



# WOMEN IN CRIMINAL DEFENSE

BY SUSAN K. BOZORGI

Ensuring that women play a more vital role in criminal defense requires that women assume a responsibility for helping other women working in the field and women just entering it.

## Providing Insight And Encouragement Along the Way to Other Women Defense Attorneys

Criminal defense has long been, and continues to be, a male-dominated field. In spite of that, 21 years ago NACDL members had the foresight to elect their first woman president. Since then, five more women have led the organization. Today women make up 31 percent of practicing lawyers in the United States and just over 20 percent of NACDL members. But statistics do not tell the whole story. Women may still be a clear minority in criminal defense, but we are no longer on the sidelines. Our contributions are forever woven into the fabric of this field, and this organization.

As the number of women graduating from law schools steadily increases — today women constitute almost 50 percent of law school graduates — it is clear that based on numbers alone, women will be playing an even more vital role in the future of criminal

defense. But ensuring this requires that women assume a responsibility for helping other women working in the field, and those just entering it.

We need to mentor women lawyers who are in the early years of their careers, help them navigate the challenges inherent in business development, and open doors for advancement and leadership opportunities. We need to do these things especially because many of us know firsthand how tough it was to build our own practices in the absence of such support. Building a community for women criminal defense lawyers starts with increasing opportunities for women to meet and connect with one another. We will strengthen our collective voice by making every effort to support our female colleagues already in the trenches, by welcoming women new to the legal profession, and by providing insight and encouragement along the way.

This edition of *The Champion* shines a bright light on the legal expertise of women in the field, both those contributing articles here and the broader community of women criminal defense lawyers who as a group bring

unique skills and perspectives to our profession. Included in these pages are discussions on grand jury reform, conducting internal investigations, the unfortunate *meet 'em and plead 'em* system of criminal justice, and deferred prosecution agreements. In addition, the article and brief accounts about the humiliation that women lawyers in Arizona have had to face, in order to simply gain access to their clients in jail, will resonate with many women who have faced this same problem in other parts of the country.

Some of the most fearless and dedicated defenders among us are women. Whether it is compassion, listening skills, or the ability to analyze a client's underlying motivation or story, women tend to view advocacy through a different lens. Our society, in many ways, operates based on long-held stereotypes about men and women. And while there is nothing fair about this, it remains true that preconceived notions about gender affect how a message is received and accepted. We might view as an upside the fact that a woman can deliver an aggressive cross-examination without being seen as a bully. A woman can show

emotion without being perceived as weak. A woman can send a powerful nonverbal message to a jury by simply touching a client's arm. Embracing these differences will only serve to strengthen and enhance our profession.

NACDL is committed to supporting women and increasing opportunities for women to strengthen their community. Local NACDL women's events are being held all over the country, women continue to consistently contribute as lecturers at conferences, and women have held and currently hold positions of leadership in our organization. A picture paints a thousand words,

and the pictures of women in this issue of the magazine represent the faces of NACDL leadership that welcome a new generation of women to the criminal defense family.

I have been passionately fighting for clients facing criminal charges for 20 years. I have strong connections to many of our male colleagues and feel lucky to have had incredible male mentors. Although there were women along the way who could have contributed to my development, they simply did not seem accessible to me. My hope is that women entering the field today and in the future feel that they have access to the insight

and the experience of other women who have gone before them.

As a member of the NACDL Board of Directors and chair of the Women's Task Force, I can say without question that the most rewarding experience has been, simply, getting to know other women lawyers from all over the country who have inspired and energized me. Before I attended the recent NACDL women's events, I had not realized how much I needed to connect with others who share experiences that are unique to being a woman criminal defense attorney.

Sheryl Sandberg's book *Lean In* has



Ivan Dominguez

**February 22, 2013:** NACDL women leaders attend the 2013 Midwinter Meeting & Seminar held in Washington, D.C. First row (left to right): Nellie King, Cynthia Hujar Orr, Bonnie Hoffman, Elissa Heinrichs; second row: Nina J. Ginsberg, Elizabeth Kelley, Paula Ham, Susan Bozorgi; third row: Tracy Miner, Vicki Young, Ellen C. Brotman, Christie N. Williams, Maria H. Sandoval; fourth row: Jennifer Thompson, Lisa M. Wayne, Melinda Sarafa, CeCelia Valentine, Candace C. Crouse.



re-energized a conversation in this country about the role of women in business, and the title is quickly becoming a symbol for the current generation's commitment to achieve full equality. Lisa Wayne, an NACDL past president, made huge strides toward focusing on women in this field. It is an unprecedented time for women in law, with women at the helm of many national bar associations such as the American Bar Association, American Association for Justice, Cuban American Bar Association, National Asian Pacific American Bar Association, and many others. Women are in positions of leadership that will influence and shape the future of our profession. It is more important than ever to reach out, up, and back to connect and

