

Below is the agenda for the

JUNE 2010 WINNING STRATEGIES SEMINAR

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

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

**Hyatt Regency
Chicago, Illinois
June 17-19, 2010**

FINAL AGENDA

Thursday, June 17, 2010

7:45-8:15 AM Registration & Continental Breakfast

8:15-8:30 AM WELCOMING REMARKS *PLAZA BALLROOM*

*Carol A. Brook, Executive Director, Federal Defender Program for the
Northern District of Illinois*

*Eric Vos, Attorney-Advisor, Office of Defender Services, Training Branch,
Washington, D.C.*

8:30-9:15 AM KEYNOTE ADDRESS *PLAZA BALLROOM*

*Jed Stone, Founding Partner, Jed Stone & Associates, Ltd.,
Chicago, IL*

Jed Stone is one of the nation's leading criminal defense lawyers. He is known for vigorous, thorough and intelligent representation on behalf of his clients. Listed in the Bar Register of Preeminent Lawyers, Jed has also been distinguished as one of Illinois' leading criminal defense lawyers.

9:15-10:30 AM **DECONSTRUCTION/DESTROYING CHILD PORN GUIDELINES
*PLAZA BALLROOM***

*Troy Stabenow, Assistant Federal Public Defender, Western District of
Missouri*

If you think you may possibly be defending a Child Pornography matter any time soon this is a *must see* presentation. Courts have now held that where a guideline was not developed based on "empirical data and national experience," it is not an abuse of discretion for a sentencing judge to conclude that the Guideline used "yields a sentence 'greater than

necessary' to achieve § 3553(a)'s purposes...' With this in mind, this session looks closely at how the Child Pornography Guidelines are based on neither empirical data nor national experience and thus helps to establish a great basis to effectively argue for variant sentences during Child Pornography sentencing presentations.

10:30-10:45 AM **BREAK - COFFEE & TEA OUTSIDE PLAZA BALLROOM AREA**

10:45-11:45 AM **BREAK-OUT SESSIONS**

1. **THE NUTS AND BOLTS OF FEDERAL FIREARMS LAW** *DUSABLE*

Richard O. Ely II, Assistant Federal Public Defender, Southern District of Texas

Rafael Andrade, Assistant Federal Public Defender, District of Puerto Rico

A look at common, and very uncommon, defenses when your client is charged with a firearm's offense. Common legal issues will be discussed with an additional look at defense possibilities from *a gun enthusiast's* intense point of view. Additionally, the presentation addresses the sentencing issues pursuant to 18 U.S.C. §922(g) (1) (the felon in possession statute) prosecutions and the corresponding sentencing guidelines under USSG §2K2.1.

2. **PLEAS & PROFFERS** *WRIGHT*

Callie Glanton-Steele, Assistant Federal Public Defender, Central District of California

Pleas and Proffers - no one likes them and yet, we all are forced to address these issues when trying to preserve our client's freedom. Most federal criminal matters end with pleas, and sometimes proffers, and there are many obstacles and intense dangers when navigating these waters. A well structured and highly regarded presentation which provides bedrock information concerning this critical phase of federal criminal defense.

3. **AGGRAVATED IDENTITY THEFT** *MCCORMICK*

J. Martin Richey, Supervisory Assistant Federal Public Defender, District of Massachusetts

Identity theft is the crime du jour and a client with one of these convictions does at least a **mandatory** two year sentence which must run consecutive to any underlying sentence. If your client has ten counts for Aggravated Identity Theft Count the Court has the discretion to sentence your client to a two-year mandatory, to run consecutive, for each and every count. This new law may take your otherwise pedestrian fraud clients and expose them to a string of mandatories with possible decades in federal prison. 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.

4. **CROSS-EXAMINATION** *PLAZA BALLROOM*

Cynthia Roseberry, Executive Director, Federal Defenders of the Middle District of Georgia, Inc.

