

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

WINNING STRATEGIES SEMINAR

January 12-14, 2017

Hilton Long Beach

Long Beach, California

International Ballroom III, IV & V, 2nd Floor

Thursday, January 12, 2017

7:30 to 8:30 a.m. Registration - **Promenade 2nd Floor**

8:30 to 8:45 a.m. **INTRODUCTIONS & WELCOMING REMARKS**

International Ballroom III, IV & V, 2nd Floor

Hilary Potashner, Federal Public Defender, Central District of California, Los Angeles, California

Anthony Solis, Panel Representative, Central District of California, Los Angeles, California

Juval O. Scott, Attorney Advisor, Defender Services Office Training Division, Washington, DC

8:50 to 10:00 a.m. **THE MYTH OF COLORBLIND JUSTICE**

International Ballroom III, IV & V, 2nd Floor

L. Song Richardson, Professor of Law, University of California, Irvine School of Law, Irvine, California

This session will discuss how implicit (i.e. unconscious) biases can influence decision-making and judgments in ways that are consequential to criminal justice system outcomes. The talk will address how these biases are formed, how they affect behaviors and perceptions, and how to safeguard against their influence.

10:00 to 10:15 a.m. Break - **Promenade 2nd Floor**

10:15 to 11:15 a.m. Break-Out Sessions

1. **TRIAL STRATEGIES TO ATTACK CELL SITE LOCATION DATA (CSLI) - International Ballroom III, IV & V, 2nd Floor**

Jack Cunha, Esq., Cunha & Holcomb, Boston, Massachusetts

Law enforcement's aggressive tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police. Law enforcement claims that your client's location can be pinpointed with the smart phone in his pocket using historic cell site location information (CSLI). Some in law enforcement describe these devices as "the virtual biographer of our daily activities." Not so fast! Use of CSLI contains pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement, attorneys, and most importantly, juries. This presentation will get attorneys started on learning the lay of the land, help elucidate the issues, the technology and the problems with over-reliance on CSLI, and present strategies for attacking the reliability of law enforcement opinions as to your client's location based upon cell phone use.

2. **REMOVING THE STIGMA FROM MENTAL HEALTH ISSUES IN YOUR SENTENCING PRACTICE - Pacific I 2nd Floor**

Frank Draper, *Attorney Advisor, Defender Services Office Training Division*

Mental health issues are part of your client's "history and characteristics." Overall, 45% of federal prisoners have had a mental health problem (61.2% for women in federal prison). Often our clients have mental health issues reaching back to childhood. This session is designed to help participants learn how to present your client's mental health issues in a mitigating way by removing the stigma of mental illness, and suggesting an appropriate sentence that takes into account punishment, treatment, and recidivism.

3. **TRIAL STRATEGIES IN RICO CASES - Pacific II 2nd Floor**

Anthony Solis, Esq., *Anthony Solis Law, Los Angeles, California*
Craig Wilke, *Law Office of Craig Wilkie, Fullerton, California*

The two will discuss strategies for pre-trial litigation to prepare for trial as well as strategies for in-trial litigation in RICO cases. This will include a discussion of pre-trial motions, expert witnesses, jury instructions and motions in limine as well as a discussion of some caselaw relevant to RICO cases.

4. **BLIND MULE AND DURESS DEFENSES IN BORDER CROSSING CASES - Atlantic I & II 2nd Floor**

Walter Goncalves, *Assistant Federal Public Defender, District of Arizona, Tucson, Arizona*

This session is tailored towards practitioners in border districts, however, blind mule and duress defenses come up in other contexts as well. The session is aimed at providing useful tools for those defending clients

charged with any drug case involving duress or blind mule defenses (although certain aspects can also be applied to illegal entry cases). There will be a summary of critical case law, a discussion of jury instructions, and useful tips for pre-trial and trial strategy.

5. EXPERTS – HOW TO USE THEM AND KEEP THEM OUT

International Ballroom II, 2nd Floor

Mark Cedrone, Esq., *Cedrone & Mancano, LLC, Philadelphia, Pennsylvania*

This session will provide an overview of how to effectively use and challenge experts in federal court. The session will provide an overview of the Federal Rules of Evidence and Procedure concerning expert witnesses. This session will also talk about how to effectively challenge expert witnesses offered by the United States Attorney by using motions in limine and effective cross examination.

