

Below is the agenda for the  
2009 MULTI-TRACK FEDERAL CRIMINAL DEFENSE SEMINAR

To view written materials produced in conjunction with a particular session at the seminar, click on the [blue link](#) to that agenda item.

Please note that the absence of a link for a specific session indicates that the presenter did not provide any written materials for that session.

**Note for Mac Users:** The links in this agenda will only function on a PC. If you do not have access to a PC and would like to view the materials in conjunction with a particular session, please send a request to [Lisa\\_Porcari@ao.uscourts.gov](mailto:Lisa_Porcari@ao.uscourts.gov). Select materials from this program are also accessible through the Topics Menu on the left side of the Training Materials & Other Publications Page on [www.fd.org](http://www.fd.org).

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 20-22, 2009*

*and*

*Fundamentals of Federal Criminal Defense Training  
August 20, 2009*

*Hyatt Regency Hotel  
Chicago, Illinois*

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 - Gangs, Computer Crimes, Immigration, Sentencing and Forensics - will be presented in four distinct hour-long time blocks. These sessions will be presented on Thursday, August 20, 2009, and then repeated on Friday, August 21, 2009. 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 22, 2009, seminar participants will have the opportunity to select from three additional tracks, including Mental Health, Noncapital Mitigation, and Trial Skills.

In addition to the above-referenced tracks, the seminar will also include plenary sessions addressing topics of general interest and importance to criminal defense practitioners, along with the opportunity to attend small group breakouts covering a variety of substantive criminal defense issues.

On Thursday, August 20, 2009, there will be a full-day training - "Fundamentals of Federal Criminal Practice" - 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 draft 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*

**Final Agenda**

Thursday, August 20, 2009

- 7:30 to 8:30 A.M.**     **Registration & Continental Breakfast** - *Columbus Hall Foyer, East Tower, Gold Level*
- 8:30 to 8:45 A.M.**     **Welcoming Remarks** - *Columbus Hall G-L, East Tower, Gold Level*  
*Lori A. Green, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.*  
*Kenneth Cunniff, Esq., CJA Panel Representative, Chicago, IL*  
*Carol Brook, Executive Director, Illinois Federal Defender Program, Inc.*
- 8:45 to 9:15 A.M.**     **Keynote Speech** - *Columbus Hall G-L, East Tower, Gold Level*  
*Richard Anderson, Federal Public Defender, Northern District of Texas,*
- 9:20 to 10:20 A.M.**   **Plenary** - *Columbus Hall G-L, East Tower, Gold Level*  
**NAS Report Overview**  
*Geoffrey Simonson Mearns, Dean and Professor of Law, Cleveland-Marshall College of Law, Cleveland, OH*
- 10:20 to 10:35**        **Break** - *Columbus Hall Foyer, East Tower, Gold Level*

**Track Presentations Descriptions**

**1. Gangs**

*During this track learn how to defend a gang case from bond hearing to sentencing, with a specific focus on creative motions and cross-examination of “gang” experts. The sessions will also provide tips on how to investigate gang cases and how to develop defenses for use at trial, plea negotiations and sentencing, such as whether an “enterprise” even exists and whether the acts attributed to your client were in furtherance of the enterprise or were actually gang activities.*

**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 to better prepare defense counsel to challenge the use of such evidence in their cases.*

## **Track Presentations**

**10:35 to 11:40 A.M. 1) Gangs - *Field Room, East Tower, Gold Level***

### **Defining the Gang**

*Kate Corrigan, Esq., Corrigan Law Corporation, APLC, Newport Beach, CA*

This session explores whether an “enterprise” even exists and whether the acts attributed to your client were in furtherance of the enterprise or were properly characterized as gang activities.