Cross-examination is the cornerstone of any good attorney's arsenal. This highly regarded presentation explores cross-examination techniques, strategies, pitfalls and the need to fully investigate the background of the witness – including the details of government “deals” in order to neutralize important government witnesses.

5. **SENTENCING GUIDELINES 101** *SKYWAY 260*

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

While the Federal Sentencing Guidelines might not be here to stay they are still, undoubtedly, here. The law requires all sentencing judges to first properly calculate your client's Guideline Range and then to proceed to other considerations. Thus, we all need to remain experts in this vital area of Federal Criminal Defense. This well designed session covers the *basics* of calculating the federal sentencing guidelines. During the next break-out period, an additional presentation, Guidelines 202, will build on this session, addressing more complex sentencing issues.

6. **THE PANEL ATTORNEY'S BIG CONCERN: TACKLING THE VOUCHER AND GETTING PAID!** *FIELD*

Donna Shearer, CJA Supervising Attorney, District of Maryland

Unless you are taking appointments for your looks you may want to think about attending this comprehensive survey on those lovely vouchers and how to get paid for your efforts.

11:45-1:00 PM

LUNCH

1:00 - 2:00 PM

BOOKER, GALL, KIMBROUGH & SPEARS: A VIEW FROM THE DISTRICT COURT BENCH *PLAZA BALLROOM*

Judicial Panel:

Honorable David H. Coar, Senior Judge, Northern District Court of Illinois

Honorable Aida Delgado-Colon, District Court of Puerto Rico

Honorable Gary L. Lancaster, Chief Judge, Western District Court of Pennsylvania

Moderator: Carol A. Brook, Executive Director, Federal Defender Program for the Northern District of Illinois Program, Inc.

In 2005, *Booker* redefined the sentencing landscape – or did it? Somewhere between rarely and never do attorneys get to hear from sentencing judges as to what works, hurts and/or is effective when parties advocate for a more favorable sentence. This very special panel discussion features the most important point of view - that of the District Court Sentencing Judge. Our panel of judges comes from around the country and each judge will discuss his/her individual perspectives on the sentencing process post-*Booker, Gall, Kimbrough* and *Spears*.

2:00-3:00 PM

COMPUTER CRIMES *PLAZA BALLROOM*

Ken Hawk, Assistant Federal Public Defender, Eastern District of Texas

Computers are gifts which seem to just keep on giving when it comes to federal criminal prosecutions. With desktops, laptops, iPads, smart-phones, etc. our clients have a bevy of ways to get indicted. And it certainly is not slowing down. This well organized presentation focuses broadly on federal computer and internet crimes such as child pornography, hacking, identity theft, cyber stalking, unauthorized password use, and fraud.

3:00-3:15 PM **BREAK - COFFEE, TEA, SOFT DRINKS & LIGHT SNACKS OUTSIDE PLAZA BALLROOM AREA**

3:15-4:15 PM **BREAK OUTS (Repeat of Morning Sessions 1-6; Session 5 is Part II of a two-part presentation on applying the Federal Sentencing Guidelines)**

1. **THE NUTS AND BOLTS OF FEDERAL FIREARMS LAW** *DUSABLE*
2. **PLEAS & PROFFERS** *WRIGHT*
3. **AGGRAVATED IDENTITY THEFT** *MCCORMICK*
4. **CROSS-EXAMINATION** *PLAZA BALLROOM*
5. **SENTENCING GUIDELINES 202** (This Session builds on the earlier Sentencing Guidelines 101 presentation which took place during the first break-out sessions) *SKYWAY 260*
6. **THE PANEL ATTORNEY’S BIG CONCERN: TACKLING THE VOUCHER AND GETTING PAID!** *FIELD*

4:15-4:30 PM **BREAK**

4:30-5:30 PM **SUPREME COURT UPDATE** *PLAZA BALLROOM*

Paul Rashkind, Supervisory Federal Defender, Southern District of Florida

While we toil away in the trenches there is a small group of people, far far away, we always need to keep well focused on - THE SUPREME COURT!! This important hour provides a critical update concerning Supreme Court decisions, trends and the possible future - all of which will undoubtedly affect our federal criminal trial practice, sentencing advocacy and possible appellate matters.

