



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

MULTI-TRACK FEDERAL CRIMINAL DEFENSE SEMINAR - HYBRID

(1) Fundamentals; (2) Strategic Litigation Initiative and Advocacy; (3) Non-Capital Mitigation & Mental Health; (4) Trial Skills, Practice, and Evidence; (5) Substantive Federal Offenses; and (6) Sentencing Strategies & Practices

LSR = Live Streamed & Recorded Session

**Renaissance Seattle
515 Madison Street
Seattle, WA 98104**

August 11-13, 2022

Agenda

Thursday, August 11, 2022

7:30 – 8:30 a.m. Registration – Continental Breakfast
Courtyard Foyer (B Level)

8:30 – 8:45 a.m. Welcoming Remarks – *LSR*
Courtyard Ballroom (B Level)

Frank Draper, *Chief, Training Division, Defender Services Office, Washington, DC*

Colin Fieman, *Federal Public Defender, Western District of Washington, Seattle, WA*

Paula T. Olson, *CJA Panel Representative, Western District of Washington, Tacoma, WA*

8:45 – 10:00 a.m. PLENARY 1 – *LSR*
Courtyard Ballroom (B Level)

Breaking Out of the Cage: Bail Reform Act Fundamentals

Alison Siegler, *Clinical Professor of Law, Director of the Federal Criminal Justice Clinic, University of Chicago School of Law, Chicago, IL*

This session will focus on how to keep your client out of jail. The bond stage is every bit as important as trial and sentencing and affects every other

stage of the case. This session will break down how to conduct pretrial interviews that enable you to craft a compelling bond narrative, will demonstrate how to link your client's story to the best aspects of the legal standard, and will ensure that you know the Bail Reform Act better than anyone else in the courtroom.

10:00 – 10:15 a.m. REFRESHMENT BREAK

Courtyard Foyer

TRACK PRESENTATION DESCRIPTIONS

1. Fundamentals

This track is designed for those new to federal criminal defense practice and addresses topics that you will likely encounter in your practice, such as the essential role of investigation in CJA cases, discovery and motion practice, pleas and proffers, the basics of sentencing and the sentencing guidelines, application of the sentencing guidelines, the categorical approach, and the Bureau of Prison.

2. Strategic Litigation Initiative and Advocacy

This track is designed to provide defense practitioners with a foundational understanding of how to handle a wide variety of litigation that seeks to vindicate the constitutional and statutory rights of clients and to challenge pervasive unfair criminal legal system practices that undermine the right to a fair trial, including strategies to litigate police misconduct as well as identifying and confronting issues of racial bias by police, prosecutors, juries, and even defense teams.

3. Non-Capital Mitigation & Mental Health

This track is designed to help defense professionals learn new perspectives on how to better discover their client's story and develop mitigation evidence. Participants will learn how to develop mitigation themes, identify potential mental health issues, hypotheses, questions, and brainstorm investigative follow-up tasks.

4. Trial Skills, Practice, and Evidence

Mastery of multiple skills is essential to a trial lawyer's success. This track is designed to build and update trial prowess through synthesizing increasingly complex and voluminous discovery, developing an aggressive pretrial motions strategy, and capitalizing on the rules of evidence, including the new rules on documents requiring no authentication for admissibility.

5. Substantive Federal Offenses

Slightly more than 45% of felony filings in federal court are for drug (31.3%) and firearm (14.2%) offenses. These two substantive offenses remain front and center of our focus as federal criminal defense practitioners. This tract will include “hot” developing areas and innovative ways of looking at federal drug and firearms offenses.

6. Sentencing Strategies & Practices

Sentencing in federal criminal cases is no longer limited to a mere guideline calculation. This track highlights avenues available to defense counsel to obtain better sentences for their clients. Track sessions will look at the guidelines, interpret sentencing statutes and discuss how to create a critical sentencing narrative by developing persuasive, fact-based, sentencing strategies.

