

# THE DEFENSE NEVER RESTS

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## Cracking the Disparity....

CJA Panel Attorney Stephen Shapiro filed a sentencing memorandum on behalf of his client Vincent Henderson (EDLA 09-020 “J”) arguing for the district court to adopt a 1:1 crack/powder ratio. On September 10, 2009, Judge Carl Barbier ruled that he was indeed adopting a 1:1 crack/powder ratio and ordered that the United States Probation Office include both the current 100:1 guidelines and the guideline range for a 1:1 crack/powder ratio. *Vincent Henderson v. U.S.*, \_\_\_ F. Supp.2d \_\_\_, 2009 WL 2969507 (E.D.La.) In making this ruling, Judge Barbier advised that “this Court has determined that the methodology of using a 1:1 crack-to-powder ratio, and subsequently varying up or down from the guidelines as necessary to comply with Section 3553(a), is an appropriate and well-reasoned sentencing method which this Court will use in this, and ALL FUTURE CRACK CASES.” (Emphasis added). Judge Barbier relied heavily on Judge Mark Bennett’s decision in *U.S. v. Gully*, 619 F. Supp.2d 633 (N.D. Iowa 2009), where that court rejected the 100:1 ratio and its policy underpinnings in favor of the 1:1 ratio. Judge Bennett originally adopted a 20:1 crack/powder ratio, but abandoned that in favor of 1:1. It is interesting to note that Judge Bennett also penned the district court ruling which was upheld by the Supreme Court in *Spears v. U.S.*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 840 (2009). In *Spears*, the Supreme Court stated that sentencing courts can adopt some other well-reasoned basis for sentencing in lieu of the 100:1 ratio and approved Judge Bennett’s methodology. This is an important victory in the fight to end the unfair disparity between crack and powder cocaine sentences. While it does not allow reductions below mandatory minimums, it could allow for huge reductions in sentences where there are no mandatory minimums or if the safety valve is available. It would also help in lowering sentences to the mandatory minimum when the 100:1 guidelines would call for a sentence greater than that mandatory minimum. Congratulations to Stephen Shapiro for his excellent work!



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## FBA's New Orleans Chapter Honors Two CJA Panel Members with the Camille F. Gravel, Jr. Pro Bono Award

At its annual meeting and luncheon on Friday, August 21, 2009, the New Orleans Chapter of the Federal Bar Association honored CJA panel members Charles D. Marshall, III and Lindsay A. Larson, III with the Camille F. Gravel, Jr. Pro Bono Award. Over 300 members were in attendance to see the awards presented.

The award is named in honor of the late Camille Gravel, a veteran trial attorney and a champion in the battle for civil rights and equal justice irrespective of financial means. With the avowed intention to have the "ordinary practice of a country lawyer," Mr. Gravel hung out his shingle in Alexandria in the 1940's. Mr. Gravel's career paralleled the tumultuous years of the civil rights movement in the South, and his affinity for helping those in trouble led him to embrace fully the call for equal justice for all races. In 1980, an African American civil rights leader in Alexandria, and a contemporary of Mr. Gravel, wrote the following of him: "I know of no other man in this state who has been more dedicated to the problems of the weak, the oppressed, the downtrodden, the have-nots, and those who are least able to defend themselves than Camille Gravel."

The Camille Gravel Award recognizes an attorney who has done substantial pro bono legal work in keeping with the spirit and values exemplified by Mr. Gravel.

Charles D. Marshall, III received this prestigious award in recognition of his representation of Ronald Letulier in state post-conviction and federal *habeas corpus* proceedings in the Western District of Louisiana. Lindsay A. Larson, III was recognized for his representation of Julius Lucky in state post-conviction and federal *habeas corpus* proceedings in Louisiana 24th Judicial District Court.



Charles D. Marshall, III with Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P.



Lindsay A. Larson, III of King, Krebs & Jurgens, P.L.L.C.

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## New CJA Panel Member Orientation

As you may recall, recently Cate Bartholomew, James Beane, James Carter, Christopher Edwards, Stephen Haedicke, Christine Lehmann, and Gary Proctor were added to the CJA panel. In conjunction with their panel membership, an orientation was held on September 17, 2009. Panel Representative Billy Gibbens, FPD Virginia Schlueter, Panel Administrator Barbara Daigle and Financial Administrator Heather Crain Davis discussed the appointment and voucher process. New panel members were advised that the time required for review and recommendation to the district court judge, approval by the judge and payment is ordinarily one month. Vouchers in excess of the statutory maximums typically require an additional three months for circuit review.



