



## WINNING STRATEGIES SEMINAR II

### ADMINISTRATIVE OFFICE OF THE U.S. COURTS DEFENDER SERVICES OFFICE TRAINING DIVISION

InterContinental Hotel New Orleans  
444 St. Charles Avenue  
New Orleans, LA 70130  
February 23-24, 2023

February 23-25, 2023  
[Draft Agenda 1/23/23](#)

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#### Thursday, February 23, 2023

7:30 to 8:30 a.m.    **Registration & Continental Breakfast**

8:30 to 8:45 a.m.    **Introduction & Welcoming Remarks**

Claude J. Kelly, *Federal Public Defender, Eastern District of Louisiana, New Orleans, Louisiana*

Townsend Myers, *Panel Representative, Eastern District of Louisiana, New Orleans, Louisiana*

George Couture, *Attorney Advisor, Defender Services Office Training Division, Washington, D.C.*

8:45 to 9:45 a.m.    **Plenary 1: Ethics - The Attorney Client Relationship: Crossing All Lines**

LaRonda R. Martin, *Assistant Federal Defender, Office of the Federal Public Defender for the District of Nevada, Las Vegas, NV*

Every case begins and ends with the client. The attorney client relationships is the foundation of any preparation for trial or sentencing. If it has not been built, neither will strive. Whether the challenge be race, sexual orientation, language, education, or religious - the attorney client relationship cannot grow without

addressing these issues. Join a discussion about building better client relationships.

10:00

to 11:00 a.m. **Break-Out Sessions 1**

1. **The Maritime Drug Law Enforcement Act: We're All in the Same Boat**

Tracy Dreispul, *Assistant Federal Defender, Office of the Federal Public Defender, Miami, FL*

This presentation will provide a broad overview of the Maritime Drug Law Enforcement Act (MDLEA), along with a discussion of recent developments under the statute and litigation tips. The presentation will begin with a discussion of the "Felonies on the high Seas" Clause under Article I, Section 8, Clause 10 of the U.S. CONST., and the limitations that clause places on the United States' ability to arrest and prosecute foreign nationals for drug trafficking offenses at sea. The presentation will include a discussion of challenges to the statute that have been raised in the circuit courts, as well as recurring topics including pre-indictment delay and sentencing issues.

2. **Poetic Justice: Combating the Single Story in Pleadings**

Ijemoa Eke, *Assistant Federal Defender, Office of the Federal Public Defender, Central District of California, Los Angeles, CA*

Storytelling is an act of agency, yet often times our clients' stories go unheard and it is up to us, as their attorney, to help them regain their agency. As defense attorneys we are constantly combatting the danger of the single story or narrative of who our client is that is contained in the indictment, the discovery, and the arguments put forth before the courts. In this training we will explore the different ways to tell our clients' stories throughout the life of a criminal case by focusing on storytelling in pleadings. Specifically, this training will utilize the tenets of spoken word poetry such as imagery, wordplay, and sound devices to transform our pleadings and tell our clients stories in the most persuasive and effective manner.

**3. Representing Veterans in Criminal Cases: Obtaining and Understanding Military Records**

Captain Art Cody, *Director Center for Veteran Criminal Advocacy, New York, NY*

Veterans undergo an experience far removed from the vast majority of those who sit in judgment of them in the justice system. The military experience, particularly if it involves combat, indelibly shapes the veteran and often has significant causal or mitigation implications relating to criminal offenses. Seeking military records can be difficult and understanding those records in the context of the military culture can be daunting to even the most accomplished practitioner. This practical presentation will discuss obtaining, reviewing, and understanding military records, as well as offering suggestions in framing veteran mitigation.

**4. Drug Predicates: Which One of These is Not Like the Other?**

Matthew Dodge, *Assistant Federal Defender, Federal Defender Program, Inc., Northern District of Georgia, Atlanta, GA*

Our clients have been spared decades of prison time, §1326 convictions, and deportation by showing that their prior drug convictions were for substances not controlled by the federal government. In this session we will share some of the great law in this area and go step-by-step through the process so you, too, can successfully argue your client's prior conviction is not a serious drug offense (ACCA), serious drug felony, felony drug offenses (§ 851), controlled substance offense (career offender, §2K1.2), aggravated felony/conviction related to a controlled substance (§1326(d)), or drug trafficking offense (§2L1.2).