**Left to right: NACDL Board Members Candace C. Crouse, Nellie L. King, and Elissa B. Heinrichs attend the women's event held on May 16 in New York City.**



Quintin Chatman



Quintin Chatman

**May 16, 2013: Women's event in New York City. Back row: Susan Brune, Deborah Colson, Nina Beattie, Andrea Zellan, Amy Millard, Ellen Yaroshesky, Melinda Sarafa, Isabelle Kirshner. Front row: Marjorie Peerce, Justine Harris, Silvia Serpe, Susan Necheles, Susan Bozorgi, Yery Marrero.**

draw upon the knowledge base of fellow women to enrich your own experience and enhance and improve the profession. I cannot imagine a more critical time for women in this field to *lean in* and take steps to support other women.

Without question, there are challenges that women criminal defense attorneys face that are unique to being a woman, but what unites us as defenders regardless of gender is that the toughest challenge remains fighting for our clients' rights. Ultimately, male or female, we all function as a voice for our clients. The voice that fights for justice, liberty, and dignity for every client is the heartbeat of our profession. But women have a unique role to play, and now is the time to work toward strengthening our collective voice, not only for ourselves but also for the women who will follow in our footsteps. ■

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### About the Author

Susan K. Bozorgi is Chair of the Women's Task Force at NACDL and a member of the NACDL Board of Directors. She is a partner at Marrero Bozorgi, PL, a firm that represents individuals and corporations under investigation or charged with criminal offenses, with an emphasis on complex white collar crimes.



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## I Love My Work – The Jails I Can Live Without

Several generations of female lawyers have paved the way. Now we find ourselves reflected in the faces of more than 50 percent of all law students. Women work in every level of the courts and are slowly moving into the highest echelons of legal practice. We have come a long way, yet the road before us stretches longer than the road behind.

We have been in courtrooms for decades. Slowly but surely we proved, as our male counterparts never had to do, that we can be trusted to act and dress appropriately as befits our role as lawyers. Faith in the ability of women to dress appropriately comes to an end, however, when women visit their clients in jails and prisons. Stepping through the doors of jails and prisons subjects us to dress codes reminiscent of grade school. Back then, a walk down the hall between classes might result in an unwanted trip to the office of the eagle-eyed principal with his trusty ruler, where we were forced to kneel on the floor for the ceremonial measuring of the hemline for its proximity to the knees. And across the street in the Catholic school, girls were routinely chided about the dangerous reflective qualities of patent leather shoes. School admin-

istrators drilled two messages into the core of our being: (1) we could not be trusted to comport ourselves appropriately, and (2) we were responsible for the unrestrainable primal urges of the males around us. We had to be protected from the world, and the world from us.

Throughout the year, in every court across the country, newly admitted lawyers stand and swear an oath that likely includes the words “I will support the Constitution of the United States.” For criminal defense lawyers, those words have an especially personal meaning as translated through this Sixth Amendment promise: “In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.” Those gender-neutral words define not only who we are, but what we

When I visited my client at FCI, they made me remove my bra because the underwire posed a threat to national security. After removing the bra, I walked through the scanner and the machine did not beep. Then they said I wasn’t allowed to enter the facility without proper underclothing. “How do you enforce this policy?” I asked. They gave me snarky looks, and they would not allow me to see my client. I asked if they would lend me a pair of scissors to cut out the underwire. “Ma’am, most attorneys know we don’t provide weapons here at the front desk,” they replied. Someone in line took pity on me and lent me a pair of nail clippers to use to cut up my underclothing. I removed the wire, and finally, I was able to see my client.

— Anonymous

BY DEBORAH WILLIAMS

This is the regular humiliation that women attorneys face when all we want to do is meet with our clients. I have been told that I can't come into facilities while wearing an underwire bra. Am I going to whip it off in the middle of a meeting? And then do what with it, I don't know. One day, I went into the ladies room to take my bra off so I could walk through the detector without it. The faucet automatically came on, soaking my shirt. Worst. Day. Ever.

We're treated as if we all are making these visits with some ulterior social or romantic agenda. Have they taken a good whiff of those visiting rooms? Have they seen our filthy clients, who are dirty because they are only allowed showers 1-2 times a week? Give me a break. We are professionals. Like our male colleagues, we are there to do a job — a job required by the Constitution. We should be afforded the same respect as male attorneys.

Male attorneys don't deal with this issue. Two years ago at CADC, I was in the middle of a client meeting in that big open room when one of the guards said I either needed to cover my lower back or leave. I was wearing jeans and a t-shirt. When I bent forward, the shirt rode up a little bit. No underwear showing, nothing like that. I looked up and saw one of my male CJA colleagues talking with his client. Not only was his lower back showing, but I could clearly read "Joe Boxer" peeking out from his jeans. No one said anything to him.