## Robert Fleming - In Memoriam



Panel Member Robert F. "Bob" Fleming, Jr. lost his battle with cancer on July 28, 2009. Bob joined the panel in 1992 and willingly accepted all panel appointments. He lived a very full life and volunteered his services to his community. His dedication to the criminal justice system was well known and he was highly respected by clients, colleagues, and judges alike. At the time of his death he was still actively representing four CJA clients despite his serious illness.

His pleasant manner and great sense of humor will be greatly missed. He is survived by his wife Suzanne Montgomery Fleming, one daughter and six sons.

## New Methods of Computing Time Periods and Revised Deadlines in Federal Court Litigation

In March 2009, the U.S. Supreme Court approved proposed amendments to the Federal Rules of Criminal Procedure, Civil Procedure, Appellate Procedure and Bankruptcy Procedure, intended to simplify deadline calculations. These amendments, which are scheduled to take effect on December 1, 2009, will change the methods for computing time—including Federal Rule of Criminal Procedure 45 and Federal Rule of Appellate Procedure 26—and many time periods.

The primary change in the amended time-computation rules is the adoption of a "days are days" approach to calculating time periods, which will eliminate the current method of omitting weekends and holidays when the time period is short. Under the amended rules, intervening weekend days and holidays are no longer distinguished from court days and are always counted, regardless of the length of the period. The amended rules will also extend short deadlines to offset the effect of including intervening weekends and holidays in the calculation. Finally, for most periods of less than 30 days, multiples of 7 days are adopted so that deadlines will usually fall on weekdays.

For more information on these changes and to review the amended national rules, please see <http://www.uscourts.gov/rules/supct0309.html>.

## The United States Code Section for Speedy Trial Has Changed

The United States Code citation referring to speedy trial calculations has changed. It is now Title 18, United States Code, Section 3161(h)(7)(A) that allows for the exclusion of time from speedy trial calculations for any delay caused by a continuance of the trial filed by a party or upon the Court's own motion. Previously, Section 3161(h)(8)(A) was the applicable section. Title 18, United States Code, Section 3161(h)(7)(A) provides, in pertinent part, that any period of delay resulting from a continuance granted on the basis of a court's findings that the ends of justice served by the granting of a continuance outweigh the best interest of the public, and the defendant in a speedy trial shall be excluded in computing the time within which the trial must commence.

Also, please note that the factors to consider in deciding whether to grant a continuance are listed in Title 18, United States Code, Section 3161(h)(7)(B). Previously, Section 3161(h)(8)(B) listed the factors for consideration. If you need to continue a trial because the discovery process is ongoing and you need additional time to investigate and review the evidence, you should state that you are seeking a continuance because the denial of a continuance would deny counsel for the defendant "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Title 18, United States Code, Section 3161(h)(7)(B)(iv).



# Supreme Court: Fall Oral Arguments

## Eighth Amendment

Graham v. Florida, Docket No. 08-7412, Nov. 9, 2009: The issue presented in this case is whether the Eighth Amendment's ban on cruel and unusual punishment prohibits the imprisonment of a juvenile for life without the possibility of parole as punishment for the juvenile's commission of a non-homicide (armed burglary). At age 16, Petitioner Graham was charged as an adult and pled guilty to armed burglary and attempted armed robbery of a restaurant. He received three years of probation. He subsequently violated his probation and was sentenced to the statutory maximum penalty—life imprisonment without the possibility of parole—for the crime he committed as a 16-year-old. Petitioner argues that this sentence, based upon his juvenile acts, cannot be reconciled with this Court's precedents under the Eighth Amendment. Graham urges that, as recognized in *Roper v. Simmons*, 543 U.S. 551 (2005), the characteristics of juvenile offenders, in particular their diminished culpability, make them categorically different from adult defendants who have committed the same crimes. And because of these differences between juveniles and adults, the severity of the criminal sanction, which is unquestionably harsher for a 16-year-old assigned to an adult prison population in perpetuity than it is for an adult, cannot be considered proportional to any non-homicide offenses.

