

CHAPTER 51

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Guide to Researching Massachusetts Criminal Practice and Procedure

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§ 51.1 INTRODUCTION

This chapter provides an annotated overview of resources useful for researching Massachusetts criminal practice and procedure. We have started with primary law and worked our way to secondary resources. However, we would always advise less experienced attorneys to start with one of the many excellent secondary sources we have in Massachusetts, and which are discussed in depth below, to help them jump start their research.

Many of the sources we discuss are available in print, and on either Westlaw or LexisNexis or both. We have noted this information at the end of every annotation. When using Westlaw Classic, the easiest way to locate the source is to go to the “Search for a database” box and type in the database identifier, which we have included in parenthesis. When using WestlawNext, the easiest way to locate a source is to type the source name in the universal search box. Throughout this chapter we describe research in Westlaw Classic versus WestlawNext, since Westlaw Classic is more rules-based and WestlawNext is more intuitive. For titles available on LexisNexis, the best way to locate the source is to go to the “Find a Source” tab and type in the name of the title under the “Option 1” default: “Type in keyword, list, or phrase.” Almost everything written in the way of search tips in this chapter is true for both online and print resources.

For researchers wanting to get their hands on the legal resources discussed in this chapter, there are 17 [Massachusetts Trial Court Libraries](#) located throughout the state, which allow access to members of the bench and bar, and the general public. Many of these libraries also offer free access to LexisNexis and/or Westlaw. Check the Trial Court Libraries [catalog](#) to find out which branches have the resources for which you are looking. Law school libraries around the state are another source for the resources discussed within this chapter.

Finally, we would take it as a great kindness if the reader of this chapter would let us know of any errors, or of resources that should have been included but were not. Please send any comments to pnewcombe@law.wne.edu. Thank you.

PART ONE: PRIMARY LAW

§ 51.2 CONSTITUTIONS

51.2A UNITED STATES CONSTITUTION

The following amendments come into play with criminal practice and procedure. Please check Appendix B for secondary sources interpreting the constitutional amendments listed below

1. Amendments

4th amendment – **Search and Seizure:** “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

5th amendment - **Grand Jury, Double Jeopardy, Self-Incrimination, Due Process:** “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

6th amendment - **Criminal Prosecutions - Jury Trial, Right to Confront and to Counsel:** “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”

8th amendment - **Excess Bail or Fines, Cruel and Unusual Punishment:** “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

2. Where to Find Cases Interpreting the Amendments

The most efficient way to locate cases interpreting the language of a constitutional amendment is by using an annotated source. An annotated source brings together in one place,

in addition to references to secondary materials, cases where the courts have interpreted the amendments.

United States Code Annotated (U.S.C.A.) (Thomson West). Twenty-eight volumes contain the U.S. Constitution and its amendments, and provide case annotations. These volumes are shelved either at the beginning of the set, or at the end, depending on library practice. There is an index to the Constitution in the last of the twenty-eight volumes. The *U.S.C.A.* also provides cross-references, relevant administrative citations, and cites to secondary sources. The *U.S.C.A.* is also available electronically on Westlaw (USCA).

United States Code Service (U.S.C.S.) (LexisNexis). The first ten volumes contain the U.S. Constitution and its amendments, and provide case annotations. The *U.S.C.S.* also provides cross-references, relevant administrative citations, and cites to secondary sources. The *U.S.C.S.* is more selective about case annotations than the *U.S.C.A.* The *U.S.C.S.* is also available on LexisNexis.

GPO Access. This website provides free access to the following title published by the U.S. Government Printing Office: *Constitution of the United States of America: Analysis and Interpretation, with Annotation of Cases Decided by the Supreme Court of the United States to June 2002*. This document was prepared by the Congressional Research Service and published in 2002 as Senate Document 108-17. This title analyzes and interprets the Constitution with annotations of Supreme Court cases, and is updated every two years, with a new version published every ten years as a Senate document. Files are available in ASCII text and PDF format.

Two additional free websites that provide access to the U.S. Constitution with annotations are [Legal Information Institute](#) and [FindLaw](#). These websites do not purport to be comprehensive, but may be useful to do some preliminary research if you are interested in keeping costs down.

51.2B. MASSACHUSETTS CONSTITUTION

The following provisions of the Massachusetts Constitution come into play with criminal practice and procedure. All are available online at the [Massachusetts legislative website](#). Following this section we describe where to find cases interpreting these constitutional provisions. For secondary sources interpreting the constitutional articles, see Appendix B to this chapter.

1. Articles ¹

PART THE FIRST. A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Article XI - Remedy by recourse to the laws; obtaining of right and justice freely, completely and promptly. (Right to speedy trial) – “Every subject of the commonwealth

¹ The titles to the following constitutional articles come from the *General Laws of Massachusetts, G.L.M.*, the official (unannotated) version of the Massachusetts Constitution. The titles have been adjusted in some instances by the writers to aid clarity.

ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.”

See also, Mass. R. Crim. P. 36 (Defendant shall be tried within 12 months of the return day).

Article XII - Regulation of prosecutions; right of trial by jury in criminal cases (as well as the rights: to sufficient charges; against self-incrimination; to confront witnesses; to counsel; to due process of law; and to trial by jury): “No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.”

See also, S.J.C. Rule 3:10, Mass. R. Crim. P. 8.

Article XIII - Criminal prosecutions, verification of facts in vicinity: “In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.”

Article XIV -- Freedom from unreasonable searches and seizures; warrants: “Freedom from unreasonable searches and seizures; warrants. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure: and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.”

Article XV - Right to trial by jury in controversies and suits: “In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.”

Article XXIV - Ex post facto laws: “Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.”

Article XXVI - Excessive bails or fines; cruel or unusual punishments: “No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.”

PART THE SECOND. The Frame of Government.

Chapter VI, Article VII. Habeas corpus: “The privilege and benefit of the writ of habeas corpus shall be enjoyed in this commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.”

2. Where to Find Cases Interpreting the Articles

The most efficient way to locate cases interpreting these constitutional provisions is to use an annotated source for the Massachusetts Constitution. Annotations will also provide pointers to additional resources, including citations to secondary sources discussing the article at issue.

Massachusetts General Laws Annotated (M.G.L.A.) (Thomson West). The first several unnumbered volumes of this set contain the U.S. Constitution followed by the Massachusetts Constitution. (Note: some libraries shelve these volumes first and some shelve them last.) Only the Massachusetts Constitution is annotated in this set. The third volume contains an index to the Constitution, a little easier to use than the multi-volume index to the whole set. The *M.G.L.A.* is also available on Westlaw (MA-ST-ANN).

To locate the case annotations when using *M.G.L.A.*, find the section called “Notes of Decisions” following the text of each constitutional article (after historical notes, cross references, law review and journal commentaries, etc.). The Notes of Decisions contain all cases that have interpreted a particular Massachusetts article, and it has an internal index to the cases annotated. Perusing this internal index can help you not only isolate the section of cases relevant to your issue(s), but can also give the newer researcher ideas about other areas to pursue.

Annotated Laws of Massachusetts (A.L.M.) (LexisNexis). LexisNexis has an annotated version of the Massachusetts Constitution in a single volume. This volume is unnumbered and may be placed at either the front or back of the statutory set. The state Constitution is followed by the U.S. Constitution. In the *A.L.M.* a constitutional provision is followed by cross references, research references, *American Law Report* annotations, texts, law reviews, and the “case notes” which are the functional equivalent of the “Notes of Decisions” described above. This set is available on LexisNexis.

§ 51.3 STATUTES

Massachusetts criminal law is found in chapters 263 through 274 of the Massachusetts General Laws. Criminal procedure statutes are found in chapters 275 through 280. In this section you will find direct links to the Massachusetts criminal statutory provisions, followed by a list of annotated sources that provide summaries of cases where the courts have interpreted the statute.

Please check Appendix B for secondary sources interpreting the statutes listed below, where available.

51.3A MASSACHUSETTS CRIMINAL STATUTORY PROVISIONS

1. Substantive Criminal Law

- [MGL c.263](#) Rights of Persons Accused of Crime
- [MGL c.263A](#) Witness Protection in Criminal Matters

- [MGL c.264](#) Crimes Against Governments
- [MGL c.265](#) Crimes Against the Person
- [MGL c.266](#) Crimes Against Property
- [MGL c.267](#) Forgery and Crimes Against Currency
- [MGL c.268](#) Crimes Against Public Justice
- [MGL c.269](#) Crimes Against Public Peace
- [MGL c.270](#) Crimes Against Public Health
- [MGL c.271](#) Crimes Against Public Policy
- [MGL c.272](#) Crimes Against Morality
- [MGL c.273](#) Desertion, Non-Support and Illegitimacy
- [MGL c.274](#) Felonies, Accessories and Attempts to Commit Crimes

2. Procedural Criminal Law

- [MGL c.275](#) Proceedings to Prevent Crimes
- [MGL c.276](#) Search Warrants, Rewards, Fugitives from Justice, Arrest, Examination, - Commitment and Bail. Probation Officers and Board of Probation
- [MGL c.276A](#) District Court Pretrial Diversion of Selected Offenders
- [MGL c.277](#) Indictments and Proceedings Before Trial
- [MGL c.277A](#) Statewide Grand Jury
- [MGL c.278](#) Trials and Proceedings Before Judgment
- [MGL c.279](#) Judgment and Execution
- [MGL c.280](#) Fines and Forfeitures

3. Where to Locate Cases Interpreting the Statutes

While the statutory text provides the relevant language, for research purposes it is best to use an annotated source that directs you to the cases interpreting the statute. It is not the naked statutory language that controls but a court’s interpretation of the statute, particularly in instances where the statute is vague or ambiguous. The annotated sources for Massachusetts statutes are listed below.

Massachusetts General Laws Annotated (M.G.L.A.) (Thomson West). Updated by monthly pamphlets plus annual pocket parts. *M.G.L.A.* is also available on Westlaw (MA-STAT-ANN).

To locate the case annotations using *M.G.L.A.*, find the section called “Notes of Decisions” following the text of each statute (after historical notes, cross references, law review and journal commentaries, etc.). The Notes of Decisions contain all cases that have referred to a particular Massachusetts statute, and it has an internal index to the cases annotated. Perusing this internal index can help you not only isolate the section of cases relevant to your issue(s), but can also give the newer researcher ideas about other areas to pursue.

The Annotated Laws of Massachusetts (A.L.M.) (LexisNexis). Updated by monthly pamphlets plus annual pocket parts. In the *A.L.M.* a statute is followed by cross references, research references, *American Law Report* annotations, texts, law reviews, and the “case notes” which are the functional equivalent of the “Notes of Decisions,” described above. Also available on LexisNexis.

4. How to Find Statutes When You Don’t Have a Citation

There are two primary techniques used to locate statutes in print when you do not have a citation: using the General Index and the Popular Name Approach. Finding statutes online is also discussed in this section.

Every statutory compilation will have a number of volumes that are referred to as the "General Index" To use the General Index, determine keywords or phrases that describe your research problem. Consult the index at the end of the statutes for these terms. The index directs you to the appropriate chapter and section. For example, the crime in which you are interested involves some form of forgery, so you find “forgery” in the appropriate index volume, and at the entry for forgery, you are directed to go to “generally, 267 § 1et seq.” Find the volume of the *M.G.L.A.* or *A.L.M.* that contains Chapter 267, locate section 1, and that is the start of the statutes relating to forgery. The start of the chapter contains a table of contents of all of the sections related to forgery. In this instance, Chapter 267 is entitled “Forgery and Crimes Against the Currency.” Newer researchers should make it a practice to peruse all of the potentially relevant sections to be sure they have a comprehensive grasp of the crimes that may be at issue.

Some Massachusetts statutes are known by a popular name. If you are researching a statute with a popular name, for example, the Massachusetts Lemon Law, locate the last index volume to the Massachusetts laws, which contains the Popular Name Table. This lists in alphabetical order those state laws known by their common name. Alternatively, use the link “[Massachusetts Laws by Popular Name](#)” from the Massachusetts Trial Court Law Libraries website.

Searching for statutes on either LexisNexis or Westlaw: at the time of this writing, the consensus of professional researchers disfavors doing an initial search for a relevant statute online: if you’ve used a wrong term, a print index will often redirect you, whereas an online query will not. For example, if you look up “battery” in a print index, you may be redirected to “Assault and battery, generally, this index;” then under “Assault and Battery” in the index, you will find that there are many permutations on this crime: abuse of aged persons, abuse between family and household members, etc. It is easier to see this in a print index than to try to decipher the results of an online search.

Finally, investigate the sections before and after the section you believe to be relevant: statutes are not passed in isolation and the sections preceding and succeeding may have qualifying language.

§ 51.4 RULES

This section covers the Massachusetts Rules of Criminal Procedure, Rules of Court, and Evidence. It details unannotated sources first, followed by annotated sources for the Massachusetts Rules of Criminal Procedure, Rules of Court, and (proposed but unpromulgated) Rules of Evidence. *See also Ch. 52 of this book, which link to these and other rules relevant to criminal trials), and Sec. 51.14 of this chapter, containing secondary sources interpreting these rules.*

51.4A. MASSACHUSETTS RULES OF CRIMINAL PROCEDURE ²

The current Massachusetts Rules of Criminal Procedure were adopted by the Supreme Judicial Court in October, 1978, with an effective date of July 1, 1979. These rules are applicable to proceedings in the following venues: District Court; Boston Municipal Court; and Superior Court.

Unannotated

Rule 1:	Title, Scope
Rule 2:	Purpose; Construction; Definition of Terms
Rule 3:	Complaint and Indictment; Waiver of Indictment; Probable Cause Hearing
Rule 3.1:	Determination of Probable Cause for Detention
Rule 4:	Form and Contents of Complaint or Indictment; Amendment
Rule 5:	The Grand Jury
Rule 6:	Summons to Appear; Arrest Warrant
Rule 7:	Initial Appearance and Arraignment
Rule 8:	Assignment of Counsel
Rule 9:	Joinder of Offenses or Defendants
Rule 10:	Continuances
Rule 11:	Pretrial Conference and Pretrial Hearing
Rule 12:	Pleas and Withdrawals of Pleas
Rule 13:	Pretrial Motions
Rule 14:	Pretrial Discovery
Rule 15:	Interlocutory Appeal
Rule 16:	Dismissal by the Prosecution
Rule 17:	Summonses for Witnesses
Rule 18:	Presence of Defendant
Rule 19:	Trial by Jury or by the Court
Rule 20:	Trial Jurors
Rule 21:	Sequestration of Witnesses
Rule 22:	Objections
Rule 23:	Statements and Reports of Witnesses for Impeachment

² The links below are taken directly from the Supreme Judicial Court's website which contains the following notice: "The official publication of the Massachusetts Rules of Criminal Procedure is found in the bound volumes published and distributed as part of the Massachusetts Reports. Efforts have been taken to accurately compile and publish on this Web site these rules as they were initially published in 378 Mass. 842 (1979), subsequently amended in Massachusetts Reports through July 1, 2011. In the event of discrepancies between the electronic version of the rules found on this Web site and the print version found in the Massachusetts Reports, the print version will be considered authoritative."

Rule 24:	Opening Statements; Arguments; Instructions to Jury
Rule 25:	Motion for Required Finding of Not Guilty
Rule 26:	Request for Rulings
Rule 27:	Verdict
Rule 28:	Judgment
Rule 29:	Revision or Revocation of Sentence
Rule 30:	Postconviction Relief
Rule 31:	Stay of Execution; Relief Pending Review; Automatic Expiration of Stay
Rule 32:	Filing and Service of Papers
Rule 33:	Counsel for Defendants Indigent or Indigent But Able to Contribute
Rule 34:	Report
Rule 35:	Depositions to Perpetuate Testimony
Rule 36:	Case Management
Rule 37:	Transfer of Cases
Rule 38:	Disability of Judge
Rule 39:	Records of Foreign Proceedings and Notice of Foreign Law
Rule 40:	Proof of Official Records
Rule 41:	Interpreters and Experts
Rule 42:	Clerical Errors
Rule 43:	Summary Contempt Proceedings
Rule 44:	Contempt
Rule 45:	Removal of the Disruptive Defendant
Rule 46:	Time
Rule 47:	Special Magistrates
Rule 48:	Sanctions

See below for annotated sources for the Massachusetts Rules of Criminal Procedure. See Kent B. Smith, *Massachusetts Practice Series* Vols. 30-30B – *Criminal Practice and Procedure* (3d ed. 2007-) for detailed analysis of the Rules.