They turned me away from FCC last week because my skirt was too short. I'd just finished visits at CADC. I was wearing a dress I regularly wear to court.

And when is the last time an attorney actually showed up at attorney visits wearing gang colors or insignia? Ridiculous.

— Anonymous

do. But the gender neutral part stops at the jailhouse door.

At the jails, we exchange Bar cards for measured hemlines and patent leather. Unlike our male colleagues, the price of our admission is once again the principal's ruler. The rules of the CCA and BOP facilities in Arizona impose a principal who is aided by uniformed hall monitors with virtually unrestrained power and bureaucracy. Prison personnel are more concerned with form than substance. They measure with their eyes the length of our skirts, skorts, and pants to make sure they are knee length or below (and without slits). They measure the height of heels that cannot exceed two inches. And they examine the style of our shoes to verify they are attached to our feet. Female attorneys are scrutinized to ensure that (1) attire is appropriately "loose fitting and not unduly suggestive, not similar in color/design of inmate attire," (2) necklines are neither low nor V-neck in design, (3) shirts are not sheer and sweaters are not loosely woven, and above all, (4) bra straps must not become exposed.

Unlike our male colleagues — who freely sit with plumber's views as their Joe Boxer labels protrude freely above the slumping waistlines of their sagging pants — we must pass rigorous under-

wear checks. "Proper foundational undergarments" must be worn at all times, but not to include garter belts and underwire bras (the latter are strictly forbidden). Last but not least, there is the color code. "Visitors are not permitted to wear gray-colored sweat wear, or any clothing khaki, orange, or green. Plain t-shirts in gray, khaki, green, orange, white, red, or yellow are not permitted. No medical scrubs or clothing resembling staff uniforms." Neutral on its face, but not in application. Standard male lawyer attire (khaki pants, blue button down, navy jacket) is fine. For women, the pants with navy jacket and white blouse that was perfectly fine in the courtroom may not work at the jail an hour later. The woman wearing an underwire bra will have to cut apart her bra or perhaps remove it altogether and carry it in her briefcase. And the woman in her ninth month of pregnancy whose dress is "too tight" will have to plead her case up the chain of command before entry is begrudgingly allowed.

While some people may offer a variety of "common sense explanations," no doubt they are not the same people being turned away at the door or being forced to disrobe as the price of admission. Even at Gitmo, the last great hold-

out from the Constitution, female lawyers are afforded the professional courtesies extended to their male colleagues. Professional courtesy is expected and it is given.

Decades have passed since I last knelt on the floor in the principal's office, and so much has changed. No longer schoolgirls, now we are lawyers rumbling and scrapping through courtrooms and into the jails, moving through the lives and crimes of clients and carrying their baggage into our own lives. Yes, now we run with the big dogs, giving as good as we get and always fighting for more. But even now, several generations after the first woman stood at a podium in a courtroom, still we must fight to be treated as adult professionals. We are judged by ancient standards in a legal system that still insists we act like "ladies" first and "professionals" second.

Female defense attorneys fight for boundaries with clients who see in us their mothers, sisters, and girlfriends. We argue with jailers who care only about our hemlines and necklines, always vigilantly watching for errant bra straps and clothes that hint of our womanhood. Even now, 50 years after *Gideon*, we have earned the right to stand and fight for clients, but still we start each day checking hemlines and heel height. There are questions we ask ourselves as we dash through our frantic morning rituals. What can I wear to the jail today? What colors are off-limits today? Is this the suit I can wear in court but not at the jail, or is it the other way around? These weighty questions chase through our sleepless nights while we are otherwise worrying about returning our clients to their families or even keeping our clients alive.

For nearly 30 years I have stood

I wore an underwire bra to FCI a couple of years ago. They made me take it off to go through the metal detector. After clearing the metal detector, I went to the bathroom and put it back on. Then they said I couldn't wear it in, but I could carry it in my briefcase. Because I really wanted to visit my client, I carried the bra in my briefcase and went braless to talk to my client. How did my bra pose less of a threat to security when I put it in my briefcase?

— Anonymous



beside my male colleagues and fought for my clients. I have watched with joy and admiration the swelling ranks of female lawyers and judges in federal court. I love my work. As for the jails, that is a different matter. Some of our male colleagues ask, "What's the big deal about underwire bras? Just wear a sports bra!" To them I extend a blanket invitation — you wear one! I just want to do my job. ■

Last evening, for the first time in 20 years of visiting FCI, I was told I could not enter *with* my underwire bra and I could not enter *without* it. I could not take it off and have the guard inspect it. I could not enter even if a female guard, who was present, patted me down. I stood my ground for about a half hour until Lt. Peas came down and said he would let me in "this time." We need to have a group conference with the warden.

Did you know that we are supposed to wear "appropriate underwear," i.e., underpants? Are they going to start searching us to see if we are?