10:15 – 11:15 a.m. TRACK PRESENTATIONS 1

1. Fundamentals

Vista (28th Floor)

Getting the Most Out of Plea Agreements, Cooperation, and Navigating the Dangers of a Proffer

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

With an overwhelming percentage of clients entering pleas, this session will take a hard look at how to get the most out of deals with the government. Additionally, like it or not, many of our clients intelligently decide that cooperation is in their best interests. Unfortunately, proffer sessions can quickly devolve into train wrecks with clients getting no benefit and all the added risk we lose sleep over. This session explores common benefits and dangers associated with cooperation while addressing the many land mines just waiting for your client in the proffer room.

2. Strategic Litigation Initiative and Advocacy - *LSR*

Courtyard Ballroom (B Level)

Litigating Race Through Sentencing

Akin Adepoju, *Attorney Advisor, Training Division, Defender Services Office, Washington, DC*

Recent incidents make it clearer that the path to a better system involves understanding and acknowledging that what ails minority, but

particularly the African-American, community does not just exist in the minds of Black people; that the legacy is real and inflicts trauma. This session will be a discussion of how the legacy of discrimination during childhood impacts the growth and development of children; how it shapes the brain and attitude toward law enforcement, and how race manifests in criminal cases. The session will provide ideas on how to understand and tell our clients' stories through this lens and directly litigate pretrial and sentencing issues.

3. Trial Skills, Practice, and Evidence
South (3rd Floor)

Rules of Evidence 404 and 405: How To Use Them and Not Be Abused By Them

James Smith, III, *Attorney, Of Counsel, CPLS, P.A., Orlando, FL*

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. Substantive Federal Offenses
East (3rd Floor)

Crack 2.0 Plus: Challenges Based on Flawed Federal Methamphetamine and Fentanyl Sentencing Policies

Lex A. Coleman, *Senior Litigator, Assistant Federal Public Defender, Office of the Federal Public Defender for the Southern District of West Virginia, Charleston, WV*

This session focuses on challenges based upon the 1986 ADAA drug type, quantity, and purity model, which remains “an incredibly poor proxy” for culpability under 21 U.S.C. § 841(a), as well as just punishment under 18 U.S.C. § 3553(a). Since 1986 - pretrial release, the triggers for statutory mandatory minimum sentences, and application of the U.S. Sentencing Guidelines have all revolved around the drug type, quantity and purity involved in a charged drug trafficking offense. This has been the case even when a given drug trafficking defendant in one case, is doing the exact same thing a different drug trafficking defendant is doing in another case. By virtue of arbitrary statutory and guideline distinctions made between different controlled substances and different forms of the same controlled substances, the existing drug type, quantity, and purity model is producing unwarranted sentencing disparities which do not advance the purposes of sentencing under 18 U.S.C. § 3553(a). Expanding on this premise, this presentation will provide participants with tactics and strategies to use in both the charge and plea-bargaining stages of your case, as well as in

making your *Kimbrough* arguments for downward variances below the Commission's advice during the sentencing phases of your case. While the emphasis will be on methamphetamine and fentanyl offenses, the approaches discussed will apply to any case brought under the Controlled Substances Act and ultimately sentenced under U.S.S.G. § 2D1.1.

5. Sentencing Strategies & Practices
North/West (3rd Floor)

A Guide to Getting the Most Out of the Sentencing Process

Eric A. Vos, *Chief Federal Public Defender, District of Puerto Rico, San Juan, PR*

Developing a sentencing strategy is a process: it begins from the moment you first meet with the client. As the client's case runs from the initial/first appearance through sentencing, too often we give up key opportunities to enlighten probation, judges, and even the government on the client's story – not the story of the offense, but the story of the client's life and background. In this presentation, we will search for a process to develop a sentencing strategy, explore ways to convey a client's story effectively throughout various in-court and out-of-court proceedings, and examine creative uses of experts and studies to support our client's story.

11:15 – 11:30 a.m. BREAK

11:30 a.m.

