



Montana Association of
Criminal Defense Lawyers
and
Federal Defenders of Montana
Conference
March 9-10, 2023



AGENDA

Day 1

Thursday, March 9, 2023

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

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

Rachel Julagay, *Federal Defender, Federal Defenders of Montana, Great Falls, MT*

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

George Couture, *Attorney Advisor, Defender Services Offices, Washington, DC*

9:15-10:15 a.m. **Strategies for Dealing with Jury Deliberation Issues**

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

After a jury has heard evidence from the government and defense and has been instructed on the law, the jury takes on the awesome responsibility of deliberating the fate of the accused. This session will examine myriad common problems that arise in jury deliberations—e.g., jury notes, deadlocked jury, excused juror, consideration of extraneous matter—and effective strategies for turning these problems into opportunities to advance the client’s case.

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

10:20-11:50 a.m. **The Ethics of Sentencing**

Akin Adepoju, *Attorney Advisor, Training Division, Defender Services Office, Washington, D.C.*

Only 2 percent of federal criminal cases—and a similar number of state cases—are brought to trial. More than 90 percent of convictions, at both federal and state levels, are the result of guilty pleas. After trial or plea comes sentencing, yet not enough attention has been paid to the rules that govern a large aspect of our practice. This presentation will cover the primary rules of legal ethics generally applicable to defense counsel and prosecutors in criminal cases, with

particular focus on recurring ethical issues arising at sentencing. The presentation will include several realistic hypothetical cases raising ethical issues related to sentencing.

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

1:20–2:20 p.m. **Mitigation on a Dime**
Fritz Scheller, *Fritz Scheller, P.L., Orlando, Florida*

Sentencing has become the most important part of a criminal case given the reality that criminal trials have given way to pleas in most cases. Thus, sentencing is often the primary opportunity for the defense to affect the outcome of the case by presenting mitigation. This presentation will discuss strategies and resources to investigate, develop and present compelling and cost-effective mitigation.

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

2:30-3:30 p.m. **Police Body Worn Cameras: Are We Really Seeing Everything?**
Giselle Pomerleau, *Litigation Technology Attorney, Office of the Federal Defender, District of New Jersey, Camden, NJ*

Across the country, police departments are increasingly using body-worn cameras to better monitor what officers are doing out in the field. This session will provide an overview of body worn cameras (nuts and bolts of the systems), tips and tricks for efficient video evidence review (e.g., signs of video tampering/manipulation), and legal strategies for obtaining discovery to ensure you are getting everything you are entitled to receive, and how to challenge this evidence.

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

3:40-5:10 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.

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

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

Day 2

Friday, March 10, 2023

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

9:00-10:00 a.m. **The Busy Lawyer's Guide to Character Evidence**

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

The law of character evidence is filled with potential traps (and opportunities!) for defense lawyers. This session will provide a roadmap for dealing with character evidence (FRE 404 and 405), including how to defend against 404(b) prior bad act evidence, and how to use FRE 404(b) to bolster the defense case. We will also cover character evidence in the context of sexual assault cases (FRE 413) and child molestation cases (FRE 414). This presentation will also discuss how to attack the credibility of witnesses for untruthfulness (FRE 608), as well as the rules dealing with impeachment by criminal conviction (FRE 609).

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

10:10-11:10 a.m. **Rethinking Second Amendment Litigation After *Bruen*: Using Text and History to Challenge Federal Gun Laws**

Cullen Macbeth, *Assistant Federal Defender, Office of the Federal Defender, District of Maryland, Greenbelt, MD*;
Carmen Smarandoiu, *Appellate Chief, Office of the Federal Public Defender, San Francisco, CA*

Last year's opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), heralded a new era in Second Amendment litigation. Rather than conducting means-ends balancing, as courts did in the wake of *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Bruen* instructs judges to assess firearms statutes by looking only to (1) "the Second Amendment's plain text" and (2) "the Nation's historical tradition of firearm regulation." *Bruen*'s new approach provides promising avenues for attacking numerous federal firearms regulations, from 18 U.S.C. § 922(g) to the National Firearms Act to enhancements in the Sentencing Guidelines. This session will introduce you to the fundamentals of Second Amendment law and offer lessons learned from the first eight months of *Bruen* litigation—where we've had success, the best responses to common government arguments, and how to correct lower courts' misapplications of *Bruen*.

11:10-11:20 a.m. **Break**

11:20 a.m. - **Military Culture/Military Mitigation Investigations**
12:20 p.m. Captain Art C. Cody, Director of the Center for Veteran Criminal Advocacy, Ridgewood, New Jersey

Military Veterans undergo an experience far removed from the vast majority of those who sit in judgment of them in the justice system. The military culture/experience, particularly if it involves combat, indelibly shapes the veteran and often has significant causal or mitigation implications relating to criminal offenses. At core, as mandated by *Porter v. McCollum*, 558 US 30 (2009)(link is external), the lawyer's role and obligation in a veteran's case is to the greatest degree possible understand military culture and investigate and tell the vet's story -- to translate this uncommon experience into a human narrative that engenders the comprehension of a prosecutor, judge, jury and evokes their compassion. This practical instruction will assist lawyers in fulfilling their ethical obligation by exploring veteran culture, veteran client interaction, interpreting military records, interview techniques, and an archetypical veteran mitigation brief.

12:20-12:50 p.m. **Lunch**

12:50-1:50 p.m. **What to do if your client lies? Ethical considerations for criminal practitioners**
Katy Stack, Associate Dean, University of Montana School of Law, Missoula, MT

We will look at different approaches for dealing with a client who intends to commit perjury while testifying, based on Rules of Professional Responsibility 1.16 and 3.3, as well as case law and legal scholarship on the topic.

1:50-2:00 p.m. **Break**

2:00-3:00 p.m. **Crash Course in Immigration Consequences of Criminal Convictions**
Kari E. Hong, *Assistant Professor of Law, Boston College of Law, Boston, MA*

This session will provide an overview of aggravated felonies, CIMTs (“crime involving moral turpitude”), inadmissibility grounds, deportability grounds, and criminal bars to asylum. The discussion provides an overview on analyzing state convictions and provide tips on how to develop "safe harbor" pleas that avoid immigration consequences.

3:00 p.m.

Closing Remarks

Rachel Julagay, *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.