Sullivan v. Florida, Docket No. 08-7621, Nov. 9, 2009: Similarly, the question here is whether Sullivan's sentence to life in prison without the possibility of parole is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. Sullivan was arrested in 1989, at the age of 13, and indicted as an adult for sexual battery. After a one-day trial, he was convicted by a six-person jury and sentenced to life imprisonment with no possibility of parole. In all of the United States, only nine human beings are incarcerated under sentences of life imprisonment without the possibility of parole for crimes committed at or before the age of 13. Only two of them are serving this sentence for non-homicide crimes, both in Florida. Sullivan is one of the two. Sullivan argues that the constitutional logic of *Roper v. Simmons* controls this case and requires the invalidation of a sentence of life imprisonment without parole imposed on a 13-year-old child. Although *Roper* dealt with a death sentence, Sullivan argues that under *Roper*'s Eighth Amendment reasoning, life without parole is most akin to death and that, in regard to those specific matters which were central to *Roper*, the entry of irrevocable judgment on a child of 13, condemning him or her to be imprisoned until death, is impermissible.

## Fifth Amendment

Maryland v. Shatzer, Docket No. 08-680, Oct. 5, 2009: At issue in this case is whether the *Edwards v. Arizona*, 451 U.S. 477 (1981), prohibition against re-interrogation of a suspect who has invoked the right to have counsel present during custodial interrogation is applicable to Respondent who remained in state custody for two years and seven months and was re-interrogated without counsel. Here, Respondent was incarcerated on an unrelated offense when he was initially approached for questioning. He invoked his *Miranda* rights and requested counsel. Subsequently, he was sentenced to prison on the unrelated offense. While serving that sentence, Respondent was re-interrogated without counsel present at which time he gave incriminating statements relevant to the instant case. In *Edwards v. Arizona*, 451 U.S. at 484-85, the Court held that an accused in custody who has invoked the right to have counsel present "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused initiates further communication, exchanges, or conversations with the police." Respondent urges maintenance of *Edwards*' bright-line rule which the Court has sustained in the face of requests for exceptions twice before. Further, Respondent argues that if *Edwards* is restricted in its application only to a period of temporary investigative custody, then its protection would apply to a small number of suspects accused of committing crimes.

## Sentencing Enhancements - Armed Career Criminal Act

Johnson v. United States, Docket No. 08-6925, Oct. 5, 2009: This case presents two questions to the Court: (1) whether the element of use of "physical force against the person of another," as found in the definition of "violent felony" in the Armed Career Criminal Act, requires violence and aggression likely to create a serious potential risk of physical injury, which is not satisfied by the *de minimis* contact required for a non-consensual touching (i.e. simple battery) and (2) whether the holding of a state's highest court, that a given offense in that state does not have as an element "the use or threatened use of physical force," is binding on federal courts in determining whether that same offense qualifies as a "violent felony" that "has as an element the use, attempted use, or threatened use of physical force against the person of another." Johnson pled guilty to possession of ammunition by a convicted felon and was sentenced under the enhanced penalties of the ACCA due to, inter alia, his 2002 Florida battery conviction, which had been enhanced to a third degree felony based on his prior 1989 simple battery conviction. First, Petitioner argues that a battery committed by the slightest nonconsensual touching does not qualify as a requisite "violent felony" under the ACCA which is defined as one that has as an element the use, attempted use, or threatened use of *physical force* against the person of another. Secondly, Petitioner argues that the Florida Supreme Court is the final authority on the interpretation of Florida statutes and that court has squarely held that the offense of battery does not categorically contain the "use or threat of physical force" as an element because the crime can be committed by non-consensual touching.