– 12:30 p.m. PLENARY 2 - *LSR*
Courtyard Ballroom (B Level)

Supreme Court Update

Paul Rashkind, *Esquire, Miami, FL*

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

12:30 – 1:45 p.m. Lunch – own your own

1:45 – 2:45 p.m. TRACK PRESENTATIONS 2

1. Fundamentals
Vista (28th Floor)

The Essential Role of Investigation in CJA Cases

Herbert Duzant, *Investigator, Office of the Federal Public Defender for the District of Nevada, Las Vegas, NV*
Sharon Samek, *Attorney Advisor, Defender Services Office Legal & Policy*

Division, Washington, DC

As cases continue to grow complex with more discovery and information regarding the guilt phase as well as the sentencing phase, the services of a trained and dedicated investigator can be invaluable. Hear from a defense investigator about the road map toward a successful investigation in all phases of a CJA case. An attorney will join the discussion of how the investigator can assist throughout the life cycle of a case, including quickly locating and interviewing witnesses, obtaining information from digital and paper records and seeking out information that can be important for the court to consider at sentencing. The discussion will include information about how to obtain funding for investigative and other expert services.

2. **Strategic Litigation Initiative and Advocacy - *LSR***
Courtyard Ballroom (B Level)

Fighting Racial Bias by Police Through Suppression Litigation

Andre Allen Vitale, *Acting First Assistant Deputy Public Defender, Trial Chief, Hudson Trial Region at New Jersey Office of the Public Defender*

Racial bias, both implicit and intentional, negatively impacts people of color within the criminal prosecution system. Nowhere is this more evident than in decisions made by police, prosecutors, and judges in the area of probable cause determinations which invade on our client's right of privacy in their persons, possessions, and homes. From where the police choose to focus enforcement, to who to search, who to arrest, who to charge, and determinations about whether the police had probable cause, are all influenced by racial bias. As criminal defense lawyers, we know bias plays a part in all these decisions, yet too many times when litigating 4th Amendment issues, we limit our focus to legal standards and an objective application of the facts against the law. In fighting against violations of our clients' 4th Amendment rights, we need to include the effect racial bias plays in these decisions. This presentation will discuss why it is so important for criminal defense lawyers to include racial bias in their motions to suppress evidence. We will also discuss strategies on how best to accomplish this mission.

3. **Trial Skills, Practice, and Evidence**
South (3rd Floor)

Analyzing Cell Phone Extractions

Molly Gilbert, *King County Department of Public Defense, Seattle, WA*

Police and prosecutors have come to rely heavily on various forms of digital evidence to investigate and later prove the government's case at trial. This presentation will focus on ways the government uses cell phone extractions to bolster their case (while simultaneously obfuscating data that could help

the defense) and simple strategies defense teams can use to fight back. Attendees will learn how evidence can be limited prior to the defense receiving it, how to argue for expanded searches when exonerating or impeachable evidence may exist, and all the various ways defense teams can aggressively use cell phone extractions to their legal advantage.

4. Substantive Federal Offenses

East (3rd Floor)

Cocaine is Not Cocaine: Successful Challenges to the Characterization of a Prior as a “Serious Drug Offense”

Paresh Patel, Appellate Chief, Office of the Federal Public Defender for the District of Maryland, Baltimore, MD

In this session, the presenter will share how to use the tools of chemistry to establish that a drug (as defined under state law at the time of the prior conviction) is subject to an overbreadth challenge such that it doesn't qualify for draconian sentencing enhancements under the statutes (Armed Career Criminal Act (ACCA), 21 U.S.C. § 841) or the guidelines (U.S.S.G. §4B1.2). The presentation will delve into how to successfully challenge drug priors by examining the definition at the time the conviction was entered to establish that the definition was broader when compared to the current federal definition under the Controlled Substances Act (CSA).

5. Sentencing Strategies & Practices

North/West (3rd Floor)

Statutory Conspiratorial Culpability Versus Relevant Conduct Guideline Culpability: Distinctions with a Huge Difference

Troy Stabenow, Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of Missouri, Jefferson City, MO

Federal conspiracy law is expansive; federal guideline sentencing is much less so. Even so, often Presentence reports are written so expansively as to conflate criminal culpability with sentencing guideline liability. This session will compare and contrast the two differing legal theories to illustrate ways defense counsel can ensure that PSR relevant-conduct recommendations are not erroneously inflated on a conspiracy theory.