51.4B. MASSACHUSETTS RULES OF COURT

The Massachusetts Rules of Court regulate the conduct of business before the courts ranging from details such as the correct form for motions, pleadings, and briefs to more substantive issues such as grounds for appeal and time limitations.

Unannotated:

Massachusetts Rules of Court, Vol. 1, State (West). Issued annually. This volume comes in a handy desktop compilation of all applicable state rules. Although considered unannotated, it does include the Reporter's Notes where available, which can be helpful for

research, but there is nothing else in the way of annotation. The volume includes, but is not limited to:

Massachusetts Rules of Criminal Procedure, Rules 1 through 48.

Uniform Magistrate Rules, including preliminary probation revocation hearings;

Uniform Rules on Subpoenas to Court Officials;

Uniform Rule for Probable Cause Determinations for Persons Arrested without a Warrant;

District/Municipal Courts Rules of Criminal Procedure including issuance of complaint, arraignment, and pretrial hearing;

Special Rules of the Boston Municipal Court Department Sitting for Criminal Business, including rules for reading of the complaint, bail, and motions for return of property and to suppress evidence;

District/Municipal Court Rules of Criminal Procedure;

Special Rules of the Boston Municipal Court Department Sitting for Criminal Business;

District Court Department Supplemental Rules of Criminal Procedure. Includes rules on bails and notice of right to first-instance jury trial;

Supreme Judicial Court Rules, Chapter Three, Ethical Requirements and Rules Concerning the Practice of Law; and

Standing Orders

51.4C. ANNOTATED RULES OF PROCEDURE AND COURT

Massachusetts General Laws Annotated (M.G.L.A) (Thomson West). Each rule is followed by reporter's notes discussing the history of the rule, cross references, law review and journal commentaries, library references, pointers to useful secondary sources, references to similar U.S. Code provisions, U.S. Supreme Court cases, and Notes of Decisions. The following volumes of this set contain rules:

Vol. 47: Court Rules: Criminal Procedure Rules. Also available on Westlaw as part of the MA-ST-ANN and MA-RULES databases.

Vol. 48: Court Rules: Professional Conduct and District/Municipal Criminal Procedure Rules. Also available on Westlaw as part of the MA-ST-ANN, MA-TRIALRULES and MA-RULES databases.

Vol. 49: Court Rules: Superior Court Rules: Special Provisions for Criminal Cases. Also available in Westlaw as part of the MA-ST-ANN and MA-RULES databases.

Annotated Laws of Massachusetts - Court Rules (A.L.M) (LexisNexis). Similar to the *M.G.L.A.*, each rule is followed by its history, editorial note if applicable, reporters' notes, cross references, federal aspects of the rule, if any, pointers to secondary sources, and Case Notes, which point the researcher to cases interpreting or applying a particular rule. All of the rules appear in three volumes labeled "Court Rules" (i.e., unnumbered), issued annually with a mid-year updating pocket part. Rules are contained in the following volumes:

Vol. 1: Massachusetts Rules of Criminal Procedure. Also available on LexisNexis (MARULE).

Vol. 2: Superior Court Rules (Special Provisions for Criminal Cases), Trial Court Rules. Also available on LexisNexis (MARULE).

Vol. 3: District/Municipal Courts Rules of Criminal Procedure, District Court Department Supplemental Rules of Criminal Procedure, District Court Rules for Probation Violation Proceedings, Special Rules for Boston Municipal Court Sitting for Criminal Business. Also available on LexisNexis (MARULE).

51.4D. MASSACHUSETTS RULES OF EVIDENCE (PROPOSED BUT UNPROMULGATED)

Despite recent attempts, at the present time there is no codification of evidence rules for Massachusetts comparable to the Federal Rules of Evidence. The Supreme Judicial Court Advisory Committee on Massachusetts Evidence Law publishes the [Massachusetts Guide to Evidence](#), and the Supreme Judicial Court recommends its use. The *Guide* is updated by means of annual publication both online and in print. The Introduction to the *Guide* contains the following statement: “Ultimately, the law of evidence in Massachusetts is what is contained in the authoritative decisions of the Supreme Judicial Court and of the Appeals Court, and the statutes duly enacted by the Legislature.” Although this resource would be considered an “unannotated” source, it does contain invaluable “notes” following each section that discuss the origin of the specific section.

There are two print versions of the online *Guide*. One is the *Massachusetts Guide to Evidence* published by the Flaschner Judicial Institute, the official print edition of the online version; and the other is the *Massachusetts Guide to Evidence* published by MCLE.

§ 51.5 CASE LAW

The following section first outlines sources of reported case law in Massachusetts and then explains several efficient ways to locate on-point cases. For an in-depth discussion of sources for case law in Massachusetts, see Mary Ann Neary et al., *Handbook of Legal Research in Massachusetts* § 4.6 (3d ed., MCLE 2009).

51.5A. SOURCES FOR CRIMINAL CASE LAW IN MASSACHUSETTS

1. Trial Court

Massachusetts does not have an official reporter for its trial court. *The Massachusetts Law Reporter*, published by the Massachusetts Law Book Company, selectively publishes opinions from the Superior Court. Each volume has a cumulative index for that specific volume, but there is no index that cumulates the whole series. Selected Superior Court opinions are also digested in the legal newspaper for Massachusetts, *Massachusetts Lawyers Weekly*. Typically, if you want to see an opinion from a state trial court, you have to go to that court and request the file.

The *Massachusetts Appellate Division Reports* contain decisions of the Appellate Divisions of the District Courts and Boston Municipal Court. There is no cumulative index for this set either. The lack of a cumulative index or a digest for these resources makes them difficult to use for research purposes.

2. Appellate Courts

Print:

The official reporter for the Massachusetts Appeals Court is the *Massachusetts Appeals Court Reports*. Appeals Court opinions dating back to 2001 are available on the [Court's website](#). Opinions are also unofficially reported in the *Northeastern Regional Reporter* and *Massachusetts Decisions* published by Thomson West.

The official reporter for the Supreme Judicial Court (SJC) of Massachusetts is the *Massachusetts Reports*. As with the Appeals Court, SJC opinions dating back to 2001 are available on the [Court's website](#). Opinions are also unofficially reported in the *Northeastern Regional Reporter* and *Massachusetts Decisions* published by Thomson West.

3. Online - Free

The Massachusetts Trial Court Libraries, with its 17 branches throughout the state, have the deepest collection of free cases online. Both the [SJC and the Appeals Court](#) cases go back to 1938. The Trial Court Libraries also have a link to even [earlier case law](#) where available through Google Books.

As mentioned, opinions from both Massachusetts appellate courts are available for free from 2001 to the present on the official [website](#) of the Office of the Reporter of Decisions.

[LexisONE](#) contains opinions from the last ten years for all states.

4. Online - Fee

Westlaw has Massachusetts appellate cases in several databases: First Circuit Federal & State Cases (CTA1-ALL); Massachusetts State and Federal Cases (MA-CS-ALL); Massachusetts Cases (MA-CS); and Massachusetts Criminal Justice Cases (MACJ-CS). Be sure to choose the smallest database that suits your needs, as the larger the database, the larger the fee.

The Massachusetts state court cases on LexisNexis include: MA State Cases, Combined; MA Superior Court Cases from 1993; MA District Court, Appellate Division Cases from 1990; MA Court of Appeals Cases from 1972; Supreme Judicial Court Cases from 1768; MA Federal and State Cases, Combined; MA Federal District Court Cases; and MA Court of Appeals Unpublished. (Note: even though the database is called "MA Superior Court Cases from 1993," the scope note says it has cases from December 1984).

51.5B. HOW TO FIND CASE LAW

1. Finding Case Law Using a Constitutional Provision, Statute, or Rule

One of the major research purposes of an annotated statutory compilation is to aid the researcher in finding cases that have interpreted a statute, rule or constitutional provision. Following the text of the provision at issue, the researcher will find, in either the "Notes of Decisions" if using *M.G.L.A.* or "Case Notes" if using *A.L.M.*, all cases in which that provision has been applied. If you are working with a particular provision, this is the most efficient way to find relevant cases.

2. Finding Case Law Without a Citation to a Constitutional Provision, Statute, or Rule

Using Massachusetts Digest -- To search for relevant cases, when you do not have a citation to a constitutional provision, statute, or rule, consult the *Massachusetts Digest*. The *Massachusetts Digest* relies on the proprietary West topic and key number system. The *Digest* is a compilation of all of the headnotes extracted from Massachusetts cases published by West in the National Reporter System. These headnotes are organized by subject.

There are three ways to use the *Digest*. First, if you know the topic (Criminal Law), go directly to the volume(s) containing this topic. Criminal Law has a thorough outline at the beginning of the section that breaks down the topic (criminal law) into more discrete categories (for example, "Motions for New Trial"). The categories are then further sub-divided into precise issues of law (for example, "Discretion of courts as to new trial"). These issues of law are assigned "key numbers."

Scan the entries to determine the appropriate key number and proceed to look up and examine the headnotes listed or digested under the key number. If using print, don't forget to check the pocket parts. One useful aspect of this approach, especially for newer researchers, is that scanning the list of potential issues of law can awaken the researcher to other issues either not known or not considered.

Second, at either the end or the beginning of the *Massachusetts Digest*, are multiple volumes called the *Descriptive Word Index*. Use these volumes to look up terms descriptive of your issue. You will be provided with a topic (in this instance "criminal law") and key numbers, which will take you directly into the *Digest*, as described above. As an example of this method: you have an issue concerning the identification procedures used in your case. Look up "criminal law, identification procedures>suggestiveness in manner of exhibition." The Descriptive Word Index points you to the topic Criminal Law, and the key number 339.7(3). Following this topic and key number will be cases discussing overly suggestive identification procedures.

The third method relies not only on having one case on point, but also having the West version of that case because you will be using their topic and key number system. Examine the headnotes in your relevant case, and determine which one(s) are most descriptive of your legal issue. Take this topic (for example, criminal law) and key number (for example, 339.7(3)) and either run it through the appropriate Westlaw database for your jurisdiction, or look up the topic and key number in the appropriate print volume of the *Massachusetts Digest*. You will then retrieve all Massachusetts cases digested under that particular topic and key number.

3. Using an Online Database

We do not intend for this to be an exhaustive review of online searching, but since we are discussing how to find case law, something must be said about online methods. The three main approaches are discussed below and unless otherwise noted are the same using either Westlaw or LexisNexis.

Terms and Connectors Searching -- Choose the narrowest database suitable to your needs. Remember you can always check the database scope note to see what is included in a particular database. The most efficient way to search using terms and connectors is to use proximity connectors between concepts. Using the example given above concerning overly suggestive line-ups, try the following search in LexisNexis:

(identification or line up) /10 (suggest! or bias!)

This search will retrieve cases where these two concepts are discussed within 10 words of each other. It is always a good idea to examine your results for ideas about how to refine your search.

Field/Segment Searching -- When doing a terms and connector search, the researcher also has the option of searching with greater specificity by using fields (Westlaw) or segments

(LexisNexis). In this example, we will use Westlaw’s synopsis/digest (SY,DI) fields. This will retrieve cases where your terms are located either in the synopsis and/or the headnotes, thus creating a very targeted search.

The search looks like this:

SY,DI(("photographic array" or "line up") /10 (suggestive or bias!))

Note: We did not arrive at this search on our first try and most likely neither would you. Research involves a fair amount of trial and error. We tried variations, examined our results, and retooled our search.

Natural Language -- Natural language searching allows the researcher to either make a statement or write a query and search. This is best illustrated by an example based on overly suggestive photo array procedures:

Is it overly suggestive to have a photographic array that includes only one suspect of a different race

Behind the search template, both systems strip away words like "is," "it," "to," "a," "that" and inserts proximity connectors linking the substantive words like "suggestive," "photographic array," "suspect," "race."

4. Finding Additional Case Law Using Citators

Using either Westlaw or LexisNexis, call up one relevant case, even if it is from a different jurisdiction. On Westlaw, KeyCite that case. Click into “citing references” and select “Limit KeyCite Display.” Researchers may customize KeyCite results by Headnote and Jurisdiction, among other limitations. By focusing your KeyCite results on cases cited in your jurisdiction for the proposition of law discussed in the relevant headnote, you will retrieve cases that cite your case for the same proposition of law.

Similarly, on LexisNexis, call up the relevant case that you have. Shepardize that case, and then click into “FOCUS - Restrict By.” The template that comes up gives you customization options which may include headnotes and jurisdiction. Be aware that the headnote numbers used in Shepard’s refer to LexisNexis headnotes, not the proprietary West Topic and Key Number headnotes.

5. Finding Case Law Using a Secondary Source

Finding a good secondary source is an efficient way to locate cases. The next part of this chapter provides a guide to these sources.

PART TWO: SECONDARY SOURCES

A secondary source provides commentary on the law or analysis of the law, but is not the law itself. Finding a good secondary source is often the best way to begin your research because it brings together in one place relevant statutes, cases, and, in the more practitioner-oriented secondary sources, practice pointers, which can be invaluable for novice researchers. If you do not see one that seems relevant, remember you can always call a [Massachusetts Trial Court Library](#) and ask the highly skilled librarians for suggestions.

We begin with an in-depth review of two major Massachusetts-specific practice-oriented sources – Massachusetts Continuing Legal Education (“MCLE”) guides and the *Massachusetts Practice Series*. Following this section is a discussion of treatises, divided into two parts: the first covering Massachusetts-specific titles; the second covering treatises of a national scope that may prove useful to the Massachusetts practitioner. We then review other

available secondary sources including jury instructions, state-sponsored materials/guidelines, forms, encyclopedias and a few miscellaneous types of secondary sources.

§ 51.6 MASSACHUSETTS CONTINUING LEGAL EDUCATION PRACTICE GUIDES (“MCLE”)

The MCLE series has many titles written for criminal practitioners. Remember that in addition to MCLE titles having direct relevance to criminal practice and procedure, there are also MCLEs that have perhaps less obvious relevance. For example, *Massachusetts Expert Witness* contains sections on *Daubert/Langigan* Issues (Chapter 6), Criminalistics (Chapter 13), DNA evidence (Chapter 14), and Psychological Experts (Chapter 23). *Ethical Lawyering in Massachusetts* has a chapter on Criminal Trial Practice (Chapter 20).

As with all resources, one overarching issue when using an MCLE volume, either in print or online, is the currency of the information. Even if the resource has been updated in the current year, the practitioner must update any information to be used by means of the citator systems provided by LexisNexis or Westlaw. Even if the resource is consulted in the online version, in most instances it follows the same updating schedule as the print format. Do not be lulled into thinking that “online = current.”

Following is a small sampling of selected MCLE titles relevant to criminal law and procedure; a comprehensive listing is available at MCLE.org. Most of the MCLE guides themselves are available on both Westlaw and LexisNexis.³ (Descriptions of the following resources were taken from the publisher’s website where available.)

Crime and Consequences: The Collateral Effects of Criminal Conduct (William J. Meade & Daniel B. Winslow eds., 2009). *Crime and Consequence* is full of alerts and practical pointers about how to avoid or minimize the many consequences of criminal conduct and conviction. Guidance is offered on such practical matters as how a guilty plea can impact one’s housing eligibility; the authority of the RMV to act pursuant to a court-ordered suspension of a driver’s license; and how criminal proceedings may affect immigration status, university disciplinary decisions, and professional licensing. Also available on LexisNexis.