— Anonymous

### About the Author

Deborah Williams is the First Assistant to the Federal Public Defender for the District of Arizona. She has tried a wide array of cases including white collar, domestic terrorism, and violent offenses from Indian Country. She served a special detail at the U.S. Sentencing Commission in 1993, and later became the first female president of Arizona Attorneys for Criminal Justice.



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## Meet 'Em and Plead 'Em: Is This the Best Practice?

A defense attorney arrives in court to represent a new client. She is given a cursory police report and/or complaint. If the attorney is lucky, she may have an opportunity to view the state's file that includes a printout of the client's criminal history. The state makes an offer to the new client, and it sounds decent. Perhaps the state offers probation when the client may not otherwise be eligible. Maybe the state offers a deferred prosecution or diversion program. Perhaps the offer is prison time, but by the defense attorney's understanding of the criminal history, the offer is a lot less time than the client would be facing at trial.

The defense attorney goes back to the holding cell and meets the client for the first time. She introduces herself as the attorney appointed to represent him, lets him know the charges, and then discusses the level of offense to let him know what kind of sentence he may be facing if the state can prove its case. If defense counsel is lucky, she will not have to yell over the other noise of similar conversations between countless other attorneys and incarcerated individuals. She may even have an opportunity to take the client aside and have a confidential conversation with him. She talks (or yells, as the case

may be) to the client about what happened, and informs him that the state has offered a pretty good plea agreement. "You can take the deal now and get this over with," she tells him.

At times, clients may tell defense counsel that they want to plead guilty and get started serving their time/probation and get it all behind them as quickly as possible. The state has made an offer, the client is willing to take it, and the judge is more than happy to have one less case taking up space on the docket. Does she plead him or not?

In many jurisdictions across the country, this is an all too common scenario. It happens mostly, if not exclusively, to indigent people accused of offenses. Why? Often it happens because the courts and the state put a lot of pressure on court-appointed attorneys to handle cases quickly and efficiently with little regard to the attorney's obligation to her client. Admittedly sometimes, without considering the long-term consequences of his plea agreement, the client may put pressure on the attorney to get him out of jail as quickly as possible. This does not happen as often on retained cases. If retained on a case, the defense lawyer would likely have met with the client at least once (maybe several times) prior to the initial court appearance and gone over the case and the client's expectations. However, for defendants unfortunate enough not to be able to afford to hire an attorney prior to appearing in court, their initial meeting with their newly appointed attorney may come complete with a plea offer and the sometimes tempting risk of signing away important and valuable rights. In many instances, an indigent client may do just that and enter into a plea agreement within minutes or hours after meeting his attorney. Many clients do this with serious consequences that likely could not have been

BY CECILIA VALENTINE

meaningfully contemplated during their short interaction with the attorney.

The defense attorney's obligation is first and foremost to the client. Is a quick plea truly ever in the best interest of the client? In answering this question, there are many things to consider. While not an exhaustive list, the topics discussed below can serve as the start of a conversation that will lead to vigorous representation of the most vulnerable in the criminal justice system — indigent clients.

## Initial Client Meeting

Defense attorneys are inevitably the most important person in their clients' lives at a particular time. Attorneys are there to help, guide, and protect them. Protecting a client's liberty and sometimes a client's life is a heavy responsibility that requires a great deal of care and consideration.

The initial meeting with a client sets the tone for what the client can expect from the defender. Should clients expect a champion for their liberty who will fight for them, or should they expect nothing more than a warm body to stand next to while talking to the judge? A good way to begin to act as a champion for the client is to treat him with dignity and respect and take some time to get to know him. After all, advising the client to plead guilty with scant knowledge of the facts may not make the best first impression.

## Client Interview

Perhaps the most important thing the criminal defense attorney will ever do is a client interview or intake. It is the way the attorney gets to know the person behind the criminal charges. A good client interview will shed light on his circumstances and what is going on in his life. Is the client addicted to drugs? Is he suffering from mental illness or a serious physical ailment? Is he in school or working full time? Is he competent? Does he have an alibi, witnesses, or a compelling explanation for his conduct?

The various answers to these questions may lead to different solutions for a case. They may lead to competency proceedings and/or mental health treatment. The answers may lead to some sort of drug treatment. They may lead to an investigation that results in dismissal or reduction of charges. Or the answers may simply lead to mitigation for a lesser sentence or better plea agreement down the line.

## Take Time to Investigate the Deal

CeCelia Valentine recently represented a juvenile who insisted that he wanted to "sign for his time" so that his case would come to an end immediately. After having him evaluated for competency (he was found to be competent), he wanted to enter a stipulation<sup>1</sup> at the very next court date. When that date arrived, however, the state changed its recommendation from probation with placement to be determined by the Juvenile Probation Office (JPO) to commitment to the Texas Juvenile Justice Department (TJJD). Valentine's client was difficult and had been in several other placements. This change in recommendation resulted from the JPO's suggestion that its programs were inadequate and TJJD was the only outcome that should be considered.

