

Below is the agenda for the

2011 NATIONAL SEMINAR FOR FEDERAL DEFENDERS

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.

Draft Agenda, 5/25/11
National Seminar for Federal Defenders
June 1-3, 2011
Baltimore, Maryland

Wednesday, June 1

8:45 a.m. **Welcome and Opening Remarks (Plenary)**

Honorable James Bredar (D. Md.)
Chuck Arberg, Education Division, FJC
Jim Wyda, Federal Defender (D. Md.)

9:15 a.m. **Keynote (Plenary)**

Lanny Breuer, Assistant Attorney General, Criminal Division, DOJ

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

10:30 a.m. **Concurrent Sessions I (choose one)**

(1) Defending Firearms Cases: 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.

Rick Ely, Assistant Federal Defender (S.D. Tex.)

(2) Ten Lessons Learned at the Supreme Court

Prof. Jeff Fisher, Stanford Law School

(3) [Mandatory Immigration Detention:](#) bond for non-citizens and related topics

Eleni Wolfe-Roubatis, Esq.
National Immigrant Justice Center, Chicago, Illinois

(4) Post-Conviction Risk Assessment: Federal Probation is currently implementing a national assessment tool in an effort to objectively measure and address the risks and needs of offenders on post-conviction supervision. This session will

examine the theoretical underpinning of the tool, the purpose of its use, the current implementation, and the future of risk/needs assessment in the Federal Probation System.

Scott VanBenschoten, Office of Probation and Pretrial Services (A.O.)
Stephen Vance, Office of Probation and Pretrial Services (A.O.)

(5) Deconstructing the Drug Guidelines and Fair Sentencing Act

Update: A discussion of the legislative history of the drug trafficking guideline, including the flawed assumptions underlying the Anti-Drug Abuse Act of 1986 and later Congressional directives to the Commission; review of Commission's incoherent (or absent) explanations for how the guideline is intended to achieve the purposes of sentencing, and a review of the empirical evidence showing it does a poor job of tracking any purpose. The 2011 amendments to the drug guideline in response to the Fair Sentencing Act of 2011 will also be discussed, with an update on retroactivity of those amendments as well as on the application of the statutory provisions to defendants not yet sentenced on the date of the Act.

Jennifer Coffin, Sentencing Resource Counsel Project (M.D. Tenn.)
Paul Hofer, Sentencing Resource Counsel Project (D.D.C.)

11:45 a.m. **Lunch Break**

1:00 p.m. **Defender Services Update (Plenary)**

Hon. Catherine Blake (D. Md.), Member, Jud. Conf. Comm. on Defender Services
Steve Asin, Deputy Assistant Director, Office of Defender Services (A.O.)
Bob Burke, Training Branch Chief, Office of Defender Services (A.O.)

1:45 p.m. **Special Considerations in Representing Non-Citizens after Padilla (Plenary)**

Eleni Wolfe-Roubatis, Esq.
National Immigrant Justice Center, Chicago, Illinois

2:45 p.m. **Break**

3:00 p.m. **Concurrent Sessions II (choose one)**

(1) Going on the Offensive Using the Federal Rules of Evidence:

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, including use of “reverse 404(b)” evidence, 804(b)(3) statements against penal interest, the Rule of Completeness (FRE 106), and others.

Omodare Jupiter, Assistant Federal Defender (S.D. Miss.)

- (2) Effective Appellate Advocacy:** Judge Motz will answer questions regarding best practices in written and oral advocacy before the Courts of Appeals. Ms. Newberger will moderate this session designed to give attorneys candid answers to questions on how to be most effective on appeal.

Honorable Diana Gribbon Motz (4th Cir.)
Katherine Newberger, Assistant Federal Defender (D. Md.), Moderator

- (3) Rethinking Probation, Supervised Release, and Helping Your Client Succeed Outside of Incarceration:** Spend time with two of the strongest client advocates imaginable and see what effectively helps defendants in a post-conviction world. An inspiring look at what clients *really* go through, what makes them succeed, and a moving reminder of why we are committed to helping indigent defendants. Session will include tips on how to possibly obtain shorter sentences for your clients and ways to greatly enhance their chances of never again entering the criminal justice system.

Douglas Burriss, Chief U.S. Probation Officer (E.D. Mo.)
Kevin Thomas, Jobs and Family Specialist, U.S. Probation Office (E.D. Mo.)

