismissal, 6:68
 - Denial of, limited right to appeal, 6:76
 - Failure to conform as grounds, proceeding's, 6:68
 - Grounds for, 6:68
 - Impairment of grand jury integrity, 6:67
 - Prosecutorial misconduct. See subhead: Prosecutor's misconduct as ground for dismissal
 - Standard of review, 6:68-6:72
 - See also Grand Jury Evidence
 - Statutory grounds, 6:68
 - Waiver, 6:68
- Defense motion to dismiss, 7:15
 - Not received, 7:18
 - Time limit, critical, 7:18
 - Indicted defendant, 7:15
- Determination. See subhead: Decision
- Document production, subpoena, 6:12
- Evidence. See Grand Jury Evidence
- Generally
 - Conducted in secret, 6:6, 6:7
 - Decision within 45 days, 6:25
 - Disclosure unlawful, 6:6
- Judge
 - County and Supreme Court judge, advisers to, 6:8
 - Does not conduct, 6:8
 - Presence of voting members, 6:24

GRAND JURY PROCEEDINGS—Cont'd

- Generally—Cont'd
 - Prosecutor adviser to, 6:8
 - Unauthorized presence improper, 6:7
- Guilty plea allocution
 - Codefendant's, use at trial, 14:53, 18:20
- Handwriting exemplars, compelling, 6:14
- Identification of defendant, evidence, methods of
 - identification at presentation of
 - See also Grand Jury Evidence
- Impeachment
 - Defendant choosing to testify before grand jury, 6:43, 6:44
 - Prior convictions, by, grand jury instructions, 6:59
 - Sandoval motion possible, 6:44
- Instruction to jury. See Grand Jury Instructions
- Jurors, 6:22
- Length of, 6:21
- Lesser included offenses, 16:32, 16:33
 - Advice by defense counsel, 16:32
 - Consideration of lesser charges, 16:32
 - Green/Glover two-prong test, 16:7
 - Inquiry by grand jurors concerning, 6:57
 - Motion to reduce charges, 16:33
- Lower courts, prosecution of case in, 6:74
- Minutes. See Grand Jury Minutes
- Notices
 - Defendant's request to testify. See Grand Jury
 - Opportunity to testify. See Grand Jury
 - Presentation, notice of. See subhead: Notice of presentation
- Notice to defendant, presentation to grand jury
 - Insufficiency
 - Charges not in prosecutor's notice voted, 6:36
 - Overview, 6:31
 - Sealed indictment exception, 6:34
 - Service of, request for, 6:37
 - When required, 6:34
- Overview, 6:1-6:27
- Perjured testimony, use of, 6:71
- Preliminary hearings, presentation to avoid, 6:38
- Presumption of regularity, 6:27
- Prosecutor's misconduct as ground for dismissal, defense motion
 - Evidentiary issues, 6:71
 - Exculpatory defense, instructions on, 6:70
 - Perjured testimony, use of, 6:71
 - Unbelievable evidence, use of, 6:71
- Prosecutor's obligation before, Sandoval rules, 11:47
- Readiness, within time for, 4:57
- Reasonable cause standard, 6:10
- Release of defendant, procedure for obtaining, 6:25

GRAND JURY PROCEEDINGS—Cont'd

- Resubmission of charges
 - Generally, 6:28
 - After dismissal of indictment, 6:30
 - After partial acquittal, 6:30
 - Second grand jury, resubmission to, 6:29
 - Reversal on appeal, after, 24:126
 - Self-incrimination, privilege against
 - Defendant's appearance, 6:49
 - Subpoena duces tecum upon defendant, 6:12-6:20
 - Waiver of immunity, 6:41
 - Speedy trial
 - Limits, 5:19
 - Subpoena duces tecum, 6:12-6:14
 - Testify, defendant's opportunity and request to. See Grand Jury
 - Testimony
 - See Grand Jury, Defendant's Testimony
 - See Grand Jury Minutes
 - Unauthorized presence improper, 6:7
 - Waiver
 - Defense motion to dismiss proceeding, 6:68
 - Immunity, waiver by defendant, 6:41
 - Indictment
 - Entering plea earlier, 17:4
 - Requires defendant or charged held for grand jury, 3:18
 - Withdrawal of case prior to decision, 6:29
 - Witnesses at, 6:11
 - Attorney for, 6:15
 - Child as witness, 6:20
 - Competence and capacity, 6:19
 - Defense, witnesses for, 6:16
 - Handwriting exemplars, compelling, 6:14
 - Immunity, 6:14, 6:15
 - Oath, 6:18
 - Recall of, 6:17, 6:21
 - Representation of, 6:15
 - Rights of, 6:14
 - Subpoenas, 6:11, 6:12
- ## GRAND LARCENY
- Codefendants
 - Joinder of offenses, 14:6, 14:8
 - Statutory definitions similar, 14:8
 - Felony, example of, 1:38
 - Grand Larceny 3rd degree, shock probation as harsh and excessive sentence, effect on defendant's family, 22:186
 - Grand Larceny 4th degree, sentence consecutive, forgery 2nd degree, 22:19
 - Overlapping guilty verdicts, grand larceny and robbery, 20:18
 - See also Larceny

GREEN/GLOVER TEST FOR LESSER INCLUDED OFFENSES

- CPL 300.50, 16:11
- Defendant's statements, evaluation of, 16:17
- Elements of crime, first prong of test, 16:8-16:10
 - Comparison of crime charged and claimed lesser included offenses, 16:8
- Drug sales, 16:9
- Greater charge must include lesser, 16:9
- No new element possible, 16:10
- Evidentiary standard favors defendant, 16:13
- Grand jury, 16:7
- Impossibility, 16:8
- Jury's right to evaluate evidence, 16:14
- Lesser charge, basis for refusing, 16:18
- Overview, 16:7-16:18
- Rational basis for lesser, necessity of, 16:12
- Reasonable jury finding, second prong, 16:11-16:18
- Trial, 16:7
- Two-prong test, reasonable finding, 16:11-16:18
 - Accomplice testifying for prosecution, 16:15
 - Assault 3rd degree described as lesser included offense, 16:16
 - Charging down improper, 16:12
 - Codefendants, relevance of actions of, 16:16
 - Defendant's statements, evaluation of, 16:17
 - Driving while ability impaired, 16:13
 - Driving while intoxicated, 16:13
 - Evidentiary standard favors defendant, 16:13
 - Lesser charge, basis for refusing, 16:18
 - Robbery, 16:11
 - Testimony, jury barred from irrationally dissecting, 16:14
 - Witness' testimony, jury barred from irrational dissection of, 16:14

GUILT

- Accomplices, assistance with crime alone insufficient, 14:45
- Codefendants, joinder of offenses, Molineux evidence
 - Proof, one offense admissible to prove another, 14:7
- Disclosure of evidence material to defendant's guilt, 8:22
- False alibi evidence for guilt prohibited, 15:39
- Not guilty defense
 - Mental disease or defect defense
 - See also Mental Disease or Defect Defense
- Not guilty defense, 15:1
 - Mental disease or defect defense, 15:53

GUILTY PLEA

- Absentee plea, 17:43
 - Court permission, 17:46
 - Misdemeanors and violations, 17:45

GUILTY PLEA—Cont'd

- Absentee plea, 17:43—Cont'd
 - Misdemeanors and violations, 17:45
 - Prosecutor's role, 17:46
 - Traffic infractions, pleading guilty by mail, 17:44
- Accusatory instruments
 - Allocution, 17:26
 - Inconsistent charges in, 17:35
 - Plea in satisfaction, 17:47
- Adjournment for sentencing, 17:62
- Admission of elements of crime as part of plea, 17:24
 - Allocution. See subhead: Allocution
 - Exceptions, 17:24
- Advisement of rights, 17:37, 17:38
 - Probation violation, 17:37
- Against advise of counsel valid, 17:39
- Agreed-upon sentence, 17:37
- Alford plea, 17:34
- Allocution, 17:25
 - Alford plea. See subhead: Alford plea
 - Defense raised during, 17:29
 - Denial of element of offense, no plea, 17:27
 - Exception to requirement, 17:26
 - Failure to recite element, 17:29
 - Hypothetical crime, plea to, 17:33
 - Inferable element from admitted facts, guilty plea accepted, 17:28
 - Mental impairment raised during, effect on plea, 17:30
 - Necessity of, for each offense, 17:26
 - Waiver of defense, 17:29
- Allocution, plea without, 17:31
 - Hypothetical crime, plea to, 17:33
 - Lesser offense, plea to, 17:32
 - Minimum requirement, 17:32
- Appeal, 17:37
 - After simple plea, 24:14
 - Coerced guilty pleas, collateral proceeding on issues outside record, 24:33
 - Conditional plea, 17:81, 17:82
 - Effect of plea on, 17:73-17:84
 - Conditional plea improper, 17:81
 - Harmless error analysis inapplicable, 17:78
 - Issues waived by plea, 17:79
 - Harmless error analysis inapplicable, 17:78
 - Ineffective assistance of counsel, 17:80
 - Plea bargaining, multiple convictions, 24:115
 - Withdrawal of plea by defendant for preservation of issues for direct appeal, 17:63, 17:64
- Appeal on denial of interest of justice motion, 7:28
- Appeal, right of, waiver, 24:3-24:8
 - Permissible as condition of plea, 17:82

GUILTY PLEA—Cont'd

- Appeal, right of, waiver, 24:3-24:8—Cont'd
 - Voluntary, 24:4
- Arraignment, entering plea at, 4:23
 - Disposition, 4:25
 - Sentencing, 4:25
- Batson objection in jury selection, guilty plea waiving, 19:126
 - Batson objection in jury selection, 19:126
- Boykin rights, 17:37
- Brady disclosure waived, 8:31
- Burden
 - Prosecution's, proof of guilt beyond a reasonable doubt, 17:37
- Charge
 - Inconsistent charges, to, 17:35
 - Reduced to misdemeanor in exchange for, 5:20
- Checklists
 - Collateral consequences, checklist of, 17:86
 - Plea colloquy, likely questions during, 17:85
- Civil rights, loss of, 17:37
- Coerced plea, vacation over objection, 17:71
- Collateral consequences, 17:38
- Collateral estoppel doctrine applicable to, 22:211
 - Collateral consequences of, 22:202
- Collateral proceedings, CPL 440.10 motion, 23:55
 - Factual basis, without, 23:55
 - Withheld evidence or information, 23:55
- Conditional plea improper, appeal, 17:81, 17:82
- Connected or wired plea, 17:23
- Conviction
 - Equivalent to, 17:37
 - Occurs on, 20:22
 - Reversal of prior, separate convictions, 17:83, 17:84
- Defendant's
 - Decision to plead, 2:36
 - Rights, 17:37
 - Advice as to, 17:37
 - Right to be present, 17:42
 - Waiver, 17:43
- Defenses, waiver of, 17:29, 17:37
- Denial of element of offense, no plea, 17:27
- Discovery, 8:19
- Disposition of case transferred after, 21:61
 - Family Court, removal after, 21:60
 - Defendant not criminally responsible for crime, 21:55
 - Murder 2nd degree, no transfers allowed for, 21:56
 - Pattern of behavior, action not part of, 21:55
- Disposition on, 4:25
 - Arraignment, sentencing at, 4:25

GUILTY PLEA—Cont'd

- Disposition on, 4:25—Cont'd
 - Entering at arraignment, 4:23
 - Adjournment on, grounds, 4:24
- Double jeopardy upon, 17:74
 - Delayed death exception, 17:77
 - DWI-related cases, early guilty plea barred by, 17:75, 17:76
- DWI-related cases, early guilty plea barred by, 17:75, 17:76
- Effective/ineffective assistance of counsel, 2:75
 - Right to, 2:75, 2:80
 - Waiver of ineffectiveness issue, 2:80
- Effect of, 17:73-17:84
- Equivalent to conviction after trial, 17:37
- Factual allocutions. See subhead: Allocation
- Failure to advise defendant of rights as basis for withdrawal of, 17:38
- Forms
 - Absentee, 17:90
 - ACD (adjournment in contemplation of dismissal), affidavit requesting ACD in abstenia, 17:93
 - Letter to client after, sample, 17:92
 - Letter to defendant before, sample, 17:91
 - Motion to withdraw, affirmation and affidavit, 17:95
 - Plea bargaining, notice of conditions of sentence promises, sample, 17:88
 - Plea in satisfaction, 17:94
 - Pre-plea probation investigation and report, waiver of, 17:87
 - Probation investigation and report, waiver of pre-plea, 17:87
 - Waiver of right by, 17:89
 - Withdrawal of, motion for; affirmation and affidavit, 17:95
- Hypothetical crime, plea without allocutions, 17:33
- Informed defendant, 2:35
- Issues
 - Surviving plea, 17:80
 - Waived by plea, 17:79
- Knowing, intelligent, and voluntary plea
 - Appeals
 - Nature of plea questioned, 24:7
 - Voluntary waiver, 24:5
 - Requirement of, 17:36
- Legality of sentence, 17:80
- Lesser included offenses, 16:34, 16:35
 - Allocation, plea without, 17:32
 - Factual colloquy, pleading to, 16:35
- Impossibility, 16:8
- Lesser charge, conviction on, 16:1
- Plea bargaining. See Plea Bargaining

GUILTY PLEA—Cont'd

- Mental impairment
 - Issues, 17:30, 17:80
 - Raised during allocution, effect on plea, 17:30
- Motions
 - Withdrawal of plea, defendant's, 17:65
- Not guilty plea
 - Defendant's right to plead, 17:1
 - Defense. *See* Defense
 - May be changed, 1:54
- Not guilty plea, 15:1
 - Prosecution's burden of proof, 15:1
- Notice to defense for using defendant's statement, timeliness, suppression issue, 9:157
- Not required, 17:37
- Objection not waived by, failure to move dismissal, defective accusatory instrument, 3:79
- Plea
 - Bargaining
 - See also Plea Bargaining
 - Explained, 1:77
 - In satisfaction, 17:47
 - Presentence investigation, 17:62, 17:70
 - Prosecution's notice prior to use of evidence, waiver of timeliness, 8:65
 - Pro se motion to withdraw, 17:64
 - Quickie plea, 17:75
 - Reversal of prior, separate conviction
 - Conviction and plea must be intertwined, 17:84
 - Effect, 17:83, 17:84
 - Rights waived by guilty plea, 24:3-24:8
 - Defendant's voluntary waiver, 24:4-24:7
 - Rosario violation waiver, 8:51
- Sentencing
 - Adjournment for, 17:62
 - Arraignment, sentencing at, 1:54
 - Specific performance, 17:19, 17:22
 - Specific performance, 22:170
- Speedy trial
 - Constitutional grounds, preserved for appeal, 13:20
 - Statutory grounds
 - Waiver, 13:20
 - Withdrawn plea, commencement date of action, 13:50
- Statute of limitations waived by, 13:12
- Subpoena witnesses, defendant's right to, 17:37
- Traffic infractions, pleading guilty by mail, 17:44
- Unrelated offenses, plea including, 17:47
- Violation charges, 4:25
- Voluntariness
 - Claim plea not made voluntarily, 17:80

GUILTY PLEA—Cont'd

- Waiver
 - Condition of plea, waiver of rights of appeal permissible as, 17:82
 - Defense, of, 17:29
 - Issues waived by plea, list, 17:79
 - Preservation of error, 18:156
 - Right to appeal adverse Sandoval ruling, 11:54
 - Right to be present at plea, defendant's, 17:43
 - Statute of limitations, 13:12
 - Statutory speedy trial, 13:20
- Withdrawal of plea by court, 17:70
 - Coerced plea, vacation over objection, 17:71
 - Fraud as ground to vacate plea, 17:70
- Withdrawal of plea by defendant, 17:63, 17:64
 - Application made to trial court, 17:65
 - Lopez, narrow exception under, 17:66
 - Motions, 17:65, 17:66
 - Prompt request, 17:67
 - Attorney, need for separate counsel if conflict with, 17:68
 - Claim of innocence as basis, 17:67
 - Court's discretion, 17:63
 - Effect of plea, failure to inform regarding, 17:63
 - Improper use of plea, 18:74
 - Inquiry into reasons for, 17:69
 - Preservation of issues for direct appeal, necessary for, 17:63
 - Prompt request, 17:67
 - Pro se motion to withdraw, 17:64
 - Rights, failure to advise defendant of, 17:38
 - Summary denial prohibited, 17:69
- Writ of prohibition
 - Court acceptance of without prosecutor's consent, 23:16
 - Judge, vacating of plea, mutual mistake, 23:5

GUILTY VERDICT

- See Verdict subhead: Guilty verdict

HABEAS CORPUS

- Alleged deprivation of due process, relief, 24:64
- Appeal of habeas corpus order, 24:104
- Appellate delay, relief of long delay, 24:64
- Collateral proceedings, 23:18-23:25
- Exhaustion requirement, 23:24
- Extradition, 4:91
- Federal prisoner as witness, 8:103
- Habeas corpus, federal, 23:24, 23:25
 - Constitutional violation necessary, 23:25
 - Exhaustion of state remedies, 23:24
- Habeas corpus petition, state
 - Contents of petition, 23:23
 - Grand jury's failure to decide within 45 days, 6:25

HABEAS CORPUS—Cont'd

- Habeas corpus procedure, state, 23:22
 - Appeal from
 - Order detaining defendant, 23:23
 - Exhaustion of remedies, 23:24
 - Writ procedures, 23:24
- Petitioner, defined, 23:18
- Psychiatric examination of defendant, Article 730
 - application to habeas corpus proceedings, 15:61
- Relator
 - Defined, 23:18
 - Relief unavailable, 23:21
- Relief available, 23:19, 23:20
 - Custody, relief from, 23:19
 - Scope of writ is narrow, 23:20
- Relief not available, 23:21
 - Appeal sufficient, 23:21
 - Motion to dismiss sufficient, 23:21
 - Traditional proceedings, no reason for departure from shown, 23:21
- Review of bail determination, 4:76
 - Extraordinary circumstances, only in, 4:76
 - Relator's proposal, 4:76
 - Superior court application compared, 4:76
- Speedy trial pretrial release, 13:82

HABIT EVIDENCE

- Change in defendant's appearance, courtroom identifications, suppression, 9:209
- Hearsay exception, 18:22, 18:49

HAIR SAMPLES

- Defendant required to provide, discovery, 8:40

HANDCUFFING

- Detainer, handcuffing for safety reasons, warrantless police intrusion, 9:26
- Showups, use for, not equivalent to arrest, 9:191

HANDWRITING

- Exemplars, motion or order for discovery, 8:40
- Expert
 - Generally, 2:41, 18:131
 - Assigned counsel compensation for, 2:25
- Grand jury proceedings, prosecutor's power to compel handwriting exemplars at, 6:14
- Immunity, 6:14
- Testimony
 - Expert, 2:41, 18:131
 - Lay, genuineness of, 18:146

HARASSMENT

- Aggravated harassment
 - Continuing crime theory applicable, indictment, 3:44
- Including prior as element of offense, example, 22:145

HARASSMENT—Cont'd

- See also Order of Protection

HARMLESS ERROR

- 911 recordings of prior inconsistent statements, refusal to admit, 18:125
- Appeal issues
 - Generally, 24:87
- Bruton rule, violation as harmless, 14:26
- Generally, 24:87
- Ineffective assistance of counsel, 2:71
- Sandoval ruling, 11:52

HEALTH

- Adjournment, 19:46
- Harsh and excessive sentence on appeal, 22:186

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

- Disclosure, 8:106

HEARING IMPAIRED

- See also AIDS
- See also Deaf Mute

HEARINGS

- Adjournment in contemplation of dismissal, 21:22
 - Juvenile delinquent, hearing on conviction, 21:24
 - Juvenile offenders, 21:61
- Bail revocation, 4:74
- Bail surety, 4:70
- Bifurcated hearing, identification of defendant, independent basis, 9:227
- Cardona hearing, 7:37
- Collateral proceedings, hearings relating to
 - Constitutional violation, ineffective assistance of counsel, 23:48, 23:49
 - Motion, hearing on, 23:64
 - Procedural matters in trial court, 23:61
- Conflict of interest, attorney/client, 2:45
- Coronavirus, effect on criminal law, 13:1
- Courtroom closure, hearing required, 19:32
- COVID-19, effect on criminal law, 13:1
- CPL 440.10 motion, evidentiary hearings, 23:61
- Decision, court's, 7:41
 - Reargument after, 7:44
- Defendant's presence at, 7:33
 - Hearing judge as trial judge, 7:32
 - Minutes of, transcription, time allowed for, 7:1
 - Purpose of, 7:12
- Discovery at, 7:31
- Dispositional hearing
 - See also Dispositional Hearing
- Evidence presented at, hearing decision base on, 7:50

HEARINGS—Cont'd

- Evidentiary hearings
 - CPL 440.10 motion, 23:61
 - Motion to set aside verdict
 - Recantation of testimony, entitlement to, 20:41
- Factual disagreements, hearings available to resolve, 7:39
- Failure to conduct, 5:1
- Felony hearings. See Preliminary Hearings
- Franks hearing, affidavit underlying search warrant, challenging, 9:78
- Frye hearing, 7:37
- Generally
 - Assigned attorney, types of representation, 2:19
- Gomberg hearing, 2:44, 2:45
- Hinton hearing. See Courtroom Closure
- Huntley hearing. See Huntley Hearing
- Impound of vehicle and post-seizure hearing, 1:61
- Juvenile delinquent status, 21:21
- Mapp hearing. See Mapp Hearing
- Motions to dismiss, speedy trial
 - Allegations denied in People's papers, hearing, 13:77
 - Factual dispute in People's papers, hearing, 13:77
 - Hearing, requirement for, conditions, 13:76, 13:77
 - Specific delay, hearing on, 13:76
- New evidence after, reopening pretrial hearings, 7:42
 - Denial, 7:43
 - Insufficient additional facts, 7:43
- Outley hearing, 7:37
- Parker warnings, application of, 19:20
 - Trial judge, conducted by, 19:70-CITE19:72
- Practice, 7:29
 - Cross-examining witnesses, 7:35
 - Defendant's hearing testimony, use at trial of, 7:36-7:38
 - Defendant's presence required, 7:33
 - Discovery at, 7:31
 - Public hearing, right to, 7:34
 - Purpose of, 7:12
 - Timing of hearings, 7:40
 - Witnesses, importance of calling, 7:30
- Preliminary hearings. See Preliminary Hearing
- Pre-plea hearing on prior convictions. See Sentencing subhead: Pre-plea hearing on prior convictions
- Pretrial hearings
 - See also Pretrial Hearing
 - Trial judge, conducted by
 - See also Trial

HEARINGS—Cont'd

- Probable cause hearing, detention beyond initial appearance, juvenile delinquent, 21:22
- Probation revocation hearing. See also Probation Revocation Hearing
- Public hearing, right to, 7:34
 - Time for, 7:1
- Reconstruction hearings
 - See also Reconstruction Hearing
 - Incomplete record on appeal, relief, 24:29, 24:35
- Rehearings. See subhead: New evidence after
- Restitution to crime victim, 22:73
- Right, 19:11
- Rosario hearing
 - See also Rosario Hearing
- Rosario hearing, 9:226
- Sandoval hearing
 - See also Sandoval subhead: Hearing
 - Motion, hearing on. See Sandoval Motions
- Sex Offender Registration Act. See Sex Offender Registration Act
- Stipulation in lieu of motions, pretrial hearings as, 7:14
 - Decision based on hearing evidence only, 7:50
 - Defendant's testimony, inadmissibility of, 7:36
 - Failure to move for, 7:8
 - Reopening of, preservation and, 7:46
 - Abuse of discretion and, 7:47
 - Huntley hearing, 7:46
 - Inadequacy of hearing evidence, 7:47
 - Second attorney, motion to reopen by, 7:48
- Suppression hearings
 - Huntley hearing. See Huntley Hearing
 - Mapp hearing. See Mapp Hearing
 - Wade hearing. See Wade Hearing
- Testimony
 - Recantation, entitlement to hearing on, 20:41
- Timing of hearings, 7:40
- Traffic infractions, administrative adjudication of, 1:30, 1:32, 1:33
- Trial court failure to hold on-the-record hearing, 24:34
- Types of; list, 7:37
- Ventimiglia hearings, 12:36-12:41
 - See also Ventimiglia Hearings
- Wade hearing. See Wade Hearing

HEARSAY

- 911 Recordings. See 911 Recordings
- Accusatory instrument
 - Felony complaint based on, 3:34
 - Information, non-hearsay in required, 3:6
 - Misdemeanor complaint, hearsay in, allowed, 3:10, 3:32
- Bruton rule, 14:18

HEARSAY—Cont'd

- Business record exception, 18:78-18:85, 18:126
 - See also Business Records
- Codefendant's statement, 14:18
- Confrontation, 18:10, 18:23-18:26, 18:122
- Conspiracy, 14:24
- Conspiracy, statements in, 18:21
- Courtroom identifications, inferential bolstering prohibited, 9:214
- Declaration against interest, 18:20, 18:21
- Declaration against penal interest, 18:20
- Defined, 18:23
- Domestic violence victim, answers by, 18:122
- Dying declarations, 18:18
- Entrapment defense, admissibility in, 15:76
- Evidence admitted, not binding at retrial, 24:120
- Exceptions, 18:14-18:21
 - Confrontation, defendant's right of, 18:23, 18:26
 - Dying declarations, 18:18
 - Excited utterance, 18:17
 - Habit evidence, 18:22
 - Penal interest, declaration against, 18:20
 - Prior exculpatory statement of defendant, 18:27
 - Prompt complaint evidence, 18:16
 - Public document exception, 18:15
 - Spontaneous declaration, 18:17
- Excited utterance
 - Admission into evidence, 18:122
 - Exception, 18:17
- Exclusion, 18:11
- Expert, use of, 18:140
- Frye Rule and expert's reliance on, 18:140
- Habit evidence exception, 18:22, 18:49
- Hearsay rule, generally, 18:23, 18:121
 - Application of principles, 18:122-18:126
- Huntley hearing, 9:166
 - Mapp hearing, 9:72
- Implicit hearsay, 9:213
- Indirect hearsay, 18:12
- Interlocking statements, 14:23
- Overview, 18:10-18:27
- Past recollection recorded, 18:19
- Penal interest, 18:20
- Persistency hearing, 22:140
- Present sense impressions, 18:124
- Prior exculpatory statement of defendant inadmissible, 18:19, 18:27
- Prompt complaint evidence, 18:16
- Public document exception, 18:15, 18:28
- Sex Offender Registration Act, hearing under; reliable hearsay required, 23:100
- Spontaneous declarations
 - Admission into evidence, 18:122

HEARSAY—Cont'd

- Spontaneous declarations—Cont'd
 - Exception, 18:17
- Statement not offered for its truth, 18:13
- State of mind, 18:5
- Suppression hearing, 9:164
 - First hand knowledge required, 9:72
- Truth, statement not offered for its, 18:13

HIV

- Defendant with AIDS, interest of justice dismissal granted, 7:23
- See also AIDS
- Victim infected with, defendant required to provide blood samples, 8:39

HOLIDAYS AND WEEKENDS

- Complaint conversion to information, 4:55
- Preliminary hearing within
 - Occurring during holidays or weekends, 5:10
- Preliminary hearing within 144 hours of confinement, 4:56
- Speedy trial computations, 13:22

HOMICIDE

- Autopsy report, 8:84
- Criminally negligent, juvenile offenders, murder 2nd degree charge, instead of, 21:57
- Exhumation of body, 8:87
- Harsh and excessive sentences modified on appeal, 22:186
- Murder. See Murder
- Psychiatric records of homicide victim, discovery, 8:84
- Speedy trial, coverage
 - None, statutory speedy trial provision, 13:18, 13:25
- Uncharged crimes, permissible use as evidence, motive, 12:12

HOUSE ARREST

- Time served, 22:4

HUNG JURY

- Described, 1:81
- Effect, 1:81
- Retrial, effect of first trial hung jury on, 24:129
 - Conviction on retrial, appeal on sufficiency of evidence at first trial, 24:129

HUNTLEY HEARING

- All possible witnesses, no need to call, 9:166
- Cross-examination of police officer, 9:233
- Direct examination of police officer, 9:231
- Ineffective counsel, 2:82
- Procedure and evidence at, 9:166
 - Cross-examination at, 9:166
- Grand jury proceedings, statements suppressed after hearing used at, 9:176

HUNTLEY HEARING—Cont'd

- Procedure and evidence at, 9:166—Cont'd
 - Hearsay admissible, 9:166
 - Order of suppression issued, use of suppressed statement at trial limited, 9:170
 - Proof beyond a reasonable doubt, prosecution's burden, 9:166
 - Reference, defense's statement, cross-examination to clarify issue, 9:166
 - Truth of statement irrelevant, 9:166
- Reopening of hearing, 7:48
 - Police knowledge, defendant represented by counsel, 7:48
- Voluntariness of defendant's statement, 7:45

HYPNOSIS

- Refreshing witness' recollection through, 18:128

IDENTIFICATION

- Arrest photograph admitted to dispute, 18:94
- Blank lineups, 9:189
- Card, 9:56
- Codefendant, misidentification of, Brady disclosure, 8:26
- Corroboration, 9:216
 - Resemblance testimony, 9:219
 - Suppression of, 9:179-9:230
- Date and location, specification in prosecution's notice, 8:62
- Defendant's identification
 - Grand jury proceedings
 - See also Grand Jury Evidence
 - Suppression of
 - See also Identification of Defendant
- Discovery, 8:66
 - Police-initiated procedures, notice, 8:66
- Exclusion of evidence, 18:39
- Expert testimony, 9:216
- Jury charge
 - See also Jury Charge
- Jury charge, 19:168
- Lineups
 - See Identification of Defendant, Suppression subhead: Lineups
 - See Lineups
- Location, specification in prosecution's notice, 8:62
- Medical history, 9:205
- Misidentification, 9:211
- Not prearranged, exclusion from disclosure, 8:66
- Photographs, 18:94, 18:96
 - See also Identification of Defendant, Suppression
 - See also Photographs
- Police-initiated, of defendant. See Wade Hearing
- Preclusion versus suppression, 8:64

IDENTIFICATION—Cont'd

- Prosecution's notice prior to use of evidence, 8:66
- Resemblance testimony, 18:39
- Scars and tattoos, 9:205
- Sequential lineups, 9:189
- Showups. See Identification of Defendant, Suppression
- Suppression motion, preservation of error through, 18:165
- Suppression of Wade, 1:6

IDENTIFICATION OF DEFENDANT, SUPPRESSION

- "Canvass" of crime area as identification procedure, 9:193
 - Lineups, clothing creating suggestiveness, 9:185
- Codefendant, identification of, 9:209
- Composite drawings, 9:194
- Confirmatory identifications
 - Hearing for suppression. See subhead: Hearing for suppression
- Confirmatory identifications, 9:197
 - Another person, exhibiting to negate identification, 9:206
 - Discovery, pretrial application for, 9:207
 - Grand jury, appearance at, compelling, 9:208
 - Hearing for suppression, indirect hearsay admissible at, 9:213
 - Implicit hearsay, impact, 9:29
 - Indirect hearsay prohibited, 9:213-9:215
 - Inferential bolstering prohibited, 9:214
 - Objection based on insufficient to preserve appeal, 9:213
 - Prohibited, 9:213
 - Reversal of conviction, 9:213
 - Suppression hearings, permissible at, 9:215
 - Trowbridge error, 9:212
- Change in defendant's appearance, impact, 9:209
- Compelling appearance at grand jury, 9:208
- Countering techniques, 9:201
- Defendant not previously identified within meaning of statute, 9:197
- Defense not limited in use of photos, 9:214
- Denying suppression, rationale for, 9:197
- Described, 9:197, 9:201
- Direct evidence, as, 9:201
 - Body of defendant, prosecution request for exhibition, pretrial application, 9:207
- Expert testimony, admission discretionary, 9:216
- Features, defendant's use of, 9:205
 - Change in appearance, impact, 9:210

**IDENTIFICATION OF DEFENDANT,
SUPPRESSION—Cont'd**

- Confirmatory identifications, 9:197—Cont'd
 - Features, defendant's use of, 9:205—Cont'd
 - Mustache, requested mug shot showing defendant with, 9:210
- Independent basis required, 9:180
- Informing court or prosecutor before using counter techniques, 9:201
- Jury instructions, 9:204
- Lay person, more than minimal knowledge of defendant required, 9:197
- Lineups, in-court, counter technique, 9:201
- Marks, defendant's use of identifying, 9:205
- Misidentification testimony relevant, 9:211
 - Admissibility, conditions, 9:213
 - Defense not limited in use of photos, 9:214
 - Foundation lacking, 9:213
 - Hearsay present, writing on back of mug shot, 9:210
 - Irrelevant photo, 9:210
 - Lessening prejudicial impact of photographs admitted, 9:205
 - Prejudicial effect, 9:211
 - Traditional pose, 9:210
 - Witness cannot testify to photograph, 9:205
- Negative identification testimony permissible, 9:202
- Notice to defense not required, 9:218
- Photograph or video, testimony based on viewing, 9:210
- Physical appearance of defendant not testimonial, 9:209
- Resemblance as issue, 9:208
- Scars, defendant's use of identifying, 9:205
- Time lag between occurrence of crime and trial, impact, 9:214
- Video or photograph, testimony based on viewing, 9:210
- Courtroom identification
 - Out-of-court identification, trial testimony of. See subhead: Out-of-court identification
- Described, 9:179
- Drug sale case, single-photo identification by informant improper, 9:180
- Confirmatory identifications, 9:197
- Courtroom identifications, indirect hearsay admissible, 9:213
- Hearing for suppression
 - Private identification of perpetrator, victim's. See subhead: Private identification of perpetrator
 - Wade hearing. See subhead: Wade hearing
- Illegal arrest, 9:181
- Improper identification, Wade hearing, 9:180
 - Bifurcated hearing, 9:227

**IDENTIFICATION OF DEFENDANT,
SUPPRESSION—Cont'd**

- Improper identification, Wade hearing, 9:180
 - Cont'd
 - Courtroom identifications, 9:180
 - Wade hearing, requirement, 9:228
- In-court identification. See subhead: Courtroom identification
- Independent identification by victim, 9:179
 - Attenuation supporting admissibility, 9:184
 - Lineups, 9:185
- Lineups, 9:179
 - Blank, 9:187
 - Clothing creating suggestiveness, 9:185
 - Counsel, right to, 9:189
 - Court ordering defendant to appear in lineup, 9:190
 - Post-indictment lineup, 9:189
 - Suspected represented by counsel on other charges, 9:189
 - Described, 9:185
 - Failure to photograph suggestive, 9:185
 - Identical participants, no right to, 9:186
 - Joint viewing, 9:185
 - Negative identification testimony permissible, 9:202
 - No suppression if defendant causes suggestiveness, 9:188
 - Suggestiveness in police-arranged identification procedures, 9:185-9:189, 9:185-9:190
- Mistaken identification, 9:13
 - Content of motion papers, 9:221
 - Goal of, 9:221
 - Out-of-court identifications, challenging, 9:221
 - People's failure to serve notice, defense moves, waives notice, 9:220
 - Wade hearing, procedure for obtaining, 9:222
- Negative identification testimony permissible, 9:202
- Non-identification of defendant at trial, effect of, 9:203
 - Confirmatory identification, 9:219
 - Positive identification from photo array not made, notice not required, 9:219
 - Time for notice, 9:218
 - Before using police-arranged identification at trial, 9:180
- Notice to defense required, 9:218
 - Improper or absent notice, preclusion, 9:219
 - Incorrect notice, 9:219
 - Motion to suppress waives failure to receive notice, 9:220
- Out-of-court identifications, 9:182
 - Bolstering testimony prohibited, 9:213
 - Codefendant, identification of, 9:209
 - Described, 9:208

**IDENTIFICATION OF DEFENDANT,
SUPPRESSION—Cont'd**

- Out-of-court identifications, 9:182—Cont'd
 - Motion to suppress, defense, 9:221
 - Private identifications by victim, suppression hearing, 9:198
 - Trial testimony of, 9:208
 - Prior identification, on, 9:208
- Person seated next to defense counsel, 9:179
- Photographs
 - Array. See subhead: Photographs, array
 - Identification
 - Courtroom identification, People's use of mug shot, limitations. See subhead: Courtroom identification
- Photographs, 9:182
 - Attenuation of evidence, 9:184
 - Bank security investigator not connected with police, photographs shown by, Wade hearing unavailable, 9:196
 - Defense not limited to use of, 9:214
 - Confirmatory by lay person, more than minimal knowledge of defendant required, 9:197
 - Mug shot, admissibility of, 9:213
 - Positive not made, notice not required, 9:219
 - Prejudicial impact of admitted photographs, lessening, 9:211
 - Witness testimony to identification of photograph prohibited, 9:213
 - Joint viewing, conditions, 9:183
 - Mug shot, admissibility of, 9:213
 - Negative identification testimony permissible, 9:202
 - Prejudicial impact of admitted photographs, lessening, 9:211
 - Procedure for showing, 9:192
 - Defendant in each picture, 9:192
 - Lineups, failure to photograph, 9:185
 - One photo in color, 9:192
 - Remarks to witness, 9:192
 - Size, differences in, 9:192
 - Repeated, defendant in each picture, suggestiveness, 9:192
 - Witness testimony to identification of photograph prohibited, 9:213
- Police involvement triggering suppression hearing, 9:197
- Private identifications of perpetrator, victim's, 9:196
 - Attempts to track down criminal, victim's, 9:196
 - Bank security investigator not connected with police, photographs shown by, Wade hearing unavailable, 9:196
 - Accidental identification, exception, 9:197
 - Holding of hearing discretionary, 9:198

**IDENTIFICATION OF DEFENDANT,
SUPPRESSION—Cont'd**

- Private identifications of perpetrator, victim's, 9:196—Cont'd
 - Bank security investigator not connected with police, photographs shown by, Wade hearing unavailable, 9:196—Cont'd
 - Police involvement triggering, 9:197
 - Spontaneous identification, exception, 9:197
 - Tainted evidence, admissibility, 9:196
- Procedural considerations, 9:220-9:230
- Prosecutor's notice, 8:66
- Search, suppression based on unlawful, 9:8
- Sequential, 9:187
- Showups, 9:182
 - Described, 9:182
 - Handcuffs, use of, 9:191
 - One-on-one corporeal identification, 9:191
 - Potential for suggestiveness, 9:191
- Suggestiveness in police-arranged identification procedures
 - Joint viewing. See subhead: Joint viewing
 - Unduly suggestive. See subhead: Wade hearing
- Suggestiveness in police-arranged identification procedures, 9:182
 - Certain behaviors tainting identification, 9:182
 - Lineups, 9:185-9:190
 - Out-of-court identification procedure arranged, 9:182
 - Telling witness one of the individuals criminal or wrong person picked, 9:182
- Voice identifications, 9:195
- Wade hearing, suggestiveness in police-arranged identification procedures, 9:221
 - Attendance by defendant, 9:229
 - Bank security investigator not connected with police, photographs shown by, hearing unavailable, 9:196
 - Burden of proof, 9:224
 - Defense, 9:224
 - Prosecution, 9:225
 - Suggestiveness found, burden shifting to prosecution, 9:225
 - Court required to make findings, 9:230
 - Essence of, 9:222
 - Independent basis for identification, requirement, 9:228
 - Police identification, confirmatory, 9:226
 - Procedure for obtaining, defense motion to suppress as, 9:221
 - Prosecution's evidence notably incomplete, defendant's ability to call witnesses, 9:223
 - Reargument of suggestiveness to jury, 9:230
 - Unduly suggestive identification, 9:222

**IDENTIFICATION OF DEFENDANT,
SUPPRESSION—Cont'd**

- Wade hearing, suggestiveness in police-arrange
identification procedures, 9:221—Cont'd
- Witness at hearing, defendant's ability to call,
9:223

IDENTITY

- Biting, uncharged crimes, permissible use as evi-
dence, 12:17
- Confidential informant, discovery, 8:88
- Mistaken identity, claim of, uncharged crimes,
permissible to prove guilt, 12:42
- Uncharged crimes, permissible use, proving guilt,
12:16, 12:19
- Uniqueness requirement, 12:17

IGNITION INTERLOCK

- Applicable to youthful offenders, 21:81
- Inapplicable to DWAI, 4:36
- Probation condition, 22:49

ILLNESS

- Defendant's, trial delay, 19:46
- Mistrial, juror illness, 18:182
- Sentencing, 22:186
- Sex offender registration, 23:95
- Victim or prosecution witness, statutory speedy
trial, 13:41

IMMIGRATION

- Conviction, collateral consequences of, 22:204
- Conviction, collateral consequences of, 2:76
- Counsel, right to; foreign citizens, 9:136
- Disentitlement doctrine, 24:39
- Effective assistance of counsel; collateral conse-
quences, 2:76
- Illegal entry into country, inquiry for impeach-
ment allowed, Sandoval rules, 11:27
- Padilla and Peque; collateral consequences of
conviction, 2:76
- Setting aside plea, attorney's affirmative misrep-
resentation, 22:204
- Vienna Treaty on Consular Relations, 9:136

IMMUNITY

- Discretionary power of prosecutor to grant, 18:44
- Grand jury proceedings, witnesses at, 6:14, 6:15
- Immunized crimes, Sandoval rules on examina-
tion, 11:35
- Judicial immunity, 2:87
- Prosecutor, granted only by, 18:42
- Prosecutorial discretion, 18:41
- Prosecutorial immunity, 2:87
- Refusal to grant, prosecutor's, 18:44
- Statement, 18:74
- Transactional, 18:43
- Transactional immunity, compelling defendant to
give statement, suppression exception, 9:105

IMMUNITY—Cont'd

- Use immunity, 18:43
- Waiver, defendant's grand jury testimony, 6:41
- Waiver of, 18:45
- Witness rights, 6:14

IMPEACHMENT

- Alibi witnesses, 15:40
- Arrest, 11:29, 18:4
- Attorney-client privilege, 18:51
- Bias, 18:57
- Bolstering, prior inconsistent statements, 18:64
- Bornholdt rule, 18:62
- Brady material used to impeach witness, 8:26
- Character, 8:108
- Codefendant
 - Right of, limitation, 14:28, 14:34
 - See also Codefendants subhead: Joinder
 - Severance, motions for, lack of Sandoval
protection, 14:34
- Collateral matters, 18:63, 18:64
 - Rape shield law, 18:65
- Completeness, rule of, 18:70, 18:71
- Conviction, 8:114
- Cross-examination of defendant leading to, 18:51
- Defendant
 - Sandoval
 - See Sandoval
 - See Sandoval Motion
 - See Sandoval Rules
 - Suppressed statements as basis
 - See Defendant's Statements, Suppression
- Generally, 8:114
- Grand jury proceedings
 - Defendant choosing to testify, 6:43, 6:44
 - Prior convictions, grand jury instructions, 6:59
 - Sandoval motion possible, 6:44
- Improper, 18:60
- Independent evidence inadmissible, 18:58, 18:60
- Own witness, of, 18:61
- Prior inconsistent statement, 18:62, 18:125
- Probative value, 18:60
- Prosecutor's conduct, good faith requirement,
18:195
- Rape shield law, 18:65
- Rebuttal use improper, 18:68
- Refreshing witness recollection, 18:53
- Rehabilitation of witness, 18:66
- Religion, improper, 18:60
- Statements by defendant used for, notice to
defense not required, 9:160
- Verdict, 20:36
 - See also Jury Deliberations subhead: Verdict
- Vicarious admission, 18:57, 24:125

IMPEACHMENT—Cont'd

Witnesses

- Collateral matter, impermissible use of photograph, 18:95
- 911 recordings of, 18:116, 18:125
- Youthful offender, subsequent litigation, effect of adjudication on, 21:86

IMPLIED CONSENT

- DWI, 9:63

IMPOSSIBILITY DEFENSE

- Attempted crime, 15:69

IMPOUNDING

- See Automobiles, Warrantless Stop and Search
- See Forfeiture

IMPRISONMENT

- Adjourned bail application resulting in, 4:66
- Bail evaluation interview, 4:66
- Credit for time served, 4:47
- Pretrial and trial preparation, 4:66
- Record unavailable, felony defendant, 4:66
- Unavailable record, felony defendant, 4:66
- Attorney's visits, regular visits to incarcerated client, 2:37
- Conditional release on local sentence, 22:10
- Constitutional speedy trial dismissal, extent of pretrial incarceration and, 13:89
- Incarcerated defendant
 - Attorney's visits, 2:37
 - Release pending trial, People's failure of speedy trial, 13:24, 13:67, 13:82
 - Request for trial transcript for appeal, 24:39
 - Statutory speedy trial, pretrial release, 13:82
 - Telephone call from jail after arraignment, 13:67, 13:82
- Incarceration, mandatory, enhanced felony status, 22:124
- Intermittent "weekend" incarceration, 22:30
- Jail sentence. See Jail subhead: Sentences
- Jail time
 - See also Jail Time
 - Upstate time, 2:61
- Local facilities, 22:9
- Mandatory surcharge, incarceration for nonpayment, 22:92
- Old crimes, imprisonment for, impeachment Sandoval rules, 11:8
- Prison sentence. See Prison subhead: Sentences
- See also Jail
- See also Prison
- Sentence, 22:6-22:9
 - Correctional facility, local or state, 22:6
 - Determinate, 22:6
 - Determining, 22:7

IMPRISONMENT—Cont'd

- Sentence, 22:6-22:9—Cont'd
 - Indeterminate, non-violent offenders, 22:12
 - Good time, 22:15
 - Merit time, 22:13
- State imprisonment
 - Felony, punishment for conviction of, 1:38
 - Term of determined by classification of felony, 1:39
- State imprisonment, 22:7, 22:11-22:18
 - Parole, eligibility for, 22:14
 - Period of, explained, 22:6
 - Prison time, meaning, 22:10
 - Release from, 22:14
- Statutory speedy trial, defendant's release pending trial, People's failure, speedy trial, 13:24, 13:67, 13:82

IMPROPER CONDUCT

- Appeals
 - Argument of issues outside record on appeal, 24:31
 - Failure to advise client of right of appeal, 24:15
- Judge's, barring attorney-client communication, 2:41
- Juror's misconduct, motion to set aside verdict, 20:35-20:37
- Prosecution's, questions violating attorney-client privilege, 2:40
- Prosecutor, grand jury, 6:69
- Prosecutorial misconduct, motion to set aside reversible error in record, 20:33
- Prosecutor's summation, 18:202-18:203
- See also Ethics

IN CAMERA EXAMINATION

- Confidential informant's identity, 8:88
- Confidential informant's identity, 8:88
- Rosario material, 8:47
- Victim, related to, 8:86
- Darden hearing, 9:81
- Judge disqualification, 19:67
- Jury disqualification, 19:129

INCARCERATION

- See Imprisonment
- See Jail
- See Prison

INCOMPETENT PERSONS

- Competency defined, 2:44
- Decision-making role of counsel, 2:44
- Mental disease or defect. See Mental Disease or Defect
- Motion to suppress evidence for, 2:44
- Statutory speedy trial delay not charged to People, 13:31

INCONCLUSIVE CONCURRENT COUNT

Defined, 16:37

INCONSISTENT STATEMENTS

See Statements

INCONSISTENT VERDICTS

See Verdicts subhead: Repugnant verdicts

INCORPORATION BY REFERENCE

Constitutional issue, 15:95

Indictment, 3:35, 3:50

INCULPATORY STATEMENTS

See Statements

INDICTMENT

Accusatory instrument, 3:1

Amendment of, before or during trial, 3:70-3:76

Addition of counts to cure omission, 3:72

Adjournment after, 3:75

Constructive, at trial, circumstances permitting, 3:76

Formal motion not required, conditions, 3:76

Defect cured by, dismissal for defectiveness improper, 3:77

Defendant not prejudiced by, 3:74

Items subject to amendment, 3:71

Prohibited, failure to state offense, 3:73

Appeal

Effect of guilty plea, 17:80

Multiple indictments, effect, reversal of one conviction on, 24:115

Concurrent jail time, 24:115

Record on appeal, indictment in, 24:26

Waiver of indictment, direct appeal on jurisdictional issues, 24:7

Application, 8:121

Arraignment. See Arraignment

Ballistics report, motion to dismiss, incorrect report, 7:49

Weapons possession, incorrect ballistics report, 7:49

Bill of particulars

Correcting deficiency, 3:36

Charge in, reduction of, defense motion, 6:73

Constitutional

Speedy trial, delay between indictment and arraignment, 13:86

Continuing

Crime theory and duplicity, 3:43-3:45

Criminal action, 3:1

Court allowance, 19:48

Custody, holding defendant in if resubmission granted, 4:58

Arraignment on indictment following, 4:28

Description and function, 3:14-3:15

INDICTMENT—Cont'd

Dismissal of

Curable defect improper, conditions, 3:77

Motion to dismiss. See subhead: Motion to dismiss

Duplicity counts, 3:37-3:47

Appeal, raised on without preserving issue, 3:42

Bill of particulars, 3:39

Collateral proceedings, CPL 440.10 motion, 23:35

Continuing crime theory and, 3:43-3:45

Facially duplicity, 3:37

Judge, prosecutor, or person acting in their behalf, use of duress by, 23:35

Multiplicity and, contrasted, 3:47

Raised on appeal without preserving issue, 3:42

Rule against, 3:35, 3:37

Dismissal, basis for, 3:37, 3:38

Double jeopardy, assures against, 3:41

Each count must charge only one offense, 3:37

Unanimous verdict assured, 3:40

Explained, 3:37-3:42

Notice of charges guaranteed, 3:38

Unanimous verdict assured, 3:40

Entering plea earlier, waiver by, 17:4

Evidence, unbelievable, use of prohibited, 6:71

Exceptions in statute, allegations as to, 3:49

Factual allegations, legal insufficiency, amendment prohibited, 3:73

False evidence supporting, guilty plea survives, 17:80

Felony

Complaint replaced by indictment, 3:14

“True bill,” “voted,” 3:14, 6:23

Forms

Approval of waiver of, 3:84

Waiver of, 3:83

Grand jury indictment, juvenile offenders, 21:34

Disallowed after case filed in Family Court, 21:61

Grand jury vote

Insufficiency, charges not in prosecutor’s notice of presentation voted, 6:36

Opportunity to testify before, giving defendant, 6:38

Other charges from same indictment, 6:36, 6:37

“True bill” of indictment, 3:14, 6:23

Unanimity not required, 6:24

Voting members’ presence required, 6:24

Written certification, filing, 6:38

Guilty plea, effect of, 17:79, 17:80

INDICTMENT—Cont'd

- Improper, conviction resulting, enhanced sentencing not applicable, 22:99
- Incorporation by Reference, 3:35, 3:50
- John Doe indictment, 9:138
 - Lineup, right to counsel, 9:189
 - Suppression motion possible, 9:177
- Juvenile offenders, 21:34
 - Family Court, defense motion for removal to, delays resulting in indictment, effect, 21:43
 - Grand jury, 21:34
 - Indictment, insufficient basis for, 21:52
 - Murder 2nd degree, 21:34
 - Plea bargains restricted after indictment, 21:37
- Lesser included offenses, lesser charge, conviction on, 16:1
- Misdemeanor charge, 3:9
 - Defendant's right to, 3:9
- Motion made after indictment, 7:4
 - Grand jury minutes, inspection of and, 7:49
- Motion to dismiss
 - Exception and proviso, allegations as to, 3:49
 - Testify, failure to allow defendant to, 6:38
- Multiplicity
 - Duplicity and, contrasted, 3:47
 - Same offense several counts, effects, 3:46
- New indictment on retrial, 24:126
 - Acquittal on top count/conviction on lesser charge, 24:126
 - Double jeopardy bar to further prosecution on top count, 24:126
 - Untimely, 24:127
 - Motion on speedy trial or double jeopardy ground, 24:127
- Offense, failure to state, amendment prohibited, 3:73
- Post-indictment
 - Delay, effect of guilty plea, 17:80
- Preliminary hearings, 5:7, 5:12
 - See also Preliminary Hearing
 - Reasonable cause at, finding of, case to grand jury for indictment, 5:7
 - Returned before time expired for hearing, exception to mandatory release, 5:12
- Proviso not alleged, 3:49
- Provisos, allegations as to exceptions and, 3:49
- Resubmission to grand jury, 6:72
- Retrial, 24:125
- Sealed
 - Filed in superior court, commencing case, 3:2
 - No grand jury notice required, 6:34
 - Purpose, 3:2