"I was representing him on a probation violation. He had left home right after completing boot camp. There is no doubt in my mind that if we would have gone forward with a stipulation that day, he would have been sentenced to TJJD," Valentine said. The court's file, still en route from the warehouse, was not available that day. "Not wanting to just give up and give this young man a mark on his record that would always be with him, I asked that the case be reset for the purpose of looking into other options," Valentine explained. "In this case, my client was the only person putting pressure on me to resolve the case quickly. To say that he was unhappy about staying in detention and coming back to court in another 10 days is an understatement."

In the days before the next court appearance, Valentine visited her client and tried to discuss other alternatives with him. She asked social workers from her office to visit him in an attempt to develop mitigation evidence. "I bought him a book to enlighten him on the realities of gang life. I talked to him, and I advised him of all of his rights and of the dire consequences of a TJJD sentence," she said. "My young client was going to turn 17 in the next few months, which would make him an adult for the purposes of criminal law in Texas." A TJJD sentence would have made him ineligible for probation in the future and would have constituted a prior prison trip in the adult system, automatically enhancing any future sentence.<sup>2</sup> "Unfortunately, I had a feeling that he would be arrested for something within a short time after turning 17, so I wanted to give him the best chance possible in the adult system."

When the new court date arrived, the court file was available. "When I was finally able to look at the original paperwork it became clear that my client's underlying offense was a misdemeanor — not a felony as alleged by the state. This meant that he was not even eligible to go to TJJD. We ended up getting the disposition we sought in the first place," Valentine said. "As I documented my file later on, the gravity of the situation hit me. I realized that had I given in to the client's demands against my better judgment, I would have committed malpractice. Perhaps I would not have had any significant career fallout as a result, but my client would have needlessly suffered, and I would have done harm to my own conscience. How many other times has this happened? I wondered. Have there been others that entered a plea agreement or a stipulated sentence improperly?"

Regardless of the answers, a client interview will no doubt give the defense attorney valuable information that will aid in the defense of the client. The key elements necessary for a good client interview are *privacy* (the attorney will be asking the client for personal and private information and confidentiality is a priority) and *time* (it takes time to build trust and a relationship). Five minutes in a crowded holdover cell with many listening ears may not be the best time and place for a good client interview.

## Collateral Consequences

In the wake of *Padilla v. Kentucky*,<sup>3</sup> being aware of serious collateral consequences of plea agreements has become an even more important part of a defense lawyer's practice. Although *Padilla* deals with immigration consequences, numerous other collateral consequences exist that can be triggered by a guilty plea. While a license suspension, loss of public housing and/or benefits, or loss of a job may not seem as serious as deportation, it may



## Client Interview

File No: \_\_\_\_\_ Case No: \_\_\_\_\_ Charges: \_\_\_\_\_

Name: \_\_\_\_\_ Def't Location: \_\_\_\_\_

Aliases/Nicknames: \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Birthdate: \_\_\_\_\_ Birthplace\*\*: \_\_\_\_\_ Time in County: \_\_\_\_\_

**\*\*If outside U.S.:** When last entered the U.S.? \_\_\_\_\_ How did you enter? \_\_\_\_\_

Did you ever obtain a green card, visa, permission? Y/N. When? \_\_\_\_\_

Have you ever been deported or put into deportation proceedings? \_\_\_\_\_

Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_ SSN: \_\_\_\_\_

Present Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Lives With (names and relationship): \_\_\_\_\_

How long at this address? \_\_\_\_\_ How long at previous address? \_\_\_\_\_

Previous Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Other Methods of Contact: \_\_\_\_\_

Marital Status: \_\_\_\_\_ Any Children? \_\_\_\_\_ Lives With? \_\_\_\_\_

Spouse's Name: \_\_\_\_\_

Children's Names and Ages: \_\_\_\_\_

Other Close Relatives and Contact Information: \_\_\_\_\_

If any family members were to contact me, do I have permission to speak to them? \_\_\_\_\_

Are there any family members that you want me to contact? \_\_\_\_\_

Present Occupation: \_\_\_\_\_ How Long? \_\_\_\_\_

Employer: \_\_\_\_\_

Name	Address	Phone	Time
------	---------	-------	------

Previous Employer: \_\_\_\_\_

Name	Address	Phone	Time
------	---------	-------	------

Education Level: \_\_\_\_\_ Military Service: \_\_\_\_\_ Branch: \_\_\_\_\_

Dates: \_\_\_\_\_ Type of Discharge: \_\_\_\_\_ Highest Rank: \_\_\_\_\_

Current Health Status? \_\_\_\_\_ Any Disorders? \_\_\_\_\_

Current Prescription Medications: \_\_\_\_\_

Do you use drugs or alcohol? \_\_\_\_\_ Which ones? \_\_\_\_\_

How often? \_\_\_\_\_ Previous Treatment History: \_\_\_\_\_

Are you now interested in treatment? \_\_\_\_\_ What type? \_\_\_\_\_

Have you ever been treated or diagnosed with any type of mental condition? \_\_\_\_\_