**11:00 to 11:15 a.m. Break**

**11:15 a.m. to 12:15 p.m. Break-Out Sessions 2**

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**12:15 to 1:45 p.m. Lunch**

**1:45 to 3:00 p.m. Plenary 2: The Racist Origins of Illegal Reentry (and How to Challenge Them in Your Practice)**

Kara Hartzler, *Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA*

The original law criminalizing illegal reentry under 8 U.S.C. 1326 grew out of a disturbing time in history marked by the rise of eugenics, the Ku Klux Klan, and deeply nativist sentiments. This session tells the story behind the passage of the first illegal reentry law, the racial motives underlying it, and why it's important for defenders to confront these issues today. Attendees will also receive practical tips for challenging this racist past through a motion to dismiss on equal protection grounds and sentencing memorandum, complete with sample briefing.

**3:00 to 3:15 p.m. Break**

**3:15 to 4:15 p.m. Break-Out Sessions 3****1. Dismantling the Administrative State**

Todd Borden, *Assistant Federal Defender, Office of the Federal Public Defender, Northern District of California, San Francisco, CA*

Lisa Ma, *Assistant Federal Defender, Office of the Federal Public Defender, Northern District of California, San Francisco, CA*

This session will cover emerging challenges to the Sentencing Guidelines commentary and beyond in light of the Supreme Court's decisions in *Kisor v. Wilkie* and *Stinson v. United States*.

**2. Using Technology to Craft Persuasive Filings**

Franco Perez, *Assistant Federal Defender, Office of the Federal Public Defender, District of Puerto Rico, San Juan, PR*

In a visual-media-dominated world, court filings remain largely text-based, adhering to conventions set in the pre-computer days of the 19th century. While logic and rhetoric are still vital instruments in our toolkit, digital tools give 21st century practitioners the power to persuade in new, creative ways. This presentation offers helpful pointers on integrating technology to craft persuasive court filings. We'll discuss how and why digital tools persuade. We'll sample ideas on how to use images, tables, and graphs to advance your theory of the case. And we'll flag ethical and other pitfalls to avoid before putting these tools to use.

**3. Discovery beyond the rules – a theory-driven approach**

Benjamin Schiffelbein, *Assistant Federal Defender, Office of the Federal Public Defender, Western District of Virginia, Roanoke, VA*

This training focuses on four aspects of discovery litigation to enhance your tools for getting to not guilty: 1) thinking about discovery differently and planning litigation based on your trial theory; 2) utilizing creative methods to get discovery; 3) using the Rules and the law to get more discovery and gather more exculpatory evidence; and 4) engaging practical tips for making the most of the discovery you get. This training uses examples from cases to help lawyers think expansively about discovery and encourages them to litigate using

proven strategies to build a record, get discovery, and advance their theory.

4. **Documentary Video and Editing for Sentencing Advocacy, Part 1**  
Marcos Barbery, *Marcos Barbery, Mitigation Specialist, Federal Defender Program for the Northern District of Illinois, Chicago, IL*

This two-part training emerged out of a Sentencing Advocacy Workshop presentation. The dual breakout sessions offer a hands-on learning experience in both documentary production and editing for sentencing. The training draws on the use of inexpensive tools – including smart phones and a \$90 editing software – to teach basic skills on how to make short, inexpensive, high-quality documentaries that demonstrate the truth about your clients. During the first hour, several short sentencing videos will be screened; then, in step-by-step process, the production process – from shooting to interviewing – will be unpacked and dissected, followed by a learn-by-doing production tutorial. Attendance at both breakout sessions is preferred.

5. **Police Body Worn Cameras: Are We Really Seeing Everything?**  
Giselle Pomerleau, *Litigation Technology Attorney, Office of the Federal Defender, District of New Jersey, Camden, NH*

Across the country, police departments are increasingly using body-worn cameras to better monitor what officers are doing out in the field. This session will provide an overview of body worn cameras (nuts and bolts of the systems), tips and tricks for efficient video evidence review (e.g., signs of video tampering/manipulation), and legal strategies for obtaining discovery to ensure you are get everything you are entitled to receive, and how to challenge this evidence.

**4:15 to 4:30 p.m. Break**

**4:30 to 5:30 p.m. Plenary 3: From Presentence to Release – Avoiding BOP Pitfalls So Your Client Doesn’t Serve More Time Than Necessary**  
*Stephen Sady, Chief Deputy Federal Defender, Office of the Federal Public Defender, District of Oregon, Portland, OR*

This session will provide practical tips if your client faces federal imprisonment. It will include factors to consider for your client to receive the earliest feasible release date.