INDICTMENT—Cont'd

- Sealed—Cont'd
 - Statutory speedy trial commences with filing, 13:27
 - Indictment dismissed and new one voted, original commencement date, 13:53
- Signature of district attorney, 3:35
- Statutory speedy trial
 - Commencement with filing of sealed indictment, 13:27
 - Indictment dismissed, new one voted, original commencement date, 13:53
 - Defense motion to dismiss under, 13:68
 - Notice of readiness
 - At arraignment on indictment, sufficient notice, 13:59
- Sufficiency provided in CPL Article
 - Duplicious counts prohibited, 3:35
 - Form and content, 3:35
 - Previous convictions, allegations of prohibited, 3:35
- Superior court information. See Superior Court Instruments
- Superseding indictment, 3:15, 6:29, 13:65
- Variance, 3:74
- Waiver of
 - CPL Article 195 providing for, 3:17
 - Exception for class A felony, CPL 195.10(1)(b), 3:21
 - Plea bargain, included in, effect, 3:12, 3:16
 - Prerequisite to, grand jury action, 3:18
 - Signature by defendant on waiver required, 3:20
 - Untimely, post-indictment returned, 3:22
- Weapons possession, incorrect ballistics report, indictment dismissed, 7:49
- Writ of prohibition, collateral proceedings
 - Special prosecutor, indictment by, 23:6

INDIGENT DEFENDANT

- 18-B attorney; assigned counsel
 - See also Attorney
 - See also Counsel
- 18-B attorney; assigned counsel, 2:18-2:23
- Assigned counsel, 2:18-2:23
 - See also Attorney
 - See also Counsel
- Counsel for, 2:16, 2:18
 - County law provision for, 2:18
 - Legal Aid, public defender, 1:17
 - Private attorney, assigned, conditions, 1:19
- Criminal appeals, assigned counsel, 24:24
- Mandatory surcharge, waiver of, 22:88
- Record on appeal, no bound record required, 24:26
- Subpoenas, jurisdiction and validity of, 8:98

INDIGENT DEFENDANT—Cont'd

- Transcript of pretrial hearings, free copy of, 7:1
- Writ of prohibition, filing fee improper for indigent, 23:14

INDIRECT HEARSAY

- Generally, 18:12

INEFFECTIVE ASSISTANCE OF COUNSEL

- See Effective Assistance of Counsel subhead: Ineffective assistance

INEXTRICABLY INTERTWINED CRIMES

- Molineux, admissibility under, 12:21
- Uncharged crimes, permissible use of, 12:21, 12:24

INFANCY DEFENSE

- 16 years of age, defendant under, requirement, 15:32
- Juvenile delinquents, trial not barred, 21:11
- Juvenile offenders, 21:11
 - Criminally negligent homicide, 21:57
 - Prior convictions, questions on, 21:78
- Juvenile offenders, infancy not always defense, 21:27
 - Armed felony offenses, 21:28
 - Crimes leading to juvenile offender status, 21:32
 - Felony-murder defendants, 21:29
 - Murder 2nd degree, 21:28
 - Depraved indifference Murder 2nd degree, 21:28
 - Intentional Murder 2nd degree, 21:28
 - Violent felony offenses, 21:28
- Proof beyond a reasonable doubt, prosecution's burden to disprove, 15:6

INFORMANTS

- Darden hearing, 9:81
- Discovery issues, 8:88
- Identity, confidential informants, discovery, 8:88
- Non-testifying confidential informant's statements, Rosario material exclusion, 8:47
- Police paid informant not called by prosecution, missing witness charge, 19:177
- Search warrants, informant used to make out supporting affidavit, Aguilar-Spinelli test
 - See also Search Warrants
- Search warrants, informant used to make out supporting affidavit, Aguilar-Spinelli test, 9:87

INFORMATION

- Accusatory instrument, 3:1
- Amendment of accusatory part, prior to trial, 3:67
 - Defense entitled to response, 3:67
- Arraignment on, 22:144
 - Driving while intoxicated (DWI), 22:144

INFORMATION—Cont'd

- Bail, incomplete information, 4:66
 - Within 5 days, 4:55
 - Failure, mandatory ROR, 4:55
- Charging offense below a felony, 3:6
- Commencing criminal action, use, 3:1
- Defects supporting dismissal, 3:30
 - Facially insufficient, no timely objection, 3:80
 - Hearsay disallowed, 3:6
 - Jurisdictional defect, 3:80
- Defined, 3:6
- Duplicious counts, 3:26
- Grand jury proceedings, not following, 3:6
- Local court accusatory instrument, 3:6
 - See also Local Court Information
- Long form, 3:58, 3:69
- Misdemeanor complaint, conversion into, 3:11
- Misdemeanor information. See Misdemeanor Information
- Preliminary hearing, not following, 3:6
- Prosecution upon, 3:6
- Prosecutor's information, 3:1, 3:31, 3:68
 - See also Prosecutor's Information
- Special information
 - Continuing criminal action, 3:1
- Filing
 - Superior court, 3:1
- Sufficiency, CPL Article 200.60(2) providing, 3:51
- Superior court information. See Superior Court Instruments
- Unavailable at arraignment, 4:71

INFRACTION

- See Traffic Infraction

INJURIES

- Defendant in custody, involuntary statements inadmissible, 9:108
- Photographs of victim to demonstrate, 18:99

IN LIMINE MOTIONS

- Generally, 18:174

INNOCENCE

- Defendant's claim of, withdrawal of guilty plea, 17:67
- Pleas of not guilty. See Guilty Plea subhead: Not guilty plea
- See also Temporary Innocent Possession Defense

INQUIRY, COMMON LAW RIGHT OF

- Warrantless police intrusion
 - See also Warrantless Police Intrusion
- Warrantless police intrusion, 9:23

INSANITY DEFENSE

- See Mental Disease or Defect

INSPECTION

Grand jury minutes, 6:61-6:88
See also Grand Jury Minutes

INSTRUCTIONS TO JURY

See Jury Instructions

INTENT

Accomplices, shared mental state required, 14:42
Different states of mind, 16:19
Domestic violence, 12:14
Generally, 16:19
Lesser included offenses, state of mind, 16:19-16:24
Intoxication and, 16:23
Photographs used to establish, 18:96
Transferred intent, sentencing, 22:21
Uncharged crimes, permissible use of, 12:13-12:18
Admissibility under Molineux, effect of defense on, 12:21
Exception for, rationale, 12:13

INTEREST OF JUSTICE

ACD resulting in, 22:38
Dismissal
Writ of prohibition denied, 23:10
Dismissal, 7:22-7:28
Appellate review, 7:28
Civil case, effect on, 7:27
Defendant's condition; factors considered, 7:23
Denying motion, 7:26
Factors considered on motion, 7:23
Granting motion, 7:25
Harm, extent of caused, 7:23
Hearing practice, motion and, 7:24
Previous trials; factors considered, 7:23
Motion to dismiss. See Interest of Justice, Motion to Dismiss
Verdict set aside, preservation for appeal requirement, 20:29
Youth offender status, discretionary grant of, criteria, 21:76

INTEREST OF JUSTICE, MOTION TO DISMISS

Factors considered
Writ of prohibition, 23:10
Indictment, motion not available when charges brought under, 7:6

INTERIM PROBATION

Generally, 22:175

INTERLOCKING STATEMENTS

Codefendants, Bruton rule, 14:23

INTERMITTENT "WEEKEND" INCARCERATION

See Imprisonment
See Jail subhead: Intermittent "weekend" incarceration

INTERNET

Appellate documents, electronic filing of, 24:53
Judicial notice of articles on, 18:9
Juror use during trial, 19:133
Jury instructions, 18:208
Search and seizure, websites, 9:94
Subpoena of records, 8:101

INTERNET SITES

Appellate Divisions
Fourth Department, 24:58
Third Department, 24:57
Arbitration, fee, 2:29
Cash transfer reports, 2:32
Commission on Judicial Conduct, 1:22
Court of Appeals, 1:29
Defense organizations, 1:18
Department of Motor Vehicles, 1:29
Freedom of Information forms, 8:115
Jury instructions, 1:29
Jury instructions, 19:139
Local courts, 1:26
Prisoner location, 24:24
Sources for research, websites as, 1:29

INTERPRETER

Assigned counsel compensation for, 2:25
Defendant's right to presence of, 19:14
Miranda warnings, 9:123

INTERROGATION

See Confession, Statement

INTERSTATE

Parole and parole transfer, 4:94

INTERSTATE AGREEMENT ON DETAINERS

See Extradition

INTOXICATION

Breathalyzer test, calibration records of, Brady disclosure, 8:26
Driving while intoxicated (DWI)
See also Driving While Intoxicated
Depraved indifference charges, prior act close in time, 12:25
Impeachment of defendant as witness, use of prior DWI conviction, 11:21, 11:22
911 recordings, to indicate victim's state, 18:116
Plea bargaining limitations, 17:61
Videotapes, use of, 18:127
Jury charge, improper language used, 19:143

INTOXICATION—Cont'd

- See also Intoxication Defense Blood alcohol test, sufficiency of foundation on accuracy of, waived by guilty plea
- Statement of defendant, 9:146

INTOXICATION DEFENSE

- Degree of intoxication, central issue, 15:46
- Evidence relevant to negative element of crime, 15:46
- Mental capacity, defendant's, as central issue, 15:46

INVESTIGATION

- Assigned counsel compensation for, 2:25
- Investigator, 2:25
- Court orders, 22:147
 - Defense obtaining, 22:152
 - Resentencing, 22:179
- Criminal history record, obtaining, 8:118
- Effective assistance of counsel; grand jury investigation, 2:79, 2:80
- Failure to investigate
 - Ineffective assistance of counsel, 2:79
- Forms
 - Application for and order authorizing, 2:95
 - Letter to investigator from attorney, 2:94
 - Order authorizing, 2:95
- Guilty plea, presentence investigation, 17:62, 17:70
- People's. See Police Investigation
- Plea bargaining; pre-plea investigation, 17:13
- Preaccusatory representation, 2:77
- Pre-plea investigation, 17:13
- Pre-sentence investigation
 - Familiarity with, 2:74
 - Pre-plea investigation, 17:13
 - Probation department provides court, 1:83
 - Use of statements at trial, 18:74
- Speedy trial, effect on, 13:43, 13:96

INVESTIGATORS

- Compensation for indigent, 2:25
- Interviews by, discovery, 8:58

INVOLUNTARY STATEMENTS

- Defendant's, suppression
 - See Collateral Estoppel
 - See Defendant's Statements, Suppression

JAIL

- County correctional facility, 22:8
- Intermittent "weekend" incarceration, 22:30
- Money earned in, applied to mandatory surcharge, 22:81
 - Maximum and nature of, 22:9
- Misdemeanor, served in, 22:8
- Violation, 22:8

JAIL—Cont'd

- Punishment for violation or infraction, 1:41
- Sanction, jail described as, 1:8
- See also Imprisonment

JAIL TIME

- Adjourned bail application resulting in, 4:66
 - Multiple charges, 4:47
- Appeals, reversal of conviction, effect on concurrent jail time, 24:115
- Attorney's visits, regular visits to incarcerated client, 2:37
- Concurrent, effect of reversal of conviction, 24:115
- Credit for time served, 22:4
- Felony defendant, record of unavailable, 4:66
- Pretrial and trial preparation during, 4:66
- Upstate time, 2:61

JOINDER

- Bruton rule, 14:18-14:27
 - See also Bruton Rule
- Charge, failure to, 14:31
- Defendants, joinder for, 14:1-14:4
 - Common plan or scheme, 14:1
 - Cooperation with prosecution, 14:3
 - Different treatment of codefendants, 14:4
 - Grounds for, 14:1
 - Plea bargaining, 14:1
 - Plea offers, different, 14:4
 - Same criminal transaction, 14:1
 - Separate counsel, representation by, 14:2
- Different treatment of codefendants, 14:4
- Dual jury trials, 14:14
- Effects of, 14:13-14:31
 - See also Codefendants
 - Impeachment rights of codefendant, 14:28
 - Jury instructions as to charges, 14:29, 14:30
 - Objections by defense do not protect codefendants, 14:17
- Misjoinder in indictment, amendment prohibited, 3:73
- Offenses, joinder of
 - Accusatory instruments, 14:11
 - Codefendants, 14:5-14:10
 - Coercion, 14:8
 - Consolidation, codefendants, 14:11
 - Grand larceny, 14:8
 - Joinder of offenses, 14:6
 - Grounds, 14:6
 - Improperly joined charges, 14:8
 - Kidnapping and related offenses, 14:8
 - Proof, one offense admissible to prove another, 14:7
 - Rape, 14:8

JOINDER—Cont'd

- Offenses, joinder of—Cont'd
 - Robbery, 14:6
 - Statutory definitions similar, 14:8
 - Same criminal transaction, 14:6
 - Severance
 - Converse of, 14:11
 - Statutory definitions similar, 14:8
 - Third charge, joinable to, 14:9, 14:10
 - Unrelated criminal transactions, 14:7
- Peremptory challenges among codefendants, 14:16
- Public interest served by, 14:12
- Statutory speedy trial, joinder for trial with codefendants, 13:37, 13:38
 - Adjournment, consent by one/no consent by other, 13:38
 - Differing total time for codefendants, 13:38
 - No time chargeable to People, 13:37
- Verdicts inconsistent, 14:30
- Waiver of indictment, 3:19

JOINT APPELLATE DIVISION RULES

- Generally, 24:55

JOINT TRIALS

- See Trial subhead: Codefendants

JUDGE

- Accusatory instrument read by, 4:17
 - Amount set, 4:60
 - Appointment of counsel, 4:28
 - Form determined, 4:60
 - Granting of ROR, 4:56
 - Indictment arraignment, 4:28
 - Review of status, 4:28
 - Setting, 4:60, 4:67-4:70
- Appeal, leave to, application to
 - Appellate division judge, 24:100
 - Court of appeals judge, 24:100
- Appeal, right of
 - Advisement of defendant rights, 24:15
 - Voluntary waiver, defendant's
 - Judge acceptance expected, 24:5
- Attorney-client privilege and judge's duty to inquire, 2:42
- Attorney General's office representation of, 23:13
- Bench trial
 - See also Trial, Bench Trial
- Bench trial, 19:57-19:79
- Bias issues, 18:190-18:193
- Character witness, as, 18:47
- Collateral proceedings, CPL 440.10 motion
 - Duress, 23:35
 - Fraud, 23:35
 - Misrepresentation, 23:35
- Discipline or complaint, 1:22

JUDGE—Cont'd

- Discretion. See Judicial Discretion
- Disqualification, 1:10
- Disqualification, 19:63
 - In camera proceedings infrequent, 19:67
 - Ex parte and in camera proceedings infrequent, 19:67
- Ex parte communications prohibited, 19:67
- Judicial conduct, 19:66
- Local court case transfer upon disqualification of judge, 19:65
- Policy position, 19:63
- Removal, 19:63
- Ethical obligations, 1:22
- Fraud by, CPL 440.10 motion to vacate judgment, 23:35
- Grand jury, 6:8
- Hearing judge as trial judge, 7:32
 - Errors, 7:42
- Inherent power
 - Plea bargain, 17:70
- Judge's role, 8:9
 - Issuance by court required, discovery, 8:97
 - Power to issue, 8:91
- Judicial bias, 1:22
- Jury selection, challenges for cause, judicial determination, 19:93
- Law of the case, decision on issue constituting, 7:51
- Lay judge, bench trial heard by
 - Malpractice immunity, 2:87
- Lay judge, bench trial heard by, 19:69
- Ministerial functions, 19:10
- Resentence, 22:181
- Substitution of, 24:117
- Transfer of case, 17:18, 24:117
- Writ of prohibition
 - Defendant's seeks to bar from trial, as biased, denied, 23:10
 - Disqualifying of defense attorney by, 23:10
 - Guilty plea vacated, 23:5
 - Psychological testimony precluded by judge, 23:10
 - Severance, denial of motion for, 23:10

JUDGMENT

- Declaratory judgment action, 23:7
- Post-sentencing, 7:15
- Setting aside sentence, 23:67
- Vacation of judgment, 23:34, 23:61
 - CPL 440.10. See CPL 440.10 Motion to Vacate Judgment
- Judgment obtained by
 - Duress, 23:35
 - Fraud, 23:35
 - Misrepresentation, 23:35

JUDGMENT—Cont'd

- Vacation of judgment, 23:34, 23:61—Cont'd
- Time to bring, 23:30

JUDICIAL BIAS

- Broaching issue privately, 18:193
- Criticizing defense counsel, 18:188
- Disqualification, 19:63
- Grounds for reversal, 18:190
 - Statements in jury presence, 18:191
 - Witness, questioning by judge eliciting incriminating testimony, 18:192
- Jury's presence, statements made in, ground for reversal, 18:191
- Objection to perceived bias in writing by counsel, 18:193
- Overview, 18:190
- Remedies, 18:193
- See also Bias and Prejudice
- Witness, questioning, 18:192
 - Incriminating testimony, eliciting, reversal, 18:192

JUDICIAL DISCRETION

- Abuse of, failure to reopen hearing, 7:47
- Codefendants, motion for severance, 14:32
- Defendant's withdrawal of guilty plea, 17:63
- Denial, court's discretion, 4:52

JUDICIAL HEARING OFFICERS

- Contempt power, 23:144
- Generally, 19:78
- Report of hearing to trial judge, 7:32

JUDICIAL NOTICE

- Evidence, 18:9
- Internet, article on, 18:9

JURISDICTION

- Appeals
 - See also Appeal
- Attorney General, 1:10
- CPL 440.10 motion, vacating of judgment, 23:34
- Defense, 15:47
- Errors, 7:42
- Family Court. See Family Court
- Guilty plea, waiver, 17:78
- Inherent power
 - Plea bargain, 17:70
- Loss of, sentencing delay, 22:181
- Resentence, 22:181
- Search warrant, courts authorized to review,
 - Mapp hearing, 9:79
- Speedy trial, defendant in other jurisdiction
 - Defendant's right to transfer within 180 days, 13:98
- Extradition from other jurisdiction, waiver and, 13:67, 13:98

JURISDICTION—Cont'd

- Speedy trial, defendant in other jurisdiction
 - Cont'd
 - People's failure to produce defendant, 13:67, 13:98
- Subpoenas, jurisdiction and validity of, 8:98
- Territorial jurisdiction of state, prosecution's burden, establish beyond a reasonable doubt, 15:47
- Traffic tickets, multiple towns, 15:97

JURY AND JURORS

- Addressing jurors individually, 19:3
- Alternate jurors, 19:213
 - Replacement with, 19:119-19:122
- Appellate review, standards of, 24:67
- Bias statements made by judge in presence of, grounds for reversal, 18:191
- Charge. See Jury Charge
- Charge to. See Jury Charge
- Contact after verdict, 19:223
- Crime scene visit
 - Unauthorized visit, 20:37
- Defense, consideration by jury
 - See also Defense
- Defense, consideration by jury, 15:76-15:84
- Deliberations. See Jury Deliberations
- Demeanor of counsel when addressing, 19:4
- Discharge
 - Nonexistent crime, objection or motion before, 20:14
 - Preservation of repugnant verdict, claim by objection or motion before, 20:10
- Evidence rejected by, mercy function, 20:7
- Familiarity with witnesses or information different from jury selection, juror's; replacement after jury sworn, 19:125
- Foreperson, 19:85
 - Replacement, 19:130
- Grand jury. See Grand Jury
- Illness of juror, impeachment of verdict barred, 20:36
- Information different from jury selection, juror's; replacement after jury sworn, 19:125
- Instructions. See Jury Instructions
- Juror misconduct, motion to set aside verdict, 20:21, 20:35-20:37
 - CPL 330.30(2) motion, 20:35
 - Impeaching verdict, juror barred from, 20:36
 - Exceptions, 20:37
 - Juror's unauthorized visit to crime scene, 20:37
 - Outside influence affecting deliberations, 20:37
- Mercy function, 20:7
- Notetaking, when permitted, 19:208

JURY AND JURORS—Cont'd

- Outside influence affecting deliberations, motion to set aside verdict, 20:37
- Outside influence on jurors, 19:221
- Polling, 20:1
- Prior service on jury, 19:94
- Questioning by jurors, 19:214
- Recent and exclusive possession, 19:186
- Replacement after jury sworn, 19:119-19:134
 - Buford, 19:133
 - In camera inquiry, 19:128
 - Presence of defendant and counsel, 19:129
 - Consent of defendant required once deliberations begin, 19:134
 - Defendant's rights regarding, 19:133
 - Disqualification standard, 19:133
 - Familiarity with witnesses or information different from jury selection, juror's, 19:125
 - Grossly unqualified juror, 19:132
 - Information different from jury selection, juror's, 19:125
 - Particular jury, defendant's right, 19:131
 - Post-voir dire incident or impermissible contact, 19:127
 - Representation of juror by associate of defense attorney, 19:132
 - Safety concerns, juror expressing, 19:126
 - Sleeping juror, 19:128
 - "Two hour" rule, 19:130
 - Unavailable juror, 19:130
 - Absent or disobedient juror, sanctions against, 19:131
 - Disobedient or absent juror, sanctions against, 19:131
 - Sanctions against, possible, 19:131
 - Safety concerns, juror expressing; replacement after jury sworn, 19:126
 - Selection and voir dire. *See* Jury Selection and Voir Dire
 - Selection of
 - See also* Jury Selection and Voir Dire
 - Selection of, 19:81-19:134
 - Sequestration, 19:212
 - Size of
 - Felony case, 1:80
 - Misdemeanor case
 - 6 persons for other misdemeanor charges
 - 12 persons if result of grand jury indictment, 3:9
 - Sleeping, 19:134
 - Trial. *See* Trial by Jury
 - Unauthorized visit to crime scene, motion to set aside verdict, 20:37
 - Voluntariness of statement, jury consideration, suppression issue, 9:167
 - Written questions to witnesses, 19:214

JURY CHARGE

- Accomplices, 14:54-14:56
 - Corroborating evidence to convict, 14:55
 - Participation in offense, matter of law, 14:55
 - Presence at scene insufficient to prove guilt, 14:43
 - Status, question of fact, 14:56
- Accomplices, 19:147
 - Cautionary instructions, 19:203
 - Intent of principal, must share, 19:147
 - Missing witness charge inappropriate, 19:190
 - Presence at scene insufficient to prove guilt, 19:147
- Additional instructions, jurors returned to courtroom for, 19:138
- Adverse inference charge, 19:148
- Agency, 19:149
 - Defense, identification charge, 19:168
 - Witnesses, singling out, error, 19:206
- Alibi charge
 - Defense request for denied, objection, 18:205
- Alibi charge, 19:151
 - Error to instruct jury false alibi evidence of guilt, 19:151
 - Reasonable doubt raised by alibi, 19:151
- Allen charge, 19:150
- Attorney, ineffective legal counsel, requests for charge
 - Failure to request, 2:88
 - Improper requests, 2:88
- Bill of particulars, based on, 19:152
 - Intent, improper jury charge shifting burden, 19:170
- Missing witness charge, 19:187
- Burden of proof
 - Beyond a reasonable doubt. *See* subhead: Reasonable doubt
- Cautionary instructions, 19:193-19:195
 - Corroboration, where testimony requiring, 19:203
 - Improper, 19:206
 - Credibility, 19:205
 - Unsworn witness, additional evidence charge, 19:204
- Character, defendant's, 19:153
 - Circumstantial evidence, 19:155
 - Defense calling character witnesses, prosecution rebuttal, 19:153
 - Good character evidence not defense to offense charged, 19:153
 - Opposing witness, character of, 19:154
 - Witnesses, 19:154
- Charging conference, holding, 19:138
 - Character, defendant's, 19:155
 - Direct versus, 19:157

JURY CHARGE—Cont'd

- Charging conference, holding, 19:138—Cont'd
 - Moral certainty charge for circumstantial proof, 19:157
- Codefendants, evidence against each evaluated separately, 14:29
- Common charges, 19:151
- Constitutional issues, determination as to, 19:145
- Corroboration of defendant's admission or statement, 19:158
- Crime elements, improper to provide in writing, 19:136
- Crime scene, viewing of, 19:207
- Criminal Jury Instructions, use of, 19:139
- Defendant's failure to testify, 19:160
 - Improper prosecutorial comment, 19:160
 - Right of defendant to testify, comment on, 19:160
- Defense, 19:161
- Defense objection
 - Judge's varying from allegations in accusatory instrument, 3:76
- Defined, 19:137
- Drafting by counsel and court, 19:137
- Drug possession and drug sale, distinction, 19:149
- DWI instruction, improper language used, 19:143
- Element of crime, removal from jury's consideration, 19:162
- Entrapment, 19:163
 - Alibi witness, singling out, 19:206
 - False alibi as evidence of guilt, 19:151
 - Good character evidence not defense to offense charged, 19:153
 - Identification evidence, evaluating, 19:167
 - Improper cautionary instructions, 19:206
 - Marshaling, 19:175
 - Out-of-court exculpatory statement, evaluate with caution, improper instructions, 19:206
 - Preservation of, 19:142
 - Presumption of innocence charge, 19:192
 - Reasonable doubt from lack of, 19:196
 - Variance from stated charge as, court's, 19:141
 - Alibi witness, singling out, 19:206
 - Objection to preserve error, necessity for, 19:142
- Evidence
 - Witnesses. See subhead: Witnesses
- Exceptions to, court request, 19:138
- Experts, may accept or reject, 19:164
- Falsus in uno, 19:165
- Flight from scene, 19:166
- Fruits of crime, recent and exclusive possession of, 19:197
 - Galbo charge of competing inferences, 19:198

JURY CHARGE—Cont'd

- Fruits of crime, recent and exclusive possession of, 19:197—Cont'd
 - Guilty possession, inference of, 19:197
 - Larceny, guilty possession inference, 19:197
 - Robbery case, guilty possession inference, 19:197
- Galbo charge of competing inferences. See subhead: Fruits of crime
- Hypothetical, use of, 19:144
- Identification, 19:167
 - Alibi defense, expanded charge, 19:168
 - Beyond a reasonable doubt, 19:167
 - Cautionary instructions, 19:206
 - Evaluating evidence, 19:167
 - Expanded charge, 19:167
 - Language, 19:143
- Ineffective assistance of counsel for failure to request proper, 2:73
- Initial instructions, request for instructions made after, timeliness, 19:138
- Intent, 19:169
 - Improper charge shifting burden, 19:170
 - Proof of each element beyond a reasonable doubt, 19:169
- Interested witness charge, 19:171
 - Balancing instructions between interested and disinterest witness, 19:205
 - Credibility, 19:194
- Involuntary statement, 19:202
 - Improper charge, 19:172
- Justification, right to charge on, 19:173
- Language, improper, 19:143
 - Informing counsel before summation, 19:140
 - Party requesting instruction, informing jury, 19:143
 - Self-defense, 19:200
 - Superfluous language improper, 19:143
 - Unintentional meaning, use of words conveying, 19:143
 - Victim, referring to complainant as, 19:143
- Lesser included offenses and, 15:82
 - Charge given jurors over, 15:81
 - Mental disease or defect defense, 15:59
 - Prosecution raising, sufficient evidence to warrant, 15:79
 - Sufficient evidence, 15:79
- Lesser included offenses charge, 16:40-16:39
 - Defenses, 16:41, 16:46
 - Misdemeanor trials, 16:38
 - Prosecutors, request charge on, 16:41
- Limiting instructions, 19:176, 19:187
- Manner of requesting charges, 19:139
- Missing evidence charge, 19:176
- Missing witness charge, 19:177
 - Accomplice, charge inappropriate, 19:190

JURY CHARGE—Cont'd

- Missing witness charge, 19:177—Cont'd
 - Adverse inference charge, 19:148
 - Both parties, to, 19:182
 - Control and availability required, 19:178
 - Defined, 19:179
 - Out-of-state witness, 19:179
 - Prosecution response, 19:187
 - Prosecution witness, initial defense burden, 19:186
 - Self-incrimination negating, 19:180
 - Unavailable witness, prosecution response, 19:187
 - Burglary prosecution, no charge, counsel comment, 19:188
 - Control of witness, 19:181
 - Inappropriate charge, 19:184
 - No control, prosecution response, 19:187
 - Prosecution response, 19:187
 - Defeating request, prosecution response, 19:187
 - Defense comment where no charge, 19:190
 - Defense missing witness when charge available, 19:190
 - Drug sale case, no testimony by police officer, request for charge denied, 19:183
 - Immaterial or irrelevant knowledge, prosecution response, 19:187
 - Importance that discussions are on record, 19:185
 - Initial defense burden where prosecution fails to call witness, 19:186
 - Knowledge of material issue by witness required, 19:183
 - Police paid informant not called by prosecution, 19:177
 - Prompt request, 19:185
 - Comment if charge not given, inappropriate, 19:189
 - Response, 19:187
 - Witness, initial defense burden, 19:186
 - Prosecution's comment, 19:189
 - Rape victim's husband, prosecution failure to call, 19:183
 - Real criminal, charge inappropriate, 19:190
 - Requisite knowledge, uncalled witness not having, prosecution response, 19:187
 - Robbery prosecution, no charge, counsel comment, 19:188
 - Self-incrimination negating availability, 19:180
 - Untimely request, prosecution response, 19:187
 - Moral certainty charge for circumstantial proof, 19:157
 - Nullification charge improper, 19:172
 - Objections to. See Objections

JURY CHARGE—Cont'd

- Party requesting instruction, informing jury, improper language, 19:143
- Police officer's testimony, 19:191
 - No testimony on drug sale case, missing witness charge denied, 19:183
 - Witness to sale, favorable testimony for prosecution, 19:186
- Presumption applicable to aid prosecution
 - Fruits of crime, recent and exclusive possession of. See subhead: Fruits of crime
- Presumption applicable to aid prosecution, 19:193
 - Bootstrapping of presumptions, 19:195
 - Grand jury, charge at, 19:194
 - Grand jury, presumption charge at, 19:194
 - Permissive, 19:193
 - Purpose, 19:193
 - Reversal where no charge given, 19:196
 - Stolen property, defendant charged with possession, 19:197
 - Weapons possession, 19:193
- Presumption of innocence, 19:192
- Prompt ruling on each request to, required, 19:139
- Reasonable doubt, 19:196
 - Alibi charge, 19:151
 - Beyond a reasonable doubt, 19:196
 - Identification, 19:167
 - Intent, proof of each element, 19:169
 - Certainty, reasonable degree of, misstatement common, 19:196
 - Doubt for which jurors able to give reason, misstatement common, 19:196
 - Fruits of crime, recent and exclusive possession, 19:197
 - Good sound substantial reason, misstatement common, 19:196
 - Lack of evidence, 19:196
 - Missing witness charge, no, counsel comment, 19:188
 - Misstatements, 19:196
 - Uneven scales reference, 19:196
- Recording admitted, counsel's request for instructions, 18:113
- Repugnant verdict test based on charge, 20:5
 - Jury's function considered, 20:7
 - Mercy function, 20:7
 - Rational theory sustains verdict, 20:6
- Self-defense, 19:199
 - Defendant's denial of act, charge required, 19:199
 - Described, 19:199
 - Lesser included offenses charged, 19:200
- Specific instructions, 19:136-19:206

JURY CHARGE—Cont'd

- Statutes as jury aid, 19:208
 - Lesser included offenses charge, informing counsel before summation, 19:140
 - Missing witness charge, counsel comment in, 19:188
- Superfluous language improper, 19:143
- Theory of defense instruction, 19:201
 - Requesting charges, for, 19:138
- Unintentional meaning, use of words conveying, improper language, 19:143
- Verdict, repugnant. See subhead: Repugnant verdict test based on charge
- Verdict sheets as aid in listing charges, 19:210
- Victim, referring to complainant as, improper language, 19:143
- Voluntariness of defendant's statement, 19:202
 - Opposing witness, character of, 19:154
 - Initial defense burden where prosecution fails to call witness, missing witness charge, 19:186
 - Testimony uncontradicted, uncontroverted and unimpeached; improper prosecutorial comment, 19:160
 - Presumptions, 19:193
 - Defense calling, prosecution rebuttal, 19:153
 - Opposing witness, character of, 19:154
 - Unsworn witness, additional evidence charge, 19:204
- Witnesses
 - Cautionary instructions. See subhead: Cautionary instructions
 - Error. See subhead: Error
 - Interested witnesses. See subhead: Interested witness charge
 - Missing witness charge. See subhead: Missing witness charge
 - Police officers. See subhead: Police officer's testimony
- Written instructions, 19:198
- Written instructions not allowed, 19:209

JURY DELIBERATIONS

- Contact with jurors regarding, improper, 19:223
- Deadlock jury, mistrial, 18:187, 18:188
- Discussion of case after verdict rendered, 19:223
 - Exception to prohibition, 19:220
 - Juror acting as unsworn witness, 19:220
 - Outside influence affecting deliberations, 19:220
 - Prohibitions, 19:220
 - Remedy for juror misconduct during deliberations, 19:222
- Dismissed or retained, 19:213
- Fears of crime, directing arguments to, prosecutor's summation improper, 18:202

JURY DELIBERATIONS—Cont'd

- Hung jury, 1:77, 1:81
 - Retrial, effect of first trial hung jury on, 24:129
 - No bar to retrial, 24:129
- Lesser included offenses
 - Green/Glover test, 16:7-16:18
 - See also Green/Glover Test for Lesser Included Offenses
 - Lesser charge, conviction on, 16:1
 - Required choice of lesser offense, 16:21-16:24
- Photographs used to aid jury in understanding experts', 18:102
- Readback of instructions or testimony requested, 19:217
- Recording transcript provided to aid, admissible, 18:114
- Replacement of juror, 19:119-19:122
- Request for information, 19:211
 - Juror questions, procedure, 19:214
 - Permissible delay in responding to, 19:218
 - Readback of instructions or testimony, 19:216
 - Attorney's statements, court not obliged to read, 19:216
 - Balanced readback required, 19:217
 - Response to juror question required, 19:213
 - Stipulating evidence be sent to jury room, counsel, 19:213
 - Supplemental instructions requested, 19:204
 - Written form, requirement, 19:213
- Response to juror question required, 19:213
- Sequestering jury during, requirement waived, 19:212
- Supplemental instructions requested, 19:204
- Unanimous verdict required, 19:218
- Uncharged crimes, permissible use as evidence, priors necessary for jury's understanding, 12:25

JURY INSTRUCTIONS

- Accomplice, witnesses as, 14:56
- Adverse inference drawn
 - Defense request for instructions denied subject to renewal, preservation of error, 18:154
- Closure, 19:38
- Codefendants, special instructions, 14:29
- Curative instructions as remedy for error, 18:207
- Defendant's right to be present during
 - See also Defendant's Right to Be Present
 - Defense attorney cannot waive, 2:43
- Defendant's right to be present during, 19:25
- Defense. See Defense
- Final instructions. See Jury Charge
- Grand jury instructions. See Grand Jury Instructions
- Hypothetical example, 19:140
- Identifications, 9:204

JURY INSTRUCTIONS—Cont'd

- Improper jury instructions, verdict set aside, 20:34
- Lesser included offenses
 - Highest charge must be resolved first, 16:39
 - Lower charge only supported by evidence, 16:44
 - Several possible lesser included offenses, 16:40
- Limiting instructions, 14:19, 18:207
- Marshaling evidence, 19:175
- Outside contact, reporting, 19:132
- Photographs, admission of warranting request for limiting instructions, 18:91
- Preliminary, 19:135
 - Crime elements, improper to provide in writing, 19:136
- Recordings
 - Admitted, 18:112, 18:115
 - See also Recordings
 - 911 recordings, timely pretrial request made to preserve and recording erased, 18:117
- See also Jury Charge
- Supplemental instructions
 - Nonexistent crime, conviction on, 20:14
 - Repugnance issue, preservation of, 20:10
- Suppressed statements, use of as prior inconsistent statements, 9:172
- Time to make requests for, lesser included offenses, 16:40, 16:41
- Transcript, 18:115
- Uncharged crimes, permissible use as evidence
 - Redaction, request for, 12:3

JURY NULLIFICATION

- Improper charge, 19:172

JURY SELECTION AND VOIR DIRE

- Alternate jurors, selection of, 19:129
- Crime victimization status, 19:108
- Deaf or hearing impaired juror, 19:107
- Employment as grounds for challenge, 19:115
- Religious discrimination, 19:106
- Batson Rule
 - Racial exclusion. See subhead: Racial exclusion of jury members barred
- Bench conference with juror, 19:85
 - Defendant's right to be present at bench, 19:86
- Blood relationship as disqualification, 19:91
- Cause, challenges for, 19:89
 - Batson challenge, when made, 19:110
 - Blood relationship as disqualification, 19:91
 - Challenge or removal, standards for, 19:89
 - Composition and selection, 19:83
 - Erroneous challenge, reversibility, 19:95
 - Implied bias based upon prospective juror's relationship, 19:91

JURY SELECTION AND VOIR DIRE—Cont'd

- Cause, challenges for, 19:89—Cont'd
 - Judicial determination, 19:93
 - Panel, challenge to, 19:88
 - Peremptory challenges improper, test for determining, 19:109
 - Prospective jurors, 19:87
 - Facially race-neutral challenges of juror, valid, 19:113
 - Rehabilitating prospective juror, 19:92
 - Relative, disqualification, 19:94
 - Statutory disqualification, 19:94
 - Types of challenges, 19:87
 - Unlimited number, 19:89
- Challenging jury members
 - Cause, for. See subhead: Cause, challenges for
 - Invalid. See subhead: Invalid challenges of jurors
 - Peremptory challenges. See subhead: Peremptory challenges
- Crime victimization status, 19:108
- Deaf or hearing impaired juror, 19:107
- Defendant's right to be present during, 19:15
 - No waiver of hearing or trial for failure to be present, 19:16
- Discharge of juror, discrimination found, 19:125
- Employment as grounds for challenge, 19:115
 - Cause, challenge for, reversible upon exhaustion of peremptory challenges, 19:95
 - Order of peremptory challenge, 19:102
- Example of questions to be asked during, 19:84
- Gender exclusion impermissible, 19:105
- Guilty plea waiving Batson objection, 19:126
- Hearing impaired juror, 19:107
- Implied bias based upon prospective juror's relationship; challenge for cause, 19:91
 - Employment in government affirmative action unit, 19:115
 - Minority, exclusion of, 19:113
- Limitations on questioning jurors, 19:88
 - Fair opportunity, 19:88
 - Time limits, 19:87
- Number of jurors, 19:80
- Objection registered on procedure, 18:172
- Overview, 19:83
- Panel, challenge to, 19:88
- Peremptory challenges
 - Codefendants, 14:16
- Peremptory challenges, 19:96
 - Additional peremptories permissible, 19:101
 - Defendant's right to be present, 19:29
 - Erroneous challenge for cause reversible upon exhaustion of, 19:95
 - Exception, 19:97

JURY SELECTION AND VOIR DIRE—Cont'd

- Peremptory challenges, 19:96—Cont'd
 - Inadvertent viewing of shackled defendant, additional challenge allowed by court, 19:29
 - Number of challenges, determination, 19:101
 - Order of, prosecution first, 19:102
 - Racially discriminatory grounds, barred, 19:97
- Prejudice, peremptory challenges on racially discriminatory grounds prohibited, 19:97
- Questionnaires, use of, 19:83
- Racial exclusion of jury members barred, Batson rationale, 19:101-19:104
- Appellate review, 19:128
- Application of rule beyond race, 19:104
- Burden on defense, 19:127
 - Court determination whether burden satisfied, 19:113
 - Exclusions not disproportionate burden not met, 19:119
 - Prima facie case, establishing, 19:119
 - Shifting of burden, 19:111
- Determination of discrimination, 19:113
 - Discharge of juror, discrimination determined, 19:125
 - Members of defendant's class not determinative, 19:118
 - Remedies, 19:125
- Exclusions of prospective minority jurors not met, 19:119
- Guilty plea waiving Batson objection, 19:126
- Invalid challenges, 19:114
 - Not cured by final jury composition, 19:123
- Non-class member, defendant as, raising issue permissible, 19:108
- Other ethnic groups, use of rationale by, 19:104
- Preservation of issue, 19:124
- Pretext with similarly situated jurors, 19:119
- Procedure on defense Batson claim, 19:109
- Similarly situated jurors, 19:107
- Rehabilitating prospective juror, 19:92
- Religious discrimination prohibited, 19:106
- "Reverse Batson" challenge by prosecution, 19:119
- Ruling by judge, 19:93
- Standard questions, request for copy of, 19:83
- Transcript of selection for record on appeal, appellate attorney request for, 24:26
- Voir dire
 - Verification by child requiring, 3:60

JURY TRIAL

- See Trial by Jury

JUSTICE COURTS

- See Local Courts

JUSTICE DEPARTMENT, U.S.

- Petite policy, 1:5

JUSTIFICATION DEFENSE

- Application of defense, 15:8
- Assault 2nd degree and Assault 3rd degree, injuring police officer as, 15:31
- Available to defendant, 1:43
- Burden of proof on prosecution, 15:6
- Burglary, inapplicability to, 15:7
- Choice of evils defense
 - See also Necessity Defense
- Choice of evils defense, 15:30
- Corporal punishment, 15:13
- Emergency defense
 - See also Necessity Defense
- Emergency defense, 15:30
- Grand jury instructions on evidence constituting, 6:54
- Jury charge, 19:173
- Lawful conduct, 15:5
- Lesser included offenses, applicability to, 15:8
 - Application of defense, 15:7
 - Premises, defense of, deadly force prohibited, 15:11
- Necessity defense
 - See also Necessity Defense
- Necessity defense, 15:30
- Parent, act of, 15:13
 - Police officials, involvement of, 15:31
 - Premises, defense of, 15:10-15:12
 - Self-defense, 15:14
 - Resisting arrest, use in, prohibited, 15:31
- Photographs, use to rebut defenses, 18:97
- Physical force
 - Deadly physical force, use of
 - Premises, defense of
 - See also Premises
 - Self-defense
 - See also Self-Defense
- Police officials, involvement of, 15:31
- Proof beyond a reasonable doubt, 15:6
- Psychiatric records of homicide victim, discovery, 8:84
- Reasonable belief requirement, 15:14
- See also Self-Defense
- State of mind, defendant's, impact on defense, 15:75
- Teacher, act of, 15:13
- Weapons possession, inapplicability to, 15:7
- Welfare of child, endangering, inapplicability to, 15:7

JUVENILE DELINQUENTS

- Accusatory instrument, petition in lieu of, 21:2

JUVENILE DELINQUENTS—Cont'd

- Adjournment in contemplation of dismissal, 21:24
- Adjudication, 21:2
 - No criminal record, 21:8
 - Non-juvenile offender charges, transfers after guilty verdict, 21:57
- Admission to allegations, 21:20
- Adult criminal procedure compared, 21:17
- Affect on credibility and cross-examination, 11:18
- Age 16 and 17, youth part for respondents, 21:12
- Appeal, 21:25
- Confidentiality of adjudication, 21:26
- Conviction, dispositional hearing upon, 21:24
 - Burden of proof, 21:24
- Counsel, right to, 21:19
- CPL applicability, 21:13
- Date of offense controls, 21:7
- Fact-finding hearing, 21:24
- Family Court, 21:2
 - Complaint, proceedings on, 21:13
 - Exclusive jurisdiction in, 21:15
 - Felony, 21:15
 - Misdemeanors, 21:15
 - Lower offenses, grand jury request, juvenile delinquents charges, not juvenile offender charge, 21:51
- Hearing, 21:21
 - Admission to allegations and fact-finding hearing, 21:24
 - Dispositional hearing upon conviction, 21:24
 - Fact-finding hearing, 21:24
 - Probable cause, detention beyond initial appearance, 21:22
- Impeachment prohibited, 11:18
- Infancy defense not barring trial as, 21:11
- Investigative services, 21:20
- Juvenile offender status, transfers from, 21:3
 - Robbery 3rd degree, 21:62
- Lesser included offenses, conviction on, Family Court, transfers to, 21:36
- Parents, responsibility for costs, 21:9
- Parker warnings, application of, 19:20
- Petitions, 21:18
 - In lieu of criminal accusatory instrument, 21:2
- PINS proceeding, conversion to, 21:23
- Prior adjudications, 21:8
- Proceedings
 - Assigned attorney as law guardian, representation at, 2:19
- Removal of proceedings, 21:14
 - Larceny occurring during commission of Murder 2nd degree, indictment, 21:34
 - Murder 2nd degree, larceny occurring during commission of crime, 21:34

JUVENILE DELINQUENTS—Cont'd

- Sealing of records, 23:156
- Social investigation ordered by court, 21:24
- SORA proceeding, use of adjudication, 23:81
- Speedy trial, 13:83
- Speedy trial, 21:17
- Status as, 21:11-CITE21:26
 - Adult criminal procedure and compared, 21:24
 - Confidentiality of adjudication, 21:26
 - Conviction, dispositional hearing upon, 21:24
 - Criminal Procedure Law, applicability, 21:16
 - Dispositional hearing upon conviction, 21:24
 - Family Court Act, 21:16
 - Felony-murder defendants, 21:29
 - Probable cause hearing if detained beyond initial appearance, 21:17
- Time limit prior to trial, 21:17
- Violations, inapplicability to, 21:11
- Youth part for respondents age 16 and 18 and juvenile offenders, 21:12

JUVENILE OFFENDERS

- Adjudication toward felony record, enhanced sentencing, 22:98
- Classification as, 21:3
- Commencing of case, 21:30
 - Date of offense controls, 21:7
 - Filing of felony complaint to commence case, 21:30
 - Infancy not always defense, 21:28
 - Prosecutor's consent, transfer to Family Court, 21:59
 - Punishment options upon conviction, 21:38
 - Adult penalties and criminal record, 21:3
 - Removal to Family Court, conditions, 21:31
 - Serious felony charges, 21:3, 21:27-21:29
- Confidentiality of adjudication, 21:28
 - Adult, conviction as, 21:3
 - Financial assessments may not be imposed, 21:40
 - Lesser included offense, effect of conviction on, 21:36
 - Nature of charge, effect varying with, 21:41
 - Predicate felony, conviction qualifies as, 21:41
 - Punishment options upon, 21:38-21:40
 - Youthful offender adjudication possible, 21:39
- Convictions
 - Sex Offender Registration Act requiring registration, 23:81
- Crime victim assistance fees, imposition of, 21:40
- Criminal court, case commenced in, 21:30
- Criminal record status, 21:3

JUVENILE OFFENDERS—Cont'd

- Defendant, not criminally responsible for crime and guilty plea, removal to Family Court, 21:55
 - Admissibility of evidence, 21:46
 - Character of defendant, 21:46
 - Condition of, 21:46
 - Defendant not sole participant, 21:46
- Family Court
 - Transfers to Family Court
 - See also Family Court subhead: Juvenile offender
- Family Court, 21:3
 - Arraignment, local court, prosecutors request for removal to, 21:50
 - Consensual removal, 21:59
 - Murder 2nd degree, exception for, 21:59
 - Dispositional hearings, 21:61
 - Guilty plea, removal after, 21:60
 - Consensual removal after, 21:59
 - Defendant not criminally responsible for crime, 21:55
 - Pattern of behavior, action not part of, 21:55
 - Transfer after on non-Juvenile offender charges, 21:57
 - Indictment, removal after, 21:60
 - Consent of prosecutor, crimes requiring, 21:54
 - Inspection of grand jury minutes, removal, 21:52
 - Jurisdiction of transferred case, 21:61
 - Fact-finding hearings, 21:61
 - Grand jury indictment disallowed once case filed in Family Court, 21:61
 - Guilty plea or verdict, disposition, case transferred after, 21:61
 - Lower offenses, removal at Grand jury's request, 21:51
 - Non-juvenile offender charges, transfers after guilty verdict, 21:28
 - Procedural considerations affecting removal to, 21:60-21:62
 - Prosecutor's request after local court arraignment, 21:50
 - Transfers to Family Court, 21:42-21:59
 - Non-juvenile offender offense, guilty verdict only on, 21:57
 - Punishment options upon conviction, 21:38
- Family Court, defense motion for removal to, 21:43-21:49
 - Admissibility of evidence, 21:46
 - Armed felony offenses, 21:55
 - Armed felony offenses, prosecutor's consent, transfer to Family Court, 21:59
 - Classification as juvenile offender, 21:3
 - Community safety or welfare, impact on, 21:46

