

Table of Contents

CHAPTER 1. INVESTIGATIVE MISCONDUCT

- § 1:1 Introduction
- § 1:2 Entrapment and instigation
- § 1:3 —Subjective approach to entrapment
- § 1:4 —Extensions of entrapment defense
- § 1:5 — —Entrapment by estoppel
- § 1:6 — —Sentence entrapment
- § 1:7 —Manufactured Jurisdiction
- § 1:8 —Objective approach to entrapment
- § 1:9 —Due process defense for outrageous governmental conduct
- § 1:10 —Procedure and proof
- § 1:11 — —Issues of fact or law
- § 1:12 — —Burdens of proof
- § 1:13 — —Admission of hearsay evidence
- § 1:14 — —Inconsistent defenses
- § 1:15 — —Expert testimony to prove lack of predisposition
- § 1:16 — —Evidence of prior good conduct to prove lack of predisposition
- § 1:17 Staged arrests, scams, and stings
- § 1:18 —Staged arrests
- § 1:19 —Scams and stings
- § 1:20 Commission of crimes
- § 1:21 —Involvement in crime under investigation
- § 1:22 — —Subornation of perjury—A special case
- § 1:23 —Commission of extraneous crimes
- § 1:24 — —Crimes preparatory to investigation
- § 1:25 — —Crimes unrelated to investigation
- § 1:26 — —Misuse of informers
- § 1:27 Violation of individual rights
- § 1:28 —*Rochin v. California*
- § 1:29 —Applying *Rochin* to violations of defendant’s rights
- § 1:30 —Applying *Rochin* to violations of rights of third parties
- § 1:31 — —Due process violated
- § 1:32 — —Due process not violated
- § 1:33 Interference with right to counsel
- § 1:34 —Violation of Sixth Amendment
- § 1:35 — —Prejudice required

- § 1:36 — —Prejudice not required
- § 1:37 — —Ex parte contacts with represented persons
- § 1:38 Coercing corporate cooperation
- § 1:39 Interference with right to counsel—Deliberately eliciting incriminating statements
- § 1:40 — —“Deliberately elicited” standard
- § 1:41 — —Application of standard
- § 1:42 — —Secret intrusions into counsels of defense
- § 1:43 — —As per se violation
- § 1:44 — —Rejecting per se rule
- § 1:45 — —Lower court decisions
- § 1:46 Illegal eavesdropping
- § 1:47 Sanctions
- § 1:48 — —Dismissal or reversal
- § 1:49 — —Exclusion of evidence
- § 1:50 — —Injunctive relief
- § 1:51 — —Attorney disciplinary proceeding
- § 1:52 — —Civil damage action
- § 1:53 — —Disqualification

CHAPTER 2. MISCONDUCT IN GRAND JURY

- § 2:1 Introduction
- § 2:2 Interrogation of witnesses
- § 2:3 — —Impugning character of defendant
- § 2:4 — —Insinuating guilt
- § 2:5 — —Misleading comments
- § 2:6 — —Inflammatory and abusive remarks
- § 2:7 — —Threats
- § 2:8 — —Harassment
- § 2:9 Undermining legal safeguards
- § 2:10 — —Discrediting witness’s reliance on rights
- § 2:11 — —Failure to advise of rights
- § 2:12 — —Subverting grant of immunity
- § 2:13 — —Informal or “pocket” immunity
- § 2:14 — —Interfering with privileged relationships
- § 2:15 — —Attorney-client privilege
- § 2:16 — —Work product doctrine
- § 2:17 — —Marital privileges
- § 2:18 — —Physician-patient privilege
- § 2:19 — —Clergyman-communicant privilege
- § 2:20 — —Other privileges
- § 2:21 — —Interfering with First Amendment rights
- § 2:22 — —Invading grand jury secrecy
- § 2:23 — —Unauthorized presence of prosecutor
- § 2:24 — —Unauthorized presence of other persons