**2) Fraud - *Burnham Room, West Tower, Silver Level***

### **White Collar/Fraud**

*Paul Kish, Esq., Kish and Leitz, P.C., Atlanta, GA*

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 - *Dusable Room, West Tower, Silver Level***  
***Begay/Chambers***

*Anne Blanchard, National Sentencing Resource Counsel, Trenton, NJ*  
*Sara Noonan, Research and Writing Specialist, National Sentencing Resource Counsel, Boston, MA*

This presentation will explain how to use the Supreme Court's decisions in *Begay* and *Chambers* to argue that prior offenses are not "crimes of violence" under the career offender guideline, 2K2.1, or 2L1.2, and that they are not "violent felonies" under the ACCA.

**4) Computer Crimes - *Plaza Ballroom, East Tower, Green Level***  
***An Overview of Computer Crimes***

*Kenneth Hawk, AFPD, Eastern District of Texas*

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.

**5) Forensics - *Columbus Hall G-L, East Tower, Gold Level***  
***Fingerprints***

*Robert Epstein, AFD, Eastern District of Pennsylvania*

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**

**11:40 to 12:40 P.M. 1) Gangs - *Field Room, East Tower, Gold Level***

***Investigation and Developing a Defense***

*Ellen Barry, Esq., Law Office of Ellen Barry, Los Angeles, CA*  
*Terry Rearick, Investigator, Terry Rearick and Associates, Canoga Park, CA*

A large part of the defense in a gang case may depend on the results of the investigative efforts. This session explores how those efforts can shape the defense, and the importance of gathering facts to either attack the government's theory or develop the defense theory.

**2) Fraud - *Burnham Room, West Tower, Silver Level***  
***Identity Theft***

*Martin Richey, Third Level Supervisory AFPD, District of Massachusetts*  
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 - *Dusable Room, West Tower, Silver Level***

**Deconstructing the Guidelines**

*Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA  
Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public  
Defender Office*

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.

**4) Computer Crimes - *Plaza Ballroom, East Tower, Green Level***

**Computer Crimes Overview continued**

**5) Forensics - *Columbus Hall G-L, East Tower, Gold Level***

**Firearm and Toolmark Identification**

*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

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.

**12:40 to 2:00 P.M. LUNCH ON YOUR OWN**

**2:00 to 3:00 P.M. 1) Gangs - *Field Room, East Tower, Gold Level***

**Preserving the Record in Gang Cases: Pretrial Motions and Objections**

*Karen Landau, Esq., Oakland, California*

*Verna Wefald, Esq., Pasadena, California*

This session provides suggestions for pretrial motions and objections to both enhance the defendant's chances at trial and – equally important -- preserve the record on appeal. It will focus on the more unusual (but increasingly common) unconstitutional situations that are emerging in gang cases in federal court, including anonymous juries; allowing jurors to ask questions; government filing of sealed ex parte and in camera documents with inflammatory information prejudicing your client that you don't even know about and can't respond to. In addition, it will address more commonplace problems, such as prosecutors winking and nodding with informants to avoid the disclosure of deals; the admission of testimony from so-called gang "experts" who serve as both a fact and expert witness, interpret common slang as code words, and create significant confrontation problems by relaying hearsay from unreliable informants; and the closure of courtroom to defendant's family and friends because a witness is "afraid." Making a record in the trial court provides the best chance for success, at both trial and on appeal.

**2) Fraud- *Burnham Room, West Tower, Silver Level***

**Introduction to Mortgage Fraud**

*Kathy Nester, AFPD, Southern District of Mississippi*

This session will provide an overview of the unique terms and forms associated with the mortgage application process and the role of the different players in the typically charged mortgage fraud scheme.

**3) Sentencing - *Dusable Room, West Tower, Silver Level***

**Developing and Presenting Mitigating Evidence**

*Denise Barrett, National Sentencing Resource Counsel, Wilmington, DE  
Jennifer Coffin, Research and Specialist, National Sentencing Resource Counsel, Nashville, TN*

This presentation will first explain why judges must consider *all* of the mitigating circumstances of the offense and characteristics of the offender, and demonstrate hands-on ways to do it.