- (4) Fighting Fiction with Fact – Using Current Research to Advocate for Lower Sentences:** Too often, the assumptions underlying sentencing recommendations and decisions not only lack empirical support but actually contradict what has been proven to work. Criminologists, psychologists, psychiatrists, and related professionals have published a wealth of information about identifiable risk factors for criminal behavior and what programs have been most effective in dealing with them. In this session, we will “truth squad” some common sentencing misconceptions, setting the record straight with recent research that you can use to argue for more efficacious and just sentences.

Denise Barrett, National Sentencing Resource Counsel (D. Del.)
Anne Blanchard, National Sentencing Resource Counsel (D.N.J.)

- (5) **21st Century Surveillance:** The government uses cell phone records, precision locators, pen registers, and other electronic information to track your client and develop their case. Find out more about high-tech government investigations and how to challenge them.

Amy Baggio, Assistant Federal Defender (D. Ore.)

- (6) **Co-occurring Disorders – Identifying and Working with Clients Who Have Both Substance Abuse and Mental Health Problems:** Co-occurring disorders can be difficult to identify and present special treatment and courtroom challenges. In this session, a mental health expert will share information about diagnosis and treatment and a defender will offer suggestions for obtaining relief for clients in court.

Sarah Gannett, Assistant Federal Defender (E.D. Pa.)

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

4:30 p.m. **New Developments in the Right to Confrontation (Plenary)**

Prof. Jeff Fisher, Stanford Law School

5:30 p.m. **Adjourn for the Day**

Thursday, June 2

8:30 a.m. **Supreme Court and Other Significant Cases Update (Plenary)**

Professor Susan Herman, Brooklyn Law School
Paul Rashkind, Chief, App. Div., Office of the Federal Defender (S.D. Fla.)

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

10:30 a.m. **Concurrent Sessions III (choose one)**

- (1) **Sentencing Film Festival:** At sentencing, a picture is worth at least a thousand words, and will often add layers of credibility and emotion to your client’s mitigation story. Lawyers across the country understand that in the right case, “moving pictures” are the most effective tool to help the judge connect with and understand your client. This session will showcase incredible sentencing videos prepared in 2010 by five different FPD offices in cases involving child porn, assault, guns, drugs, and illegal re-entry. We will see the films in their entirety and collectively

choose a winner. In the process, we will explore various ways to incorporate powerful and persuasive images into our sentencing presentations.

Doug Passon, Assistant Federal Defender (D. Ariz.)

- (2) **21st Century Tools for Managing Large Cases:** Federal criminal cases are increasingly document-intensive and involve different electronic files in addition to paper. Relatively recent improvements in litigation support software can assist federal defender teams in the organization, analysis, and presentation of a client's case. This session will highlight trial-tested techniques and methodologies and demonstrate a number of software programs, including Adobe Acrobat Pro, ISYS, and CaseMap, which can assist you and your team in organizing your case information, creating searchable data, and presenting your client's case more effectively.

Sean Broderick, National Litigation Support Administrator (A.O.)

- (3) **The Many Uses of Neuropsychology:** Discussion of the discipline of neuropsychology and how it differs from forensic psychiatry. Presentation of case studies on the various uses of neuropsychology and IQ testing, including in challenges to prior convictions and competency, as powerful mitigation at sentencing and as proof of mental retardation in death penalty cases.

Katherine Newberger, Assistant Federal Defender (D. Md.), Moderator

- (4) **Cooperation – Getting the Most Out of §5K1.1:** Much of criminal defense practice in federal court is centered on sentencing advocacy. One key component to reducing sentences is through departures pursuant to §5K1.1. While use of cooperation can be effective, it is often misunderstood – there are stigmas attached to it for both clients and defense lawyers alike. This presentation will focus on making the most of cooperation and present a practical approach to preparing for and using cooperation to the client's maximum advantage.

Patrick Ehlers, Assistant Federal Defender (D. Ore.)

- (5) **Defending Against Sentencing Enhancements in Immigration Cases:** The adjustments to the illegal re-entry guideline can add 4 to 6 years to a recommended sentence. This presentation focuses on a systematic approach to legal objections involving

crimes of violence, drug trafficking offenses, aggravated felonies, and felonies designed to minimize the effect of these upward adjustments.