## Sixth Amendment - Effective Assistance of Counsel

Padilla v. Kentucky, Docket No. 08-651, Oct. 13, 2009: Here, there are two questions to the Court: (1) in providing the effective assistance guaranteed by the Sixth Amendment, does defense counsel ever have a duty to investigate and advise a non-citizen client whether the offense to which he is pleading guilty will result in his deportation and (2) if a criminal defense attorney falsely advises a non-citizen client that his plea of guilty will not result in deportation, can that misadvice constitute ineffective

assistance of counsel under the Sixth Amendment. Petitioner Padilla, a longtime lawful permanent resident of the United States and U.S. Army veteran, pled guilty in 2002 to a state felony offense for marijuana drug trafficking. Padilla did so on the advice of defense counsel that he did not need to worry about deportation because he had been in this country for so long when in fact, the Kentucky drug trafficking offense is an “aggravated felony” under federal law that effectively subjects Padilla to mandatory deportation. The Kentucky Supreme Court held that “collateral consequences” are outside the scope of the guarantee of the Sixth Amendment right to counsel, and that counsel’s failure to advise Petitioner of such collateral issue or his act of advising Petitioner incorrectly provides no basis for relief. Padilla argues that the two-pronged test in *Strickland v. Washington*, 466 U.S. 668 (1984), which requires (1) a showing that counsel’s performance fell below an objective standard of reasonableness and (2) prejudice to the defendant in conjunction with *Hill v. Lockhart*, 474 U.S. 52 (1985), in which the Court declined to import the collateral consequences doctrine into the Sixth Amendment, requires reversal.

#### Speedy Trial Act

Bloate v. United States, Docket No. 08-728, Oct. 6, 2009: The question presented here is whether time granted to prepare pretrial motions is excludable under § 3161(h)(1). The Speedy Trial Act, 18 U.S.C. § 3161 et seq., requires that a criminal defendant be tried within 70 days of indictment or the defendant’s first appearance in court, whichever is later. In calculating the 70-day period, 18 U.S.C. § 3161(h)(1) automatically excludes “delay resulting from other proceedings concerning the defendant, including but not limited to (D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion. In this case, the excluded time at issue concerned a period running from September 7, 2006, when petitioner moved to extend the deadline for preparation and filing of pretrial motions, through October 4, when the magistrate judge granted Petitioner’s waiver of the same. The district court treated the entire 28-day period between September 7 and October 4 as “within the extension of time granted to file pretrial motions,” and excluded it from the speedy trial calculation. That conclusion brought the total excluded time to 134 days and the total nonexcludable time to 58 days. Petitioner was convicted and sentenced to 360 months’ imprisonment. On appeal, the Eighth Circuit affirmed, “holding that pretrial motion preparation time may be excluded under § 3161(h)(1), if the court specifically grants time for that purpose.” Petitioner argues that under plain text of the Speedy Trial Act, pretrial motion preparation time is not automatically excluded under § 3161(h)(1). The Act expressly addresses “delay resulting from any pretrial motion” and specifies that only the time “from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion” is within the automatic exclusion. Petitioner argues that the elementary principles of statutory interpretation require that the specific treatment of pretrial motion delays set forth in subparagraph (D) trump the general standard of § 3161(h)(1).

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## Fifth Circuit Updates

#### Sentencing

United States v. Avila-Cortez, No. 08-41219, Sept 10, 2009: The district court committed reversible error when it denied Avila-Cortez his right to allocution at sentencing. Avila-Cortez pled guilty to and was convicted of being an alien unlawfully found in the United States after having been previously denied admission, excluded, deported, or removed from the country, in violation of 8 U.S.C. § 1326(a) and (b). At the sentencing hearing, the district court inquired of the government and defense counsel prior to imposing sentence, but failed to allow Avila-Cortez an opportunity to allocute. Avila-Cortez failed to object. The Fifth Circuit held it was plain error where Avila-Cortez presented mitigating arguments which could have impacted the district court’s decision and did not have a previous opportunity to allocute. Sentence vacated and remanded.

#### Speedy Trial

United States v. Molina-Solorio, No. 08-11067, Jul. 27, 2009: In 1997, Appellant Molina-Solorio was charged by indictment with escaping from federal custody. He was arrested on that charge in 2007 and filed a motion to dismiss, arguing, *inter alia*, a violation of his constitutional right to speedy trial. The Government argued Molina-Solorio had not asserted his right to a speedy trial, nor alleged malicious governmental intent to prevent him from being brought to trial, and thus could not prove actual prejudice as a result of the delay. The district court denied the motion to dismiss “for the reasons set forth in the Government’s Response.” Applying *de novo* review, the Fifth Circuit held that the four-factor balancing test from *Barker v. Wingo*, 407 U.S. 514 (1972) required a finding that the lengthy delay, combined with the Government’s negligence and Molina-Solorio’s timely assertion of his rights, warrants a finding of presumed prejudice. Conviction vacated and remanded with instructions to dismiss the indictment.