TABLE OF CONTENTS

§ 2:25	— —Unauthorized disclosure of evidence
§ 2:26	—Failing to record proceedings
§ 2:27	Using grand jury for illegitimate purpose
§ 2:28	—Interrogating already indicted defendant
§ 2:29	—Trapping witness into perjury
§ 2:30	—Stigmatizing individual as “unindicted coconspirator”
§ 2:31	—Misuse of grand jury reports
§ 2:32	Nondisclosure of favorable evidence
§ 2:33	—Perjured testimony
§ 2:34	—Evidence negating guilt
§ 2:35	— —Evidence impairing credibility of witnesses
§ 2:36	— —Other evidence negating guilt
§ 2:37	—Evidence undermining grand jury’s authority
§ 2:38	—Deception of grand jury
§ 2:39	— —Deliberate deception
§ 2:40	— —Negligent deception
§ 2:41	Hearsay evidence
§ 2:42	—Abuses in presenting hearsay evidence
§ 2:43	—Judicial limitations on excessive use of hearsay
§ 2:44	—State limitations on use of hearsay evidence
§ 2:45	Intrusion into grand jury deliberations
§ 2:46	—Presence of prosecutor during deliberations
§ 2:47	—Coercing vote
§ 2:48	—Presigned indictment
§ 2:49	Conflicts of interest
§ 2:50	—Dual role of prosecutor and witness
§ 2:51	—Dual employment status
§ 2:52	—Prior representation of defendant
§ 2:53	Remedies for misconduct
§ 2:54	—Dismissal or reversal on constitutional grounds
§ 2:55	—Dismissal or reversal under supervisory power
§ 2:56	—Dismissal with permission to reindict
§ 2:57	—Other remedies

CHAPTER 3. ABUSE OF PROCESS

§ 3:1	Introduction
§ 3:2	Abuse of grand jury subpoenas
§ 3:3	—Unreasonable or overbroad subpoenas
§ 3:4	— —Relevance
§ 3:5	— —Reasonable particularity
§ 3:6	— —Reasonable time limitation
§ 3:7	—Challenges for overbreadth
§ 3:8	—Use of subpoena for private interrogation
§ 3:9	— —Abuse of process by prosecutor
§ 3:10	— —Abuse of process by FBI

- § 3:11 — Remedies
- § 3:12 — Use of subpoena for trial preparation
- § 3:13 — Subpoena to obtain information for pending indictment
- § 3:14 — Subpoena to obtain information for new indictment
- § 3:15 — Subpoena to examine suppressed evidence
- § 3:16 — Subpoena after mistrial to gather evidence for new trial
- § 3:17 — Coercive use of subpoena
- § 3:18 — Subpoena to compel guilty plea
- § 3:19 — Subpoena to coerce relatives to testify
- § 3:20 — Use of grand jury process for civil litigation
- § 3:21 — Civil antitrust action
- § 3:22 — Civil tax litigation
- § 3:23 — Remedies
- § 3:24 — Subpoenas to attorneys
- § 3:25 Abuse of administrative warrants
- § 3:26 — Administrative inspection warrants to gather evidence for use in a criminal prosecution
- § 3:27 — Immigration and Naturalization Service administrative warrants to obtain evidence for criminal prosecution
- § 3:28 Abuse of internal revenue service process
- § 3:29 — Use of IRS process for sole purpose of finding evidence of criminal conduct
- § 3:30 — IRS summonses against attorneys
- § 3:31 Abuse of Securities and Exchange Commission process
- § 3:32 Abuse of writs of habeas corpus ad testificandum
- § 3:33 Abuse of administrative subpoenas

CHAPTER 4. ABUSE OF CHARGING FUNCTION

- § 4:1 Introduction
- § 4:2 Prosecutorial discretion
- § 4:3 — Meaning of discretion
- § 4:4 — Dangers of unchecked discretion
- § 4:5 — Discretion not to prosecute
- § 4:6 — Failure to exercise any discretion
- § 4:7 — Discretion in selecting charge
- § 4:8 — Improper joinder
- § 4:9 Selective prosecution
- § 4:10 — Development of doctrine
- § 4:11 — Discriminatory effect—Other persons similarly situated have not been prosecuted
- § 4:12 — Discriminatory intent—Selection motivated by arbitrary or invidious consideration