JUVENILE OFFENDERS—Cont'd

- Family Court, defense motion for removal to, 21:43-21:49—Cont'd
 - Consent of prosecution, 21:43
 - Character of, 21:46
 - Condition of, 21:46
 - History of, 21:46
 - Not sole participant, 21:46
 - Convictions, juvenile offender qualifies as predicate felony, 21:41
 - Disqualification for youthful offender status, 21:39
 - Exception if no reasonable cause, 21:47
 - Factors to be considered by court, 21:46
 - Factors to be considered by judge, 21:45
 - Grand jury, indictment by, 21:34
 - Grand jury, removal of lower offenses at request of, 21:51
 - Ground for removal, in interest of justice, 21:44
 - Harm caused by offense, 21:46
 - Infancy not always defense, 21:27-21:29
 - Armed felony offenses, 21:28
 - Consensual removal to Family Court after guilty verdict, exception, 21:59
 - Crimes leading to juvenile offender status, 21:32
 - Criminally negligent homicide as verdict, 21:57
 - Depraved indifference Murder, infancy defense, 21:28
 - Depraved indifference Murder 2nd degree, 21:28
 - Fact-finding hearings, disposition of transferred cases, 21:62
 - Felony-murder defendants, 21:29
 - Guilty plea, no transfer to Family Court following, 21:56
 - Indictment, 21:34
 - Infancy not always defense, 21:28
 - Intent, 21:28
 - Intentional Murder 2nd degree, 21:28
 - Larceny occurring during commission of crime, 21:34
 - Murder 2nd degree, 21:28
 - Non-juvenile offender charges, transfers after guilty verdict on, 21:57
 - Prosecutor's consent to transfer to Family Court, 21:59
 - Violent felony offenses, 21:28
- Interest of justice as ground for removal, 21:44
- Jurisdiction of local court, 21:49
- Lesser felony, reasonable cause found for, 21:33
- Mitigating circumstances, 21:46

JUVENILE OFFENDERS—Cont'd

Family Court, defense motion for removal to, 21:43-21:49—Cont'd

Non-juvenile offender felony charged also, 21:34

No purpose served by removal, 21:46

Delays, 21:43

Denial of motion, 21:48

Murder 2nd degree, prosecutor's consent to transfer to Family Court, 21:59

One motion only permitted, 21:48

Pendency of motion, 21:49

Rape 1st degree charges, 21:59

Robbery 3rd degree, fact-finding hearings, disposition of transferred case, 21:62

Seriousness and circumstances of offense, 21:46

Sodomy 1st degree charges, 21:59

Proof, deficiencies in, 21:46

Prosecutor's consent, crimes requiring, 21:59

Public's confidence in criminal justice system, impact of removal on, 21:46

Punishment options upon conviction, disqualification for youthful offender status, 21:39

Reasonable cause to charge with, grand jury power, request removal, 21:51

Removal to Family Court, consensual after guilty verdict, 21:59

Commencement of case, 21:30

Filing of felony complaint to commence case, 21:30

Sodomy 1st degree, prosecutor's consent to transfer to Family Court, 21:59

Superior court, orders by, 21:47

Victim's attitude regarding motion to remove, 21:46

Violent felony offenses, infancy not always defense, 21:28

Felony

Offenses. See subhead: Offenses

Felony-murder defendants, inapplicability of status, 21:29

Financial assessments not imposed, 21:40

Action before case commences, 21:31

Disposition of case, after guilty verdict, 21:61

Disposition of case transferred after, 21:61

Family Court, removal to after, 21:60

Defendant not criminally responsible for crime, 21:55

Murder 2nd degree, no transfers allowed for, 21:56

Pattern of behavior, action not part of, 21:55

Indictment by, 21:34

Lower offenses, removal at grand jury's request, 21:51

JUVENILE OFFENDERS—Cont'd

Financial assessments not imposed, 21:40

—Cont'd

Minutes, inspection, removal after, 21:52

Non-juvenile offender charges, after guilty verdict, 21:57

Serious felonies, defendant held if reasonable cause found, 21:33

Indictment, 21:34

Insufficient basis for, 21:52

Murder 2nd degree, 21:34

Plea bargains restricted after indictment, 21:37

Interest of justice, ground for removal to Family Court, 21:53

Non-juvenile offender felony charged also, 21:34

Admissibility of evidence, 21:46

Harm caused by, 21:46

Lesser included offense, effect of conviction on, 21:36

Lower offenses, grand jury request for juvenile delinquent charges not juvenile offender charge, 21:51

Reasonable cause for charge, 21:51

Seriousness and circumstances of, 21:46

Offenses

See also Felony

See also subhead: Felony charges, serious

Parents, responsibility for costs, 21:9

Plea bargaining, 21:37

Predicate felon, conviction qualifies as, 21:41

Preliminary hearing held or waived, 21:32

Lesser felony, reasonable cause found for, 21:33

Serious felony, reasonable cause found for, 21:33

Rape 1st degree. See subhead: Felony charges, serious

Robbery 3rd degree. See subhead: Felony charges, serious

School authorities, notification to, 21:10

Sentence, authorized, purpose and effect of imposing, 21:46

Sentencing, granting youthful offender status, 21:3

Sex Offender Registration Act, application of, 23:81

Sex offenders, civil management for, 23:109

Sodomy 1st degree. See subhead: Felony charges, serious

Status as juvenile offender

Family Court, removal to

See also Family Court subhead: Juvenile offender

Status as juvenile offender, 21:27-21:62

Arrest, grand jury acting before, 21:31

Financial assessments may not be imposed, 21:40

JUVENILE OFFENDERS—Cont'd

- Status as juvenile offender, 21:27-21:62—Cont'd
 - Arrest, grand jury acting before, 21:31
 - Cont'd
 - Lesser-included offense, effect of conviction on, 21:36
 - Nature of charge, effect varying with, 21:41
 - Punishment options upon, 21:38-21:40
 - Youthful offender adjudication possible, 21:39
- Crimes leading to, 21:32
 - Depraved indifference Murder 2, 21:28
 - Felony-murder defendants, 21:29
 - Intentional Murder 2, 21:28
 - Murder 2nd degree, 21:28
 - Violent felony offenses, 21:28
- Criminal court, case commenced in, 21:30
 - Grand jury acting case commences, 21:31
- Family Court, removal to, 21:42-21:59
- Grand jury action before case commences, 21:31
- Indictment, 21:34
 - Plea bargaining restricted after, 21:37
- Infancy not always defense, 21:27-21:29
- Predicate felony, conviction qualifies as, 21:41
- Preliminary hearing held or waived, 21:32
 - Lesser felony, reasonable cause found for, 21:33
 - Serious felony, reasonable cause found for, 21:33
- Punishment options upon conviction, 21:38-21:40
 - Youthful offender adjudication possible, 21:39
- Youthful offender adjudication possible, 21:39

JUVENILE RECORD

- See also Criminal Record

KENDRA'S LAW

- Generally, 15:50

KIDNAPPING

- Codefendants, 14:8
- Dismissal of merged kidnapping charge, 20:19
- Merger doctrine, 20:19
- Self-defense, use of deadly physical force in, 15:14
- Sex Offender Registration Act, registration under, 23:81
- Unlawful imprisonment charge, 20:19

KNIFE

- Photograph of knife wounds on murder victim as evidence, 18:98
- See also Assault
- See also Weapons

KNOWLEDGE

- Lesser included offenses, state of mind defined, 16:19
- Missing witness charge, jury charge, 19:187
- Photographs of crime scene in conjunction with defendant's admission to, 18:101
- See also Intent

LANGUAGE

- Foreign, recording in, admissibility, 18:109
- Improper in jury charge
 - See also Jury Charge subhead: Language
- Improper in jury charge, 19:143
- Interpreter. See Interpreter
- Miranda warnings, 9:123
- Police officer's testimony on drug trade jargon or notations in drug dealer's ledger, 18:136, 18:142

LARCENY

- Aggregation, 3:44
- Claim of right defense, 15:70
- Constructive amendment of theory, 3:76
- Expert testimony on value, 18:131
- Fiduciary, statute of limitations on larceny by, 13:5
- Fruits of crime, recent and exclusive possession, jury charge, 19:197
- Harsh and excessive sentences modified on appeal, 22:182
- Lesser crime, plea bargaining, 21:37
 - Murder 2nd degree, larceny occurring during commission of crime, 21:34
- Petit larceny, plea down to disorderly conduct, 17:10
- Physical force justifiable to stop crime, 15:11
 - Deadly force prohibited, 15:11
- Theory, 3:76

LAW ENFORCEMENT PERSONNEL

- See Police

LAW FIRM

- Searches, 9:96

LAW OF THE CASE

- Failure to object, 18:163
- Judge's decision constituting, 7:51

LAY WITNESSES

- Confirmatory identifications, more than minimal knowledge of defendant required, 9:197
- Testimony by. See Testimony

LEAVE TO APPEAL

- See Appeal subhead: Leave to appeal
- See Court of Appeals

LEGAL AID SOCIETY

- Conflict of interest, Article 18-B provisions, 2:18

LEGAL AID SOCIETY—Cont'd

Conflict of interest, indigent defendant, 1:19
 Defendant entitled to use, conditions, 1:17
 Low income defendant represented by, 2:18
 Smaller counties without, 2:18

LEGALLY SUFFICIENT CASE

See Prima Facie Case

LESSER INCLUDED OFFENSES

Accomplice testifying for prosecution, 16:15
 Allocation, plea without, 17:32
 Appealable issues, 16:50
 Appellate court remedy for trial error, 16:51
 Applicable to lesser included offense, 15:82
 Jury instructions, 15:83
 Defense inconsistent with lesser included offense, jury should not consider, 15:83
 Evidence sufficient, instruction unnecessary, 15:84
 Same defense, applicability, 15:82
 Justification defense, applicability, 15:8
 Mental disease or defect defense, 15:58
 Assault
 Assault 2nd degree
 Assault 3rd degree described as lesser included offense, 16:16, 16:24
 Attempt, 16:28
 Assault 3rd degree described as lesser included offense, 16:16, 16:24
 Intoxicated defendant, 16:24
 Recklessness, 16:24
 Intoxicated defendant, 16:24
 Attempts, 16:25-16:31
 Degree, reduction in, 16:28, 16:29
 Assault 2nd degree, 16:28
 Recklessness, 16:29
 Waiver of objection, 16:31
 Burglary, 16:4
 Elements of, 16:4
 Intoxicated defendant, intent, 16:23
 Changed by, conviction in enhanced sentencing, 22:104
 Codefendants not protected by defense objections, 14:17
 Concurrent counts, inclusory and non-inclusory, 16:37
 Conviction
 Consideration of lesser included offenses conviction on lesser charge, 16:1
 CPL 220.20, plea bargains, 16:34
 CPL 220.30, plea bargains, 16:34
 Criminal negligence, 16:19
 Criminal trespass, 16:4
 Elements of, 16:4
 Defined, 16:4-16:6
 Identical elements, crimes with, 16:6

LESSER INCLUDED OFFENSES—Cont'd

Defined, 16:4-16:6—Cont'd
 Lesser grade or degree necessary, 16:5, 16:6
 DWI and DWAI, 16:13
 Elements of crime, 16:4
 Comparison of crime charged and claimed lesser included offenses, 16:8
 Green/Glover two-prong test, 16:11-16:18
 See also Green/Glover Test for Lesser Included Offenses
 Identical elements, crimes with, 16:6
 Error, appellate court remedy for trial, 16:51
 Factual colloquy, pleading to, 16:35
 Felony, 16:4
 Gradation of criminal offenses, 16:4
 Grand jury, 16:32, 16:33
 Advice by defense counsel, 16:32
 Consideration of lesser charges, 16:32
 Motion to reduce charges, 16:33
 Green/Glover two-prong test, 16:7-16:18
 See also Green/Glover Test for Lesser Included Offenses
 Guilty pleas, 16:34, 16:35
 Factual colloquy, pleading to, 16:35
 “Heinous” conduct, 16:6
 Highest charge must be resolved first, 16:39
 Identical elements, crimes with, 16:6
 Importance, 16:1
 Impossibility test, 16:8
 Not met, 16:10
 Impossible or nonexistent crime, 16:26, 17:33
 Inclusory and non-inclusory concurrent counts, 16:37
 Inconsistent with defense raised, 15:83
 Judgment, 16:36
 Jury charge
 See also Jury Charge
 Jury charge, 19:200
 Jury charge, several possible lesser included offenses, 16:40
 Juvenile offenders, convictions, effect on, 21:36
 Knowledge, 16:19
 Less culpable mental state, Murder 2nd degree or Manslaughter 2nd degree, differences, 16:19
 Lesser grade or degree necessary, defined, 16:5, 16:6
 Manslaughter 1st degree, described, 16:21
 Manslaughter 2nd degree, described, 16:19
 Misdemeanors, 16:4
 Murder 2nd degree, described, 16:19, 16:21, 16:22
 Non-inclusory and inclusory concurrent counts, 16:37
 Order of submission of charges, 16:38
 Overview, 16:1-16:52

LESSER INCLUDED OFFENSES—Cont'd

- Petit larceny described as lesser included offense, 16:14
- Plea bargains, 16:34, 16:35
- Plea to, 17:1
 - Negotiations with prosecutor, 17:10
 - Described, 17:10
 - Felony complaint, reduction of, 17:11
 - Predicate and persistent felony offenders, time limit, 17:50
 - Seriousness of charge, effect of, 17:10
- Reasonable jury finding, 16:11-16:18
 - See also subhead: Green/Glover two-prong test
- Reckless crimes and attempts, 16:29
- Recklessness, 16:19, 16:24
 - Assault, intoxicated defendant, 16:24
 - Attempts, 16:29
 - Degree, reduction in, 16:29
 - Reckless crimes, 16:29
- Required choice of lesser offense, 16:21-16:24
 - Evidence determines, 16:22
 - Intoxication and
 - Intentional conduct, 16:23
 - Reckless assault, 16:24
 - Recklessness, 16:24
- Robbery 2nd degree, petit larceny described as lesser included offense, 16:14
- Sentence and, 16:36
- Several possible lesser included offenses, jury charge, 16:40
- Sexual misconduct, 16:6
- State of mind, 16:19-16:24
 - Criminal negligence, 16:19
 - Intent, 16:19-16:24
 - Intoxication and, 16:23
 - Intent and knowledge as separate elements, 16:20
 - Knowledge, 16:19, 16:20
 - Recklessness, 16:19, 16:24
 - Required choice of lesser offense, 16:21-16:24
 - Evidence determines, 16:22
 - Intoxication and intentional conduct, 16:23
 - Intoxication and reckless assault, 16:24
- Statutory definition, 16:5, 16:6, 16:8
- Strict liability crimes, 16:28, 16:29
- Trespass, 16:4
 - Elements of, 16:4
- Trial issues, 16:36-16:51
 - Appealable issues, 16:50
 - Two lesser offenses requested by defense, 16:50
 - Appellate court remedy for trial error, 16:51
 - Error, appellate court remedy for, 16:51
 - Judgment, 16:36

LESSER INCLUDED OFFENSES—Cont'd

- Trial issues, 16:36-16:51—Cont'd
 - Jury charge, 16:40-16:39
 - See also subhead: Jury charge
 - Jury instructions, time to make requests for, 16:40, 16:41
 - Objections to lesser included offenses, 16:48, 16:49
 - Failure to object, effect of, 16:49
 - Strategic matters, 16:36
- Trial order of dismissal, 18:178
- Types of situations giving rise to, 16:2
- Verdict, defense strategy to get, bench trial, 19:62
- Violations, 16:4

LESSER OFFENSE

- Guilty plea to, 17:1
 - Discretionary, 17:10
 - See also Plea Bargaining

LIABILITY, CRIMINAL

- Accomplices, 14:46
- Unintentional act, 14:45

LICENSE

- Driver's license. See Driver's License
- Out of state, 4:32

LICENSE PLATE

- Probable cause, 9:46

LIFESTYLE EVIDENCE

- Uncharged crimes, permissible use of, 12:29

LINEUPS

- Appearance in, discovery issues, 8:40
- Blank lineup, 9:187
- Court ordering defendant to appear in, 9:190
- Described, 9:185
- Prosecution's notice
 - Defense counsel relays information to defendant, 2:38
- Prosecution's notice, 8:66
- Sequential lineup, 9:187
- Suppression of identification, motion for
 - See also Identification of Defendant
- Suppression of identification, motion for, 9:179, 9:185-9:190
- Videotapes used to identification of defendant in, 18:127

LOCAL COURT

- Bail, power to set, 4:67
- Exceptions, 4:68
 - Attorney informed of arraignment, 4:28
 - Grand jury, no local disposition power, 4:24
- Oral ROR request by defense, 4:56
- Stay of sentence and release pending appeal, 4:83

LOCAL COURT—Cont'd

Criminal Court

- Accusatory instruments filed in, 3:1
- Bail, power to set
 - Excessive bail set by, superior court review, 24:2
- Preliminary hearings. *See* Preliminary Hearing
- Divested of jurisdiction, 21:47
- Divested of jurisdiction, 5:18
 - Waiver of indictment, 3:18
- Jurisdiction, lesser offenses handled in, 1:68
- Removal order, 19:69
- Superior court distinguished, 1:25
- Transfer of case upon judicial disqualification to, bench trial, 19:65

LOCAL COURT ACCUSATORY INSTRUMENTS

- Amendment of, for curable defect, 3:66
- Information. *See* Local Court Information
- Prosecutor's information, 3:1, 3:8
- Traffic ticket, simplified traffic information, 3:7
- Types, 3:6-3:12

LOCAL COURT INFORMATION

- Accusatory instrument, 3:6
 - See also* Accusatory Instruments
- Amendment to cure defect permitted, condition, 3:30
- Bill of particulars unavailable to cure deficiency, 3:28
- Dismissal, defects supporting, 3:30
- Filed in local criminal court, 3:1
 - Completed and signed by, 3:6
- Prima facie required for, 3:27
 - Hearsay statements
 - Non-hearsay allegations required, 3:27
 - Prosecutor's, bill of particulars unavailable to cure, 3:28
- Prosecutor's information, 3:1, 3:31, 3:68
 - See also* Prosecutor's Information
- Sufficiency
 - Standard of, CPL Articles governing, 3:26
 - Facial sufficiency, 3:26
 - Form and content, 3:26
 - Writing, verification, filing, charge of offense, 3:26
 - Supplementation by supporting deposition, 3:29
 - Filing, 3:29
- Traffic ticket. *See* Traffic Ticket

LOCAL LAWS

- See* Municipal Ordinances

LOCAL ORDINANCES

- Attorneys, matters prosecuted by, 1:14

LYING

- Expert testimony barred, 18:137
- Terming witness as misconduct, 18:198

MAIL

- Traffic infractions or violations, pleading guilty by mail
 - Registered or certified mail within 48 hours, 4:26
- Traffic infractions or violations, pleading guilty by mail, 17:44

MALICIOUS PROSECUTION CHARGE

- Adjournment in contemplation of dismissal, subsequent civil suit for, 22:42

MALPRACTICE

- Collateral estoppel, 2:87
- Defense attorneys, liability of, 2:87
- Defenses, 2:87
 - Collateral estoppel, 2:87
 - Discharged counsel, 2:87
- Discharged counsel, no liability, 2:87
- Disciplinary action for ineffectiveness, 2:87
- Generally, 2:87
- Ineffective assistance of counsel, finding, 2:87
- Innocence of client, required claim, 2:87
- Judges, immunity of, 2:87
- Legal malpractice, role of defense counsel, 2:87
- No "but for" test allowed, 2:87
- Policy considerations, 2:87
- Prosecutors, immunity of, 2:87
- Statute of limitations, 2:87
- Unique nature of malpractice cases, 2:87
- Valid claim by client, required, 2:87

MANDATORY ASSESSMENTS

- Crime victim assistance fee. *See* Crime Victim
- Mandatory surcharge. *See* Mandatory Surcharge

MANDATORY RELEASE

- See* Release

MANDATORY SURCHARGE

- Amount, 22:82
- Amount depending on offense, 22:80
 - Crime victim fee, 22:85
 - Restitution to crime victim, 22:85
- DWI, surcharge, fee, fines, 22:83
- Felony, 22:106
- Misdemeanor, 22:106
 - Vehicle and Traffic Law provision, 22:84
- Multiple offenses, surcharge applicable to highest, 22:81
 - Vehicle and Traffic Law exception, 22:81
- Youthful offender may not be surcharged, 22:81

MANDATORY SURCHARGE—Cont'd

- Inability to pay, resulting in incarceration, conditions, 22:93
- Imprisonment satisfying financial assessments, 22:93
- Incarceration for nonpayment, 22:92
- Increases in, state legislature's, 22:80
- Mandatory Surcharge/Penalty/Victim Fee, 22:81
- Money earned by defendant in jail, applied to, 22:81
- Vehicular offenses, Vehicle and Traffic Law, 22:84
- Waiver not available, 22:88
- Youthful offender assessments, 22:89
- Youthful offender, not surcharged, 22:81

MANSLAUGHTER

- Agreed-upon sentence disregarded by court for bad presentence report, 22:170
- Appeal, defendant entitled to specific performance, 22:170
- Lesser included offenses
 - Manslaughter 2nd degree, described, 16:19
 - Manslaughter 1st degree, described, 16:21
- See also Homicide
- See also Murder
- Unintentional act
 - Accomplices, 14:45
 - Codefendants, 14:45

MAPP HEARING

- Affidavit underlying search warrant, challenging, 9:77
- False statements, asserting affiant made, 9:77
- Franks hearing, 9:78
 - Intentionally, statements made, 9:78
 - Knowingly, statements made, 9:78
 - Preponderance of evidence, defendant burden by, 9:78
 - Reckless disregard for truth, statements made with, 9:78
 - Veracity of affiant's statement, determining, 9:78
- Procedure, 9:77
- Validity of warrant, 9:77
- Challenge to informants
 - the Darden hearing, 9:81
- Closing statements, 9:71
- Constructive possession, defendant with, standing required. See Standing, below
- Defendant, burden of proof, illegality of search and seizure, 9:71
- Hearsay admissible, 9:72
- Illegality of search and seizure, 9:71
- Motion to reopen, 7:47
- Opening statements, 9:71
- Police conduct, establishing legality of, 9:71

MAPP HEARING—Cont'd

- Procedure, 9:71
- Search warrants, challenging, 9:79
 - Another, property on person of, 9:76
 - Imputation of possession not derived from statute, no automatic standing, 9:76
 - More than one possession charge, 9:76
 - No automatic standing, 9:76
- Consent to search, expectation of privacy overcome by, 9:75
- Court of coordinated jurisdiction, review by, 9:80
- Courts authorized to review warrant, 9:80
- Establishment, 9:74
- Execution of search exceeding scope of warrant, 9:79
- Expectation of privacy in premises, 9:74
 - Consent to search, expectation of privacy overcome by, 9:75
 - Defendant not resident of dwelling, 9:74
- Firearm in automobile, statutory presumption of possession, 9:76
- Imputation of possession not derived from statute, no automatic standing, 9:76
 - Imputation of possession not derived from statute, no automatic standing, 9:76
 - More than one possession charge, 9:76
- Inferior jurisdiction, review by, 9:80
- Issuing judge warrant reviewed by, 9:80
- Lack of jurisdiction of issuing court, 9:79
- Poor description of premises to be searched, 9:79
- Standing described, 9:73
- Time of warrant's executions, 9:79
- Unclear issue, determination of standing, 9:73
- Voluntariness for search, prosecution's burden to show clear and convincing evidence, 9:71
- Witnesses with firsthand knowledge of police conduct, 9:72

MARIJUANA

- Automatic dismissal and expungement of marijuana convictions where convictions not in violation of Penal Law 222, 23:66
- Automobile, no presumption of possession in, 19:213, 19:224
- Collateral proceedings and marijuana convictions, 23:66
- Misdemeanor complaint and supporting deposition insufficient evidence, 3:33
- Period of adjournment up to, 22:39
 - Prosecution's consent not required, 22:39
- Possession, Sandoval rules on inquiry for impeachment, 11:28
- Sealing of convictions, 23:157
- See also Controlled Substances Offenses
- See also Drugs

MARIJUANA—Cont'd

Smell, probable cause to search car, 9:58

MATERIAL WITNESS

Absence affecting speedy trial, 13:40
Order to compel attendance, 8:95
Presence of defendant at hearing, 19:11
Process issued by court, 1:27
Subpoena, 18:75

MEDIA

See News Media

MEDIATION

Privileged communications, 18:28

MEDICAID FRAUD

Prosecuted by Medicaid Fraud prosecutor, 1:10

MEDICAL RECORDS

Admissibility, 18:79, 18:80
Autopsy reports, 18:100, 18:139
Defendant's, introduction of without cross-examination, Sandoval rules, 11:6
Exonerating defendant, untimely Brady disclosure, sanctions, 8:33
Hearsay, 18:100
Identification, relevance, 9:205
Mentally ill, 8:106
Privileged, 18:19
Psychological records, 8:84

MEGAN'S LAW

See Sex Offender Registration Act

MENS REA

See Intent

MENTAL DISEASE OR DEFECT

Acquittal, 15:57
Amnesia, 15:62
Arraignment, mental health issues at, 4:29
Arrest, mental health issues, 4:29
Bail, 4:29
Cases, assigned counsel, 2:19
Competency defined, 2:44
Counsel, waiver of, pro se representation, 2:7
Decision-making role of counsel, 2:44
Defense
 See also Mental Disease or Defect Defense
Defense, 15:50-15:63
 Amnesia, 15:62
 Examination and hearing, 15:63
Effective assistance of counsel, 2:71
Examination of Defendant, 8:38
 Attendance by defense expert or defense counsel, 8:38
Facilities, clinical records, court issued subpoena for, discovery, 8:103

MENTAL DISEASE OR DEFECT—Cont'd

Kendra's Law, 15:50
Mental condition, defendant's mental limitation, factor considered, harsh and excessive sentence on appeal, 22:186
Mental illness, detention based on, 4:29
Motion to suppress evidence for, 2:44
Notice to prosecution required, 1:42
Records, subpoena for, 8:106
Retention hearing, 15:57
Sanity, presumption of. See Mental Disease or Defect Defense
Service of subpoena on mentally ill persons, 8:106

MENTAL DISEASE OR DEFECT DEFENSE

Acquittal due to insanity, effect of, 15:57
Burden of proof, 15:52
Capacity of defendant, know or appreciate nature and consequences of act committed, 15:50
 Nature of charges, 15:53
Competency defined, 2:44
CPL 440.10 motion, 23:38
Entry of plea, 15:53
 Insufficiency, 15:58
 Sufficiency to negate specific intent, 15:58
Extreme emotional disturbance as defense to murder charge, 15:56
Findings on record, 15:53
Guilty plea and
 Appeal rights, 17:80
 Mental impairment raised during allocutions, effect on plea, 17:30
 Mental examination ordered, 17:30
 Mental incapacity to assist in own defense survives, 17:80
Jury charge, 15:59
Lesser included offenses, submission of, 15:58
Not guilty, examination and confinement of defendant in secure facility, 15:50
Notice to prosecution, 15:54-15:56
Overview, 15:50
Physician-patient privilege waived by defendant where mental state placed in issue, 15:50
Probation violation, applicability to, 15:52
Psychiatric evidence, notice to prosecution, 15:54
 Extreme emotional disturbance as defense to murder charge, 15:56
 Report of examiner, 15:55
 Mental examination of defendant, 15:55
See also Psychiatric Defense
Statutory speedy trial delay not charged to People, 13:31

MENTAL EXAMINATIONS

See Psychiatric Examination

INDEX

MENTAL HEALTH

See Mental Disease or Defect

MENTAL STATE

See State of Mind

MERGER

Concurrent sentences, 22:19
Kidnap-merger doctrine, 20:19

MINOR CHARGES

Interest of justice motion to dismiss, 7:23

MINOR OFFENSES

See Petty Offenses

MINORS

Defendants, charged in Family Court, 1:23
Generally, 21:1-21:88
Infancy defense
 See also Infancy Defense
Infancy defense, 15:32
Legal representation, county reimbursement,
 parent's obligation, 2:28
Questioning, 9:113
Second child sexual assault offender, 22:112
 Second child sexual assault offender, 22:112
See also Youthful Offenders
Sex offense
 Statute of limitations for child sexual offenses,
 13:7
Sexual acts performed with child, bill of
 particulars, 8:124
Witness
 Grand jury proceedings, 6:20

MINUTES

See Court Stenographers
See Grand Jury Minutes
See Transcripts

MIRANDA WARNINGS

Any statement made may be used against
 defendant, 9:119
Foreign-speaking defendant, 9:122
Foreign-speaking defendant, waiver of rights,
 9:123
Presence of attorney, right to, 9:119
Probation officer, statements made to, 9:121
Public safety exception, 9:19
 Pedigree questions, warnings not required
 before, 9:134
Questioning defendant
 Prior to arrest, failure to warn, effect, 1:44
Recording of confession, 9:120
Rights card, use of by police, 9:121
See also Custody
See also Defendant's Statements, Suppression
Silent, right to remain, 9:119

MIRANDA WARNINGS—Cont'd

State action only, applicability to, 9:123
Waiver, 9:122
 Defendant represented, no waiver allowed,
 9:143
 Foreign-speaking defendant, 9:123
 Mentally limited individual, by, 9:122
 Use of statements at trial, 9:119

MISCHIEF, CRIMINAL

Defense of premises, 15:11
Justification defense, 15:7

MISCONDUCT

Disruptive conduct by defendant, impact on
 defendant's right to be present in court,
 19:27-19:29
Juror's, during deliberations, remedy, 19:222
Molineux evidence admissible to prevent
 speculation as to police misconduct, 12:20
Professional, conviction as, 22:206
Prosecutorial
 Appellate standard of review, 24:78
 Defense motion to dismiss grand jury proceed-
 ing, 6:69-6:71
 See also Grand Jury Proceedings
Prosecutor's conduct, objections. See Objections
 Based on Prosecutor's Conduct
See also Improper Conduct
Sexual. See Sexual Misconduct

MISDEMEANOR

Accusatory instrument
 Complaint. See Misdemeanor Complaint
 Information. See Misdemeanor Information
Bail, pre-arraignment, 4:66
 Bail § 250 maximum, 4:45
 Bail § 500 maximum, 4:45
 Pre-arraignment, 4:45
Bill of particulars, application, 8:121
Charged reduced to, in exchange for guilty plea,
 5:20
Class A
 Gradation of, 16:3
 Punishable as unclassified, 1:40
Class B
 Gradation of, 16:3
Classification, 1:40
 Gradation of, A and B, 16:3
Complaint conversion to information, 5 days for,
 4:55
Conviction, nature of established by defense,
 Sandoval ruling changed, 11:57
Defined as a crime, 1:40
Described as level of offense, 1:40
Disposition at arraignment, 4:24
 Bail, § 250 maximum, 4:45

MISDEMEANOR—Cont'd

- Disposition at arraignment, 4:24—Cont'd
- Pre-arraignment, 4:45
- Duty to advise defendant, 24:15
- Fine, maximum, 22:70
- Fingerprinting, 1:48
- Grand jury, presentation of charge to, 5:17
- Including prior as element of offense, 22:145
 - Jail sentence, 22:8
 - Exception for state prison, 22:8
 - Weekend jail sentence, 22:30
 - Probation available, 22:45
- Indictment, grand jury returns, 3:9
 - Person entitled to, 3:9
- Jury entitlement, 1:80, 3:9
- Juvenile delinquents, 21:2
 - Bench trial, 21:73
 - Family Court, exclusive jurisdiction in, 21:15
 - Jury trial disallowed, 21:73
 - Mandatory status, 21:78
 - Maximum sentence limited once status granted, 21:80
- Lay judge, bench trial by, 19:69
- Lesser included offenses, jury charge, 16:38
- Local courts jurisdiction, 1:67, 17:45
 - Absentee guilty plea authorized
 - Court permission, 17:46
- Local ordinances, violation of; bench trial, 19:59
- New York City, no right to jury trial in, 19:58
- Parker warnings, application of, 19:20
- See also Crime
- See also Felony
- See also Offenses
- See also Petty Offense
- Statutory speedy trial
 - Within days requirement, 13:24
 - Felony reduced to misdemeanor, 13:54
- Unclassified
 - Class A, punishable as, 1:40
 - Penal Law not defining, 1:40
 - Punishment provided by Penal Law statute, 1:40
- Warrantless arrest, 9:27
- Youthful offender, maximum sentence, 21:80
 - Youthful offender, maximum sentence, 21:80

MISDEMEANOR COMPLAINT

- Accusatory instrument
 - Commencing criminal proceeding, 1:50, 3:10
 - Local court filing, 3:10
- Bill of particulars, application, 8:121
- Completed and signed by police officer or victim, 3:10
- Conversion into information, 3:11
 - Mandatory conversion, 3:11
 - Failure to timely convert, effect, 3:11

MISDEMEANOR COMPLAINT—Cont'd

- Conversion into information, 3:11—Cont'd
- Mandatory conversion, 3:11—Cont'd
 - Time for, 3:11
- Defined, 3:10
- Deposition, supporting, may be filed, 3:32
- Dismissible, conclusory statements or insufficient evidentiary facts, 3:33
- Hearsay sufficient to commence proceeding, 3:10, 3:32
- Prima facie case not required for, 3:10
- Required allegations, 3:33
- Sufficiency, governing CPL Articles, 3:32
- Verification, manner of, 3:32

MISDEMEANOR INFORMATION

- Accusatory instrument, 3:6
- Commence criminal case, 1:50

MISIDENTIFICATION

- See Identification

MISREPRESENTATION

- Collateral proceedings, CPL 440.10 motion, 23:35

MISSING WITNESS CHARGE

- See Jury Charge

MISTAKE

- Lack of, uncharged crimes evidence, 12:7
- Mistake of fact, 15:45
- Mistake of law, 15:45
- Search and seizure, 9:46

MISTAKE, MUTUAL

- Parties, writ of prohibition, 23:5

MISTAKEN IDENTITY

- Claim, uncharged crimes, permissible use in proving guilt, 12:42
- See also Identification
- See also Identity

MISTRIAL

- Deadlock jury, 18:187, 18:188
 - Factors to be considered, 18:188
- Hung jury consequence, 1:81
- Juror viewing of handcuffed defendant out of court, mistrial not required, 19:29
- Manifest necessity requirement for motion, 18:182
 - Deadlocked jury, 18:187, 18:188
 - Prosecution motion. See subhead: Prosecution motion
- Motion for, codefendants, objections by defense, 14:17
- Partial verdict, option for, 18:189

MISTRIAL—Cont'd

- Prosecution motion, 18:183
- Defendant's failure to object may be consent, 18:185
- Double jeopardy, grant triggering, 18:184
- Prosecutor's right to retry, 1:81
- Writ of prohibition to bar retrial, use of, 18:175
- Specifying, defendant, 18:186

MITIGATING DEFENSE

- Grand jury instructions on evidence constituting, 6:56

MODE OF PROCEEDINGS ERROR

- Generally, 24:93
- O'Rama error, 19:214

MODUS OPERANDI

- Uncharged crimes, permissible use of, 12:15, 12:17
- Common plan or scheme as variation of, 12:18
- Unique pattern requirement, 12:15

MOLINEUX EVIDENCE

- Appeal, 12:43
- Appellate review, standards of, 24:73
- Domestic violence, 12:14, 12:17
- Effective assistance of counsel, 2:82
- Limiting instruction, 6:60
- Prior crimes
- Grand jury instructions, 6:60
- Uncharged crimes, permissible use in proving guilt, 12:6-12:27
- See also Uncharged Crimes
- Admissibility of evidence, 12:21, 12:22
- Confession by defendant, admissible to explain, 12:20
- Inextricably intertwined crimes, 12:21
- Intent, 12:21
- Molineux triggered, 12:22
- Police misconduct, admissible to prevent speculation as to, 12:20
- Rebuttal, admitted on, 12:22
- Appeal, 12:43
- Categories of evidence, 12:11-12:25
- Error, potential for, 12:8
- Identity, Uniqueness requirement, 12:17
- Intent, 12:13-12:18
- Modus operandi
- Common plan or scheme as variation of, 12:18
- Unique pattern requirement, 12:15
- Prejudice
- Limitation of to defendant, 12:8
- Potential for, 12:7
- Probative worth of evidence, 12:8
- Rebuttal, admitted on, 12:22

MOLINEUX EVIDENCE—Cont'd

- Uncharged crimes, permissible use in proving guilt, 12:6-12:27—Cont'd
- Relevance, inquiry as to, 12:7-12:9
- Rulings, 12:10
- Time lapse, barring of evidence, 12:9
- Unproven crimes, 12:42

MOOTNESS

- Enhanced felony status, 24:63
- Habeas corpus, 23:18
- Jury selection, alternate juror, 19:129
- Sentence served, 22:187

MOTIONS

- Accusatory instrument, deficient, 3:61-3:64
- See also Accusatory Instrument
- Anders brief procedure
- See also Anders Brief subhead: Procedures
- Appellate Division, to, 24:59
- Bill of particulars, defense motion to compel
- See also Bill of Particulars subhead: Defense motion to compel
- Bill of particulars, defense motion to compel, 8:126
- Bruton rule, severance, appellate review of denial of, 14:27
- Common method of supporting, 7:12
- Consolidation, codefendants, 14:37-14:39
- Contents, 7:7
- Affirmation, pretrial motion, use of to impeach defendant, 7:37
- Burden of proof, pretrial motion, use of to impeach defendant, 7:38
- Discovery motions. See Discovery Motions
- Dismissal for failure to prosecute, 13:81
- Domestic Violence Survivors Justice Act, 23:74
- Due diligence, issues which defendant could not "with due diligence" have been aware, effect of, 7:4
- Effective assistance of counsel, 2:82
- Electronic methods for service and filing, 7:3
- Filing, 7:7
- Stipulation in lieu of, 7:58
- Forms
- New trial or judgment motion, notwithstanding verdict, 23:184
- Set aside verdict
- Notice of motion and affirmation to, 20:47
- Prosecutor's affirmation in response to CPL 330.30 motion, 20:48
- Traffic ticket conviction, defense motion to vacate, 23:167
- Vacate judgment, sample notice of motion and affirmation to, 23:165

MOTIONS—Cont'd

- Grand jury proceedings, defense motions, 6:61-6:95
 - See also Grand Jury Proceedings
 - To dismiss proceeding, standard of review, 6:68-6:72
- Grand jury proceeding with indicted defendant, motion to dismiss, 7:15
 - No opportunity for defendant to testify, 7:18
 - Notice to defendant, failure of, 7:18
 - Time limit, critical, 7:18
- Guilty plea, 17:72
 - See also Guilty Plea
- Hearings on, 1:75
 - Huntley and Wade, examples, 1:75
 - Scheduled on return date, 1:75
- Indictment, most defense motions made after, 7:6
- In limine
 - Affirmation of defense attorney and defendant's affidavit, 7:12
 - Allegations of fact required, 7:12
 - Filing copy with county clerk's office, 7:1
 - Hearing determined by, 7:12
 - Interest of justice motion to dismiss, 7:22-7:28
 - Pretrial hearings at least, 7:1
 - Sufficiency of supporting papers, 7:10
 - Transcript of pretrial hearings requested in, 7:36
- In limine, 18:174
- Judgment
 - Defense motion to set aside, 23:67
 - Vacate judgment. See CPL 440.10 Motion to Vacate Judgment
- Juvenile offenders. See Juvenile Offenders subhead: Family Court
- Lesser included offenses, motion to reduce grand jury charges, 16:33
- Mistrial, codefendants, objections by defense, 14:17
- Motion papers
 - Resettlement of transcript, appellate attorney's motion, 24:29
 - Speedy trial motions to dismiss, 13:70
- Motion to dismiss
 - See also Traffic Ticket
 - Interest of justice motion to dismiss
 - See also Interest of Justice
 - Speedy trial
 - Generally, 13:20
 - See also Speedy Trial
 - Both constitutional and statutory grounds, 13:20
 - Defense motion papers, 13:70
 - Hearing, when required, 13:77
 - Hearing not always required, 13:76

MOTIONS—Cont'd

- Motion to dismiss—Cont'd
- Speedy trial—Cont'd
 - Prosecution's responsive papers, 13:73-13:76
 - Statutory grounds, 13:17, 13:19, 13:68-13:79
 - Traffic infractions, 13:26
 - Waiver on failure to move, 13:97
 - Wisdom of combining constitutional and statutory grounds, 13:20
- Time-barred action, issue raised and dismissed by defense, 13:11
- Trial order of dismissal
 - See also Trial Order of Dismissal
 - Motion to dismiss, failure to establish prima facie case, 18:175-18:181
 - Objecting to People's case as legally insufficient, 18:175-18:181
- Omnibus motion
 - See also Omnibus Motion
- Omnibus motion, 7:1-7:16
 - Issues defendant could not "with due diligence" have been aware of, effect, 7:4
- Making of, 7:9
 - Areas at issue addressed in, 7:9
 - Moving papers, allegations and legal conclusions in, 7:10
 - Notice of motion, 7:9
 - Sufficiency of supporting papers, 7:10
 - Suppression, motion for, 7:11
- Renewal, portion of omnibus motion, motion for, 7:15
- Return date, 7:5
- Time within which to bring, 7:5
- Overturn conviction, joinder of defendants, 14:1
- Postconviction motion, 1:84
- Post-conviction motion, motion to set aside verdict, 1:82
- Practice, 7:1-7:28
- Presentence investigation report, motion to strike portions of, 22:228
- Preservation for appeal
 - Trial, motions made at, 18:175-18:181
- Preservation for appeal, 7:8
 - Failure to make pretrial motion, conviction on, 7:7
 - Trial, motions made at, 7:8
- Pretrial motions, 1:73
 - See also Omnibus Motion
 - See also Pretrial Motions
 - Prosecutor entitled to respond, 1:74
- Pretrial motions, 7:7, 7:42-7:52
- Pretrial release, motion for, statutory speedy trial, 13:82
- Prosecution's motion, written, 7:13

MOTIONS—Cont'd

- Pro se motion, 2:13
- Quash subpoena, discovery, 8:112-8:114
- Renewal, 7:45-CITE7:49
- Reopen, motion to, denial of, appeal, 7:30
- Sandoval motion, 11:37, 11:38
 - See also Sandoval Motions
- Sentence, prosecution motion to set aside, 23:68, 23:69
- Service and filing, 7:3
- Set aside verdict. See Motions to Set Aside Verdict
- Severance, codefendants, 14:32-14:43
 - See also Codefendants
- Special prosecutor, 1:12
- Special prosecutor, 7:21
- Specific relief, motions for
 - See also Omnibus Motion
- Specific relief, motions for, 7:15
 - Grand jury proceeding with indicted defendant, motion to dismiss, 7:15
 - Time limit, critical, 7:18
- Motion in limine
 - Time limit, critical, 7:19
- Pre-indictment motion to suppress, 7:15
- Renewal, portion of omnibus motion, 7:15
- Set-aside of verdict, post-trial motion for, 7:15
- Vacation of judgment, post-sentencing motion for, 7:15
- Stipulation in lieu of motions
 - See also Stipulation
- Stipulation in lieu of motions, 7:14
- Strike, motions to, 18:41, 18:54, 18:155
- Suppression, motion for
 - Incompetent persons, 2:44
- Suppression, motion for, 7:11
 - Pre-indictment motion, 7:15
 - Probable cause, 7:11
 - Allegation of sufficient fact, 7:10
 - Facts, not legal conclusions, essential, 7:11
- Trial, motions made at, 7:8
 - Preservation for appeal, 7:8
- Untimely motions, court allowing, 7:4
- Vacation of conviction, motion for, 17:72
- Vacation of judgment, post-sentencing motion for, 7:15
 - Post-trial motion for generally, 7:15
- Verdict, to set aside, 23:35
 - Grounds for. See CPL 330.30 Motion
- Withdrawal from representation, 2:66

MOTIONS TO SET ASIDE VERDICT

- Appeals
 - Defense appeal, 20:45
 - Prosecution appeal, 20:44
- Defense appeal, 20:45

MOTIONS TO SET ASIDE VERDICT—Cont'd

- Denial of motion
 - Defense appeal, 20:45
 - Preservation for appeal, 20:23
- Described, 1:84
- Development of facts not in record, 20:23
 - Preservation for appeal, 20:23
- Error in record, reversible, 20:26-20:34
- Evidence, newly discovered, 20:21, 20:38-20:41
- Facts outside record
 - Development of facts outside, preservation for appeal, 20:23
 - Juror misconduct, 20:35-20:37
- Juror misconduct, 20:21, 20:35-20:37
 - CPL 330.30(2) motion, 20:35
 - Impeaching verdict, juror barred from, 20:36
 - Exception, 20:37
- Legally sufficient evidence no bar to defense motion, 20:42
- Newly discovered evidence, 20:21, 20:38-20:41
 - CPL 330.30(3) motion, 20:38
 - Defense burden, 20:39
 - Failure to show due diligence, 20:40
 - Recantation evidence, 20:41
 - Hearing not automatically precluded, 20:41
- Overview, 20:21-20:45
- Place, motion brought, 20:25
- Preservation for appeal
 - Development of facts not in record, 20:23
 - Interest of justice, 20:29
 - Repugnance issue, bench trial, 20:10
- Procedural matters in trial court, 20:43
- Prosecution appeal, 20:44
- Reversible error in record, 20:26-20:34
 - Appellate court's power to reverse vs. trial court's power to set aside, 20:28
 - Available grounds, 20:31-20:34
 - CPL 330.30(1) motion, 20:26
 - Matter of law, 20:26
 - Trial court limitations, 20:28
 - Unavailable grounds, 20:28-20:30
- Time to make, between conviction and sentencing, 20:21
 - Time when conviction occurs, 20:22
- Trial court before trial judge as place to bring motion, 20:25
- Usefulness of post-trial motion, 20:23

MOTION TO SET ASIDE VERDICT

- Effective assistance, 2:75

MOTIVE

- Circumstantial evidence, 24:85
- Uncharged crimes, permissible use of, 12:12
 - Homicide, uncharged crime, as evidence, 12:12

MOTOR VEHICLES

- Driving while intoxicated. See Driving While Intoxicated
- See Automobile
- See Vehicle

MOTOR VEHICLES DEPARTMENT

- Statements in possession of, Rosario material exclusion, 8:48

MULTI-DEFENDANT

- Codefendants; Defendant; Trial subhead: Multiple defendants

MULTIPLE

- Charges. See Charges, Multiple Charges
- Offenses. See Offenses subhead: Multiple

MULTIPLICITY

- Contrasted with duplicity, 3:47
- Explained, 3:46

MUNICIPAL ORDINANCES

- Accusatory, filing of, 19:58
- Administrative search, 9:90
- Application of CPL, 1:42
- Attorneys, matters prosecuted by, 1:14
- Basis for stop, 1:42
- Constitutional challenge, 15:89
- Corporations, subpoena duces tecum, court issued, 8:103
- Criminal court, prosecution of violation of ordinance in, 1:42
- Jury trial, 19:59
- Noise ordinance, vagueness challenge, 15:93
- Place of prosecution, 1:42
- Preemption, 15:94
- Right to assigned attorney, 2:2
- Speedy trial, 13:22

MURDER

- Attempted murder, weapons possession and, single act consecutive sentence, 22:21
- Bail not set in local court, 4:68
- Charges in prosecution, bill of particulars, 8:124
- Defendants, juvenile offenders status, applicability, 21:29
- Depraved indifference
 - Continuing crime theory applicable, indictment, 3:44
 - Uncharged crimes, permissible use of as evidence, 12:25
- Described, not violent felony offense, 22:18
 - Concurrent sentences, robbery an element, 22:22
- Extreme emotional disturbance, 15:56
- Intentional and deprave indifference, guilty plea, 17:35

MURDER—Cont'd

- Juvenile delinquents, felony-murder defendants, 21:29
- Felony-murder defendants, status, applicability, 21:29
 - Consensual removal to Family Court after guilty verdict, exception, 21:59
- Criminally negligent homicide, 21:57
- Depraved indifference, 21:28
- Guilty plea, no transfer to Family Court following, 21:56
- Indictment, 21:34
- Infancy not always defense, 21:28
- Intent, 21:28
- Larceny occurring during commission of crime, 21:34
- Non-juvenile offender charges, transfers after guilty verdict on, 21:58
- Prosecutor's consent to transfer to Family Court, 21:59
- Juvenile offenders
 - Murder 2nd degree. See subhead: Murder 2nd degree
- Lesser included offenses, Murder 2nd degree, described, 16:19, 16:21, 16:22
- Murder 1st degree, accusatory instrument, right to plead to, exception, 17:5
- Murder 2nd degree
 - Felony, example of, 1:39
 - Statute of limitations commencement, no limitation, 13:3, 13:10
- Photograph of knife wounds on murder victim as evidence, 18:98
- See also Homicide
- Sentence consecutive, conditions, 22:25
- Statute of limitations, no, 13:10

NAMES

- Absence from indictment, 3:38
- Anonymous jury improper, 19:83
- Anonymous testimony, 19:34
- False, use of, inquiry as to, Sandoval rules, 11:27-11:28
- Improper use of alias by prosecutor, suggesting prior arrest, barred, 11:28
- Nickname improper, 18:201
- See also Alias
- Valid use of different name, 11:28
- Witnesses' names, discretionary disclosure
 - See also Discovery
- Witnesses' names, discretionary disclosure, 8:89

NECESSITY DEFENSE

- Choice of evils defense, 15:30
- Civil disobedience, inapplicability to, 15:30
- Emergency defense, 15:30

NECESSITY DEFENSE—Cont'd

- Imminent public or private injustice, use of to avoid, 15:30
- Use of, 15:30

NEGLECT PROCEEDINGS

- Assigned attorney as law guardian, representation at, 2:19
- See also Abuse Proceeding

NEWS MEDIA

- Courtroom closure. See Courtroom Closure
- Defense right to seek exclusion of public, 5:14
- Freedom of Information, 8:115
- Gag order, 19:53
- Shield law, 18:28
- Videotapes created for, admissibility of, 18:127

NEW YORK CITY CRIMINAL COURT

- Appeal from misdemeanor conviction heard in, 1:88
- Stay of sentence and release pending appeal, 4:83

NONEXISTENT CRIME

- See Crime subhead: Nonexistent

NON-JURY TRIALS

- See Trial, Bench Trial

NOTES AND NOTE-TAKING

- Counsel's, in lieu of entire transcript, 7:36
- Rosario material, 8:46
 - Prosecutor's, 8:46
 - Scratch pad notes of police officer, 8:46
 - Witness's, unrelated to trial issues, exclusion, 8:47
- See also Rosario Material

