

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH

*Multi-Track Federal Criminal Defense Seminar:
Strategies For Defending Complex Cases*
August 12-14, 2010

and

Fundamentals of Federal Criminal Defense Training
August 12, 2010

**Trump International Beach Resort Miami
Sunny Isles Beach, Florida**

The agenda for the Multi-Track Federal Criminal Defense Seminar follows this cover page. The seminar is designed to offer in-depth instruction in a variety of substantive criminal defense topic areas. Five of the tracks - Fraud, Computer Crimes, Immigration, Sentencing and Forensics - will be presented in four distinct hour-long time blocks. These sessions will be presented on Thursday, August 12, 2010, and then repeated on Friday, August 13, 2010. This design will provide seminar participants with the opportunity to attend two of the five separate tracks taking place on Thursday and Friday.

On Saturday, August 14, 2010, seminar participants will have the opportunity to attend both plenary and small group breakout sessions. These sessions will address topics of general interest and importance to criminal defense practitioners.

On Thursday, August 12, 2010, there will be a full-day training - Fundamentals of Federal Criminal Defense Training- specifically designed for practitioners who are new to federal criminal defense practice. It will provide them the opportunity to receive instruction on the areas most vital to providing an effective defense for their clients. **The agenda for the Fundamentals of Criminal Defense Training immediately follows the Multi-Track agenda**

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH

*Multi-Track Federal Criminal Defense Seminar:
Strategies For Defending Complex Cases*

**Trump International Beach Resort Miami
Sunny Isles Beach, Florida**

**Draft Agenda
(May 28, 2010)**

Thursday, August 12, 2010

7:30 to 8:30 A.M. Registration

8:30 to 8:45 A.M. Welcoming Remarks

*Eric Vos, Attorney-Advisor, Office of Defender Services Training
Branch, Washington, D.C.*

8:45 to 9:15 A.M. Keynote Speech

**9:20 to 10:20 A.M. Plenary: Facebook, Myspace, The Joys/Dangers of Internet Social
Networks and How to Use Them as Litigation Tools**

Mary Lou Newberger, FPD, Southern District of West Virginia

It seems like everyone these days has a darn Facebook page! What is with all these youngsters posting pictures of themselves on MySpace. Who wants to see strangers engaging in illegal activity, taking drugs, bragging about their exploits and making darn fools of themselves? **You do!!!!** There is a bevy of great material out there to impeach snitches, lay witnesses, police officers and just about anyone who logged off the night before and showed up to testify against your client at trial the very next morning. An important look at the new frontier of Internet Social Networks and your next trial.

10:20 to 10:35 A.M. Break

Track Presentations Descriptions

1. Immigration

Immigration cases present a variety of issues often not encountered in the defense of other types of cases. Learn some of the specific defenses available in illegal reentry cases and how to make effective use of mitigation evidence. Alien smuggling cases may present opportunities to attack the specific elements of proof and pretrial motions may play a large role in the defense. All of those issues and more will be covered during the sessions in this track.

2. Fraud

The past couple of years have seen an increase in both the types and number of fraud cases being brought in federal cases. Tough economic times have increased the focus on these types of cases. An increasing number of these cases are being defended by appointed counsel. Handling these types of cases requires an understanding of the specific character of the charges and the manner in which loss calculations impact sentencing. This track will cover specific types of fraud prosecutions and the issues they present at sentencing.

3. Sentencing

Sentencing in federal criminal cases has evolved from a mere guideline calculation. This track highlights some of the avenues available to defense counsel to obtain a better sentence for their clients. This track will look at guideline deconstruction, interpretations of sentencing statutes by the Supreme Court and mitigation within those frameworks.

4. Computer Crimes

Computer technology is playing an increasing role in criminal cases. Specific criminal offenses involve the use of computers, requiring increased knowledge of the technology and forensic techniques utilized to evaluate evidence. The aim of these sessions is to provide an overview of some of the specific crimes associated with computers and the forensic science involved in evaluating the strengths and weaknesses of the cases.