TABLE OF CONTENTS

§ 4:13 — —Race
§ 4:14 — —Gender
§ 4:15 — —Organizational membership
§ 4:16 — —First Amendment
§ 4:17 — — —Draft prosecutions
§ 4:18 — — —Tax prosecutions
§ 4:19 — — —Political affiliation
§ 4:20 — — —Other First Amendment claims
§ 4:21 — —Status
§ 4:22 — — —Occupation
§ 4:23 — — —Membership in organized crime
§ 4:24 — — —Prominence
§ 4:25 — — —Habitual offenders
§ 4:26 — —Other arbitrary selections
§ 4:27 —Procedure and proof
§ 4:28 — —Pre-trial motion
§ 4:29 — —Evidentiary hearing
§ 4:30 — — —When granted
§ 4:31 — — —Discovery
§ 4:32 — — —Cross-examination of prosecutor
§ 4:33 — —Burdens of proof
§ 4:34 Vindictive prosecution
§ 4:35 —Development of due process right
§ 4:36 — —Judicial vindictiveness
§ 4:37 — —Prosecutorial vindictiveness
§ 4:38 — — —Extension of doctrine to vindictive prosecutor
§ 4:39 — — —Exception for plea bargaining
§ 4:40 — — —Erosion of right in pre-trial setting
§ 4:41 — —Assertion of right
§ 4:42 — —Pre-trial rights
§ 4:43 — — —Refusal to plead guilty and insistence on trial
§ 4:44 — — —Change of venue
§ 4:45 — — —Speedy trial
§ 4:46 — — —Bail
§ 4:47 — — —Nolo contendere plea
§ 4:48 — — —Insistence on trial before district judge
§ 4:49 — — —Motion to suppress evidence
§ 4:50 — — —Assertion of other pre-trial rights
§ 4:51 — —Trial rights—Motion for mistrial
§ 4:52 — —Post-trial rights
§ 4:53 — — —Appeal
§ 4:54 — — —Retrial
§ 4:55 — —Modes of vindictive prosecutorial conduct
§ 4:56 — —Threats
§ 4:57 — —Successive prosecutions by separate jurisdictions
§ 4:58 — —Charging

- § 4:59 — —Recharging
- § 4:60 — —Relevance of prosecutor’s knowledge
- § 4:61 — —Excuses for prosecutor’s conduct
- § 4:62 —Presenting the claim
- § 4:63 — —When raised
- § 4:64 — —Tests for finding vindictiveness
- § 4:65 — — —Appearance of vindictiveness
- § 4:66 — — —Balancing
- § 4:67 — — —Realistic likelihood of vindictiveness
- § 4:68 — —Standard of review
- § 4:69 Bad faith prosecution
- § 4:70 —Prosecution without hope of obtaining conviction
- § 4:71 Prosecution to discourage or coerce exercise of rights
- § 4:72 —Release-dismissal cases
- § 4:73 —Prosecutions reflecting racial or political hostility
- § 4:74 —Prosecution motivated by personal or political gain

CHAPTER 5. NONDISCLOSURE OF EVIDENCE

- § 5:1 Introduction
- § 5:2 The *Brady* doctrine
- § 5:3 —Development of doctrine and applicable principles
- § 5:4 —Significance of request for *Brady* evidence
- § 5:5 —Materiality of suppressed evidence
- § 5:6 Nature and limitations of *Brady*
- § 5:7 —Favorable evidence
- § 5:8 —Admissible evidence
- § 5:9 —Exculpatory and impeachment evidence
- § 5:10 —Significance of knowledge
- § 5:11 — —Prosecutor’s knowledge
- § 5:12 — —Defendant’s knowledge
- § 5:13 —Time of disclosure
- § 5:14 — —General principles
- § 5:15 — —Delayed disclosure
- § 5:16 — —Post-conviction disclosure
- § 5:17 —In camera judicial review
- § 5:18 —Conflict between *Brady* rule and Jencks Act
- § 5:19 False testimony
- § 5:20 —Applicable principles
- § 5:21 —What constitutes false testimony?
- § 5:22 —Materiality of false testimony
- § 5:23 Violations of discovery rules
- § 5:24 Lost or destroyed evidence
- § 5:25 Duty to assist the defense in obtaining exculpatory evidence