NOT GUILTY PLEA

- See Guilty Plea subhead: Not guilty plea

NOTICE

- Alibi defense. See Alibi
- Appeal, notice of
 - Filing, 24:17
 - Within 30 days of
 - Conviction, 24:17
 - Late notice, 24:19
 - Preservation of right to appeal, 24:17
 - Prosecution failure to file, 24:51
 - Prosecution's untimely filing, 24:51
 - Risk of appeal, letter to client, 24:18
 - Risk of appeal, letter to client, 24:18
- Application to withdraw representation, notice to defendant, 2:66
- Attorney as recipient of, 2:38
- Client informed, 2:38
- Bench warrants, defendant notified, 4:79
 - Bail revocation application, notice to defense, 4:73

NOTICE—Cont'd

- Bench warrants, defendant notified, 4:79
 - Cont'd
- Grand jury presentation, prosecution notice of, 4:24
- Indictment, notice to defendant, 4:28
- Service of, 4:27
- Constitutional challenges, notice to attorney general, 15:89
- CPL 710.30 notice (intention to introduce evidence or identification)
 - Described, 1:56
 - Time for, 1:56
- Defendant, grounds for motion to dismiss, 7:18
- Defense
 - Notice to prosecution. See Defense
 - Suppression of evidence. See Suppression of Evidence
- Discovery. See Discovery
- Eavesdropping, regarding, 8:41
- Grand jury proceedings
 - See also Grand Jury Proceedings
 - Notice of presentation, 6:31-6:38
- Judicial notice, 18:9
- Mental disease or defect defense, notice to prosecution, 15:54-15:56
- Omnibus motion, 7:10
- Order of protection, 22:65
- Plea offers, notice to defendant of, 2:75
- Probation terms, 22:47-22:50
- Prosecution, notice to defense, 1:5
- Psychiatric defense. See Psychiatric Defense
- Right to appeal, 24:15
- Sandoval motion
 - Pretrial motion, 11:38
 - Uncharged crimes, disclosure of previously, 11:40
 - Prosecutor's notice of defendant's, 11:40
- Sex Offender Registration Act
 - Requirements, 23:86
 - Time frames for notice, 23:78
- Statutory speedy trial
 - Notice of impending dismissal, failure of reasonable notice to People, 13:79
- Notice of readiness
 - Insufficient notice, 13:60
 - Premature service of notice, 13:58
 - Sufficient notice, 13:59, 13:70
- Traffic infraction, application to, 9:161
- Withdrawal of guilty plea, 17:65

NURSE

- Blood test, 18:30
- Testifying, privilege, 18:28, 18:30
- Testimony, 18:80, 18:129

NYSIS

See Rap Sheet

OATH AND AFFIRMATION

Child. See Child
 Court deputy at trial, 19:223
 Generally, 19:56
 Grand jury proceedings, witnesses at, 6:18
 Juror, 19:83
 Prospective juror, 19:83
 Search warrants, requirement, 9:84
 Witnesses, 18:35

OBJECTIONS

Abandonment or waiver, 18:154
 Arrest photographs, use of, 18:94
 Bolstering, 9:212
 Codefendants, defense objections do not protect, 14:17
 Continuing, 18:169, 18:170
 Defense's, prosecution's proof or judge's charge varying from accusatory instrument allegations, 3:76
 Exception, taking an, 18:172
 Form of question, to, 18:171
 General, 18:167
 Guilty plea, Batson objection in jury selection, 19:127
 Different instructions given without defense objection, 19:142
 Preservation of error, 19:142
 Requested charge not given, 19:142
 Insufficient, testimony by witness, objection made before, 18:169
 Judicial bias, objection in writing, 18:193
 Jury charge, 18:205
 Alibi charge, defense request for denied, 18:205
 Denial, 18:205
 Need for precision, 18:205
 Preservation of error
 See also Preservation of Error
 Jury selection procedure, objection registered, 18:172
 Lesser included offenses, 16:48, 16:49
 Failure to object, effect of, 16:49
 Moving to strike witness testimony; continuing objection, 18:170
 Nonexistent crime, objection before jury discharge, 20:12
 Opening the door, 18:154
 Preservation of error
 See also Preservation of Error
 Prosecutor's conduct, 18:194-18:200
 See also Objections Based on Prosecutor's Conduct

OBJECTIONS—Cont'd

Prosecutor's summation, 18:202-18:203
 See also Objections to Prosecutor's Summation
 Real evidence, 18:87
 See also Real Evidence
 Recent fabrication, 18:105, 18:125
 Repugnance issue preserved by, before jury discharge, 20:10
 Specific, 18:167, 18:168
 Standing objections, 18:169
 Standing or continuing objection, 18:169
 Strike, motions to, 18:41
 Strike testimony, 18:41, 18:170
 Strike testimony, 19:180
 Trial order of dismissal, objecting to People's case as legally insufficient, 18:175
 Violent crime, defense counsel objection to excessive number of photos, 18:93
 Waiver of, lesser included offenses, attempts, 16:31

OBJECTIONS BASED ON PROSECUTOR'S CONDUCT

Another's credibility, no testimony regarding, 18:199
 Credibility
 Another's credibility, no testimony regarding, 18:199
 Impeachment of defendant's credibility, exceeding limitations, 18:195
 Defense questioning good faith, 18:196
 Good faith requirement, 18:195
 Defense obligation, 18:198
 Defense obligation of good faith, 18:197
 Defense questioning good faith, 18:196
 Impeachment
 Defendant's credibility, exceeding limitations, 18:198
 One's own witness, 18:195
 Witnesses
 Character witnesses, questioning, 18:195
 Impeachment, 18:195
 Refreshing recollection of, 18:195
 Overview, 18:194
 Privilege, witness who will assert, improper to call, 18:200
 Required trial conduct, 18:194-18:200
 See also Bad Faith Prosecutor
 Summation, misconduct on, 18:201
 Witnesses
 Another's credibility, question regarding, prohibited, 18:199
 Good faith conduct requirement toward. See subhead: Good faith requirement
 Lying, question on whether witness is, prohibited. See subhead: Lying

OBJECTIONS BASED ON PROSECUTOR'S CONDUCT—Cont'd

Witnesses—Cont'd

- Privilege, witness who will assert, improper to call, 18:200
- Willing to testify, prosecutor's belief, no error calling, 18:200

OBJECTIONS TO PROSECUTOR'S SUMMATION

- Acquittal of defendant, improper implication, 18:202
- Generally, 18:202-18:203
- Improper tactics by prosecutor, 18:203
- Permissible argument, 18:202
- Preserve error, objection to, 18:201
- Quality of defense evidence, excess comment on, 18:202

OFFENDERS

Age

- Ages 7 through 15. See Juvenile Delinquents
- Ages 13 through 15. See Juvenile Offenders
- Ages 16 through 18. See Youthful Offenders
- Character as evidence, 12:3
- Date offense committed, determines age, 21:7
- Prior conviction as evidence, 12:1
- Temporally remote convictions, 12:9

OFFENSES

- Accomplices. See Accomplices
- Admissibility of evidence, 21:46
 - Harm caused by offense, 21:46
 - Lower offenses, grand jury request for juvenile delinquents charges not juvenile offender charge, 21:51
 - Reasonable cause for charge, 21:51
 - Fact-finding hearings, disposition of transferred cases, 21:62
 - Seriousness and circumstances of offense, 21:46
- Codefendants
 - See also Codefendants
 - Grand larceny, 14:6, 14:8
 - Joinder of offenses, 14:5-14:10
 - Coercion, 14:8
 - Grand larceny, 14:6, 14:8
 - Grounds, 14:6
 - Improperly joined charges, 14:8
 - Proof, one offense admissible to prove another, 14:7
 - Rape, 14:8
 - Robbery, 14:6
 - Same criminal transaction, 14:6
 - Statutory definitions similar, 14:8
 - Third charge, joinable to, 14:9, 14:10
 - Unrelated criminal transactions, 14:7

OFFENSES—Cont'd

Codefendants—Cont'd

- Manslaughter, unintentional acts, 14:45
- Rape, 14:8, 14:33
- Robbery, 14:6, 14:8
- Same criminal transaction, 14:1, 14:6
- Continuing. See Continuing Offense
- Criminal offenses
 - Statutes of limitations, 13:3-13:12
 - See also Statute of Limitations
 - Criminal and civil law compared, 13:11
 - Uncharged crimes. See Uncharged Crimes
- Drug offenses
 - See Drugs
 - See Drug Sales
- Interest of justice, motion to dismiss, seriousness of offense factor, 7:23
- Justification, 15:7
- Lesser included offense. See Lesser Included Offenses
- Levels of, 1:37
- Mandatory surcharge applicable to highest, 22:80
 - Vehicle and Traffic Law offenses, excepted, 22:81
- Maximum amounts, 4:45
 - Bail, § 100 maximum, 4:45
 - Set at police station, 4:45
- Petty
 - See also Petty Offense
- Photographs admitted to injury, 18:99
- Prior. See Conviction
- See also Crime
- See also Felony
- See also Misdemeanor
- Sex offense. See Sex offenses
- Speedy trial
 - Constitutional speedy trial
 - Delay and seriousness of offense, 13:88
 - Statutory speedy trial
 - Allotted time varies with level of offense, 13:47
 - Certain homicide charges not covered, 13:18
 - Coverage, 13:18
 - Traffic infractions not covered, 13:18, 13:26
- Violation level, questions about permissible, Sandoval rules, 11:24
 - Disorderly conduct conviction, 11:24
- Youthful offender, ineligibility for youthful offender treatment, 21:69

OFFER OF PROOF

- Defense right to call witnesses, 18:39
- Generally, 18:173
- Rape Shield Law, 18:65

OFF-THE-RECORD INFORMATION

- Record on appeal, no inclusion, 24:26

OMNIBUS MOTION

- Applications in
 - Assigned counsel's, for investigator as part of, 2:30
- Applications in, 7:1
 - Chart, Applications Included in Omnibus Motion, 7:1
 - Waiver, 7:1
- County clerk's office, filing copy of motion papers with, 7:1
- Defined, 1:73
- Denial of, 7:2
 - Affirmation in response to, sample, 7:57
 - Affirmation in support of, 7:56
 - Defendant's affidavit in support of, 7:59
 - DWI misdemeanor case, 7:62
 - Local court, defense omnibus motion in, 7:60
 - Notice of motion, 7:55
 - Without necessity of, 7:1
- Generally, 1:73
- Indictment, making motion after, 7:4
- Issues which defendant could not "with due diligence" have been aware, effect of, 7:4
- Items of relief, includable, 1:74
 - Dismissal
 - Motion to dismiss, 3:61
 - Time-barred action, defense motion, 13:11
- Making of
 - Time for, 3:61
- Making of, 7:9
 - Affirmation, defense attorney's, and defendant's affidavit in, 7:12
 - Allegations of fact required, 7:12
 - Areas at issue addressed in motion, 7:9
 - Common method of supporting, 7:12
 - Filing of copy with county clerk's office, 7:1
 - Hearing determined by, 7:12
 - Moving papers, allegations added to legal conclusions in, 7:10
 - Notice of motion, affidavit, affirmation, exhibits, 7:9
 - Reasonable notice, 7:9
 - Pretrial hearings at least, 7:1
 - Prosecutor's response, 7:13
 - Sufficiency of supporting papers, 7:10
 - Time for, 7:2
 - Additional time, with good cause, 7:2
 - All motions by defense attorney at one time, 7:2
 - Arraignment of defendant with representation or pro se, within 45 days of, 7:2
 - Civil and criminal practice compared, 7:2
 - 45-day rule, 7:16
 - Defense counsel's first court appearance, within 45 days of, 7:2
 - Failure to make promptly, 7:2

OMNIBUS MOTION—Cont'd

- Making of, 7:9—Cont'd
 - Time for, 7:2—Cont'd
 - Raising additional issues later, if good cause shown, 7:4
 - Transcript of, provided to defense, request for, 7:1
 - Without necessity of, 7:1
 - Written notice, 7:9
- Prosecution response to motion, 1:74
- Prosecutor's response, 7:13
- Renewal, portion of omnibus motion, motion for, 7:15
- Return date, 7:5
- Severance motion part of, 14:32
- Statutory speedy trial delay not charged to People, 13:32
- Stipulation in lieu of motions, 7:14
- Suppression, motion for, in, 9:68
- Untimely motions, review of, 7:4

ONE PARTY'S CONSENT REQUIRED FOR ADMISSION

- Recordings, Admissibility, 9:98

OPENING STATEMENT

- Bench trial, abbreviated procedures, 19:74
- Generally, 19:3
- Ineffectiveness, 2:83
- Mapp hearing, 9:71
- Retrial, first trial statements as vicarious admission binding in, 24:125

OPENING THE DOOR

- See Evidence

OPERABILITY OF WEAPON DEFENSE

- Burden of proof, prosecution's, 15:65
- Element of offense, as, 15:65
- Overview, 15:65

ORAL ARGUMENT

- Appeal
 - Improper to argue issues outside record, 24:31
 - Preservation, oral severance application, 24:121
- Rulings on motion to dismiss after, or decision reserved, 1:75

ORDER

- Gag orders, 19:53
- Order to show cause, withdrawal from representation, 2:66
- Preclusion order against prosecution, 24:44
- Protective. See Order of Protection
- Reconstruction hearing ordered by court, 24:35
- Record on appeal ordered by appellate court, 24:31

INDEX

ORDER—Cont'd

- Reduction of bail and release, all charges in written order, 4:71
- Statutory speedy trial, effect of retrial order, 13:51
- Trial order of dismissal, 24:45

ORDER OF PROTECTION

- Appealing, 22:66
- Bargained-for sentence, 22:157
- Conditions, 22:66
- Deprivation, hearing with significant; Crawford case, 22:62
- Double jeopardy, 15:71
- Duration; final order, 22:63
- Emergency issuance of temporary order in family offense cases, 22:63
- Extreme risk protection orders (ERPO), 23:152
- Filing accusatory instrument, accompanied by, 3:4
- Final order, 22:63
- Firearms license suspension and ordering surrender of any firearms, 22:61
- Forms
 - Defense memorandum in support of modified order, 23:166
- Hearing with significant deprivation; Crawford case, 22:62
- Mandatory arrest for violation of, 1:46
- Modification or vacatur, 22:66
- Notification, 22:65
- Overview, 22:61-22:67
- Pistol permit, effect, 1:45
- Plea bargain, not part of, 22:157
- Process issued by court, 1:30
- Refrain from order; final order, 22:64
 - Firearms license suspension and ordering surrender of any fire arms, 22:61
- Release order including, 3:4
- Stay away order; final order, 22:64
- Stay-away order of protection, violation of; mandatory arrest, 1:46
- Substantial deprivation hearing; Crawford case, 22:62
- Temporary, described, 22:61
 - Emergency issuance family offense cases, 22:63
 - Substantial deprivation hearing; Crawford case, 22:63
- Vacatur, 22:66
- Violation of, 22:65

ORDINANCES

- See Municipal Ordinances

ORGANIZED CRIME TASK FORCE

- Attorney General's office, as part of, 1:10

OUTLEY HEARING

- Defined, 7:37
- Increasing sentences, 22:165

OUT-OF-STATE CONDUCT

- DWI, 22:143
- Jurisdiction, 15:47
- License, 4:37
- See also Felony, Out-of-State
- Ticket, nonpayment, effect on NY license, 4:37

PAPERS

- See Documents and Papers

PARALEGALS

- Work-product and attorney-client privilege, application of, 2:25

PARDON

- Conviction pardoned, enhanced sentencing not applying, 22:99

PARENT

- Justification defense, 15:13
- Parent's obligation, county reimbursement, representation of minor child, 2:28
- See also Family

PARKER WARNINGS

- Applicability, 19:20
- Counsel's role, 19:19
- Defendant's refusal to attend trial, 19:24
- Defendant's waiver, right to be present validated by, 19:18
- Defined, 19:18
- Juvenile delinquency, application to, 19:20
- Misdemeanors, application to, 19:20
- Multi-defendant trials as exception, 19:22
- Overview, 19:18
- Pre-trial hearings, application to, 19:20
- Sentencing, application to, 19:20
- Start of trial, absence after, exception, 19:23
- Trial in absentia not automatic, 19:21
 - Factors considered, 19:21
 - Multi-defendant trials as exception, 19:22
 - Start of trial, absence after, exception, 19:23

PARKING TICKETS

- Failure to pay, inquiry for impeachment allowed, Sandoval rules, 11:27

PARKING VIOLATIONS

- Criminal offense, as, 1:42
- Impeachment, 11:27
- Parked car, police stop, 9:57
- Probable cause, 9:56

PAROLE

- Appeal, 23:123
- Conditional release, 23:127

PAROLE—Cont'd

- Conditions of release, 23:124
- Consent to search, 9:33
- Credit time allowance, limited, 23:119
- Discharge from supervision, 23:125, 23:138
- Discovery where defendant charged with parole violation, 8:120
- Extradition waiver as condition of, 4:93
- Generally, 23:118-23:138
- Interstate transfer of parole supervision, 23:137
- Judicial review, 23:123
- Limited credit time allowance, 23:119
- Maximum expiration date, 22:14
- Medical parole, 23:136
- Merit time, 23:119
- Minimum period of imprisonment, serving statutory, 22:14
- Post-release supervision, 23:128
- Release decision, 23:122, 23:123
- Release hearing, 23:120, 23:121
- Sex Assault Reform Act (SARA), 23:126
- State imprisonment, release from, 22:14
- Statement to parole officer, 9:121

PAROLE REVOCATION

- Appeal and judicial review, 23:133
- Dispositions, hearing, 23:132
- Earned time credits, 23:135
- Final revocation hearing, 23:131, 23:132
- Generally, 22:209
- Generally, 23:129-23:135
- Judicial review, 23:133
- Notice, 23:129
- Preliminary violation hearing, 23:130
- Re-release following revocation, 23:134

PASSENGER

- See Automobile, Warrantless Stop and Search

PASSPORT

- See also Deportation
- See also Immigration
- Surrender, ROR, 4:63

PAST RECOLLECTION RECORDED

- Admissibility at trial, 18:19
- Hearsay exception, 18:19

PEDIGREE QUESTIONING

- See Mapp Statements

PENAL LAW

- Described, covers substantive criminal law, 1:2
- Unclassified misdemeanor and felony, not defined by, 1:40

PENALTY

- Right to trial, plea bargaining
- No penalty for exercising right, 17:2, 17:3

PEN REGISTERS

- Defined, 9:100
- Process issued by court, 1:30

PENSION

- Conviction, collateral consequences of; loss of pension, 22:216

PEREMPTORY CHALLENGES

- See Jury Selection and Voir Dire subhead: Peremptory challenges

PERJURY

- Cooperation agreement, misstating, 8:26
- Effective assistance of counsel, 2:74
- Ethical duty of counsel, 2:74
- Grand jury proceeding defective, use of perjured testimony rendering, 6:71
- Prosecutor's duty to correct, 18:195, 18:202
- Prosecutor's duty to disclose, 8:26
- Prosecutor's use of, 6:71
- Search and seizure, strip search, 9:38
- Search warrant application, 9:78

PERSISTENT OFFENDERS

- Described, 17:49
- Discretionary sentence enhancement, 4:85
- Hearsay, 22:140
- Hearsay inadmissible, 22:139
- Plea bargaining, limitations, 17:49-17:54

PERSONS IN NEED OF SUPERVISION (PINS)

- Effect on credibility and cross-examination, 11:18
- Youthful offenders, 21:5

PETITION

- Coram nobis petition, 23:28, 23:29
- CPL 440.10 motion. See CPL 440.10 Motion to Vacate Judgment
- Habeas corpus, 23:23
- See also Habeas Corpus
- Juvenile delinquents, 21:18
- In lieu of criminal accusatory instrument, 21:2

PETIT LARCENY

- Attempted, misdemeanor, Class B, described as, 1:40
- Charge resulting from purse snatching, 1:51
- Civil penalty, 22:215
- Described, lesser included offense, 16:14
- Information failed to alleged intent steal, amendment, 3:66
- Misdemeanor, Class A, described as, 1:40
- Plea down to disorderly conduct, 17:10
- See also Larceny

PETTY OFFENSE

- Bail, § 100 maximum, 4:45
- Collateral estoppel and, 22:212

PETTY OFFENSE—Cont'd

- Conviction of not criminal conviction, 1:41
- Described as level of offense, 1:41
- Information, accusatory instrument for, 3:6
- Infractions, 1:41
- Jury trial, 1:41
- No assigned counsel, 2:2
- Sealing of records, 1:41
- Sealing of records, 22:35
- See also Offenses
- Types, 1:41
- Warrantless arrest requiring officer's presence, 9:28

PHOTOGRAPHS

- Admissibility, 18:91
 - Appearance, arrest photograph admitted to show at time of arrest, 18:94
 - Arrest photograph, use of, 18:94
 - Attire, arrest photograph, admitted, 18:94
 - Clarify testimony, use to, 18:101
 - Composite of perpetrator, photograph of, 18:92
 - Deceased victim's photographs, 18:98
 - Dirty or unkempt, to show defendant, impermissible use, 18:95
 - Dispute identification, arrest photograph admitted to, 18:94
 - Establishing, 18:92
 - Exceptions, 18:93
 - Infliction of injuries to victim, to demonstrate, 18:99
 - Limiting jury instruction, warranting request for, 18:91
 - Rebut defenses, use to, 18:97
 - Requirement, 18:91
 - Sole purpose to incite and inflame passions of jurors, exception to admission, 18:93
 - Violent crime, defense counsel objection to excessive number of photos, 18:93
- Admissions
 - Corroborated by photograph victim tied to bedpost, admission to girlfriend, 18:100
 - Crime scene photographs in conjunction with defendant's, 18:101
 - Exceptions to admission, 18:93
- Bite marks, used to compare defendant's, 18:102
- Brady disclosure, 8:26
- Cameras in courtroom, 19:40
- Clarify testimony, use to, 18:101
- Clothing
 - Arrest photographs admitted to show, at time of arrest, 18:94
 - Rape charge corroborated by victim's photograph in bloodied sleeping garment, 18:100
- Corroborate testimony, use to, 18:100
- Deceased victim's photographs, use of, 18:98

PHOTOGRAPHS—Cont'd

- Defendant, procedure for photographing, 1:48
- Dirty or unkempt, to show defendant, impermissible use, 18:95
- Discovery, 8:40
 - Photo array, prosecution's notice, intention to use, 8:66
- Element of People's case, use to establish, 18:96
- Expert's tests, use to aid jury in understanding, 18:102
- Foundation, 18:92
- Identification
 - Dispute, arrest photograph admitted, 18:94
 - Identification of defendant, suppression
 - Courtroom identification, People's use of mug shot, limitations. See subhead: Courtroom identification
 - Mug shots, People's use of, limitations
 - See also Identification of Defendant
 - Identification of defendant, suppression, 9:179, 9:182-9:185
 - Attenuation of evidence, 9:184
 - Bank security investigator not connected with police, photographs shown by, Wade hearing unavailable, 9:196
 - Confirmatory identifications by lay person, more than minimal knowledge of defendant required, 9:197
 - Joint viewing, conditions, 9:183
 - Lineups, failure to photograph suggestive, 9:185
 - Mug shots, People's use of, limitations, 9:213
 - One photo in color, suggestiveness, 9:192
 - Positive identification not made, notice not required, 9:219
 - Procedure for showing, 9:192
 - Remarks to witness, suggestiveness, 9:192
 - Repeated photo array, each one containing defendant's picture, suggestiveness, 9:192
 - Size, differing in, suggestiveness, 9:192
- Identity, use to establish, 18:96
 - Arrest photographs of defendant, 18:94
 - Mistaken identity, use to rebut defense, 18:97
- Impeach witness on collateral matter, impermissible use, 18:95
- Impermissible use of defendant's photograph, 18:95
- Infliction of injury to victim, to demonstrate, 18:99
- Rebut defenses, use to, 18:97
- Sealing upon dismissal, 1:88, 1:93
- Sole purpose to incite and inflame passions of jurors, exception to admission, 18:93
- Vicious nature, to show defendant's, impermissible use, 18:95

PHOTOGRAPHS—Cont'd

- Victim's photograph
 - Corroborate testimony, use to, 18:100
 - Infliction of injuries to, photographs to demonstrate, 18:99
- Victim's photograph to show
 - Assault with intent to cause serious physical injury, 18:99
 - Deceased victim, 18:98
 - Depraved indifference, acting with, 18:99
 - Knife wounds on murder victim, 18:98
 - Police officer, physical injury inflicted on, 18:99
- Violent crime, defense counsel objection to excessive number of photos, 18:93

PHYSICAL EVIDENCE

- See Real Evidence

PHYSICAL EXAMINATION

- See also Body
- See also Psychiatric Examination
- Submission to, defendant's, discovery, 8:40

PHYSICAL FORCE

- Duress defense, 15:43
 - Premises, defense of, 15:12
 - Self-defense, 15:14-15:31
- Justification defense
 - Premises, defense of
 - See also Premises
 - Self-defense
 - See also Self-Defense

PHYSICIANS

- Blood test; physician-patient privilege, 9:67
- Privilege waived by defendant where mental state placed in issue, 15:50
- See also Expert Testimony
- Testimony, victim asphyxiated corroborated by photograph, 18:100

PICTURES

- See Photographs

PINS PROCEEDING

- Cyberbullying, 23:82
- Juvenile delinquency proceeding conversion to, 21:23
- Sexting, 23:82

PISTOL PERMIT

- See Weapon

PLAIN VIEW, OBJECTS IN

- Search and seizure
 - See also Warrantless Search and Seizure
- Search and seizure, 9:43

PLEA

- Agreements
 - See also Plea Bargaining subhead: Agreements
 - "Cap" plea, 17:12
 - Open plea, 17:12
 - Sentence agreements, 17:12
- Arraignment, plea entered at
 - Indictment in superior court, 1:71
 - Initial court appearance, 1:54
- Arraignment, plea entered at, 4:23-4:26
- Defendant's right to be present, 17:42
- Effective assistance of counsel, right to, 2:80
- Guilty plea. See Guilty Plea
- Immigration consequences; setting aside plea based on attorney's affirmative misrepresentation, 22:204
- Not guilty plea. See Guilty Plea subhead: Not guilty plea
- Offer
 - Attorney-client communication regarding, 2:37
 - Co-defendants, different plea offers to, 14:4
 - Effective assistance of counsel in informing defendant, 2:80
- Open plea, described, 17:12
- Recording advice given defendant on issue of entering plea, 17:39
- Satisfy other charges, 17:47
- Traffic violations, by mail, 4:26
- Trial court acceptance over prosecution objection, no appeal, 24:46

PLEA BARGAIN

- Bargained-for sentence, integral part of criminal justice system, 22:157
- Defendant's waiver of indictment included in, 3:12
 - Felony complaint replaced by superior court information, 3:12
- Effective assistance of counsel, informing client, 2:80
- Enhanced felony status affecting, 22:126
- Lesser included offenses, 3:12, 16:34, 16:35
- Non-compliance with conditions, sentence promise disregarded, harsher sentence imposed Appellate Division vacating sentence, 22:162
- Agreement to remain silent at sentencing, 22:178
 - Statements made in violation improper, 22:178
- Predicate/persistent felony offender after indictment on new felony, 22:16
- Violent felony offender, 22:18
- Offer displeasing judge, interest of justice dismissal not warranted, 7:23
- Record, effective assistance of counsel in placing on, 2:82

PLEA BARGAIN—Cont'd

See also Plea Bargaining
Traffic infraction, 1:15

PLEA BARGAINING

Accusatory instruments

Amendment to reflect new charge, 17:10
Combination of charges from different, plea to, 17:1
Described, 17:4
Filing new, 17:10
Less than full, prosecutor's consent required to plead to, 17:4, 17:9
Requiring defendant to plead to entire, 17:8
Right to plead to entire, 17:4
Defense avoidance of prosecutor's sentence requirement, 17:4
Exceptions, 17:4, 17:5
Murder 1st degree, exception, 17:5

Aggravated unlicensed vehicle operation, 17:58

Agreements, 17:12

Scheduling of request, 17:12

Approval by court, 17:40

Improper policy, 17:41

Individual judge or prosecutor having own rules, 17:41

Method of securing, of sentence, 17:12

Armed robbery, 21:37

Indictment, restriction after, 21:37

Larceny, 21:37

Limitations, 21:37

"Cap" plea, 17:12

Charges, plea to

Combination of, from different accusatory instruments, 17:1

Reduced charge, prosecutor's consent required, 17:4, 17:9

Satisfied by, 17:1

Codefendants, 14:1

Different plea offers to, 14:4

Discretionary treatment of, 17:23

Collateral consequences, considerations, 17:1

Considerations generally, 17:1

Conviction, related, reversed, 24:115

Cooperation, benefit of bargain, 17:19

Described, 1:77

Driving while intoxicated (DWI), 17:59, 17:61

Effective/ineffective assistance of counsel, 2:80

Informing client, 2:80

Enhanced sentence

Advice of, required, 17:53

Waiver, 17:52

Farrar plea, 17:13

Felony

Class B, 17:57

Drug felonies, 17:1, 17:56

PLEA BARGAINING—Cont'd

Importance, 17:1

Improper conditions in plea agreement, 17:7

Investigation, pre-plea, 17:13

Lesser included offenses, plea to, 17:1

Described, 17:10

Felony complaint, reduction of, 17:11

Negotiations with prosecutor, 17:10

Predicate and persistent felony offenders, time limit, 17:50

Seriousness of charge, effect of, 17:10

Limitations, 17:48-17:61

Aggravated unlicensed vehicle operation, 17:58

Class B and Class C felonies, 17:57

Conditioning plea on waiver of appeal, 17:61

Defense counsel awareness of, importance of, 17:48

Driving while intoxicated. See subhead: Driving while intoxicated (DWI)

Drug felonies, 17:56

Persistent felony offenders See subhead: Predicate and persistent felony offenders

Predicate offenders. See subhead: Predicate and persistent felony offenders

Prosecutorial policy, based on, 17:60

Violent felony offenses, 17:55

Negotiations with prosecutor generally discretionary, 17:6

Conditions, 17:9

Consent, prosecutor's, required, 17:4, 17:9, 17:10

Improper conditions in plea agreement, 17:7

Lesser included offenses, plea to, 17:10

Statutory limitations, 17:6

Withholding offer, 17:8

New York State Police, 1:16

"Open" plea, 17:12

Predicate and persistent felony offenders, limitations, 17:49

Time to negotiate, 17:49

Pre-plea investigation, 17:13

Prosecutorial policy, limitations based on, 17:60

Prosecutor's consent required to plead to reduced charges, 17:4, 17:9

Rejection of plea offer, 22:188

Restitution not part of, imposition at sentencing barred, 22:73

Right to be present, defendant's. See subhead: Defendant's right to be present

Right to trial, defendant's, 17:1

Exercising right, 17:2

No penalty for exercising, 17:2, 17:3

Inducing defendant to give up right, 17:1

Satisfying charges, 17:1

PLEA BARGAINING—Cont'd

Sentence

- Agreements, 17:12
 - Statutory provisions, no agreements outside of, 17:14
- Lighter sentence, promise of, 17:1
- Right to trial and. See subhead: Right to trial, defendant's
- Sentence greater after trial, 17:3
- Sentence, promise of as valid basis, 17:14-17:22
- Commitment, 17:14
- Conditions imposed, 17:16
 - Stated conditions after entry of plea, 17:17
- Court obligated to fulfill promise, 17:22
- Failure to honor promise, 17:18
- Invalid plea, 17:18
 - Withdrawal of plea by defense, agreement not honored, 17:18, 17:19
- Notice of conditions, 17:16
- Record, stating on, 17:15
- Statutory provisions, no agreements outside of, 17:14
- Unfulfilled sentence promise
 - Conditional sentence promise, 17:21
 - Court obligated to fulfill promise, 17:22
 - New information as basis, 17:20, 17:21
 - Withdrawal of plea, 17:20
- Sex offenders, civil management for, 23:109
- Trial, defendant's right to. See subhead: Right to trial
- Violent felony offenses, 17:55
- Waiver
 - Appeal, conditioning plea on, 17:61
 - Enhanced sentence, 17:52
 - Voluntary waiver, right of appeal as condition of, 24:4
- Weapons possession charge, 17:1
- Withdrawal of plea offer, Alford plea, upon
 - Promise of sentence, failure to honor, 17:18, 17:20
- Withholding offer, 17:8

POLICE

- Accomplice testimony; police agent as accomplice, 14:48
- Discovery issues, 8:26
 - Disciplinary information, 8:17
 - FOIL, exemptions from, 8:115
 - Motion to quash; appealability of ruling, 8:113
 - Noncompliance with subpoena and issuance of subpoena duces tecum, 8:111
 - Non-testifying police officer's statements, 8:47
 - Rosario material issues, 8:47
 - Testimony to grand jury, Brady disclosure, 8:26

POLICE—Cont'd

- Identification, confirmatory, suppression hearing. See also Identification of Defendant
- Intrusion, warrantless. See Warrantless Police Intrusion
- Investigation
 - Interviewing parties, 1:44
 - Questioning by police, 1:44
 - Securing evidence, 1:44
 - Written reports of an officer who testifies at trial, conditions under which available to defense, 1:58
- Involvement, consequential to
 - Police witnessing incident, 1:44
 - Victim contacting police, 1:44
- Involvement in crime, defenses
 - See also Defense
- Justification defense, police officials involved, 15:31
- Molineux evidence admissible to prevent speculation as to police misconduct, 12:20
- Presence necessary for warrantless arrest, petty offense, 1:45
- Questioning defendant in absence of counsel, filing, and implications for, 3:3
- Search and seizure. See Search and Seizure

POLICE OFFICER

- Address, 19:191
- Agent of, 9:114
 - Impeachment, 8:31
- Anonymous witness or by badge number, 19:33
- Consent of defendant to search by. See Mapp Hearing
- Courtroom closure for protection of, 19:33
 - Undercover officers, 19:33
- Credibility, jury charge, 19:186
 - Drug cases, 19:183
- Fellow officer rule, 9:29
- Identifications of defendant in pretrial hearing. See Wade Hearing
- Infliction of physical injury on, photograph to show, 18:99
- Involvement in crime
 - See also Police
- Knowledge, defendant represented by counsel, 7:48
- Pre-arraignment bail set by desk sergeant, 4:45
- Reasonableness of police conduct. See Wade Hearing
- Search and seizure. See Search and Seizure
- Search warrants. See Search Warrants
- Testimony
 - Another's credibility, regarding, improper, 18:199
 - Cross-examination, 18:35, 18:56, 18:57

POLICE OFFICER—Cont'd

- Testimony—Cont'd
 - Drug cases, 18:142
 - See also Drugs
 - Preliminary hearings witnesses, 5:14
 - Weapon admitted on, no chain of evidence required, 18:90
- Traffic tickets and police officer as prosecutor, 1:9, 1:16
- Witness
 - Examination of, 18:35
 - Witness, 19:191

POLICE STATION

- Less serious offense, 4:44
- Pre-arraignment, by desk sergeant, 4:45
- Questioning without consent or probable cause, 9:147
- “Stationhouse bail, “ described, 1:49

POLLING

- Individual jurors, 20:1

POLYGRAPH TEST

- Evidence inadmissible, 18:133
- Interest of justice motion, properly considered in, 7:23

PORNOGRAPHY

- Possession by attorney, discovery, 8:100
- Sex Offender Registration Act, registration in child pornography cases, 23:83

POSSESSION

- Agency, 19:149
- Constructive, 19:190, 19:201
- Actual possession compared, 15:66
- Automobile, 9:76
- Drug factory, 9:76
- Weapon, 9:76
- Drugs. See Drugs
- See also Contraband
- See also Drugs
- See also Weapon
- Standing, 9:76
- Temporary innocent possession defense. See Temporary Innocent Possession Defense
- Weapons. See Weapons

POST-ARREST RELEASE/CONFINEMENT

- Conditions, 1:49
- Custody, defendant held until arraignment, conditions, 1:49

POST-RELEASE SUPERVISION

- Direct consequence, 22:201
- Generally, 22:7
- Imposed with determinate sentence, 22:7
- Imprudently added, 22:181

POST-RELEASE SUPERVISION—Cont'd

- Length of, 22:18
- Punishment for violation, 23:128
- Resentencing, 22:181
- Violation of, 23:128

POST-TRIAL MOTIONS TO SET ASIDE VERDICT

- See Motions to Set Aside Verdict

PREACCUSATORY REPRESENTATION

- Generally, 2:77

PRECLUSION

- Appeal by prosecutor, 24:44
- Discovery
 - See also Discovery subhead: Preclusion
- Discovery, 8:78
- Generally, 18:208
- Remedy for error, as, 18:208

PREDICATE FELON

- Bail application in superior court, 4:68
- CPL 440.40 motion to resentence as, 23:68
- Discovery of, 22:168
- Essential elements test, 22:102
 - Enhancement of sentence, discretionary, 22:217
- Persistent history, sample statement of, 22:219
- Second felony offender information and certificate, 22:218
- Ineffective assistance of counsel, 2:82
- Juvenile offender, predicate felony conviction qualifies as, 21:41
- See also Felony, Predicate Felony
- Sentencing process, 22:96-22:147
- Withdrawal of plea, 22:166
- Youthful offender, predicate felon status, 21:82
 - Irrevocability of youthful offender status and, 21:82
 - Avoidance of, 21:82
 - Subsequent litigation, effect of adjudication on, 21:87

PREDICATE OFFENDERS

- Defendant's status as, effect of guilty plea, 17:80
- Described, 17:49
- Plea bargaining, limitations, 17:49-17:54
- See also Enhanced Felony Sentences
- Sentencing, 22:16

PREDICATE VIOLENT FELONY

- See Felony, Predicate Violent Felony

PREEMPTION

- Constitutional challenges, 15:94

PREJUDICE

- Adjournment to mitigate, 19:51

PREJUDICE—Cont'd

- Bail denials, future application prejudiced by, 4:71
- Based on prior convictions or offense, Sandoval rules
 - Burden of proof, prejudicial effect of admitting prior crimes, 11:36, 11:37
 - Convictions, number of, 11:17
 - Number of convictions, 11:17
 - Prior crimes
 - Inquiry, extensive into, 11:16
 - Presentation of past crimes, 11:14
 - Two-part measurement of, 11:3
 - Evidentiary balance, 11:2
- Codefendants
 - Severance, motion for, 14:32
 - Impeachment questioning, lack of Sandoval protection, 14:34
- Evidence, clearly prejudicial to party, exclusion, 18:7
- Prejudicial error, writ of prohibition remedy, 23:1
- See also Bias and Prejudice
- Uncharged crimes, permissible use in proving guilt
 - Background evidence, limiting amount of, 12:25
 - Limitation of prejudice to defendant, 12:8
 - Potential for prejudice, 12:7
 - Ventimiglia hearings, 12:36-12:41
 - CPL 240.43 hearings vs., 12:41
 - Failure to obtain ruling, 12:37
 - Impeachment issue, 12:41
 - Same victim, 12:36
 - Sandoval issue, 12:41
 - Time for, 12:39
 - Unnecessary, conduct occurring simultaneously with criminal acts, 12:38

PRELIMINARY HEARING

- Adjournment
 - After arraignment for, 1:57
 - Consent to, exception to mandatory release, 5:12
 - Screening of case by prosecutor, 5:20
- Arraignment, initial, court's obligation, inform defendant of right to hearing at, 5:8
- Bail
 - Reduction of charges after hearing, reconsideration of bail application, 5:16
 - Set and posted after arraignment, 5:1
- Burden of proof, 8:82
- Bypassing, 6:38
- Charges, 4:21
 - Hearing not held, 4:56
 - In lieu of hearing, 4:56

PRELIMINARY HEARING—Cont'd

- Conclusion of, 5:16
 - Grand jury action after defendant's release, 5:19
- Cross-examination
 - Grand jury proceedings, 5:6
 - Prosecution witnesses, 5:3, 5:6
- Defendant's right to
 - Unincarcerated felony defendant not entitled to hearing, 5:1
- Defense
 - Position at, 5:14
 - Presentation by, 5:4
 - Rights, 5:14
 - Call witnesses, 5:4
 - Disclosure, 5:14
 - Prior statements of prosecution witnesses, 5:14
 - Public, exclusion of, right to request, 5:14
 - Rosario material, right to, 5:14
- Disclosure, 5:3, 5:4
 - Defense rights, 5:14
 - Rosario material turned over to defense, 5:14
- Discovery, use for, 8:82
- Disposition of case, 5:16, 5:20, 5:21
- Evidence
 - Grand jury. See subhead: Grand jury
 - Evidence, non-hearsay evidence requirements
 - Prima facie case, establishing, 5:13
 - Written
 - Prosecution's reliance on, 5:14
- Exceptions
 - Mandatory release, 5:12
 - Right to hearing, 5:9
- Eyewitness's, testimony by, 5:13
- Failure to conduct, 5:1
- Felony
 - Defendant's, right to, 1:69
 - Defense entitled to question prosecution witnesses, 1:69
 - Purpose of to determine reasonable cause, 1:69
- Generally, 5:1-5:7
 - Place and time for, setting, 5:8
 - Purpose of, 5:1
 - Scope and length of, tension between prosecution and defense, 5:14
 - Screening function, 5:6
- Generally, 8:82
- Good cause not releasing defendant as exception to, 5:12
- Grand jury
 - Acts before preliminary hearing
 - Mandatory release exception, 5:12
 - Cross-examination of prosecution witnesses, 5:6

PRELIMINARY HEARING—Cont'd

- Grand jury—Cont'd
 - Evidence
 - Review of, hearing not held, 5:11
 - Function unimpaired by preliminary hearing, 5:7
- Indictment
 - Conditions for presenting case to grand jury, 5:7
 - Returned before expiration of time, exception to mandatory release, 5:12
- Lower court, retention of jurisdiction after action by, 5:18
- Misdemeanor charge, presentation of, 5:17
- Proceedings compared, 5:6, 5:7
- Referral to grand jury, 5:21
- Release of defendant, action after, 5:19
- Holidays as factor, 5:10
- Indictment, 5:7
 - Returned before expiration of time, exception to mandatory release where, 5:12
- Jailed defendant
 - Court's obligation to, 5:8
 - Incarcerated after arraignment, requiring, 3:18
- Juvenile offender felony, held or waived, 21:32
 - Lesser felony, reasonable cause found for, 21:33
 - Serious felony, reasonable cause found for, 21:33
- Length of, tension between prosecution and defense on, 5:14
- Mandatory release, exceptions to, 5:12
- Out-of-custody defendant, reduced charge offer declined by, 5:21
- Police officer's, testimony by, 5:14
- Preservation function, 5:5
- Prima facie case based on non-hearsay evidence, 5:13
- Prior statements of prosecution witnesses, obtaining, 5:14
- Probable cause found, not found, 3:18
- Prosecutor's information
 - Returned before expiration of time, exception to mandatory release, 5:12
- Public, defense rights to request exclusion of, 5:14
- Reasons for not holding, 5:9
- Record on appeal, hearing transcript as part of, 24:26
- Reduction of charges after
 - Misdemeanor, reduction to, in exchange for guilty plea, 5:20
 - Out-of-custody defendant, offer declined by, 5:21
- Reconsideration of bail, application for, 5:16

PRELIMINARY HEARING—Cont'd

- Release of defendant
 - Grand jury action after, 5:19
- Right to hearing, 4:22
- Rosario material
 - Prosecution witnesses, obtaining statements by, 5:14
 - Turned over to defense, 5:14
- Screening function, 5:2
- Subpoenas, use of, 8:91
- Sufficiency of accusatory instrument, 4:22
 - Custody, within 120 hours of weekend or holiday, 4:56
- Testimony
 - Eyewitness', 5:13
 - Lay person's, 5:14
 - Police officers', 5:14
 - Victim's, 5:13
- Time for, 5:10
 - Custody, within weekend or holiday, 5:10
- Grand jury
 - Action, 5:11
 - Presentation to avoid hearing, 6:38
- Place and, setting, 5:8
- Prosecution's failure to hold timely
 - Mandatory release, 5:12
- Trial, use of testimony at, 5:15
- Witnesses
 - Defense witnesses, 5:4
 - Eyewitness, testimony by, 5:13
 - Police officers, 5:14
 - Prior statements of prosecution witnesses, obtaining, 5:14
 - Right to call witness for defense, 5:14
 - Unavailability, admissibility of hearing testimony at trial, 5:5
 - Victim, testimony by, 5:13

PREMISES, DEFENSE OF

- Arson, deadly force justifiable, 15:12
- Burglary, deadly force justifiable, 15:12
- Criminal trespass, deadly force prohibited, 15:11
- Damage to property, deadly force prohibited, 15:11
- Generally
 - See also Justification Defense
- Generally, 15:10-15:12
- Hallway outside of apartment, 15:10
- Mischief, criminal, deadly force prohibited, 15:11
- Overview, 15:10
- Physical force, 15:10
 - Arson, deadly force justifiable, 15:12
 - Burglary, deadly force justifiable, 15:12
 - Criminal trespass, deadly force prohibited, 15:11

PREMISES, DEFENSE OF—Cont'd

- Physical force, 15:10—Cont'd
 - Damage to property, deadly force prohibited, 15:11
 - Deadly physical force, use of, 15:10
 - Justifiable, conditions, 15:12
 - Prohibitions, 15:11
 - Larceny, deadly force prohibited, 15:11
 - Mischief, criminal, deadly force prohibited, 15:11
- Warrantless police intrusion
 - See also Warrantless Presentence Investigation

PREPONDERANCE OF EVIDENCE

- Standard of proof, 1:96

PRESENTENCE INVESTIGATION

- See Investigation

PRESENT SENSE IMPRESSION

- 911 recording, admissible for statements revealing speaker's state of mind, 18:124

PRESERVATION OF ERROR

- Abandonment
 - Counsel's silence on absence of ruling as abandonment of motion, 18:155
 - Waiver of issue by, 18:154
- Adequate opportunity not provided, 18:153
- Change of ruling, 18:158
 - Adverse effect, objection to change, 18:159
- Discovery, 8:18
- Exceptions to requirement, 18:151
- Form of ruling not crucial, 18:157
- Guilty plea, waiver by, 18:156
- Importance of obtaining ruling, 18:155
- Insufficient, courtroom identifications, bolstering testimony, 9:212
- Misconduct, prosecutor's, 18:201
- Objection
 - Absence of ruling equivalent to denial of, 18:155
 - Defense motion, prosecution's failure to object constituting waiver, 18:162
 - Overruled, 18:167
 - Refusal to acknowledge attorney's, 18:153
 - Renewal of, 18:154
 - Separate, by codefendants, 18:160
 - Stipulations, 18:160
- "Opening the door," 18:158
- Procedure, 24:89
- Proof, offer of, 18:173
- Prosecution, 18:161, 24:93
 - Answering papers, effect, 18:162
 - Defense motions, on, 18:162
 - Losing on suppression, appeal, 18:164
 - Trial, at, 18:163
 - Requested charge not given, 19:142

PRESERVATION OF ERROR—Cont'd

- Request for sanctions, preservation through, 18:152
- Retroactivity, 24:92
- Strike, motions to, 18:41
- Suppression motion, pretrial, 18:165
 - Identification issue, 18:165
 - Time for ruling, 18:166
 - Unconstitutional use of evidence, 18:165
- Verdict, repugnant, 20:10
- Waiver of issue
 - Abandonment, by, 18:154
 - Defense motion, prosecution's failure to object constituting waiver, 18:162
 - Failure to
 - Preserve waiver, 18:153
 - Guilty plea, by, 18:156

PRESUMPTION

- Automobile, drug possession, 9:76
- Bootstrapping of, 19:195
- Charge at grand jury, 19:194
- Common law, 1:95
- Competency to stand trial, 15:63
- Constitutional challenges, 15:88
- Controlled substance, 9:76
- Drug factory, 9:76
- Failure to charge, 24:83
- Generally, 1:95
- Jury charge
 - See also Jury Charge
- Jury charge
 - Applicable to aid prosecution, 19:193
 - Innocence, jury charge, 19:193
- Marijuana, inapplicable, 9:76
- Possession, 9:76
- Presumption of
 - Effective assistance of counsel, in favor of attorney, 2:75, 24:95
 - Overcoming presumption, 24:95
 - Prejudice, appellate delay does not result in, 24:64
 - Regularity, demonstration of appealable issue to rebut, 24:35
- Regularity, 6:27
- Search and seizure, presumption against abandonment
 - See also Warrantless Search and Seizure
 - Statutory presumption of possession, standing to contest, Mapp hearing. See Mapp Hearing
- Search and seizure, presumption against abandonment, 9:41
- Search warrant validity, 9:80

PRESUMPTION—Cont'd

- Statutory presumption, 1:95
- No obligation to help defendant overcome, grand jury evidence, 6:48
- Stolen property, 19:197

PRETRIAL

Activities

- Effective assistance of counsel, 2:78, 2:79
 - Absence of crucial advocacy, 2:78
 - Applications to court, 2:82
 - Bill of particulars, 2:82
 - Fourth amendment, 2:82
 - Grand jury investigation, 2:79, 2:80
 - Huntley issue, 2:82
 - Molineux evidence, 2:82
 - Motion to dismiss, 2:82
 - Sandoval issue, 2:82
 - Speedy trial, 2:82
 - Wade issue, 2:82
- Informed defendant, pretrial necessity, 2:35
- Speedy trial, right to, 2:82
- Conference, adjournment after arraignment for, 1:57

PRETRIAL HEARING

- Deadline to make request, 7:1
 - Exception for Sandoval motions, 7:1
 - Requirement, 7:33
 - Suppression hearings, 7:36
- Effective/ineffective assistance of counsel, 2:82
- Failure to move for, conviction, 7:7
 - Motion to renew prior motion, importance of, preservation of issue, 7:45-CITE7:49
 - Papers determinative of holding, 7:12
- Prosecution witness, testimony by, 7:1
- Purpose of, 7:12
- Reopening based on new evidence, 7:42
 - Denial, 7:43
 - Fee, on request by counsel, 7:1
 - Indigent defendants, free transcript for, 7:1
 - Counsel's, 7:36
 - Defendant testimony, 7:36
 - Partial transcript, 7:36
 - Insufficient additional facts, 7:43
 - Prosecution's failure to provide, 7:49
 - Sandoval excepted, 7:1
 - Stipulation in lieu of motions, hearings as, 7:14
 - Transcript not provided, counsel's note taking, 7:36
- Right to be, 19:11
 - Waiver of, 19:12
- Suppression hearing, prosecution appeal of suppression order
 - Ventimiglia /Molineux ruling, 24:120
- Trial judge conducts, 19:70-CITE19:72