Diagnosis: \_\_\_\_\_ Medications: \_\_\_\_\_

Doctor: \_\_\_\_\_ Case Manager: \_\_\_\_\_

Institution Address and Phone: \_\_\_\_\_

Family History: \_\_\_\_\_

Other Hospitalizations: \_\_\_\_\_

### Previous Record

Date	Charge	Type (F/M)	Disposition	Location

Are you currently on probation? \_\_\_\_\_ If Yes, Attorney Name: \_\_\_\_\_  
 Judge: \_\_\_\_\_ Date of Sentence: \_\_\_\_\_ Charges: \_\_\_\_\_  
 Sentenced to: \_\_\_\_\_ Revocation Hr'g date: \_\_\_\_\_  
 Disposition: \_\_\_\_\_  
 Probation Officer Name and Number: \_\_\_\_\_

Present Charges: \_\_\_\_\_  
 Date of Arrest: \_\_\_\_\_ Day of Week: \_\_\_\_\_ Time: \_\_\_\_\_  
 Location: \_\_\_\_\_ Officer/Agency: \_\_\_\_\_  
 Search: \_\_\_\_\_ What was found? \_\_\_\_\_ Warrant: Y/N  
 Any statements made to police? Y/N \_\_\_\_\_ Oral/Written \_\_\_\_\_ Where? \_\_\_\_\_  
 Advised of Miranda? Y/N \_\_\_\_\_ When? \_\_\_\_\_ Where? \_\_\_\_\_  
 Was statement tape recorded? \_\_\_\_\_

Client's Story: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Fact/Alibi Witnesses:

Name	Address	Phone	Will testify that:

Character Witnesses:

Name	Address	Phone

What does client want to do? What would be an ideal outcome for client? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attorney's Analysis and Evaluation of Defense and Defendant: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Initial Interview Date: \_\_\_\_\_  
 Subsequent Interview Date: \_\_\_\_\_  
 Subsequent Interview Date: \_\_\_\_\_  
 Subsequent Interview Date: \_\_\_\_\_  
 Subsequent Interview Date: \_\_\_\_\_  
 Next Court Date: \_\_\_\_\_ Judge: \_\_\_\_\_ Hr'g Type: \_\_\_\_\_



mean everything to the client. What seems like a short amount of time in jail or on probation can lead to a lifetime of regret and consequence. It is important that defense attorneys, as advocates and counselors for clients, be aware of how important the decision to plead guilty is and what may result. Sometimes these consequences may only come to light after a good client interview. For that reason, a good deal of time should be spent with the client to find out what is important to him personally and how a guilty plea may affect him later. An excellent resource now available to defense practitioners is *Collateral Consequences of Criminal Convictions: Law, Policy & Practice* by Love, Roberts, and Klingele.

### Adequate Time for Consideration

Most adults have made a major purchase such as a house or car. It is safe to say that buying a house is not a quick process in which a buyer simply points to her dream house on the street and moves into it. Instead, the buyer starts by applying for

a mortgage (a long process in and of itself) and figuring out how much house she can afford. Next, the buyer chooses the area of town in which she wants to live and starts viewing properties. With the assistance of a realtor, or not, the buyer visits a number of homes before finding one on which she wants to make an offer. If she is lucky, the offer is accepted (or is eventually accepted after a negotiation period), and she is on her way to home ownership — provided the home inspection goes well. If the offer is rejected, then she keeps looking and begins the process all over again. Similarly, in buying a car, the buyer conducts the research to determine the kind of car she wants and can afford. Then she goes through the process of test driving, negotiating the price and financing, insuring the vehicle, and getting the title and license for it. Buying a house or a car is a purchase that is not entered into lightly and requires a great deal of information gathering, reflection, and consideration.

Although criminal defense attorneys are not advising their clients in a property transaction, they are advising clients in one of life's most serious decisions. In many

instances, clients are faced with a plea agreement that will lead to a number of years in prison. There are other changes to their lives that will happen as the result of a felony or misdemeanor criminal conviction. Like buying a house, this type of decision should not be taken lightly and will most likely require more than 5 or 10 minutes, or even a few hours of consideration.

### Need for Investigation

After reading a police report, sometimes the defense attorney does not quite believe what the officer said is true, or that the events took place exactly as the officer described. Sometimes a witness statement does not have the ring of truth. The defense attorney's review of a case might reveal that there is no way the state will be able to prove its allegations. All defense attorneys, at one time or another, have encountered these situations.