TABLE OF CONTENTS

CHAPTER 6. MISUSE OF THE MEDIA

- § 6:1 Introduction
- § 6:2 Extra-judicial statements to the media
- § 6:3 —Releasing grand jury material
- § 6:4 —References to defendant’s bad character
- § 6:5 —Commenting on nature of crime
- § 6:6 —Disclosing confessions
- § 6:7 —Disclosing criminal record
- § 6:8 —Disclosing information about trial strategy, strength of government’s case, and opinions of guilt
- § 6:9 —Revealing information contained in public record
- § 6:10 —Commenting on defendant’s lack of cooperation
- § 6:11 —Commenting on Decision Not to Bring Charges
- § 6:12 —Disclosures during trial
- § 6:13 —Comments to press after verdict
- § 6:14 —Impact of television
- § 6:15 —Impact of Internet
- § 6:16 Remedies
- § 6:17 —Voir dire
- § 6:18 —Changing jury venire
- § 6:19 —Change of venue
- § 6:20 —Continuance
- § 6:21 —Sequestering jury
- § 6:22 —Declaring mistrial
- § 6:23 —Dismissing juror
- § 6:24 —Judicial control of extra-judicial statements
- § 6:25 —Mandamus
- § 6:26 —Defendant’s failure to seek relief
- § 6:27 Sanctions
- § 6:28 —Reversal
- § 6:29 —Dismissal of indictment
- § 6:30 —Mistrial as bar to reprosecution
- § 6:31 —Contempt
- § 6:32 — —Violation of grand jury secrecy
- § 6:33 — —Violation of court order prohibiting extra-judicial comments
- § 6:34 — —Application of ABA rule
- § 6:35 —Disqualification
- § 6:36 —Appellate rebuke
- § 6:37 —Professional discipline
- § 6:38 —Civil damage action
- § 6:39 —Defamation action

CHAPTER 7. MISCONDUCT IN PLEA BARGAINING PROCESS

- § 7:1 Introduction

- § 7:2 Inducements to plead guilty
- § 7:3 —False promises, fraud, or misapprehension of conditions
- § 7:4 —Illusory promises
- § 7:5 —Open-ended bargains
- § 7:6 —Bargaining without participation of defense counsel
- § 7:7 —Promises of leniency
- § 7:8 — —Promises of leniency to third persons
- § 7:9 — —Package deals
- § 7:10 — —Threats to family and friends
- § 7:11 — —Extraneous conditions
- § 7:12 —Requiring specific testimony
- § 7:13 —Requiring waiver of rights
- § 7:14 — —Speedy trial
- § 7:15 — —Appeal
- § 7:16 — —Collateral review
- § 7:17 Inducements to Plead Guilty—Requiring waiver of ineffective assistance of counsel
- § 7:18 Inducements to plead guilty—Threats and retaliation
- § 7:19 —Pleading guilty to avoid death sentence
- § 7:20 Nondisclosure of exculpatory evidence
- § 7:21 Disparate treatment of similar defendants
- § 7:22 —Disparate pleas
- § 7:23 —Disparate sentences
- § 7:24 —Guilty plea as consideration for sentence
- § 7:25 —Impermissible disparate treatment
- § 7:26 Breach of plea bargain
- § 7:27 —Plea as contract
- § 7:28 —Remedies for breach
- § 7:29 — —Specific performance
- § 7:30 — —Vacating plea
- § 7:31 —Withdrawal of offer before entry of plea
- § 7:32 —Ambiguous bargains
- § 7:33 Breach of promise to dismiss other charges
- § 7:34 —Disallowing unilateral decisions of prosecutor
- § 7:35 —Disallowing prosecutor modifications
- § 7:36 —Agreement binding on all prosecutors
- § 7:37 —Other breaches
- § 7:38 —Evidentiary hearing
- § 7:39 Diversion

CHAPTER 8. DELAY

- § 8:1 Introduction
- § 8:2 Pre-accusation delay
- § 8:3 —Prejudice
- § 8:4 — —Generally

