

11/16/18  
MBA Family Law  
Conference

## Chronology of a Criminal Case

### How it Starts

- Generally by a police department
  - under arrest
  - investigation only
- Could come from a hospital, a victim service agency, the Victim

### If under arrest . . .

- **Arraignment:** The initial court date where the charges are officially read to a defendant, he/she is assigned a lawyer, bail and/or conditions are established
- (More on Bail later)

### Team is Assigned

- Assistant District Attorney – duty is to prosecute the case
- MDAO Victim Witness Advocate – acts as a liaison between the Victim and the ADA, assists the Victim with services and all rights under the Victim Bill of Rights
- Sometimes: Police Detective – does the follow up investigation

### Initial Victim Contact

- Phone vs in Person
- Usually four things are done:
  - Explain to the victim who everyone is and the process for the contact
  - Obtain the facts of the case, history between the parties (if Detective is present)
  - Talk to the Victim about his/her wishes about participating in a prosecution, what he/she would like to see happen
  - Explain what will happen next

### Investigation

- Interview witnesses
- Potentially interview suspect (if investigation, not if it was an arrest)
- Obtain records: Phone, bank, hotel, work, medical, etc.
- Physical Evidence is processed at the lab, if necessary

## Prosecution Decisions

- Which Court will it be prosecuted in: District Court vs Superior Court?
- What charges are going to be pursued?

## If District Court:

- Case either gets charged in the court if it was just an investigation OR
- Case remains in the District Court in which it was already charged.
- May add or dismiss certain charges depending on the investigation.

## If Superior Court:

- **Grand Jury:** This is a secret proceeding. There is no Judge, defense attorney, or the defendant present during the testimony. However, it is recorded, and the defense will get a copy of the transcript.
- The Grand Jury decides whether there is Probable Cause for the indictments. Much lower standard than Beyond a Reasonable Doubt.
- If Grand Jury votes a "true bill", then there will be a new arraignment in Superior Court, and the district court case will be dismissed.

## Next Steps In Both Courts

- **Pre-trial "Paper Dates"**
  - Discovery: Motions to obtain records, reports, from either side
  - Motions to suppress evidence, dismiss the case
  - Motions for a victim's psychiatric or mental health records

## Possible Resolution

- **Disposition Short of Trial**
  - Called a Change of Plea.
  - The Victim has a right to be heard, make a Victim Impact Statement – can be verbally, in writing, or through the ADA.

## Otherwise,

- **Trial**
  - The majority of the time, the victim will have to testify
  - Other witnesses would testify
  - The standard is Beyond a Reasonable Doubt. Very high standard.
  - Defendant could be found guilty or not guilty. If a defendant is found not guilty, then this is the end of the process.



- **Sentencing**

- If a defendant is found guilty after a trial, then a sentencing hearing is held.
- The Victim has a right to be heard, make a Victim Impact Statement.

## Post-sentencing

- Appeals
  - Of entire case, or certain charges
  - Of Sentence
- Motions for New Trials
- Probation Surrenders (If a defendant is on probation, the probation officer will establish contact with the victim)
- Parole Hearings
- Notification to Victims when a defendant is being released from custody.

## Victim's Rights in Criminal Cases

### MGL c.258B

#### § 3 Rights afforded victims, witnesses or family members

This section includes – among other rights – the right:

... (a) to be informed by the prosecutor about the victim's rights in the criminal process. At the beginning of the criminal justice process, the prosecutor shall provide an explanation to the victim of how a case progresses through the criminal justice system, what the victim's role is in the process, what the system may expect from the victim, why the system requires this, and, if the victim requests, the prosecutor shall periodically apprise the victim of significant developments in the case.

... (c) to be notified by the prosecutor, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled.

