



Montana Association of
Criminal Defense Lawyers
and
Federal Defenders of Montana
Conference



March 10-11, 2022

“Prepare, Persuade and Prevail”

*“You can’t always get what you want,
but if you try sometimes, you might find,
you get what you need.”*

- Sir Michael Philip Jagger

Day 1

Thursday, March 10, 2022

8:00-9:00 a.m. Registration & Chico Breakfast

9:00-9:15 a.m. **Welcome and Introduction**

Tony Gallagher, *Federal Defender, Federal Defenders of Montana,
Great Falls, MT*

Colin Stephens, *President, Montana Association of Criminal Defense
Lawyers, Missoula, MT*

9:15-10:15 a.m. **Evidence: The Busy Lawyer’s Guide to Hearsay**

Rene Valladares, *Federal Defender, District of Nevada, Las Vegas,
NV*

Hearsay does not have to be a mysterious and threatening topic. This webinar will provide a roadmap for criminal defense lawyers to navigate their way through hearsay problems. The presentation will cover what constitutes hearsay (FREs 801 and 802), the major hearsay exclusions (FRE 801(d)) and exceptions (FREs 803 and 804), and what constitutes unavailability under FRE 804. This session will also address the intersection of the hearsay rules and the Confrontation Clause.

10:15-10:20 a.m. **Break**

10:20-11:50 a.m. **Dissecting Discovery and Utilizing Experts in Drug Cases: Making Sense of the Graphs, Data, Notes, and Conclusions Commonly Found in Drug Discovery and Utilizing Them to Defend Your Case.**

Desiree Lassiter, *Visiting Attorney Advisor, Defender Services Office, Washington, D.C.*

Discovery provided in drug cases is often too data heavy to make sense of or so conclusory in nature that defense teams struggle to identify issues ripe for challenge. This training aims to assist defense teams in their dissection of discovery files commonly provided in drug cases with a focus on laboratory reports, chemistry notes, and analytical data, such as gas chromatography-mass spectrometry results and drug weight analysis. Attendees will also learn to identify missing discovery and comprehend the data heavy files provided. Building upon this new foundation in drug discovery, attendees will apply common issue spotting techniques to detect potential weaknesses in the government's case and identify areas ripe for further exploration with a chemistry expert. The end goal of this training is to provide defense teams with the tools necessary to dissect their drug discovery and identify when to retain an expert to explore chemistry-based attacks to the government's case.

11:50 a.m. – **Lunch Break**
1:20 p.m.

1:20–2:20 p.m. **Taming Cerebus: Becoming a Probation Officer Whisperer from the PSR Interview Through Sentencing**

Fritz Scheller, *Fritz Scheller, P.L., Orlando, Florida*

This presentation will provide defense counsel with critical techniques and strategies for dealing with the U.S. Probation Officer to maximize your client's chances at sentencing. The focus will be on practical tips and best practices from the first PSR interview, to drafting PSR objections, through finally impacting Probation's sentencing recommendations to the Court.

2:20-2:30 p.m. **Break**

2:30-3:30 p.m. **Experts and Trial Teams**

Dr. Gary Dale, M.D., *Forensic Pathology Specialist*
Rachel Julagay, *Assistant Federal Defender, Federal Defenders of MT*

This presentation will be a collaboration between Dr. Gary Dale, Forensic Pathologist, Attorney Rachel Julagay, and Investigator Jamie Gipe. Consultation with a forensic pathologist, can net immeasurable results. Whether testing the viability of a proposed trial theory based on available medical records and witness accounts, seeking mitigation for potential sentencing, or developing arguments for a proposal for resolution to a lesser charge to the prosecuting attorney, early consultation with a forensic pathologist can help guide effective strategy and case decision making. Jamie and Rachel will discuss working as a defense team to effectively prepare for consultation with the forensic pathologist, including record gathering and other investigation, as well as client-centered case theory development. Dr. Dale will discuss the records and other items he needs to perform an effective case review and provide examples of creative case consultation where he has given defense teams invaluable information that help inform case decision making.