5. Forensics

The recently released NAS report has raised a number of questions regarding the “science” the government has used to support its prosecutions. These sessions will look at specific areas where the formerly relied upon and accepted science has been debunked. They will also provide the basis for understanding the science itself, or the lack of it, to better prepare defense counsel to challenge the use of such evidence in their cases.

Track Presentations

10:35 to 11:35 A.M. 1) Immigration

How a Criminal Conviction Will Impact Your Client’s Future Immigration Status

Peter Ashman, Esq., Law Offices of Peter Ashman, Las Vegas, NV (confirmed)

This session provides a careful examination of the types of convictions that can lead to deportation of your clients who are not United States citizens. This is important information to consider when advising your client of his or her options in a criminal proceeding.

2) Fraud White Collar Fraud

Paul Kish, Esq., Kish and Leitz, P.C., Atlanta, GA (confirmed)

So called “white collar” and fraud crimes often result in highly complex prosecutions which can create huge headaches for defense counsel. This presentation will focus on the somewhat different type of client often involved in such matters, including the difficult issues that arise when the defendant is a professional and/or the case generates significant publicity.

Furthermore, this session will look at the types of white collar and fraud prosecutions that often become complex, discovery and document management issues, specialized assistance in certain areas, motions practice, and sentencing questions.

3) Sentencing

Deconstructing the Guidelines and Constructing a Purpose-Driven Sentence

Jennifer Coffin, Research and Writing Specialist, National Sentencing Resource Counsel, Nashville, TN (confirmed)

Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public Defender Office (confirmed)

This presentation will demonstrate how to deconstruct some of the most frequently-applied and severe guidelines, showing that they are not based on national sentencing data or empirical research. Child Pornography, Immigration, Drugs, Relevant Conduct and Career Offender guidelines will be covered. Further discussions will be held concerning how to best construct a sentence which addresses specific goals.

4) Computer Crimes

An Overview of Computer Crimes

G. Patrick Black, FPD, Eastern District of Texas

Kenneth Hawk, AFPD, Eastern District of Texas (confirmed)

This presentation will focus on federal computer and internet crimes including hacking, identity theft, cyberstalking, unauthorized password, and fraud. It will also provide tips on how to investigate an alleged computer crime. Additionally, the session will focus on child pornography cases with an in-depth discussion of statutes, constitutional issues, search and seizure, pretrial detention, sentencing guidelines and other related issues. *(This session will be presented in two parts. The second session immediately follows.)*

5) Forensics

Fingerprints

Patrick Kent, AFPD, District of Maryland (confirmed)

This presentation looks at the science behind fingerprint identification. Learn how an expert matches one fingerprint to another and how to challenge the accuracy of the identification.

Track Presentations

11:45 to 12:45 P.M. 1) Immigration

Defending Against Charges of Alien Smuggling, Alien Transportation, and Alien Harboring

Selena Solis, AFPD, Western District of Texas (confirmed)

Key to the government's prosecution is the testimony from "material witnesses," who are themselves alleged undocumented immigrants. Learn how to interview these witnesses and prepare effectively for cross-examination (either in a deposition or at trial) and challenge the use of deposition testimony. This session will also suggest pretrial motions and trial strategies that will help you counter the assertion that your client

knew the people with whom he was traveling were undocumented immigrants, and the allegation that the offense charged was committed for profit.

2) Fraud

Calculating Loss In Fraud Cases

Kevin Tate, AFPD, Western District of North Carolina (confirmed)

This session details how to accurately determine loss amounts in telemarketing fraud, securities fraud, mortgage fraud, tax fraud and other cases where loss calculations are paramount to the determination of the appropriate sentencing range.