TABLE OF CONTENTS

- § 8:5 — —Substantial, actual, and nonspeculative prejudice
- § 8:6 — —Presumption of prejudice
- § 8:7 — —Vindictiveness
- § 8:8 — —Reasons for delay
- § 8:9 — —Generally
- § 8:10 — —Intentional delay to gain tactical advantage
- § 8:11 — —Reckless or negligent delay
- § 8:12 — —Necessity of proving both elements
- § 8:13 — —Absence of prejudice
- § 8:14 — —Prejudice alone
- § 8:15 — —Balancing approach
- § 8:16 — —Proving due process violation
- § 8:17 Post-accusation delay
- § 8:18 — —Constitutional and statutory bases for dismissal
- § 8:19 — —Prosecutor’s duty
- § 8:20 — —Valid reasons for delay
- § 8:21 — —Unavailable witness
- § 8:22 — —Complex case
- § 8:23 — —Negotiations with defendant
- § 8:24 — —Inability to locate defendant or codefendant
- § 8:25 — —Defendant undergoing mental examination
- § 8:26 — —Appellate litigation
- § 8:27 — —Neutral reasons for delay
- § 8:28 — —Understaffed prosecutor’s office
- § 8:29 — —Congestion in court system
- § 8:30 Postaccusation delay—Neutral reasons for delay—
Prosecution by another sovereign
- § 8:31 Post-accusation delay—Reasons weighed heavily
against prosecutor
- § 8:32 — —Dismissal and reindictment
- § 8:33 — —Forum shopping
- § 8:34 — —Motions for continuance
- § 8:35 — —Filing multiple charges and overcharging
- § 8:36 — —Disseminating prejudicial publicity
- § 8:37 — —Severance
- § 8:38 — —Failure to locate defendant or defense witness
- § 8:39 — —Withholding discovery and notice
- § 8:40 — —Resurrecting time-barred charges
- § 8:41 Delay in sentencing

CHAPTER 9. JURY SELECTION

- § 9:1 Introduction
- § 9:2 Challenging individual jurors
- § 9:3 Challenging array
- § 9:4 Voir dire
- § 9:5 Discriminatory exercise of peremptory challenges

- § 9:6 —Standing to object to discriminatory challenges
- § 9:7 —Applicable procedures
- § 9:8 — —Establishing prima facie case
- § 9:9 — —Overcoming prima facie showing
- § 9:10 — —Facially neutral reasons
- § 9:11 — —Pretextual reasons
- § 9:12 — —Trial court’s determination
- § 9:13 —Remediating violations
- § 9:14 — —Trial remedies
- § 9:15 — —Appellate remedies

CHAPTER 10. MISCONDUCT IN PRESENTATION OF EVIDENCE

- § 10:1 Introduction
- § 10:2 Character assassination
- § 10:3 —Improper use of prior convictions
- § 10:4 — —Proving guilt by showing predisposition
- § 10:5 — —Eliciting excessive details
- § 10:6 — —Disobeying rulings excluding proof of prior convictions
- § 10:7 — —Counselless convictions
- § 10:8 — —Exception when defendant opens door
- § 10:9 —Indirect reference to defendant’s criminal record
- § 10:10 —Prior criminal acts
- § 10:11 —Guilt by association
- § 10:12 Using defendant’s silence for impeachment
- § 10:13 Misuse of silence as due process violation
- § 10:14 —Indirect references to post-arrest silence
- § 10:15 —References to request for attorney
- § 10:16 —Permissible impeachment of post-arrest silence
- § 10:17 —Use of pre-arrest silence for impeachment
- § 10:18 —Use of post-arrest, pre-*Miranda* silence for impeachment
- § 10:19 Deliberately eliciting inadmissible and prejudicial evidence
- § 10:20 —Questions without factual basis
- § 10:21 —Polygraph tests
- § 10:22 —Withdrawn guilty pleas
- § 10:23 —Convictions and guilty pleas of coconspirators
- § 10:24 —Cooperation agreements
- § 10:25 —Bolstering credibility
- § 10:26 —Characterizing witness as liar
- § 10:27 —False evidence
- § 10:28 —Reference to religious beliefs
- § 10:29 —Reference to race, ethnicity, and nationality
- § 10:30 —Violating privileges