Friday, June 18, 2010

8:00-8:30 AM **Continental Breakfast**

8:30-9:45 AM **EVIDENCE MEETS HOLLYWOOD: TRAINING THE LITIGATOR’S EAR TO MAKE, MEET, AND WIN TRIAL OBJECTIONS** *PLAZA BALLROOM*

Francisco Morales, Assistant Federal Public Defender, Western District of Texas

Making, meeting, and winning trial objections starts with listening to everything that occurs in the courtroom setting. This engaging, entertaining and well designed session employs a popping multimedia approach (television, movies, music, etc.) to train the litigator's ear in spotting, meeting, and winning evidentiary objections.

9:45-10:00 AM

BREAK - COFFEE & TEA OUTSIDE PLAZA BALLROOM AREA

10:00-11:00 AM

BREAK OUTS

1. **INTRODUCTION TO DEFENDING COMPUTER BASED CHILD PORNOGRAPHY CASES** *PLAZA BALLROOM*

Colin Fieman, Assistant Federal Public Defender, Western District of Washington

If you have ever defended a Child Porn case, or think one may be in your future, you know how quickly a even first time offender with no history of "hands on" offenses may be facing a shockingly long potential sentence. These cases are being filed all over the country and anyone who will be taking on federal criminal matters should consider this session. This survey discussion focuses on issues which often arise in connection with the defense of internet based sex crimes and other commonly charged sex offenses. The session will address the basics of computer forensics, detention issues, pretrial motions, potential defenses, and important sentencing and mitigation issues.

2. **DECONSTRUCTION/DESTROYING CAREER OFFENDER GUIDELINES** *FIELD*

Amy Baron-Evans, National Sentencing Resource Counsel

Jennifer Coffin, National Sentencing Resource Counsel

This new ground breaking survey of the Career Offender Guidelines blows apart the conventional wisdom that the Guidelines are based on sound research, statistics, intelligence or public policy. Courts have now held that where a guideline was not developed based on "empirical data and national experience," it is not an abuse of discretion for a sentencing judge to conclude that the Guideline used "yields a sentence 'greater than necessary'

to achieve § 3553(a)'s purposes..." With this in mind, this session explores the Career Offender Guidelines and demonstrates a void of empirical data and national experience, and thus shows us how to effectively advocate for variant sentences before the Court.

3. **ATTACKING WIRETAPS** *WRIGHT*

Liliana Coronado, Assistant Federal Public Defender, Central District of California

Callie Glanton-Steele, Assistant Federal Public Defender, Central District of California

Unlike other areas of criminal defense, too many of us just do not get enough experience when it comes to attacking wiretaps. There is nothing worse than your client's own admissions on tape. Thus, this is an important step-by-step discussion of how to attack this otherwise deadly wiretap evidence.

4. **DEFENDING AGAINST ARMED CAREER CRIMINAL & CAREER OFFENDER DESIGNATIONS** *MCCORMICK*

Rene Valladares, Supervisory Assistant Federal Public Defender, District of Nevada

Brenda Weksler, Assistant Federal Public Defender, District of Nevada

Few areas of defense are more frustrating than dealing with this draconian fifteen year mandatory. We know the dread of seeing our client's three relevant prior convictions, but after that dread clears, we can attack, defend and deflect the ACCA and Career Offender designations.

5. **MITIGATION EXPERTS/TOOLS/TRICKS/FIREWORKS**
SKYWAY 260

Paula Xinis, Assistant Federal Public Defender, District of Maryland

A lively romp through the fantastic possibilities of bringing your client's story to life during the sentencing phase. There are a variety of experts and tools you can use in screaming to the Court about mitigation. This well regarded presentation takes aim at

opening your mind up to re-thinking strategies which may result in the Court embracing your pitch for a variant/lesser sentence.