3) Sentencing

Litigating Mitigating Factors: Departures, Variances, and Alternatives to Incarceration

Jennifer Coffin, Research and Writing Specialist, National Sentencing Resource Counsel, Nashville, TN (confirmed)

Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public Defender Office (confirmed)

The 2010 Guideline amendments specifically set forth sentencing possibilities which may serve as an alternatives to incarceration. Alternatives such as treatment for substance abuse and mental health conditions as well as departures for age, physical condition (including substance abuse), mental and emotional conditions, and military service must be revisited and offered up to the sentencing court as appropriate alternative options to fulfill the sentencing requirements set forth in 18 U.S.C. § 3553(a). This session will explore the practical implications of the amendments and ways to advocate for options which move away from incarceration.

4) Computer Crimes

Computer Crimes Overview continued

5) Forensics

Firearm and Toolmark Identification

Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA (confirmed)

This session will address how to effectively challenge the lack of a scientific basis of "forensic" evidence presented in cases involving firearms/toolmark identification in light of the recent findings in the National Academy of Sciences (NAS) Report. Arguments to repudiate claims that firearms produce unique markings on bullets/casings, lack of standards for identifying so-called individual markings, lack of statistical basis for declarations of a match between a gun and bullet, and prejudice from unsupported "expert" testimony will be presented.

12:45 to 2:00 P.M. LUNCH

Track Presentations

2:00 to 3:00 P.M. 1) Immigration

Sentencing Issues in Illegal Reentry Cases and Fighting Aggravating Criminal History

James Langell, AFPD, District of New Mexico (confirmed)

Clients convicted of illegal reentry often face far longer sentences than they did when convicted of more serious offenses prior to their deportation. This session will help you assert § 3553(a) factors post- *Rita*, *Gall*, and *Kimbrough*; argue against upward adjustments based on prior aggravated felonies and drug-trafficking offenses; and make creative sentencing presentations to the court

2) Fraud

Litigation Tactics and Defending A Mortgage Fraud Case

Kevin Tate, AFPD, Western District of North Carolina (confirmed)

This session will discuss defense strategies, pretrial motions, and defenses to the offense of mortgage fraud.

3) Sentencing

Recidivist Sentencing Enhancements under *Begay*, *Chambers*, *Johnson*

Denise Barrett, National Sentencing Resource Counsel, Wilmington, DE
Attacking the Guideline's "second axis," criminal history, requires a keen understanding of how the Sentencing Commission justified guideline range increases based on past convictions. While we have always been led to believe the Commission used scientifically sound methodology in concluding more criminal history justified higher sentencing ranges, we now learn the "science" may be rather lacking. *Booker* and its progeny have allowed for a healthy debate on peeling back the validity of the Guidelines and this session will discuss how attorneys can educate sentencing courts about how irrelevant criminal history scores are while otherwise advocating for variant sentences based on 18 U.S.C. § 3553(a) factors. An important session which explores how to expose the invalidity of using criminal history as a valid measuring stick when sentencing.

4) Computer Crimes

Computer Based Sex Crimes: Defending Enticement and Child Pornography Cases

Faculty TBA

This session will focus on some of the issues that often arise in connection with the defense of internet-based sex crimes. Among other topics, this session covers the most commonly charged offenses, detention issues, pretrial motions, trial defenses, and sentencing issues.

5) Forensics

DNA

Marc Scott Taylor, President, Laboratory Director, Technical Associates Incorporated, Ventura, CA (confirmed)

This session will cover ways to successfully challenge the presence of

DNA evidence in your case. If the government claims to have located your client's DNA at the crime scene, your client may not have put it there. Evidentiary issues involved with certification, testing, and transfer will be covered.

Track Presentations

3:10 to 4:10 P.M.

1) Immigration

Defending Against the Illegal Entry and Illegal Reentry Charges

Kari Converse, AFD, District of New Mexico

Element by element, this session will discuss concrete defenses to raise against a charge of illegal entry or illegal reentry. Participants will gain an understanding of defenses related to derivative and acquired citizenship, collateral attacks on prior removals, the required *mens rea*, inadequate corroboration of a confession, permission to reapply for admission, and voluntariness. Participants will also gain an understanding of the documents contained in an "A-file" and learn how to use information found within them.