**5:30 p.m. Adjournment**

**Friday, February 24, 2023**

**7:30 to 8:30 a.m. Registration & Continental Breakfast**

**8:30 to 9:30 a.m. Plenary 4: Supreme Court Update**  
*Andy Adler, Assistant Federal Public Defender and Chief of the Appellate Division of the Federal Public Defender, Southern District of Florida, Miami, Florida*

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

**9:30 to 9:40 a.m. Break**

**9:40 to 10:40 a.m. Plenary 5: A View from the Bench: Strategies for Skillfully Navigating Evidentiary Issues**  
*Honorable Lisa Rau, Founder Resonate Mediation and Arbitration (and retired 19 year Judge for the Court of Common Pleas, Philadelphia County), Philadelphia, PA*

Admitting and excluding evidence can be the crucial difference between winning and losing at trial. Judges generally want to follow the law and do not want their errors to be memorialized in an appellate opinion. Yet, evidentiary issues can be foreseeable, unforeseeable, and tricky. Educating your judge in advance about key evidentiary issues can be the secret to your success at trial. In this session, a seasoned state court trial judge will provide specific strategies to use before and during trial to diplomatically get judges



to understand and rule correctly on evidentiary issues and permit you to make your record for appeal.

**10:40 to 10:50 a.m. Break**

**10:50 to 11:50 a.m. Break-Out Sessions 4**

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**11:50 a.m.**  
**to 1:00 p.m.**

**Lunch**

**1:00 to 2:00 p.m. Plenary 6: Rethinking Second Amendment Litigation After *Bruen*: Using Text and History to Challenge Federal Gun Laws**

Cullen Macbeth, *Assistant Federal Defender, Office of the Federal Defender, District of Maryland, Greenbelt, MD*

Carmen Smarandoiu, *Appellate Chief, Office of the Federal Public Defender, San Francisco, CA*

For the first 14 years after the Supreme Court recognized an individual right to possess firearms, the lower federal courts were almost uniformly hostile to criminal defendants' Second Amendment claims. But the Court's recent opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), has the potential to change that. Rather than conducting means-ends balancing, which usually doomed our clients' claims, *Bruen* directs courts to decide Second Amendment challenges by looking only to "constitutional text and history." Using this new approach, criminal defense attorneys may be able to attack numerous federal firearms provisions, from the felon-in-possession statute to the National Firearms Act to portions of the recently enacted Bipartisan Safer Communities Act. This session will introduce practitioners to *Bruen*, explain how to use the opinion to mount a Second Amendment challenge, suggest possible targets for *Bruen* litigation, and identify several arguments the government may raise in opposition.

**2:00 to 2:10 p.m. Break**

**2:10 to 3:10 p.m. Break-Out Sessions 5**

**1. Mitigation on a Shoestring Budget**

Fredilyn Sison, *Assistant Federal Defender, Training Coordinator & Director, Office of the Federal Public Defender for the Western District of North Carolina, Asheville, NC*

Have you wistfully looked at private counsel who have unlimited funds and can hire a team of mitigation specialists? Or federal defenders who have social workers in their staff? "Wist" no longer. This session will provide you with the tools you need to be your client's own mitigation specialist, from creating release forms and requests for letters of support to researching topics relevant to your theory of the sentencing. Is there help you can get for free? (Of

course!). You will learn how to conduct meaningful interviews and translate the information you've acquired into an effective sentencing memo/presentation.

**2. Guarding *Miranda* and Waivers Ranchers: Cultural Considerations in the Suppression of Confessions**

Francisco "Frank" Morales, *Assistant Federal Defender, Southern District of Texas, Corpus Christi, Texas*

So you say your client gave a full confession? But before getting there, your client understood his rights and waived those rights. Right? This lecture deals with various aspects of *Miranda* litigation, especially the influence of culture and language as it relates to intelligent and knowing waivers of *Miranda* rights and statements that are knowingly and intelligently given. For many, the time they are arrested is the first time that they have the benefit of hearing *Miranda* rights. Is it possible for someone to hear *Miranda* for the first time and still not understand it? We will delve into the different ways that language, education, culture, and machismo, among other things, play a role in the knowing and intelligent calculus as it relates to *Miranda*

**3. Winning Your Case Through Motions**

Kevin Tate, *Senior Litigator, Office of the Federal Public Defender for the Western District of North Carolina, Charlotte, NC*

Learn about the litigation advantages of an aggressive motions practice that can lead to the discovery of critical evidence that supports the defense, limitation of evidence, and preserving and shaping of reversible appeal errors should you lose at trial.