11:15 to 11:30 a.m. Break

**11:30 a.m.
to 12:30 p.m. Break-Out Sessions**

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3. **EXHIBIT TO EVIDENCE: HOW TO MASTER INTRODUCING EVIDENCE AT TRIAL - Pacific I 2nd Floor**

James Smith, Esq., *CPLS, P.A., Orlando, Florida*

This session will teach participants how to successfully introduce evidence into trial. An interactive presentation this session will teach participants how to prepare the foundations necessary for the introduction of evidence in federal trials.

4. **REPRESENTING AQUALUNG: THE PREPARATION AND TRIAL OF A FEDERAL CHILD PORNOGRAPHY OFFENSE**

International Ballroom III, IV & V, 2nd Floor

Gilbert Schaffnit, *Law Offices of Gilbert A. Schaffnit, Gainesville, Florida*

This session will suggest various pretrial measures for attorneys to take when faced with the prospect of going to trial. The presentation will also discuss evaluation of the strengths and weaknesses of the forensic evidence in the case and the approaches for handling the cross-examination of the Government's forensic expert.

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12:30 to 1:45 p.m. Lunch

1:45 to 2:45 p.m. CONDITIONALLY SPEAKING: CHALLENGING STANDARD AND SPECIAL CONDITIONS OF SUPERVISED RELEASE

International Ballroom III, IV & V, 2nd Floor

Johanna Christiansen, *Assistant Federal Defender, Peoria, Illinois*

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.

2:45 to 3:00 p.m. Break - **Promenade 2nd Floor**

3:00 to 4:00 p.m. Break-Out Sessions

1. **NOT YOUR FATHER'S OPENING STATEMENT**

International Ballroom II, 2nd Floor

Eric Vos, Federal Public Defender, District of Puerto Rico, San Juan, Puerto Rico

Opening statements are arguably the most important part of your trial. They set the stage, introduce the players, tell the story, legitimize the attorneys and emotionally prejudice the judge and jury. This session invites trial attorneys to think about starting with an explosion which will be heard throughout the trial and influence the jury's view each and every time a witness or a piece of evidence is introduced. Openings are not your chance lull folks to sleep by thanking jurors for performing their duty, saying good morning, asking them to pay close attention, explaining reasonable doubt or asking them to keep an open mind. Instead, it is your chance to fascinate them, prejudice them and get them to doubt the government's tidal wave of witnesses and evidence during every moment of the trial.

2. **BLIND MULE AND DURESS DEFENSES IN BORDER CROSSING CASES - Atlantic I & II 2nd Floor**

Walter Goncalves, Assistant Federal Public Defender, District of Arizona, Tucson, Arizona

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3. **GUN CASES AND THE ART OF WAR - Pacific II 2nd Floor**

Dumaka Shabazz, Assistant Federal Defender, Middle District of Tennessee, Nashville, Tennessee

Across the nation, we are seeing a rise in firearms prosecutions. This session will explore various strategies and practical tips for defending a firearms case. We will discuss issues ranging from initial investigations, knowledge of firearms, pretrial strategies, negotiations, and trial defenses. For

illustrative purposes, we will analyze different fact patterns and discuss how to proceed at each stage of representation.

4. **A SURVIVAL GUIDE: NOVEL TIPS FOR NAVIGATING THE WILDS OF WHITE COLLAR CRIME - Pacific I 2nd Floor**

Jay McEntire, *Senior Litigator, District of Eastern Washington, Spokane, Washington*

Effectively defending white collar cases requires thinking outside the box. Always. The goal for this talk is simple: to provide folks with succinct, easy-to-implement tips for working a white collar case from start to finish.

5. **TRIAL STRATEGIES TO ATTACK CELL SITE LOCATION DATA (CSLI) - International Ballroom III, IV & V, 2nd Floor**

Jack Cunha, Esq., *Cunha & Holcomb, Boston, Massachusetts*

Law enforcement's aggressive tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police. Law enforcement claims that your client's location can be pinpointed with the smart phone in his pocket using historic cell site location information (CSLI). Some in law enforcement describe these devices as "the virtual biographer of our daily activities." Not so fast! Use of CSLI contains pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement, attorneys, and most importantly, juries. This presentation will get attorneys started on learning the lay of the land, help elucidate the issues, the technology and the problems with over-reliance on CSLI, and present strategies for attacking the reliability of law enforcement opinions as to your client's location based upon cell phone use.

4:00 to 4:15 p.m. **Break**

4:15 to 5:30 p.m. **DISMANTLING THE CONSPIRACY CHARGE: PRETRIAL THROUGH TRIAL - International Ballroom III, IV & V, 2nd Floor**

Marilyn Bednarski, *Partner, Kaye, McLane, Bednarski & Litt, LLP, Pasadena, California*

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.