2) Fraud

Identity Theft

Instructor TBA

Identity theft is the crime du jour. This session will provide an overview of federal identity theft and identity fraud cases, including review of the relevant statutes and sentencing guidelines, and potential pretrial, trial, and sentencing issues.

3) Sentencing

Mitigation Experts/Tools/Tricks/Fireworks

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A lively romp through the fantastic possibilities of bringing your client's story to life during the sentencing phase. There are a variety of experts and tools you can use in screaming to the court about mitigation. This well regarded presentation takes aim at opening your mind up to re-thinking strategies which may result in the court embracing your pitch for a variant/lesser sentence.

4) Computer Crimes

Forensics

Rick Lavaty, Computer Systems Administrator, District of Arizona

Eddy Archibeque, Computer Systems Administrator, District of New Mexico (confirmed)

All is not as it seems when it comes to computers. Is what you see on the screen really there? And how did it get there? Does it belong to your client? Who put it there and when did it get there? These questions may be key to your defense. This session addresses those and similar issues that arise in cases involving computers.

5) Forensics

Discovery and Challenges to Crime Labs

*Christopher McKee, Esq., Adjunct Professor, Colorado University School of Law at Boulder, former Special Counsel, Public Defender Service for the District of Columbia (**confirmed**)*

This session will detail how to meaningfully challenge the forensic evidence in your case by making specific discovery requests about the analyst, all information relied upon by the analyst in reaching a conclusion, manuals, protocols, databases, policies and accreditation of the lab and its personnel.

4:10 to 4:25 P.M. BREAK

4:25 to 5:25 P.M. Plenary: Working With Probation

*Doug Burris, Chief U.S. Probation Officer, St. Louis, MO (**confirmed**)*

The probation officer plays a critical role at sentencing which often influences the judge's opinion. This session will discuss how to work with the probation officer in order to persuade him or her to adopt (or not oppose) your theory of sentencing.

5:25 P.M. Adjournment

Friday, August 13, 2010

8:30 to 9:30 A.M. Plenary: CJA Resources

Donna Shearer, CJA Supervising Attorney, District of Maryland (confirmed)

Panelists TBA

The CJA Guidelines specify how panel attorneys obtain funding for expert services and other resources to defend their clients in appointed criminal cases. This panel will help you make sense of it all. Learn some new ideas and tips on how to obtain technical and litigation-support funding and the best ways to use those funds. The panel will also explore potential roles of investigators, mitigation specialists and other experts, as well as resources available through www.fd.org and the Office of Defender Services Training Branch. This session offers CJA practitioners an opportunity to ask very knowledgeable and experienced panel experts/administrators any questions you have about CJA administrative policies.

Repeat of Thursday Track Presentations

9:40 to 10:40 A.M. 1) Immigration

How a Criminal Conviction Will Impact Your Client's Future Immigration Status

Peter Ashman, Esq., Law Offices of Peter Ashman, Las Vegas, NV (confirmed)

This session provides a careful examination of the types of convictions that can lead to deportation of your clients who are not United States citizens. This is important information to consider when advising your client of his or her options in a criminal proceeding.

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12 to 1:30 P.M.

Lunch

1:30 to 2:30 P.M.

Plenary: Supreme Court Update

Paul Rashkind, Supervisory Federal Defender, Southern District of Florida (confirmed)

While we toil away in the trenches there is a small group of people, far far away, we always need to keep well focused on - THE SUPREME COURT!! This important hour provides a critical update concerning

Supreme Court decisions, trends and the possible future - all of which will undoubtedly affect our federal criminal trial practice, sentencing advocacy and possible appellate matters.

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3:50 to 4:05 P.M. Break

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5:05 P.M.