#### Evidence

United States v. Sylvester, No. 08-30586, Sept. 18, 2009: Appellant’s knowing and voluntary waiver of Fed. R. Evid. 410 protections was held valid, rendering the incriminating statements fully admissible in government’s case-in-chief. In 2004, Sylvester was arrested, *inter alia*, for murder. Subsequently, in exchange for a prosecutorial promise not to seek the death penalty and after consultation with his attorney, Sylvester gave a full confession and waived objection, pursuant to Fed. R. Evid. 410, to the admission of his otherwise excludable, incriminating statements at trial in the event that plea negotiations failed and the parties proceeded to trial. In its decision, the Fifth Circuit extended the United States Supreme Court’s ruling in *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995), which upheld a more limited waiver, one that allowed the government to use statements made in plea negotiations to impeach the defendant if he testified at trial. The Fifth Circuit relied on the Court’s holding that voluntary agreements to waive these protections are presumptively enforceable.

# THE DEFENSE NEVER RESTS

## ANNUAL CLE

### NOVEMBER 5 - 6, 2009

#### THURSDAY, NOVEMBER 5TH

8:00 am to 9:00 am - Sign In

9:00 am to 10:00 am

**Update on Crack/Cocaine Sentencing Disparity** - 15 minutes

*Gary Schwabe* and *Cynthia Cimino*, of the Federal Public Defender's Office for the Eastern District of Louisiana, will present recent changes and proposals aimed at eliminating the disparity in punishment for crack and cocaine powder offenders.

**Disaster-Assistance Fraud** - 15 minutes

*Gary Schwabe*, of the Federal Public Defender's Office for the Eastern District of Louisiana, will discuss the increased penalties for disaster-assistance fraud under the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007.

**Montejo v. Louisiana** - 15 minutes

*Cynthia Cimino*, of the Federal Public Defender's Office for the Eastern District of Louisiana, will present the Supreme Court's recent decision in Montejo v. Louisiana, as well as a proposed course of action to protect a client's right to counsel in light of this holding.

**Arizona v. Gant** - 15 minutes

*Claire Sathe*, of the Federal Public Defender's Office for the Eastern District of Louisiana, will present the Supreme Court's recent decision in Arizona v. Gant and the current state of the law on warrantless vehicle searches.

10:00 am to 10:15 am - Break

10:15 am to 11:45 am

**Law and Technology**

*Lamont Lewis*, Computer Systems Administrator for the Office of the Federal Public Defender, will demonstrate ways to enhance your trial advocacy skills with the use of trial presentation software. The presentation will include an overview of useful software tools that can assist with discovery generated in digital formats.

11:45 am to 1:00 pm - Lunch

1:00 pm to 2:30 pm

**Representation of Juveniles**

A panel of speakers will lead a general discussion concerning the representation of juveniles. The panel will include: *John Craft* and *Sandra Jenkins*, who are both members of the Criminal Justice Act Panel for the Eastern District of Louisiana; *David Katner*, director of the Juvenile Law Clinic at Tulane University Law School; and *Derwyn Bunton*, who previously served as Director of Juvenile Regional Services and Associate Director of the Juvenile Justice Project of Louisiana, and is currently Chief Public Defender in Orleans Parish. The speakers will discuss the impact on the judicial system of the post-Katrina increase in the number of juveniles without parental supervision, and how to best navigate the juvenile justice process. Their presentation will focus on the distinctions between state and federal juvenile law, including the differences in the length of life sentences for juvenile offenders and in the certification process for adult prosecution, and other issues relevant to juvenile representation, such as juvenile competency and mental health disorders affecting juveniles.

2:30 pm to 2:45 pm - Break

2:45 pm to 3:45 pm

**Bond Perfection**

*Edgar Casey*, Staff Investigator for the Office of the Federal Public Defender, will explain the implications of a recorded mortgage for the property owner(s), the necessary procedures to perfect a real estate bond, the documentation required for Court approval, and the cancellation process. In addition, Mr. Casey will share information from the expert resource book and discuss the importance of selecting the correct expert.