2:45 – 3:00 p.m. REFRESHMENT BREAK

Courtyard Foyer (B Level)

3:00 – 4:00 p.m. TRACK PRESENTATIONS 3

1. Fundamentals
Vista (28th Floor)

Pretrial Motions: Stuff to Know to Get the Discovery You Need

Michael Kennedy, *Law Offices of Michael Jerome Kennedy, PLLC, Reno and Las Vegas, NV*

Tired of simply begging the federal prosecutor for the discovery and materials you need? This session will explore the advantages to taking a proactive, rather than a passive, approach to using multiple pretrial motions in combination with third party subpoenas to get more of the discovery and evidence you need. Learn from the combined perspective of a trial lawyer and a death penalty post-conviction attorney about other avenues, in addition to Rule 16, to obtain discoverable evidence that might be helpful if considered while mounting a defense to any federal criminal prosecution.

2. Strategic Litigation Initiative and Advocacy
North/West (3rd Floor)

Litigating Race Through Sentencing

Akin Adepoju, *Attorney Advisor, Training Division, Defender Services Office, Washington, DC*

Recent incidents make it clearer that the path to a better system involves understanding and acknowledging that what ails minority, but particularly the African-American, community does not just exist in the minds of Black people; that the legacy is real and inflicts trauma. This session will be a discussion of how the legacy of discrimination during childhood impacts the growth and development of children; how it shapes the brain and attitude toward law enforcement, and how race manifests in criminal cases. The session will provide ideas on how to understand and tell our clients' stories through this lens and directly litigate pretrial and sentencing issues.

3. Non-Capital Mitigation & Mental Health - *LSR*
Courtyard Ballroom (B Level)

Mitigation Assessment: Community Violence and Its Impact on Neurological Development

Marian L. Swindell, PhD, MSW, *Professor, Mississippi State University, Meridian, MS*

The purpose of this workshop is to introduce and discuss the importance of incorporating community efficacy and its impact on brain

development/architecture into the mitigation assessment interview. Research findings linking the relationship between community violence/wellness and brain development as well as interview techniques to unpack those relationships will be discussed.

4. **Trial Skills, Practice, and Evidence**

South (3rd Floor)

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5. **Substantive Federal Offenses**

East (3rd Floor)

Pulling the Trigger on Trial Themes: Storytelling in the 922g Context

Ijeoma U. Eke, *Deputy Federal Public Defender, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

“The gun isn’t mine.” “The cops planted it.” “It’s not even a gun.” “Did it even cross state lines?” Defenses to felon-in-possession cases may seem like common sense but the challenge is turning the theory of the case into a compelling narrative. The session will discuss trial themes and theories for felon-in-possession cases and examine how their effectiveness is rooted in, and begins with, a successful investigation and pretrial litigation.

4:00 – 4:15 p.m. BREAK

**4:15 – 5:15 p.m. PLENARY 3 - *LSR*
*Courtyard Ballroom (B Level)***

Understanding Mental Illness & Intellectual Disabilities in the Legal System

Elizabeth Kelley, *Attorney at Law, Spokane, WA*

Today, approximately half the people in our jails and prisons have some sort of mental illness or intellectual disability. This presentation will assist criminal defense lawyers with some of the basic issues they face when

representing this population: the lack of proper medication in correctional facilities; the process of selecting an expert to conduct evaluations for competency, sanity, and mitigation; dealing with misperceptions about malingering and understanding the real phenomena of masking; awareness of special problems faced by veterans such as PTSD and TBI; evaluating the advantages and disadvantages of mental health courts and veterans courts; and working with the family of a client with a mental illness or an intellectual disability.

5:15 p.m.

Adjourn for the Day

Friday, August 12, 2022

7:30 – 8:30 a.m. Continental Breakfast
Courtyard Foyer (B Level)

8:30 – 9:30 a.m. PLENARY 4 - LSR
Courtyard Ballroom (B Level)

Say Your Client's Name: Lessons Learned from George Floyd's Story

Robert Samuels, *National Enterprise Reporter for the Washington Post, Washington, DC*

In this session, Robert Samuels, co-author of the book, "His Name is George Floyd: One Man's Life and the Struggle for Racial Justice," will discuss the racial injustice that fundamentally impacted all aspects of George Floyd's life. Just like George Floyd, many clients in the criminal justice system have faced similar systemic racism throughout their lives. Criminal justice professionals must tell these stories.