Anne Berton, Assistant Federal Defender (W.D. Tex.)

Mike Gorman, Staff Attorney, Office of the Federal Defender (W.D. Tex.)

(6) No More Math Without Subtraction – Variances, Departures, and Alternatives to Prison after Gall, Pepper, and Tapia:

Guideline ranges are constructed by adding up aggravating factors that overstate the harm and seriousness of the offense, while factors relevant to culpability such as motive, intent, role, and mental capacity are ignored or dwarfed by operation of the aggravating factors. The Guidelines exclude, prohibit, or disapprove all mitigating factors that are relevant to the needs for deterrence, incapacitation, and rehabilitation. This presentation discusses ways to argue for meaningful subtraction from the advisory guideline range, addressing all types of below-guideline sentences and alternatives to incarceration, how to connect individualized facts and empirical arguments to purposes and parsimony, and how to use Supreme Court law to support these arguments.

Amy Baron-Evans, National Sentencing Resource Counsel (D. Mass.)

Jennifer Coffin, Sentencing Resource Counsel Project (M.D. Tenn.)

(7) Making a Federal Case Out of It – Innovative Approaches to Working up Fraud Cases

Bob Biddle, Esq., Baltimore, Maryland

Caroline Ciraolo, Esq., Baltimore, Maryland

Larry Nathans, Esq., Baltimore, Maryland

11:45 a.m. **Lunch Break**

1:15 p.m. **Mass Incarceration – Causes, Consequences, and Exit Strategies (Plenary)**

Prof. Carol Steiker, Harvard Law School

2:15 p.m. **Break**

2:30 p.m. **Concurrent Sessions IV (choose one)**

(1) Effective Trial Lawyer Communications – Part I

Terry MacCarthy, Defender Emeritus (N.D. Ill.)

- (2) **Vicarious Trauma:** This session will cover the sensitivity and recognition of post secondary stress in the workplace, where employees are subject to exposure of evidence, particularly in the area of child pornography, which is likely to adversely impact all of us. Discussion will focus on how to identify and treat these predictable reactions while maintaining our commitment to zealously represent our clients

Leigh Skipper, Federal Defender (E.D. Pa.)

- (3) **The Power of Requesting a Jury Trial:** This session will include a discussion of the various reasons for demanding trial. It will provide different perspectives and is designed to encourage and inspire. Participants will be asked to share their experiences with the power of demanding trial.

Cynthia Roseberry, Federal Defender (M.D. Ga.)

Shane McMahon, Assistant Federal Defender (W.D. Tex.)

Dan Stiller, Federal Defender (E.&W.D. Wis.)

Kevin Tate, Assistant Federal Defender (W.D.N.C.)

- (4) **Defending Those Who Defend Us – Considerations When Defending Veterans:** This session will identify key considerations for defense counsel representing veterans, particularly veterans suffering from service-connected Post Traumatic Stress Disorder and Traumatic Brain Injury, and will provide tips on how to maximize the impact of a client's honorable military service during sentencing. This session will also assist counsel unfamiliar with the military to recognize whether their client's service record offers a rich bounty of mitigating factors, or contains information that could hurt their client.

Christian Capece, Assistant Federal Defender (S.D.W.V.)

- (5) **Defending Illegal Re-entry Cases:** This session will address various aspects of defending illegal re-entry cases prior to sentencing, including pretrial motions that may be filed, basics of what the government must prove, an overview of common issues that arise in 1326 cases, and how to defend the indefensible 1326 case (i.e. not roll over).

Edgar Holguin, Assistant Federal Defender (W.D. Tex.)

- (6) Probation’s Post-Conviction Risk Assessment – What You Must Know to Evaluate What it Means for Your Defense Practice:** Evidence-based practices which are presently being implemented by U.S. Probation, including actuarial risk assessment and the Psychological Inventory of Criminal Thinking Styles (PICTS), present a host of new challenges for defense counsel. In this session, we will go beyond the “what,” discussing instead the general pitfalls of risk assessments, the specific pros and cons of the current instruments, as well as potential legal challenges. We will also brainstorm how these new tools will impact our advice to clients at both sentencing and post-conviction stages.

Denise Barrett, National Sentencing Resource Counsel (D. Del.)
Molly Roth, Assistant Federal; Defender (W.D. Tex.)