3:45 pm to 4:00 pm - Break

4:00 pm to 5:00 pm

**Rhetoric, Legal Ethics and Professionalism: Are They Compatible?**

*Dane Ciolino*, Alvin R. Christovich Distinguished Professor of Law at Loyola University New Orleans School of Law, will explore the ethical implications of rhetorical techniques used by effective advocates. In particular, he will examine how persuasive arguments—which often appeal to the emotions of the audience or rely on the personal credibility of the advocate rather than logic—can conflict with a lawyer's duty of candor to the court and other ethical obligations.

#### FRIDAY, NOVEMBER 6TH

8:00 am to 8:30 am - Sign In

8:30 am to 9:00 am

**Developments on Sentencing Variances**

*Alan Dorhoffer*, of the United States Sentencing Commission in Washington, D.C., will present the latest case law developments on variances and provide recent examples of successful arguments for downward variances.

9:00 am to 10:00 am

**Relevant Conduct**

*Alan Dorhoffer*, of the United States Sentencing Commission in Washington, D.C., will lead a discussion on the scope of relevant conduct and how to assess whether a plea agreement dismissing certain counts will reduce your client's sentence. He will also examine limits on the use of self-incriminating information divulged during debriefing under § 1B1.8. The discussion will include both lectures and scenarios.

10:00 am to 10:15 am - Break

10:15 am to 11:15 pm

**Professionalism (Closing Argument)**

*H. Michael Sokolow*, First Assistant Federal Public Defender, Southern District of Texas, will discuss how to recognize and confront various forms and instances of professional misconduct by the prosecution during closing argument.

11:15 pm to 12:15 pm

*Eric Vos*, Assistant Federal Public Defender in Maine will lead a discussion on the use and importance of expert witnesses at trial. He will offer practical recommendations on how to identify and select experts, how to properly prepare them for trial, and how to present their qualifications during trial. He will also discuss the principal means of excluding the testimony of government experts or diminishing their credibility at trial.

12:15 pm to 1:15 pm - Lunch

1:15 pm to 2:45 pm

**Recent U.S. Supreme Court and Fifth Circuit Cases**

*Tim Crooks*, Assistant Federal Public Defender in the Southern District of Texas, keeps us updated on recent cases that have emerged from the Supreme Court and Fifth Circuit over the last twelve months.

2:45 pm to 3:00 pm - Break

3:00 pm to 4:30 pm

**Recidivism Enhancements**

*Alan Dorhoffer*, of the United States Sentencing Commission in Washington, D.C., will discuss how to determine whether a state conviction fits the definition of a crime of violence or a drug trafficking offense for purposes of sentencing enhancements. He will also touch on staleness of prior convictions, prior offenses committed before age 18, calculating the length of prior sentences, and the relation between criminal history and career offender provisions.



## Recommended Training Programs for Panel Attorneys

### WINNING STRATEGIES

**SAN FRANCISCO, CALIFORNIA - FEBRUARY 4 - 6, 2010**

Contact: [Karen W Holsendorff@ao.uscourts.gov](mailto:Karen_W_Holsendorff@ao.uscourts.gov)

Drawing its faculty from the ranks of federal judges, defenders, and practitioners, *Winning Strategies* presents legal techniques for use in securing pretrial, trial, sentencing and appellate relief in a variety of cases. The seminar will use plenary and break-out instructional sessions to present “nuts and bolts” defenses to firearms, drugs, child pornography, and immigration prosecutions and will present defenses to more novel prosecutions such as mortgage fraud, identity-theft, etc. Participants will receive analysis of the Supreme Court’s recent criminal law decisions and insights into that Court’s pending criminal cases. They will also hear forecasts from the Sentencing Resource Counsel’s representatives on proposed guideline amendments and will learn strategies to better advocate for and achieve just sentences.

Though designed to meet the needs of the experienced and less-experienced attorneys alike, *Winning Strategies* will provide a one-day “Fundamentals Track” on Day I for the those attendees who desire a more basic “building blocks” examination of federal criminal defense practice. Participants will then return to the larger seminar on subsequent days.