Adjournment

Saturday, August 14, 2010

8:30 to 9:30 A.M. Plenary: Isms and Schisms —How We Unknowingly Make Decisions Which Impact Our Cases

Cynthia Roseberry, Executive Director, Federal Defenders of the Middle District of Georgia (confirmed)

This session explores the decisions we make when in representing clients and the impact of the subconscious mind on those decisions. It will get attorneys thinking about the way they represent people whose background is different from theirs. Just as a prosecutor's discretion is influenced by his or her experience, so is a defense attorney's exercise of discretion when developing trial strategy. This presentation challenges defense attorneys to evaluate how and when our personal experiences influence decisions in our cases.

9:40 to 10:40 A.M. Breakout Sessions

1) The Nuts and Bolts of Trying Firearms Cases

Richard O. Ely II, AFD, Southern District of Texas (confirmed)

This session addresses the essentials of trying a gun case. The presentation will cover: jury selection issues (e.g., do you want gun owners, NRA members, ex-military members on your jury); how to handle firearms in court to demonstrate confidence and knowledge to the jury; firearms terms and the historical background of firearms laws; cross-examination of government witnesses; serialization of firearms as a defense; and a discussion of antique firearms.

2) How To “Correctly” Utilize Interpreters: Getting the Biggest Bang From Interpreters When Working with Clients, Jurors and Judges

Javier A. Soler, Court Interpreter Program Specialist, District Court Administrator Division. (Confirmed)

Using a translator or interpreter is far from "plug and play." Many times lawyers unwittingly miss important cues or allow scenarios to unfold which greatly reduce the impact of an interpreter during trial, sentencing or even during client interviews. This session will explore ways of making sure clients, attorneys, jurors and the Court get the full benefit of one of the most important tools out there - the interpreter.

3) Recurring Issues in RICO and Other Large Multi-Defendant Cases (or Avoiding Guilt(y) by Association)

Richard G. Novak, Esq., Law Offices of Richard G. Novak, Pasadena, CA (confirmed)

For a number of political and budgetary reasons, federal law enforcement agencies and prosecutors are increasingly devoting their attention and resources to the development of mega-cases filed against members of street gangs under federal racketeering statutes. This session will address a number of strategic challenges and opportunities that recur in these cases. Discovery, severance (“grouping”), cooperating informants, co-conspirator statements, 404(b) issues, and jury instruction issues will all be addressed.

4) Defining Crimes of Violence for Sentencing Purposes

*Shereen Charlick, Chief Trial Attorney, Federal Defenders of San Diego
Donna Coltharp, AFD, Western District of Texas (confirmed)*

New challenges to what constitutes “crimes of violence” in federal court using the Supreme Court’s latest cases: *Begay, Chambers & Johnson*. The session includes a comprehensive discussion of how the courts are applying them to statutes for which defining "crimes of violence" is essential. In addition, it will cover cutting-edge arguments against the application of ACCA, career offender predicate offenses and mandatory minimum terms.

5) Jury Instructions

Faculty TBA

A discussion of how to prepare jury instructions and special verdict forms that address the issues that arise in criminal cases, including unanimity instructions, conspiracy instructions and other instructions relevant to multiple count and multiple defendant cases.

6) Mental Health

Recognizing and Confronting Mental Health Issues

Faculty TBA

Forty-five percent of federal prisoners have had a mental health problem, and 40% of federal prisoners have had symptoms of a mental health disorder. In the post-*Booker* world, the history and characteristics of the offender are important sentencing considerations for the court. This session focuses on how to use a history and symptoms of mental illness to inform the sentence of the appropriate, and below guidelines sentence. Learn about the signs that could indicate the need for further evaluation and what to do with the information once you have it.

10:40 to 11:00 A.M. Break

Breakouts (repeated from morning session)

11:00 to 12:00 A.M.