TABLE OF CONTENTS

§ 10:31	—Backdooring hearsay
§ 10:32	—Impeachment with inadmissible evidence
§ 10:33	—Defendant’s former testimony
§ 10:34	—Misuse of experts
§ 10:35	—“Overview” witnesses
§ 10:36	Inflammatory conduct
§ 10:37	—Physical evidence
§ 10:38	—Gruesome photographs
§ 10:39	—Inflammatory testimony
§ 10:40	—Inflammatory remarks
§ 10:41	—Other inflammatory tactics
§ 10:42	Discrediting defense witnesses
§ 10:43	—Prior convictions
§ 10:44	—Prior acts of misconduct
§ 10:45	—Character witnesses
§ 10:46	—Alibi witnesses
§ 10:47	—Expert witnesses
§ 10:48	Becoming unsworn witness
§ 10:49	—Injecting personal knowledge
§ 10:50	—Exploiting involvement in investigation
§ 10:51	—Personal comments to jury
§ 10:52	Disobeying rulings
§ 10:53	—Aggravating factor for reversal
§ 10:54	—Barring retrial under double jeopardy
§ 10:55	—Breach of pretrial agreement
§ 10:56	Forcing claim of privilege
§ 10:57	—Prosecutor’s culpable intent
§ 10:58	—Need to show prejudice
§ 10:59	—Defense counsel’s response
§ 10:60	Interference with defendant’s right to call witnesses
§ 10:61	—Nature of right
§ 10:62	—Conduct interfering with defendant’s right to present witnesses
§ 10:63	— —Deportation
§ 10:64	— —Obstructing defense attempts to locate witnesses
§ 10:65	— —Instructing witnesses not to talk to defense counsel
§ 10:66	— —Breach of interview agreement with defense counsel
§ 10:67	— —Threats of criminal charges
§ 10:68	Need to show prejudice
§ 10:69	Refusal to grant defense witness immunity
§ 10:70	—Immunity for essential exculpatory testimony
§ 10:71	—Reciprocal immunity
§ 10:72	—Immunity to remedy prosecutorial intimidation of witness

CHAPTER 11. SUMMATION MISCONDUCT

- § 11:1 Introduction
- § 11:2 Inflammatory remarks
- § 11:3 —Namecalling and abuse
- § 11:4 —Law and order appeals
- § 11:5 —Insinuation of threats and violence against witnesses
- § 11:6 —Appeals to racial prejudice
- § 11:7 —Appeals to religious, ethnic, and gender prejudice
- § 11:8 —Appeals to patriotism
- § 11:9 —Appeals to wealth and class bias
- § 11:10 —Appeals to jurors as parents
- § 11:11 Violating rights
- § 11:12 —Defendant’s failure to testify
- § 11:13 —Defendant’s demeanor
- § 11:14 —Defendant’s failure to call witnesses
- § 11:15 —Defendant’s post-arrest silence
- § 11:16 —Burdening exercise of other rights
- § 11:17 Disparagement of defense counsel
- § 11:18 —Denigrating objections
- § 11:19 —Insinuating belief in client’s guilt
- § 11:20 —Personal attacks on counsel’s ethics and integrity
- § 11:21 —Sandbagging
- § 11:22 Expressing personal opinions and beliefs
- § 11:23 —Bolstering credibility
- § 11:24 — —Personal vouching
- § 11:25 — —Extra-record verification
- § 11:26 —Belief in defendant’s guilt
- § 11:27 —Characterizing testimony as false
- § 11:28 False and misleading arguments
- § 11:29 —Availability of unused evidence
- § 11:30 —Misstating the record
- § 11:31 —Reference to other crimes of defendant
- § 11:32 —Going beyond four corners of record
- § 11:33 —Insinuating that issues of fact already have been decided
- § 11:34 —Predicting consequences of verdict
- § 11:35 — —Arguments of mitigation
- § 11:36 — —References to appellate review
- § 11:37 — —Arguments for aggravation
- § 11:38 Opening statements
- § 11:39 Conduct during argument