Criminal Model Jury Instructions for Use in the District Court (3d ed., 2009-). This two-volume source provides over 150 instructions covering trial procedure, evidentiary rules, and every major offense and defense triable in the district court. It is the resource used by judges across the Commonwealth, as it is the only official manual of pattern jury instructions in Massachusetts. Three new model instructions are included, covering Subsequent Offense, Failing to Register as a Sex Offender, and Giving a False Name upon Arrest. Featured is a checklist of instructions either required or affirmatively recommended by appellate courts, and a chart offering suggested dialogues for sentencing. Also available on LexisNexis.

R. Mark Kantrowitz, Timothy E. Maguire & Helle Sachse, *Massachusetts Criminal Law Sourcebook & Citator* (2012). The *Sourcebook* provides easy access to key elements of particular crimes; what the Commonwealth needs to prove to support its case; distinctions between related crimes; the lesser included offense in a given crime; available defenses; procedural requirements; key evidentiary issues; penalties for particular crimes and sentencing options. Also available on LexisNexis and Westlaw.

³ One difference is that as of this writing, the researcher can pull up an individual database for each MCLE resource on LexisNexis while on Westlaw the researcher must go to the MA-CLE database, and select which resource he wants to search, but you are still searching in one large MA-CLE database. This may have a cost differential that can only be determined by the terms of the researcher’s plan.

Peter M. Lauriat & James F. McHugh eds., *Massachusetts Expert Witness* (2d ed., MCLE 2010). Guiding you through the process of using and opposing experts at each stage of litigation, this book features tips on communicating effectively with such experts as accountants, engineers, ballistics experts. Also available on LexisNexis.

Massachusetts Arrest, Search and Seizure Citator (Mark S. Coven ed., MCLE 2011). This resource includes detailed summaries of the applicable law, along with hundreds of abstracts of Massachusetts search and seizure cases. The book is organized by numerous finding aids, including a table of cases organized by legal issue and keywords for each abstracted case. Use this reference for a detailed overview of Massachusetts law, as articulated through over three decades of decisions. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Courtroom Advocacy (Richard W. Renehan & J. Owen Todd eds., 2d ed. 2009-). See Chapter 15 – Criminal Defense. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts District Court Criminal Defense Manual (Cathleen L. Bennett et al. eds., 3d ed. 2008-). Filled with advice from some of Massachusetts' finest criminal law practitioners and judges, this book guides you through every phase of criminal representation, from filing an appearance through pretrial hearings, trial and any post-conviction process. This is the key manual used for Bar Advocate trainings, and it is the only manual in Massachusetts that combines the advice of CPCS lawyers with that of private counsel, judges, and prosecutors. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Evidence: A Courtroom Reference (J.W. Carney, Jr. ed., 6th ed. 2011-). This is a comprehensive guide to the admissibility of evidence. Judicial commentary from Massachusetts trial court judges provides a practical perspective on the handling of evidence at trial. Monthly online updates are available to brief the reader on evidentiary developments throughout the year.

Massachusetts Motor Vehicle Offenses: Criminal, Civil, and Registry Practice (Andrew M. D'Angelo ed., 2d ed., MCLE 2009-). This single volume offers practical insights from the prosecutor and defense point of view, explanations of technical issues such as blood-alcohol testing, and an assortment of sample motions and support materials. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Superior Court Criminal Practice Jury Instructions (Frances A. McIntyre et al. eds., 2004). This two-volume work provides instructions that cover every major type of criminal case. You can tailor and adapt these instructions to the particular issues of your case. This work includes instructions common to all criminal cases, specific crimes, defense and justification, special issues, and procedural aspects of jury instruction. Forms are available on an accompanying CD. Also available on LexisNexis.

Massachusetts Superior Court Criminal Practice Manual (Robert H. Bohn, Jr. ed., 1999-). This resource is a practical guide for every phase of litigation and trial, and is useful to both prosecution and the defense. Also available on LexisNexis.

Christine M. McEvoy & Gilda Tuoni Russell, *Massachusetts Hearsay Evidence* (2006). This reference starts off with a definition of what hearsay is, and aids you in spotting hearsay issues quickly at trial. Also available on LexisNexis.

Harold W. Potter, Jr. & Paul E. Troy, *A Practical Guide to Introducing Evidence: Basic Foundations and Objections* (3d ed., 2007-). This resource identifies the foundational requirements and examination techniques that apply to introducing evidence at trial. Sample

examinations illustrate the practical implementation of each of the evidentiary approaches explored in the text. Areas covered include prior convictions, privileges, hearsay, as well as timely topics such as genetic marker testing, "first complaint" evidence, Daubert/Lanigan standards, and electronic evidence.

Sex Offender Registry Practice (Larni S. Levy ed., MCLE 2009). The *Sex Offender Registry Practice* examines hearings before the Sex Offender Registry Board (SORB) and appeals, and the many collateral consequences of convictions and juvenile adjudications. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Drug Cases in Massachusetts (Stephanie Page ed., 2010). This edition incorporates a number of important developments, including the U.S. Supreme Court's opinion in *Melendez-Diaz v. Massachusetts*. Throughout the publication you will find sample forms, practice notes, information on forensic procedures and analysis, and citations to recent cases and amended statutes. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Murder and Other Homicide Cases in Massachusetts (Stephanie Page & Larry R. Tipton eds., 2004). Beginning with an introduction to the major types of homicide — first-degree murder, second-degree murder, voluntary manslaughter, and involuntary manslaughter — this book takes you through each step of a homicide case. Sample motions and other various exhibits are included, and six appendices provide you with more reference materials. Also available on LexisNexis.

Trying OUI Cases in Massachusetts (James M. Sullivan ed., MCLE 2004-). With contributions from attorneys and judges involved in many different stages of the process, this manual provides guidance on preparing for and trying OUI cases. In addition to the text, over 90 exhibits are included, such as sample motions, checklists, jury instructions, statutes, and breathe test forms. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Sex Offense Cases in Massachusetts (Stephanie Page ed., 2d ed. 2009). This practice manual serves as a guide to the substantive law, procedural requirements, and practical strategies necessary for handling sex offense cases. Applicable statutes, available defenses, investigation and discovery, pretrial motions, voir dire, and trial issues are addressed. Also available on LexisNexis and Westlaw (MA-CLE).

Jane Larmon White, *Committee for Public Counsel Services (CPCS) Training Manual for Criminal Defense* (2010). A compact resource providing a basic foundation for defense of indigents, primarily in the District Court Department of the Massachusetts Trial Court. The *Manual* serves a dual purpose as a framework for spotting issues and as a launching pad for in-depth research and practice. Revised regularly. Also available on LexisNexis.

§ 51.7 MASSACHUSETTS PRACTICE SERIES

The *Massachusetts Practice Series* is a set mostly of treatises, but some of the volumes are more practice oriented than may be typical. Each subject is written by different authors and many are considered to be "bibles" in their respective areas. Descriptions of the following resources may be taken from the publisher's website where available.

The *Massachusetts Practice Series* is available only on Westlaw (MAPRAC). On Westlaw the researcher can search in *Massachusetts Practice* at least two ways, either by finding the individual database, for example, "Criminal Practice and Procedure" (MAPRAC CPP), or by searching in a database that includes all of the subjects covered by *Massachusetts Practice* (MAPRAC). Be sure to check which approach is the least expensive under your plan.

Howard J. Alperin, *Massachusetts Practice Series* Vol. 14A - *Summary of Basic Law* (4th ed., 2006-). This volume is a comprehensive summary of the basic principles of Massachusetts law, including criminal law.

Richard W. Bishop, *Massachusetts Practice Series* Vols. 17A-17B - *Prima Facie Cases: Proof and Defense* (5th ed., 2005-). First published in 1958, these volumes offer a practical summary and analysis of the essential elements of specific actions, which the lawyer must prove to establish a *prima facie* case or successfully assert a defense. Chapter 52 covers the Massachusetts Rules of Criminal Procedure. Chapter 53, Proof of Crimes, is divided into “The Commonwealth’s Case” and “The Defendant’s Case.”

Stephen L. Jones, *Massachusetts Practice Series* Vol. 50 - *Drunk Driving Defense* (2004-). This work follows the litigation arc from “the Stop,” roadside tests, and citation issues through post-conviction relief. Includes forms, which are also available on the accompanying CD, for all phases including client intake, motions to dismiss, motions in *limine*, and sample notices of appeal. Also available on Westlaw (MAPRAC).

Victoria L. Nadel & Roger Witkin, *Massachusetts Practice Series* Vol. 42 - *Criminal Defense Motions* (4th ed., 2012-). *Criminal Defense Motions* breaks down the motion universe into modules that coincide with various stages of litigation. For example, there are forms for fee agreements, the early days of litigation (Grand Jury, arraignment, bail, etc.), from information gathering to post-trial motions. There is also a section devoted to juveniles. Many of the forms can also be found on the accompanying CD.

Joseph R. Nolan & Laurie J. Sartorio, *Massachusetts Practice Series* Vol. 32 - *Criminal Law* (3d ed. 2001-). *Criminal Law* is a compact one-volume resource that starts with discussions of the nature of crime, the criminal process and applicable principles of constitutional law and proceeds to heavily footnoted descriptions of the elements of Massachusetts crimes.

Bethany R. Scheffler & David N. Finley, *Massachusetts Practice Series* Vol. 54 - *Motions in Limine* (2011). *Motions in Limine* is atypical of the *Massachusetts Practice Series* in that it is not written by Massachusetts practitioners. However, all of the motions are completely annotated with Massachusetts support, and the volume offers relevant criminal practice motions such as motions to exclude prior crime evidence and character evidence.

Kent B. Smith, *Massachusetts Practice Series* Vols. 30-30B – *Criminal Practice and Procedure* (3d ed. 2007-). This work presents a comprehensive treatment of all aspects of criminal procedure following the arrangement of the Rules for easy reference. Some consider this the bible for all matters having to do with the Massachusetts criminal practice and procedure.

William G. Young, John R. Pollets & Christopher Poreda, *Massachusetts Practice Series* Vols. 19-20 - *Evidence* (1998-). Based on an expert evaluation of Massachusetts cases and statutes, this work illustrates the practical application of the rules governing admissibility of evidence in all types of litigation.

51.7A. WHERE TO FIND MCLES AND THE MASSACHUSETTS PRACTICE SERIES

The Trial Court Libraries typically hold a complete set of *MCLEs* and the *Massachusetts Practice Series*. Check the Trial Court Libraries’ [catalog](#) to find out which branches have particular titles. The law school libraries around the state, many of which allow access to lawyers, would typically have at least some of the *MCLEs* and all of the *Massachusetts Practice Series*.

The Trial Court Libraries may also offer electronic access to both through on-site public access to either Westlaw or LexisNexis. Online access may also be available at law schools with a public access terminal for one of the electronic research services such as Westlaw or LexisNexis.

§ 51.8 TREATISES

The first section identifies Massachusetts-specific treatises; the second section reviews general criminal law treatises that may also be of interest. (Descriptions of the following resources were taken from the publisher’s website where available.)

51.8A. MASSACHUSETTS

Marks S. Brodin & Michael Avery. *Handbook of Massachusetts Evidence* (8th ed., Wolters Kluwer Law & Business 2007-). This one-volume source, formerly known as “Liacos,” is a well-known treatise on Massachusetts evidence. See especially Chapter 11 – “Eyewitness Identification Evidence,” and Chapter 12 – “Confessions and Incriminating Statements.”

James F. Comerford, *Fundamental Principles of Massachusetts Criminal Law* (Flaschner Judicial Institute 2004-). *Fundamental Principles* contains the critical language and holdings of significant Massachusetts criminal cases.

James F. Comerford, *Massachusetts Motor Vehicle Stops Benchbook* (Flaschner Judicial Institute 2011-). This benchbook seeks to provide an understanding of the continuum of suppression issues that the prosecutor, counsel, and the court face.

Joseph Grasso & Christine M. McEvoy, *Suppression Matters under Massachusetts Law* (Matthew Bender 2010-). This one-volume resource will assist you in analyzing a fact pattern, recognizing problems, and advancing the relevant suppression issue. Also available on LexisNexis.

John M. Greaney & James F. Comerford, *The Law of Homicide in Massachusetts* (Flaschner Judicial Institute 2009). Written in part by a former Supreme Judicial Court Justice, this one-volume benchbook covers the substantive law of homicide, as well as Miranda and other confession issues, defenses, expert testimony, forensic testing, witness immunity, the Confrontation Clause, jury issues, closing arguments and appeals.

Stephen Paul Maidman & Eva Marie Badway, *Habeas Corpus in the Federal Court* (MCLE 2012). Federal habeas corpus litigation is the most complex, difficult, and murky area of post-conviction criminal procedure. This treatise brings together practitioners from across the state to help you to understand how to navigate the treacherous waters comprising habeas corpus practice in the federal courts.

Massachusetts Guide to Evidence (Flaschner Judicial Institute 2012). This is the official print edition of the Supreme Judicial Court (SJC) Advisory Committee on Massachusetts Evidence Law. While this one-volume guide to evidence in Massachusetts courts is not binding, it is very persuasive. This text is also available [online](#).

Massachusetts Jury Trial Benchbook (2d ed., Flaschner Judicial Institute 2004). This one-volume instruction manual on how a judge can or should rule or preside over a case, provides attorneys with inside information to help them anticipate trial matters.

Marc C. Perlin & Davalene Cooper, *Massachusetts Proof of Cases* (West 2011). *Massachusetts Proof of Cases* provides encyclopedic treatment of the elements of substantive law which must be proved in order to prevail on a claim or a defense. One volume is devoted to criminal law and evidence topics. Also available on Westlaw (MAPOC).

Richard G. Stearns, *The Massachusetts Criminal Law: A District Court Prosecutor's Guide* (Massachusetts Prosecutor's Guide 1996-). Now in its 30th edition, this resource presents a comprehensive analysis of Massachusetts criminal law and its practice in the Massachusetts courts. The text cites and discusses criminal law cases decided by the Supreme Court, federal Courts of Appeals, and state appellate courts from around the country. The main focus, however, is on Massachusetts criminal law and its practice in the courts of the Commonwealth. It is also available as a fee-based [online database](#).

Edward M. Swartz, *Trial Handbook for Massachusetts Lawyers* (3d ed., Lawyers Cooperative Publishing 1999-). This one-volume treatise covers both the procedural and substantive aspects of trial practice, analyzing current Massachusetts trial case law, rules, and statutes. It includes principles of successful jury selection and strategies and tactics in using the rules of evidence. See especially Chapter 4 – “Criminal Trials,” Chapter 27 – “Confessions,” and Chapter 28 – “Exclusion or Admission of Illegally Obtained Evidence.”

51.8B. NATIONAL

James A. Adams & Daniel D. Blinka, *Prosecutor's Manual for Arrest, Search & Seizure* (2d ed., LexisNexis 2004). This one-volume treatise on arrest, search and seizure issues is geared for defense lawyers and prosecutors, and written by former prosecutors who canvass the landscape of 4th Amendment law.

Nafiz M. Ahmed et al., *Witness Preparation and Examination for DUI Proceedings: Leading Lawyers on Selecting, Preparing, and Examining Expert Witnesses in DUI Cases* (Aspatore 2011). *Witness Preparation* discusses best practices for using expert witnesses to overcome evidence in driving-under-the-influence cases. It guides you through the process of determining the right type of expert to hire for a case, walking through the evidence with an expert to prepare testimony, and preparing the expert for cross-examination by the prosecutor. The authors examine the emerging types of evidence used in DUI cases and the role expert witnesses can play in refuting the validity of this data.

Paul A. Alsdorf et al., *White Collar Case Strategies: Leading Lawyers on Developing Winning Strategies, Communicating with Clients, and Navigating High-Profile Cases* (Aspatore 2009). This one-volume source focuses on how to implement winning strategies when handling difficult, and often high-profile, white collar cases. It discusses the different phases of strategic development and the key considerations for each phase. It offers advice on interviewing the client effectively, establishing a trusting relationship with government officials, developing a strategy early on, and making tough decisions, such as whether or not the client should testify.