**4) Computer Crimes - *Plaza Ballroom, East Tower, Green Level***

**Computer Based Sex Crimes: Defending Enticement and Child Pornography Cases**

*Kenneth Hawk, AFPD, Eastern District of Texas*

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 - *Columbus Hall G-L, East Tower, Gold Level***

**DNA**

*Marc Scott Taylor, President, Laboratory Director, Technical Associates Incorporated, Ventura, CA*

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.

**3:05 to 4:05 P.M.**

**Track Presentations**

**1) Gangs - *Field Room, East Tower, Gold Level***

**Cross Examination of Gang Experts**

*Martin Sabelli, Esq., Law Offices of Martin Sabelli, San Francisco, CA*

Gang prosecutions often rely on the use of expert testimony to classify certain types of behavior as “gang related” or “gang activity”. Learn what types of questions to ask the “expert” about both his or her background and the conclusions he or she is drawing from the prosecution’s allegations.

**2) Fraud - *Burnham Room, West Tower, Silver Level***

**Litigation Tactics and Defending A Mortgage Fraud Case**

*Kevin Tate, AFPD, Western District of North Carolina*

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

**3) Sentencing - *Dusable Room, West Tower, Silver Level***  
**Demonstrations of Constructing a 3553(a) Sentence**

*Denise Barrett, National Sentencing Resource Counsel, Wilmington, DE*

*Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA*

*Anne Blanchard, National Sentencing Resource Counsel, Trenton, NJ*

*Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public  
Defender Office*

*Jennifer Coffin, Research and Specialist, National Sentencing Resource  
Counsel, Nashville, TN*

*Sara Noonan, Research and Writing Specialist, National Sentencing  
Resource Counsel, Boston, MA*

Using a hypothetical case scenario, all of the lessons learned from the previous track sessions will be woven into a comprehensive sentencing approach. The panelists will demonstrate, through examples, what the purposes of sentencing mean, what kinds of considerations are relevant to each purpose, and how to construct a 3553(a) sentence by (a) applying sentencing purposes to the case, (b) deconstructing the applicable guideline(s), and (c) finding objective support for the sentence you request.

**4) Computer Crimes - *Plaza Ballroom, East Tower, Green Level***  
**Forensics**

*Rick Lavaty, Computer Systems Administrator, District of Arizona*

*Eddy Archibeque, Computer Systems Administrator, District of New  
Mexico*

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 - *Truffles, West Tower, Blue Level***  
**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*

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.

**4:05 to 4:20 P.M.**     **BREAK-** *Plaza Ballroom Foyer, East Tower, Green Level*

**4:20 to 5:20 P.M.**     **Supreme Court Update** - *Plaza Ballroom, East Tower, Green Level*  
*Paul Rashkind, Third Level Supervisory AFPD, Southern District of Florida )*

This session provides an update on recent Supreme Court decisions affecting federal criminal practice, and reviews issues currently under consideration

**5:30 P.M.**             **Adjournment**

**Friday, August 21, 2009**

**7:30 to 8:30 A.M.**     **Registration & Continental Breakfast** - *Columbus Hall Foyer, East Tower, Gold Level*

**8:30 to 9:30 A.M.**     **Plenary Session: Sentencing Update Panel Discussion**  
**Sentencing Update Panel Discussion** - *Columbus Hall G-L, East Tower, Gold Level*

*Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA*  
*Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public Defender Office*

The panelists will discuss the impact of the Supreme Court's decisions in *Rita, Gall* and *Kimbrough*; the changes to the Sentencing Guidelines effective November 1, 2009; and the potential areas for Guideline amendments in 2010.

**Repeat of Thursday Track Presentations Through 3:35 p.m.**

**9:40 to 10:40 AM**     **1) Gangs** - *Field Room, West tower, Silver Level*  
**Defining the Gang**

*Kate Corrigan, Esq., Corrigan Law Corporation, APLC, Newport Beach, CA*

This session explores whether an “enterprise” even exists and whether the acts attributed to your client were in furtherance of the enterprise or were properly characterized as gang activities.