### MGL c.258B

- (e) to be informed by the prosecutor of financial assistance and other social services available to victims, including information relative to applying for such assistance or services
- (g) to confer with the prosecutor before the commencement of the trial, before any hearing on motions by the defense to obtain psychiatric or other confidential records, and before the filing of a nolle prosequi or other act by the commonwealth terminating the prosecution or before the submission of the commonwealth's proposed sentence recommendation to the court
- The prosecutor shall inform the court of the victim's position, if known, regarding the prosecutor's sentence recommendation.
- *The right of the victim to confer with the prosecutor does not include the authority to direct the prosecution of the case*

## Intersection of Criminal and Civil Cases

## For the Defendant

- A defendant may have made statements which would be located in:
  - Relevant police reports
  - Grand Jury (unlikely)
  - Affidavits for motions
  - Motions to Suppress (not often)
  - Trial
  - "Jail Calls"

## For the Victim

The victim/witnesses may have made statements which would be included in:

- Relevant Police Reports
- 58A Hearing
- Restraining Order Hearing
- Grand Jury (likely if a superior court case)
- Restraining Order affidavits
- Other affidavits
- Victim Compensation file
- Trial
- Jail Calls
- Victim Impact Statements

## F.O.I.A

### Freedom of Information Act

- Not likely to get information from the DA's Office while a case is pending
- Limits on what you can get even after a case is concluded

## Conditions/Limitations on one or more parties

- Restraining Orders
- Bail conditions
- Probation conditions

### Examples:

- Abide by all probate court orders
- SA/NC with victim/children
- Maintain/Actively seek employment
- MH/Substance Abuse/CBP/Other Treatment
- Fines/Fees – some are monthly

## Restraining Orders

## 209A Restraining orders

- Can obtain relief without notice and opportunity to be heard - "ex parte"
  - \* emergency orders – through PD
  - \* must attend next sitting of the court to extend
  - \* 10-day hearings
  - \* extensions for 1 year / permanent orders
- Not criminal case but violation is a crime
- Custody and support available in District Court, but Probate Court decision on either trumps Det order

## 209A Restraining orders

- Visits cannot be ordered in District Court unless parties agree to it
- Except for visits in Probate Court, plaintiff may not be ordered to do anything - RO's limit the defendant's liberty, NOT the plaintiff's

## "Enforcement" under 209A?

*Criminal violations* of Probate and Family Court orders are enforced pursuant to § 7 of 209A – a criminal charge: *violation of RO*

### "Criminal Violations"

Vacate / stay away, refrain from abuse, no contact - are enforceable criminally

Other provisions (e.g., visits, support) are enforceable through the contempt process



# Trial Advocacy Workshop

Monday, July 9 - Friday, July 13, 2018; 8:30 a.m. – 5:30 p.m.  
MCLE Conference Center, Boston; Seminar No. 2170170P01

## AGENDA

### DAY 1: JULY 9- OPENING STATEMENTS AND DIRECT EXAMINATIONS

#### FACULTY:

HON. PAUL A. CHERNOFF  
*Superior Court, Commonwealth of Massachusetts (Ret.)*  
HON. KATHE M. TUTTMAN  
*Superior Court, Commonwealth of Massachusetts*  
ROBERT M. HIGGINS, ESQ.  
*Lubin & Meyer, PC, Boston*  
MARY LOGALBO, ESQ.  
*MBTA Legal Department (Ret.), Boston*  
STEPHEN LOUGHLIN, ESQ.  
*Middlesex District Attorney's Office, Commonwealth of Massachusetts*  
FRANCIS J. LYNCH, ESQ.  
*Lynch & Lynch, PC, South Easton*  
ELLEN J. ZUCKER, ESQ.  
*Burns & Levinson LLP, Boston*