David Andrascik et al., *Understanding Field Sobriety and Breath Testing Procedures: Law Enforcement Officials on Following Test Administration Standards, Utilizing New Technologies, and Ensuring Test Validity* (Aspatore 2009). Discussing the tests administered and devices utilized by law enforcement officials during a DUI-related traffic stop, this one-volume treatise is useful for prosecutors and defense attorneys alike, outlining the steps performed during roadside sobriety tests and the role these tests play in a DUI case.

Joel Androphy, *White Collar Crime* (2d ed., Clark Boardman Callaghan 2001-). This four-volume treatise discusses legal developments affecting the prosecution and defense of fraud and other white collar crimes. It includes sample briefs and memoranda covering several different aspects of white collar crime cases, from initial client contact and government investigation, through sample jury instructions. Also available on Westlaw (WCCR).

Julio Cesar Argueta et al., *The Legality of Search and Seizure in DUI Cases: Leading Lawyers on Understanding the Latest Fourth Amendment Issues and Their Impact on DUI Defense Strategies* (Aspatore 2011). This one-volume source discusses best practices for identifying and litigating Fourth Amendment violations during a DUI defense. It guides the reader through the proper search and seizure procedures and standards that law enforcement should follow during the initial stop, investigation, and DUI arrest.

F. Lee Bailey et al., *Crimes of Violence: Homicide and Assault* (Clark Boardman Callaghan 1960-). *Crimes of Violence* takes you through the steps of a homicide trial, from pretrial investigatory stages to the courtroom confrontation itself. It includes pretrial dilemmas, such as dealing with the initial interview; attorney-client relations; and guiding clients through surrender, arraignment, pleading, and setting bail. This treatise offers trial strategies and tactics for jury selection, opening statements, plea negotiations, and illegally obtained evidence and confessions.

F. Lee Bailey et al., *Crimes of Violence: Rape and Other Sex Crimes* (Clark Boardman Callaghan 1960-). Providing step-by-step guidance through the phases of a sex crime case, this work begins by discussing the initial client interview, setting the fee, the insanity plea and plea bargaining, and addresses suppression of evidence and jury selection. The text concentrates on the major sex crime areas of rape, prostitution, incest, obscenity, sodomy, homosexuality, child abuse, stalking, and interstate domestic violence. It also includes sample motions, jury instructions, voir dire questions, and witness questions.

F. Lee Bailey & Kenneth J. Fishman, *Criminal Trial Techniques* (Clark Boardman Callaghan 2000-). This three-volume treatise walks you through the stages of a criminal defense case, from initial case considerations to dealing with the trial judge. It outlines aspects of pre-arrest, pretrial preparation, and pretrial investigation proceedings. Available on Westlaw (CRTRTECH).

F. Lee Bailey & Kenneth J. Fishman, *Handling Misdemeanor Cases* (2d ed., Clark Boardman Callaghan 2008-). *Handling Misdemeanor Cases* details the basic concepts, strategies, and procedures involved in handling misdemeanor-level cases, as well as tactical elements of pretrial preparation. Also available on Westlaw (HANDLMISD).

F. Lee Bailey & Kenneth J. Fishman, *Handling Narcotic and Drug Cases* (Clark Boardman Callaghan 1960-) Covering the critical phases of a state or federal narcotics case, this one-volume resource takes you from the initial interview through sentencing. It offers advice for addressing key challenges, such as handling and communicating with drug-using clients, developing successful trial strategies, and overcoming the stigma associated with narcotics use. Also available on Westlaw (NARC-DRUG).

Patrick T. Barone et al., *Defending DUI Vehicular Homicide Cases: Leading Lawyers on Understanding DUI Cases, Developing a Thorough Defense, and Negotiating Settlements* (Aspatore 2012). Providing information on counseling clients accused of vehicular homicide or manslaughter while driving under the influence (DUI), this work guides the reader through the DUI environment. It analyzes how the latest trends, decisions, and political and social climate impact cases.

Garrett Beaumont, *Avoiding Reversible Error in Criminal Cases* (Litigation One 2011). This one-volume resource for prosecutors and defense counsel provides information on how to avoid costly reversible errors in working up and trying criminal cases. Over 170 errors are identified. Also available on Westlaw (REVERRCCR).

Robert J. Belloto, *Understanding DUI Scientific Evidence: Leading Lawyers on Analyzing New Forensic Science, Challenging Testing Procedures and Results, and Consulting Experts for Defense Arguments* (Aspatore 2011). This one-volume resource discusses the new scientific and technological developments in DUI criminal defense, and provides information on emerging research related to breath, blood, and urine alcohol analysis, standard field sobriety testing, retrograde extrapolation, accident reconstruction science, and alcohol detection devices.

Barbara E. Bergman et al., *Wharton's Criminal Evidence* (15th ed., Clark Boardman Callaghan 1997-). A classic work that analyzes applicable Federal Rules of Evidence and cases interpreting the rules, these eight-volumes provide guidance for both defense and prosecution on handling criminal evidentiary issues from pretrial preparation through trial. Also available on Westlaw (CRIMEVID).

Barbara Bergman et al., *Wharton's Criminal Procedure* (14th ed., Clark Boardman Callaghan 2002-). This four-volume set analyzes common law development and criminal procedure. Subjects covered include criminal and juvenile court, venue, arrest, extradition, preliminary hearings, search and seizure, grand juries, indictment, bail, arraignment and pleas, pre-trial motions and objections, and discovery. The text discusses self-incrimination, trial, opening statements, and closing arguments, and post-trial coverage.

David Bernheim, *Defense of Narcotics Cases* (Matthew Bender 1972-). Covering all aspects of narcotics cases, this three-volume work addresses identification of drugs, search and seizure, motor vehicle and airport searches, and pretrial proceedings. It also discusses informers and accomplices, the trial, alternatives to standing trial, compulsory commitment of narcotics addicts, defense of driving-under-the-influence cases, and forfeiture proceedings. Also available on LexisNexis.

Peter E. Brill et al., *Strategies for Defending Internet Pornography Cases: Leading Lawyers on Analyzing Electronic Documents, Utilizing Expert Witnesses, and Explaining Technological Evidence* (Aspatore 2008). Strategies discusses how to mount a defense against charges of possession of Internet pornography. It looks at the key considerations involved when investigating accusations of Internet crimes and examines the technology issues at work. The text discusses the challenges of defending these technology-driven cases and explains the concepts of shareware, unintentional downloading, digitally altered images, and temporary Internet file folders as they relate to false claims of Internet pornography possession. This treatise also offers advice on selecting an appropriate defense strategy.

John M. Burkoff, *Criminal Defense Ethics: Law and Liability* (Clark Boardman Callaghan 2011). This one-volume source reviews the underlying ground rules and the range of resolutions applicable to particular ethical and legal dilemmas. Coverage includes forfeiture of legal fees, abuse of the subpoena process, liability in malpractice suits, and conflicts of interest. Also discussed are disqualification motions, ineffective assistance of counsel, trial publicity and other public statements. Also available on Westlaw (DEFETHICS).

Arthur W. Campbell, *Law of Sentencing* (3d ed., Clark Boardman Callaghan 2004-). Addressing types of sentencing, including probation sentences and death sentences, this one-volume treatise explores constitutional considerations, basic sentencing principles, and judicial sentencing review. Also available on Westlaw (LAWSSENT).

James Farragher Campbell et al., *Defense of Speeding, Reckless Driving and Vehicular Homicide* (Matthew Bender 1984-). This three-volume treatise discusses the law, technical knowledge and litigation techniques required to successfully defend a speeding, reckless driving, or vehicular homicide case. Also available on LexisNexis.

Stuart Sacks et al., *Criminal Defense Techniques* (Matthew Bender 1971-). Covering the topic of criminal law, this ten-volume work covers the waterfront from pretrial to appeal. Also available on LexisNexis.

Richard A. Cline, *Defense Investigation and Discovery in Criminal Cases: A Systematic Approach to Obtaining Information and Preparing for Trial* (Aspatore 2011). Presenting trial-tested investigation and discovery methods, this one-volume work explores the theoretical and jurisprudential concepts that govern a defendant's right to obtain information from the prosecutor. It also provides practical advice on integrating discovery information into an effective defense.

Harvey M. Cohen & Joseph B. Green, *Apprehending and Prosecuting the Drunk Driver: A Manual for Police and Prosecution* (Matthew Bender 1992-). This one-volume treatise addresses legal, scientific and practical guidance concerning drunk driving stops, searches, arrests and prosecution. Also available on LexisNexis.

Neil Cohen, *The Law of Probation and Parole* (2d ed., Clark Boardman Callagan 2011-). Providing guidance for handling most probation or parole matters, this two-volume treatise cites emerging trends and analyzes relevant federal and state court decisions and statutes. Subjects include probation granting, including coverage of eligibility, limits of discretion, factors used in probation decisions, federal parole law, and supervised release.

Joseph G. Cook, *Constitutional Rights of the Accused* (3d ed., Clark Boardman Callaghan 1996-). This four-volume looseleaf set covers the federal constitutional rights of persons accused or convicted of a crime. Also available on Westlaw (CONRTACC).

Criminal Law Reporter (BNA). This is a weekly publication that reports on and analyzes significant developments and emerging patterns in criminal law. Also available in Bloomberg [BNA Online](#) and Westlaw (BNA-CRIMLR).

Criminal Practice Manual, Report, & Guide (Thomson West 2004-). The *Manual* provides overviews and analysis of criminal law topics, case law commentary and practice guidance. This treatise also includes jury instructions, checklists, forms and trial transcripts. Also available on Westlaw (CRPMAN). The *Criminal Practice Report* newsletter keeps you up-to-date with significant laws, news, and trends in criminal practice. It discusses tactics and techniques in criminal law practice. Also available on Westlaw (CRPREPORT). The *Criminal Practice Guide* provides information and practice aids on particularly challenging criminal law defense issues. It contains articles, forms, jury instructions and checklists focusing on specific criminal defense issues. Also available on Westlaw (CRPGUIDE).

Criminal Procedure Handbook (Clark Boardman Callaghan 2012). This one-volume treatise analyzes more than 3,700 federal and state criminal procedure decisions, providing coverage from pretrial issues, the trial, and sentencing. It also reviews the latest developments and trends in criminal procedure. Also available on Westlaw (CRIMPRHB).

Aaron M. Danzig et al., *White Collar Fraud Investigations: Leading Lawyers on Analyzing Recent Trends, Building a Defense Strategy, and Developing Compliance Programs* (Aspatore 2010). *White Collar Fraud* looks at best practices for understanding recent fraud trends and developing a client's defense strategy accordingly. It guides the reader through the most recent white-collar fraud cases, discussing the motives behind the incidences and the

strategies being employed by the government to enforce crime investigation. Explaining the structure of an investigation and the responsibilities of legal counsel at each stage, the authors discuss their tactics for conducting an internal company review, interacting with investigating government agencies, and negotiating a settlement to avoid prosecution.

Paul DerOhannesian II, *Sexual Assault Trials* (3d ed., Michie 2006-). This two-volume treatise covers virtually all aspects of sexual assault trials, providing guidance on discovery and pretrial issues, jury selection, direct and cross-examination, hearsay, expert testimony, presentation of evidence, and jury instructions.

James M. Doyle et al., *Eyewitness Testimony: Civil and Criminal* (4th ed., LexisNexis 2007-). Written by experts in eyewitness psychology and an experienced trial attorney, this one-volume source offers courtroom-ready trial techniques and the latest psychological research concerning such issues as jurors' beliefs about eyewitness testimony, the factors that may impede perception and memory, and illustrates the consequences and effects of eyewitness testimony in both criminal and civil trials.

Brian C. Drummond et al., *Trial Techniques for Criminal Cases: Leading Lawyers on Developing a Case Theory, Preparing for Trial, and Managing Client Expectations* (Aspatore 2010). Providing a perspective on best practices for defending clients in criminal trials, this one-volume work guides the reader through establishing client relationships, negotiating plea bargains, and building an effective defense strategy. The authors discuss the techniques most critical for a successful outcome and offer strategies for developing a case theory, selecting jurors, handling discovery issues, analyzing evidence, and examining witnesses.

Richard Essen, *Defense of Drunk Driving Cases: Criminal – Civil* (3d ed., Matthew Bender 1971-). This four-volume set examines the legal and technical issues that arise in a drunk-driving case, and contains guidance concerning relevant statutes, case law, and scientific facts. Topics discussed include per se laws, implied consent legislation, constitutional objections, field sobriety testing, and admissibility of chemical test results and other evidence. Also available on LexisNexis.

David L. Faigman et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* (Thomson West 2011). *Modern Scientific Evidence* is a five-volume guide that provides the legal and scientific background that assists attorneys in asking the right questions when dealing with scientific evidence and expert witnesses. The resource will help trial attorneys to be better prepared to explain complex science during admissibility arguments and elicit or challenge experts' testimony during trial. Also available on Westlaw (MODSCIEVID).

Justin D. Franklin & Steven C. Bell, *Searches and Seizures, Arrests and Confessions* (2d ed., Clark Boardman Callaghan 1979-). This is a three-volume sourcebook for all aspects of search, seizure, arrest and confession jurisprudence, providing a resource on 4th, 5th, and 6th Amendment law. It includes references to U.S. Supreme Court cases, federal and state law, and major recent developments. Also available on Westlaw (SSAC).

Rachel Kathleen Gernat & Thomas Sadaka, *Strategies for Prosecuting Internet Pornography Cases: Leading Prosecutors on Interviewing the Suspect, Developing a Trial Strategy, and Negotiating the Charges* (Aspatore 2008). *Strategies* is a one-volume resource providing a perspective on key methods for investigating Internet crime cases involving pornographic material and bringing these cases to court.

Bennett L. Gershman, *Prosecutorial Misconduct* (Clark Boardman Callaghan 2010). This one-volume work examines misconduct by prosecutors during the investigation, indictment, plea bargain, trial and sentencing phases of a case. It also covers misuse of the media. Also available on Westlaw (PROSMIS).

John Wesley Hall, *Professional Responsibility in Criminal Defense Practice* (Clark Boardman Callaghan 2005-). *Professional Responsibility* provides trial guidance for striking a balance between duty to the client under the 6th Amendment representing a client's interests, yet obeying the law and maintaining a profitable practice. Also available on Westlaw (PRCRIMDEF).

John Wesley Hall, *Search and Seizure* (3d ed., Matthew Bender 2000-). Addressing the types of issues frequently encountered by both practitioners in the field and judges, this two-volume treatise discusses such issues as reasonable expectation of privacy, consent, and probable cause. Also available on LexisNexis.

Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* (6th ed., Michie 2011-). This two-volume title gives practical information for obtaining habeas corpus relief in both capital and non-capital cases. It is the resource cited most frequently by the U.S. Supreme Court and lower federal courts.

Marshall Houts et al., *Courtroom Toxicology* (Matthew Bender 1981-). *Courtroom Toxicology* is an eight-volume medico-legal treatise on using complex toxicology findings in the courtroom. Also available on LexisNexis.

Stephen Hrones, *Criminal Practice Handbook* (3d ed., Michie 2006-). A one-volume treatise, this source guides you through a criminal case from beginning to end. It provides techniques and contains checklists, sample motions, and examples that you can tailor to each particular situation.

Edward J. Imwinkelried et al., *Courtroom Criminal Evidence* (5th ed., Matthew Bender 2011-). This two-volume treatise discusses the rules governing admissibility and sufficiency of evidence, and keeps you up to date on the latest developments in evidence law. Also available on LexisNexis.

Edward J. Imwinkelried et al., *Criminal Evidentiary Foundations* (Matthew Bender 2007-). Describing how to lay foundations to ensure the admission of critical items of evidence in a criminal trial this one-volume work demonstrates how to convert abstract evidentiary doctrine into concrete lines of questioning. Also available on LexisNexis.

Edward J. Imwinkelried, *Exculpatory Evidence: The Accused's Constitutional Right to Introduce Favorable Evidence* (3d ed., Michie 2004). This one-volume treatise examines case law defining the scope of the constitutional right to present exculpatory evidence.