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**3) Sentencing** - *Addams Room, West Tower, Silver Level*  
**Begay/Chambers**

*Anne Blanchard, National Sentencing Resource Counsel, Trenton, NJ*  
*Sara Noonan, Research and Writing Specialist, National Sentencing Resource Counsel, Boston, MA*

This presentation will explain how to use the Supreme Court’s decisions in *Begay* and *Chambers* to argue that prior offenses are not “crimes of violence” under the career offender guideline, 2K2.1, or 2L1.2, and that they are not “violent felonies” under the ACCA.

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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.

**10:45 to 11:00 AM Break - *Columbus Hall Foyer, East Tower, Gold Level***

**Track Presentations**

**11:00 A.M. to 12 1) Gangs - *Field Room, West Tower, Silver Level***

**Investigation and Developing a Defense**

*Ellen Barry, Esq., Law Office of Ellen Barry, Los Angeles, CA*

*Terry Rearick, Investigator, Terry Rearick and Associates, Canoga Park, CA*

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**12 to 1:30 PM**                    **LUNCH ON YOUR OWN**

**Track Presentations**

**1:30 to 2:30 PM**

**1) Gangs - *Field Room, West Tower, Silver Level***  
**Pretrial Motions**

**Preserving the Record in Gang Cases: Pretrial Motions and Objections**

*Karen Landau, Esq., Oakland, California*

*Verna Wefald, Esq., Pasadena, California*

This session provides suggestions for pretrial motions and objections to both enhance the defendant's chances at trial and – equally important -- preserve the record on appeal. It will focus on the more unusual (but increasingly common) unconstitutional situations that are emerging in gang cases in federal court, including anonymous juries; allowing jurors to ask questions; government filing of sealed ex parte and in camera documents with inflammatory information prejudicing your client that you don't even know about and can't respond to. In addition, it will address more commonplace problems, such as prosecutors winking and nodding with informants to avoid the disclosure of deals; the admission of testimony from so-called gang "experts" who serve as both a fact and expert witness, interpret common slang as code words, and create significant confrontation problems by relaying hearsay from unreliable informants; and the closure of courtroom to defendant's family and friends because a witness is "afraid." Making a record in the trial court provides the best chance for success, at both trial and on appeal.

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**Track Presentations**

**2:35 to 3:35 P.M.**

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**Cross Examination of Gang Experts**

*Martin Sabelli, Esq., Law Offices of Martin Sabelli, San Francisco, CA*

Gang prosecutions often rely on the use of expert testimony to classify certain types of behavior as “gang related” or “gang activity”. Learn what types of questions to ask the “expert” about both his or her background and the conclusions he or she is drawing from the prosecution’s allegations.

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**3) Sentencing - *Dusable, West Tower, Silver Level***

**Demonstrations of Constructing a 3553(a) Sentence**

*Denise Barrett, National Sentencing Resource Counsel, Wilmington, DE*

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*Anne Blanchard, National Sentencing Resource Counsel, Trenton, NJ*

*Dr. Paul Hofer, Policy Analyst, District of Columbia Federal Public Defender Office*

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The panelists will demonstrate, through examples, what the purposes of sentencing mean, what kinds of considerations are relevant to each purpose, and how to construct a 3553(a) sentence by (a) applying sentencing purposes to the case, (b) deconstructing the applicable guideline(s), and (c) finding objective support for the sentence you request..

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**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*

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.

**3:35 to 3:50 P.M.**

**BREAK - *Columbus Hall Foyer, East Tower, Gold Level***

**3:50 to 4:50 P.M. Breakout Sessions**

**1) The Nuts and Bolts of Trying Firearms Cases - *Burnham Room, West Tower, Silver Level***

*Richard O. Ely II, AFPD, Southern District of Texas*

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) Attacking Wiretaps - *Addams Room, West Tower, Silver Level***

*Liliana Coronado, AFPD, Central District of California*

*Callie Glanton Steele, AFPD, Central District of California*

A step-by-step discussion of how to attack wiretap evidence.