- (7) How to Challenge Forensic Evidence – A Case Study:** This session will detail the nuts and bolts of forensics litigation, including discovery requests, expert retention, admissibility challenges, and cross examination of forensic experts, as well as an overview of how to attack the aura of invincibility that surrounds forensic evidence. Mr. Kent has litigated forensic evidence extensively and is the only attorney to mount a successful fingerprint admissibility challenge in a death penalty case.

Patrick Kent, Assistant Federal Defender (D. Md.)

3:45 p.m. **Break**

4:00 p.m. **Concurrent Sessions V (choose one)**

- (1) Effective Trial Lawyer Communications – Part II**

Terry MacCarthy, Defender Emeritus (N.D. Ill.)

- (2) Federal Problem Solving Courts – Re-entry, Veteran’s Issues, and Drug Courts, Mental Health and Pretrial:** Numerous problem solving courts are making their way into our federal court system. Such programs differ significantly from the adversarial model of justice. The collaborative justice model used in such programs raises important practical issues and a significant role change for all team participants, including the AFPDs involved. This session will address the similarities and differences in the roles of AFPDs and touch on key components of the Drug Court model and its application and use in federal re-entry programs; the differences and similarities between

adversarial and collaborative justice models; the rules of ethics relevant in collaborative justice programs; and the potential benefits to current or future clients in courts that embrace collaborative justice and evidence-based practice models for criminal justice, sentencing, and treatment.

Patrick Ehlers, Assistant Federal Defender (D. Ore.)
Hilary Potashner, Assistant Federal Defender (C.D. Cal.)

- (3) **Sentencing Film Festival:** At sentencing, a picture is worth at least a thousand words, and will often add layers of credibility and emotion to your client's mitigation story. Lawyers across the country understand that in the right case, "moving pictures" are the most effective tool to help the judge connect with and understand your client. This session will showcase incredible sentencing videos prepared in 2010 by five different FPD offices in cases involving child porn, assault, guns, drugs, and illegal re-entry. We will see the films in their entirety and collectively choose a winner. In the process, we will explore various ways to incorporate powerful and persuasive images into our sentencing presentations.

Doug Passon, Assistant Federal Defender (D. Ariz.)

- (4) **Discussion of Defender Priorities for Sentencing Commission:** This session will cover new proposals, priorities, and survey.

Margy Meyers, Federal Defender (S.D. Tex)
Jon Sands, Federal Defender (D. Ariz.)

- (5) **"The Wire"**

Michelle Engert, Assistant Federal Defender (D. Md.)

- (6) **Derivative Citizenship:** Foreign-born citizens get deported and then charged with illegal re-entry. This session will cover how to raise, litigate, and try a derivative (or acquired) citizenship defense in illegal re-entry cases. We will discuss how to spot these issues, the law that applies, and practical considerations to get your client's case dismissed and, if necessary, how to win at trial.

Norma Aguilar, Assistant Federal Defender (S.D. Cal.)
Greg Murphy, Assistant Federal Defender (S.D. Cal.)

5:15 p.m. **Adjourn for the Day**

Friday, June 3

8:30 a.m. **Faces Behind the Cases – Who’s What in Court From the *Alford Plea to the Terry Stop, From Miranda to Anders – The Inside Story***: Have you ever been in trial and the judge says she’s going to give an *Allen* charge and, while you know enough to object, you have no idea what an *Allen* charge is? Have you been in court and the prosecutor requests a *Nebbia* hearing and you object, not having a clue what a *Nebbia* hearing is? You are not alone. This talk instructs about those parts of the criminal process which have a defendant’s name attached, but goes beyond the rule of law, looking to the background facts of the cases, the defendants, their lawyers, and what happened since the case

Heather Williams, First Assistant Federal Defender (D. Ariz.)

9:45 a.m. **Break**

10:00 a.m. **Ethics Issues Arising in Federal Criminal Practice (Plenary)**

Michael Sokolow, First Assistant Federal Defender (S.D. Tex.), Moderator

Kevin Butler, First Assistant Federal Defender (M.D. Ala.)

Doris Randle-Holt, First Assistant Federal Defender (W.D. Tenn.)

Selena Solis, Assistant Federal Defender (W.D. Tex.)

11:30 a.m. **Closing Remarks, Completion of Evaluations, and Adjournment**