Edward J. Imwinkelried et al., *The Methods of Attacking Scientific Evidence* (4th ed., Matthew Bender 2004-) Reviewing the major evidentiary doctrines applicable to scientific evidence, this one-volume resource analyzes the admissibility of the testimony of the witnesses who lay the chain of custody for the physical evidence tested. It then catalogues the admissibility attacks on the expert witnesses who teach the jury about the theory and instrument, report about the specific test in question, and evaluate the test result for the jury. Also available on LexisNexis.

Edward J. Imwinkelried & Giannelli, Paul C. *Scientific Evidence* (4th ed., Matthew Bender 2007-). This two-volume treatise contains information about the latest forensic techniques and scientific concepts used in collecting and evaluating evidence. It covers rules and precedents relating to admissibility, constitutional limitations, discovery, expert testimony, laboratory reports, and chain of custody. Also available on LexisNexis.

Peter Joy & Kevin C. McMunigal, *Do No Wrong: Ethics for Prosecutors and Defenders* (ABA 2009). *Do No Wrong* aims to illuminate ethical questions for criminal

practitioners and to provide both prosecution and defense with the analysis and authorities necessary to understand the issues and underlying policies.

Mark J. Kadish et al., *Criminal Law Advocacy* (Matthew Bender 1985-). This six-volume treatise explores the techniques behind successful law practice and offers specific procedural guidelines. Checklists, sample forms and real-life examples of testimony are included. Also available on LexisNexis.

Steven L. Kessler, *Civil & Criminal Forfeiture: Federal and State Practice* (Clark Boardman Callaghan 2002-). Providing analysis of the primary forfeiture provisions enacted by Congress and legislatures, this three-volume work analyzes major cases interpreting forfeiture statutes. It also provides guidance to the practice and handling of forfeiture cases in state and federal courts.

Wayne R. LaFave et al., *Criminal Procedure* (3d ed., Thomson West 2007-). This seven-volume treatise guides the reader through a typical state court criminal justice system, starting with investigation and ending with post-appeal collateral attacks. Also available on Westlaw (CRIMPROC).

Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (4th ed., Thomson West 2004-). *Search and Seizure* reports the current state of 4th Amendment law. This is a six-volume work and is part of the Criminal Practice Series. Also available on Westlaw (SEARCHSZR).

Wayne R. LaFave, *Substantive Criminal Law* (2d ed., Thomson West 2003-). This three-volume treatise analyzes the law via the Model Penal Code, focusing on the ways specific crimes and general principles of criminal law are defined by state statutes and interpreted by the courts. Also available on Westlaw (SUBCRL).

Joseph F. Lawless, *Prosecutorial Misconduct: Law, Procedure and Forms* (4th ed., Matthew Bender 2008-). Providing a scholarly analysis of prosecutorial abuses, this one-volume treatise covers the initiation of a criminal investigation through the appeal and post-conviction stages for both federal and state jurisdictions. Included in this treatise is a collection of motions, briefs, and arguments from actual cases handled by noted defense lawyers. Also available on LexisNexis.

Jay Levinson, *Questioned Documents: A Lawyer's Handbook* (LexisNexis 2000). Questioned documents are any documents that may be used as evidence in a trial, ranging from handwritten notes to counterfeit currency to contracts. This one-volume handbook explains the basics of document examination and helps litigators improve the way they present document evidence and question witnesses.

Paul Marcus, *The Entrapment Defense* (4th ed., Matthew Bender 2009-). Presenting a discussion of trial issues under both subjective and objective tests, this one-volume work includes treatment of the standards of proof for both the state and defendant. Also available on LexisNexis.

Paul Marcus, *Prosecution and Defense of Criminal Conspiracy Cases* (Matthew Bender 1978-). This two-volume treatise provides coverage on the topic of criminal conspiracy, including complex evidentiary matters, constitutional issues, and practical considerations. Also available on LexisNexis.

Thomas P. Mauriello, *Criminal Investigation Handbook* (Matthew Bender 1990-). Offering guidance on the practical aspects of an investigation as well as pertinent legal analysis, this one-volume treatise includes illustrations, checklists, and forms. Also available on LexisNexis.

Brian R. Means, *Postconviction Remedies* (Clark Boardman Callaghan 2011). *Postconviction Remedies* distinguishes the multitude of remedies available, describing them in detail, and offering solutions for problems that may arise. This one-volume treatise also covers key issues such as federal postconviction remedies for challenging federal convictions, custody requirements, the exhaustion doctrine, and procedural default effects. Also available on Westlaw (PCREM).

B. Anthony Morosco, *The Prosecution and Defense of Sex Crimes* (Matthew Bender 1976-). This one-volume source covers legal problems involved in forcible and non-forcible sex crimes, including sexual and physical abuse of children and spouses, and prostitution. Also available on LexisNexis.

Michael Mushlin, *Rights of Prisoners* (4th ed., Clark Boardman Callaghan 2009-). The law affecting prisoners and their rights, and the latest developments resulting from the increase in prison litigation, are discussed in this four-volume treatise. It provides analysis of related Supreme Court decisions, with special attention paid to the application of First, Fourth, and Eighth Amendment rights in prisons. Also available on Westlaw (RGTSPRISON).

Michael L. Perlin, *Mental Disability Law: Civil and Criminal* (2d ed., LexisNexis 2003-). This five-volume treatise provides a discussion of the law affecting the mentally disabled. It discusses research and litigation problems that may arise in this area. Also available on LexisNexis.

Jonathan M. Purver & Lawrence E. Taylor, *Handling Criminal Appeals* (Clark Boardman Callaghan 1960-). This one-volume resource provides guidance through the technical maneuvers that can be made from the time of trial through the final possible review. It discusses making the decision on which appeals to handle, and how to arrange for bail on appeal, augment the trial record, and formulate argument.

Robert S. Reiff, *Drunk Driving and Related Vehicular Offenses* (5th ed., Matthew Bender 2010). Analyzing the avenues of prosecution and lines of defense in this aggressively legislated, prosecuted, and adjudicated area of law, this one-volume work demonstrates how to sell yourself to your client, select a jury, cross-examine the arresting officer, and deliver a strong closing argument. Also available on LexisNexis.

Paul H. Robinson, *Criminal Law Defenses* (Thomson West 1984-). This two-volume Criminal Practice Series treatise examines the potential and limitations of more than 60 major criminal law defenses, and discusses practical points collateral to the substantive law of criminal defenses. Also available on Westlaw (CRLDEF).

David S. Rudstein et al., *Criminal Constitutional Law* (Matthew Bender 1990-). Examining the constitutional issues involved in criminal law, this three-volume set provides substantive discussion, as well as procedural guidelines on tactics and strategy. Also available on LexisNexis.

John S. Siffert & Jed S. Rakoff, *Business Crime: Criminal Liability of the Business Community* (Matthew Bender 1981-). This seven-volume treatise provides guidance on criminal questions arising from modern business practices. This resource also includes *Business Crime Commentary*, a bimonthly reporter providing a lead article addressing business crime. Also available on LexisNexis.

David B. Smith, *Prosecution and Defense of Forfeiture Cases* (Matthew Bender 1985-). This is a two-volume treatise on the substantive and procedural law of civil and criminal forfeiture. Also available on LexisNexis.

Nathan R. Sobel et al., *Eyewitness Identification* (Clark Boardman Callaghan 2012). Providing access to recent cases and interpretations of eyewitness identification law, this one-volume treatise includes coverage of the due process test for eyewitness identification, exclusionary sanctions in identification cases, photo and voice identification, and independent source and reliability factors. Also available on Westlaw (EYEWITN).

Charles E. Torcia, *Wharton's Criminal Law* (15th ed., Clark Boardman Callaghan 1993-). *Wharton's Criminal Law* describes the common law background of crimes and defenses in both state and federal jurisdictions. This four-volume set also considers statutes only to the extent that they may have played a part in the decision of cited cases. A detailed discussion of criminal law defenses is provided. Also available on Westlaw (CRIMLAW).

Cyril H. Wecht, *Forensic Sciences* (Matthew Bender 1981-). In this five-volume set, experts discuss the sciences relevant to criminal and civil litigation and the law concerning their use in the courtroom. Also available on LexisNexis.

Flem K. Whited III, *Drinking/Driving Litigation: Criminal and Civil* (Clark Boardman Callaghan 1998-). Providing tactics and strategies for building a successful drunk-driving defense, this four-volume set discusses issues including challenging prior convictions, arrests, and chemical testing. Included are checklists, outlines, forms, sample questions, and arguments. Also available on Westlaw (DRNKDRIVING).

Flem K. Whited III, *Drinking/Driving Litigation: Criminal and Civil Trial Notebook* (Clark Boardman Callaghan 2011). This one-volume resource contains coverage of issues arising in DUI litigation, from initial client contact to sentencing. It provides samples, checklists and forms, as well as instructions and analysis. Also available on Westlaw (DDTRIALNB).

Donald E. Wilkes, Jr., *State Postconviction Remedies and Relief Handbook with Forms* (The Harrison Company 2011). Stay up-to-date with this four-volume treatise on state postconviction procedure. This work deals at length with federal habeas corpus remedy for state convicts, and the availability of postconviction relief in state courts.

Zachary Wolfe, *Hate Crimes Law* (Clark Boardman Callaghan 2012). This one-volume resource provides current analysis and legal guidance concerning the federal and state statutes that were enacted to punish or enhance the punishment of bias-motivated crimes. It discusses elements of proof and potential areas for constitutional challenges. Also available on Westlaw (HATECRIMES).

§ 51.9 JURY INSTRUCTIONS

Many sets of jury instructions not only provide the actual text of an instruction but also follow the text with commentary directing the researcher to cases, statutes, or treatises that support the language used in the instruction. *See also* Appendix A-2 to this chapter for secondary sources on jury instructions.

Criminal Model Jury Instructions for Use in the District Court (3d ed., MCLE 2009-). This two-volume source provides over 150 instructions covering trial procedure, evidentiary rules, and every major offense and defense triable in the district court. It is the resource used by judges across the Commonwealth, as it is the only official manual of pattern jury instructions in Massachusetts. Three new model instructions are included, covering Subsequent Offense, Failing to Register as a Sex Offender, and Giving a False Name upon Arrest. Featured is a

checklist of instructions either required or affirmatively recommended by appellate courts, and a chart offering suggested dialogues for sentencing. Also available on LexisNexis.

[*Criminal Model Jury Instructions*](#). (Massachusetts District Court Revised 2011). Includes all model Massachusetts District Court criminal jury instructions in PDF and WordPerfect formats.

Massachusetts State and Federal Criminal Jury Instruction Filings. Selected criminal jury instructions filed with the state and federal trial courts in Massachusetts. A document contains jury instructions submitted and/or approved and read for a selected case. Keep in mind that these are not model jury instructions and may not have met with court approval. Available only electronically on Westlaw (MA-CRJIF-ALL).

Massachusetts Superior Court Criminal Practice Jury Instructions (Frances A. McIntyre et al. eds., MCLE 2004). This two-volume work provides instructions that cover every major type of criminal case. You can tailor and adapt these instructions to the particular issues of your case. This work includes instructions common to all criminal cases, specific crimes, defense and justification, special issues, and procedural aspects of jury instruction. Forms are available on an accompanying CD. Also available on LexisNexis.

§ 51.10 STATE-SPONSORED MATERIALS/GUIDELINES

This section lists a variety of miscellaneous state-sponsored materials and guidelines available electronically.

[*District Court Standards of Judicial Practice: The Complaint Procedure*](#). The original Complaint Standards were developed in 1975. These revised standards completed in 2008 are a result of the accumulation of appellate decisions and statutory and rules amendments bringing significant changes in law and practice. They cover such areas as filing a criminal complaint, felony charges sought by law enforcement officials, and challenging the issuance of a complaint by a motion to dismiss, and many other areas.

[*Felony and Misdemeanor Master Crime List*](#) (Massachusetts Sentencing Commission, June 2010). This resource lists felonies and misdemeanors, first by M.G.L. reference, and then alphabetically by offense, specifying the penalty type and sentencing information.

[*Massachusetts Sentencing Guidelines*](#). These sentencing guidelines are the basis for determining the penalty for an offense committed in Massachusetts.

[*Superior Court Criminal Case Management*](#). This document was compiled to improve procedures in criminal cases in the Superior Court, to promote uniformity in practice throughout the Commonwealth, and to insure compliance with the provisions and aims of the Rules of Criminal Procedure, among other goals.

§ 51.11 FORMS

Rather than creating forms from scratch, the researcher can consult sample forms. Form books typically include explanations, checklists and annotations to primary and other secondary sources. Massachusetts may have prescribed official forms, so consult a practice guide before using non-jurisdiction specific forms. Forms can also be found in many of the practice guides discussed in this chapter. Be sure to check the resource for an accompanying CD which will expedite the drafting process.

In this section we first review resources specific to Massachusetts, including forms found in the MCLE practice guides and the *Massachusetts Practice Series*. This section is followed by forms national in scope.

51.11A. MASSACHUSETTS-SPECIFIC FORMS

Massachusetts Continuing Legal Education - Forms

Massachusetts District Court Criminal Defense Manual (Cathleen L. Bennett et al. eds., 3d ed. 2008-) (described above). The *Criminal Defense Manual* contains a wide range of motions, including motions to dismiss to motions for a stay of sentence, all available on the accompanying CD. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Motor Vehicle Offenses: Criminal, Civil, and Registry Practice (Andrew M. D'Angelo ed., 2d ed. 2009-). This single volume offers practical insights from the prosecutor and defense point of view, explanations of technical issues such as blood-alcohol testing, and an assortment of sample motions and support materials. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Superior Court Criminal Practice Forms (Robert H. Bohn, Jr. ed., 1999). This two-volume set contains forms from the files of practicing Massachusetts attorneys, including checklists; motions to dismiss; discovery motions; motions in limine to admit or exclude; motions to suppress evidence; motions to suppress statements; motions to suppress identification; memoranda in support of motions; oppositions to motions to suppress; sample affidavits; motions for juror questionnaire; proposed voir dire questions (with supporting memorandum of law); motions for peremptory challenges; and petitions for interlocutory relief. Forms are available on the accompanying CD. Note: Unfortunately, this resource has not been updated since it was first published in 1999, so while it may be useful as a starting point, the practitioner will have to be cautious. Also available on LexisNexis.

Sex Offender Registry Practice (Larni S. Levy ed. 2009) (described above). The accompanying CD contains forms, motions, memoranda, and scientific articles. Available on LexisNexis and Westlaw (MA-CLE).

Trying Drug Cases in Massachusetts (Stephanie Page ed., 2010) (described above). Throughout this publication you will find sample forms, including motions for discovery of drug analysis, motions to exclude opinion testimony regarding suspected controlled substance, and motions in limine. All forms are on an accompanying CD. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Murder and Other Homicide Cases in Massachusetts (Stephanie Page & Larry R. Tipton eds., 2004) (described above). All of the exhibits referred to in the volumes are available on an accompanying CD, including motions for discovery of informant, for disclosure of identification procedures, in limine to exclude gang references, etc. Also available on LexisNexis and Westlaw (MA-CLE).

Trying OUI Cases in Massachusetts (James M. Sullivan ed., 2004-) (described above). Over 90 exhibits are included in print and on the accompanying CD, with sample motions, checklists, jury instructions, and breath test forms. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Sex Offense Cases in Massachusetts (Stephanie Page ed., 2d ed. 2009) (described above). More than 100 forms are available on the accompanying CD. Also available on LexisNexis and Westlaw (MA-CLE).

Massachusetts Practice Series – Forms

Stephen L. Jones, *Massachusetts Practice Series Vol. 50 - Drunk Driving Defense* (2004-). In addition to motion forms, this volume includes intake questions for the client, investigation checklists, memoranda in support of a motion to dismiss, among other useful materials. The CD that accompanies this resource includes versions of the forms in the volume. Also available on Westlaw (MAPRAC).