**3) Recurring Issues in RICO and Other Large Multi-Defendant Cases (or Avoiding Guilt(y) by Association) - *Field Room, West Tower, Silver Level***

*Gail Ivens, AFPD, Central District of California*

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) Winning Fourth Amendment Motions to Suppress - *Ogden Room, West Tower, Silver Level***

*Rene Valladares, Supervisory AFPD, District of Nevada*

The myth out there is that Motions to Suppress search and seizure issues are almost impossible to win. This presentation will put that myth to rest. It will focus on cases in the following major areas of Fourth Amendment litigation: reasonable suspicion and probable cause; consent; vehicle searches; and searches with warrants. Successful suppression motions from several circuits will be considered. In addition, this presentation will examine strategies designed to maximize the chances of winning Motions to Suppress.

**5) CJA Resource Issues and Tips for Managing Electronic Discovery**  
*Truffles, West Tower, Blue Level*

*Sean Broderick, National Litigation Support Administrator,  
Office of Defender Services Training Branch, Oakland, CA  
Donna Shearer, CJA Supervising Attorney, District of Maryland*

This session will discuss how to obtain funding when you need technical and other litigation support. There will be an emphasis on IPRO Tiff and Adobe Acrobat PDF formats, two application file formats that the government is using for electronic discovery. This session offers CJA practitioners an opportunity to ask very knowledgeable and experienced panel experts/administrators any questions you have about CJA administrative policies.

**6) Jury Instructions - Horner Room, West Tower, Silver Level**

*Jay L. Lichtman, Esq., Law Offices of Jay L. Lichtman, Los Angeles, CA*  
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.

**7) Mental Health - Dusable, West Tower, Silver Level**  
**Recognizing and Confronting Mental Health Issues**

*Frank Draper, AFPD, District of Maryland*

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 sentencer 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.

**5:00 to 6:00 P.M.**

**Plenary Session: Isms and Schisms —How We Unknowingly Make Decisions Which Impact Our Cases - Columbus Hall G-L, East Tower, Gold Level**

*Cynthia Roseberry, Assistant Clinical Professor, DePaul University,  
College of Law, Chicago, IL*

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.

**6:00 P.M.**

**Adjournment**

Saturday, August 22, 2009

7:30 to 8:30 A.M. **Registration & Continental Breakfast - Plaza Ballroom Foyer, East Tower, Green Level**

### Track Presentations

#### 1) Non-Capital Mitigation

*In Booker/Fanfan, the Supreme Court confirmed the relevance of the nature and circumstances of the offense and the history and characteristics of the defendant. (18 USC Section 3553(a) These sessions are designed to help the defense attorney in the development and presentation of mitigating factors, including narrative approaches to telling the client's story, interpretation of life history records, utilizing community resources, and effective strategies in sentencing presentations.*

#### 2) 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*

#### 3) Trial Skills

*Although the majority of federal criminal cases are resolved by pleas, it is imperative that defense attorneys have the skills needed to be successful at trial. This track highlights some of the areas that are essential to an effective trial presentation.*

### Track Presentations

8:30 to 9:30 A.M. **1) Non-Capital Mitigation - Skyway Conference Center, Room 260, East Tower, Bronze Level**

#### **Conceptualizing Mitigation**

*Robert Dunham, AFD, Eastern District of Pennsylvania  
Stuart Lev, Eastern District of Pennsylvania*

This session will provide an integrated framework for understanding what mitigating evidence is, and how to investigate and present it. It will start with a summary of recent Supreme Court case law reaffirming the core principle that defendants have a constitutionally protected right to present mitigating evidence, and that state statutes, instructions, and evidentiary rules must provide juries a meaningful opportunity to give effect to what makes the evidence mitigating. The session will teach new lawyers how to "think large" about mitigating circumstances: describing the multiple dimensions and interrelatedness of what may sometimes appear to be different kinds of mitigating evidence; explaining how to investigate and develop testimony from family and lay witnesses, institutional records, case-related institutional witnesses, and defense social history and mental health experts to most persuasively present interrelated mitigation themes. It will use age, poverty, and antisocial personality disorder as stepping-off points to illustrate the personal, social, psychological, and neuropsychological dimensions of mitigating evidence and explore the

differences between the type of superficial investigation and presentation of these factors that are frequently seen at trial and the type of thorough investigation and presentation the constitution requires and our clients deserve.