6. **NAVIGATING THE CLIENT INTERVIEW** *DUSABLE*

Jim Skuthan, Chief Assistant Federal Public Defender, Middle District of Florida

“What’s in a client interview?” Tons of land mines, obstacles, misunderstandings and hard brick walls - that’s what! An important look at how to avoid a blow-up or running down the wrong alley and into a wall while you mine for gold and meet with a key player in your case - **the client**.

11:00-11:15 AM **BREAK**

11:15-12:30 PM **INTRODUCTION TO MORTGAGE FRAUD TERMS, PLAYERS, DEFENSE STRATEGIES, PRETRIAL MOTIONS AND DEFENSES** *PLAZA BALLROOM*

Kevin Tate, Assistant Federal Public Defender, Western District of North Carolina

Angela Parrott, First Assistant Federal Public Defender, Western District of North Carolina

With the recent housing market implosion and all those “creative” mortgages bubbling to the top, this new area is ripe for prosecution. A new and important wave we all need to learn about. 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.

12:30-1:45 PM **LUNCH**

1:45-2:45 PM **BREAK OUTS (Repeat of Morning Sessions)**

1. **INTRODUCTION TO DEFENDING COMPUTER BASED CHILD PORNOGRAPHY CASES** *PLAZA BALLROOM*
2. **DECONSTRUCTION/DESTROYING CAREER OFFENDER GUIDELINES** *FIELD*
3. **ATTACKING WIRETAPS** *WRIGHT*

4. **DEFENDING AGAINST ARMED CAREER CRIMINAL DESIGNATION**
MCCORMICK
5. **MITIGATION TOOLS** *SKYWAY 260*
6. **NAVIGATING THE CLIENT INTERVIEW** *DUSABLE*

2:45-3:00 PM

BREAK - COFFEE, TEA, SOFT DRINKS & LIGHT SNACKS OUTSIDE PLAZA BALLROOM AREA

3:00- 4:15 PM

PUTTING THE SENTENCING NARRATIVE TOGETHER
PLAZA BALLROOM

Eric Vos, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.

We have all heard and/or learned about deconstruction, mitigation, the Guidelines being “demoted,” the use of videos, photographs and the infinite sentencing possibilities in a post-*Booker* world. Yet, how do we effectively combine experts, sentencing memos, guideline deconstruction and multi-media presentations in a post-*Booker* world to explore the limitless world of 18 U.S.C. § 3553 (a) sentencing variances? Hear how!

4:15- 4:30 PM

BREAK

4:30- 5:30 PM

RESOURCES FOR CJA PANEL ATTORNEYS: A PANEL DISCUSSION
PLAZA BALLROOM

Russ Aoki, Managing Partner, Aoki Sakamoto Grant LLP of Seattle, Washington

Kelly Scribner, Assistant National Litigation Support Administrator, Office of Defender Services, Training Branch, Oakland, CA

Lisa Porcari, Attorney Advisor, Office of Defender Services, Training Branch, Washington, D.C.

The CJA Guidelines specify how panel attorneys obtain funding for expert services and other resources to defend their clients in appointed criminal cases. This panel will help you make sense of it all. Learn some new ideas and tips on how to obtain technical and litigation-support funding and the best ways to use those funds. The panel will also explore potential roles of investigators, mitigation specialists and other experts, as

well as resource available through www.fd.org and the Office of Defender Services Training Branch. Questions welcomed.