1) The Nuts and Bolts of Trying Firearms Cases

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12:10 to 1:10 P.M. Plenary: Panel Discussion “Ethical Issues Confronting Criminal Defense Attorneys”
Moderator: Cynthia Roseberry, Executive Director, Federal Defenders of the Middle District of Georgia (confirmed)

Panelists: TBA

1:10 to 1:20 P.M. Closing Remarks and Adjournment

**ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH**

Fundamentals of Federal Criminal Defense Training

August 12, 2010

Miami, Florida

Draft Agenda

(May 28, 2010)

Designed to give as an overview for new federal CJA practitioners, this track addresses topics that are essential to defending clients in federal criminal cases.

7:30 to 8:30 A.M. Registration

8:30 to 8:40 A.M. Welcoming Remarks

*Lori A. Green, Attorney-Advisor, Office of Defender Services
Training
Branch, Washington, D.C.*

8:40 to 9:40 A.M. Bail Reform Act

Judith S. Gracey, Esq., Sylvan Lake, MI

How can you maximize your chances of getting your client released under the Bail Reform Act? This session will address pretrial interviews, third party custodians, other favorable witnesses, the detention hearing, the appeal of a detention order and release pending appeal

9:45 to 10:45 A.M. Client Interviews

*Christina L. Hunt, Senior Litigator, Federal Defenders of the Middle
District of Georgia, Inc. (confirmed)*

Our main goal as criminal defense attorneys is to learn our clients' stories. This session explores the way to create trust and respect in the attorney-client relationship. We will discuss the importance of first impressions, as well as subsequent contacts and frequency of visits with your client in improving communication and a good working relationship. We will also address common problems and ethical concerns that may arise in the attorney-client relationship.

10:45 to 11: 00 A.M. BREAK

11:00 to 12:00 P.M. Discovery Issues With a Twist – Rule 16 and More

*Michael Kennedy, First Assistant FPD, District of Nevada
David Anthony, AFD, Capital Habeas Unit, District of Nevada
(confirmed)*

A look at discovery issues from the combined perspectives of trial attorney and attorneys working on cases post-conviction. This session addresses the requirements of Rule 16, but goes beyond it by looking at discoverable evidence from the perspective of a lawyer seeking post conviction relief. Learn about other avenues to discoverable evidence that might be helpful if considered while mounting a defense to criminal

- 12:00 to 12:55 P.M. Introduction to the Federal Sentencing Guidelines (Sentencing Guidelines 101)**
Michael Maloney, Visiting Attorney-Advisor, Office of Defender Services Legal, Policy & Training Division, Training Branch, Washington, D.C. (confirmed)
This session will cover the basics of applying the federal sentencing guidelines. Drug amount calculations, criminal history, and offense conduct will be included in this discussion.
- 12:55 to 2:15 P.M. LUNCH**
- 2:15 to 3:15 P.M. Plea Negotiations and Proffers**
Callie Glanton-Steele, AFPD, Central District of California (confirmed)
A discussion of how to negotiate a plea, with a particular focus on providing charge alternatives that limit a client's exposure, and avoiding pitfalls as you guide your client through proffers to the government.
- 3:20 to 4:20 P.M. The Affirmative Use of the Federal Rules of Evidence**
Omodare Jupiter, Visiting Attorney-Advisor, Office of Defender Services Legal, Policy & Training Division, Training Branch Washington, D.C.
We spend so much of our time and effort trying to exclude evidence that we tend to forget many evidentiary rules that allow us to tell our client's side of the story. This presentation will explore how criminal defense attorneys can use the evidentiary rules to admit favorable evidence at trial.
- 4:20 to 4:35 P.M. BREAK**
- 4:35 to 5:35 P.M. Practical Tips if Your Client Faces Incarceration in a Federal Prison**
David Merchant, AFPD, District of Montana (confirmed)
This session will provide practical tips if your client faces federal imprisonment. It will include factors to consider for your client to obtain a federal sentence at the least restrictive possible facility and receive the earliest feasible release date.