**2) Immigration - *Skyway Conference Center, Room 272, East Tower, Bronze Level***

**Grounds of Deportability and Inadmissibility Related to Crimes**

*Dennis Candelaria,, AFPD, District of New Mexico*

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.

**3) Trial Skills - *Truffles, West Tower, Blue Level***

**Developing Theories and Themes and How to Use Them Effectively in Opening Statements and Closing Arguments**

*Anthony Natale, Third Level Supervisory AFPD, Southern District of Florida*

Having a theme and/or theory of defense organizes your presentation and helps you tell a compelling story that benefits your client. This session will address how you develop theories and themes and weave them into your defense.

**Track Presentations**

**9:35 to 10:35 A.M. 1) Non-Capital Mitigation - *Skyway Conference Center, Room 260, East Tower, Bronze Level***

**Telling Your Client's Story**

*Melissa Kupferberg, Investigator, Middle District of Florida*

*James Tibensky, Mitigation Specialist, Federal Public Defenders of Northern Illinois*

An effective mitigation presentation requires the services of a mitigation specialist/investigator. This presentation details the skills and services that those professionals can provide to the defense team. Learn how to work as a team to uncover those aspects of your client's life experiences that may play a significant role in sentencing and the overall defense strategy. This session explores narrative approaches to telling the client's story and how to use these techniques to support lower sentences.

**2) Immigration - *Skyway Conference Center, Room 272, East Tower, Bronze Level***

**Sentencing Defenses in Illegal Entry and Illegal Reentry Cases: Gathering Evidence to Show Favorable § 3553(a) Factors, Understanding §2L1.2, and Fighting the Aggravated Felony Enhancements**

*James Langell, AFD, District of New Mexico*

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.

**3) Trial Skills - *Truffles, West Tower, Blue Level***

**Cross-Examination**

*Juval Scott, AFD, Indiana Federal Community Defender*

This presentation will provide a discussion of cross-examination techniques, and the need to fully investigate the background of the witness – including the details of his/her deal with the government

**10:35 to 10:50 A.M. Break - *Plaza Ballroom Foyer, East Tower, Green Level***

**Track Presentations**

**10:50 to 11:50 A.M. 1) Non-Capital Mitigation - *Skyway Conference Center, Room 260, East Tower, Bronze Level***

**Working With Life History Records**

*Melissa Kupferberg, Investigator, Middle District of Florida*

*James Tibensky, Mitigation Specialist, Federal Public Defenders of Northern Illinois*

Social history records are key in the presentation of mitigating evidence at sentencing, and are objective tools to document life experiences.

Participants in this hands-on workshop will discuss techniques for obtaining client records and personal history; how to decipher life history records including recognizing signs of adverse developmental experiences such as mental illness, developmental disorders including mental retardation, learning disabilities, and abuse; and identification of additional lay witnesses and records referenced in collected documents.

**2) Immigration - *Skyway Conference Center, Room 272, East Tower, Bronze Level***

**Defending Against Charges of Alien Smuggling, Alien Transporting, and Alien Harboring**

*Selena Solis, AFPD, Western District of Texas*

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.

**3) Trial Skills - *Truffles, West Tower, Blue Level***

**Using PowerPoint to Create Effective and Dynamic Closing Arguments**

*Thomas C. Plunkett, Esq., St. Paul, Minnesota*

Technology can be a powerful tool in the courtroom. Learn how to use Powerpoint to make your closing arguments come alive for the jury.