Victoria L. Nadel & Roger Witkin, *Massachusetts Practice Series Vol. 42 - Criminal Defense Motions* (4th ed. 2012-) (described above). Many of the forms can also be found on the accompanying CD. Also available on Westlaw (MAPRAC).

Bethany R. Scheffler & David N. Finley, *Massachusetts Practice Series Vol. 54 - Motions in Limine* (2011) (described above). Each motion is annotated with supporting and opposing authorities as well as suggested motion text. The forms are also available on the accompanying CD. Also available on Westlaw (MAPRAC).

Miscellaneous State-Sponsored Online Forms

Dwyer Forms. Dwyer forms are used in criminal cases in which a defendant seeks pretrial inspection of records of third parties that may be statutorily privileged, pursuant to Commonwealth v. Dwyer, [448 Mass. 122](#) (2006). The following forms supersede and replace the forms originally included in the Dwyer order:

[Notice of a Hearing Regarding the Release of Records](#)

[Notice Accompanying Court-Ordered Summons for Non-Privileged Records](#)

[Notice Accompanying Court-Ordered Summons for Presumptively Privileged Records](#)

[Protective Order for Defense Counsel](#)

[Order Allowing Access to Privileged Records by Persons Other Than Counsel](#)

[Protective Order for Prosecuting Attorney](#)

Massachusetts District Court. The following forms are provided by Massachusetts District Court:

[Voluntary Assignment of Cash Bail to Other Financial Obligations to Court](#)

[Consent to Filing Criminal Charge\(s\) After Guilty Finding or Verdict](#) (Mass. R. Crim. P. 28(e))

[Defense Certificate of Discovery Compliance](#) (Mass.R.Crim.P. 14 (a)(B))

[Motion to the Court and Affidavit](#) (General Purpose Motion)

[Motion to Seal Record](#) (M.G.L. c. 276 § 100C or c. 94C § 44)

[Petition for Forfeiture of Motor Vehicle or Vessel](#) (M.G.L. c. 90 § 24W)

[Pretrial Conference Report](#) (Mass.R.Crim.P. 11(a)(2)(A))

[Prosecution Certificate of Discovery Compliance](#) (Mass.R.Crim.P. 14(a)(B))

[Statement of Facts in Support of Application for Criminal Complaint](#)

[Tender of Plea or Admission & Waiver of Rights](#)

[Waiver of Counsel with Spanish Translation](#)

51.11B. NATIONAL FORMS

American Jurisprudence Pleading and Practice Forms Annotated (West Group 1967-). This is a multivolume, comprehensive collection of state and federal forms many of which are related to criminal practice. Access to these forms begins by consulting the General Index under the topic “criminal law.” Hundreds of forms are listed relating to criminal practice/procedure. Also available on Westlaw (CJ-PP). (Note: When these forms are accessed on Westlaw, they may be edited.)

F. Lee Bailey & Kenneth J. Fishman, *Complete Manual of Criminal Forms* (3d ed. West 2000-). This *Manual* contains more than 1,000 federal and state criminal forms covering from the time clients enter the office, through final appeal to the U.S. Supreme Court. Also available on Westlaw (CMCRF).

§ 51.12 MISCELLANEOUS SECONDARY MATERIALS

The following materials cover both civil and criminal matters. Their usefulness in the criminal context is explained in the annotation.

American Jurisprudence 2d (2d ed., Lawyers Cooperative Publishing 1962-). One of the two major national encyclopedias, this resource provides a broad overview of legal topics with annotations to state and federal cases. This type of resource is useful when first approaching a topic to get an overview of issues in an efficient manner. Examples of “criminal” subject headings include: “Robbery,” “Homicide,” and “Searches and Seizures.” Also available on Westlaw (AMJUR) and LexisNexis.

American Jurisprudence Proof of Facts, 3d Series (Lawyers Cooperative Publishing 1988-). Another potentially very useful set, *POF* explains, as its title suggests, how to prove essential facts of a case. Also available on Westlaw (AMJUR-POF).

American Jurisprudence Trials (Lawyers Cooperative Publishing 1964-). Another multi-volume set that instructs on how to accomplish discrete acts at trial, it includes model pleading, discovery, motion forms, sample opening statements and closing arguments, and sample litigation aids, and articles on trial techniques and strategies. Also available on Westlaw (AMJUR-TRIALS).

American Law Reports (Lawyers Cooperative Publishing). *ALR* is a hybrid resource somewhere between an encyclopedia and a treatise, useful in writing memoranda in support of motions. Published in a variety of series (1st, 2d, 3d, etc.), it provides in-depth analysis of specific legal issues, together with a complete list of cases from every jurisdiction that discusses the case at issue. Also available on Westlaw (ALR) and LexisNexis.

Corpus Juris Secundum (Thomson West 1936-). The second of the two major national encyclopedias, *CJS*, provides a broad overview of legal topics with annotations to state and federal cases. Examples of “criminal” subject headings include: “Searches and Seizures,” “Bail,” and “Larceny.” Also available on Westlaw (CJS).

Memo Banks. Memo banks do not fit into any of the categories previously discussed in this chapter, but we want to mention the important role they can play. Memo banks are accumulations of written work (memoranda, briefs, motions, etc.) shared by attorneys. These banks may be operated by a particular firm or institution, may be offered by an affinity-based organization, or may be informally shared amongst defense attorneys. For example, the National Association of Criminal Defense Lawyers has a [Briefs & Motions Bank](#), which is

provided as a benefit of membership. Members may download briefs and motions free of charge.

§ 51.13 ANNOTATED LIST OF USEFUL WEBSITES

[Criminal Law: Resources](#) (Cornell Legal Information Institute). LII provides a topical overview of the subject of criminal law, and links to relevant federal and state sources, key internet sites, and online journals.

[Crime Reporting Unit, Massachusetts.](#) This website is designed to assist local police in compiling their crime statistics for the Crime Reporting Unit of the Massachusetts State Police. While this website is not very user friendly, it may be useful for obtaining statistics concerning juvenile and adult arrests, crime data by county, among other statistics.

[Massachusetts District Attorneys Association \(MDAA\)](#) . The MDAA's website provides links to DA directories and pending legislation. The MDAA legal staff reviews published decisions issued by the United States Supreme Court, the Massachusetts Supreme Judicial Court and the Massachusetts Appeals Court that relate to criminal law and procedure. They post summaries of selected decisions on this website.

[Massachusetts Trial Court Law Library - Law about Criminal Law and Procedure.](#) The Massachusetts Trial Court Law Library has developed research guides covering many legal topics. Of particular interest to our researchers is the research guide for Criminal Law and Procedure. This guide provides links to Massachusetts law, court rules, jury instructions, case law, and web resources.

[National Criminal Justice Reference Service.](#) This is a federally-funded resource offering justice and substance abuse information to support research, policy, and program development. The website provides access to many government publications by topic.

[National District Attorneys Association.](#) There are publications called the “Special Topic Series” at this site, under “Publications,” covering subjects of interest to prosecutors, such as “Prosecuting Gang Cases: What Local Prosecutors Need to Know.”

Sources for Statistics:

[Bureau of Justice Statistics.](#) Sponsored by the Office of Justice Programs, this website is a first stop when looking for statistics having to do with criminal law in the United States. Included are broad topics such as recidivism, capital punishment, and victims, among others.

[Sourcebook of Criminal Justice Statistics Online.](#) The Sourcebook brings together data from more than 100 sources about many aspects of criminal justice in the United States.

[National Archive of Criminal Justice Data: The Source for Crime and Justice Data](#) - The mission of the National Archive of Criminal Justice Data (NACJD) is to facilitate research in criminal justice and criminology, through the preservation, enhancement, and sharing of computerized data resources; through the production of original research based on archived data; and through specialized training workshops in quantitative analysis of crime and justice data.

[Court Statistics Project \(National Center for State Courts\).](#) Collects and analyzes data relating to the work of our nation's state courts, including statistics on criminal filings and caseloads.

[Federal Bureau of Investigation](#). Home to the *Uniform Crime Reports*, the mother lode of crime statistics in the U.S.

§ 51.14 SECONDARY SOURCES BY SUBJECT

Appeals

Jonathan M. Purver & Lawrence E. Taylor, *Handling Criminal Appeals* (Clark Boardman Callaghan 1960-). This one-volume resource provides guidance through the technical maneuvers that can be made from the time of trial through the final possible review. It discusses making the decision on which appeals to handle, and how to arrange for bail on appeal, augment the trial record, and formulate argument.

Arrest

James A. Adams & Daniel D. Blinka, *Prosecutor's Manual for Arrest, Search & Seizure* (2d ed., LexisNexis 2004). This one-volume treatise on arrest, search and seizure issues is geared for defense lawyers and prosecutors, and written by former prosecutors who canvass the landscape of 4th Amendment law.

Justin D. Franklin & Steven C. Bell, *Searches and Seizures, Arrests and Confessions* (2d ed., Clark Boardman Callaghan 1979-). This is a three-volume sourcebook for all aspects of search, seizure, arrest and confession jurisprudence, providing a resource on 4th, 5th, and 6th Amendment law. It includes references to U.S. Supreme Court cases, federal and state law, and major recent developments. Also available on Westlaw (SSAC).

Massachusetts Arrest, Search and Seizure Citor (Mark S. Coven ed., MCLE 2011). This resource includes detailed summaries of the applicable law, along with hundreds of abstracts of Massachusetts search and seizure cases. The book is organized by numerous finding aids, including a table of cases organized by legal issue and keywords for each abstracted case. Use this reference for a detailed overview of Massachusetts law, as articulated through over three decades of decisions. Also available on LexisNexis and Westlaw (MA-CLE).

Assault

F. Lee Bailey et al., *Crimes of Violence: Homicide and Assault* (Clark Boardman Callaghan 1960-). *Crimes of Violence* takes you through the steps of a homicide trial, from pretrial investigatory stages to the courtroom confrontation itself. It includes pretrial dilemmas, such as dealing with the initial interview; attorney-client relations; and guiding clients through surrender, arraignment, pleading, and setting bail. This treatise offers trial strategies and tactics for jury selection, opening statements, plea negotiations, and illegally obtained evidence and confessions.

Confessions

Criminal Procedure Checklists, Fifth Amendment and Sixth Amendment (Clark Boardman Callaghan 2011). A ready reference for research, brief writing, and trial work, this two-volume set provides access to relevant doctrine and cases. Volume one covers the 5th Amendment, and volume two covers the 6th Amendment. Also available on Westlaw (CPLIST).

Justin D. Franklin & Steven C. Bell, *Searches and Seizures, Arrests and Confessions* (2d ed., Clark Boardman Callaghan 1979-). This is a three-volume sourcebook for all aspects of search, seizure, arrest and confession jurisprudence, providing a resource on 4th, 5th, and 6th Amendment law. It includes references to U.S. Supreme Court cases, federal and state law, and major recent developments. Also available on Westlaw (SSAC).

Conspiracy

Paul Marcus, *Prosecution and Defense of Criminal Conspiracy Cases* (Matthew Bender 1978-). This two-volume treatise provides coverage on the topic of criminal conspiracy, including complex evidentiary matters, constitutional issues, and practical considerations. Also available on LexisNexis.

Constitutional Law, generally. *See also* more specific categories such as Arrest, Search and Seizure, etc.

Joseph G. Cook, *Constitutional Rights of the Accused* (3d ed., Clark Boardman Callaghan 1996-). This four-volume looseleaf set covers the federal constitutional rights of persons accused or convicted of a crime. Also available on Westlaw (CONRTACC).

David S. Rudstein et al., *Criminal Constitutional Law* (Matthew Bender 1990-). Examining the constitutional issues involved in criminal law, this three-volume set provides substantive discussion, as well as procedural guidelines on tactics and strategy. Also available on LexisNexis.

Drug Offenses

F. Lee Bailey & Kenneth J. Fishman, *Handling Narcotic and Drug Cases* (Clark Boardman Callaghan 1960-) Covering the critical phases of a state or federal narcotics case, this one-volume resource takes you from the initial interview through sentencing. It offers advice for addressing key challenges, such as handling and communicating with drug-using clients, developing successful trial strategies, and overcoming the stigma associated with narcotics use. Also available on Westlaw (NARC-DRUG).

David Bernheim, *Defense of Narcotics Cases* (Matthew Bender 1972-). Covering all aspects of narcotics cases, this three-volume work addresses identification of drugs, search and seizure, motor vehicle and airport searches, and pretrial proceedings. It also discusses informers and accomplices, the trial, alternatives to standing trial, compulsory commitment of narcotics addicts, defense of driving-under-the-influence cases, and forfeiture proceedings. Also available on LexisNexis.

Trying Drug Cases in Massachusetts (Stephanie Page ed., 2010). This 2010 edition incorporates a number of important developments, including the U.S. Supreme Court's opinion in *Melendez-Diaz v. Massachusetts*. Throughout the publication you will find sample forms, practice notes, information on forensic procedures and analysis, and citations to recent cases and amended statutes. Also available on LexisNexis and Westlaw (MA-CLE).

Drunk Driving, see Motor Vehicle Offenses

DUI, see Motor Vehicle Offenses

Entrapment

Paul Marcus, *The Entrapment Defense* (4th ed., Matthew Bender 2009-). Presenting a discussion of trial issues under both subjective and objective tests, this one-volume work includes treatment of the standards of proof for both the state and defendant. Also available on LexisNexis.

Evidence

Barbara E. Bergman et al., *Wharton's Criminal Evidence* (15th ed., Clark Boardman Callaghan 1997-). A classic work that analyzes applicable Federal Rules of Evidence and cases interpreting the rules, this eight-volume work provides guidance for both defense and prosecution on handling criminal evidentiary issues from pretrial preparation through trial. Also available on Westlaw (CRIMEVID).

Marks S. Brodin & Michael Avery. *Handbook of Massachusetts Evidence* (8th ed., Wolters Kluwer Law & Business 2007-). This one-volume source, formerly known as "Liacos," is a well-known treatise on Massachusetts evidence. See especially Chapter 11 – "Eyewitness Identification Evidence," and Chapter 12 – "Confessions and Incriminating Statements."

Joseph Grasso & Christine M. McEvoy, *Suppression Matters under Massachusetts Law* (Matthew Bender 2011-). This one-volume resource will assist you in analyzing a fact pattern, recognizing problems, and advancing the relevant suppression issue. Also available on LexisNexis.

Edward J. Imwinkelried et al., *Courtroom Criminal Evidence* (5th ed., Matthew Bender 2011-). This two-volume treatise discusses the rules governing admissibility and sufficiency of evidence, and keeps you up to date on the latest developments in evidence law. Also available on LexisNexis.

Edward J. Imwinkelried et al., *Criminal Evidentiary Foundations* (Matthew Bender 2007-). Describing how to lay foundations to ensure the admission of critical items of evidence in a criminal trial this one-volume work demonstrates how to convert abstract evidentiary doctrine into concrete lines of questioning. Also available on LexisNexis.

Edward J. Imwinkelried, *Exculpatory Evidence: The Accused's Constitutional Right to Introduce Favorable Evidence* (3d ed., Michie 2004). This one-volume treatise examines case law defining the scope of the constitutional right to present exculpatory evidence.

Edward J. Imwinkelried et al., *The Methods of Attacking Scientific Evidence* (4th ed., Matthew Bender 2004-). Reviewing the major evidentiary doctrines applicable to scientific evidence, this one-volume resource analyzes the admissibility of the testimony of the witnesses who lay the chain of custody for the physical evidence tested. It then catalogues the admissibility attacks on the expert witnesses who teach the jury about the theory and instrument, report about the specific test in question, and evaluate the test result for the jury. Also available on LexisNexis.

Jay Levinson, *Questioned Documents: A Lawyer's Handbook* (LexisNexis 2000). Questioned documents are any documents that may be used as evidence in a trial, ranging from handwritten notes to counterfeit currency to contracts. This one-volume handbook explains the basics of

document examination and helps litigators improve the way they present document evidence and question witnesses.