3:30-3:40 p.m. **Break**

3:40-5:00 p.m. **One of these Things is Not Like the Others: Challenging Drug Predicates**

Brianna Mircheff, *Appellate Chief, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

Nancy Schwartz, *NG Schwartz Law PLLC & CJA Panel Attorney, Billings, MT*

Our clients have been spared decades of prison time by showing that their prior drug convictions were for substances not controlled by the federal government. In this session, we will cover the basics and some of the litigation frontiers so you, too, can successfully argue your client's prior conviction is not a serious drug offense (ACCA), serious drug felony, felony drug offenses (851), controlled substance offense (career offender, § 2K1.2), aggravated felony/conviction related to a controlled substance (SS § 1326(d)), or drug trafficking offense (§ 2L1.2)).

6:30-7:00 p.m. **Cocktail hour**

7:00 p.m. **Dinner and Awards**

Day 2

Friday, March 11, 2022

8:00-9:00 a.m. **Registration and Chico Breakfast**

9:00-10:00 a.m. **Developing Persuasive Theories and Themes/Storytelling**

Fredilyn Sison, *Assistant Federal Defender, Training Coordinator & Director, Office of the Federal Public Defender for the Western District of North Carolina, Asheville, NC*

Having a theory of sentencing, and supporting themes is critical to your organization of the case and forms the basis of your sentencing story. This session will define a theory and theme and will address how to develop theories and themes and weave them into your story of mitigation for sentencing. It will also discuss the elements of storytelling and how to effectively use storytelling to make a compelling argument at sentencing.

10:00-10:05 a.m. **Break**

10:05-11:05 a.m. **Federal Habeas for State Prisoners Under AEDPA**

Dana Hansen Chavis, *Assistant Federal Defender, Federal Defender Services of Eastern Tennessee, Knoxville, TN*

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) erects numerous barriers for state prisoners as they seek post-conviction relief from their convictions and sentences under 28 U.S.C. § 2254. This session will discuss the key provisions of the AEDPA—e.g., statute of limitations, exhaustion, procedural default, deference under 28 USC § 2254(d), and limitations on fact development—and how they affect state prisoners' attempts to obtain relief.

11:05-11:10 a.m. **Break**

11:10 a.m. – **Using More Than Words to Persuade**

12:10 p.m. Lisa Lunt, *Attorney Advisor, Defender Services Office, Washington, DC*

At sentencing, a picture is worth at least a thousand words, and can bring life and emotion to your client's story. This session will look beyond the written word and examine ways to include powerful and persuasive images into your sentencing presentations.

12:10-1:30 p.m. **Lunch**

1:30-2:30 p.m. **Turn the Page: *United States v. Joshua Cooley***

Eric Henkel, *CJA Panel Attorney, District of Montana, Missoula, MT*

John Rhodes, *Assistant Federal Defender, Federal Defenders of Montana, Missoula, MT*

This presentation will address the Supreme Court litigation in *United States v. Cooley*, 141 S.Ct. 1638 (2021).

2:30-2:35 p.m. **Break**

2:35-3:35 p.m. **Ethics – The Attorney Client Relationship: Crossing All Lines**

LaRonda R. Martin, *Assistant Federal Public Defender, Office of the Federal Public Defender for the District of Nevada, Las Vegas, NV*

Every case begins and ends with the client. The attorney client relationships is the foundation of any preparation for trial or sentencing. If it has not been built, neither will thrive. Whether the challenge be race, sexual orientation, language, education, or religious – the attorney client relationship cannot grow without addressing these issues. Join a discussion about building better client relationships.

3:35-3:40 p.m. **Break**

3:40-4:55 p.m. **Supreme Court and Montana Case Law Update**

James R. Reavis, *Appellate Defender for Montana Montana Office of the Public Defender, Billings, MT*

This session will provide a broad survey of the United States Supreme Court and Montana Supreme Court criminal law cases from the past year.

4:55 p.m. **Closing Remarks**

Tony Gallagher, *Federal Defender, Federal Defenders of Montana, Great Falls, MT*

A WORD OF THANKS

Those who plan and teach at the annual MTACDL and FDOM seminar are volunteers in service to the profession - reimbursed only for meals, travel and lodging. Their generous contributions of time, talent and energy make this and every joint CLE presentation a success. We appreciate their dedication and work.