PRETRIAL HEARING—Cont'd

- Witnesses, importance of calling, 7:30

PRETRIAL MOTIONS

- Court advisement by, 4:66
 - Incomplete information from, 4:66
- Double jeopardy, 15:97
- Effective/ineffective assistance of counsel, 2:82
- Examples
 - Omnibus motion. See Omnibus Motion
- Failure to move for pretrial hearing, 7:7
 - Importance of, preservation for appeal, 7:7
- Hearing. See Pretrial Hearing
- Motions to renew, 7:42-7:52
 - Failure to make motion, 7:45
 - New evidence, reopening based on, 7:42
 - Preservation, importance of, 7:45
 - Pretrial hearings other than suppression, 7:49
 - Suppression hearings, 7:46-7:48
- New evidence, reopening based on, 7:42
 - Adverse decision, further evidence following, 7:42
 - Denial of motion to reopen, 7:43
 - Insufficient facts to reopen, 7:43
 - Reasonable diligence, prior discovery impossible with, 7:42
 - Time for reopening, 7:42
 - Wade hearing, 7:42
- Preservation for appeal, 7:7
 - Failure to move for pretrial hearing, effect of, 7:7
- Proceedings, jury selection, defendant's presence not required at some, 19:17
 - No waiver of hearing or trial for failure to be present, 19:16
- Prosecutor entitled to respond, 1:74
- Publicity, questioning prospective jurors about, defendant's right to be present, 19:11
- Renewal of, 7:42-7:52
- Statutory speedy trial delay not charged to People, 13:32
- Time-barred action, defense motion to dismiss, 13:11

PREVIOUS CONVICTION

- See headings beginning with: Conviction, Prior Conviction

PRIMA FACIE CASE

- Compared to weight, 24:81
- Failure to establish, trial order of dismissal, motion for, 18:175-18:181
- Information, requiring, 3:27
 - Deposition supplementing, 3:29
- Jury selection, defense burden to establish case of discrimination, 19:119
- Misdemeanor complaint, not requiring, 3:10

PRIMA FACIE CASE—Cont'd

Non-hearsay evidence, based on, preliminary hearings, 5:13
See also Hearsay
See also Trial Order of Dismissal

PRIOR CONVICTION

Criminal history records, obtaining, 8:118
See also Conviction

PRIOR CRIMES

See Crime subhead: Prior crimes

PRISON

Body order to produce incarcerated defendant
Court, issuance by, 1:30
Court, issuance by, 8:103
Disciplinary proceedings
Appeal and review of decisions, 23:143
Disciplinary (Tier II) and superintendent's (Tier III) hearings, 23:142
Levels of discipline, 23:139
Review, right to effective assistance of counsel, 2:70
Rights at hearings, 23:140-23:143
Superintendent's (Tier III) hearings, 23:142
Three levels of discipline, 23:139
Violation (Tier I) hearing, 23:142
Disciplinary proceedings, testimony from inadmissible, 18:73
No collateral estoppel, 15:99
Prisoners, subpoena, production through use of, 8:103
Prison time, meaning, 22:10
Felony, serving, 22:10
Indeterminate, 22:12
Running concurrently, 22:26
Minimum/maximum explained, 22:12-22:18
Predicate offenders, minimums higher, 22:16
Armed felony offense, 22:17
Violent felony offense, 22:18
See also Imprisonment
See also Jail
State correctional facility, 22:10

PRIVACY

Disclosure
See also Discovery
Family Court records of victim, 8:107
Victim, discovery from, 8:83
Witness, discovery from, 8:34
Right to, protection from unreasonable search and seizure
See also Search and Seizure
Right to, protection from unreasonable search and seizure, 9:10
Sex offense cases, privacy issues in, 19:41

PRIVACY—Cont'd

Standing through expectation of privacy of premises, Mapp hearing
See also Mapp Hearing
Standing through expectation of privacy of premises, Mapp hearing, 9:74

PRIVATE ATTORNEY

See Attorney subhead: Private attorney

PRIVATE INVESTIGATOR

Discovery, 8:58
Investigative services, 2:25
See also Investigation

PRIVATE PERSON

Cross complaint, 1:16
Private identification, 9:196
Private search, 9:10
Private taping, 9:99
Statement to, 9:123
No notice required, 9:159
Suppression of, 9:123

PRIVATE PROSECUTION

Cross complaint, 1:16
Procedure, 1:16

PRIVILEGED COMMUNICATIONS

Applicability, 18:29, 18:30
Attorney-client privilege. See Attorney-Client Privilege
Discovery, protection from, 18:32, 18:33
Generally, 18:28-18:33
Mediation should be, 18:28
Mediation, statement made in, 18:28
Nondefendant, 18:32
Non-defendant, raised by, 18:29
Physician-patient privilege waived by defendant where mental state placed in issue, 15:50
Protection from discovery, 18:33
Scope of privilege varies, 18:31
Waiver of, 18:33, 18:34

PROBABLE CAUSE

911 recordings used to support or undercut, 18:116
Abandonment doctrine, 9:41
Anonymous tip, 9:25
Direct examination of police officer, 9:232
Stop of automobile in DWI case; cross-examination of police officer, 9:234
Attenuation. See Mapp Suppression
Detaining defendant, 9:25
Dogs, 9:25
Exigent circumstances, 9:34

PROBABLE CAUSE—Cont'd

- Family Court, transfers to, exception absent reasonable cause, 21:47
- Grand jury, power to request removal, 21:51
- Lesser felony, reasonable cause for, 21:33
- Preliminary hearing held or waived, 21:33
- Serious felonies, defendant held, 21:33
- Fellow officer rule, 9:29
- Force, excessive use by police, 9:17
- Generally, 1:96
- Grand jury decision, 6:23
- Hearsay, based on, 9:29
- Parked cars, 9:57
- Pretext stop as valid basis to search, 9:59
 - Arrest, 9:27
 - Automobiles, stop and search of, 9:47-9:66
- Search and seizure, warrantless
 - Automobiles, stop and search of
 - See also Automobiles, Warrantless Stop and Search
- Search for physical evidence, Mapp hearing. See Mapp Hearing
- Standing issue, prosecution contesting on appeal, preservation of error, 18:164
- Suppression, motion for, 7:11

PROBATION

- Conditional discharge and, compared, 22:33
- Contempt, 22:4
- Conviction, collateral consequences of, revocation of probation, 22:213
- Early termination of probation, 22:51
- Electronic monitoring bracelet, 22:49
- Electronic monitoring device, 22:49
 - Defense letter objecting to proposed probation conditions, 22:214
 - Defense memorandum objecting to proposed probation conditions, 22:214
 - Objecting to proposed probation conditions, defense letter, 22:214
 - Standard condition of, 22:226
 - Terminate, motion to, 22:213
- Extradition waiver as condition of, 4:93
- Ignition interlock device, specific condition, 22:49
- Interim probation, 22:175
 - Imposed prior to sentencing, 22:175
- Mental disease or defect defense, applicability to probation violation, 15:52
 - Mental disease or defect defense, applicability, 15:52
- Modification or early termination of probation, 22:51
- New crime, 22:56
- Noncriminal conduct; probation violation, 22:58
 - Community service, part of, 22:34

PROBATION—Cont'd

- Noncriminal conduct; probation violation, 22:58
 - Cont'd
 - Higher-level felonies, 22:45
 - Ignition interlock device, 22:49
 - Lower level felonies, 22:45
 - Misdemeanors, 22:45
 - Presentence investigation from, 22:151
 - Requirement, 22:47
 - Sex offense convictions, 22:50
 - Specific condition, 22:47-22:50
 - Suggestions to court on sentencing, 22:150
 - Traffic infractions, 22:45
 - Violations, 22:45
- “Raise the age” legislation expanding youthful offender to age 16 then 18, 21:66
- “Raise the age” legislation expanding youthful offender to age 17 then 18
 - Youthful offender’s, irrevocability of youthful offender status, 21:82
- Revocation hearing. See Probation Revocation Hearing
- ROR, regular reporting, 4:63
- Sentenced to, as criminal sanction, 1:8
- Sex offenses, 23:75
- Shock probation/split sentence
 - See also Shock Probation/Split Sentence
- Shock probation/split sentence, 22:33
- Statement to probation officer, 9:121
- Terms and conditions in writing to defendant, 22:47-22:50
 - Determination, 22:58
 - Grounds for, 22:56
 - Hearing, 22:55
 - New crime, 22:56
 - Noncriminal conduct, 22:57
 - Restitution or reparation, 22:48
 - Special conditions, 22:48-22:50
 - Supervision, 22:54
- Violation
 - Appeal from, 24:20
 - Guilty plea to new charge constituting, failure to inform defendant, 17:38
- Witness’s probation report, discovery, 8:52

PROBATION REVOCATION HEARING

- Probation officer, admissibility of statements made to, 9:121

“PROBLEM DRIVER” REGULATIONS

- Generally, 22:95

PROCESS

- Types issued by court, 1:30

PROFESSIONAL MISCONDUCT

- Conviction as, 22:206

PROMISE

- Law enforcement promise, impact on suppression of defendant's statements, 9:110
- Non-compliance with conditions, sentence promise disregarded, harsher sentence imposed appellate division vacating sentence, 22:162
- Prosecutor's promise
- Sentence, plea bargaining
 - Lighter sentence, 17:1
 - Promise of sentence as valid basis, 17:14-17:22
- See also Plea Bargaining subhead: Sentence

PROOF

- Accomplices, assistance with crime alone insufficient, 14:45
- Alibi defense, 15:33
 - Constitutional challenges, 15:88
 - Justification, 15:6
 - Not guilty plea, 15:1
 - Territorial jurisdiction of state, 15:47
- Automobiles, warrantless stop and search, 9:51
 - Suppression of evidence, 9:52
- Beyond a reasonable doubt
 - Jury charge
 - See also Jury Charge subhead: Reasonable doubt
- Burden of proof. See Burden of Proof
- Deficiencies in, juvenile offenders, defense motion for removal to Family Court, 21:46
- Offer of proof, preservation of error, 18:173
- Prosecution's varying from allegations in accusatory instrument, defense objection, 3:76
- Reopening proof, 18:179
- Trial proof, reopening, 19:8
- Variance, 3:74

PROPENSITY, USE AS EVIDENCE

- Prior crimes of associates, 12:4
- Propensity for criminal behavior, Sandoval rules, 11:4
- See also Molineux Evidence
- Uncharged crimes, permissible use of, exceptions to rule, 12:2-12:4

PROPERTY

- Bail, alternate posting with court, 4:61
 - House as bond collateral, 4:61
 - Pledge for bail, 4:61
- Damage, physical force justifiable to stop, 15:11
- Defense of premises
 - See also Premises
- Defense of premises, 15:10-15:12
- Evidence, retaining property for, 1:60
- Larceny charge, 8:82
- Retaining, 1:60
- Return of, 1:61

PROSECUTION

- Adjournment request, 19:50
- Appeals, 1:86
- Appeals by prosecution
 - Assigned counsel, 24:50
 - Dismissal of, 24:51
 - Expedited procedure, 24:49
 - Failure to
 - Follow procedure, dismissal on, 24:51
 - Introduce statements, order of preclusion, 24:44
 - Timely perfect appeal, dismissal on, 24:51
 - Failure to file notice of appeal, dismissal on, 24:51
 - Improper to argue issues outside record on appeal, 24:31
 - Motion to dismiss, defendant's inaction on appeal, 24:39
 - Objection to plea, no appeal on acceptance of plea, 24:46
 - Order of preclusion, no appeal, 24:44
 - Procedural errors, dismissal on, 24:51
 - Trial order of dismissal, no appeal, 24:45
 - Untimely notice of appeal, dismissal on, 24:51
- Application, change of, 4:71
 - Felony defendant, position on, 4:66
 - Setting, People's consent, 4:66
 - Status, request of review, 4:72
- Arraignment at local court, prosecutors request for removal, 21:50
 - Defense motion for removal to, consent of prosecution, 21:59
 - Guilty plea, recommendations for transfers to following, 21:55
- Bill of particulars, 8:125
- Defenses
 - Selective prosecution defense
 - See also Selective Prosecution Defense
- Discovery issues. See headings beginning with Discovery
- Failure, mandatory ROR, 4:54-4:58
 - Complaint not converted to information, 4:55
 - Delay in grand jury action, 4:57
 - No preliminary hearing, 4:56
 - Oral request by defense, prosecutor present, 4:56
- Failure to provide, 7:49
 - Pretrial testimony to defense, 7:1
- Grand jury issues
 - See also topic beginning with Grand Jury
 - Delay in turning over grand jury minutes, speedy trial implications, 6:66
- Misconduct, motion to set aside reversible error in record, 20:33
- Mistrial motion, 18:183-18:186

PROSECUTION—Cont'd

- Motions to set aside verdict
 - Appeal by prosecution, 20:44
 - Prosecutorial misconduct, reversible error in record, 20:33
- Notice to
 - Alibi defense, pretrial notice
 - See also Alibi
 - Psychiatric evidence, use of
 - Mental disease or defect defense
 - See also Mental Disease or Defect Defense
- Photographs, use to establish element of People's case, 18:96
- Plea offer by, attorney-client communication, 2:37
- Preliminary hearings, point of view concerning, 5:14
- Preservation of error
 - See also Preservation of Error
- Representation regarding discovery, 8:59
- Retrial
 - Correction of errors at, 24:122
 - First trial defendant testimony used by retrial prosecution, 24:125
- Selective prosecution defense, 15:68
 - Alibi defense, pretrial notice, 15:37
 - Mental disease or defect defense, 15:54-15:56
- Speedy trial
 - Constitutional speedy trial, dismissal
 - Further prosecution precluded, 13:20, 13:84
 - Defense waiver of rights with request for prosecution investigation, 13:96
 - Statute of limitations time-barred action, prosecution burden of timely charge, 13:11
 - Defense pretrial motion to dismiss, 13:11
 - Prosecution burden to raise issue, 13:11
- Speedy trial, statutory speedy trial
 - See also Speedy Trial, Statutory Speedy Trial
 - Post-readiness delays, 13:62-13:67
 - Readiness, 13:23, 13:58-13:61
- State, by, 1:7
- Trial order of dismissal, objecting to People's case as legally insufficient, 18:175

PROSECUTOR

- Advisor to grand jury, 6:8
- Agrees to remain silent at sentencing, part of plea bargain, 22:178
 - Statements made in violation improper, 22:178
- Appeals, CPL 440.10 motion, 23:71
- Attorney General, New York State, matters prosecuted by, 1:10
- Bail misuse, impermissible, 4:48
- Character of, as evidence, 12:1

PROSECUTOR—Cont'd

- Civil action, commencement of, 1:9
- Codefense counsel acts second prosecutor, severance granted, 14:34
- Collateral proceedings
 - CPL 440.10 motion
 - Duress, 23:35
 - Fraud, 23:35
 - Notice requirement, 23:57
 - Written requirement, 23:57
 - Writ of prohibition, 23:3
 - See also Writ of Prohibition
- Conduct, objections based on. See Objections
 - Based on Prosecutor's Conduct
- County attorney, Family Court, 1:23
- CPL 440.10 motion, appeals, 23:71
- Credibility, 12:10
- Detention misuse, impermissible, 4:48
- Discretion
 - Bootstrapping (overcharging defendant), described, 3:48
 - Remedy, 3:48
 - Charges determined by, 3:5
 - Choice of offense level, example, 3:5
- Disqualification, 1:12
- Disqualification, 7:21
- District Attorney, 1:9-1:16
 - See also District Attorney
- Dropping charges, complainant, 1:65
- Felony, notice of intention for grand jury served, 4:24
- Lesser included offenses
 - Green/Glover two-prong test, accomplices testifying for prosecution, 16:15
 - Jury charge, request for, 16:41
- Malpractice immunity, 2:87
- Medicaid fraud prosecutor, prosecutorial function, 1:10
- Misconduct at trial. See Objections to Prosecutor's Summation
- Misconduct, grounds for dismissal, defense motion, grand jury proceeding
 - Evidentiary issues, 6:71
 - Exculpatory defense, instructions on, 6:70
 - Perjured testimony, use of, 6:71
 - Unbelievable evidence, use of, 6:71
- Municipal attorneys, matters prosecuted by, 1:14
- Omnibus motion, response to, 7:13
- Outside counsel to assist at trial, 1:13
- Plea bargain, discretionary negotiations with, 17:6
 - Conditions, 17:9
 - Consent of prosecutor required, 17:4, 17:9, 17:10
 - Lesser included offenses, plea to, 17:10, 17:11
 - Statutory limitations, 17:6

PROSECUTOR—Cont'd

- Plea bargain, discretionary negotiations with, 17:6—Cont'd
- Withholding offer, 17:8
- Prior conviction as evidence
 - Associates of defendant, prior crimes of, 12:4
 - Exception to general rule, 12:1-12:5
 - Temporally remote convictions, 12:9
- Private person as prosecutor, 1:16
- Prosecutor's information. See Prosecutor's Information
- Quasi-judicial capacity, writ of prohibition, 23:3
- Redaction, Bruton rule, 14:20
 - Defense participation in redaction, 14:20
- Reopening of case, 7:52
- Representation regarding discovery, 8:59
- Selection of case, 1:9
- Sentence, motion to set aside. See CPL 440.40
 - Motion to Vacate Judgment
- Special prosecutor
 - Appointed by superior court judge, 1:12
 - Prosecutorial powers, 1:12
- State Inspector General, 1:11
- Suggestions to court on sentencing, 22:150
- Summation, objections to. See Objections to Prosecutor's Summation
- Traffic infractions, prosecution of, 1:15
- Traffic tickets and police officer as prosecutor, 1:9, 1:16
- Uncharged crimes, permissible use in proving guilt, prosecutor's option, 12:32
 - See also Uncharged Crimes
- Unsworn witness, 18:202
- Writ of prohibition
 - Bodily samples improperly sought, 23:9
 - Prosecutor, quasi-judicial capacity as to, 23:3
 - Prosecutor seeking, 23:15, 23:16
 - Appeal available, writ denied, 23:16
 - Grounds lacking, writ denied, 23:16
 - Reduction of charges without prosecutor's express consent, 23:15
 - Special prosecutor, indictment by, 23:6
 - Used against prosecutor, 23:3
 - Videotaping of psychiatric examination, 23:10

PROSECUTOR'S INFORMATION

- Amendment of, before or during trial, 3:68
 - Defense permitted to be heard, 3:68
 - Indictment, same rules for amending as, 3:68
 - Superseding of local court accusatory instrument, 3:69
- Bill of particulars, application, 8:121
- Charge less than a felony, 3:8
- Continuing criminal action, 3:1
- Felony complaint replaced by, 3:8

PROSECUTOR'S INFORMATION—Cont'd

- Filed in local criminal court, 3:1, 3:8
 - Same as indictment, 3:8, 3:31
- Grand jury
 - Decision, 6:23
 - Finds less than a felony, 3:8
- Guilty plea to entire, 17:4
- Lower courts, prosecution of case in, 6:74
- Preliminary hearings, 5:12
 - See also Preliminary Hearing
- See also Local Court Information
- Sufficiency, 3:31
- Superior court order directing prosecutor to file, 3:8
- Verification not required, 3:8

PRO SE REPRESENTATION

- Appellant client, rights on appeal, 2:14
- Approval of, 2:10
- Constitutional right, propria persona, 2:5
- Criminal proceeding, defendant's right, 1:20
- Hearing, 2:9, 2:10
 - Absent, summary denial of request, error, 2:10
 - "Searching inquiry," court's, 2:9
- Hybrid representation, barred, 2:11
 - Pro se motion, 2:13
 - Standby counsel at court's discretion, 2:12
- Ineffective assistance of counsel, effect of, 2:7
- Knowledge of right and court's obligation to inform, 2:5
- Mental competency and waiver of counsel, 2:7
- Omnibus motions within 45 days of arraignment, 7:2
- Pro se motion, 2:13
- Request to proceed
 - Granted, right after, 2:10
 - Summary denial, absent hearing, 2:10
- Right to counsel not surrendered, 2:6
- Risks, duty to advise of, 2:9
- Standby counsel, court assigned, 2:12
 - Removal of, 2:12
- Submissions
 - Application to appellate court, 24:39
 - Within 45 days, 24:39
 - Client/attorney disagreement on appeal, 24:38
 - Disparaging defendant's pro se arguments, finding, 24:96, 24:97
 - Undermining by defense, ineffective counsel, 24:38, 24:96
- Three-part test satisfying court, 2:6

PROTECTIVE ORDERS

- Appellate review, 8:13
- Bill of particulars request, prosecution response, 8:126

PROTECTIVE ORDERS—Cont'd

- Common conditions, 22:61
- Sentencing, 22:67
- Violation, 22:65
- Generally, 8:13
- See also Orders of Protection

PROTECTIVE SWEEP

- Warrantless police intrusion, 9:31

PSYCHIATRIC DEFENSE

- Defense notice to prosecution, 8:77
- No examination of defendant, 8:77
- Mental disease or defect defense, 15:54-15:56
- Notice to prosecution required
 - Mental disease or defect defense
 - See also Mental Disease or Defect Defense
- Precluded, defendant's refusal to take psychiatric examination, 8:38
- See also Mental Disease or Defect Defense

PSYCHIATRIC EVIDENCE

- Defense notice of intended use of psychiatric evidence, 15:53
- Mental examination of defendant, 15:55
- Notice to prosecution, 15:54-15:56
- Report of examiner, 15:55
- Statutory speedy trial delay not charged to People, 13:31

PSYCHIATRIC EXAMINATION

- Appointment of psychiatrists, 15:61
- Article 730 examination, 15:61
- Competency of defendant, 15:60
 - Article 730 examination, 15:61
 - Competency of defendant, 15:60
 - Hearing on competency, 15:63
 - Not guilty by reason of mental disease or defect, 15:51
 - Prosecutors seeking examination, 15:55
- Generally, 15:50-15:63
- Habeas corpus proceedings, application of Article 730 to, 15:61
- Hearing on competency, 15:63
- People's entitlement to, psychiatric defense, 8:38
 - Refusal to take, defense precluded, 8:38
- Prosecutors seeking examination, 15:55
- See also Mental Disease or Defect
- Videotaping of, sought by prosecutor, writ of prohibition, 23:10

PSYCHIATRIC RECORDS

- Brady disclosure, 8:26
- Discovery, 8:84
- Victim's records, 8:84
- Witness's, 8:34

PSYCHIATRIST

- Assigned counsel compensation for, 2:25

PSYCHOLOGICAL TESTIMONY

- Judicial preclusion, writ of prohibition, 23:10

PSYCHOLOGISTS

- Opinion testimony, precluded from giving, 18:131

PUBLIC

- Exclusion from trial, 19:31-19:39
- Exclusion of from preliminary hearing, defense right to request, 5:14
- Family excluded from trial, 19:37
- News media excluded, 19:36
- Trial, 19:31

PUBLIC DEFENDER

- Conflict of interest with indigent defendant, 1:19
- Defendant entitled, conditions, 1:17
- Office of
 - Low income defendant represented by, 2:18
 - Smaller counties without, 2:18

PUBLICITY

- Pretrial, questioning prospective jurors about, defendant's right to be present, 19:11
- See also News Media

PUBLIC SAFETY EXCEPTION

- Statements, 9:19
- Warrantless police intrusion, 9:19

PUBLIC TRIAL

- See Trial subhead: Public trial

PUNISHMENT

- Bail impermissible as, 4:48
- Contempt, civil versus criminal, 23:144
- Disclosure of evidence material to punishment of defendant, 8:22
- Level of not affected by level of involvement in crime, 1:52
- See also Sentence

QUESTIONNAIRES

- Jury selection, use in, 19:83

RACE

- Facially race-neutral challenges of juror, valid, 19:113

RACIAL DISCRIMINATION

- Racial exclusion of jury members barred, Batson rationale
 - See also Jury Selection and Voir Dire
- Racial exclusion of jury members barred, Batson rationale, 19:105
- Defense burden, 19:109-CITE19:128

RADAR

- Admissibility, 18:146

RAPE

- Charge corroborated by victim's photograph, 18:100
- Codefendants
 - Joinder of offenses, 14:8
 - Severance, motion for, 14:33
 - Statutory definitions similar, 14:8
- Earlier rape conviction, improper use of, defendant charged with sodomy, Sandoval, 11:11
- Lesser included offenses, 16:6
- Prosecution failure to call victim's spouse, missing witness charge, 19:183
- Prosecutorial discretion to determine charges, 3:5
- Psychiatric records of victim, 8:84
 - Rape kit used for victim, 8:87
- Rape shield statute, 18:65
 - Exceptions, 18:65
- Rape shield statute, 21:16
 - Defense motion for, 21:59
 - Fact-finding hearings, disposition of transferred cases, 21:62
 - Consent to transfer to, 21:59
 - Request for transfer, 21:47
- See also Sodomy
- Sex Offender Registration Act. See Sex Offender Registration Act
- Two different theories, 3:37
- Use of deadly physical force in, self-defense, 15:14

RAP SHEET

- Defendant's, as aid in preparing Sandoval motion, 11:37
- Subpoena, 8:83
- Witness, 8:52

REAL ESTATE

- Bail, as alternate, 4:61
- House as bond collateral, 4:61

REAL EVIDENCE

- Admissibility, 18:87
 - Chain of custody. See subhead: Chain of custody
 - Objections. See subhead: Objections to admissibility
- Chain of custody, 18:88
 - Authentication of evidence's non-altered state, no chain required, 18:90
- Drugs, 18:88, 18:89
- Missing link in, admissibility issues, 18:89
 - Drugs as evidence, 18:89
 - Reasonable assurance of item's identity, 18:89
- No chain required, instances, 18:90
- Unique characteristics, object possessing, no chain required, 18:90

REAL EVIDENCE—Cont'd

- Chain of custody, 18:88—Cont'd
 - Weapon, admissibility based on officer's testimony, no chain required, 18:90
- Drugs, chain of custody
 - Each person who handled drugs, failure to show, missing link, 18:89
 - Possession of drugs, defendant charged with, 18:88
- Graphic evidence offered by prosecution, objections, 18:87
- Lost
 - Appeal, lost on, 24:30
- Objections to admissibility
 - Graphic evidence offered by prosecution, 18:87
- Overview, 18:87
- Photographs, 18:91-18:102
 - See also Photographs
- Videotapes, use of
 - See also Videotapes

REASONABLE BELIEF

- Justification, required for
 - See also Justification Defense subhead: Reasonable belief requirement
- Justification, required for, 15:9, 15:18-15:22

REASONABLE CAUSE

- Charge defendant, grand jury determination, felony case, 1:70
- Generally, 1:96
- Grand jury proceedings, standard applied, 6:10
- Hold defendant in custody, preliminary hearing to determine, felony case, 1:69
- See also Probable Cause

REASONABLE DOUBT

- Defense, prosecution's burden to disprove beyond a reasonable doubt
 - See also Defense
- Defense, prosecution's burden to disprove beyond a reasonable doubt, 15:32
- Jury charge. See Jury Charge subhead: Reasonable doubt

REASONABLE SUSPICION

- Defined, 9:25
- See also Probable Cause

REBUTTAL

- Adverse expert's testimony, 18:129
- Character witness, defense calling, prosecution rebuttal, 19:153
- Evidence, 18:54
- Evidence, 19:6
- Photographs, use to rebut defenses, 18:97
- Prior inconsistent statement, 9:171

REBUTTAL—Cont'd

- Testimony, defense
 - See also Defense
- Testimony, defense, 15:73
- Time for hearing on rebuttal evidence, 12:39
- Uncharged crime, 12:22

RECATATION EVIDENCE

- CPL 440.10 motion, 23:44
- Generally, 20:41
- Grand jury testimony, 6:7
- Motion to set aside verdict, 20:21
- Newly discovered evidence; CPL 440.10 motion, 23:44

RECENT FABRICATION

- Evidence. See Evidence
- Objections. See Objections

RECKLESS

- Crimes, attempts not commission of, 16:29
- Driving, accusatory instrument, error in, prosecutor's amendment cures, 3:66
- See also Intent
- State of mind defined, lesser included offenses, 16:19, 16:24

RECOGNIZANCE

- Release on own recognizance (ROR). See Release on Own Recognizance (ROR)

RECOLLECTION

- Past recollection recorded, 18:19
- Record on appeal to refresh witness, 24:64
- Refreshing witness recollection, 18:53, 24:64

RECONSTRUCTION HEARING

- Incomplete record on appeal, 24:29, 24:35

RECORDINGS

- 911 recording. See 911 Recordings
- Attorney recording, 9:98
- Defendant's statements, 9:120
- Discovery, 8:34
- Videotape. See Videotapes

RECORDINGS, ADMISSIBILITY

- Accurate and unaltered, demonstrating, 18:106
- Attorney recording conversation, 1:21, 1:63
- Audibility
 - Background noise, high enough level of, effect, 18:111
 - Effect on admissibility, 18:111-18:113
 - Inaudible recordings, effect, 18:111
 - Transcription
 - Evidence of audibility, as, 18:114
 - 911 tapes, 18:120
- Chain of custody requirement for admission, 18:107

RECORDINGS, ADMISSIBILITY—Cont'd

- Clear and convincing evidence, demonstrating, 18:106
- Defendant and another, recording usually of, 18:104
- Error, refer to recording previously ruled inadmissible, 18:113
- Foreign language, recording in, 18:109
- Foundation for admission, laying, 18:106
- Legality requirement for admission, 18:104-18:115
- Materiality, requirement, 18:108
- One party's consent required for admission, 18:104
- Persons, monitored and recorded tape, establishing foundation for admission, 18:106
- Private taping of conversations, 9:99
- Redaction where other crimes mentioned, 18:110
- Relevance requirement, 18:108
 - 911 tapes, 18:119
- Transcript of admissible recording, 18:114
 - Aid jury, use to, 18:114
 - Audibility. See subhead: Audibility
 - Jury instructions, limiting, 18:115

911 RECORDINGS

- Admissibility, hearsay rule. See subhead: Hearsay rule

RECORDKEEPING

- Speedy trial, statutory
 - Motion to dismiss, important defense records, 13:20

RECORD ON APPEAL

- See Appeal, Record on Appeal

RECORDS

- Calibration records of breathalyzer in DWI prosecution, Brady disclosure, 8:26
- Clinical, subpoena issued for party seeking, 8:103
- Court records. See Court Records
- Criminal history records, obtaining, 8:118
- Criminal record. See Criminal Record
- Family Court records, access to, 8:107
- Hearsay rule, public document exception under, 18:28
- Medical, untimely Brady disclosure, sanctions, 8:33
- Police officer's records and reports, Rosario disclosure, 8:46
- Psychiatric, discovery, 8:84
- Sealing of. See Sealing of Records
- See also Psychiatric Records
- Summaries of records, admissibility of, 18:77
- Telephone conversation, private recording, 18:104

RECURRING ISSUES

Artificial intelligence, 1:97

RECUSAL

See Judge

REDACTION

Bruton rule

Defective redaction, waiver of appellate claim of, 14:20

Evidence, redacted statement used as, 14:19-14:24

Defense participation, 14:20

Exculpatory statements also redacted, 14:22

Prosecutors and, 14:20

Severance, 14:22

Testimony vitiating redaction, 14:21

Interlocking statements, 14:23

Defined, 18:86

Ineffective assistance, 2:79

Recordings, redaction where other crimes mentioned, 18:110

Request for, uncharged crimes used as evidence, 12:3

Written statement, 9:107

REDUCED CHARGES

Plea bargaining. See Plea Bargaining

REDUCTION OF CHARGES

Preliminary hearings, after, 5:16

See also Preliminary Hearing

REFORMATORY

Sentence, qualifying as upstate time, persistent felony status, 22:116

REFRESHING RECOLLECTION

Generally, 18:53

Notes, access to, 18:53

Witnesses, 18:53, 24:64

RELATIVES

See Family

RELEASE

Application for, 4:55

Delay, 4:66

Bail

See also Bail

Release without bail

Arraignment, time for, 1:53

Bail, 4:71

Delay, 4:57

Dismissal, 4:58

Prosecutorial failure, 4:54-4:58

Reduction of bail, all charges in written order, 4:71

Defendant

Bound over to grand jury, 6:25

RELEASE—Cont'd

Grand jury action

After defendant's release, 5:19

Mandatory

Exceptions, 5:12

Preliminary hearing, 5:12

Prosecution's failure to hold timely, 5:12

Nonmonetary conditions, release on, 4:6

Order of protection included in, 3:4

Pending appeal, stay of sentence and, 4:83-4:85

Recognizance. See Release on Own

Recognizance (ROR)

Release order, defendant's right to, misdemeanor complaint, untimely conversion to information, 3:11

Restrictions on, relation to purposes of bail, 4:64

Stay of sentence and release pending appeal, 4:83-4:85

Terms set by local court, 4:67-4:70

RELEASE ON OWN RECOGNIZANCE (ROR)

Application at arraignment, 4:55

Bail determination review, 4:75

Failure to follow, bail revoked, 4:73

Curfew, 4:63

Driving, limitations on, 4:63

Firearms license and possession suspension as condition for release, 22:61

Generally, 4:4

Incomplete information for, 4:66

Bail, 4:53

Preliminary hearing, 4:56

Mandatory release for prosecutorial failure, 4:54-4:58

Complaint not converted to information, 4:55

Delay in grand jury action, 4:57

Oral request by defense in prosecutor presence, 4:56

No hearing, 4:56

Nonmonetary conditions, release on, 4:6

Passport surrender, 4:63

Probation, report to, 4:63

Qualifying offenses, ROR not presumed for, 4:4

Restrictions, 4:64

Securing order, 4:3

Statutory speedy trial, failure to reappear and chargeable time

Pretrial release, 13:82

RELEVANCE

Uncharged crimes, permissible use in proving guilt, *Molineux*, *People v.*, 12:7-12:9

RELEVANT EVIDENCE

See Evidence

RELIGION

Adjournment, 19:50

RELIGION—Cont'd

- Batson rule, religious discrimination prohibited, 19:106
- Impeachment, improper, 18:35, 18:60
- Oath of witness, impeachment improper, 18:35
- Oath of witness, impeachment improper, 19:56
- Religious groups, lifestyle evidence, uncharged crimes, permissible use of, 12:29

REMEDY

- Constitutional speedy trial delay, dismissal with prejudice, 13:84
- Discrimination, determination of, jury selection, 19:125
- Due process argument
 - Motion for dismissal, 13:92
- Error, trial court remedies for, 18:206-18:210
 - See also Error
- Extraordinary remedy, writ of prohibition, collateral proceedings, 23:2-23:11
 - See also Writ of Prohibition
- Impeachment of verdict, remedy for juror misconduct during deliberations, 19:222
- Judicial bias, trial court remedies, 18:193
- Sanctions. See Sanctions
- Suppression appeal, dismissal or retrial, 9:6

REMITTITUR

- Action upon, 24:108
- Forms
 - Order upon, 24:154
 - Release and vacatur of conditions upon, order for, 24:156

REOPENING OF CASE

- Defense reopening case, 7:49
- Prosecution, by, 7:52
- Second bite of the apple theory, 7:52
- Trial, 19:8

REPARATION

- Probation conditions, 22:48
- Restitution to crime victim, 22:75

REPORTS

- Arrest report, Rosario material, 8:46
- Autopsy, 18:100, 18:139
- Darden hearing, report by hearing judge, 9:82
- Discovery of written, 8:34
- Grand jury investigation report of public official's misconduct or lack of misconduct, 6:3
- Police records and reports, Rosario disclosure, 8:47
- Presentence investigation report
 - Obtaining, 17:62

REPRESENTATION

- See Attorney

REPRESENTATION—Cont'd

- See Counsel
- See Pro Se Representation

REPUGNANT VERDICTS

- See Verdict subhead: Repugnant verdicts

REPUTATION

- See Character

RESENTENCING

- After appeal, 22:179
- Domestic Violence Survivors Justice Act, 22:184
- Drug Law Reform Acts, 22:183
- Ex post facto sentencing, 22:182
- Generally, 22:179
- Predicate felony, 22:121
- Retroactive sentencing, 22:182
- Sua sponte resentence improper, 22:181
- Vindictiveness, 22:180

RES GESTAE

- Sandoval hearings and, 11:41

RESIDENCE

- See also Premises

RESTITUTION

- Juvenile delinquency, 21:26

RESTITUTION TO CRIME VICTIM

- Additional amount to Probation Department, 22:70
- Amount set by court, 22:69
 - Defendant not complying, effect, 22:69
- Appeal, 22:77
 - Crime victim fee, 22:85
 - Mandatory surcharge, 22:85
- Burden of proof, 22:81
- Damages investigated/reported by Probation Department, 22:69
- Defendant's failure to make timely, sentence bargain ignored by court, 22:161
- DNA registration and fee, 22:86
- Hearing, 22:74
- Necessity of objection, 22:74
- Plea agreement, 22:72
- Probation conditions, 22:48
- Reparation, 22:74
- Sentence, component of, 22:69
 - Hearing, 22:74
 - Reparation, 22:74
- Third party restitution, 22:70
 - Insurance company as victim, 22:71
- Third party restitution, law agency as victim, 22:72
- Types of financial charges, 22:77

RESTRAINTS

Assaultive behavior, defendant with history of, during grand jury testimony, 6:45
Disruptive conduct by defendant, effect, 19:27-19:29

RETAINER

Criminal matter, no representation on contingent fee basis, 2:31
Fee prohibitions, 2:31
No “minimum nonrefundable fee” for representation, 2:31
No representation on contingent fee basis, 2:31
Letter of engagement, 2:29-2:40
No “minimum nonrefundable fee” for representation, 2:31
Parent’s obligation to pay assigned attorney’s lower fees, 2:28
Scope of representation, limitations, 2:34
Withdrawal from representation
Breach of contract of representation, 2:65
Unpaid fees, 2:61

RETRIAL

Hung jury, 24:129
Mistrial and double jeopardy, 18:184
Overview, 24:118-24:123
Partial verdict, 20:11
See also Trial, Retrial After Appeal

RETROACTIVITY

Constitutional law, 24:92
Ex post facto law, 22:182

RIGHTS

Advisement of
See also Advisement of Rights
Advisement of, 4:15-4:27, 4:18-4:22
Appeal. See Appeal
Bail. See Bail subhead: Defendant’s right to Counsel. See Counsel subhead: Right to Defendant’s. See Defendant’s Right to and Defendant’s Right to Be Present
Due process. See Due Process
Effective assistance of counsel on appeal, 24:95
See also Effective Assistance of Counsel subhead: Appeal
Jury trial. See Defendant’s Right to subhead: Trial by jury
Preliminary hearing, 4:21
Present a defense, 18:39
See also Miranda Warnings
Silence. See Silence
Speedy trial. See Speedy Trial
Trial, right to, 17:1-17:2
See also Plea Bargaining subhead: Right to trial

ROBBERY

Accomplices, corroboration of testimony, 14:50
Armed robbery, juvenile offenders, 21:37
Juvenile delinquents, juvenile offender status, transfers from, 21:62
Juvenile offenders, fact-finding hearings, disposition of transferred cases, 21:62
Codefendants
Joinder of offenses, 14:6, 14:8
Statutory definitions similar, 14:8
Two different days, same crime, 14:8
Element of felony-murder, concurrent sentences required, 22:22
Jury charge
See also Jury Charge
Jury charge, 19:197
Lesser included offenses, 16:11, 16:14
Operability of weapon defense, affirmative defense, 15:65
Overlapping guilty verdicts, robbery and grand larceny, 20:18
Robbery 1st degree
Defendant appeared to be armed
Simultaneously occurring acts, 12:26
Described, lesser included offenses, 16:11
Plea down to lesser charge, 17:10
Robbery 2nd degree
Described as lesser included offense, 16:11
Petit larceny described as lesser included offense, 16:14
Robbery 3rd degree
Defined, 1:51
Purse snatching, charge resulting from, 1:51
Self-defense, use of deadly physical force in, 15:14
Uncharged crimes, permissible use of, mistaken identity claim, 12:42
Youthful offenders, interest of justice dismissal granted, mandatory sentence, failure of purpose, 7:23
Impact on community weighing against, 7:23

ROR

See Release on Own Recognizance (ROR)

ROSARIO HEARING

Pre-Wade -Rosario hearing, 9:226
See also Identification
See also Wade Hearing

ROSARIO MATERIAL

911 recordings
Disclosure, 18:118
911 tapes, 8:46
Confidential informant’s statements, exclusion, 8:47
Police officer’s statements, exclusions, 8:47

ROSARIO MATERIAL—Cont'd

- 911 tapes, 8:46—Cont'd
 - Prosecution's justification for, 8:47
- Adverse inference charge for failure to turn over, 19:148
- Affidavits, supporting search warrant, 8:46
- Appellate standard of review of violations, 24:75
- Arrest report, 8:46
- Attorney work product, 8:53
- Defense
 - Material turned over to, preliminary hearing, 5:14
- Defined, 1:58
- Duplicative equivalent already disclosed, exclusion, 8:47
- Equal access, 24:127
- Exclusions, 8:48
 - Diary, witness's, exclusion, 8:47
- Grand jury minutes, defense motion to inspect, 6:63
- Guilty plea as waiver of violation, 8:51
- In camera examination, 8:47
- Non-disclosure
 - Part of record on appeal by stipulation, 23:33
 - CPL 440.10 motion, 23:33
- Notes, 8:46
 - Prosecutor's, 8:46
 - Reciprocal obligations, 8:41
 - Scratch pad notes of police officer, 8:46
 - Witness's, unrelated to trial issues, exclusion, 8:47
- Pretrial testimony of prosecution witness, to defense, 7:1
- Prosecution's failure to provide, 7:49
- Prosecution witnesses, obtaining statements by, preliminary hearings, 5:14
- Purpose of rule, 8:44
- Recordings, 8:46
- Remedies for violation of rule, 8:45
- Reversal, per se rule, for violations regarding related counts, 8:46
 - Covered by rule, 8:46
 - Excluded by rule, 8:49
 - Scope of previous statement, determining Rosario status by, 8:50
- Statements in possession of agencies, exclusion, 8:48
 - Prosecution representation to turn over, 8:49
- Statutory requirements, 8:43-8:51
- Strict enforcement of rules, 8:45
- Theory behind rule, 8:44
- Transcript not provided by, counsel's note taking, 7:36
- Uncharged crimes used as evidence, redaction, request for, 12:3
- Use, 1:58

SANCTIONS

- Brady disclosure, untimely, 8:33
- Contempt. See Contempt
- Counsel, against, remedy for error, 18:210
 - See also Error
- Discovery
 - See Discovery
 - See Discovery Motions
- Ethics. See Ethics
- Monetary sanctions against counsel, remedy for error, 18:210

SANDOVAL

- Compromise
 - Defendant's presence at
 - Defendant's right, 11:44
 - Delivery of ruling, 11:44
 - Errors, avoidance of, 11:44
 - Defendant's right to testify and cross-examination, resolving conflict between, 11:45
- Defined, 11:13
- DWI conviction, impeachment under prior, 11:21, 11:22
- Inadmissibility, defendant's statements, 11:43
- Ineffective counsel, 2:82
- Limitations on inquiry of crime, 11:45
- Nonjury trials, uncertainty of hearing at, 11:62
- Procedure, 11:45
- Similarity of crimes, 11:13
- Uncertainty of need for, nonjury trial, 11:62
- Uncharged crimes, previously res gestae, 11:41
- Context and nature of, 11:1-11:4
- Prosecutor's right to cross-examine balanced with defendant's right to fair trial, 11:1
 - Key authority, *People v Sandoval*, 11:1
- Protection lacking, codefendants prejudice with impeachment, severance, 14:34
- Ruling
 - Codefendants, inapplicability of ruling to, 11:60
 - Constitutional right of codefendant to cross-examine defendant, 11:60
 - Compliance with prosecutor's, 11:55
 - Summation, 11:56
 - Compliance with trial court, 11:57
 - Caution to defendant against "opening the door" to questions or putting character in issue, 11:58
 - Change of, nature of misdemeanor conviction established by defense, 11:57
 - False testimony, defendant's, 11:58
 - Prosecutor permitted beyond original ruling on prior conviction, 11:58
 - Molineux vs. Sandoval* rulings, compared, 12:10
- See also Uncharged Crimes

SANDOVAL—Cont'd

Standard of review, 24:73

Time for, 7:1

SANDOVAL MOTIONS

Hearing on, 11:42-11:45

Impeaching defendant, grand jury testimony, 6:44

Omnibus motion made outside of 45-day period, 7:16

Pretrial motion

Advantages of obtaining early ruling, 11:38

Delay in rendering ruling, 11:39

Preference for, 11:38

Rap sheet, defendant's, aid in preparation for, 11:37

Request for disclosure of prior uncharged acts, 11:40

Ruling

Definite, requirement of, 11:50

Delay in rendering, on pretrial motion, 11:39

Delivery of, defendant's presence at, 11:44

Early ruling, advantages of obtaining, 11:38

Equivocal, 11:50

Uncharged crimes, disclosure of previously, 11:40

Request for disclosure of prior uncharged acts, 11:40

SANDOVAL RULES

Absence of shield, multiple same offenses, 11:12

Acquittal, past charges, no right to examine on, 11:34

Active criminal cases, inquiry as to other, 11:30

Appealed convictions, 11:31

Addiction-related crimes

Impermissible prejudice, question on prior convictions as special risk, 11:25

Questions on convictions for, 11:25

Adultery, 11:27

Alcohol abuse. See subhead: Addiction-related crimes

Alford convictions, 11:23

Appeals

Convictions pending, inquiry as to, 11:31

Deference to trial courts, 11:52

Recording ruling for, 11:51

Waivers

Failure to testify, 11:53

Guilty plea, waives right to appeal adverse Sandoval determination, 11:54

Arrests, questions as to, 11:29

Bad acts, 11:26

Alias, use of, 11:27

Cross-examination on prior, extent of. See subhead: Cross-examination

False names, use of, 11:27-11:28

SANDOVAL RULES—Cont'd

Bad acts, 11:26—Cont'd

Inquiry to impeach

Allowed areas, 11:27

Disallowed areas, 11:28

Marijuana possession, 11:28

Self-interest, act committed for advancement of own, 11:14

Sexually deviant practice, 11:28

Uncharged, denial of, 11:49

Bench trial, motion judge presiding at, 11:62

Body of defendant, exhibiting to jury, 11:6

Burden of proof, defendant's, prejudicial effect of admitting prior crimes, 11:36

Criminal Services Div. record, defendant's right to, 11:37

Motions, defendant's rap sheet, aid in preparing for, 11:37

Rap sheet, defendant's aid in preparing for motions, 11:37

Specification, reason to exclude crimes, 11:37

Submitting information of prior convictions, 11:37

Compromise, Sandoval, 11:22

Traffic infraction, impact on credibility as witness, 11:20

Conviction

Constitutionally invalid conviction, use of, 11:32

Denial of, 11:48, 11:49

Proof of conviction, independent introduction of, 11:50

Dishonesty, similar conviction involving, use of, 11:10

DWI, impeachment under prior, 11:21

Invalid convictions, 11:32

Revealed excluding details, 11:13

Violation-level offenses, questions on, 11:24

CPL 240.43 provisions. See subhead: Uncharged crimes

Crimes, similarity of, 11:11

Absence of shield for multiple same offenses, 11:12

Compromise under Sandoval, 11:13

Conviction revealed excluding details, 11:13

Prior offense excluded on grounds of, 11:11

Cross-examination

Extent permitted on prior crimes or bad acts, 1:14, 11:1

Multiple same offenses, 11:12

Standards applicable to, 11:1

Multiple same offenses, 11:12

Non-testimonial evidence, 11:6

Defendant, impeachment of credibility, 11:15

SANDOVAL RULES—Cont'd

- Denial of
 - Conviction, 11:48, 11:49
 - Proof of conviction, independent introduction of, 11:50
 - Uncharged crimes, 11:49
- Dishonesty
 - Impeachment
 - Areas of inquiry allowed for, 11:27-11:28
 - Crimes not involving dishonesty, 11:15
 - Names, use of false, 11:27-11:28
 - Relevancy, 11:9
 - Similar conviction involving dishonesty, use of, 11:10
- Dismissed charges, 11:32
- Drug abuse. See subhead: Addiction-related crimes
- DWI conviction, impeachment under prior, 11:21
 - Compromise, Sandoval, 11:22
- Employment application, false statement on, 11:27
- Evidentiary balance, 11:2
 - Prejudice, two-part measurement of, 11:3
 - Probative value of testimony on defendant's past, 11:2
 - Propensity for criminal behavior, 11:4
- Facts underlying prior crimes, 11:16
- False names, use of, 11:27-11:28
 - Improper use of alias by prosecution, 11:28
 - Valid use of different name, 11:28
- Fraud. See subhead: Dishonesty
- Good faith requirement, prosecutor's, 11:46
- Grand jury, prosecutor's obligation before, 6:44, 6:60, 11:47
- Harmless error, 11:52
- Illegal entry into country, 11:27
- Immoral acts. See subhead: Bad acts
- Immunized crimes, examination on, 11:35
- Imprisonment, effect on old crimes, 11:8
- Jury instructions, 11:63
- Lapse of time between prior conduct and alleged crime, 11:7-11:8
 - See also subhead: Time
- Medical records, introduction without cross-examination, 11:6
- Motions. See Sandoval Motions
- Notice, prosecutor's of defendant's uncharged crimes, 11:40
- Parking tickets, failure to pay numerous, 11:27
- Prejudice on basis of prior convictions or offense
 - Burden of proof, defendant's. See subhead: Burden of proof
 - Convictions, number of, 11:17
 - Number of convictions, 11:17
 - Prior crimes
 - Inquiry, extensive into, 11:16