Massachusetts Evidence: A Courtroom Reference (J.W. Carney Jr. ed., 6th ed., MCLE 2011-). This is a comprehensive guide to the admissibility of evidence. Judicial commentary from Massachusetts trial court judges provides a practical perspective on the handling of evidence at trial. Monthly online updates are available to brief the reader on evidentiary developments throughout the year.

Massachusetts Guide to Evidence (Flaschner Judicial Institute 2012). This is the official print edition of the Supreme Judicial Court (SJC) Advisory Committee on Massachusetts Evidence Law. While this one-volume guide to evidence in Massachusetts courts is not binding, it is very persuasive. This text is also available [online](#).

Christine M. McEvoy & Gilda Tuoni Russell, *Massachusetts Hearsay Evidence* (MCLE 2006). This reference starts off with a definition of what hearsay is, and aids you in spotting hearsay issues quickly at trial. Also available on LexisNexis.

Marc C. Perlin & Davalene Cooper, *Massachusetts Proof of Cases* (West 2011). *Massachusetts Proof of Cases* provides encyclopedic treatment of the elements of substantive law which must be proved in order to prevail on a claim or a defense. One volume is devoted to criminal law and evidence topics. Also available on Westlaw (MAPOC).

Harold W. Potter, Jr. & Paul E. Troy, *A Practical Guide to Introducing Evidence: Basic Foundations and Objections* (3d ed., MCLE 2007-). This resource identifies the foundational requirements and examination techniques that apply to introducing evidence at trial. Sample examinations illustrate the practical implementation of each of the evidentiary approaches explored in the text. Areas covered include prior convictions, privileges, hearsay, as well as timely topics such as genetic marker testing, "first complaint" evidence, Daubert/Lanigan standards, and electronic evidence.

Bethany R. Scheffler & David N. Finley, *Massachusetts Practice Series Vol. 54 - Motions in Limine* (2011). *Motions in Limine* is atypical of the *Massachusetts Practice Series* in that it is not written by Massachusetts practitioners. However, all of the motions are completely annotated with Massachusetts support, and the volume offers relevant criminal practice motions such as motions to exclude prior crime evidence, character evidence, and evidence of prior DUI.

William G. Young, John R. Pollets & Christopher Poreda, *Massachusetts Practice Series Vols. 19-20 - Evidence* (1998-). Based on an expert evaluation of Massachusetts cases and statutes, the work illustrates the practical application of the rules governing admissibility of evidence in all types of litigation.

Expert Witness

David L. Faigman et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* (Thomson West 2011). *Modern Scientific Evidence* is a five-volume guide that provides the legal and scientific background that assists attorneys in asking the right questions when dealing with scientific evidence and expert witnesses. The resource will help trial attorneys to be better prepared to explain complex science during admissibility arguments and elicit or challenge experts' testimony during trial. Also available on Westlaw (MODSCIEVID).

Peter M. Lauriat & James F. McHugh eds., *Massachusetts Expert Witness* (2d ed., MCLE 2010). Guiding you through the process of using and opposing experts at each stage of litigation, this book features tips on communicating effectively with such experts as accountants, engineers, ballistics experts. Also available of LexisNexis.

Nathan R. Sobel et al., *Eyewitness Identification* (Clark Boardman Callaghan 2012). Providing access to recent cases and interpretations of eyewitness identification law, this one-volume treatise includes coverage of the due process test for eyewitness identification, exclusionary sanctions in identification cases, photo and voice identification, and independent source and reliability factors. Also available on Westlaw (EYEWITN).

Eyewitnesses

James M. Doyle et al., *Eyewitness Testimony: Civil and Criminal* (4th ed., LexisNexis 2007-). Written by experts in eyewitness psychology and an experienced trial attorney, this one-volume source offers courtroom-ready trial techniques and the latest psychological research concerning such issues as jurors' beliefs about eyewitness testimony, the factors that may impede perception and memory, and illustrates the consequences and effects of eyewitness testimony in both criminal and civil trials.

Field Sobriety Tests, see Motor Vehicle Offenses

Forfeiture

Steven L. Kessler, *Civil & Criminal Forfeiture: Federal and State Practice* (Clark Boardman Callaghan 2002-). Providing analysis of the primary forfeiture provisions enacted by Congress and legislatures, this three-volume work analyzes major cases interpreting forfeiture statutes. It also provides guidance to the practice and handling of forfeiture cases in state and federal courts.

David B. Smith, *Prosecution and Defense of Forfeiture Cases* (Matthew Bender 1985-). This is a two-volume treatise on the substantive and procedural law of civil and criminal forfeiture. Also available on LexisNexis.

Habeas Corpus

Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* (6th ed., Michie 2011-). This two-volume title gives practical information for obtaining habeas corpus relief in both capital and non-capital cases. It is the resource cited most frequently by the U.S. Supreme Court and lower federal courts.

Stephen Paul Maidman & Eva Marie Badway, *Habeas Corpus in the Federal Court* (MCLE 2012). Federal habeas corpus litigation is the most complex, difficult, and murky area of post-conviction criminal procedure. This treatise brings together practitioners from across the state to help you to understand how to navigate the treacherous waters comprising habeas corpus practice in the federal courts.

Hate Crimes

Zachary Wolfe, *Hate Crimes Law* (Clark Boardman Callaghan 2012). This one-volume resource provides current analysis and legal guidance concerning the federal and state statutes that were enacted to punish or enhance the punishment of bias-motivated crimes. It discusses elements of proof and potential areas for constitutional challenges. Also available on Westlaw.

Homicide

F. Lee Bailey et al., *Crimes of Violence: Homicide and Assault* (Clark Boardman Callaghan 1960-). *Crimes of Violence* takes you through the steps of a homicide trial, from pretrial investigatory stages to the courtroom confrontation itself. It includes pretrial dilemmas, such as dealing with the initial interview; attorney-client relations; and guiding clients through surrender, arraignment, pleading, and setting bail. This treatise offers trial strategies and tactics for jury selection, opening statements, plea negotiations, and illegally obtained evidence and confessions.

Patrick T. Barone et al., *Defending DUI Vehicular Homicide Cases: Leading Lawyers on Understanding DUI Cases, Developing a Thorough Defense, and Negotiating Settlements* (Aspatore 2012). Providing information on counseling clients accused of vehicular homicide or manslaughter while driving under the influence (DUI), this work guides the reader through the DUI environment. It analyzes how the latest trends, decisions, and political and social climate impact cases. John M. Greaney & James F. Comerford, *The Law of Homicide in Massachusetts* (Flaschner Judicial Institute 2009). Written in part by a former Supreme Judicial Court Justice, this one-volume benchbook covers the substantive law of homicide, as well as Miranda and other confession issues, defenses, expert testimony, forensic testing, witness immunity, the Confrontation Clause, jury issues, closing arguments and appeals.

Trying Murder and Other Homicide Cases in Massachusetts (Stephanie Page & Larry R. Tipton eds., 2004). Beginning with an introduction to the major types of homicide — first-degree murder, second-degree murder, voluntary manslaughter, and involuntary manslaughter — this book takes you through each step of a homicide case. Sample motions and other various exhibits are included, and six appendices provide you with more reference materials. Also available on LexisNexis and Westlaw (MA-CLE).

Investigation

Thomas P. Mauriello, *Criminal Investigation Handbook* (Matthew Bender 1990-). Offering guidance on the practical aspects of an investigation as well as pertinent legal analysis, this one-volume treatise includes illustrations, checklists, and forms. Also available on LexisNexis.

Jury Instructions

[Criminal Model Jury Instructions](#). (Massachusetts District Court Revised 2011). Includes all model Massachusetts District Court criminal jury instructions in PDF and WordPerfect formats.

Criminal Model Jury Instructions for Use in the District Court (3d ed., MCLE 2009-). This two-volume source provides over 150 instructions covering trial procedure, evidentiary rules, and every major offense and defense triable in the district court. It is the resource used by judges across the Commonwealth, as it is the only official manual of pattern jury instructions in Massachusetts. Three new model instructions are included, covering Subsequent Offense, Failing to Register as a Sex Offender, and Giving a False Name upon Arrest. Featured is a

checklist of instructions either required or affirmatively recommended by appellate courts, and a chart offering suggested dialogues for sentencing. Also available on LexisNexis.

Massachusetts State and Federal Criminal Jury Instruction Filings. Selected criminal jury instructions filed with the state and federal trial courts in Massachusetts. A document contains jury instructions submitted and/or approved and read for a selected case. Keep in mind that these are not model jury instructions and may not have met with court approval. Not available in print; available only on Westlaw (MA-CRJIF-ALL).

Massachusetts Superior Court Criminal Practice Jury Instructions (Frances A. McIntyre et al. eds., MCLE 2004). This two-volume work provides instructions that cover every major type of criminal case. You can tailor and adapt these instructions to the particular issues of your case. This work includes instructions common to all criminal cases, specific crimes, defense and justification, special issues, and procedural aspects of jury instruction. Forms are available on an accompanying CD. Also available on LexisNexis.

Mental Disability Law

Michael L. Perlin, *Mental Disability Law: Civil and Criminal* (2d ed., LexisNexis 2003-). This five-volume treatise provides a discussion of the law affecting the mentally disabled. It discusses research and litigation problems that may arise in this area. Also available on LexisNexis.

Misdemeanors

F. Lee Bailey & Kenneth J. Fishman, *Handling Misdemeanor Cases* (2d ed., Clark Boardman Callaghan 2008-). *Handling Misdemeanor Cases* details the basic concepts, strategies, and procedures involved in handling misdemeanor-level cases, as well as tactical elements of pretrial preparation. Also available on Westlaw (HANDLMISD).

Motor Vehicle Offenses

Nafiz M. Ahmed et al., *Witness Preparation and Examination for DUI Proceedings: Leading Lawyers on Selecting, Preparing, and Examining Expert Witnesses in DUI Cases* (Aspatore 2011). *Witness Preparation* discusses best practices for using expert witnesses to overcome evidence in driving-under-the-influence cases. It guides you through the process of determining the right type of expert to hire for a case, walking through the evidence with an expert to prepare testimony, and preparing the expert for cross-examination by the prosecutor. The authors examine the emerging types of evidence used in DUI cases and the role expert witnesses can play in refuting the validity of this data.

David Andrascik et al., *Understanding Field Sobriety and Breath Testing Procedures: Law Enforcement Officials on Following Test Administration Standards, Utilizing New Technologies, and Ensuring Test Validity* (Aspatore 2009). Discussing the tests administered and devices utilized by law enforcement officials during a DUI-related traffic stop, this one-volume treatise is useful for prosecutors and defense attorneys alike, outlining the steps performed during roadside sobriety tests and the role these tests play in a DUI case.

Julio Cesar Argueta et al., *The Legality of Search and Seizure in DUI Cases: Leading Lawyers on Understanding the Latest Fourth Amendment Issues and Their Impact on DUI Defense Strategies* (Aspatore 2011). This one-volume source discusses best practices for identifying and

litigating Fourth Amendment violations during a DUI defense. It guides the reader through the proper search and seizure procedures and standards that law enforcement should follow during the initial stop, investigation, and DUI arrest.

Patrick T. Barone et al., *Defending DUI Vehicular Homicide Cases: Leading Lawyers on Understanding DUI Cases, Developing a Thorough Defense, and Negotiating Settlements* (Aspatore 2012). Providing information on counseling clients accused of vehicular homicide or manslaughter while driving under the influence (DUI), this work guides the reader through the DUI environment. It analyzes how the latest trends, decisions, and political and social climate impact cases.

Robert J. Belloto, *Understanding DUI Scientific Evidence: Leading Lawyers on Analyzing New Forensic Science, Challenging Testing Procedures and Results, and Consulting Experts for Defense Arguments* (Aspatore 2011). This one-volume resource discusses the new scientific and technological developments in DUI criminal defense, and provides information on emerging research related to breath, blood, and urine alcohol analysis, standard field sobriety testing, retrograde extrapolation, accident reconstruction science, and alcohol detection devices.

Harvey M. Cohen & Joseph B. Green, *Apprehending and Prosecuting the Drunk Driver: A Manual for Police and Prosecution* (Matthew Bender 1992-). This one-volume treatise addresses legal, scientific and practical guidance concerning drunk driving stops, searches, arrests and prosecution. Also available on LexisNexis.

James F. Comerford, *Massachusetts Motor Vehicle Stops Benchbook* (Flaschner Judicial Institute 2011). This benchbook seeks to provide an understanding of the continuum of suppression issues that the prosecutor, counsel, and the court face.

Richard Essen, *Defense of Drunk Driving Cases: Criminal – Civil* (3d ed., Matthew Bender 1971-). This four-volume set examines the legal and technical issues that arise in a drunk-driving case, and contains guidance concerning relevant statutes, case law, and scientific facts. Topics discussed include per se laws, implied consent legislation, constitutional objections, field sobriety testing, and admissibility of chemical test results and other evidence. Also available on LexisNexis.

James Farragher Campbell et al., *Defense of Speeding, Reckless Driving and Vehicular Homicide* (Matthew Bender 1984-). This three-volume treatise discusses the law, technical knowledge and litigation techniques required to successfully defend a speeding, reckless driving, or vehicular homicide case. Also available on LexisNexis.

Stephen L. Jones, *Massachusetts Practice Series Vol. 50 - Drunk Driving Defense* (2004-). This work follows the litigation arc from “the Stop,” roadside tests, citation issues through post-conviction relief. Includes forms, which are also available on the accompanying CD, for all phases including client intake, motions to dismiss, motions in *limine*, and sample notices of appeal. Also available on Westlaw (MAPRAC).

Massachusetts Motor Vehicle Offenses: Criminal, Civil, and Registry Practice (Andrew M. D’Angelo ed., 2d ed., MCLE 2009-). This single volume offers practical insights from the prosecutor and defense point of view, explanations of technical issues such as blood-alcohol testing, and an assortment of sample motions and support materials. Also available on LexisNexis and Westlaw (MA-CLE).

Robert S. Reiff, *Drunk Driving and Related Vehicular Offenses* (5th ed., Matthew Bender 2010). Analyzing the avenues of prosecution and lines of defense in this aggressively legislated, prosecuted, and adjudicated area of law, this one-volume work demonstrates how to sell yourself to your client, select a jury, cross-examine the arresting officer, and deliver a strong closing argument. Also available on LexisNexis.

Trying OUI Cases in Massachusetts (James M. Sullivan ed., MCLE 2004-). With contributions from attorneys and judges involved in many different stages of the process, this manual provides guidance on preparing for and trying OUI cases. In addition to the text, over 90 exhibits are included, such as sample motions, checklists, jury instructions, statutes, and breath test forms. Also available on LexisNexis and Westlaw (MA-CLE).

Flem K. Whited III, *Drinking/Driving Litigation: Criminal and Civil* (Clark Boardman Callaghan 1998-). Providing tactics and strategies for building a successful drunk-driving defense, this four-volume set discusses issues including challenging prior convictions, arrests, and chemical testing. Included are checklists, outlines, forms, sample questions, and arguments. Also available on Westlaw (DRNKDRIVING).

Flem K. Whited III, *Drinking/Driving Litigation: Criminal and Civil Trial Notebook* (Clark Boardman Callaghan 2011). This one-volume resource contains coverage of issues arising in DUI litigation, from initial client contact to sentencing. It provides samples, checklists and forms, as well as instructions and analysis. Also available on Westlaw (DDTRIALNB).

Murder, *see* Homicide

Narcotics, *see* Drug Offenses

OUI, *see* Motor Vehicle Offenses

Pornography (Online)

Peter E. Brill et al., *Strategies for Defending Internet Pornography Cases: Leading Lawyers on Analyzing Electronic Documents, Utilizing Expert Witnesses, and Explaining Technological Evidence* (Aspatore 2008). *Strategies* discusses how to mount a defense against charges of possession of Internet pornography. It looks at the key considerations involved when investigating accusations of Internet crimes and examines the technology issues at work. The text discusses the challenges of defending these technology-driven cases and explains the concepts of shareware, unintentional downloading, digitally altered images, and temporary Internet file folders as they relate to false claims of Internet pornography possession. This treatise also offers advice on selecting an appropriate defense strategy.