Saturday, June 19, 2010

7:30-8:30 AM Continental Breakfast

**8:30-9:45 AM FACEBOOK, MYSPACE, THE JOYS/DANGERS OF INTERNET SOCIAL NETWORKS AND HOW TO USE THEM AS LITIGATION TOOLS
*PLAZA BALLROOM***

Kelly Scribner, Assistant National Litigation Support Administrator

Alex Roberts, National Litigation Support Paralegal

Mary Lou Newberger, Federal Public Defender, Southern District of West Virginia

It seems like everyone these days has a darn Facebook page! What is with all these youngsters posting pictures of themselves on MySpace. Who wants to see strangers engaging in illegal activity, taking drugs, bragging about their exploits and making darn fools of themselves? **You do!!!!** There is a bevy of great material out there to impeach snitches, lay witnesses, police officers and just about anyone who logged off the night before and showed up to testify against your client at trial the very next morning. An important look at the new frontier of Internet Social Networks and your next trial.

10:00- 11:00 AM BREAK-OUTS

1. **DEFENDING UNLAWFUL RE-ENTRY CASES FIELD**

Jodi Linker, Assistant Federal Public Defender, Northern District of California

Immigration defense is filled with subtleties, tricks and sinkholes. A great session which explores how to get and understand critical documents in the A-file; 4th Amendment issues and current circuit split in 1326 cases; how to raise collateral attacks to deportation or removal; how to parole in a material witness matter; derivative citizenship and other alienship defenses. Learn ways of snapping

back in what too many of us think as bad cases with no wiggle room.

2. **DEVELOPING THEORIES AND THEMES AND HOW TO USE THEM EFFECTIVELY IN OPENING STATEMENTS AND CLOSING ARGUMENTS** *SKYWAY 260*

Douglas C. Greene Esq., The Greene Law Firm, Arlington Texas

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.

3. **CRAWFORD: A SIXTH AMENDMENT REVOLUTION IN THE USE OF HEARSAY AT TRIAL** *MCCORMICK*

Donna Coltharp, Assistant Federal Public Defender, Western District of Texas

This session reviews the right to confront witnesses after *Crawford* and its progeny, and provides tips on using *Crawford* at trial and on appeal.

4. **DETERMINING “CRIMES OF VIOLENCE” & “VIOLENT FELONIES”**

PLAZA BALLROOM

Michael Meetze, Assistant Federal Public Defender, District of South Carolina

No single sentencing calculation inflicts more harm than a determination that a client’s previous convictions qualifies as a “crime of violence” or “violent felony.” Such a finding exposes the client to huge guideline offense-level enhancements and/or to increased statutory minimum sentences. But recent Supreme Court jurisprudence in *Johnson, James*, and *Begay* has significantly empowered defense counsel to combat these designations. This session will teach you how to determine whether a previous conviction actually qualifies as a crime of violence or violent felony and how to defend against any such erroneous characterization.

5. **WRITING: EFFECTIVE WAYS TO PUT IT ON PAPER** *DUSABLE*

Jonathan Libby, Deputy Federal Public Defender, Central District of California

A down and dirty look at ideas, tricks and subtle ways of making your written submissions more compelling and easier on the eyes.

11:00-11:15 AM **BREAK - COFFEE & TEA OUTSIDE PLAZA BALLROOM AREA**

11:15 - 12:30 PM **DISCOVERY ISSUES WITH A TWIST: RULE 16 AND MORE**

PLAZA BALLROOM

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

David Anthony, Assistant Federal Public Defender, Capital Habeas Unit, District of Nevada

A look at discovery issues from the combined perspectives of a trial attorney and a post-conviction attorney. 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.

12:30- 1:30 PM **PANEL DISCUSSION: ETHICAL ISSUES CONFRONTING CRIMINAL DEFENSE ATTORNEYS** **PLAZA BALLROOM**

The Honorable Carmen Garza, United States Magistrate Judge, District of New Mexico

Willie J. Epps, Jr., Shook, Hardy & Bacon, Kansas City, Missouri

Mark Cedrone, Cedrone & Pinto, Philadelphia, Pennsylvania

A discussion of some of the recurring ethical issues faced by criminal defense attorneys, and tips on how to handle these issues while continuing to provide a zealous defense.

1:30- 1:45 PM **CLOSING REMARKS**

Eric Vos, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.