SANDOVAL RULES—Cont'd

- Prejudice on basis of prior convictions or offense—Cont'd
 - Prior crimes—Cont'd
 - Presentation of past crimes, 11:14
- Pretrial motion, preference for. See Sandoval Motions
- Prior offense, exclusion of, 11:11
- Reduced charges, 11:33
- Self-interest above society, defendant's advancement of own, 11:14
 - Dishonesty, impeachment for crimes not involving, 11:15
- Similar crimes, 11:11, 11:12
- Summation, prosecutor's, 11:56
- Time
 - Lapse of, between prior conduct and alleged crime
 - Imprisonment, effect on old crimes, 11:8
 - Incarceration, effect on old crimes, 11:8
 - Uncharged crimes, prosecution's disclosure of previously, 11:40
- Traffic infraction by, impact on credibility, 11:20
- Traffic infraction, conviction for and witness's credibility, 11:20
- Trial record, defendant's past as part of, 11:2
- Uncharged crimes
 - Denial of, 11:49
 - Disclosure of previously
 - Hearings. See Hearings
 - Motions. See Sandoval Motions
 - Notice by prosecutor of defendant's, 11:40
 - Procedure, 11:40
 - "Under the table" payment to employees, 11:27
- Vehicle and Traffic Law, DWI conviction, impeachment under prior, 11:21
- Vicious acts. See subhead: Bad acts
- Violation-level offenses, questions on convictions for, 11:24
- Violence, calculated, prior act of, 11:14
- Witness
 - Defendant as, impeachment of credibility, 11:15
 - Inapplicability to
 - Other witnesses, 11:59
- Youthful adjudications, effect on credibility
 - Foreign conviction, 11:19
 - Juvenile delinquency, 11:18
 - Out-of-state conviction, 11:19
 - PINS adjudications, 11:18

SCHOOLS AND SCHOOL OFFICIALS

- Corporal punishment, 15:13
- Justification defense; act of teacher, 15:13
- Juvenile offenders, notification to school authorities, 21:10

SCHOOLS AND SCHOOL OFFICIALS

—Cont'd

- Notification of conviction or Youthful Offender adjudication, 21:10
- Principal, statement to, 9:115
- Records subpoenaed, 8:84
- Sex offender, residence proximity, 23:92
- Sex offense convictions, defendant prohibited from entering school grounds, 22:50
- Unreasonable search and seizure by public, constitutional prohibition, 9:10

SCIENTIFIC TESTING

- DNA. See DNA
- Expert testimony. See Expert Testimony
- Frye Rule, 18:139
- Hearsay, expert's reliance on, 18:140

SEALED INDICTMENT

- See Indictment

SEALING OF RECORDS AND TRANSCRIPTS

- Access to sealed conviction; Clean Slate Act, 23:158
- Acquittal, 1:88, 1:93
- Certificate of Good Conduct, 23:161, 23:163
- Certificate of Relief from Disabilities, 23:161, 23:162
- Clean Slate Act, 23:158
- Conditional sealing, 1:93, 23:159
- Convictions, generally, 23:156-23:162
- Dismissal of charge, 1:88
- Exceptions; Clean Slate Act, 23:158
- Expungement unavailable, 1:93
- Grand jury minutes, 6:77
- Juvenile delinquents, 23:156
- Marijuana convictions, 23:157
- Petty offense, 1:41
- Petty offense, 22:35
- Rehabilitation certificates, 23:161-23:163
- Ten-year seal, 23:160
- Two certificates possible, 23:161
- Violation-level offenses, sealing of dismissed cases and, 1:93
- Violations, 22:35
- Wiretap recordings, 9:99
- Youthful offenders, 1:93, 23:156

SEARCH AND SEIZURE

- Abandoned evidence
 - See also Warrantless Search and Seizure
- Abandoned evidence, 9:38-9:44
- Administrative searches, 9:90
 - Automobile, warrantless stop and search, probable cause, 9:50
 - Outside New York State, arrest made, 9:70
 - Search incident to, 9:31

SEARCH AND SEIZURE—Cont'd

Arrest

- Automobile, warrantless stop and search, probable cause
 - See also Automobiles, Warrantless Stop and Search
- Warrantless police intrusion. See Warrantless Police Intrusion
- Automobiles, stop and search of
 - See also Automobiles
- Automobiles, stop and search of, 9:47-9:66
- Black box device in automobile, 9:83
- Blood test upon court order, 9:67
- Border searches, 9:12
- Cavity search, 9:35
- Computers, 8:100, 9:90-9:94
- Consent of defendant to police search
 - See also Mapp Hearing
- Consent of defendant to police search, 9:75
- Defendant, person of, 9:7
- Defense motion to suppress, 9:68
- DWI cases, blood test upon court order in, 9:67
- Excessive force used by police, 9:17
- Exigent circumstances, 9:34
- Extreme risk protection orders (ERPO), 23:152
- Fellow officer rule, 9:29
- Firearm in automobile, statutory presumption of possession, Mapp hearing, 9:76
- Governmental searches, 9:10
- Identification, suppression of, 9:8
- Inevitable discovery, 9:66
- Intangible property, suppression of, 9:8
- Law office searches, 9:96
- Mapp hearing
 - See also Mapp Hearing
- Mapp hearing, 9:71-9:80
 - Goal to obtain, 9:68
- Mistaken identification, 9:13
- Notice to defense, use of seized property at trial, 9:97
- Obvious evidence
 - See also Warrantless Search and Seizure
- Obvious evidence, 9:43
- Omnibus motion, as part of, 9:68
- Outside New York State, arrest made, 9:70
- Overview, 9:7
- Plain view, objects in
 - See also Warrantless Search and Seizure
- Plain view, objects in, 9:43
- Police intrusion. See Warrantless Police Intrusion
- Premises where defendant or defendant's property found, 9:7
 - Arrest, 9:27
 - Automobiles, stop and search of, 9:47-9:56

SEARCH AND SEIZURE—Cont'd

- Probable cause
 - Automobiles, stop and search of
 - See also Automobiles
- Search conducted by private individuals, 9:10
- Search warrant. See Search Warrants
- Sensory diagnostic module, 9:67
- Statements, defendant's, potential for suppression under Fourth Amendment
 - See also Defendant's Statements
- Statements, defendant's, potential for suppression under Fourth Amendment, 9:147-CITE9:153
- Trial, issues generally irrelevant at, 9:83
- Typical searches, 9:7
- Unreasonable, constitutional prohibition, 9:9
 - Administrative searches, 9:90
 - Excessive force used by police, 9:17
 - Governmental searches, 9:10
 - Private individuals, search conducted by, 9:10
 - School official searches, 9:10
- Warrants. See Search Warrants

SEARCH WARRANTS

- Affidavits, Aguilar-Spinelli test for supporting
 - Challenging, Mapp hearing
 - See also Mapp Hearing
- Affidavits, Aguilar-Spinelli test for supporting, 9:87
 - Basis for knowledge, second prong, 9:87
 - Challenging, Mapp hearing, 9:87
 - Informant used to make out affidavit, 9:87
 - Knowledge, basis for, second prong, 9:87
 - Police officer used to make out affidavit, 9:87
 - Reliability, first prong, 9:87
 - Corroboration, 9:87
 - Information, reliable, 9:87
 - Unnamed informant, made by, 9:87
- Blood sample upon court order, 9:67
- Challenging, Mapp hearing
 - See also Mapp Hearing
- Challenging, Mapp hearing, 9:87
- Copy of warrant available during execution, 9:88
- Described, 9:86
- Discovery, 9:89
- Execution of, 9:83
 - Copy of warrant available during, 9:88
 - Time for, 9:79
- Good faith except not applicable in New York state courts, 15:86
- Information in, 9:83
- Insufficient, attacking warrant as, 9:7
- Issuance of, 1:27
- Issuance of, 9:88
- Items to be seized, description of, 9:85
- Nighttime search, 9:83
- No-knock entry, 9:83

SEARCH WARRANTS—Cont'd

- Omnibus motion made outside of 45-day period, 7:16
- Overbroad, 9:83
- Persons to be searched, description of, 9:85
- Premises, description of, 9:86
- Return filed, 9:89
- Supporting, Rosario rule, 8:46
- Sworn, statutory requirement, 9:83
- Things to be seized, description of, 9:85
- Validity of, 7:47

SECOND DEPARTMENT

- See Appellate Division subhead: Second Department

SECOND FELONY OFFENDER

- Enhanced crimes. See Enhanced Crimes
- Enhanced felony sentences. See Enhanced Felony Sentences
- Felony predicate felony. See Felony Predicate Felony
- Predicate felon. See Predicate Felon
- Predicate offenders. See Predicate Offenders

SECURITY GUARD

- Arrest by, 1:45
- Arrest by, 9:10

SELECTIVE PROSECUTION DEFENSE

- Defense, 15:68
 - Violation of, establishment, 15:68
- Prosecutorial discretion not extending to, 3:5

SELF-DEFENSE

- Admissibility of evidence
 - Battered woman syndrome defense. See subhead: Battered woman syndrome
- Battered person syndrome, 15:29
- Character reputation of victim, 15:22
 - Initial aggressor, victim as, 15:23
 - Knowledge of victim's acts, 15:20
- Deadly force; reasonable belief requirement, 15:16
- Deadly physical force, 15:14
 - Defendant may not be, 15:24
 - Threatening gesture by victim, 15:25
 - Threat of force determinative, 15:25
- Effect on, 15:27
- Grand jury, at, 15:28
- Victim as, 15:24
- Evidence
 - Admissibility. See subhead: Admissibility of evidence
 - Battered woman syndrome. See subhead: Battered woman syndrome
- Jury charge
 - See also Jury Charge

SELF-DEFENSE—Cont'd

- Jury charge, 19:188
- Kidnapping, use of deadly physical force, 15:14
- Photographs, use to rebut defenses, 18:97
- Physical force, 15:14
- Physical force; reasonable belief requirement, 15:16
- Rape, use of deadly physical force, 15:14
- Reasonable belief requirement
 - Victim's
 - Past, knowledge of. See subhead: Victim's past
- Reasonable belief requirement, 15:14
 - Deadly force, 15:16
 - Factors affecting, 15:17
 - Movements of potential assailant as factor, 15:17
 - Objective and subjective determination, 15:15
 - Physical attributes of all persons involved as factor, 15:17
 - Physical force, 15:16
 - Prior experiences, another intending to injure defendant as factor, 15:17
 - Tendency toward violence, 15:18
 - Threats by victim at time of offenses, 15:23
 - Threats at time of offenses, 15:23
- Robbery, use of deadly physical force, 15:14
- See also Justification Defense
- Sexual offenses, use of deadly physical force, 15:14
- Sodomy, forcible, use of deadly physical force, 15:14
- Third-party, attack on, 15:26
- Threats by victim at time of offenses, 15:23
- Two-part inquiry concerning defendant's belief, 15:15
- Victim's past, knowledge of, 15:18
 - Acts of victim, 15:20
 - Character reputation of victim alone insufficient, 15:22
 - Observation of victim's prior acts, 15:19
 - Remote in time, acts, exclusion, 15:21
 - Reputation for violence, victim's, 15:18
 - Specific violent acts, defendant's awareness of, 15:18
 - State of mind, defendant's, 15:20
- Witness invoking, 18:41
- Witness invoking, 19:182

SELF-INCRIMINATION, PRIVILEGE AGAINST

- Arrest photos, 18:94
- Codefendant, 14:34
- Constitutional challenges, 15:85
- Constitutional provisions, 18:41
- Constitutional provisions, 19:180

SELF-INCRIMINATION, PRIVILEGE AGAINST—Cont'd

- Defendant's right, 17:37
- Grand jury
 - Defendant's appearance, 6:49
 - Subpoena duces tecum upon defendant, 6:12-6:14
 - Waiver of immunity, 6:41
- Immunity and, 18:44, 18:45
- Pretrial hearing, defense's reluctance to have defendant testify, 7:36
- Prosecution's use of statements and, suppression
 - See also Defendant's Statements
- Prosecution's use of statements and, suppression, 9:104-9:106
- Request, prosecutor prohibited from introducing, 18:201
- Satisfaction of Fifth Amendment, 9:147
- Self-incrimination, availability of witness, negating missing witness charge, 19:180
- Subpoena duces tecum upon defendant in grand jury proceedings, 6:12-6:14
- Testimony barred, 18:74
- Waiver, Miranda warnings, use of statements at trial, 9:104
- Witness invoking, 2:4, 18:41

SENSORY DIAGNOSTIC MODULE

- Expert testimony, 18:146
- Seizure, 9:67

SENTENCE

- Absent verdict, improper to sentence, 20:16
- Appeal of sentences
 - Harsh and excessive sentencing
 - Decision to appeal, 24:14
 - Exception to unreviewable issues outside record, 24:32
 - Limited waiver may allow appeal, 24:6
 - Voluntary waiver of right to appeal, 24:6
 - Legality of sentence, 24:7
 - Sentence served, no retrial, 24:130
 - Served during pendency of appeal, dismissal of count rather than retrial, 24:130
 - Stay of, and release pending
 - See also Stays
 - Unpreserved issues, review of, 24:8
 - Waiver of right as condition of sentence, 24:4
- Appeal of sentences, 22:185-CITE22:200
 - Factors used by court, 22:192
 - Presentence investigation report, appellate attorney obtaining copy, 22:182
 - Release form, sentencing judge signing, 22:182
 - Prosecutor, appeal by, 22:193
- Bargained-for. See Sentence, Bargained-for Sentence

SENTENCE—Cont'd

- Categories of offenders, 21:1
- Codefendant's sentence, appeal of, 22:187
- Conditional release on local sentence, 22:10
- Delay in sentencing, 22:178
- Determining, 22:7
- Disabilities, certificate of relief from, 22:209
- Electronic monitoring bracelet, 22:49
- Enhanced. See Sentence, Enhanced Felony
- Ex post facto law, 22:182
- Fair sentence, methods of obtaining, presentence, 22:150
- Guilty plea
 - Legality of sentence survives plea, 17:80
- Harsh and excessive sentence. See subhead: Appeal of sentences
- Illegal, 17:14
 - CPL 440.20 motion, 23:67
- Illegal, 22:167
- Inherent power, 22:181
- Invalid, CPL 440.40 motion, 23:68
- Juvenile delinquency status, 22:6
- Juvenile offender, 21:3
 - Authorized sentence, purpose and effect of imposing, 21:46
- Legality, direct appeal, 24:7
- Lesser included offenses, 16:36
- Low-level offenses, pronounced immediately, 1:83
- Mandatory. See Sentence, Mandatory
- Mandatory sentence enhancement, 4:85
 - Stay of, and release pending, 4:83-4:85
- Mistake, 22:181
- Motions to set aside verdict
 - Made between conviction and sentencing, 20:21
- Motion to set aside sentence
 - Defense's motion, 23:67
 - Prosecution's motion, 23:68
- Motion to vacate judgment. See CPL 440.10
 - Motion to Vacate Judgment
- Plea bargaining, 17:14-17:22
 - See also Plea Bargaining, subheads beginning with: Sentence
 - Sentence greater after trial, 17:3
- Policy of judge, 19:62
- Predicate felons, 23:68
- Presentence investigation, 17:62, 17:70
 - See also Investigation subhead: Pre-sentence investigation
- Prior convictions and enhanced sentences. See Sentence, Prior Convictions and Enhanced Sentences
- Resentencing. See Resentencing
- Sealing of violation-level records, 22:35
 - Mandatory assessments, 22:89

SENTENCE—Cont'd

- Sentencing. See headings beginning with: Sentencing
- Time of sentencing
 - Notice of appeal filed within
 - Late notice, 24:19
 - Notice of appeal filed within 30 days, 24:17
- Unfulfilled promises, collateral proceeding on issues outside record on appeal, 24:33
- Unpreserved issues, review of, 24:8
- Vacated, mutual mistake, writ of prohibition remedy, 23:5
- Verdict with no sentence, remand for resentencing, 20:17
- Voluntary waiver of right to appeal
 - Condition of sentence, 24:4
 - Harsh and excessive sentencing, 24:6
 - Limited waiver may allow appeal, 24:6
- Youthful offender, 21:4
 - Fine may be imposed as part of sentence, 21:81
 - Maximum sentence limited once status granted, 21:79
 - Felonies, 21:79
 - Misdemeanors, 21:80
 - Reduction in sentence, 21:64

SENTENCE, BARGAINED-FOR SENTENCE

- Arrest on new charge before being sentenced; pronouncing sentence, 22:164
- Conditioned on no arrests until sentencing date, 22:165
 - Imposing harsher sentence, Appellate Division vacating, 22:162
 - Lowering, upon request, 22:159
- Court disregard, circumstances, 22:158-22:170
 - Illegal sentence, 22:168
 - Increased sentence, challenge on appeal, 22:162
 - Plea invalidated, 22:158
 - Presentence arrest on new charge, 22:162
 - Diversion program, noncompliance with, 22:163
 - Noncompliance with diversion program, 22:163
 - Validity of new arrest must be established, 22:162
 - Presentence report reveals bad record, 22:169
 - Defendant enforcing sentence bargain, detrimental reliance on agreement, 22:170
 - Defendant withdrawal of plea and, 22:168
 - Restitution, defendant's untimely, 22:161
- Detrimental reliance, 22:170
 - Failing, 22:189
 - Waiver of, included in bargain, 22:186

SENTENCE, BARGAINED-FOR SENTENCE—Cont'd

- Illegality, 22:168
 - Predicate and persistent felony sentencing, 22:168
 - Resulting from mandatory enhancement, 22:168
 - Withdrawal of guilty plea, 22:169
- Inherent power, 22:181
- Integral part of criminal justice system, 22:157
- New charge before being sentenced, arrest on; pronouncing sentence, 22:164
- Order of protection, 22:157
- Plea bargain result, 22:157
- Specific performance, 17:19
- Specific performance, 22:169

SENTENCE, ENHANCED FELONY

- Categories of offenses using, 22:97
- Current felony defined by Penal Law, 22:111
 - Disparate treatment resulting, felony defined other, not violating equal protection, 22:113
- Described, higher minimum for current felony charge, 22:97
- Out-of-state felonies. See Out-of-State Felony
- Prior convictions. See Conviction
- Sequentiality required for all categories, 22:121-CITE22:123
- State incarceration required, 22:97

SENTENCE, HARSH AND EXCESSIVE

- Appeal of legality of sentence, rules for, 24:76
- Appellate briefs regularly including, 22:150
- Appellate challenge provided for in CPL 470.15(2)(c), 22:186
 - Appeal on ground of harsh and excessive, failing, 22:189
 - Waiver of harsh and excessive challenge, included in, 22:186
- Codefendant receiving low sentence, supporting on appeal, 22:176
- Cruel and unusual punishment, 22:176
- Decision to appeal, 24:14
- Exception to unreviewable issues outside record, 24:32
- Factors considered, 22:186
- Modifications occurred in certain cases, 22:186
- Remand for resentencing, factors causing, 22:191
- Trial, penalizing for, 17:2-17:3
- Trial, penalizing for, 22:173
- Voluntary waiver of right to appeal, 24:6
 - Limited waiver may allow appeal, 24:6

SENTENCE, MANDATORY

- Appeal, prosecution's right of, 4:85
- Cruel and inhuman punishment, 7:23
 - Disproportionate to offense/offender, 7:23

SENTENCE, MANDATORY—Cont'd

- Cruel and inhuman punishment, 7:23—Cont'd
- Failure of purpose, 7:23

SENTENCE, PRESENTENCE INVESTIGATION

- Defendant's guilty plea during investigation, effect, 17:70
- Defense memorandum, 22:153
- Judge orders from Probation Department, 22:151
 - Appellate attorney, obtaining copy, 22:185
- Contents, 22:152
- Felony, 22:154
- Jail sentence more than 90 days, 22:154
- Note errors on record, 22:150
- Probationary sentence, 22:154
- Violation, 22:154
- Presentence report
 - Adjourned sentencing to obtain, 17:62
- Probation Department providing, 22:151
- Prosecution memorandum, 22:153
- Sentencing without presentence investigation or waiver is error, 22:155
- Waived, with consent of parties and court, conditions, 22:155
 - Previous probation sentence revoked, 22:155
 - Probation, 22:155
 - Time served, 22:155
 - Report prepared with the past year, 22:155
- Waiver disallowed where sentence is prison, 22:156

SENTENCE, PRIOR CONVICTIONS AND ENHANCED SENTENCES

- Alford plea, conviction after, 22:98
 - Court martial, offense equivalent to New York felony, 22:98
- Juvenile offender adjudication, 22:98
- Convictions not used to enhance sentence, 22:99
- Enhanced sentences required, conviction on record, 22:97
 - Time limit on priors, within, 22:108
 - Incarceration tolls time period, 22:109
 - Prior conviction set aside, time served not tolling time period, 22:110
- Felony, qualifying defendant as predicate offender, 22:16
- Overtaken, prior felony conviction, enhanced sentence vacated for, 22:105
- Pre-plea hearing on prior convictions. See Sentencing
- Sentencing, defendants with/without priors compared, 22:124
- Sequentiality, 22:121-CITE22:123
 - Contemporaneous felonies, counting as one, conditions, 22:123

**SENTENCE, PRIOR CONVICTIONS AND
ENHANCED SENTENCES—Cont'd**

- Status changing, time of conviction status controlling, 22:104
- Time limit for mandatory enhanced felon categories, 22:108
- Incarceration tolls time period, 22:109
- Time served for conviction set aside, not tolling, 22:110

SENTENCING

- Adjournment for, guilty plea, 17:62
- Alternatives, 22:1
- Armed felony offense, 22:17
 - Drug Law Reform Acts, 22:183
- Fines, 22:78
- Options, 22:1
- Persistent sentencing, 22:126
- Predicate sentencing, 22:126
- Probation, 22:46
 - Common conditions, 22:60
 - Violation, 22:65
- Sequentiality requirement, 22:122
- Between conviction and sentencing, 4:82
- Community service. *See* Community Service
- Components of the sentence, 22:1-22:35
 - Definite/indeterminate, running, 22:19
 - Primary state or federal custody, effect of, 22:28
 - Criminal act material element of another offense, 22:22
 - Sentences from single act, 22:21
 - Examples, 22:21
- Two sentences, one definite, one indeterminate, 22:23
- Concurrent vs. consecutive, 22:19-22:28
 - Cap on, 22:27
 - Explained, 22:19
 - Mandatory, 22:24
 - Parole violator, 22:120
 - Permitted, when concurrent not required, 22:25
 - Primary state or federal custody, effect of, 22:28
 - Prohibited, circumstances, 22:20-22:23
- Conditional discharge. *See* Conditional Discharge
- Conviction, collateral consequences of. *See* Conviction, Collateral Consequences of
- Counsel at, importance, 2:3
- Credit for time served, 22:4
- Crime victim assistance fee. *See* Crime Victim subhead: Assistance fee
- Date for, 1:83
- Day of sentencing, 22:171
- Death sentence, 22:5
- Driver's Licenses, 22:92-22:95
- Drug cases, license suspension, 22:32

SENTENCING—Cont'd

- Effective assistance, 2:77
- Enhanced felony sentencing procedure. *See* Enhanced Felony Sentencing Procedure
- Enhanced felony status. *See* Felony, Enhanced Felony Status
- Enhancement; persistency, 4:85
- Excessive, constitutional challenges, 15:92
- Execution of sentence, counsel not critical, 2:3
- Federal or out-of-state conviction, 22:29
- Fines. *See* Fines
- Forfeiture, 22:90
 - CPL 370.15 notice, 22:228
 - DVSJA, motion for resentencing under, 22:228
 - Resentencing under DVSJA, motion for, 22:228
- Forms
 - Dispositional hearing, appeal notice after, 23:186
 - New trial or judgment motion, notwithstanding verdict, 23:184
 - Psychiatric expert, order appointing, 23:185
- Guilty plea at arraignment, 4:25
- Illegal, 22:167
- Incarceration. *See* Imprisonment
- Jail sentence. *See* Jail
- Juvenile offenders, youthful offender status, granting as, 21:3
- Low-level offenses, pronounced immediately, 1:83
- Mandatory surcharge. *See* Mandatory Surcharge
- Matters outside of sentence, 22:2
- Merit time, 22:13
- Multiple charges, credit for jail time served, 4:47
- Order of protection. *See* Order of Protection
- Out-of-state conviction, 22:29
- Overview, 22:1-22:211
- Parker warnings, application of, 19:20
- Postconviction motion, 1:84
- Predicate and persistent felony sentencing. *See* Sentencing, Predicate and Persistent Felony Sentencing
- Predicate felons, ineffective counsel, 2:82
- Presentencing statement, prosecutor to file, 22:127
- Prior convictions, enhanced sentencing and. *See* Conviction
- Prison sentence. *See* Prison subhead: Sentences
- Probation. *See* Probation
- "Problem driver" regulations, 22:95
- Restitution to crime victim. *See* Restitution to Crime Victim
- Revocable sentences, 22:4
- Sentencing process. *See* Sentencing Process
- Serious offenses, pre-sentence investigation provided to court, prior, 1:83

SENTENCING—Cont'd

- Shock camp. See Shock Camp
- Shock probation/split sentence. See Shock Probation/Split Sentence
- Specific performance, 17:19, 17:22
- Specific performance, 22:170
- Stay of sentence and release pending appeal
 - See also Stays
- Stay of sentence and release pending appeal, 4:83-4:85
 - Surrender to serve, untimely perfection of appeal upon stay, 4:84
- Traffic tickets, generally, 22:92
- Victim, involvement in, 1:66
- Violations, arraignment guilty plea, 4:25
- Willard Drug Treatment Campus sentence, 22:31
- Youthful offender, 21:1-21:10
 - Enhanced felony sentencing, subsequent litigation, effect of adjudication on, 21:87
 - Out-of-state adjudication, effect on sentencing, 21:87
 - Avoidance of, 21:82
 - Denied, adult standards applied, 21:75
 - Granted after sentencing, 21:66
 - Subsequent litigation, effect of adjudication on, 21:87

SENTENCING, ENHANCED FELONY SENTENCING PROCEDURE, DISCRETIONARY CATEGORY

- Hearing, judicial discretion, 22:137-22:141
 - Challenge prior convictions, 22:141
 - Defendant may present evidence/testify, 22:141
 - Sentence as persistent felony offender or any mandatory category, 22:142
 - Status of defendant, 22:142
- Finding of persistent felony offender status, persistent felony offender sentence not required, 22:137
- Full hearing usually ordered, 22:139
- Notice of hearing to defense and prosecutor, 22:138
- One hearing for both mandatory and discretionary categories, 22:138
- Order for hearing, filed with statement, persistent treatment warranted, by prosecution, 22:137
 - Time for, 22:137
- People's case at hearing, 22:140
- Terminated, judicial discretion, 22:137
- Overview, 22:137-22:141
- Preliminary examination, 22:141
 - Defense may dispute allegations, 22:141

SENTENCING, ENHANCED FELONY SENTENCING PROCEDURE, MANDATORY CATEGORY

- Order for hearing filed, 22:137
- Overview, 22:125-22:135
- Persistency, 22:137
- Pre-plea hearing on prior conviction
 - Purpose, to determine validity of prior
 - Plea bargaining, 17:54
- Pre-plea hearing on prior conviction, 22:126
 - Another person of the same name, an issue, 22:134
 - Defendant's, 22:136
- Constitutional challenges to prior, 22:135
 - Challenge current sentence, not subject to waiver, 22:131
 - Hearing, even if prior appealed and affirmed, 22:126-22:135
 - Prior result of bargained for sentence, 22:131
- Defense burden, if prior established, 22:135
- One hearing only, per conviction, 22:132
- Out-of-state convictions, 22:126
 - Establish tolling periods, 22:133
 - Prove prior conviction, 22:133
- Plea to misdemeanor possible, 22:126
- Purpose, to determine validity of prior, 22:126
- Rarely held, 22:126
- Presentencing statement of prosecutor, 22:136-22:141
 - Copy to defendant, 22:130
 - Failure to file, effect, 22:129
 - Challenging statement, 22:132
 - Defendant admitting priors, 22:127
 - Priors, admission and denial of, at, 22:130
 - Right to dispute allegations, 22:130
 - Tolling, 22:127

SENTENCING, PREDICATE AND PERSISTENT FELONY SENTENCING

- Discretionary
 - See also Sentencing
- Discretionary, 22:137-22:141, 22:137-22:142
- Mandatory
 - See also Sentencing
- Mandatory, 22:125-22:135
- Overview, 22:96-22:147
- See also Conviction, Prior Convictions and Enhanced Sentences
- See also Sentencing

SENTENCING PROCESS

- Absence of defendant, 17:43
- Absence of defendant, 22:172
- Bargained-for sentence. See Sentence

SENTENCING PROCESS—Cont'd

- Defendant's rights at sentencing, 22:176
 - Right to address court before sentence imposed, 22:176
 - Right to be present at sentencing, 22:176
- Delays in sentencing, 22:178
- Improper for some charges, 22:179
 - Charge not submitted to jury, 22:179
- Codefendant received lower sentence, 22:176
 - Supporting excessive-sentence appellate argument, 22:176
- Count not in accusatory instrument, 22:179
- High minimum sentence inappropriate for defendant's minor record, 22:176
 - Cruel and unusual punishment argument supported, 22:176
- Jury not rendering verdict on a count, 22:179
- Youthful Offender status, if available, 22:176
- In abstentia, sentencing, 22:172
 - Court may increase punishment, 22:160
- Omission at sentencing, remand, 22:180
- Overview, 22:150-CITE22:187
- Presentence investigation. *See* Sentence
- Probation pending sentencing permissible, 22:175
- Prosecutor agrees to remain silent, 22:178
 - Statements made in violation improper, 22:178
- Sentencing after refusal to plead guilty, 22:173
 - Court performing, 22:150
 - Court retaining discretion to impose sentence, 22:158
 - Suggestions by prosecutor and Probation Department, 22:150
 - Higher sentence after trial, 22:174
- Sentencing Options Chart, 22:1
- Sua sponte resentence, 22:181
- Victim's right to address sentencing court, 22:177
 - Application to felony victims, 22:177
 - Court must inform defendant, 22:177

SEPARATE TRIAL

- See* Trial subhead: Separate, for codefendants

SEQUENTIAL FELONIES

- Generally, 22:121-CITE22:123
- See also* Felony subhead: Sequential felonies

SEQUESTRATION

- Expert witness, 19:42
- Jury sequestration, 19:212
- Witnesses, 19:42

SERVICE

- See* Subpoena

SETTING ASIDE JUDGMENT

- See* CPL 440.10 Motion to Vacate Judgment

SETTING ASIDE VERDICT

- See* Motions to Set Aside Verdict

SEVERANCE

- Bruton rule, 14:18
 - Motions for severance, appellate review of denial of, 14:27
- Redaction, 14:22
- Codefendants
 - Converse of severance, 14:11
 - Grounds for severance, 14:36-14:40
 - Motions for severance, 14:32-14:43
 - Antagonistic defenses as grounds for, 14:32
 - Bruton rule, violation of, 14:34
 - Colorable testimony, 14:35
 - Defense omnibus motion, part of, 14:32
 - Denial, writ of prohibition denied, 23:10
 - Exculpatory statements by codefendant, 14:34
 - Grounds for severance, 14:36-14:40
 - Impeachment questioning, lack of protection, 14:34
 - Irreconcilable conflict between defendants, 14:33
 - Mutually exclusive defenses, 14:33, 14:34
 - Prejudice as grounds, 14:32, 14:34
 - Sandoval protection, lack of, 14:34
 - Speculative testimony, 14:35
 - Tests for severance, 14:33-14:35
 - Sandoval ruling, inapplicability to, 11:60
- Redaction, Bruton rule, 14:22

SEX ASSAULT REFORM ACT (SARA)

- Parole, 23:126

SEX CRIMES

- See* Sex Offenses

SEX OFFENDER MANAGEMENT AND TREATMENT ACT (SOMTA)

- Appeal of civil management order, 23:116
- Appellate review, 23:117
- Civil management, 23:105, 23:110
- Dispositional hearing, 23:114
- Expert witnesses, 23:112
- Post-trial process, 23:114
- Process, generally, 23:110-23:115
- Supervision and treatment, 23:115
- Trial on civil management, 23:113

SEX OFFENDER REGISTRATION ACT

- Abduction-related offenses, 23:81
- Address change, reporting, 23:77, 23:85
- Adjournments, 23:78
- Appeal, 23:84, 23:103
- Board of Examiners of Sex Offenders responsible for implementing classifications, 23:88
- Case summary, 23:88

SEX OFFENDER REGISTRATION ACT

—Cont'd

Certification, 23:79
 Charts
 Burdens of proof, 23:78
 Risk assessment instrument factors, 23:91
 Risk assessment level, 23:84
 Risk levels, 23:87
 Child pornography cases, 23:83
 Civil nature of proceeding, 23:77
 Collateral consequence of conviction, registration as, 23:77
 Community access to registration list, 23:87
 Convictions requiring registration, 23:81
 Counsel, appointment of, 2:19
 Effective assistance, 23:99
 Court martial conviction may require registration, 23:82
 Crimes requiring registration, 23:80, 23:81
 Cyberbullying, 23:82
 Defendant's rights, 23:98
 Doe v. Pataki, redetermination hearing under, 23:101
 Double counting, Risk Assessment Instrument, 23:96
 Duration of registration, 23:87
 Essential elements, 23:82
 Failure to register, consequences of, 23:77
 Forms
 Defense affirmation and memorandum on, 23:176
 Findings of fact, conclusions of law, and order after SORA modification hearing, 23:181
 Initial letter to defendant in SORA case, 23:173
 Letter to client regarding Level 1 after SORA hearing, 23:174
 Memorandum of law in support of modification, 23:179
 Modification
 Letter requesting representation in proceeding, 23:182
 Memorandum of law in support of, 23:179
 Order granting, 23:181
 Prosecutor's affirmation in opposition to, 23:180
 Questionnaire, 23:177
 Representation in proceeding, letter requesting, 23:182
 Notice of appeal from, 23:191
 Proposed findings of fact, conclusions of law, and order after SORA modification hearing, 23:181
 Risk level, petition to modify, 23:178
 Generally, 23:75-23:104
 Guidelines, 23:77

SEX OFFENDER REGISTRATION ACT

—Cont'd

Hearings, 23:99, 23:100
 Adjournment, 23:97
 Appeal of SORA ruling, 23:103, 24:104
 Counsel, offender's right to assigned, 23:99
 Doe v. Pataki, redetermination hearing under, 23:101
 Evidentiary requirements, 23:100
 Hearsay, requirement of reliable, 23:100
 Notice of classification proceeding, 23:99
 Order after, 23:102
 Redetermination hearing, 23:101
 Juvenile offender convictions, 23:81
 Kidnapping offenses, 23:81
 Length of registration, 23:87
 Modification proceeding, 23:104
 Notice
 Requirements, 23:86
 Time frames for, 23:78
 Notice of registered sex offender, 23:87
 Notice to offender, 23:97, 23:99
 Overview, 23:75, 23:77
 Predator, classification as, 23:85
 Redetermination hearing, 23:101
 Registration process, 23:80
 Reporting requirements, 23:87
 Risk assessment
 Appealing risk classification level, 23:84
 Board of Examiners of Sex Offenders responsible for implementing classifications, 23:88
 Case summary included with Risk Assessment Instrument, 23:91
 Double counting, Risk Assessment Instrument, 23:96
 Factors under Risk Assessment Instrument, 23:92
 Guidelines and commentary, 23:90
 Notice to offender, 23:99
 Notification requirements, 23:86
 Overrides resulting in presumptive risk assessment levels, 23:93
 Points, factors under Risk Assessment Instrument and adding, 23:92
 Predator, classification as, 23:85
 Predicate or violent offender, classification as, 23:85
 Risk Assessment Instrument, 23:88-23:96
 Risk levels, 23:81, 23:84-23:87
 Static-99-R Instrument, 23:89
 Upward or downward departure, 23:94, 23:95
 Violent or predicate offender, classification as, 23:85
 Youthful offender adjudications, 23:81
 Time requirements, 23:78

SEX OFFENDER REGISTRATION ACT

—Cont'd

Toll-free number to access registry, 23:87
Youthful offender adjudications, 23:81

SEX OFFENSES

Battered woman. See Battered Woman Syndrome
Cases, harsh and excessive sentences modified on appeal, 22:182

Second child sexual assault offender, 22:112

Child

Expert witnesses, failure to obtain; ineffective assistance of counsel, 2:81

Statute of limitations, 13:7

Child sexual abuse accommodation syndrome, 18:131

Civil management for sex offenders, 23:105-23:109

Constitutionality, 23:106

later review, 23:117

Within and outside of civil management, convictions, 23:109

Petitions, civil; attorney for respondent, 23:111

Plea bargaining, 23:109

Prior crimes, 23:108

Probable cause hearing and pretrial motions and hearings, 23:111

Sex Offender Management and Treatment Act, under, 23:105

Sexually motivated felony, 23:107

Courtroom identifications, defendant's use of identifying scars, 9:205

Date specified, 3:46

Discovery, child protective services reports, 8:83

Local laws addressing sex offenders, 23:76

Medical records exonerating defendant, sanctions for untimely Brady disclosure, 8:33

"Once or more than once," in each count, duplicitous indictment, 3:38

Overview, 23:75

Prior crimes; civil management for sex offenders, 23:108

Privacy issues in sex offense cases, 19:41

Probation, 23:75

Rape. See Rape

Second child sexual assault offender, 22:112

Sex Offender Management and Treatment Act, 23:105, 23:110

Sex Offender Registration Act. See Sex Offender Registration Act

Sexual abuse. See Sexual Abuse

Sexual acts performed with, bill of particulars, 8:124

Sexually motivated felony, 23:107

Sodomy. See Sodomy

SORA. See Sex Offender Registration Act

Statute of limitations, no, 13:10

SEX OFFENSES—Cont'd

Statutory speedy trial, later accusatory instrument with different basis, 13:56

Supplemental sex offender victim fee, 23:75

Uncharged crimes, permissible use of, 12:28

Use of deadly physical force in, self-defense, 15:14

Youthful offender, ineligibility for Youthful offender treatment, 21:69

SEXUAL ABUSE

Discovery related to victim, 8:83

Jury charge, lesser included offenses, 16:43

Punishable by single act, continuing crime theory inapplicable, indictment, 3:44

Sentences concurrent, several convictions, single incident, 22:21

SEXUALLY TRANSMITTED DISEASE

Victim infected with, defendant required to provide blood samples, 8:39

SEXUAL MISCONDUCT

Lesser included offenses, 16:6

Prosecutorial discretion to determine charges, 3:5

Sandoval rules, inquiry for impeachment purposes, 11:28

SHACKLING

Grand jury, 6:46

Jury viewing, 18:182

Jury viewing, 19:29

SHIELD LAW

Privilege applies, 18:28

SHOCK CAMP

Eligibility limited, convicted felons only, 22:35

Sentencing alternative, described, 22:35

Six months "incarceration" at shock facility, 22:35

SHOCK PROBATION/SPLIT SENTENCE

Sentence, described, 22:34

Notice of given to defendant, 22:34

Violation, resulting in resentencing, 22:34

SHOPLIFTING

See Petit Larceny

SHOWUPS

Suppression of identification, motion for. See Identification of Defendant, Suppression

SIDEBAR CONFERENCES

Defendant's right to be present, 19:13

Defendant's right to present at bench, 19:86

Juror, with, 19:86

Lengthy objection, 18:167

Pro se defendant at, 2:10

Request for sidebar, 18:153

SILENCE

- Cross-examination of defendant's, 18:51
- Defendant's
 - Codefendant not protected by defense objections, 14:17
 - Silence inadmissible, 18:34, 18:50, 18:86
- Exculpatory circumstances, 9:139
- Misconduct on summation, 18:198
- Preservation of error, counsel's silence on absence of ruling as abandonment of motion, 18:155
- Sentencing, 22:190
- Witness's silence, 15:40

SIMPLIFIED TRAFFIC INFORMATION

- See Traffic Ticket

SIMULTANEOUSLY OCCURRING ACTS

- Uncharged crimes, permissible use of, 12:26
- Ventimiglia hearings not necessary, 12:38

SIXTH AMENDMENT

- See Counsel

SLEEPING

- Attorney, by, 2:75
- Juror, by, 19:134

SOCIAL MEDIA AND NETWORKS

- Access to information, 18:82
- Addresses for subpoenas, 8:101
- Admissibility, 18:85
- Instant messages, 18:82
- Jury instruction, 19:133
- Search and seizure, 9:94
- Subpoenas, 8:101
- Text messages, 18:84
- See also Text Messaging

SODOMY

- Conviction for set aside, meaningful appellate review not possible, 3:81
- Court, 21:59
- Exclusion of earlier rape conviction, defendant charged with sodomy, Sandoval rules, 11:11
- Forcible, use of deadly physical force in self-defense, 15:14
- Jury charge, lesser included offenses, 16:43
- Multiple acts for each count submitted, 3:40
 - Duplicity rule guarantees unanimous verdict, 3:40
- Punishable by single act, continuing crime theory inapplicable, indictment, 3:45
- See also Sexual Abuse
- Uncharged crimes, permissible use of, 12:13

SPECIAL INFORMATION

- See Arraignment on Special Information
- See Information subhead: Special information

SPECIAL PROSECUTOR

- Appointed by superior court judge, 1:12
- Indictment by, writ of prohibition remedy, 23:6
- Motions, 1:12
- Motions, 7:21
- Prosecutorial powers, 1:12

SPEEDING

- Expert testimony not required, 18:146
- Lay opinion, 18:146
- Moving radar, 18:146

SPEEDY TRIAL

- 2020 changes law, 13:13
- Accusatory instrument, conversion of, 13:56
- Appeals
 - Constitutional speedy trial, preservation for appeal, 13:20
 - Statutory speedy trial
 - People's failure to appeal, 13:44
- Applicability of provision for
 - Statutory speedy trial, exceptions, 13:17
- Certificate of compliance, 13:14
- Changes in law effective 2020, 13:13
- Comparison of constitutional and statutory speedy trial, 13:16
- Constitutional speedy trial, 13:16, 13:83-13:95
 - CPL 30.20, 13:16
 - Delay, dismissal with prejudice, 13:84-13:93
 - Defendant delay, 13:87
 - Demonstrable prejudice to defense, 13:90
 - Extent of delay, 13:86
 - Impairment of defense by delay, determination, 13:90
 - Incarceration, pretrial, extent of, 13:89
 - Motion for dismissal, 13:90, 13:92
 - No time limit, factors considered, 13:85-13:90
 - Post-conviction delay, no violation, 13:91
 - Reason for delay, 13:87
- Dismissal
 - Combined statutory and constitutional grounds, 13:20
 - Further prosecution precluded, 13:20, 13:84
 - No time limit on dismissal, factors considered, 13:85
 - With prejudice, 13:84-13:92
- Due process and right to, 13:16, 13:93-13:95
 - Time between commission of offense and commencement of trial, 13:16
- Federal constitution, 13:16, 13:83
- Guilty plea
 - Preservation for appeal on, 13:20
 - Withdrawn plea, effect on commencement of action date, 13:50

SPEEDY TRIAL—Cont'd

- Constitutional speedy trial, 13:16, 13:83-13:95
 - Cont'd
 - Motions
 - Based on both statutory and constitutional grounds, 13:20
 - Dismiss, motion to, 13:20
 - New York Civil Rights Law embodying federal right, 13:16, 13:83
 - Remedy, dismissal with prejudice, 13:84
 - Motion for dismissal, 13:92
 - Right to, 13:83-13:95
 - Statutory speedy trial compared, 13:16, 13:83
 - Time between commission of offense and commencement of trial, 13:16, 13:83
 - Due process and, 13:16
 - Waiver of rights, 13:20, 13:96
 - Knowing and voluntary waiver required, 13:96
 - Preservation for appeal, 13:20, 13:99
- Delay
 - Grand jury minutes, 13:67
- Extradition and, 13:98
- Filing, and implications for, 3:3
- Grand jury minutes not provided, 13:67
- Grand jury within readiness for, 4:57
- Guilty plea, effect on appeal, 17:80
- Homicide charges
 - No coverage under CPL 30.30 provision, 13:18, 13:25
- Jurisdiction, defendant in other
 - Defendant's right to transfer within 180 days, 13:98
 - Extradition from other jurisdiction, waiver and, 13:67, 13:98
 - People's failure to produce defendant, 13:67, 13:98
- Juvenile delinquency proceedings, 13:83
- Motions based on both constitutional and statutory grounds, 13:20
- New statute effective in 2020, 13:1
- New York State statutory provisions, 13:16, 13:83
- Offenses covered
 - Statutory exceptions, 13:18
- Omnibus motion made outside of 45-day period, 7:16
- Overview, 13:15-13:106
- Prosecution delay in turning over grand jury minutes, 6:66
- Purpose of, 13:21
- Right to
 - Advocacy, effectiveness of, 2:82
 - Appellate delay, long, 24:64
 - Direct appeal notwithstanding waiver, 24:7
 - Effective assistance of counsel, 2:82

SPEEDY TRIAL—Cont'd

- Right to—Cont'd
 - No direct application of speedy trial rights to appeals, 24:65
- Retrial
 - Speedy trial rights applied to, 24:65
 - Untimely new indictment for, motion for speedy trial, 24:127
- Statutory speedy trial, readiness, 13:22
- Time not tolled by dismissal of defective accusatory instrument, 3:78
- Withdrawal from representation vs., 2:67
- Statutory speedy trial, 13:17-13:20, 13:21-13:87
 - See also Speedy Trial, Statutory Speedy Trial
- Time limits, grand jury actions, 5:19
- Traffic infractions
 - Coverage under constitutional provision, 13:26
 - No coverage under CPL 30.30 provision, 13:18, 13:26
- Waiver, 13:96-13:100
 - Defense failure to make timely motion to dismiss, 13:69, 13:97
 - Extradition from another jurisdiction, 13:98
 - Failure to move to dismiss before trial, as waiver, 13:97
 - Guilty plea, waiver of CPL 30.30 issue, 13:20, 13:99, 13:100

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL

- Absent or unavailable defendant, 13:34-13:36
 - Arrest of, 13:36
 - Bench warrants by prosecution, 13:36
 - Chargeable time, 13:36
 - Defined, 13:36
 - Due diligence by prosecution, 13:66
 - Meaning of
 - Absent, 13:34
 - Unavailable, 13:34
 - Post-readiness delay caused by, 13:66
- Accusatory instrument filing date, commencement of action, 13:27
 - Higher charge, new commencement date, 13:55
 - Indictment dismissed, new one voted, 13:53
- Later accusatory instrument
 - Different basis, new commencement date, 13:56
 - Higher charge, new commencement date, 13:55
 - Indictment dismissed, new one voted, 13:53
 - Lesser charge, new commencement date, 13:54
 - New charges on same transaction, same date, 13:57
 - Same charge, original commencement date, 13:52

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

- Accusatory instrument filing date, commencement of action, 13:27—Cont'd
 - New charges on same transaction, same date, 13:57
 - Prosecution unreadiness, 13:81
- Adjournment at request or consent of defense
 - Adjournment slips signed by both counsel, 13:33
 - Codefendants, consent by one/no consent by other, 13:38
 - Defense failure to
 - Appear in court, not acquiescence to alternate date, 13:34
 - Prosecution
 - Control, unanticipated fact beyond, 13:40
 - Unreadiness, adjournment, 13:81
- Adjournment in contemplation of dismissal, 13:33
- Adjournment in contemplation of dismissal, 22:44
- Adjournment, request for, 13:21
- Appeal, 13:45, 13:80
 - People's failure to appeal, 13:44
- Appearance tickets, commencement date exception for, 13:49
- Commencement date, change of, 13:48-13:57
 - Appearance tickets exception, 13:49
 - Commencement date defined, 13:48
 - Indictment dismissed and new one voted, original date, 13:53
- Later accusatory instrument
 - With different basis, 13:56
 - On same charge, 13:52
- New charges on same transaction, same date, 13:57
- Retrial order, effect, 13:51
- Substitute accusatory instrument with lesser charge, 13:54
- Withdrawn guilty plea, effect on, 13:50
- Commencement of action begins running time, stoppable, 13:27-13:72
 - Accusatory instrument filing date, 13:27
 - Change of commencement date, 13:48-13:57
 - Excludable periods, 13:28-13:52
 - People's announcement of readiness, 13:58-13:61
 - Post-readiness delays, 13:17, 13:27, 13:62-13:67
 - Sealed indictment filing date, 13:27
- Computation of speediness, 13:17
- Constitutional speedy trial compared, 13:16-13:19, 13:83
- Converting accusatory instrument, 13:54
- Court congestion, effect of, 13:46

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

- CPL 30.30 provision, 13:17
- Defendant
 - Incompetence, time not charged to People, 13:31
 - Released pending trial, 13:24
 - Without counsel, time not chargeable to People, 13:39
- Defendant absence or unavailability, 13:34-13:36
- Defense motion for pretrial release, 13:82
 - Habeas corpus proceeding, 13:82
- Defense motions to dismiss, 13:68-13:79
 - Allegations denied in People's papers, hearing, 13:77
 - Contents of defense papers, 13:70
 - See also subhead: Motion papers contents
- Dismissal requirements, 13:19
- Factual dispute in People's papers, hearing, 13:77
- Failure to
 - Make timely motion, waiver and ineffective assistance, 13:69
 - Respond, People's, 13:75
- Hearing
 - Not always required, 13:76
 - People's failure to sustain burden at, 13:78
 - Required, conditions, 13:77
- Ineffective assistance of counsel, 13:69
- Lower court charges under CPL 170.30(1)(e), 13:68
- People's failure to sustain burden at hearing, 13:78
- Prosecution's responsive papers, 13:73-13:76
- Sua sponte speedy trial dismissal, 13:79
- Sufficiency of prosecution response, 13:74
- Summary grant or denial, without hearing, 13:76
- Superior court indictments under CPL 210.20(1)(g), 13:68
- Waiver on failure to move, 13:69
- Dismissal
 - Motions to dismiss, 13:17, 13:19, 13:68-13:79
 - Post-readiness delay tacked to earlier period, 13:17, 13:64
 - Prosecution failure to announce readiness, 13:17
 - Violation of CPL 30.30(1) time periods, 13:22
- Due diligence required of prosecution, 13:66
 - Meaning of absent and unavailable, 13:35
- Exclusions from speedy trial time, 13:28-13:52
 - Allotted time varies with level of offense, 13:47
- Day of commencement of action excluded, 13:29