**4. Greatest Hits in Defense of Our Noncitizen Clients**

Diana Rashid, *Managing Attorney, National Immigration Justice Center's Detention Project, Chicago, IL*

The National Immigrant Justice Center (NIJC) provides immigration advice to defenders and CJA panel attorneys across the nation and has answered common questions that occur in federal criminal cases for noncitizen clients. This session will provide an overview on dominant issues that defense attorneys seek advice on from NIJC, along with practical tips in defending noncitizens, including

providing immigrant-safe alternatives to controlled substance, firearm, and fraud related offenses.

5. **The Categorical Approach – A Primer**

Kara Hartzler, *Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA*

“I love the categorical approach!” – said no federal practitioner (or court), ever. The categorical approach has been a thorn in our sides since it was created by the Supreme Court in *Taylor v. United States*, 495 U.S. 575 (1990). From the Armed Career Criminal Act, to Section 924(c); from the career offender guideline, to child pornography sentencing enhancements, the categorical approach cannot be avoided. But while it may be here to stay, this analytical framework has proven to be one of our greatest tools to achieve substantive relief for our clients. In this interactive presentation, attendees will work through each step of the categorical and modified categorical approach analyses. The presentation will place particular emphasis on post-*Mathis* issues of statutory divisibility and the use of Shepard-approved documents. Attendees will leave this session with a greater comfort in employing the categorical approach, will be able to identify common missteps and opportunities for advocacy, and will perhaps even leave with some fondness for the framework so many have grown to hate.

3:10 to 3:20 p.m. **Break**

3:20 to 4:20 p.m. **Break-Out Sessions 6**

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**4:20 to 4:30 p.m. Break**

**4:30 to 5:30 p.m. Plenary 7: Dueling Sovereigns: Making Sense of Primary and Secondary Custody**

Andrew Szekely, *Assistant Federal Defender, Office of the Federal Public Defender, District of Maryland, Greenbelt, MD*

When your client has both federal and state charges or sentences, it can get messy fast. This session will cover the basics of the primary/secondary custody doctrine, help you identify common pitfalls, and provide some practice pointers to help you effectively advocate for your clients when they are dealing with multiple charges and sentences.

**5:30 p.m. Adjournment**

**Saturday, February 25, 2023**

**8:00 to 9:00 a.m. Registration & Continental Breakfast**

**9:00 to 10:00 a.m. Plenary 8: Direct Examination / Witness Prep**

*Sara M. Peloquin, Trial Attorney, Federal Defenders of San Diego, Inc., San Diego, CA*

Direct examination provides another opportunity to advance the theory of the case and defense story. This session will address techniques for preparing the witness, such as explaining the courtroom scene and basic law, appearance and communication, practicing direct and cross, and preparing for obvious questions. It will also cover how to persuasively present their testimony in the courtroom, including the use of chapters, detailed facts, keeping the focus on the witness, and effective organization and transitions.

**10:00 to 10:10 a.m. Break**

**10:10 a.m. to 11:10 a.m. Plenary 9: Taming Cerberus: Becoming A Probation Officer  
Whisperer from the PSR Interview Through Sentencing**

*Fritz Scheller, Fritz Scheller P.L., Orlando, Florida*

This presentation will provide defense counsel with critical techniques and strategies for dealing with the U.S. Probation Officer to maximize your client's chances at sentencing. The focus will be on practical tips and best practices from the first PSR interview, to drafting PSR objections, through finally impacting Probation's sentencing recommendations to the Court.

**11:10 to 11:15 a.m. Break**

**11:15 a.m. to 12:15 p.m. Plenary 10: Ethics – Hello, Goodbye, & Everything In  
Between: Communicating Ethically and Effectively with Our  
Client's Loved Ones and Community Supporters**

*Myra Cause, Assistant Federal Defender, Office of the Federal Public Defender, Western District of North Carolina, Charlotte, NC*

Using a compassionate approach, this training presents a nuts-and-bolts method to develop meaningful and ethical conversations with



the loved ones of our clients. This presentation is designed to address the situations that you likely encounter in your practice, such as hostile family members on the phone, well-meaning loved ones and community supporters who can hurt your client's case, and distraught loved ones. Learn ways to handle these communications and share information without violating rules of professional conduct.

**12:15 p.m.**

**Closing Remarks - Adjourn**