9:30 – 9:45 a.m. BREAK

9:45 – 10:45 a.m. TRACK PRESENTATIONS 4

1. Fundamentals
Vista (28th Floor)

Sentencing Fundamentals: The Legal Framework

J. Stephen Roberts Jr., *Trial Attorney, Federal Defenders of Eastern Washington, Spokane, WA*

Amy H. Rubin, *Managing Attorney, Federal Defenders of Eastern Washington, Spokane, WA*

Each and every one of us representing individuals in federal court must understand sentencing. To be effective sentencing advocates, we must know our clients, our cases, and the legal framework that shapes and governs sentencing. This session focuses on the fundamentals of sentencing law, from the Constitution to the statutes, to the guidelines. Attendees will be introduced to 18 U.S.C. § 3553 and other relevant statutes. We also will tour the guidelines manual, with an eye towards understanding its basic structure and the theories on which it operates. A solid grasp of these basics will reveal there is both room and need for creative sentencing advocacy. It takes understanding this legal framework, where it is rigid and where it bends, to effectively advocate for the best possible outcomes for our clients.

2. **Strategic Litigation Initiative and Advocacy**
North/West (3rd Floor)

Fighting Racial Bias by Police Through Suppression Litigation

Andre Allen Vitale, *Acting First Assistant Deputy Public Defender, Trial Chief, Hudson Trial Region at New Jersey Office of the Public Defender*

Racial bias, both implicit and intentional, negatively impacts people of color within the criminal prosecution system. Nowhere is this more evident than in decisions made by police, prosecutors, and judges in the area of probable cause determinations which invade on our client's right of privacy in their persons, possessions, and homes. From where the police choose to focus enforcement, to who to search, who to arrest, who to charge, and determinations about whether the police had probable cause, are all influenced by racial bias. As criminal defense lawyers, we know bias plays a part in all these decisions, yet too many times when litigating 4th Amendment issues, we limit our focus to legal standards and an objective application of the facts against the law. In fighting against violations of our clients' 4th Amendment rights, we need to include the effect racial bias plays in these decisions. This presentation will discuss why it is so important for criminal defense lawyers to include racial bias in their motions to suppress evidence. We will also discuss strategies on how best to accomplish this mission.

3. **Trial Skills, Practice, and Evidence**
South (3rd Floor)

Dismantling the Conspiracy Charge: Pretrial Through Trial

Michael Kennedy, *Law Offices of Michael Jerome Kennedy, PLLC, Reno and Las Vegas, Nevada*

This session will address the big issues that arise when a client is charged with being part of a conspiracy, including pretrial challenges, trial tactics, and sentencing issues.

4. **Substantive Federal Offenses - LSR**
Courtyard Ballroom (B Level)

Cocaine is Not Cocaine: Successful Challenges to the Characterization of a Prior as a "Serious Drug Offense"

Paresh Patel, *Appellate Chief, Office of the Federal Public Defender for the District of Maryland, Baltimore, MD*

In this session, the presenter will share how to use the tools of chemistry to establish that a drug (as defined under state law at the time of the prior conviction) is subject to an overbreadth challenge such that it doesn't qualify for draconian sentencing enhancements under the statutes (Armed

Career Criminal Act (ACCA), 21 U.S.C. § 841) or the guidelines (U.S.S.G.§4B1.2). The presentation will delve into how to successfully challenge drug priors by examining the definition at the time the conviction was entered to establish that the definition was broader when compared to the current federal definition under the Controlled Substances Act (CSA).

5. Sentencing Strategies & Practices
East (3rd Floor)

Litigating Conditions of Supervised Release

Johanna M. Christiansen, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Central District of Illinois, Peoria, IL*

Although mandatory in fewer than half of cases, most defendants convicted in federal court will receive terms of supervised release in addition to their sentences of imprisonment. The conditions of supervised release imposed at sentencing will have a tremendous impact on the defendant's life after release from imprisonment, but most are vague, overly broad, ambiguous, and unnecessary. This session will demonstrate how to successfully challenge both standard and special conditions of supervised release in the district court and on appeal. Strategies for obtaining humane and appropriate supervised release conditions for clients charged with sex offenses will also be discussed as well as appropriate conditions for clients with substance use disorders.

10:45 – 11:00 a.m. REFRESHMENT BREAK
Courtyard Foyer (B Level)

11:00 a.m.
– 12:00 p.m. TRACK PRESENTATIONS 5

1. Fundamentals
Vista (28th Floor)

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.