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

- Exclusions from speedy trial time, 13:28-13:52
 - Cont'd
 - Defendant
 - Absence or unavailability of, 13:34-13:36
 - Other proceedings concerning, People not charged, 13:30-13:32
 - Without counsel, 13:39
 - Exceptional circumstances, 13:40-13:45
 - Illness of victim or prosecution witness, 13:41
 - Investigation, delay due to, 13:43
 - Joinder for trial with codefendant, not chargeable, 13:37, 13:38
 - People
 - Failure to appeal, 13:44
 - Prosecutor unavailable, 13:42
 - Reasonable delay, 13:30-13:32
 - Felony
 - Within 90 days requirement, 13:24
 - Dismissed indictment, new one voted, original commencement date, 13:53
 - Later instrument with different basis, new commencement date, 13:56
 - Murder 2nd degree, 13:25
 - Readiness for trial
 - Charge readiness announced before grand jury indictment, insufficient notice, 13:60
 - Within six calendar months, 13:47
 - Reduction to misdemeanor, 13:54
 - Sexual offense, 13:56
- Generally, 13:17, 13:21
- Grand jury minutes, delay, 13:67
- Habeas corpus proceeding to gain pretrial release of defendant, 13:82
- Homicide charges, 13:18, 13:25
- Indictment
 - Commencement with filing of sealed indictment, 13:27
 - Dismissed indictment, new one voted, original commencement date, 13:53
 - Felony charge readiness announced before grand jury indictment, insufficient notice, 13:60
 - Notice of readiness at arraignment on indictment, 13:59
- Investigation, delay due to, 13:43
- Joinder for trial with codefendant
 - No time chargeable to People, 13:37
- Mental health issues, time not charged to People, 13:31
- Misdemeanors
 - Within days requirement, 13:24, 13:47
 - Felonies reduced to, 13:54

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

- Motion papers contents, defense motion to dismiss, 13:70
- Commencement date of action, 13:70
- Existence of excess unexcused delay, 13:70
- Grounds for motion, 13:70
- Post-readiness delays claimed, 13:71
- Prejudice to defendant not required, 13:72
- Pre/post readiness delays, 13:70, 13:71
- Notice of
 - Impending dismissal, failure to give People reasonable notice, 13:79
 - Readiness, 13:59, 13:60, 13:70
 - See also subhead: Readiness for trial
- Offenses covered, 13:18
- Other proceedings concerning defendant, People not charged, 13:30-13:32
 - Defendant incompetence, 13:31
 - Mental health issues, 13:31
 - Pretrial motions, delay from, 13:32
 - Psychiatric evaluations, 13:31
- People, periods of time charged to, 13:27
- Pivotal dates, 13:17
- Post-readiness delays, 13:27, 13:62-13:67
 - See also subhead: Readiness for trial
 - Absent defendant, prosecution's due diligence requirement, 13:66
 - Additional time periods required, 13:62
 - Court congestion, excludable delay, 13:65
 - Defendant delay, excludable, 13:65
 - Defense motion to dismiss, 13:71
 - Delay tacked on to earlier period, dismissal on, 13:17, 13:27, 13:64
- Excludable delays, 13:65
 - Exceptional fact or circumstance, 13:65
- Grand jury minutes, time for prosecution's delivery, 13:67
- People, charges to
 - Delay, 13:67
 - Time, 13:62
- People's
 - Burden to establish excludability, 13:63, 13:64
 - Failure to produce defendant in another jurisdiction, 13:67
 - Inability to produce complainant, 13:67
- Tacking on of, 13:17, 13:64
- Time, no prosecutor assigned, 13:67
- Pretrial motions
 - Delay time not charged to People, 13:32
 - Motion for pretrial release, 13:82
- Prosecutor
 - Disqualified prosecutor's office, 13:42
 - None assigned, 13:67
 - Unavailable, 13:42, 13:67

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

Prosecutor—Cont'd
 Unreadiness, 13:81
 Psychiatric evaluations, time not charged to People, 13:31
 Purpose, 13:21
 Readiness for trial
 Announcing readiness, 13:23, 13:27, 13:58-13:61
 Arraignment on indictment, announcement at, 13:59
 Certificate of, served on court and counsel, 13:58
 Date prosecution announces, 13:17
 Failure of prosecution to announce, case dismissal, 13:17
 Felony
 Charge readiness, insufficient notice, 13:60
 Within six calendar months, 13:47
 Illusory readiness, 13:23, 13:67
 Misdemeanors, within days, 13:24
 New
 Charges require new statement of readiness, 13:23
 Indictment, new announcement, 13:53
 Notice
 Premature service of notice of readiness, 13:58
 Sufficient, 13:59
 Notice, insufficient, 13:60
 Felony charge readiness announced before grand jury indictment, 13:60
 Placing case on trial ready calendar, 13:60
 Open court announcement of, 13:59
 People's
 Accusatory instrument defective, 13:60
 Announcement of readiness, 13:23, 13:27, 13:58-13:61
 Inability to produce complainant, 13:23
 Post-readiness delay, 13:17, 13:26, 13:62-13:67
 Statement of readiness, 13:24
 Unreadiness, prosecutor's, 13:81
 Varying time periods with levels of offenses, 13:47
 Violations, within days, 13:24
 Reducing charge, 13:54
 Retrial order, effect on commencement date, 13:51
 Sealed indictment filing date, commencement of action, 13:27
 Speedy trial clock
 Absent or unavailable defendant, effect, 13:34-13:36
 Change of commencement date, 13:48-13:57

SPEEDY TRIAL, STATUTORY SPEEDY TRIAL—Cont'd

Speedy trial clock—Cont'd
 Excludable periods, 13:28-13:52
 Insufficient notice of readiness, 13:60
 Post-readiness delays, 13:17, 13:26, 13:62-13:67
 Starting time, 13:27
 Restarting, 13:27
 Stopping action, 13:27-13:72
 Sua sponte speedy trial dismissal, 13:79
 Time periods
 Allotted time varies with level of offense, 13:47
 Applicability of, 13:22-13:27
 Calculation under CPL 30.30(1), 13:22-13:26
 Commencement of action begins running time, stoppable, 13:27-13:72
 See also subhead: Commencement of action begins
 Defendant's release pending trial, 13:24, 13:67
 Dismissal for violating CPL 30.30(1), 13:22
 Felonies, trial within 90 days, 13:24
 Homicide charges, 13:25
 Illusory prosecution readiness, 13:23, 13:67
 Traffic infractions, 13:26
 Violations, trial within 5 days, 13:24
 Unavailable defendant, 13:34-13:37
 See also subhead: Absent or unavailable defendant
 Waiver of rights, 13:96
 Counsel may waive, 13:96
 Guilty plea waiver, 13:99, 13:100
 Witness, vacation, 13:67

SPILLOVER EFFECT

Error, effect of, 24:116

SPOILIATION

See Evidence

SPONTANEOUS DECLARATIONS

911 recordings, 18:122, 18:123
 Generally, 9:122
 Hearsay exception, 18:17
 See also Statements

STANDING

Constructive possession, defendant with
 See also Mapp Hearing
 Constructive possession, defendant with, 9:73-9:76
 Pen register, 9:100
 Search warrant, 9:84

STATE DIVISION OF CRIMINAL JUSTICE SERVICES

Arrest record voided by, ACD, 22:38

STATEMENTS

- Agent obtaining, 9:114
- Bolstering, prior inconsistent statements, 18:64
- Completeness, rule of, 18:70, 18:71
- Concealing defendant from attorney, 9:138
- Conspiracy, 14:24
- Corroboration, 19:158
 - Out-of-court, improper cautionary jury instructions, 19:206
- Defendant's, suppression. *See* Defendant's Statements, Suppression
- Electronic recording, 9:120
- Exculpatory statements
 - Codefendants
 - Redaction, Bruton rule, 14:22
 - Severance, appropriateness of, 14:34
 - Part of statement not suppressed, admissibility, 18:28
 - Redaction, Bruton rule, 14:22
- False statements, search warrant challenged by asserting affiant made, Mapp hearing
 - See also* Mapp Hearing
- False statements, search warrant challenged by asserting affiant made, Mapp hearing, 9:87
- Foreign citizens, right to counsel, 9:136
- Miranda warnings not required, 9:131
- Notice to defense for using statement not required, 9:160
- Inculpatory, codefendant's
 - Bruton rule, 14:23
 - Conflict resolved by Bruton rule, 14:18
- Preclusion vs. suppression, 9:220
- Prior statements, inconsistent, 18:62, 18:125
- Recording, 9:120
- Redaction, 18:19
- Rosario material exclusion. *See* Rosario Material Rule of completeness, 18:71
- Spontaneous declarations, 18:122, 18:123
- Spontaneous statements, defendant's, admissible, 9:160
- Youthful defendant, 9:113

STATE OF MIND

- Admissibility issues, 18:5
- Defendant's intent, uncharged crimes evidence, 12:13
- Entrapment defense, relevance, 15:76
 - Justification defense, 15:75
 - Self-defense, 15:20
- Hearsay, 18:5
- Lesser included offenses
 - Intent, 16:19-16:24
 - Intoxication and, 16:23
 - Less culpable state of mind and lesser included offenses, 16:19-16:24
 - Criminal negligence, 16:19

STATE OF MIND—Cont'd

- Lesser included offenses—Cont'd
 - Less culpable state of mind and lesser included offenses, 16:19-16:24—Cont'd
 - Definition of mental state, 16:19
 - Knowledge, 16:19
 - Recklessness, 16:19
- Required choice of lesser offense, 16:21-16:24
- Burglary, 16:23
- Evidence determines, 16:22
- Intoxication and intentional conduct, 16:23
- Intoxication and reckless assault, 16:24
- Recklessness, 16:24
- Recklessness
 - Assault charges, 16:24
 - Less culpable state of mind and lesser included offenses, 16:19
- Shared mental state required, accomplices, 14:42
- Victim's, 18:5

STATE PRISON SENTENCE

- See* Prison subhead: Sentence

STATE REGULATIONS

- Generally, 1:3

STATUTE OF LIMITATIONS

- Accusatory instrument filing, and implications for, 3:3, 13:4
- Child sexual offenses, 13:7
- Civil and criminal law compared, 13:11
- Continuing offense, 3:48, 3:49
- Continuing offenses, 13:8
- Coronavirus, effect on criminal law, 13:1
- COVID-19, effect on criminal law, 13:1
- Criminal offenses
 - Commencement of criminal action, accusatory instrument filing date, 13:4
 - Guilty plea waives, 13:12
 - Measured from commission to commencement of crime, 13:4
 - Exceptions, 13:4-13:8
 - Seriousness of crime as factor, 13:3, 13:10
 - Time-barred action, prosecution burden, 13:11
- Defenses, 15:49
- DNA testing, 13:9
- Fugitive defendant, time tolled, 13:6
- Guilty plea waives, 13:12
- Larceny by fiduciary, action within one year after facts discovered, 13:5
- Limitation periods, 13:3-13:12
 - Guilty plea waives statute, 13:12
 - Measured from commission to commencement of action, 13:4
 - Exceptions, 13:4-13:8
- Malpractice cases, 2:87

STATUTE OF LIMITATIONS—Cont'd

- Misconduct in public office, charge within five years after service ends, 13:5
- Murder offenses, no statute of limitations with, 13:10
- Seriousness of crime as factor, 13:3, 13:10
- Sexual offenses, no statute of limitations with, 13:10
- Time-barred action, prosecution burden, 13:11
- Tolling when whereabouts of defendant unknown, 13:9
- Whereabouts of defendant unknown, tolling where, 13:9

STATUTORY INTERPRETATION

- State statutes, 1:2
- Strict liability, 16:19, 23:80

STATUTORY SPEEDY TRIAL

- See Speedy Trial, Statutory Speedy Trial

STAYS

- Appeal, 24:10-24:13
- Civil proceeding, 18:74
- Stay of sentence and release pending appeal, 4:83-4:85
 - Application for stay, 4:83
 - Court applied to, 4:83
 - One-time-only application, 4:83
 - Court rules applicable, 4:83
 - Perfection of appeal upon, 4:84

STENOGRAPHERS

- See Court Stenographers

STIPULATION

- Bench trial conducted on stipulated facts, 19:62
- Clear, unequivocal stipulation, enforcement, 18:148
- Defendant's rights, protection of, 18:147
- Discontinuing appeal
 - Appellate attorney request that defendant sign, 24:67
 - Defendant insistence on appeal, 24:67
- Enforcement, 18:148
- Evidence sent to jury room, jury deliberations, 19:213
- Expert witness's qualifications, 18:141, 18:142
- Ineffective, codefendants not protected by defense objections, 14:17
- In lieu of motions, 7:1
 - Discovery as, 7:1
 - Making of, 7:14
 - Pretrial hearings as, 7:1
- Overview, 18:147
- Preservation of error, separate objection by codefendants, 18:160
- Reopening trial proof for, 19:8

STIPULATION—Cont'd

- Stipulation to one objection by one defense attorney applicable to all, 14:17
- Uncharged crimes, stipulation to element of, 12:36
- Unconditional pretrial stipulation on admission of evidence binding at retrial, 24:125

STOLEN PROPERTY

- Alibi witnesses, adjournment to reinvestigate case to obtain, 19:48
- Defendant charged with, insufficient proof, 19:197
- Defendant charged with, insufficient proof, jury charge on presumptions, 19:197
- Fruits of crime, recent and exclusive, 19:186
- Automobiles, limited inventory searches to protect police against false claims of stolen property, 9:66
- Evidence, 8:81
- Inspection by defendant, 8:81
- Penal Law, 8:81
- Lost before trial, prosecutor's failure to produce, remedy for error, 18:208
- Presumption, jury charge
 - Fruits of crime, recent and exclusive
 - See also Jury Charge
- Return of, 1:59
- Sentences concurrent, for possession, several items, different victims, 22:21

STOP

- See also Probable Cause
- Stopping action, speedy trial clock, 13:27-13:72
- See also Speedy Trial, Statutory Speedy Trial
- Warrantless police intrusion
 - See also Warrantless Police Intrusion
- Warrantless police intrusion, 9:23

STRICT LIABILITY

- Attempt and, 16:28

STRIP SEARCH

- See Body

STUDENTS

- College, 9:115
- Records, 8:84
- Statement to principal, 9:115
- Unreasonable search and seizure, constitutional prohibition, 9:10

SUA SPONTE

- Actions, speedy trial dismissal, 13:79

SUBDIVISIONS

- Constitutional violations, 23:46-23:50
- Marijuana convictions, 23:53
- Misdemeanor ineffectiveness, 23:52
- Sex trafficking victim, 23:51

SUBPOENA

- Address, 8:93
- Ad testificandum
 - Process issued by court, 1:30
- Ad testificandum, 8:95
 - Use of, 8:96
- Attorney General, subpoena power, 1:10
- Child, upon, 8:109
- Compulsory process, 8:83, 8:96
- Condition, motion to, 8:112
- Contempt, 8:97
- Costs, reproduction, 8:96
- Court issued, 8:103, 8:115
 - Discretion, 8:115
 - Improper issuance by either side, 8:115
- Defendant's right to subpoena witnesses, guilty plea, 17:37
- Defense restricted pretrial, 7:30, 9:224
- Department of Motor Vehicles records, 8:102
- Discovery, subpoenas for
 - Duces tecum
 - 911 recording, order to show cause for production of, 18:117
 - 911 recordings, 18:117, 18:118
- Discovery, subpoenas for, 8:91-8:114
 - Clinical record of person treated in mental health facility, 8:103
- Compliance, 8:110
 - Acceptable compliance, 8:108
 - County clerk, evidence delivered to, 8:110
 - Noncompliance with subpoenas, 8:111
 - Police noncompliance, 8:111
- Condition subpoena, motion to, 8:112
- Counsel view of documents, 8:110
- Department of Motor Vehicles records, 8:102
 - Discovery through, 8:95, 8:96, 8:103
- Good faith preliminary showing requirement, 8:94
- Improper use, prohibited, 8:93
- Incarcerated person, production of, 8:103
- Indigent defendant, out-of-state, 8:98
- Internet and telephone providers, 8:101
 - Counsel can issue, 8:97
 - Court's issuance required, 8:103, 8:115
 - Improper, by prosecution, 8:106
 - Procedure, 8:97, 8:103
- Judge's signature on subpoena, advantage, 8:97
- Jurisdiction and validity of subpoenas, 8:98
- Material produced in response to, treatment, 8:92
- Modification of subpoena, motion for, 8:112
- Noncompliance with subpoenas, 8:111
- Notice, 8:108
- Original documents, 8:103

SUBPOENA—Cont'd

- Discovery, subpoenas for, 8:91-8:114—Cont'd
 - Out-of-state defendant, 8:98
 - Person to be subpoenaed, 8:95
 - Police noncompliance, 8:111
 - Police noncompliance with subpoena and issuance of, 8:111
 - Procedure, 8:95
 - Prohibitions against subpoenas in place of discovery procedure, 8:93
 - Prosecution, 8:95
 - Quash subpoena, motion to, 8:112
 - Appealability on ruling of motion, 8:113
 - Expert witness's refusal to testify, 8:114
 - Police, appealability on ruling of motion, 8:113
 - Service, manner of, 8:108
 - Telephone and internet providers, 8:101
 - Validity of subpoenas, 8:98
- Duces tecum
 - Act of production doctrine, 6:14
 - Grand jury proceedings, 6:12-6:14
 - Process issued by court, 1:30
- Family Court records, access to, 8:107
- Fees, 8:108
 - Criminal record, witness, 8:139
 - Affirmation in opposition to, 8:145
 - Motion to, 8:144
- Forms
 - Appeal, subpoena for trial court record, 24:168
- Governmental records, 8:99
- Grand jury proceedings, witness's testimony requested at, 6:11, 6:12-6:14
- Improper issuance by either side, 8:115
- Internet records, 8:101
- Judge as character witness, 18:47
- Judge called as witness in bench trial, 19:79
- Judicial, 8:97
- Jurisdiction and validity of subpoenas, 8:98
- Material witness, 18:75
- Mental health records, 8:106
- Mentally ill persons, service on, 8:105
- Minor, upon, 8:109
- Misuse, 8:93, 8:101
- Noncompliance with, 8:111
- Notice, amount of required, 8:108
 - Motion to quash; appealability of ruling, 8:113
 - Noncompliance with subpoena and issuance of subpoena duces tecum, 8:111
- Preliminary hearings, 8:91
- Quash, 8:112-8:114
- Service of, 8:108
- Telephone records, 8:101
- Validity of subpoenas, 8:98
- Wade hearing, 8:91

SUBPOENA—Cont'd

Witness, 19:237

SUMMARY REVERSAL

Motion for, 24:126

SUMMATION

Defense, 18:204

Misconduct by both prosecution and, 18:203

Personal attacks on prosecution, avoiding,
18:204

Disallowing attorneys from defining applicable
law, 18:204

Effective summation, defense entitled to, 19:7

Missing witness charge, no, counsel comment,
19:188

Jury charge

See also Jury Charge

Jury charge, 19:188

Missing witness, comment on, 19:188

Order of, 18:203

Prosecutor's

Misconduct by both defense and prosecutor,
18:203

Objections to, 18:202-18:203

See also Objections to Prosecutor's Summa-
tion

SUMMONS

Arraignment and issuance of, 4:12

Corporation as defendant, 1:24

Process issued by court, 1:27

Unpaid surcharge, 22:93

Use of, 1:47

SUPERIOR COURT

Accusatory instruments. See Superior Court
Instruments

Arraignment on indictment

Requiring new appearance, 1:71

Arraignment on indictment, 4:28

Bail determination review, 4:75

Habeas corpus compared, 4:76

Informality of, 4:75

Bench trial, removal to superior court, 19:69

Defined, 1:68

Double predicate felon, bail application, 4:68

Excessive bail set by local court, review, 24:2

Indictment arraignment, 4:28

Local criminal courts distinguished, 1:25

Pre-indictment suppression motion before, 9:177

Statutory speedy trial motion to dismiss under
CPL 210.20(1)(g), 13:68

Youthful offenders, conviction of, 21:67

SUPERIOR COURT INSTRUMENTS

Amendment of, 3:70

SUPERIOR COURT INSTRUMENTS—Cont'd

Indictment, 3:13, 3:14

Amendment of, 3:70-3:76

Waiver of. See subhead: Information

Information

Continuing criminal action, 3:1

Defined by CPL 200.15, 3:50

Description and function, 3:17-3:23

Felony complaint replaced by, 3:16

Filed in, 3:1

Indictment, waiver of, 3:17-3:23

Exceptions, 3:21

Felony charge, 3:18

Lower court charges, different charges from,
3:19

Post-indictment waiver untimely, 3:22

Probable cause, 3:18

Requirements, 3:18

Signature by defendant on waiver required,
3:20

Order directing prosecutor to file, 3:8

Use with waiver of indictment and guilty plea
with agreed on sentence, 3:50

Types, 3:13, 3:50

**SUPERSEDING ACCUSATORY
INSTRUMENT**

See Accusatory Instrument

See Depositions

See Indictment

See Traffic Ticket

SUPERVISION

Review, 23:119

Sex Offender Management and Treatment Act
(SOMTA), 23:115

SUPPORTING DEPOSITION

Generally. See Deposition

Traffic ticket. See Traffic Ticket

SUPPRESSION

Abandonment doctrine, 9:41

Appeal of, 9:6

Appellate review, standards of, 24:72

Checklists, 9:234

DWI case, 9:232

Huntley hearings, 9:231-9:233

Letter to client regarding upcoming hearing,
9:235

Dismissal as remedy, 9:6

Emergency doctrine, 9:19

Evidence, 7:10, 7:11, 7:15

Evidence. See Suppression of Evidence

Fellow officer rule, 9:29

Granting, charges dropped against defendant,
effect, 9:16

Identification of defendant, 9:221

SUPPRESSION—Cont'd

- Fellow officer rule, 9:29—Cont'd
 - Mapp hearing, 9:71-9:80
 - Required contents of motion papers, 9:69
 - Statements, defendant's, 9:169
 - Tailored testimony, 9:7
- Generally, 9:1-9:6
- Hearings
 - Appellate review, standards of, 24:72
 - Confrontation rule inapplicable, 18:26
 - Identification of defendant. *See* Identification of Defendant, Suppression
 - Mapp hearing
 - See also* Mapp Hearing
 - Wade hearing. *See* Identification of Defendant, Suppression
- Motion
 - Appeal, effect of guilty plea, 17:80
 - Evidence
 - See also* Evidence
 - Identification of defendant
 - See also* Identification of Defendant
 - Preservation of error through, 18:165, 18:166
 - See also* Preservation of Error
 - Statements, defendant's
 - See also* Defendant's Statements
 - Transcript sought by defense, adjournment requested, 19:49
 - Trial judge's rationale for determinations, bench trial, 19:72

SUPPRESSION OF EVIDENCE

- Absence of attenuation, 9:150
 - Defendant's statements, potential for suppression, Fourth Amendment, 9:152
- Identification, 9:184
- Identification of defendant, joint viewing, 9:181
- Warrantless police intrusion, 9:18
- Appeals, 24:14, 24:65
- Attenuation, admissibility
 - Defendant's statements, potential for suppression, Fourth Amendment
 - See also* Defendant's Statements
- DeBour case and warrantless police intrusion
 - See also* Warrantless Police Intrusion
- DeBour case and warrantless police intrusion, 9:14-9:35
- Defendant's statement
 - See also* Defendant's Statements
- Defendant's statement, 9:101-9:178
 - Informant purchasing, from defendant, single-photo identification improper, 9:180
 - Use before making statement, admissibility, 9:146
 - Plain view, objects in, 9:42

SUPPRESSION OF EVIDENCE—Cont'd

- Denial, on guilty plea, decision to appeal on, 24:14
- Drug
 - Warrantless search and seizure
 - Automobiles, warrantless stop and search.
 - See* Automobiles, Warrantless Stop and Search
- Exigent circumstances, 9:34
- Fruit of illegal actions, 9:8
- Gestures, defendant's, 9:140
 - Fellow officer rule, 9:29
 - First hand knowledge required, 9:70
 - Huntley hearing, at, 9:166
 - Mapp hearing, at, 9:72
- High crime area, 9:37
- Identification of defendant
 - See also* Identification of Defendant
- Identification of defendant, 9:179-9:230
 - Courtroom identifications, 9:208
 - Defendant's statements, use of, 9:97, 9:154-9:178
 - Identification of defendant, 9:180, 9:225-9:227
 - Incorporation of another document by reference, 9:159
 - Search and seizure, 9:7
 - Seized property, use at trial, 9:97
- Jury informed of, 2:73
- Motion to suppress
 - Incompetent persons, 2:44
- Notice to defense
 - Defendant's statements, use of
 - See also* Defendant's Statement
 - Identification of defendant
 - See also* Identification of Defendant
- Physical evidence
 - See also* Mapp Hearing
 - Search and seizure
 - See also* Search and Seizure
- Plain view, objects in, 9:42
- Police intrusion, warrantless
 - See also* Warrantless Police Intrusion
- Police intrusion, warrantless, 9:14-9:35
 - Automobiles, warrantless stop and search, 9:51
 - Huntley hearings, prosecution's burden, 9:166
- Pre-indictment motion, 7:15
 - Allegation of sufficient fact for, 7:10
 - Facts, not legal conclusion, essential, 7:11
 - Defendant's testimony, inadmissibility of, 7:36
 - Facts, not legal conclusion, essential, 7:11
 - Failure to move for suppression hearing at trial, 7:8
 - Reason for suppression, 7:11
 - Reopening of, preservation and, 7:46
 - Inadequacy of hearing evidence, 7:47

SUPPRESSION OF EVIDENCE—Cont'd

- Pre-indictment motion, 7:15—Cont'd
 - Reopening of, preservation and, 7:46—Cont'd
 - Second attorney, motion to reopen by, 7:48
 - Seized drugs, 7:11
 - Sworn allegation required, 7:10
 - Exception to rule, 7:10
- Probable cause
 - Mapp hearing. See Mapp Hearing
- Prosecution's notice prior to use of evidence, failure to receive, suppression motion waived, 8:64
- Search and seizure. See Search and Seizure
- Search warrants. See Search Warrants
- Silence inadmissible, 9:138
- Suppression hearings
 - Huntley hearing. See Huntley Hearing
 - Mapp hearing. See Mapp Hearing
 - Wade hearing. See Wade Hearing
- Traffic infraction, CPL 710.30 notice to, 9:161
- Voice identification, 9:194
- Warrantless search and seizure. See Warrantless Search and Seizure

SUPREME COURT, UNITED STATES

- Review of appeal, 24:110
- Stay of sentence and release pending appeal, 4:83

SUPREME COURTS, STATE

- Stay of sentence and release pending appeal, 4:83

SURETY BOND

- Bail bond, secured, partially secured or unsecured, 4:60

TANGIBLE EVIDENCE

- Admissibility. See Recordings
- Jury instructions
 - Limiting instructions where transcript admitted, 18:115
 - Transcript not evidence, 18:115
 - Twice, counsel request instructions be given, 18:112
 - Where recording admitted, 18:112
- Rosario disclosure, 8:46

TAPE RECORDING

- Recording. See Recordings

TATTOOS

- Evidence, 18:4
- Identification, 9:207

TEACHERS

- Criminal record. See Schools and School Officials

TELEPHONE

- Bail application, justice courts, 4:66

TELEPHONE—Cont'd

- Brady disclosure, 8:26
 - Raising entrapment, drug case, disclosure required, 8:26
- Cellphones, 9:93
- Jail call, 9:98
- Jurors, 19:133
- Pen register, use of, 9:100
- Recording conversation, 18:104
- Search warrant, 9:93
- Statement overheard, 9:126
- Subpoena of records, 8:101
- Text messaging, cellphones
 - Business records, admissibility as, 18:84

TELEVISION

- Conditional examination of witness, videotapes, 18:72
- Witness testifying, 18:22

TEMPORARY INNOCENT POSSESSION DEFENSE

- Establishment, 15:66
- Overview, 15:66

TEMPORARY ORDER OF PROTECTION

- Crawford, Hearing with significant deprivation, 4:42
- Emergency issuance with family offense cases, 4:43
- Filing of instrument, 4:40
- Firearms license, 4:41
- Generally, 4:39-4:43

TESTIMONY

- Accomplice testimony, corroboration of, 14:47-14:51
 - See also Accomplices
 - Accessory after fact, 14:57
 - Connection of defendant to crime, 14:50
 - Establishment of all elements of crime, 14:51
 - Independent evidence, 14:47-14:51
 - Insufficient corroborating evidence, 14:50
 - Witness as accomplice, 14:47
- Admissibility of, 7:36
 - Hearing testimony, use at trial of, 7:36-7:38
 - Transcript request, 7:36
 - Use at trial of, 7:36-7:38
 - Immunity waived upon, 7:36
 - Proceedings dismissed, defendant's lack of opportunity to testify, 7:17
 - Self-incrimination privilege, 7:36
 - Suppression hearings, inadmissibility at, 7:36
 - Use at trial of, 7:36-7:38
- Alibi testimony, listing persons to provide, 15:36
- Collateral proceedings
 - Recantation, CPL 440.10 motion, 23:44

TESTIMONY—Cont'd

- Collateral proceedings—Cont'd
 - Writ of prohibition, psychological testimony precluded by judge, 23:10
- Colorable testimony, motion for severance, 14:35
- Confession referred to in, implicating defendants, redaction vitiated, 14:21
- Curative jury instructions for prejudicial or startling, remedy for error, 18:207
- Defendant's
 - Decision to testify. See Defendant's Decision to Testify
 - Failure to testify
 - Jury charge
 - See also Jury Charge
 - First trial testimony used by retrial prosecution, 24:125
- Expert witnesses. See Expert Testimony
- Grand jury testimony, 6:39-6:55
 - See also Grand Jury
- Immunity. See Immunity
- Jury charge, 19:160
 - Defendant's right to be present, 19:11
 - Jury request, deliberations, 19:217
- Lay testimony, 18:130
 - Examination of, 18:35
 - Preliminary hearings, 5:14
 - When opinion may be given, 18:146
- Lesser included offenses
 - Accomplices testifying for prosecution, 16:15
 - Dismantling of testimony, 16:15
 - Jury barred from irrationally dissecting testimony, 16:14
- Photograph to clarify, use of, 18:101
- Private, of inadmissible confession barred, suppression, 9:117
- Prosecution witnesses, Rosario material, pretrial testimony included in, 7:1
- Recantation evidence
 - Hearing entitlement, 20:41
 - Motion to set aside verdict, 20:21, 20:41
- Retrial. See subhead: Defendant's
- Rosario material, prosecution witness' pretrial testimony in, 7:1
- Speculative testimony
 - Motion for severance, 14:35
- Testimonial evidence, 18:35
 - Cross-examination, scope of, 18:54
 - Intervention by trial judge in examination of witness, 18:70
 - Lay witnesses, examination of, 18:35
 - Police witness, examination of, 18:35
 - Recross, scope of, 18:54
 - Redirect, scope of, 18:54
 - Time limits to present case, 18:70
- Videotaped testimony, admissibility, 18:127

TESTS

- Admissibility of, 18:76
- Photographs used to aid jury in understanding experts', 18:102

TEXT MESSAGING

- Admissibility, 9:93
- Business records, admissibility as, 18:84
- Driving, 22:94
- Generally, 18:84
- Jurors, 19:133
- Sexting, 23:81

THIRD DEPARTMENT

- See Appellate Division subhead: Third Department

TIME

- Adjournment, defense request for, 19:44
- Alibi defense, 8:75
 - Rebuttal witness, alibi, 8:75
- Appeal
 - Notice of appeal filed within
 - Late notice, 24:19
 - Notice of appeal filed within 30 days, 24:17
 - Pro se supplemental brief, application within 45 days, 24:39
 - Sentencing
 - Notice of appeal filed within 30 days, 24:17
- Bill of particulars, 3:39
- Bill of particulars, 8:126
- Computation, motion, 7:5
 - Within 5 days of felony arraignment, 7:17
 - With indicted defendant, critical time limit for motion to dismiss, 7:17
- Continuing crime theory, 3:43-3:45
- Conviction occurs on guilty plea or guilty verdict, 20:22
- CPL 440.10 motion
 - Judgment, time to bring, 23:30
 - Time for motion, 23:58
- Date of offense, amendment of indictment, prejudicing defendant, 3:74
- Date of offense determines treatment for, by age, 21:7
 - Family Court, transfers to, 21:43-21:49
- Defense, time limits applicable to
 - Appeal, notice of, 24:17
 - Speedy trial issues, 13:15-13:106
- Discovery
 - See also Discovery
- Eavesdropping, notice regarding, 8:73
- Jail
 - See Imprisonment
 - See Jail Time
- Jury charge
 - See also Jury Charge

TIME—Cont'd

- Jury charge, 19:138
- Questioning of jurors, 19:10
- Jury instructions, request for, lesser included offenses, 16:40, 16:41
- Limitations
 - Grand jury minutes, prosecution delay in, 6:66
- Limits
 - Present case, testimonial evidence, 18:70
 - Statements, defendants, notice to defense for using
 - See also Defendant's Statements
- Midnight, jury trial after, 1:26
- Misdemeanor complaint conversion to information, 5 days for, 4:55
- Motions to set aside verdict, between conviction and sentencing, 20:21
 - Conviction occurs on guilty plea or guilty verdict, 20:22
- New evidence, reopening pretrial hearing based on, 7:42
- Nonexistent crime, objection or motion before jury discharge, 20:14
- Omnibus motion, time within which to bring, 7:2
 - 45-day period, 7:2
 - Arraignment, defendant with representation or pro se, within 45 days of, 7:33
 - Defense counsel's first court appearance, motion within, 7:2
 - Motions made outside of, 7:16
 - Return date not required within, 7:5
 - At least request for, 7:1
 - Transcript of, request before completion of hearing, 7:36
- Perfection of appeal upon stay within 120 hours of stay issuance, 4:84, 4:85
 - Custody, right within, 4:21, 4:56
 - Weekend or holiday, 4:21, 4:56
- Plea entry at, 4:23
 - Application at arraignment, 4:44, 4:59
 - Between conviction and sentencing, 4:82
 - Failure to appear within 30 days of appearance, 4:81
- Preliminary hearing, 5:10-5:15
 - See also Preliminary Hearing
- Preservation of error through pretrial suppression motion, time for ruling, 18:166
- Pretrial, to prosecution, 15:36
- Promise of sentence as valid basis for plea, stating on record, 17:15
- Prosecution, time limits applicable to
 - Speedy trial issues, 13:15-13:106
 - Statutes of limitations, 13:3-13:13
- Retrial, untimely new indictment, 24:127
- Sandoval hearing, time for, 7:1

TIME—Cont'd

- Sandoval rules
 - Lapse of, between prior conduct and alleged crime, effect on old crimes
 - Imprisonment, 11:8
 - Uncharged crimes, prosecution's disclosure of previously, 11:40
- Search warrants, execution of, 9:79
- Sentencing delay, 22:178
- Sex offenses, 3:39
- Speedy trial
 - See Speedy Trial
 - See Speedy Trial, Statutory Speedy Trial
- Starting of criminal action, 13:4
- Statements, defendants, notice to defense for using, 9:157
- Statutes of limitations. See Statute of Limitations
- Time-barred action, prosecution burden to raise issue and demonstrate charge brought in time, 13:11
- Traffic violations, plea by mail within 48 hours, 4:26
- Uncharged crimes, 12:31
 - Permissible use of, lapse of time; Molineux, People v., 12:9
- Variance between charge and proof, 3:43
- Verdict, repugnant, preservation of repugnancy
 - Bench trial, CPL 330.30 motion allowed after, 20:10
 - Jury trial, claim before jury discharge, 20:10

TIME SERVED

- Bail, 4:47
- Interim probation, 22:175
- Persistent felony offender status, 22:117
- Primary custody, 22:28
- Revocable sentence, 22:4

TRAFFIC INFRACTION

- Administrative adjudication, 1:30, 1:31
 - Variations from criminal case, 1:31
- Burden of proof, 1:31
- Collateral estoppel issues, 22:212
- CPL 710.30 notice, 9:161
- Fingerprinting, no, 1:48
- Hearings, 1:31, 1:32, 1:33
- Local court, handled in, 1:68
- Offense, example of, 1:41
- Pleading guilty by mail, 17:44
- Prosecution of, 1:15
- Punishment for, 1:41
- Refusal hearings, 1:33
- Routine stops, Miranda warnings inapplicable, 9:130
 - Arrest requiring officer's presence, 9:28
- Safety hearings, 1:32
- See also Driving While Intoxicated

TRAFFIC INFRACTION—Cont'd

- See also Traffic Ticket
- See also Traffic Violations
- Sentence, probation not available, 22:45
- Speeding
 - Guilty plea, 17:10, 17:44
 - Plea down to non-speeding offense, 17:10
 - Third speeding offense in, guilty plea, 17:44
- Warrantless
 - Stop and search. See Automobiles, Warrantless Stop and Search

TRAFFIC TICKET

- Accusatory instrument commencing criminal case, 1:50
- Administrative forum, 1:30
- Cellphones and texting, 22:94
- Commencing and prosecuting traffic offense, 3:7
- Community Service, 22:34
- Deposition, supporting, defendant entitled to, 3:7, 3:52
 - Administrative adjudication, no discovery with, 1:31
 - Dismissal of ticket for failure to file timely, 3:58
 - Electronic tickets, 3:55
 - Elements of offense, deposition must allege, 3:54
 - Filing, failure to make timely, 3:58
 - “Insufficient on its face,” dismissible, 3:58
 - Provided to defendant
 - Within 30 days or 5 days before trial, 3:57
 - Manner of providing, 3:57
 - Request, manner of making, 3:56
- Electronic signatures, 3:55
- Electronic tickets, 3:55
- E-tickets, 3:55
- Generally, 22:92-22:95
- Long form information after dismissal, 3:58, 3:68
- Motion to dismiss
 - Deposition not timely provided, grounds, 3:64
 - Omnibus motion, time for, 3:64
 - Time for, 3:64
- Points on driver's license, 22:93
- Police officer as prosecutor, 1:9, 1:16
- Probable cause requirement, ticket and deposition must provide, 3:53
- See also Local Court Information
- Simplified traffic information, 3:7, 3:52
 - Deposition must allege elements of offense, requirement, 3:54
 - Dismissible event, 3:58
 - Electronic signatures, 3:55
 - Electronic tickets, 3:55
 - Probable cause requirement, 3:53

TRAFFIC TICKET—Cont'd

- Simplified traffic information, 3:7, 3:52—Cont'd
 - Sufficiency, CPL articles governing, 3:52
 - Definition, 3:52
 - Form and content, 3:52
 - Time to request supporting deposition, 3:56-3:58
- Superseding barred, 3:68

TRAFFIC VIOLATIONS

- Credit cards for, 4:60
 - Pre-arraignment, 4:45
- Discovery where defendant charged with, 8:120
- No assigned counsel, 2:2
- Plea by mail, 4:26
 - Registered or certified mail within, 4:26

TRANSCRIPTS

- 18-B attorney; obtaining and paying for transcripts, 2:24
- Accuracy, 24:29
- Appeal
 - Cost of transcript, 24:28
 - Lower court having no transcript, 24:23
- Appellate review of Batson determinations, 19:128
- Assigned counsel; obtaining and paying for transcripts, 2:24
- Bail application, bail status review, 4:66
- Daily copy, 7:34
 - Fee for transcript of, 7:1, 7:36
 - Free, application to court for, 7:1
 - Indigent defendants, free transcript for, 7:1
 - Obtaining, 7:1
 - Counsel's, 7:1, 7:36
 - Defendant testimony, 7:36
 - Partial transcript, 7:36
 - Rosario material, pretrial testimony included in, 7:1
- Grand jury minutes. See Grand Jury Minutes
- Grand jury testimony, defendant's, 6:46
- Grand jury witness, 24:29
- Incarcerated defendant's request for trial transcript, 24:39
- Jury selection, 19:125
- No obligation by DA to provide, 24:127
- Ordering at end of preliminary hearing, 5:15
- Recording, of admissible, 18:114, 18:115
 - See also Recordings
- Record on appeal. See Appeal
- Rosario material, 8:46
- Suppression hearing transcript sought by defense, adjournment requested, 19:49

TRANSLATOR

- See Interpreter

TREATIES

See Federal Treaties

TREATMENT

See Sex Offender Management and Treatment Act (SOMTA)

TRESPASS

Affidavit, 18:152

Lesser included offenses

Elements of trespass, 16:4

See also Burglary

See also Information subhead: Special information

TRIAL

Adjournment

See also Adjournment

Adjournment, 19:43-19:52

AIDS patient unable to undergo, interest of justice dismissal, 7:23

Bail impermissible as pretrial punishment, 4:48

Jail or no jail during, importance, 4:48

Bench trial

See also Trial, Bench Trial

Bench trial, 19:57-19:79

Cameras in courtroom, 19:40

Codefendants

Disagreement over bench or jury trial, 14:13

Dual jury trials, 14:14

Joint trials, 14:13

Bruton rule, redacted statement used as evidence, 14:19

Collateral proceedings. See Collateral Proceedings

Conviction, collateral consequences of, 22:202

Counsel

Case strategy, counsel's, 2:37

Ineffective assistance of counsel, poor trial tactics, 2:83-2:86

Cross-examination, 2:84

Faulty evaluation of evidence, 2:73

Faulty requests to charge, 2:88

Counsel table, individuals to be seated at, 19:55

Be present in court, 19:11-19:30

Closure for compelling reasons, 19:31-19:39

Delegate functions, not to, 19:9

Disqualification of, 19:63-19:67

Presence, need for, 19:9

Substitution of, 19:10

Undercover police officers in, 19:31

Courtroom

Closure for compelling reasons

See also Courtroom Closure

Court. See Trial Court

Cross-examination of defendant, 18:52

TRIAL—Cont'd

Defendant

Cross-examination of, 18:52

Decision not to testify, 18:61

Decision to testify, 18:50, 18:52

Grand jury testimony, use of, 6:39

Informed defendant, necessity, 2:35

Defendant's right to

Be present in court

See also Defendant's Right to Be Present

Trial and sentence. See Plea Bargaining
subhead: Right to trial, defendant's

Hearing judge as trial judge, 7:32

Hung jury. See Hung Jury

In absentia, Parker warnings

See also Parker Warnings

In absentia, Parker warnings, 19:21-19:23

Interpreters

See also Interpreter

Joint trials. See subhead: Codefendants

Judge

See also Judge

Jury selection

See also Jury Selection and Voir Dire

Jury selection, 19:81-19:134

Jury trial. See Trial by Jury

Lesser included offenses, 16:36-16:51

See also Lesser Included Offenses subhead:
Trial issues

Mistrial, 18:182-18:189

See also Mistrial

Motions made at trial if necessary, 18:175-18:181

Motions made at trial if necessary, 7:8

Closure for hearing, 7:34

Preservation for appeal in, 7:8

Multiple defendants, Parker warnings, exception to, 19:22

Non-jury trials. See Trial, Bench Trial

Notebook, 19:1

Oath taken during, 19:56

Openings and summations, 19:3

Order of, 19:1

Changes in, 19:8

Chart, General Order of Jury Trial, 19:1

Courtroom closure for compelling reasons,
19:31-19:39

Defendant's right to, 19:31

Reopening trial proof, 19:8

Videotaped testimony of witness, 19:1

Order of dismissal

Codefendants, 14:17

Motion to dismiss, failure to establish prima
facie case, 18:175-18:181

Objecting to People's case as legally insuffi-
cient, 18:175-18:181

TRIAL—Cont'd

- Post-trial CPL 330.30 motion, 18:211
 - Insufficient to preserve issue not raised at trial, 18:211
- Preliminary hearing testimony, use of, 5:15
- Preparation
 - See also Pretrial subhead: Activities
- Public trial
 - Courtroom closure for compelling reasons
 - See also Courtroom Closure
- Reopening trial proof, 19:7
- Resolution without trial, 1:76, 1:77
- Retrial after appeal, 24:118-24:123
 - See also Trial, Retrial After Appeal
- Retrial, prosecution motion for mistrial triggering double jeopardy, writ of prohibition used to bar retrial
 - Double jeopardy violation, 23:5
- Rulings. See Trial Rulings
- Sanctions against counsel, 18:210
- Separate, for codefendants
 - Accusatory instruments separate, 14:37, 14:38
 - Antagonistic defenses, 14:32
 - Prejudice, 14:32
- Sex Offender Management and Treatment Act (SOMTA), civil management, 23:113
- Single, consolidation, two or more separate accusatory instruments, 14:11
- Speedy trial time not tolled by dismissal, 3:78
- Trial tactics, unconventional, 2:73
 - Attorney-client discussion, 2:73
 - Effective assistance of counsel, 2:73
 - Suppressed identifications, informing jury, 2:73
- Trying the case. See Trial, Trying the Case
- Uncharged crimes, permissible use. See Uncharged Crimes
- Verdict. See Verdict
- Witnesses. See Witnesses, Trial

TRIAL, BENCH TRIAL

- Abbreviated procedures, 19:74
 - Jury trial, order and procedures same as, 19:75
 - Opening statement, 19:74
- Appeal, effect on
 - Standard of review, 24:86
- Appeal, effect on, 19:77
- Benefits and risks, weighing, 19:62
- Charge to judge, 19:75
- Codefendants
 - Combined jury and bench trial, 14:15
 - Disagreement over bench or jury trial, 14:13
- Decision, improper delay, 19:76
 - Court's discretion, 19:60
 - Joint trial with codefendants, defendant facing, 19:60

TRIAL, BENCH TRIAL—Cont'd

- Exceptions to right to jury trial, 19:57
- Ex parte communications prohibited, 19:67
- Joint bench/jury trial, 19:62
 - Judicial disqualification, 19:63-19:67
 - Local court case transfer on, 19:65
 - Witness, as, 19:79
- Judge
 - Judicial disqualification
 - See also Judge
- Judge, lay judge, trial before, 19:68
 - City court, temporary assignment to, 19:68
- Felony cases, 19:68
- Misdemeanors, 19:68
 - Legally trained judge, no right to trial before, 19:69
- Superior court, removal to, 19:69
- Town justice, 19:68
- Village justice, 19:68
- Jury trial, exceptions to right to, 19:57
- Lesser included offenses, request for consideration of, 16:40
- Local ordinances, violation of, 19:59
- Opening statement, abbreviated procedures, 19:74
- Preservation of issues, need for, 19:74
- Pretrial hearings conducted by trial judge, 19:70
 - Necessity for hearings, 19:71
 - Suppression hearing determinations, rationale for, 19:72
- Procedure, 19:73
- Repugnance issue, preservation of, 20:10
 - CPL 330.30 motion, 20:11
 - Time to make claim, 20:10
- Requests for instructions, lesser included offenses, 16:40, 16:41
- Risks, weighing, 19:62
- Sandoval motion judge presides at Sandoval bench trial, 11:62
- Stipulated facts, conducted on, 19:62
- Superior court, removal to, 19:69
- Verdict, 19:76
- Verdict, delay in rendering, 20:20
 - Excessive delay, 20:20
 - Reversible error, 20:20
- Waiver of jury trial in favor of, 1:80
 - Violation or traffic infraction, example, 1:80
- Waiver of jury trial in favor of, 19:57, 19:59-19:62
 - Court's approval required, 19:60
 - Joint bench/jury trial, 19:62
 - Weighing benefits and risks, 19:61
 - Withdrawal of waiver, 19:60
- Youthful offender, misdemeanors, 21:73

TRIAL, RETRIAL AFTER APPEAL

- Caveats, 24:129
- Criminal proceedings, on finalized date, retrial order, 24:65
- Discovery limited, equal access to record, 24:128
- Double jeopardy
 - See also Double Jeopardy
 - no bar to evidence on remaining charges, 24:123
- First trial
 - Hearsay evidence, not binding at retrial, 24:120
 - Hung jury at, 24:129
 - Conviction on retrial, appeal on sufficiency of evidence at first trial, 24:129
 - No bar to retrial, 24:129
- First trial, rulings of, effect, 24:118-24:130
 - Double jeopardy no bar to evidence on remaining charges, 24:123
 - Evidentiary rulings at one trial not binding in subsequent trial, 24:121
 - Preservation doctrine, 24:121
 - Prosecution may correct errors, 24:122
 - Second trial objections must be preserved, 24:121
 - Trial rulings not binding, 24:120
- First trial, strategic decisions at, effect, 24:125
 - First trial defendant testimony used by second trial prosecution, 24:125
 - Opening statements binding in retrial, 24:125
 - Unconditional pretrial stipulation on admission of evidence binding at retrial, 24:125
- Generally, 24:118
- Loss of element of surprise, 24:129
 - Permitted alternatives, 24:124
 - Witnesses or evidence, 24:124
- New indictment, 24:126
 - Acquittal on top count/conviction on lesser charge, 24:126
 - Double jeopardy bar to further prosecution on top count, 24:126
 - Sometimes needed, 24:126
 - Untimely, 24:127
 - Motion on speedy trial or double jeopardy ground, 24:127
- Prosecution correction of prior errors, 24:122
- Record on appeal
 - Equal access to, 24:128
 - Limited discovery due to equal access to, 24:128
 - Rosario, defense access to record under, 24:127
- Sentence served, dismissal, no retrial, 24:126
- Speedy trial rights applied, 24:65
 - Statutory speedy trial, effect of retrial order, 13:51

TRIAL, RETRIAL AFTER APPEAL—Cont'd

- Successful retrial difficult, 24:129

TRIAL, TRYING THE CASE

- Adjournments
 - See also Adjournment
- Adjournments, 19:43-19:52
- Bench trial
 - See also Trial
- Bench trial, 19:57-19:79
- Cameras in courtroom, 19:40
- Clothing and other attire, rules governing
 - See also Clothing and Other Attire
- Clothing and other attire, rules governing, 19:54
- Defendant's right to present in court
 - See also Defendant's Right to Be Present
- Defendant's right to present in court, 19:11-19:30
- Evidence. See Evidence
- Gag orders, 19:53
- Hung jury
 - See Hung Jury
- Interpreters
 - See also Interpreter
- Judicial bias, 18:190-18:193
- Jury and jurors. See Jury and Jurors
- Jury charge. See Jury Charge
- Jury deliberations. See Jury Deliberations
- Jury instructions. See Jury Instructions
- Jury selection
 - See also Jury Selection and Voir Dire
- Jury selection, 19:81-19:134
- Mistrial, motion for, 18:182-18:189
 - See also Mistrial
- Objections. See Objections
- Opening statement
 - See Opening Statement
- Preservation of error. See Preservation of Error
- Remedies for error, 18:206-18:210
 - See also Error
- Summation
 - Defense, 18:203, 18:204
 - See also Summation
 - Prosecutor's, objections to, 18:202-18:203
 - See also Objections to Prosecutor's Summation
- Trial order of dismissal, 18:175-18:181

TRIAL BY JURY

- Bench trial issues
 - See also Trial, Bench Trial
- Bench trial issues, 19:75
 - General order of, 19:1
 - Steps in, 19:1
- Class B misdemeanor, no right to jury trial in New York City, 19:58