CHAPTER 12. MISTRIALS, CONVICTIONS, AND DOUBLE JEOPARDY

- § 12:1 Introduction

TABLE OF CONTENTS

§ 12:2	Policy considerations under double jeopardy
§ 12:3	Mistrials
§ 12:4	—Mistrials declared over defendant’s objection
§ 12:5	—Mistrials granted at defendant’s request—No bar to retrial
§ 12:6	— —Exception barring retrial for prosecutorial misconduct
§ 12:7	Federal rule barring retrial for prosecutor-provoked mistrials
§ 12:8	—Subjective standard for prosecutor-provoked mistrials
§ 12:9	—Rejection of objective standard for prosecutorial overreaching
§ 12:10	Application of subjective standard
§ 12:11	Application of objective standard to bar retrial for prosecutor-provoked mistrials
§ 12:12	Prosecutorial-provoked mistrials—Retrial permitted
§ 12:13	—Absence of prejudice
§ 12:14	—Strength of case
§ 12:15	—Time of misconduct
§ 12:16	—Isolated misconduct
§ 12:17	—Prosecutor’s response to mistrial motion
§ 12:18	—Absence of bad faith or overreaching
§ 12:19	Strategy, procedure, and proof
§ 12:20	—Decision to seek mistrial
§ 12:21	— —From defendant’s standpoint
§ 12:22	— —From prosecutor’s standpoint
§ 12:23	— —Tactical considerations
§ 12:24	Double jeopardy hearing
§ 12:25	—General considerations
§ 12:26	—Quantum of proof and elements to be proved
§ 12:27	—Judge’s function
§ 12:28	Barring retrial following reversal of conviction
§ 12:29	—Barring retrial following erroneous denial of mistrial
§ 12:30	—Barring retrial following reversal for covert misconduct
§ 12:31	—Barring retrial following reversal for insufficient evidence
§ 12:32	—Barring retrial following reversal for flagrant misconduct

CHAPTER 13. MISCONDUCT AT SENTENCING

§ 13:1	Introduction
§ 13:2	Proper and improper sentencing considerations
§ 13:3	—Background information about defendant

- § 13:4 —Defendant’s conduct and reaction to authorities
- § 13:5 —Criminal conduct of defendant
- § 13:6 —Cooperation by defendant
- § 13:7 —Exercise of constitutional rights
- § 13:8 Inflammatory appeals
- § 13:9 —Jury sentencing
- § 13:10 —Reasonable appeals to emotion
- § 13:11 —Impermissible appeals to emotion
- § 13:12 Ex parte communications between prosecutor and judge
- § 13:13 —Nature of prosecutor-judge relationship
- § 13:14 —Policy against ex parte contacts
- § 13:15 —Examples of ex parte abuses
- § 13:16 —Indirect prejudice
- § 13:17 Prosecutorial discretion under Federal Sentencing Guidelines
- § 13:18 —Constitutionality of 18 U.S.C.A. § 3553(e) and 5K1.1
- § 13:19 —Need for motion by prosecutor

CHAPTER 14. SANCTIONS

- § 14:1 Introduction
- § 14:2 Appellate reversal
- § 14:3 —Harmless error rule
- § 14:4 — —Criticism of rule
- § 14:5 — —Factors considered
- § 14:6 —Failure to object
- § 14:7 —Curative instructions
- § 14:8 —Provocation by defense counsel
- § 14:9 Contempt
- § 14:10 Other judicial sanctions
- § 14:11 Removal and disqualification
- § 14:12 Discipline by legal profession
- § 14:13 Civil action for damages
- § 14:14 Absolute immunity for advocacy activities
- § 14:15 —Qualified immunity for investigative or administrative activities
- § 14:16 — —Police activity
- § 14:17 — —Illegal searches
- § 14:18 — —Illegal wiretapping
- § 14:19 Pre-trial publicity
- § 14:20 Other nonadvocacy activities

Table of Laws and Rules

Table of Cases

Index