Rachel Kathleen Gernat & Thomas Sadaka, *Strategies for Prosecuting Internet Pornography Cases: Leading Prosecutors on Interviewing the Suspect, Developing a Trial Strategy, and Negotiating the Charges* (Aspatore 2008). *Strategies* is a one-volume resource providing a perspective on key methods for investigating Internet crime cases involving pornographic material and bringing these cases to court.

Post Conviction Remedies

Brian R. Means, *Postconviction Remedies* (Clark Boardman Callaghan 2011). *Postconviction Remedies* distinguishes the multitude of remedies available, describing them in detail, and

offering solutions for problems that may arise. This one-volume treatise also covers key issues such as federal postconviction remedies for challenging federal convictions, custody requirements, the exhaustion doctrine, and procedural default effects. Also available on Westlaw (PCREM).

Donald E. Wilkes, Jr., *State Postconviction Remedies and Relief Handbook with Forms* (The Harrison Company 2011). Stay up-to-date with this four-volume treatise on state postconviction procedure. This work deals at length with federal habeas corpus remedy for state convicts, and the availability of postconviction relief in state courts.

Prisoners' Rights

Michael Mushlin, *Rights of Prisoners* (4th ed., Clark Boardman Callaghan 2009-). The law affecting prisoners and their rights, and the latest developments resulting from the increase in prison litigation, are discussed in this four-volume treatise. It provides analysis of related Supreme Court decisions, with special attention paid to the application of First, Fourth, and Eighth Amendment rights in prisons. Also available on Westlaw (RGTSPRISON).

Probation/Parole

Neil Cohen, *The Law of Probation and Parole* (2d ed., Clark Boardman Callagan 2011-). Providing guidance for handling most probation or parole matters, this two-volume treatise cites emerging trends and analyzes relevant federal and state court decisions and statutes. Subjects include probation granting, including coverage of eligibility, limits of discretion, factors used in probation decisions, federal parole law, and supervised release.

Professional Responsibility

John M. Burkoff, *Criminal Defense Ethics: Law and Liability* (Clark Boardman Callaghan 2011). This one-volume source reviews the underlying ground rules and the range of resolutions applicable to particular ethical and legal dilemmas. Coverage includes forfeiture of legal fees, abuse of the subpoena process, liability in malpractice suits, and conflicts of interest. Also discussed are disqualification motions, ineffective assistance of counsel, trial publicity and other public statements. Also available on Westlaw (DEFETHICS).

John Wesley Hall, *Professional Responsibility in Criminal Defense Practice* (Clark Boardman Callaghan 2005-). *Professional Responsibility* provides trial guidance for striking a balance between duty to the client under the 6th Amendment representing a client's interests, yet obeying the law and maintaining a profitable practice. Also available on Westlaw (PRCRIMDEF).

Peter Joy & Kevin C. McMunigal, *Do No Wrong: Ethics for Prosecutors and Defenders* (ABA 2009). *Do No Wrong* aims to illuminate ethical questions for criminal practitioners and to provide both prosecution and defense with the analysis and authorities necessary to understand the issues and underlying policies.

Prosecutorial Misconduct

Joseph F. Lawless, *Prosecutorial Misconduct: Law, Procedure and Forms* (4th ed., Matthew Bender 2008-). Providing a scholarly analysis of prosecutorial abuses, this one-volume treatise covers the initiation of a criminal investigation through the appeal and post-conviction stages

for both federal and state jurisdictions. Included in this treatise is a collection of motions, briefs, and arguments from actual cases handled by noted defense lawyers. Also available on LexisNexis.

Rape, *see* Sexual Offenses

Scientific Evidence

Robert J. Belloto, *Understanding DUI Scientific Evidence: Leading Lawyers on Analyzing New Forensic Science, Challenging Testing Procedures and Results, and Consulting Experts for Defense Arguments* (Aspatore 2011). This one-volume resource discusses the new scientific and technological developments in DUI criminal defense, and provides information on emerging research related to breath, blood, and urine alcohol analysis, standard field sobriety testing, retrograde extrapolation, accident reconstruction science, and alcohol detection devices.

David L. Faigman et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* (Thomson West 2011). *Modern Scientific Evidence* is a five-volume guide that provides the legal and scientific background that assists attorneys in asking the right questions when dealing with scientific evidence and expert witnesses. The resource will help trial attorneys to be better prepared to explain complex science during admissibility arguments and elicit or challenge experts' testimony during trial. Also available on Westlaw (MODSCIEVID).

Marshall Houts et al., *Courtroom Toxicology* (Matthew Bender 1981-). *Courtroom Toxicology* is an eight-volume medico-legal treatise on using complex toxicology findings in the courtroom. Also available on LexisNexis.

Edward J. Imwinkelried & Paul C. Giannelli. *Scientific Evidence* (4th ed., Matthew Bender 2007-). This two-volume treatise contains information about the latest forensic techniques and scientific concepts used in collecting and evaluating evidence. It covers rules and precedents relating to admissibility, constitutional limitations, discovery, expert testimony, laboratory reports, and chain of custody. Also available on LexisNexis.

Cyril H. Wecht, *Forensic Sciences* (Matthew Bender 1981-). In this five-volume set, experts discuss the sciences relevant to criminal and civil litigation and the law concerning their use in the courtroom. Also available on LexisNexis.

Search and Seizure

James A. Adams & Daniel D. Blinka, *Prosecutor's Manual for Arrest, Search & Seizure* (2d ed., LexisNexis 2004). This one-volume treatise on arrest, search and seizure issues is geared for defense lawyers and prosecutors, and written by former prosecutors who canvass the landscape of 4th Amendment law.

Julio Cesar Argueta et al., *The Legality of Search and Seizure in DUI Cases: Leading Lawyers on Understanding the Latest Fourth Amendment Issues and Their Impact on DUI Defense Strategies* (Aspatore 2011). This one-volume source discusses best practices for identifying and litigating Fourth Amendment violations during a DUI defense. It guides the reader through the proper search and seizure procedures and standards that law enforcement should follow during the initial stop, investigation, and DUI arrest.

James F. Comerford, *Massachusetts Motor Vehicle Stops Benchbook* (Flaschner Judicial Institute 2011). This benchbook seeks to provide an understanding of the continuum of suppression issues that the prosecutor, counsel, and the court face.

Justin D. Franklin & Steven C. Bell, *Searches and Seizures, Arrests and Confessions* (2d ed., Clark Boardman Callaghan 2003-). This is a three-volume sourcebook for all aspects of search, seizure, arrest and confession jurisprudence, providing a resource on 4th, 5th, and 6th Amendment law. It includes references to U.S. Supreme Court cases, federal and state law, and major recent developments. Also available on Westlaw (SSAC).

John Wesley Hall, *Search and Seizure* (3d ed., Matthew Bender 2000-). Addressing the types of issues frequently encountered by both practitioners in the field and judges, this two-volume treatise discusses such issues as reasonable expectation of privacy, consent, and probable cause. Also available on LexisNexis.

Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (4th ed., Thomson West 2004-). *Search and Seizure* reports the current state of 4th Amendment law. This is a six-volume work and is part of the Criminal Practice Series. Also available in Westlaw (SEARCHSZR).

Massachusetts Arrest, Search and Seizure Citor (Mark S. Coven ed., MCLE 2011). This resource includes detailed summaries of the applicable law, along with hundreds of abstracts of Massachusetts search and seizure cases. The book is organized by numerous finding aids, including a table of cases arranged by legal issue and keywords for each abstracted case. Use this reference for a detailed overview of Massachusetts law, as articulated through over three decades of decisions. Also available on LexisNexis and Westlaw (MA-CLE).

Sentencing

Arthur W. Campbell, *Law of Sentencing* (3d ed., Clark Boardman Callaghan 2004-). Addressing types of sentencing, including probation sentences and death sentences, this one-volume treatise explores constitutional considerations, basic sentencing principles, and judicial sentencing review. Also available on Westlaw (LAWSENT).

Sexual Offenses

F. Lee Bailey et al., *Crimes of Violence: Rape and Other Sex Crimes* (Clark Boardman Callaghan 1960-). Providing step-by-step guidance through the phases of a sex crime case, this work begins by discussing the initial client interview, setting the fee, the insanity plea and plea bargaining, and addresses suppression of evidence and jury selection. The text concentrates on the major sex crime areas of rape, prostitution, incest, obscenity, sodomy, homosexuality, child abuse, stalking, and interstate domestic violence. It also includes sample motions, jury instructions, voir dire questions, and witness questions.

Paul DerOhannesian II, *Sexual Assault Trials* (3d ed., Michie 2006-). This two-volume treatise covers virtually all aspects of sexual assault trials, providing guidance on discovery and pretrial issues, jury selection, direct and cross-examination, hearsay, expert testimony, presentation of evidence, and jury instructions.

B. Anthony Morosco, *The Prosecution and Defense of Sex Crimes* (Matthew Bender 1976-). This one-volume source covers legal problems involved in forcible and non-forcible sex

crimes, including sexual and physical abuse of children and spouses, and prostitution. Also available on LexisNexis.

Sex Offender Registry Practice (Larni S. Levy ed., MCLE 2009). The *Sex Offender Registry Practice* examines hearings before the Sex Offender Registry Board (SORB) and appeals, and the many collateral consequences of convictions and juvenile adjudications. Also available on LexisNexis and Westlaw (MA-CLE).

Trying Sex Offense Cases in Massachusetts (Stephanie Page ed., 2d ed. MCLE 2009). This practice manual serves as a guide to the substantive law, procedural requirements, and practical strategies necessary for handling sex offense cases. Applicable statutes, available defenses, investigation and discovery, pretrial motions, voir dire, and trial issues are addressed. Also available on LexisNexis and Westlaw (MA-CLE).

Suppression Matters

Joseph Grasso & Christine M. McEvoy, *Suppression Matters under Massachusetts Law* (Matthew Bender 2011). This one-volume resource will assist you in analyzing a fact pattern, recognizing problems, and advancing the relevant suppression issue. Also available on LexisNexis.

Toxicology, *see* Scientific Evidence

Trial Preparation

American Jurisprudence Proof of Facts, 3d Series (Lawyers Cooperative Publishing 1988-). Another potentially very useful set, *POF* explains, as its title suggests, how to prove essential facts of a case. For example, if your case involves excessive use of force by a police officer, you could find an entry on just this point that will cover topics such as essential considerations such as official immunity, qualified immunity, evidence of intoxication or drug use, etc. Access to relevant material, as usual, is through the Index. For example, to find the above entry, go to Arrest, subheading, excessive force by police, and you will find many entries that may help. Also available on Westlaw (AMJUR-POF).

American Jurisprudence Trials (Lawyers Cooperative Publishing 1964-). Another multi-volume set that instructs on how to accomplish discrete acts at trial, it includes model pleading, discovery, motion forms, sample opening and closing arguments, and sample litigation aids, and article on trial techniques and strategies. For example, suppose the researcher is concerned about a victim's utterances post-act in a homicide trial. You could find an entry covering this by using the Index (Homicide>Accusatory utterances by victim after act) that suggests strategies to keep those utterances out, or nullify their effect. Also available on Westlaw (AMJUR-TRIALS).

F. Lee Bailey & Kenneth J. Fishman, *Criminal Trial Techniques* (Clark Boardman Callaghan 2000-). This three-volume treatise walks you through the stages of a criminal defense case, from initial case considerations to dealing with the trial judge. It outlines aspects of pre-arrest, pretrial preparation, and pretrial investigation proceedings. Also available on Westlaw (CRTRTECH).

Richard A. Cline, *Defense Investigation and Discovery in Criminal Cases: A Systematic Approach to Obtaining Information and Preparing for Trial* (Aspatore 2011). Presenting trial-tested investigation and discovery methods, this one-volume work explores the theoretical and jurisprudential concepts that govern a defendant's right to obtain information from the prosecutor. It also provides practical advice on integrating discovery information into an effective defense.

Paul DerOhannesian II, *Sexual Assault Trials* (3d ed., Michie 2006-). This two-volume treatise covers virtually all aspects of sexual assault trials, providing guidance on discovery and pretrial issues, jury selection, direct and cross-examination, hearsay, expert testimony, presentation of evidence, and jury instructions.

Brian C. Drummond et al., *Trial Techniques for Criminal Cases: Leading Lawyers on Developing a Case Theory, Preparing for Trial, and Managing Client Expectations* (Aspatore 2010). Providing a perspective on best practices for defending clients in criminal trials, this one-volume work guides the reader through establishing client relationships, negotiating plea bargains, and building an effective defense strategy. The authors discuss the techniques most critical for a successful outcome and offer strategies for developing a case theory, selecting jurors, handling discovery issues, analyzing evidence, and examining witnesses.

Paul Marcus, *The Entrapment Defense* (4th ed., Matthew Bender 2009-). Presenting a discussion of trial issues under both subjective and objective tests, this one-volume work includes treatment of the standards of proof for both the state and defendant. Also available on LexisNexis.

Marc C. Perlin & Davalene Cooper, *Massachusetts Proof of Cases* (West 2011). *Massachusetts Proof of Cases* provides encyclopedic treatment of the elements of substantive law which must be proved in order to prevail on a claim or a defense. One volume is devoted to criminal law and evidence topics. Also available on Westlaw (MAPOC).

Stuart Sacks et al., *Criminal Defense Techniques* (Matthew Bender 1971-). Covering the topic of criminal law, this ten-volume work covers the waterfront from pretrial to appeal. Also available on LexisNexis.

Edward M. Swartz, *Trial Handbook for Massachusetts Lawyers* (3d ed., Lawyers Cooperative Publishing 1999-). This one-volume treatise covers both the procedural and substantive aspects of trial practice, analyzing current Massachusetts trial case law, rules, and statutes. It includes principles of successful jury selection and strategies and tactics in using the rules of evidence. See especially Chapter 4 – “Criminal Trials,” Chapter 27 – “Confessions,” and Chapter 28 – “Exclusion or Admission of Illegally Obtained Evidence.”

White Collar Crime

Paul A. Alsdorf et al., *White Collar Case Strategies: Leading Lawyers on Developing Winning Strategies, Communicating with Clients, and Navigating High-Profile Cases* (Aspatore 2009). This one-volume source focuses on how to implement winning strategies when handling difficult, and often high-profile, white collar cases. It discusses the different phases of strategic development and the key considerations for each phase. It offers advice on interviewing the client effectively, establishing a trusting relationship with government officials, developing a strategy early on, and making tough decisions, such as whether or not the client should testify.

Joel Androphy, *White Collar Crime* (2d ed., Clark Boardman Callaghan 2001-). This four-volume treatise discusses legal developments affecting the prosecution and defense of fraud and other white collar crimes. It includes sample briefs and memoranda covering several different aspects of white collar crime cases, from initial client contact and government investigation, through sample jury instructions. Also available on Westlaw (WCCR).

Aaron M. Danzig et al., *White Collar Fraud Investigations: Leading Lawyers on Analyzing Recent Trends, Building a Defense Strategy, and Developing Compliance Programs* (Aspatore 2010). *White Collar Fraud* looks at best practices for understanding recent fraud trends and developing a client's defense strategy accordingly. It guides the reader through the most recent white-collar fraud cases, discussing the motives behind the incidences and the strategies being employed by the government to enforce crime investigation. Explaining the structure of an investigation and the responsibilities of legal counsel at each stage, the authors discuss their tactics for conducting an internal company review, interacting with investigating government agencies, and negotiating a settlement to avoid prosecution.

John S. Siffert & Jed S. Rakoff, *Business Crime: Criminal Liability of the Business Community* (Matthew Bender 1981-). This seven-volume treatise provides guidance on criminal questions arising from modern business practices. This resource also includes *Business Crime Commentary*, a bimonthly reporter providing a lead article addressing business crime. Also available on LexisNexis.