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8:30 – 9:00 a.m.	<b>Orientation and Introductions</b>	<b>Lower Level Front</b>
	HON. PAUL A. CHERNOFF (Ret.) <i>Superior Court, Commonwealth of Massachusetts</i> HON. KATHE M. TUTTMAN <i>Superior Court, Commonwealth of Massachusetts</i>	
9:00 – 10:00 a.m.	<b>Demonstration of Opening Statement and Discussion</b>	<b>Lower Level Front</b>
	ELLEN J. ZUCKER, ESQ. <i>Burns &amp; Levinson LLP, Boston</i>	
10:00 – 12:45 p.m.	<b>Opening Statements by Participants</b>	<b>Lower Level Front and Back</b>
	10:00 – 10:20 a.m.: Camera Training for Participants  Lower Level Front: Participants 1 – 7 (same location all week)  Lower Level Back: Participants 8 – 14 (same location all week)	
12:45 – 1:45 p.m.	<b>Lunch (on your own)</b>	
1:45 – 2:15 p.m.	<b>Demonstration of Direct Examination and Discussion</b>	<b>Lower Level Front</b>
2:15 – 5:30 p.m.	<b>Direct and Cross by Participants</b>	<b>Lower Level Front and Back</b>

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## DAY 4: JULY 12 - CLOSING ARGUMENTS

### FACULTY:

HON. PAUL A. CHERNOFF  
*Superior Court, Commonwealth of Massachusetts (Ret.)*  
HON. KATHE M. TUTTMAN  
*Superior Court, Commonwealth of Massachusetts*  
LYNDA L. DANTAS, ESQ.  
*Committee for Public Counsel Services, Lowell*  
CHARLOTTE E. GLINKA, ESQ.  
*Keches Law Group, PC, Taunton*  
SUZANNE KONTZ, ESQ.  
*Middlesex District Attorney's Office, Woburn*  
VALERIE A. YARASHUS, ESQ.  
*Meehan, Boyle, Black & Bogdanow, PC, Boston*

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8:30 – 8:40 a.m.	<b>Introduction &amp; Video</b>	<b>Lower Level Front</b>
8:40 a.m. – 12:45 p.m.	<b>Closing Arguments by Participants (limit 10 min.)</b>	<b>Lower Level Front and Back</b>
12:45 p.m. – 1:45 p.m.	<b>Lunch (on your own)</b>	
1:45 – 2:30 p.m.	<b>Trial Preparation and Faculty Coaching</b>	<b>Lower Level Front and Back</b>
2:30 – 3:30 p.m.	<b>View from the Bench</b>  HON. PAUL A. CHERNOFF <i>Superior Court, Commonwealth of Massachusetts (Ret.)</i> HON. KATHE M. TUTTMAN <i>Superior Court, Commonwealth of Massachusetts</i>	<b>Lower Level Front</b>
3:30 – 4:30 p.m.	<b>MCLE Reception</b>	<b>Main Lobby</b>

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**DAY 5: JULY 13 MOCK TRIALS**

FACULTY:

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HON. PAUL A. CHERNOFF  
*Superior Court, Commonwealth of Massachusetts (Ret.)*  
HON. KATHE M. TUTTMAN  
*Superior Court, Commonwealth of Massachusetts*

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8:30 – 9:30 a.m.            **Jury Orientation and Courtroom Assignments**

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9:30 a.m. – 12:30 p.m.    **Morning Trials**

HON. PAUL A. CHERNOFF (Lower Level Front)  
*Superior Court, Commonwealth of Massachusetts (Ret.)*  
HON. KATHE M. TUTTMAN (Upper Level)  
*Superior Court, Commonwealth of Massachusetts*

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12:30 – 1:30 p.m.        **Lunch (provided by MCLE, for jurors as well)**

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1:30 – 4:30 p.m.        **Afternoon Trials**

HON. PAUL A. CHERNOFF (Lower Level Front)  
*Superior Court, Commonwealth of Massachusetts (Ret.)*  
HON. KATHE M. TUTTMAN (Upper Level)  
*Superior Court, Commonwealth of Massachusetts*

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**NOTE: Trials may go longer than expected. Please plan to stay until 5:00 or later if necessary.**