**11:55 to 12:55 PM Plenary: Panel Discussion "Ethical Issues Confronting Criminal Defense Attorneys"**

*Plaza Ballroom, East Tower, Green Level*

*Moderator: Callie Glanton Steele, Third Level Supervisory AFPD, Central District of California*

*Panelists: Richard Anderson, Federal Public Defender, Northern District of Texas*

*Honorable Richard W. Roberts, Judge, United States District Court for the District of Columbia*

*Verna Wefald, Esq., Pasadena, California*

**12:55 to 1:10 PM Closing Remarks and Adjournment - *Plaza Ballroom, East Tower, Green Level***

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

**Fundamentals of Federal Criminal Defense Training  
Draft Agenda**

**August 20, 2009  
Chicago, Illinois**

*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 - *Columbus Hall Foyer, East Tower, Gold Level***
- 8:30 to 8:45 A.M.**                    **Welcoming Remarks**  
*Ogden, West Tower, Silver Level*  
*Lori A. Green, Attorney-Advisor, Office of Defender Services  
Training Branch, Washington, D.C.*  
*Carol Brook, Executive Director, Illinois Federal Defender  
Program, Inc.*
- 8:45 to 9:15 A.M.**                    **Keynote Speech**  
*Ogden, West Tower, Silver Level*  
*Richard Anderson, Federal Public Defender, Northern District of  
Texas*
- 9:30 to 10:30 A.M.**                    **Client Interviews**  
*Ogden, West Tower, Silver Level*  
Fredryn Sison, AFD, Federal Defenders of Western North Carolina
- 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.
- 10:30 to 10:45 A.M.**                    **Break - *Columbus Hall Foyer, East Tower, Gold Level***

**10:45 to 11:45 A.M.**

**Discovery Issues With a Twist – Rule 16 and More**

*Ogden, West Tower, Silver Level*

*Michael Kennedy, First Assistant Federal Public Defender,  
District of Nevada*

*David Anthony, AFPD, Capital Habeas Unit, District of Nevada*

A look at discovery issues from the combined perspectives of a 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 charges

**11:45 to 12:45 P.M.**

**Introduction to the Federal Sentencing Guidelines  
Sentencing Guidelines 101**

*Ogden, West Tower, Silver Level*

*Stephen L. Marley, Attorney-Advisor, Training Branch, Office of  
Defender Services, Washington, D.C.*

*Alan Dorhoffer, United States Sentencing Commission,  
Washington, D.C.*

This session will cover the basics of applying the federal sentencing guidelines.

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

**LUNCH ON YOUR OWN**

**2:00 to 3:00 P.M.**

**Plea Negotiations and Proffers**

*Ogden, West Tower, Silver Level*

*Yasmin Cader, AFPD, Central District of California*

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.

**3:00 to 4:00 P.M.**

**The Affirmative Use of the Federal Rules of Evidence**

*Ogden, West Tower, Silver Level*

*Omodare Jupiter, AFPD, Southern District of Mississippi*

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.

**4:00 to 4:15 P.M.**

**BREAK - Plaza Ballroom Foyer, East Tower, Green Level**

**4:15 to 5:15 P.M.**

**Fundamentals of Federal Criminal Defense Track**  
**"Oh Acquittal Where Art Thou: Using Fed.R.Crim.P. 29, 30, 32, 33, 34, and 35 to Win Trials and Influence Sentencing**

*Ogden, West Tower, Silver Level*

*Robert Truitt, Staff Attorney, Federal Community Defenders for the Northern District of Indiana*

This presentation will examine Federal Rules of Criminal Procedure 29, 30, 32, 33, 34, and 35 in the context of trial and sentencing. The session will examine how these rules work together to form a defense strategy which will either terminate the litigation in our client's favor or provide the necessary support for a new trial in the event of a faulty conviction. The sentencing process found in Rules 32 and 35 arm the defense with the tools to obtain the lowest possible sentence for our clients. The session will also examine the implications of Rita v. United States on the courts' sentencing process.

**5:15 to 6:15 P.M.**

**Practical Tips if Your Client Faces Incarceration in a Federal Prison - *Ogden, West Tower, Silver Level***

*Paula Xinis, AFPD, District of Maryland*

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.