TRIAL BY JURY—Cont'd

- Codefendants
 - Combined jury and bench trial, 14:15
 - Disagreement over bench or jury trial, 14:13
 - Dual or multiple jury trials, 14:14
 - Error, potential for, 14:14
- Constitutional right to, 19:57
- Exceptions to, 19:57
- General Order of Jury Trial, Chart, 19:1
- Hung jury. *See* Hung Jury
- Joint bench/jury trial, 19:62
- Jury and jurors. *See* Jury and Jurors
- Jury charge. *See* Jury Charge
- Jury deliberations. *See* Jury Deliberations
- Jury instructions. *See* Jury Instructions
- Jury selection
 - See also* Jury Selection and Voir Dire
- Jury selection, 19:81-19:134
- Mistrial. *See* Mistrial
- Nonexistent crime, conviction on, 20:14
- Petty offense, 1:41
- Repugnance issue, preservation of, 20:10
- Right to. *See* Defendant's Right to subhead: Trial by jury
- Trying the case. *See* Trial, Trying the Case
- Verdict. *See* Verdict
- Waiver of, bench trial
 - See also* Trial
- Waiver of, bench trial, 19:59-19:62
- Youthful offender, felony cases only, 21:73

TRIAL COURT

- Appeals
 - Failure of court to hold on-the-record hearing, 24:34
- Motions to set aside verdict
 - Procedural matters, 20:43
 - Reversible error in record, 20:31
 - Trial court before trial judge as place to bring, 20:25
- Record on appeal
 - Motion to settle transcript made returnable in trial court, 24:29
 - Unclear record, trial court responsibility, 24:34

TRIAL ORDER OF DISMISSAL

- Appeal by prosecution, 24:45
- Compared to weight, 24:81
- Double jeopardy bar after pre-verdict grant of motion for, 18:181
- Failure to make, no ineffectiveness, 2:84
- Improper where not ready for trial, 13:81
- Lesser included offenses, 18:178
- Objecting to People's case as legally insufficient, 18:175
 - Failure to establish prima facie case, motion, 18:175-18:181

TRIAL ORDER OF DISMISSAL—Cont'd

- Renewing motion, necessity of, 18:176
- Reopening proof, 18:179
- Retrial, 24:129
- Waiver by failure to make motion, 18:180

TRIAL RULINGS

- Not binding at retrial, 24:120
- Unfavorable prior ruling advanced as, advantage, 24:120
- Ventimiglia /Molineux ruling held as, 24:120

"TRUE BILL" OF INDICTMENT

- Generally, 6:23
- See also* Grand Jury Proceedings
- See also* Indictment

TYPOGRAPHICAL ERROR

- Dismissal not supported, 3:59

UNCHARGED CRIMES

- Acting in concert, 12:19
- Admissibility under Molineux , effect of defense on, 12:21, 12:22
 - Inextricably intertwined crimes, 12:21
 - Intent, 12:21
- Appeal, 12:43
- Appellate review, 12:43
- Common plan or scheme, 12:18
- Complete the narrative, 12:11, 12:19, 12:24, 12:26
- Defendant's need to testify as exception to rule, 12:5
- Defense use of evidence, 12:33
- Discovery, effect on, 12:35
- Error, potential for, 12:8
- Exceptions to rule, 12:1-12:5
 - Defendant's need to testify, 12:5
 - Probative worth, insufficiency, 12:3
 - Propensity, 12:2-12:4
 - Redaction, request for, 12:3
- Generally, 12:1-12:35
- Identity, 12:16, 12:19
 - Uniqueness requirement, 12:17
- Inextricably intertwined crimes, 12:21, 12:24
- Intent, 12:13-12:18, 12:21
 - Exception for, rationale, 12:13
- Jury understanding, priors necessary for, 12:25
 - Background evidence, limiting amount of, 12:25
- Mistaken identity, claim of, 12:42
- Modus operandi, 12:15, 12:17
 - Common plan or scheme as variation of, 12:18
 - Unique pattern requirement, 12:15
- Molineux categories, 12:11-12:25
 - Acting in concert, 12:19
 - Appeal, 12:43

UNCHARGED CRIMES—Cont'd

- Molineux categories, 12:11-12:25—Cont'd
 - Common plan or scheme, 12:18
 - Confession by defendant, admissible to explain, 12:20
 - Identity, 12:16, 12:19
 - Intent, 12:13-12:18
 - Modus operandi, 12:15, 12:17
 - Motive, 12:12
 - Police misconduct, admissible to prevent speculation as to, 12:20
- Molineux, *People v.*, 12:6-12:9
 - Error, potential for, 12:8
 - Prejudice issue, 12:7, 12:8
 - Probative worth of evidence, 12:8
 - Relevance, inquiry as to, 12:7-12:9
 - Time lapse, 12:9
 - Worth, inquiry as to, 12:7-12:9
- Molineux vs. Sandoval rulings, 12:10
- Motive, 12:12
- Non-Molineux admission of prior crimes, 12:23-12:30
 - Background evidence, limiting amount of, 12:25
 - Inextricably intertwined crimes, 12:24
 - Jury understanding, priors necessary for, 12:25
 - Lifestyle evidence, 12:29
 - Non-criminal activity, evidence of, 12:27
 - Sex offenses, 12:28
 - Simultaneously occurring acts, 12:26-12:30
 - Witnesses, intimidation of, 12:30
- Prejudice
 - Background evidence, limiting amount of, 12:25
 - Limitation to defendant, 12:8
 - Potential for, 12:7
 - Ventimiglia hearings, 12:36-12:41
- Probative worth of evidence, 12:3
 - Molineux, *People v.*, 12:8
- Procedural considerations, 12:31-12:43
 - Ventimiglia hearings, 12:36-12:41
- Prosecution option to use uncharged crimes, 12:32
 - Open issues, 12:34
- Relevance, inquiry as to, 12:7-12:9
- Sandoval hearings
 - Molineux vs. Sandoval rulings, 12:10
- Sandoval rules
 - Denial of uncharged crimes, prosecutor's good faith required for questioning, 11:49
 - Disclosure of previously, notice by prosecutor of defendant's, 11:40
- Sex offenses, 12:28
 - Ventimiglia hearings, 12:36
- Simultaneously occurring acts, 12:26-12:30
 - Ventimiglia hearings not necessary, 12:38

UNCHARGED CRIMES—Cont'd

- Time lapse
 - Barring of evidence, 12:9
- Timing, 12:31
- Use of unproven crimes, 12:42
 - Mistaken identity, claim of, 12:42
- Ventimiglia hearings, 12:36-12:41
 - CPL 240.43 hearings vs., 12:41
 - Defendant's right to attend, 12:40
 - Failure to obtain ruling, 12:37
 - Impeachment issue, 12:41
 - Same victim, 12:36
 - Sandoval issue, 12:41
 - Time for, 12:39
 - Unnecessary, 12:38
- Weapons possession, 12:27
- Witnesses, intimidation of, 12:30
- Worth, inquiry as to, 12:7-12:9

UNINTENTIONAL ACTS

- Accomplices, liability, 14:45

UNITED STATES CONSTITUTION

- Prior conviction unconstitutionally obtained, enhanced sentencing inapplicable, 22:99
- Pre-plea hearing determining, 22:134

UNREASONABLE SEARCH AND SEIZURE

- See Search and Seizure

UNSWORN WITNESS

- See Witnesses

USURY

- Continuing crime theory applicable, indictment, 3:45

VACATUR

- Death of defendant, 24:40
- Motion to vacate
 - Conviction, motion to vacate, 17:72
 - CPL 440.10. See CPL 440.10 Motion to Vacate Judgment
- Reversal of conviction, 24:108
- See also Judgment

VARIANCE

- Charge, and proof, between, 3:38
- Charge and proof, between, 3:76
- Jury charge, 19:141
- Trial proof, 8:128

VEHICLE

- Aggravated Unlicensed Operation
 - Plea bargaining limitation, 17:58
- Blood test with vehicular injury or death, 9:67
- Driving while intoxicated. See Driving While Intoxicated
- Impound and post-seizure hearing, 1:61

VEHICLE—Cont'd

- Including prior as element of offense, 22:145
- Motor vehicle, speed of, lay testimony, 18:146
- Roadblock, 9:58
- ROR, refrain from driving, 4:63
 - Bail by credit card, 4:60
 - Traffic violations, plea by mail, 4:26
- See also Automobile
- Taxicab, speeding, stopping and frisking passengers, presumption against abandonment of evidence, warrantless search, 9:47

VEHICLE AND TRAFFIC LAW

- Aggravated unlicensed vehicle operation, plea bargain, 17:58
- Defendant as witness, impeachment questions on traffic violations, Sandoval, 11:20
- Mandatory surcharge, provided by Vehicle and Traffic Law, 22:84
- Points on driver's license, 22:93

VENTIMIGLIA HEARINGS

- Pretrial motions and hearings common, 24:120
- Trial ruling, held as, 24:120
- Uncharged crimes, permissible use in proving guilt, 12:36-12:41
 - See also Uncharged Crimes
 - CPL 240.43 hearings vs., 12:41
 - Failure to obtain ruling, 12:37
 - Impeachment issue, 12:41
 - Same victim, 12:36
 - Sandoval issue, 12:41
 - Simultaneously occurring acts, hearing not necessary, 12:38
 - Time for hearing, 12:39
- Uncharged Molineux crimes, hearing on
 - See also Molineux Evidence

VENUE

- CPL 330.30 motion to set aside verdict, 23:28
- Defense, 15:48
- Guilty plea, waiver, 17:79
- Motion for change of, 7:20
- Preponderance of evidence, prosecution's burden to establish by, 15:48

VERDICT

- Absent, improper to sentence, 20:16
 - Defense motion to vacate, 20:2
- Accomplices, inconsistency, 14:30
- Bench trial
 - Delay in rendering verdict, 20:20
 - Excessive delay in rendering verdict, 20:20
 - Reversible error, 20:20
- Bench trial, 19:76
- Codefendants
 - Inconsistency, 14:30
 - One guilty/other not guilty, 20:8

VERDICT—Cont'd

- Codefendants—Cont'd
 - Repugnant verdict with, 20:8
- Defective verdicts, 20:13-20:17
 - Failure to render verdict is no verdict, 20:15
 - Nonexistent crime, 20:14
 - One count, no verdict on, 20:15
 - Improper to sentence, 20:16
 - Verdict with no sentence, 20:17
- Discussion of case after verdict rendered, 19:222
- Disposition of case, 21:61
 - Non-juvenile offender charges, 21:57
 - Youthful offender, status as, granted after sentencing, 21:66
- Errors, 20:2-20:10
 - Defective verdicts, 20:13-20:17
 - Delay in rendering verdict, bench trial, 20:20
 - Kidnapping, dismissal of merged charge, 20:19
 - Overlapping counts, 20:18
 - Preservation of error
 - Bench trial, 20:10
 - Jury trial, 20:10
 - Repugnant verdicts, 20:2-20:10
 - See also subhead: Repugnant verdicts
- Failure to render verdict is no verdict, 20:15
- Guilty verdict
 - Conviction occurs on, 20:22
 - Kidnapping charge, dismissal, 20:19
 - Mixed guilty/not guilty, repugnant verdict, 20:2
 - Codefendants, 20:9
 - Determination of mixed verdict, 20:4
 - Underlying crime and intent to commit crime, 20:4
- Multiple guilty verdicts, 20:18
 - Same conduct, 20:18
- Overlapping counts, 20:18
- Repugnant verdict, 20:2
- Impeaching verdict, juror barred from, 20:36
 - Exception, 20:37
- Impeachment of, jury deliberations, 19:211
 - Exception to prohibition, 19:220
 - Juror acting as unsworn witness, 19:220
 - Outside influence affecting deliberations, 19:220
 - Prohibitions, 19:220
 - Remedy for juror misconduct during deliberations, 19:222
- Inconsistent verdicts, 20:2-20:10
 - See also subhead: Repugnant verdicts
 - Accomplices, 14:30
 - Codefendants, 14:30
 - Defined, 20:4
 - Determination of, 20:4
 - Reconsideration, 20:10

VERDICT—Cont'd

- Juvenile offenders, non-juvenile offender offense, guilty verdict only on, 21:57
- Kidnap-merger doctrine, dismissal of merged charge, 20:19
- Lesser included, defense strategy to get, bench trial, 19:62
- Mental disease or defect defense, acceptance of plea equivalent to verdict, defendant's understanding required, 15:53
- Mixed guilty/not guilty, repugnant verdict, 20:2
- Motion to set aside
 - See also Motions to Set Aside Verdict CPL 330.30
 - Omissions from motion, 23:27
 - Scope of, 23:31
 - Duress, 23:35
 - Fraud, 23:35
- One count, no verdict on, 20:15
 - Improper to sentence, 20:16
- Overlapping counts, 20:18
- Partial verdict, 20:11
- Polling jury after, 20:1
- Post-trial motion, 7:15
- Preservation, CPL 330.30 motion as insufficient, 20:24
- Rational theory sustains verdict, 20:6
- Repugnant verdicts, 20:2-20:10
 - Charges reconsidered, 20:3
 - Codefendants, one guilty/other not guilty, 20:9
 - Consequence, 20:3
 - Defined, 20:4, 20:5
 - Determination of, 20:4
 - Example of, 20:2
 - Jury charge, test based on, 20:5
 - Legal inconsistency, 20:4
 - Mixed guilty/not guilty verdict, 20:2
 - Determination of mixed verdict, 20:4
 - Underlying crime and intent to commit crime, 20:4
 - Preservation of repugnancy
 - Bench trial, 20:10
 - Jury trial, 20:10
 - Time for preservation, 20:10
 - Preservation of repugnancy, claim by CPL 330.30 motion after bench trial, 20:10
 - Objection or motion before jury discharge, 20:10
 - Review of jury charge, 20:5
 - Risk of raising repugnancy issue, 20:10
 - Test based on jury charge, 20:5
 - Jury's function considered, 20:7
 - Rational theory sustains verdict, 20:6
 - Time to raise repugnancy issue
 - Bench trial, CPL 330.30 motion after, 20:10
 - Jury trial, before jury discharge, 20:10

VERDICT—Cont'd

- Sentence omitted, remand for resentencing, 20:17
- Set-aside of verdict, post-trial motion for, 7:15
- Special verdict, 20:12
- Unanimous
 - Duplicious counts, rule against, assuring, 3:40
 - Necessary in criminal case, 1:81
- Unanimous verdict required, 19:218
- Verdict sheet. See Verdict Sheet

VERDICT SHEET

- Jury aid providing listing of charges, 19:210
- Record on appeal, verdict sheet included in, 24:26

VERIFICATION

- Accusatory instrument
 - Child's, condition, 3:60

VICTIM

- Attitude of victim regarding motion to remove, 21:46
 - Guilty verdict, consensual removal after, 21:59
- Complainant's role. See Complainant
- Crime Victims Compensation Board, 22:71
- Cross complaint, 1:16
- Discovery related to
 - See also Discovery subhead: Victim, discovery related to
- Discovery related to, 8:83-8:87
- Domestic violence. See Domestic Violence
- Identification of defendant, suppression
 - See also Identification of Defendant, Suppression
- Identification of defendant, suppression, 9:179-9:230
- Ill victim, effect on statutory speedy trial, 13:41
- Infected with sexually transmitted disease, defendant required to provide blood samples, 8:39
- Intimidation by defendant, bail revocation, 4:74
- Order of protection. See Order of Protection
- Perspective, interest of justice dismissal, factor considered, 7:23
- Photographs of
 - Deceased, use, 18:98
 - As evidence, 18:98, 18:99
 - See also Photographs
- Preliminary hearings, testimony at, 5:13
- Psychiatric history of, Brady disclosure, 8:26
- Reasonable belief for self-defense by defendant against
 - See also Self-Defense
- Reasonable belief for self-defense by defendant against, 15:18-15:22

VICTIM—Cont'd

- Restitution, 22:68
- Right to address sentencing court, 22:177
- Court must inform defendant, 22:177
- Time for, 22:177
- See also Crime Victim
- Sentencing, involvement in, 1:67
- Uncharged crimes, use in proving guilt
- Same victim
- Ventimiglia hearings, 12:36

VICTIMLESS CRIMES

- Interest of justice dismissal and, 7:23

VICTIM SERVICES AGENCY

- Statements in possession of, Rosario material exclusion, 8:48

VIDEOTAPES

- Admissibility
- Testimony of witness, 18:127
- Conditional examination, testimony, 18:72
- Drug dealer's modus operandi, admissibility of recording created to show, 18:127
- DWI cases, use in, 18:127
- Examinations, Rosario disclosure, 8:46
- Lineup, identification of defendant in, 18:127
- Media news broadcast, admissibility of recording created for, 18:127
- Order of trial, 19:1
- Police, defendant after DWI arrest, Brady disclosure required, 8:26
- Psychiatric examination, writ of prohibition remedy, 23:10
- Testimony of witness
- Admissibility, 18:127
- Use of, generally, 18:127

VIENNA CONVENTION ON CONSULAR RELATIONS

- Counsel, right to, foreign citizens, 9:136

VIOLATION

- Bail, pre-arraignment, 4:45
- Disposition at arraignment, 4:24
- Guilty plea at arraignment, 4:25
- Sentencing at arraignment, 4:25
- Bruton rule, inculpatory statements of codefendants
- Harmless error, as, 14:26
- Severance, appropriateness of, 14:34
- Chain of custody violation, blood sample, 24:123
- Discovery. See Discovery
- Duty to advise defendant, 24:15
- Gradation of, 16:3
- Jail sentence, 22:8
- Probation not available, 22:45
- Weekend jail sentence, 22:30

VIOLATION—Cont'd

- Juvenile delinquents, inapplicability, 21:11
- Local courts handle, 1:68
- Absentee guilty plea authorized
- Court permission, 17:46
- No assigned counsel, 2:2
- Statutory speedy trial within 5 days, 13:24
- Stipulations
- See also Stipulation
- Warrantless arrest requiring officer's presence, 9:28

VIOLENT FELONY OFFENSE

- Defined, 1:39
- Juvenile offenders, infancy as a defense, 21:28
- Minimum sentences, with chart, 22:18

VOICE

- Exemplars, motion or order for discovery, 8:40
- Identification, 9:195
- Voiceprint, 18:134
- Voice stress analysis, 18:134

VOICEPRINT EVIDENCE

- Admissibility, 18:134

VOIR DIRE

- Child witness, 18:36
- See also Jury Selection and Voir Dire
- Verification by child requiring, 3:60

VOUCHER

- See Counsel subhead: Assigned counsel

WADE HEARING

- Bifurcated, 9:225
- Burden of proof, defense's, 9:224
- Identification, of defendant, suppression, 1:6
- Identification, of defendant, suppression, 9:221, 9:225
- Attendance by defendant, 9:229
- Bank security investigator not connected with police, photographs shown by, hearing unavailable, 9:196
- Burden of proof, 9:224
- Clear and convincing evidence, prosecution's burden, 9:225
- Defense, 9:224
- Prosecution, 9:225
- Suggestiveness found, burden shifting to prosecution, 9:225
- Court required to make findings, 9:230
- Essence of, 9:222
- Independent basis for identification, requirement, 9:228
- Police identification, confirmatory, pre-Wade Rosario hearing, 9:226
- Police identification, confirmatory, 9:226
- When held, 9:226

WADE HEARING—Cont'd

- Identification, of defendant, suppression, 9:221, 9:225—Cont'd
 - Procedure for obtaining, defense motion to suppress as, 9:221
 - Prosecution's evidence notably incomplete, defendant's ability to call witnesses, 9:223
 - Reargument of suggestiveness to jury, 9:230
 - Unduly suggestive identification, 9:222
 - Witness at hearing, defendant's ability to call, 9:223
- Ineffective counsel, 2:82
- Reopening hearing, 7:30
- Subpoena as discovery device, 8:91
- Witnesses, importance of calling, 7:30

WAIVER

- Accusatory instrument, defective, waiver, motion to dismiss not part of omnibus motion
 - Failure to testify, Sandoval rules, 11:53
 - Guilty plea, waives right to appeal adverse Sandoval determination, 11:54
- Appeal, right of
 - Guilty plea, 24:3-24:8
 - See also Appeal subhead: Waiver
 - Appealability of judgment unaffected by waiver, 24:4
 - Issues surviving waiver, 24:7
 - Voluntary waiver, defendant's, 24:4-24:7
 - Anders brief, note of valid appeal in, 24:5
 - Constitutional suppression issues, 24:6
 - Defendant's understanding and acceptance of waiver, required, 24:5
 - Harsh and excessive sentencing, 24:6
 - Ineffective waiver, uninformed defendant, 24:5
 - Issues subject to, 24:6
 - Judge acceptance expected, 24:5
 - Knowing, intelligent, and voluntary waiver required, 24:5
 - Limited waiver on record, 24:6
 - Silent record, no waiver presumed, 24:5
- Attorney-client privilege, 18:33
- Confidences, 2:40
- Conflict of interest, 2:44
- Defendant's rights
 - To be present during jury selection and trial
 - See also Defendant's Right to Be Present subhead: Waiver of right
 - Limitation on waiver by attorney, 2:43
- Defense waived knowingly, 15:1
- Discarded property, defendant waiving constitutional right against warrantless searches, 9:39
- Effective assistance of counsel, 2:80
- Enhanced sentence, 17:52

WAIVER—Cont'd

- Extradition from another jurisdiction, 13:96, 13:98
 - Guilty plea, waiver of CPL 30.30 issue, 13:99, 13:100
 - No conditional plea to preserve issue, 13:100
- Forfeiture compared, 19:18
- Forfeiture versus, 1:94
- Grand jury proceedings
 - Defense motion to dismiss proceeding, 6:68
 - Immunity, waiver by defendant, 6:41
- Guilty plea
 - Appeal rights waiver, 24:3-24:8
 - Survival of rights
 - Defendant's voluntary waiver, 24:4-24:7
 - Effect of, 17:43, 17:79
 - See also Guilty Plea
- Hearings
 - Preliminary hearing. See subhead: Preliminary hearing
- Immunity waived upon testimony at grand jury, 7:36
 - Pretrial hearing, presence at, 7:33
- Indictment, waiver of
 - Appeal of jurisdictional issues not foreclosed by waiver of appeal, 24:7
 - Disallowed for class A felony, 3:21
 - Prerequisite, grand jury submission, 3:18
 - Untimely after indictment returned, 3:22
- Jury sequestration during deliberations, 19:212
 - Right to bench trial, 19:59-19:62
- Jury trial
 - Defendant's waiver, 2:36
 - Right to bench trial
 - See also Trial
- Juvenile offenders, 21:32
 - Lesser felony, reasonable cause found for, 21:33
 - Serious felony, reasonable cause found for, 21:33
- Lesser included offenses objections
 - Attempts, 16:31
 - Failure to object, effect of, 16:49
- Plea as waiver of Rosario violation, 8:51
- Plea bargaining issues, 17:52, 17:61
 - See also Plea Bargaining
- Preservation of error, 18:153, 18:154
 - See also Preservation of Error
- Privileged communications, 18:33, 18:34
- Prosecution's notice prior to use of evidence
 - See also Discovery
- Prosecution's notice prior to use of evidence, 8:64, 8:65
- Reading of accusatory instrument, 4:17

WAIVER—Cont'd

- Redaction, defective, appellate claim of, codefendants, 14:20
- Speedy trial, statutory, motion to dismiss, failure to make, 13:69
- Speedy trial waivers, 13:96-13:100
- Statements, defendant's, suppression issue. See Defendant's Statements, suppression
- Statute of limitations waived by guilty plea, 13:12
- Superior court information. See Superior Court Instruments
- To be present during jury selection and trial, 19:11

WARRANT

- Bench warrants. See Bench Warrants
- Eavesdropping, 9:98
- Forms
 - Application, 18:214
- Search and seizure. See Search and Seizure
- Search warrants. See Search Warrants
- Unpaid surcharge, 22:93
- Video surveillance, 9:98
- Warrantless
 - Arrest. See Warrantless Arrest
 - Automobile stop and search. See Automobiles, Warrantless Stop and Search
 - Police intrusion. See Warrantless Police Intrusion
 - Search and seizure. See Warrantless Search and Seizure

WARRANTLESS ARREST

- Felony or misdemeanor, allowed for, 1:45
- Generally, 1:48-1:51
- Overview, 9:12
- Petty offense occurring in police presence, allowed for, 1:45
- Pistol permit, suspension of defendant's, 1:45
- See also Warrantless Police Intrusion, subheads beginning with: Arrest

WARRANTLESS POLICE INTRUSION

- Anonymous tip, 9:25
 - Cause to arrest alone insufficient entry into home, 9:38
 - Incident to arrest, search, 9:31
- Arrest
 - Fourth level intrusion. See subhead: Arrest
- Arrest, fourth level intrusion, 9:27
 - Felony, for, 9:27
 - Misdemeanor, for, 9:27
 - Petty offense arrest requiring officer's presence, 9:28
 - Crime not committed in, 9:27
 - Petty offense arrest requiring, 9:28
 - Probable cause, 9:27

WARRANTLESS POLICE INTRUSION

—Cont'd

- Attenuation of evidence, admissibility, 9:18
- Bloody trail leading to house, room search, 9:35
- Bodily examinations by police, 9:36
- Common law right of inquiry, second level of intrusion, 9:23
 - Forcible seizure of individual prohibited, 9:23
 - Person approached reasonably believes suspected of wrongdoing, 9:23
 - Suspicion of criminal activity, 9:23
 - Walking, manner of, basis for inquiry, 9:23
- Consent search, 9:33
 - Expectation of privacy overcome by, Mapp hearing, 9:75
- Criminal conduct by defendant after illegal stop, effect of, 9:20
- Detainer, third level of intrusion, 9:25
 - Forcible pursuit and/or stop, 9:25
 - Frisk, 9:26
 - Handcuffing for safety reasons, 9:26
 - Protective measures, 9:26
 - Reasonable suspicion defined, 9:25
- Discarded property, defendant waiving right against warrantless searches, 9:39
- Emergency doctrine, 9:19
- Exigent circumstances, under, 9:34
- First level of intrusion
 - request for information, 9:22
- Fleeing men stopped illegally, revolver seized, suppression, 9:18
 - Stop and, 9:26
 - Weapons, for, 9:12
- Grounds for levels of, 9:12
- Improper police action supporting suppression, 9:16
 - Exclusionary rule, 9:16
- Information gathered justifying to escalated, 9:15
- Levels of intrusion
 - First level of intrusion, stop. See subhead: Stop
 - Fourth level of intrusion, arrest. See subhead: Arrest
 - Second level of intrusion, common law right of inquiry. See subhead: Common law right of inquiry, second level of intrusion
 - Third level of intrusion, detainer. See subhead: Detainer, third level of intrusion
- Manual body cavity inspection, 9:36
- Person or premises, search of
 - Consent search. See subhead: Consent search
- Person or premises, search of, 9:29
 - Bloody trail leading to house, room search, 9:35
 - Bodily examinations by police, 9:36
 - Cause to arrest alone insufficient entry into home, 9:38

WARRANTLESS POLICE INTRUSION

—Cont'd

- Person or premises, search of, 9:29—Cont'd
 - Closed containers within grabbable area, 9:32
 - Exigent circumstances, under, 9:34
 - Incident to arrest, 9:31
 - Closed containers within grabbable area, 9:32
 - Legal, 9:30
 - Manual body cavity inspection, 9:36
 - Strip search, 9:37
 - Visual body cavity inspection, 9:36
- Premises, of. See subhead: Person or premises, search of
- Protective sweep permissible, 9:30
- Public safety exception, 9:19
- Reasonable suspicion defined, 9:25
- Second level of intrusion
 - common-law right of inquiry, 9:24
- Stop, first level of intrusion, 9:21
 - Address, asking for, 9:21
 - “Bootstrap” barred, 9:21
 - Citizen’s right not to comply, 9:23
 - Destination, asking for, 9:21
 - Identify, asking for, 9:21
 - Manner of, 9:21
 - Non-threatening manner required, 9:21
- Strip search, 9:37
- Visual body cavity inspection, 9:37

WARRANTLESS SEARCH AND SEIZURE

- Abandoned evidence, 9:38
 - Conduct of police, illegal, irrelevant, 9:40
- Defendant’s statement, seizure of objects found by, 9:44
- Discarded property not covered by constitution, 9:39
- Police involvement precipitating discarding of property illegal, suppression, 9:41
- Presumption against abandonment, 9:41
 - Discarded vs. abandonment, 9:41
 - Later contact unjustifiable, 9:41
 - Speeding taxicab, stopping and frisking passengers, 9:41
 - Spontaneous action, suppression of evidence, 9:41
- Spontaneous action, suppression of evidence, 9:41
- True abandonment, 9:41
 - Discarding not true, 9:41
- Waiver of constitutional right against warrantless searches, 9:39
- Automobiles, stop and search. See Automobiles, Warrantless Stop and Search

WARRANTLESS SEARCH AND SEIZURE

—Cont'd

- Border searches, 9:12
 - Abandonment of evidence, presumption against, 9:41
 - Inventory searches, motivation, 9:66
 - Plain view, in, 9:42
- Drugs
 - Automobiles, stop and search. See Automobiles, Warrantless Stop and Search
- Emergency doctrine, 9:19
- Flight, 9:39
- Frisk for weapons, 9:12
- High crime area, 9:39
- Hot pursuit, 9:38
- Inevitable discovery, 9:66
- Obvious evidence. See subhead: Plain view
- Plain touch, objects found by, 9:43
- Plain view, objects in, 9:42
 - Admissibility, 9:42
 - Dangerous objects, plain touch, seizure by, 9:43
 - Plain touch, objects found by, 9:43
 - Same car with different license plates stopped, drugs in plain view seized, 9:42
- Probable cause, hot pursuit, 9:38
- Prosecution’s burden of proof. See subhead: Burden of proof, prosecution’s
- Public safety exception, 9:19
 - Fleeing men stopped illegally, revolver seized, suppression, 9:18
 - Frisk for, warrantless police intrusion, 9:12
 - Plain touch, seizure by, 9:43

WARRANT OF ARREST

- Arrest with/without, 1:48-1:51
- Issuance of, 4:13
- Signed by local criminal court judge, 1:30, 1:47, 1:49
- Summons in lieu of, 4:13

WEAPON

- Admissibility based on officer’s testimony, no chain of evidence required, 18:90
- Conviction, effect of, 22:207
 - Sentence concurrent, with sentence for attempted murder, single act, 22:21
 - Sentence consecutive, two acts, 22:25
- Extreme risk protection orders (ERPO), 23:152
- Firearms, motion to dismiss indictment, incorrect ballistics report, 7:49
 - Incorrect ballistics report, indictment, 7:49
 - Motion to dismiss and dismissal, 7:49
- Jury charge, 19:193
- Justification defense inapplicable to possession of, 15:7

WEAPON—Cont'd

- Knife, photograph of knife wounds on murder victim as evidence, 18:98
- Operability of weapon as defense, 15:65
 - Justification defense, 15:7
- Pistol permit, suspension, 1:45
 - Order of protection, effect of, 1:45
- Possession of
 - Charge, plea bargaining, 17:1
 - Punishable by single act, continuing crime theory inapplicable, indictment, 3:45
- Presumption of possession, 9:76
- Temporary innocent possession defense
 - See also Temporary Innocent Possession Defense
- Temporary innocent possession defense, 15:66
- Uncharged crime, 12:27
- Warrantless search and seizure. See Warrantless Search and Seizure

WEAPONS

- Second Amendment issues; constitutional challenges, 15:100

WEATHER CONDITIONS

- Evidence, 18:9

WEBSITES

- See Internet Sites

WEEKENDS

- See Holidays and Weekends

WIRETAPPING

- Agent of police, 9:114
- Attorney, by, 1:21
- Attorney, by, 9:99
- Pen register, 9:100
- Warrant, 9:99

WITHDRAWAL FROM REPRESENTATION

- See Defense Attorney subhead: Withdrawal from representation

WITNESSES

- 911 recordings. See 911 Recordings
- Accomplice, as
 - Corroboration of testimony, 14:47
 - Question of fact, 14:56
- Advocate-witness rule, 1:21
 - Conflict of Interest, 2:43
- Advocate-witness rule, 7:21
- Affirmation or oath, sworn in by, 18:35
- Alibi witness, 8:75
 - Rebuttal witness, 8:75
 - Criminal record, witness, 8:139
 - Subpoena for witness's criminal record, 8:139

WITNESSES—Cont'd

- Alibi witness, 8:75—Cont'd
 - Rebuttal witness, 8:75—Cont'd
 - Witness's criminal record, subpoena for, 8:139
- Allocation, child's ability to testify as sworn witness, regarding, grand jury proceedings, 6:20
- Anonymous, 19:34
- Attorney for, 2:4, 2:19, 6:15
- Bias and prejudice, 18:57, 18:63
- Character witness, 18:46
- Child witness. See Child witness
- Competency to testify, 18:36
- Conflict of interest; simultaneous representation of prosecution witness and defendant, 2:48
- Contempt, 2:4
- Counsel for, 2:4, 2:19, 6:15
- Courtroom closure request by prosecution, witness anonymity, 19:33
- Witness, 19:237
- Defendant, by; bail revocation, 4:74
- Defendant's decision to testify, burden of proof, Sandoval rules
 - Prejudicial effect of admitting prior crimes. See also Defendant's Decision to Testify
- Defendant's decision to testify, burden of proof, Sandoval rules
 - Prejudicial effect of admitting prior crimes, 11:36, 11:37
- Defense
 - Death of noncritical witness, no prejudice to constitutional speedy trial, 13:90
 - Motion to inspect grand jury minutes, testimony of witnesses not called by prosecution, 6:63
 - Right to call witnesses, 18:40
- Discovery issues. See Brady Material
- Firsthand knowledge of police conduct, prosecution's burden to present, Mapp hearing, 9:72
- Forms
 - Grand jury
 - Letter to client-witness, 6:87
 - Subpoena of witness, defense letter requesting, 6:82
 - Material witness warrant, application, order and affirmation, 18:214
- Grand jury proceedings, at, 6:11-6:20
 - See also Grand Jury Proceedings
 - Attorney for, 6:15
 - Capacity, 6:19
 - Child as witness, 6:20
 - Competency, 6:19
 - Oath, 6:18
 - Vulnerable person as witness, 6:20
- Hostile, declaration that called witness is, 18:69

WITNESSES—Cont'd

Huntley hearing, no need to call all possible witnesses, 9:166

Ill witness, effect on statutory speedy trial, 13:41

Immunity. *See* Immunity

Impeachment. *See* Impeachment

Importance of calling, 7:30

Intimidation, 12:30

Lesser included offenses, jury barred from irrationally dissecting testimony, 16:14

List, 8:89

Loss of, effect on retrial, 24:124

Amelioration by record on appeal, 24:64

Material witness. *See* Material Witness

Missing witness

See also Jury Charge subhead: Missing witness charge

Missing witness, 19:177-19:190

Oath or affirmation, sworn in by, 18:35

Opening the door, 18:154

Own witness, impeachment of, 18:61

Preliminary hearings. *See* Preliminary Hearings subhead: Witnesses

Pretrial hearings, importance of calling witnesses, 7:30

Preservation for appeal, 7:30

Rosario material pretrial testimony included in, 7:1

Wade hearing, 7:30

Prosecution's illness, statutory speedy trial, 13:41

Prosecution witnesses

Juror making unauthorized visit to crime scene, unsworn witness, 20:37

Simultaneous representation of prosecution witness and defendant; conflict of interest, 2:48

Questioning, 15:40

Recalling, 18:67

Recantation evidence, collateral proceedings, CPL 440.10 motion, 23:44

Recollection refreshed by record on appeal, 24:64

Recordings. *See* Recordings

Refreshing witness recollection, 18:53, 24:64

Rehabilitation of, 18:66

Sandoval rules, defendant as witness, impeachment

Inapplicability to

Other witnesses, 11:59

Self-Incrimination, witness invoking privilege against, 18:41

Sequestration, 19:42

Juror experimentation, 19:220

Simultaneous representation of prosecution witness and defendant; conflict of interest, 2:48

Subpoena of, 8:95

Telephone. *See* Telephone

WITNESSES—Cont'd

Traffic infraction by, impact on credibility, 11:20

Trial. *See* Witnesses, Trial

Truthfulness, barring opinion as to, 18:137

Uncharged crimes, permissible use of

Improper testimony, 12:43

Intimidation of, 12:30

Unsworn

Child witnesses, 18:36

Crime scene, juror visiting, 20:37

Vulnerable person as witness, 6:20

WITNESSES, TRIAL

Absence due to allegedly defense misconduct, 18:73

Character witnesses, 18:46

Complaining witness, character of, 18:48

Prosecution witness, character of, 18:48

Prosecutor's conduct in questioning, good faith requirement, 18:195

Child

Vulnerable, 18:37

Child witness, 18:36

Closed-circuit television, 18:37

Unsworn testimony, 18:38

Voir dire, 18:36

Closed-circuit television, 18:37

Complaining witness, character of, 18:48

Conditional examination, 1:30, 18:72

Process issued by court, 1:30

Videotaping testimony from, 18:72

Defendant's decision not to testify, 18:52, 18:61

Defendant's decision to testify, 18:50

Defense calling, prosecution rebuttal, 19:153

Jury charge, 19:154

Opposing witness, character of, jury charge, 19:154

Exchange of witness list, 19:2

Intimidated witness testifying at trial, 18:73

Intimidation, 12:30

Intimidation, 4:74

Jury charge issues. *See* Jury Charge

Lay witness, examination of, 18:35

List of witnesses, exchange of, 19:2

Material witness. *See* Material Witness

Missing witness charge, jury charge

See also Jury Charge

Missing witness charge, jury charge, 19:177-19:190

Objection made before testimony of, insufficient, 18:169

Photographs used to corroborate testimony, 18:100

Prior proceedings, use of testimony from, 18:71

WITNESSES, TRIAL—Cont'd

- Prosecution table, inappropriate to allow witnesses at, 19:55
- Additional evidence charge, cautionary instructions, 19:204
- Impeachment of verdict, 19:220
- Outside influence on jurors, 19:221
- Order of trial, 19:1
- Prosecutor's conduct toward, objections, 18:195, 18:201-18:203
- See also Objections Based on Prosecutor's Conduct
- Recalling, 18:67
- Recross, scope of, 18:54
- Redirect, scope of, 18:54
- Refreshing recollection of
 - Hypnosis, through, 18:128
 - Prosecutor's conduct, good faith requirement, 18:195
- Sirois, 18:73
- Time limits to present case, 18:70
- Trial judge questioning witness, judicial bias, 18:192
- Truthfulness, barring opinion as to, 18:137
- Videotaped testimony
 - Admissibility, 18:127

WOMEN

- Gender exclusion from jury impermissible, 19:105

WORK PRODUCT DOCTRINE

- See Attorney's Work Product

WRIT OF HABEAS CORPUS

- See Habeas Corpus

WRIT OF PROHIBITION

- Abstention doctrine, application of, 23:17
- Article 78 review, 23:11
- Barred from challenging determination in criminal matter, 23:2
- Bodily samples improperly sought, 23:9
- Constitutional separation of powers issues, 23:5
- Declaratory judgment action compared, 23:7
- Denial of
 - Appeal available, prosecution's seeking of writ, 23:16
 - Discretionary denial of proper writ, 23:8
 - Dismissal in interest of justice sought by defendant, 23:10
 - Disqualifying of defense attorney by judge, 23:10
 - Grounds lacking, writ sought by prosecution, 23:16
 - Judge, attempted barring of by defendant, 23:10

WRIT OF PROHIBITION—Cont'd

- Denial of—Cont'd
 - Psychiatric exam, videotaping sought by prosecution, 23:10
 - Psychological testimony precluded by judge, 23:10
 - Severance, denial of motion for, 23:10
 - Sufficient alternative remedy, 23:6, 23:7
 - Videotaping of psychiatric exam, 23:10
- Discretionary denial of proper writ, 23:8
- Error
 - Mere error of law, writ not supported, 23:10
 - Prejudicial error, 23:1
- Essential question, trial of defendant, 23:1
- Exhaustion requirement; Article 78 review, 23:12
- Extraordinary remedy, 23:2-23:11
 - Actions of court supporting writ, 23:5-23:8
 - Constitutional separation of powers issues, 23:5
 - Double jeopardy, violation of, 23:5
 - Federal treaty, violation of, 23:5
 - Guilty plea vacated by judge, 23:5
 - Motion to dismiss, denial of, 23:5
 - Mutual mistake of parties, 23:5
 - Retrial, writ to bar, 23:5
 - Article 78 review, 23:11
 - Bodily samples improperly sought, 23:9
 - Challenges determination in criminal matter barred, 23:2
 - Declaratory judgment action compared, 23:7
 - Denial of writ, 23:6
 - Discretionary denial of proper writ, 23:8
 - Discretionary denial of proper writ, 23:8
 - Dismissal in interest of justice sought by defendant, 23:10
 - Disqualification, defense attorney by judge, 23:10
 - Double jeopardy, violation of, 23:5
 - Error of law, writ not supported, 23:10
 - Irreparable harm to defendant supports writ, 23:9
 - Prosecutors, writ used against, 23:3
 - Psychiatric exam, videotaping sought by prosecution, 23:10
 - Psychological testimony precluded by judge, 23:10
 - Severance, denial of motion for, 23:10
 - Sufficient alternative remedy, 23:6, 23:7
 - Videotaping of psychiatric exam, 23:10
- Federal forum unavailable, 23:17
 - Abstention doctrine, application of, 23:17
- Federal treaties violated, 23:5
- Filing fee improper for indigent, 23:14
- Guilty plea
 - Court acceptance of without prosecutor's consent, 23:16

WRIT OF PROHIBITION—Cont'd

- Guilty plea—Cont'd
 - Vacated by judge, 23:5
- Hung jury at first trial, no writ of prohibition to bar retrial, 24:129
- Importance of, 23:1
- Indigent, filing fee improper for, 23:14
- Irreparable harm to defendant supports writ, 23:9
- Motion to dismiss, denied, 23:5
- Mutual mistake of parties, 23:5
- Overview, 23:1-23:17
- Procedure, 23:13
- Prosecutors
 - Use of writ against, 23:3
 - Use of writ by, 23:4
 - Writ sought by, 23:15, 23:16
 - Appeal available, writ denied, 23:16
 - Grounds lacking, writ denied, 23:16
 - Reduction of charges without prosecutor's express consent, 23:15
- Relief available, 23:19, 23:20
- Retrial, writ to bar, 23:5
- Special prosecutor, indictment by, 23:6

YOUTHFUL ADJUDICATIONS

- Credibility not affected by, 11:18
 - Juvenile delinquency, 11:18
 - PINS adjudications, 11:18
 - Sandoval rules impact, 11:18-11:19
- Credibility not affected by, 21:6

YOUTHFUL OFFENDERS

- Adjudication
 - Credibility not affected, defendant's credibility as witness, Sandoval rules. See Sandoval Rules
 - Sex Offender Registration Act, 23:81
- Age 16 through 18, 21:4
- Age offense committed as determining age, 21:7
 - Date of offense controls, 21:7
- Appellate discretion to grant youthful offender status, 21:84
- Armed felony offense, ineligibility for youthful offender treatment, 21:69
- Benefits of eligibility, 21:4
- Civil proceedings, later use of records in, 21:88
 - Criminal conviction, setting aside of if status granted, 21:75
- Generally, 21:4
- Juvenile offenders, transfers to Family Court, 21:3
- Presentence investigation required upon, 21:74
- Collateral consequences, 21:85-21:88
 - Fee inapplicable, 21:81
 - Later criminal prosecution, effect on, 21:86
 - Mandatory surcharge applicable, 21:81
 - No criminal record, 21:78

YOUTHFUL OFFENDERS—Cont'd

- Collateral consequences, 21:85-21:88—Cont'd
 - Predicate felon sentencing, avoidance of, 21:82
 - Privacy of, 21:78
 - Punishment options upon conviction of juvenile offender, 21:39
 - Subsequent litigation, effect on, 21:86-21:88
 - Civil proceedings, later use of records in, 21:88
 - Criminal prosecution, limited use in, 21:86
 - Enhanced felony sentencing, 21:87
 - Out-of-state adjudication, effect on sentencing, 21:87
 - Persistent felony sentencing, use for limited, 21:87
 - Predicate felony sentencing, use for limited, 21:87
- Concealment to obtain confession, suppression, 9:113
- Courtroom closure discretionary, 19:39
- Crimes rendering youth ineligible for youthful offender treatment, 21:69
 - Armed felony offense, 21:69
 - Class A, accusation of, 21:66
 - Crimes rendering youth ineligible for youthful offender treatment, 21:78
- Defendant not sole participant, exception, 21:69
- Enhanced felony sentencing, subsequent litigation, effect of adjudication on, 21:87
- Jury trial, right to, 21:73
- Maximum sentence limited once status granted, 21:79
- Mitigating circumstances, 21:69
- Out-of-state adjudication, effect on sentencing, 21:87
- Persistent felony sentencing, subsequent litigation, effect of adjudication on, 21:87
 - Avoidance of, 21:82
 - Subsequent litigation, effect of adjudication on, 21:87
- Presentence investigation required upon conviction, 21:74
- Privacy in proceedings unavailable in felony case, 21:71
- Sex crimes, 21:69
- DNA testing inapplicable, 22:75
 - Conviction, enhanced sentencing not applying, 22:99
- Mandatory assessments, 22:86
 - Requested at sentencing, if available, 22:176
 - Appellate court may confer, 22:176
- Grand jury, youthful defendant's statement before well after questioning, potential for suppression, 9:152
- Guilty verdict, youthful offender status granted after sentencing, 21:66

YOUTHFUL OFFENDERS—Cont'd

- Irrevocability of status, 21:82
- Predicate felon status, 21:82
- Juvenile offender treated as, case not transferred to Family Court, 21:4
- Bench trial, 21:73
- Jury trial disallowed, 21:73
- Maximum sentence limited once status granted, 21:80
- Offenses, ineligibility for youthful offender treatment, 21:69
- Out-of-state adjudication, effect on sentencing, 21:87
- Person in Need of Supervision (PINS), 21:5
- Petty offenses, unavailability of status, 21:70
 - Irrevocability of youthful offender status and, 21:82
 - Subsequent litigation, effect of adjudication on, 21:87
- Presentence investigation required upon conviction, 21:74
 - Adjudications, 21:8
 - Convictions, questions on, 21:78
 - Felony cases, unavailable, 21:71
- Probation, violation of, youthful offender status irrevocable, 21:82
- Questioning, 21:9
- “Raise the age” legislation and age of adult criminal responsibility now 18, 21:65
- Retroactive youthful offender treatment, 21:83
- School authorities notified, 21:10
- Sealing of records
 - Fine may be imposed as part of, 21:81
 - Maximum sentence limited once status granted, 21:79
 - Reduction in sentence, 21:64
- Sealing of records, 1:93, 23:156
- Sentence
 - Maximum sentence limited once status granted
 - See also subhead: Status as Youthful Offender
- Sentencing, 21:4
 - Adult standards, youthful offender status denied, 21:75
 - Persistent felony sentencing, subsequent litigation, effect of adjudication on, 21:87
 - Avoidance of, 21:82
 - Subsequent litigation, effect of adjudication on, 21:87
 - Youthful offender status granted after sentencing, 21:66
- Sex Assault Reform Act (SARA), 23:126
- Sex crimes, ineligibility for youthful offender treatment, 21:69
- Sex Offender Registration Act, 23:81
- Sex offenders, civil management for, 23:109

YOUTHFUL OFFENDERS—Cont'd

- Statements, 9:113
- Status as youthful offender, 21:64-21:88
 - Age 16 and 17, including, 21:65
 - All charges, status to be granted for, 21:77
 - Appellate discretion to grant youthful offender status, 21:84
 - Automatic vs. discretionary eligibility, 21:67
 - Candidates for status, 21:67
 - Automatic vs. discretionary eligibility, 21:67
 - Eligible youth determination, 21:79
 - Ineligibility for youthful offender treatment, 21:69
 - Petty offenses, unavailability of status, 21:70
 - Civil proceedings, later use of records in, 21:88
 - Effect of, 21:78
 - Enhanced felony sentencing, 21:87
 - Fee inapplicable, 21:81
 - Mandatory surcharge applicable, 21:81
 - Out-of-state adjudication, effect on sentencing, 21:87
 - Persistent felony sentencing, use for limited, 21:87
 - Predicate felony sentencing, 21:87
 - Privacy of, 21:78
 - Punishment options upon conviction of juvenile offender, 21:39
 - Subsequent litigation, effect on, 21:86-21:88
 - Class A felony, accusation of, 21:66
 - Crimes rendering youth ineligible for youthful offender treatment, 21:69
 - Criminal conviction, set aside if status granted, 21:75
 - Criminal record, sparing of defendant, 21:78
 - Defendant's right, eligibility for status, 21:72
 - Denial of, 21:75
 - Determination of status and consequences, 21:75-21:80
 - Adjudication, effect of, 21:78
 - All charges, status to be granted for, 21:77
 - Denial of status, 21:75
 - Discretionary grant of status, criterion for, 21:76
 - Fee inapplicable, 21:81
 - Felony sentence, maximum, 21:79
 - Fine may be imposed, 21:81
 - Interest of justice, criterion for, 21:76
 - Mandatory surcharge applicable, 21:81
 - Maximum sentence limited once status granted, 21:79
 - Misdemeanors, maximum sentence, 21:80
 - Records sealed upon granting of status, 21:78
 - Effect of status, 21:64

YOUTHFUL OFFENDERS—Cont'd

- Status as youthful offender, 21:64-21:88—Cont'd
 - Eligible youth determination, 21:78
 - Granting of, 21:3
 - Guilty verdict, granting of status following, 21:66
 - Ineligibility for youthful offender treatment, 21:69
 - Irrevocability of youthful offender status, 21:82
 - Jury trial, right to in felony cases only, 21:73
 - Local vs superior court, conviction in, 21:68
 - Mandatory surcharge inapplicable, 21:81
 - Maximum sentence limited once status granted, 21:79
 - Jury trial disallowed, 21:73
 - Maximum sentence, 21:80

YOUTHFUL OFFENDERS—Cont'd

- Status as youthful offender, 21:64-21:88—Cont'd
 - Petty offenses, unavailability of status, 21:70
 - Presentence investigation required upon conviction, 21:74
 - Felony cases, unavailable, 21:71
 - Purpose of status, 21:64
 - “Raise the age” legislation and age of adult criminal responsibility now 18, 21:65
 - Records sealed upon granting of status, 21:78
 - Superior vs local court, conviction in, 21:68
 - Superior court, conviction in, 21:67

ZONING

- See Municipal Ordinances