Conducting an investigation can reveal lying witnesses (or police officers) or show that something could not have happened as reported. An investigation can also lead to the discovery of witnesses that

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show someone else is responsible for the crime the client is accused of committing. For these reasons and more, an investigation is an important part of representing clients. A good investigation can lead to a reduction in charges or even the dismissal of the client's case. An investigation might serve as the basis for a suppression motion that may affect the outcome of the client's case. Of course, in the real world the reality is that some investigations may reveal the guilt of a client. Even in this instance, the defense attorney will have the information that she needs to have a frank discussion with the client, and he can then make the decision regarding whether or not to plead guilty.

The difference in advising the client after conducting an investigation is that the client is confident that (1) the attorney has been working on his case, and (2) the case is important to the attorney. Some investigations may take longer than others, and not all investigations require the employment of an investigator. For example, a quick visit to the crime scene or a few phone calls from the defense attorney's office can sometimes paint the client's case in a whole different light. But at the very least, conducting an investigation can save the defense attorney from a complaint or grievance with the local or state bar.

## Ethical Considerations

While attorneys are called upon to be zealous advocates for their clients, they must also conduct themselves in an ethical manner. This call for ethics goes beyond candor to the tribunal, abiding by local court rules, and the like. For the purposes of this discussion, the attorney must deal with clients ethically by doing research and conducting an investigation into their cases and making sure they have the information needed before making a decision.

Another aspect of the ethical discussion is the conduct of the prosecutor. All prosecutors take an oath to ensure that justice is done. Of course, many prosecutors equate this with obtaining as many convictions possible. Because defense attorneys can talk all day about what their local prosecutor is or is not doing, this will be a very limited discussion. Simply stated, a prosecutor cannot ethically withdraw a plea agreement without allowing adequate and appropriate time for the defense attorney to advise her client. In reminding a prosecutor of this, it is not necessary to cite ABA Ethical Standards chapter and verse. Many times defense counsel can simply explain that she has to look into a certain issue (especially immigration or collateral consequences) before she can advise the client

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on the plea agreement. When asking for a short continuance in this circumstance, it is rare to have a prosecutor refuse to keep the plea open for another week or two. If the prosecutor refuses and is not being reasonable, putting this information on the record to the court can be another remedy so that the client does not enter an involuntary plea on the spot.

## The Dignity and Respect of the Client

Defense lawyers are responsible for the protection of some of the most vulnerable members in society. Moreover, defense lawyers are the guardians and protectors of their clients' constitutional guarantees and freedoms. The state must go through defense counsel to get to the client, and defense counsel should make the state fight for every victory. Most defense lawyers have dealt with a difficult client that they did not like. Even in those situations, the attorney can earn the respect of the client by being prepared and diligently working on his case. Just because the defense attorney has been appointed to represent someone she would not want to grab dinner with does not mean that she should phone it in and not do the work. This is a situation in which the golden rule — treat others the way you would like to

be treated — is especially relevant.

## Notes

1. In Texas, a stipulation is the juvenile equivalent of a plea agreement.
2. Texas Penal Code § 12.42(f).
3. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). ■

## About the Author

CeCelia Valentine is an Assistant Public Defender in the Maricopa County Public Defender's Office. A public defender for more than eight years, she has also worked as an attorney at the Harris County Public Defender's Office in Houston, Texas, and the Pima County Public Defender's Office in Tucson, Ariz.



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# BOOK REVIEWS

## My Beloved World

By *Sonia Sotomayor*  
*Knopf (2013)*

Reviewed by *Elizabeth Kelley*



The book's jacket is significant. Across the top, the author's name appears simply as Sonia Sotomayor, not as Justice Sotomayor. Across the bottom is the title *My Beloved World*, taken from

"To Puerto Rico (I Return)" by poet José Gautier Benítez. And in the background is a large picture of a smiling justice, not in judicial robes but in an elegant black suit. These details foreshadow what lies inside the book — the story of Sonia Sotomayor before she became a judge; a woman sustained and propelled by her proud Puerto Rican heritage; a woman who openly and honestly takes us not just to Princeton and Yale Law School, but to the lonelier places of her life such as her father's alcoholism and her failure to secure a job offer after working as a summer associate.

From the first chapter, our hearts open to the eight-year-old girl standing on a chair to reach the stove. She is holding a needle in the flame of the gas burner to sterilize it so she can administer her own insulin. Both her mother and her father are too scared to do it.

As a little girl, Sonia was surrounded by love — scores of aunts, uncles, cousins, and a worshiping although annoying little brother. More complicated were her parents — a kind, but alcoholic, father and a mother who worked long hours to provide for the family, particularly after the father died when Sonia was nine. At the center of it all, like a force of nature, was the family matriarch, Sonia's grandmother, her Abuelita.