2. Non-Capital Mitigation & Mental Health
North/West (3rd Floor)

BOP and Mental Health

Frank Draper, *Chief, Training Division, Defender Services Office, Washington, DC*

A BJS Report states about 1 in 7 state and federal prisoners meet the threshold for serious psychological distress (SPD) in the 30 days prior to a survey. Overall, 45% of federal prisoners have had a mental health problem (61.2% for women in federal prison). Yet BOP statistics suggest they are not receiving treatment. As of November 2017, 95% of the male BOP population, and 94% of the female BOP population were classified as CARE1-MH by BOP and are not required to receive any regular mental health services or to have a treatment plan. This session will discuss and brainstorm ways to inform the sentencing courts of the failure to provide adequate mental health care in BOP.

3. Trial Skills, Practice, and Evidence
South (3rd Floor)

Winning Pretrial Motions

Kevin Tate, *Senior Litigator, Western District of North Carolina, Charlotte, NC*

This session focuses on strategic pretrial motions that defense counsel should consider filing, and how to effectively investigate and litigate these motions with the goal of creating issues that can help win your case.

4. Substantive Federal Offenses - *LSR*
Courtyard Ballroom (B Level)

The Nuts, Bolts, and Field Stripping of Firearms Evidence

Kate Philpott, *Instructor, Virginal Commonwealth University, Richmond, VA*

This session will start with a brief introduction to firearms-associated toolmark (FATM) evidence -- i.e., the practice of matching the markings

left on a bullet or cartridge case back to a specific gun -- then move to strategies for challenging its admissibility and confronting it at trial.

12:00 – 1:15 p.m. LUNCH – on your own

1:15 – 2:15 p.m. PLENARY 5 - *LSR*
Courtyard Ballroom (B Level)

Litigating Scientific Evidence

M. Chris Fabricant, *Director, Strategic Litigation, The Innocence Project, New York, NY*

A primer on litigating scientific evidence, including an overview of the most significant literature; the basics on making a *Daubert* challenge to Government proffers of expert testimony; fighting for adequate discovery, and an explanation of the proposed modification of FRE 702 and how to weaponize those changes.

2:15 – 2:30 p.m. BREAK

2:30 – 3:30 p.m. TRACK PRESENTATIONS 6

1. Fundamentals
Vista (28th Floor)

From Presentence to Release – Avoiding BOP Pitfalls So Your Client Doesn't Serve More Time Than Necessary

Elizabeth Daily, *Appellate Chief, Office of the Federal Public Defender for the District of Oregon, Portland, OR*

Stephen Sady, *Chief Deputy Federal Defender, Office of the Federal Public Defender for the 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.

2. Trial Skills, Practice, and Evidence - *LSR*
Courtyard Ballroom (B Level)

Rules of Evidence 404 and 405: How To Use Them and Not Be Abused By Them

James Smith, III, *Attorney, Of Counsel, CPLS, P.A., Orlando, FL*

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

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3. Substantive Federal Offenses
East (3rd Floor)

Pulling the Trigger on Trial Themes: Storytelling in the 922g Context

Ijeoma U. Eke, *Deputy Federal Public Defender, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

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4. Sentencing Strategies & Practices
North/West (3rd Floor)

Litigating Conditions of Supervised Release

Johanna M. Christiansen, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Central District of Illinois, Peoria, IL*

Although mandatory in fewer than half of cases, most defendants convicted in federal court will receive terms of supervised release in addition to their sentences of imprisonment. The conditions of supervised release imposed at sentencing will have a tremendous impact on the defendant’s life after release from imprisonment, but most are vague, overly broad, ambiguous, and unnecessary. This session will demonstrate how to successfully challenge both standard and special conditions of supervised release in the district court and on appeal.

3:30 – 3:45 p.m. REFRESHMENT BREAK
Courtyard Foyer (B Level)

3:45 – 4:45 p.m. PLENARY 6 - *LSR*
Courtyard Ballroom (B Level)

Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement

Michael German, *Liberty and National Security Fellow, Brennan Center for Justice, Los Angeles, CA*

Police reforms after incidents of racist misconduct or brutality often focus on dealing with officers’ unconscious bias, but they leave unaddressed explicit racism, an entrenched, especially harmful form of bias within law

enforcement that takes many forms, from membership with violent white supremacist or far-right militant groups like the KKK to overtly racist activities in public and social media.

