

**T H E** National Association of Criminal Defense Lawyers®

# **CHAMPION**®

September/October 2017

## **ALSO IN THIS ISSUE**

- ❖ **Admitting Email Into Evidence**
- ❖ **EB-5 Visa Fraud Cases – What You Need to Know**
- ❖ **A Primer for Representing Medical Professionals**

## **White Collar Crime Issue**

**Has Your Client Corruptly  
Endeavored to Impede the IRS?**

**TAX LAW**

Steve Bright, is like hearing Steve give one of his iconic closings. These are just some of the rich insights contained in this remarkable book.

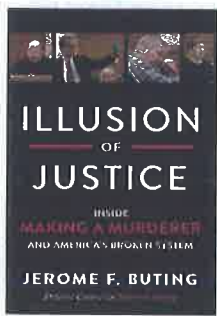
A couple of other thoughts are worth mentioning. Leaders of organizations in death penalty states know what a problem capital punishment is, consuming resources, creating conflicts, and burning out employees. No leader in such an organization should fail to learn the lessons contained in this book. Mitigation specialists are in many ways the heroes in the telling of the decline of capital punishment in the United States. While the *Supplemental Guidelines* are their bible, this book should become their friend. ■

## Illusion of Justice

### Inside Making a Murderer and America's Broken System

By Jerome F. Buting  
Harper (2017)

Reviewed by Raymond Dall'Osto



*Illusion of Justice* is not simply a companion piece to the popular Netflix series on the continuing legal odyssey of Steven Avery and his nephew Brendan Dassey. It is a gripping firsthand account

of what really unfolds when a criminal defense lawyer is brought into a high profile homicide case, and more so, what happens when the system and the science are like loaded dice against one's client. The roller coaster series of events in Avery's life — first conviction, then exoneration; then a new charge and the commencement of a forced march towards conviction, no matter what — is dealt with expertly by the author.

The first chapter explodes in real time as criminal defense counsel are trying to get their bearings and a handle on a brutal homicide case being purposely sensationalized by the prosecution and law enforcement in the media. This book is not derived from third-person accounts, but is told "from the trenches" as it really happened (and still is happening) by Jerome "Jerry" Buting, one of Avery's defense attorneys.

The author intertwines the often hard to believe, true story about what happened in Avery's case with his own story. Buting informs the reader how he became a criminal defense lawyer, how he came to repre-

sent Avery, and why he continues, like Clarence Darrow, to be an "attorney for the damned." Jerry started out as a public defender, which, for many of us, was our proving ground. His reminiscences on that time, his development into a seasoned defense attorney, and his description of what it feels like to fight, lose, and hurt make for a most compelling story. Disclaimer: I worked with Jerry when we were young public defenders. I saw him in action firsthand, and saw how he honed his trial skills and developed his approach to complex science issues.

The book's discussion of the validity and reliability of DNA and other forensic evidence — not only in the Avery case but also in other postconviction litigation such as the Ralph Armstrong case — provides a primer on DNA evidence and defending against such. For that alone, the book is worth the price.

Jerry also walks the reader through his investigation in the Avery case, pre-trial and post-trial, which makes for very suspenseful reading. Spoiler alert: watch for his exploration of blood sample preservative EDTA, the source of samples and potential tampering and/or contamination. This may yet turn out to be the key to the jailhouse door for Steven Avery.

If you deal with DNA and other forensic evidence in your practice, you will know what I mean after you read *Illusion of Justice*. Buting's lessons and proposals at the conclusion of *Illusion of Justice* are all the more relevant given Attorney General Sessions' announcement in April 2017 that he would not renew the National Commission on Forensic Science and his decision to suspend review of past FBI testimony on several questionable forensic science techniques. "Accurate forensic science analysis be damned!" appears to be the Trump Justice Department's new motto. As Buting's book points out, particularly in the concluding chapters, this means that justice be damned too. In light of this, the task for criminal defense lawyers will certainly become considerably more difficult, and challenging junk science even more important. We must *resist* this perversion of science, law, and justice.

Jerry's career, his fight to free the innocent, and his efforts to protect the constitutional rights of his clients would

### About the Reviewer

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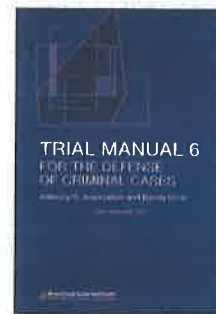
be worthwhile reading on their own. But this is not a self-laudatory book or a collection of "war stories." It is an important exposition of what really happened in some of the trial and appeal cases in which Jerry Buting and others in the defense bar were involved. Advocates who have been practicing criminal defense for many years will appreciate Jerry Buting's concluding "forest and the trees" overview. For lawyers at an earlier stage in their careers, *Illusion of Justice* will not only open their eyes and educate them, but it will also inspire them to join the battle. ■

## Trial Manual 6 for the Defense of Criminal Cases

By Anthony G. Amsterdam  
and Randy Hertz

American Law Institute CLE (2017)

Reviewed by Abbe Smith  
and David Rudovsky



We are both former public defenders who cut our teeth on earlier versions of this essential criminal defense treatise. For us and for new generations of criminal defense lawyers, there is a newly revised, two-

volume *Trial Manual 6 for the Defense of Criminal Cases* by Anthony Amsterdam and his NYU colleague Randy Hertz. Tony Amsterdam has been an incredibly creative criminal defense lawyer and teacher for close to six decades and his teaching and counseling have guided many of us through the treacherous landscape of criminal defense. Randy Hertz has made his mark in exceptional clinical teaching and advocacy and as co-author of a highly touted treatise on federal habeas corpus practice (with James Liebman) and juvenile defense practice (with Amsterdam and Martin Guggenheim). Their skills and innovative thinking have produced a *Manual* that should be on every criminal lawyer's book shelf, serving as the first reference book for inexperienced lawyers and as an essential resource for the experienced practitioner.

The *Manual* is a thoughtfully conceived, well-organized, easy-to-read guidebook on the process of handling a criminal case, from arrest to appeal. Threading the needle of serving the novice and the experienced lawyer is always a challenge in the writing of professional manuals, as is finding the right balance in addressing federal and state rules of