But make no mistake: this was not a fairy tale childhood. The family lived in the South Bronx, surrounded by poverty and violence. Her parents often fought to the point of screaming. And at the time Sonia was diagnosed with juvenile diabetes, life expectancy for such children was short.

The little girl grew into a very smart teenager. An older classmate told her that she should apply to some Ivy League colleges. She did not quite know what that meant, but she followed his advice. Her on-campus interviews were a bit like *Goldilocks and the Three Bears*; Radcliffe was too prim, Yale was too radical, but Princeton felt just right.

Prior to entering Princeton, Sonia feels the sting of racism. The school nurse makes a snide remark about Sonia's taking the place of someone more deserving, and when she and her mother are shopping for a suitable winter coat, the store clerk is decidedly unhelpful — until she learns that Sonia is bound for Princeton.

It is said that those with the clearest goals have the clearest sense of direction and the best chance of success. That applies to now-Justice Sotomayor. From the time she was a kid watching Perry Mason on TV, she figured out that the judge made the final decision, and that is what she wanted to be. Every choice in her life flowed from that.

Arguably, she made choices that a similarly motivated man would not have to make. She reveals that her first marriage ended in divorce because her ambition and success eclipsed her husband's.

Like most mother-daughter relationships, the one she has with her mother is complex. Undeniably, Celina — Mati — sacrificed for her daughter. She bought a set of Encyclopedia Britannica in installments in order to feed the hungry mind of her young daughter. She worked long hours to send her to Catholic schools. But she seemed emotionally distant and overly harsh to Sonia's beloved father. The mother was glamorous to the point that



she was called the Jackie O of Bronxdale. In contrast, Sonia was awkward and did not care about clothes. The justice reveals that in recent years she has repaired her relationship with her mother and that they are very close. But she is silent as to specifics.

If you read *My Beloved World* in order to gain insight into Justice Sotomayor's judicial philosophy, you will be disappointed. But if you read it in order to understand the woman behind the justice, you will be fully satisfied.

*This review originally appeared in The Federal Lawyer.* ■

## About the Reviewer

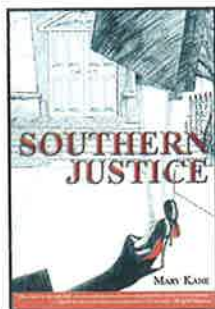
Based in Spokane, Wash., Elizabeth Kelley is chair of the NACDL Membership Committee. She has a special commitment to representing individuals with mental illnesses and intellectual disabilities who are accused of crimes.

*The opinions expressed in reviews are those of the reviewers and do not necessarily reflect the opinion of NACDL.*

## Southern Justice

By Mary Kane

Reviewed by Twyla Sketchley  
T&M Publishing (2012)



After 27 years as a trial attorney, author Mary Kane knows how to capture an audience's attention and imagination. In her first book, *Southern Justice*, Kane weaves the realities of being a court-

appointed attorney in a small town in the panhandle of North Florida with the intrigue and drama of a high stakes murder trial — while asking the moral and ethical questions surrounding representing a minor charged as an adult in the brutal murder of a beloved citizen.

The court appoints attorney Kat James, a young Yankee, to represent Eddie Ray, a young black man accused of killing the wife of a local state trooper in a robbery gone wrong. Unlike other “realistic” crime novels, this story will not bring the reader trite jailhouse confessions leading to the “ah-hah” moment of innocence or the witty sound bite-sized conversations with impeccably dressed opposing counsel. Kat's supporting characters include a partner with an inappropriate approach to young women that has already endangered the firm once, a heavy case-

load, and a dedicated southern woman as an assistant.

Against this backdrop Eddie Ray is tried for the murder of an admired businesswoman and wife of a state trooper. Eddie Ray's story includes societal abandonment and the racial tension still present in small southern towns in 2011. Kat, using an overworked staff, charm and intelligence, fights sexism, racism, poverty, and stereotypes in her effort to save Eddie Ray. While she merely has to establish a reasonable doubt to save him, it appears out of reach. Kat's investment in Eddie Ray is greater than that of his relatives save for his Aunt Belle Rivers, who took him in when “other relatives could no longer afford another mouth to feed, another back to clothe.”

Through Kat's investment in Eddie Ray's life and faith in the legal system, the reader experiences the life of a small town criminal defense attorney with all its flaws exposed. Readers ride along with Kat to the small southern town over canopy roads to visit a scared child client. They are privy to Kat's strategy and planning and root for her success, even in the face of overwhelming odds. Readers question the motivation of witnesses with Kat, and they bristle against Eddie Ray's predicament. Kat's surprises and frustrations are the reader's.

Mary Kane, who retired from the practice of law in 2010, was the first woman in the country to become a life member of NACDL. Her novel is well

written, true to the practice of law, and well worth the read. She shows that the practice of law is all about telling a client's story. ■

## About the Reviewer

Twyla Sketchley is an elder law attorney in Tallahassee, Fla.

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