This presentation, by a former FBI Special Agent and author of *Disrupt, Discredit, and Divide: How the New FBI Damages Democracy*, examines explicit racism in law enforcement and makes policy recommendations to federal, state and local governments to identify officers involved in overt and organized racism and ensure that their biases don't hurt the people they are charged with protecting.

4:45 p.m.

Adjourn for Day

Saturday, August 13, 2022

7:30 – 8:30 a.m. Continental Breakfast
Courtyard Foyer (B Level)

8:30 – 9:30 a.m. PLENARY 7 - LSR
Courtyard Ballroom (B Level)

Equal to the Occasion: Litigating ACCA Cases after *Wooden*
Brianna Mircheff, *Chief of Writs and Appeals, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

Wooden v. United States took on the question of what it means for ACCA predicates to be committed on occasions different from one another and opened up a world of options for litigating ACCA sentences. This session will cover the *Wooden* decision, and what it means for your ACCA litigation.

9:30 – 9:45 a.m. BREAK

9:45 – 10:45 a.m. TRACK PRESENTATIONS 7

1. Fundamentals
Vista (28th Floor)

Workshop, Application of Drug Guideline §2D1.1

Although a rigid application of the Sentencing Guidelines is no longer mandatory under Supreme Court precedent, correctly calculating your client's guideline range is one of the most important steps in obtaining the best possible sentence for your client. In this session of Fundamentals, we will break out into small groups led by skilled facilitators. Using problems from real cases, we will practice applying the main drug offense guideline, §2D1.1.

2. Trial Skills, Practice, and Evidence
South (3rd Floor)

E-Discovery Review Databases 101: Simple Ways to Use a High Tech Tool to Increase Your Review Efficiency
Russell M. Aoki, *Aoki Law PLLC, Seattle, WA*

E-discovery review databases are not tools most cases need. They can be expensive and take time to set up. But what if you find yourself in a multiple defendant drug case with wiretap interceptions, tens of thousands of pages of investigative reports, search warrant pleadings, and social media materials? What about an extensive fraud case with hundreds

of thousands of business records, bank materials, and emails that span a multiple-year indictment period? E-discovery review databases will save you time and help you find materials critical to your case.

In this session you will learn how to 1) use a “search, sample, and save” keyword search methodology; 2) find key documents like investigative reports, grand jury materials, and search warrant pleadings that name your client; and 3) find wiretaps and jail calls associated with your client’s phone number. In addition, we will discuss the use of case management orders that other CJA panel attorneys have used to successfully prepare their complex cases.

**3. Substantive Federal Offenses - *LSR*
*Courtyard Ballroom (B Level)***

Crack 2.0 Plus: Challenges Based on Flawed Federal Methamphetamine and Fentanyl Sentencing Policies

Lex A. Coleman, *Senior Litigator, Assistant Federal Public Defender, Office of the Federal Public Defender for the Southern District of West Virginia, Charleston, WV*

This session focuses on challenges based upon the 1986 ADA drug type, quantity, and purity model, which remains “an incredibly poor proxy” for culpability under 21 U.S.C. § 841(a), as well as just punishment under 18 U.S.C. § 3553(a). Since 1986 - pretrial release, the triggers for statutory mandatory minimum sentences, and application of the U.S. Sentencing Guidelines have all revolved around the drug type, quantity and purity involved in a charged drug trafficking offense. This has been the case even when a given drug trafficking defendant in one case, is doing the exact same thing a different drug trafficking defendant is doing in another case. By virtue of arbitrary statutory and guideline distinctions made between different controlled substances and different forms of the same controlled substances, the existing drug type, quantity, and purity model is producing unwarranted sentencing disparities which do not advance the purposes of sentencing under 18 U.S.C. § 3553(a). Expanding on this premise, this presentation will provide participants with tactics and strategies to use in both the charge and plea-bargaining stages of your case, as well as in making your *Kimbrough* arguments for downward variances below the Commission’s advice during the sentencing phases of your case. While the emphasis will be on methamphetamine and fentanyl offenses, the approaches discussed will apply to any case brought under the Controlled Substances Act and ultimately sentenced under U.S.S.G. § 2D1.1.