### SENTENCING ADVOCACY WORKSHOP

**NEW ORLEANS, LOUISIANA - MARCH 18 - 20, 2010**

Contact: [Karen W Holsendorff@ao.uscourts.gov](mailto:Karen_W_Holsendorff@ao.uscourts.gov)

The Sentencing Advocacy Workshop focuses on an often neglected, yet extremely important, area of practice. Since approximately 95% of federal criminal cases proceed to the sentencing phase, participation in the Sentencing Advocacy Workshop should not be missed. The program presents a comprehensive approach to sentencing advocacy. Participants will learn a process for the development of a persuasive, fact-based sentencing theory and the advocacy skills necessary to advance that theory in writing and during sentencing hearings. Among other subjects, presentations and demonstrations will address changes in federal sentencing law, judging at sentencing, use of a mitigation specialist, storytelling and persuasive writing. The workshop consists of plenary sessions and small group breakout sessions. In the small group breakout sessions, participants will use a case of their own to brainstorm facts, develop a theory and theme, tell a story, and persuasively write a portion of their downward departure motion or sentencing memo.

**Enrollment for this program is limited to 64 panel attorneys certified to accept Criminal Justice Act appointments in federal court. Registration for this program will open soon. Early registration is encouraged.**

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## Financial Assistance for Trial Advocacy Training

The Training Branch is offering financial assistance to eligible CJA Panel Attorneys who would like to enroll in one of the following criminal defense trial advocacy programs:

- National Criminal Defense College - Trial Practice Institute - *Macon, GA - June 13-26, 2010 and July 18-31, 2010*
- Western Trial Advocacy Institute - *Laramie, Wyoming - June 5-10, 2010*
- National Defender Training Project’s Public Defender Trial Advocacy Program - *Dayton, Ohio, June 4-9, 2010*

To apply for financial assistance, please complete the *Financial Assistance Request Form* ([http://www.fd.org/pdf\\_lib/Financial%20Assistance%20Application%20trial%20ad.pdf](http://www.fd.org/pdf_lib/Financial%20Assistance%20Application%20trial%20ad.pdf)) and fax it to the attention of Bob Burke at (202) 502-2911. **Please submit your request two weeks in advance of the registration deadline for the program you wish to attend.**

If you would like to apply for financial assistance to attend a trial advocacy program offered by an organization other than one of those listed above, please submit a detailed description of the program along with your application. The Training Branch will approve only those programs that meet certain educational standards.

If you have any questions regarding the application process or the status of your application, please contact Bob Burke at 202-502-3030.

# MESSAGE BOARD

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- Paralegals are considered experts. We have resumes from independent contracting paralegals to assist CJA attorneys who would like professional assistance particularly in document heavy cases. Contact Heather Davis or Barbara Daigle at 504-589-7930 for recommendations. Also please be aware that paralegal time is reimbursed using a CJA form 21 and follows the same funding guidelines outlined in the next bullet.
  - Please be aware that when obtaining investigative, expert, and other services in CJA appointed cases, district court approval is required for compensation of services which exceed \$500. If in excess of \$1600, the district court and the Fifth Circuit must approve. Approval is required **before** the investigative, expert, and other services are rendered.
  - The U.S. Court of Appeals for the Fifth Circuit announces that beginning with cases heard in late May 2008, recordings of oral arguments are available to the public on the internet at <http://www.ca5.uscourts.gov/OralArgumentRecordings.aspx>.
  - Please note that our office can no longer accept and process handwritten bills from CJA Panel Attorneys. In the future, it will be the attorney's responsibility to submit properly typed bills. This will increase the likelihood that vouchers will be approved.
  - Our office reviews CJA vouchers to insure that appropriate hourly rates are used and that the calculations are mathematically accurate. This process is generally completed within 2 weeks of receipt. Thereafter, the voucher and the Federal Public Defender's recommendation of payment is submitted to the district court for approval. The district court can approve the amount if it is under the \$8,600 statutory maximum. If the voucher is in excess of this amount, circuit review is required, and that process averages 90 days. Once circuit approval is received, our office immediately issues payment. Actual payment should be received within 7 to 10 days thereafter. Please note that if your voucher is over the statutory maximum of \$8,600, a letter justifying why the case was extended and/or complex should be submitted with the voucher.
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## FEDERAL PUBLIC DEFENDER'S OFFICE

Hale Boggs Federal Building  
500 Poydras Street  
Suite 318  
New Orleans, LA 70130

[www.federaldefender.net](http://www.federaldefender.net)

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