4. **Sentencing Strategies & Practices**
North/West 3rd Floor

Persuasive Sentencing Hearings

J. Stephen Roberts Jr., *Trial Attorney, Federal Defenders of Eastern Washington, Spokane, WA*

Amy H. Rubin, *Managing Attorney, Federal Defenders of Eastern Washington, Spokane, WA*

This session will discuss how to persuasively tell the client's story at the sentencing hearing. It will examine factors to consider in making decisions about what to present and how to conduct the hearing.

10:45 – 11:00 a.m. REFRESHMENT BREAK
Courtyard Foyer (B Level)

11:00 a.m.
– 12:00 p.m. TRACK PRESENTATIONS 8

1. **Fundamentals**
Vista (28th Floor)

Workshop, Application of Criminal History Guidelines §§4A1.1-4A1.2

Although a rigid application of the Sentencing Guidelines is no longer mandatory under Supreme Court precedent, correctly calculating your client's guideline range is one of the most important steps in obtaining the best possible sentence for your client. In this session of Fundamentals, we will break out into small groups led by skilled facilitators. Using problems from real cases, we will practice applying two criminal history guidelines, §§4A1.1-4A1.2.

2. **Trial Skills, Practice, and Evidence**
South (3rd Floor)

E-Discovery Review Databases 101: Simple Ways to Use a High Tech Tool to Increase Your Review Efficiency

Russell M. Aoki, *Aoki Law PLLC, Seattle, WA*

E-discovery review databases are not tools most cases need. They can be expensive and take time to set up. But what if you find yourself in a multiple defendant drug case with wiretap interceptions, tens of thousands of pages of investigative reports, search warrant pleadings, and social media materials? What about an extensive fraud case with hundreds of thousands of business records, bank materials, and emails that span a

multiple-year indictment period? E-discovery review databases will save you time and help you find materials critical to your case.

In this session you will learn how to 1) use a “search, sample, and save” keyword search methodology; 2) find key documents like investigative reports, grand jury materials, and search warrant pleadings that name your client; and 3) find wiretaps and jail calls associated with your client’s phone number. In addition, we will discuss the use of case management orders that other CJA panel attorneys have used to successfully prepare their complex cases.

3. Substantive Federal Offenses

East (3rd Floor)

The Nuts, Bolts, and Field Stripping of Firearms Evidence

Kate Philpott, *Instructor, Virginal Commonwealth University, Richmond, VA*

This session will start with a brief introduction to firearms-associated toolmark (FATM) evidence -- i.e. the practice of matching the markings left on a bullet or cartridge case back to a specific gun -- then move to strategies for challenging its admissibility and confronting it at trial.

4. Sentencing Strategies & Practices or Strategic Litigation Initiative and Advocacy - *LSR*

Courtyard Ballroom (B Level)

A Guide to Getting the Most Out of the Sentencing Process

Eric A. Vos, *Chief Federal Public Defender, District of Puerto Rico, San Juan, PR*

Developing a sentencing strategy is a process: it begins from the moment you first meet with the client. As the client’s case runs from the initial/first appearance through sentencing, too often we give up key opportunities to enlighten probation, judges, and even the government on the client’s story – not the story of the offense, but the story of the client’s life and background. In this presentation, we will search for a process to develop a sentencing strategy, explore ways to convey a client’s story effectively throughout various in-court and out-of-court proceedings, and examine creative uses of experts and studies to support our client’s story.

12:00-12:15 p.m. BREAK

12:15 - 1:15 p.m. PLENARY 8 - *LSR*
Courtyard Ballroom (B Level)

The Ethics of Social Media Investigation

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

This interactive session will discuss the key Rules of Professional Conduct that should guide attorneys when collecting and preparing to use social media data as evidence, as well as, examining the ethical pitfalls when responding to subpoenas or other request for the client's social media information.

1:15 p.m. Closing Remarks/Adjournment – *Courtyard Ballroom (B Level)*
Frank Draper, *Chief, Training Division, Defender Services Office, Washington, DC*

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