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

Friday, January 13, 2017

7:30 to 8:30 a.m. Registration - **Promenade 2nd Floor**

8:30 to 9:30 a.m. SUPREME COURT UPDATE

International Ballroom III, IV & V, 2nd Floor

Paul Rashkind, *Supervisory 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.

9:35 to 10:35 a.m. ATTORNEY WELLNESS: DEFENSES TO COMPASSION FATIGUE AND BURNOUT - **International Ballroom III, IV & V, 2nd Floor**

Ron Tyler, *Associate Professor of Law and Director, Criminal Defense Clinic, Stanford University School of Law, Palo Alto, California*

Lawyers are at significantly higher risk for substance abuse and mental health issues, as demonstrated by numerous studies, including recent findings by the American Bar Association and the Hazelden Betty Ford Foundation. The negative impacts of lawyering are particularly high for those in criminal defense and other high-stress high-touch practice areas. This plenary session will review risk factors and will engage participants in the exploration of tools and strategies to address those risks and increase their resiliency and long-term wellbeing to benefit themselves, their families and their clients.

10:35 to 10:50 a.m. Break- **Promenade 2nd Floor**

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

1. A BUSY LAWYER'S GUIDE TO HEARSAY AND CHARACTER EVIDENCE - **Atlantic I & II 2nd Floor**

Rene Valladares, *Federal Public Defender, District of Nevada, Las Vegas, Nevada*

Hearsay and character evidence are amongst the most important concepts in evidence. Unfortunately, the state of the law for both concepts can seem muddled and disjointed. If you find yourself wondering whether a statement is hearsay or not, or if you just want to brush up on your evidence, this lecture is for you. You will walk out of this presentation with an approach to hearsay and character evidence that is simple, practical and that you will be able to apply at your next trial.

2. **PRACTICAL TIPS IF YOUR CLIENT FACES INCARCERATION IN A FEDERAL PRISON - International Ballroom II, 2nd Floor**
David Merchant, Assistant Federal Defender, Federal Defenders of Montana, Billings, Montana

This session will provide practical tips if your client faces federal imprisonment. It will include factors to consider for your client to obtain a federal sentence at the least restrictive possible facility and receive the earliest feasible release date.

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4. **ALL I DO IS WIN: NEW IMMIGRATION GUIDELINES, NEW CHALLENGES - International Ballroom III, IV & V, 2nd Floor**
Laura Mate, Sentencing Resource Counsel, Des Moines, Iowa

This session will address the new and sweeping changes to the immigration guidelines effective November 1, 2016. We will use scenarios to help us identify the challenges in applying the new guidelines to help ensure the lowest possible sentence for our clients.

5. **UNDERSTANDING URBAN TRAUMA - Pacific II 2nd Floor**
Rachelle Veasley, LCSW, Director of Client & Mitigation Services, Southern District of New York, New York, New York

What is urban trauma? How can we identify if our clients suffer from it? How does this impact their behavior in the instant offense? How can understanding urban trauma be mitigating and integrated as part of an effective defense? This session will provide a clearer understanding of what constitutes urban trauma and the impact of such trauma on our client's' lives. Various components of urban trauma will be considered, including the impact of community violence, lack of access to quality systems, transgenerational patterns of family trauma and dysfunction, limited housing and the collateral consequences of overcrowding, and the impact of extreme poverty. Research will be presented which highlights the physiological, developmental and psychological impairments that result from urban trauma. The use of mental health experts to identify and

evaluate urban trauma, and the usefulness of evaluations for mitigation and defense, will also be discussed.

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

1:00 to 2:00 p.m. **WRITING, WITH STYLE - International Ballroom III, IV & V, 2nd Floor**
Jay McEntire, *Senior Litigator, Eastern District of Washington, Spokane, Washington*

Good lawyering depends on good communicating, and good communicating requires clear writing. The goal for this talk: to provide succinct, easy-to-implement writing tips to generate clear writing, which will enable better communicating, which result in better lawyering - plain and simple.

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

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

1. CURRENT ILLEGAL REENTRY DEFENSE STRATEGIES: THAWING THE ICE-STORM - International Ballroom II, 2nd Floor

Raul Ayala, *Visiting Attorney Advisor, Defender Services Office Training Division, Assistant Federal Defender, Central District of California, Los Angeles, California*

The prosecution of the reentry of deported aliens (Title 8 U.S.C. Section 1326) has been second only to drug offenses in all federal criminal charges for the past several years. In Fiscal Year 2014, for example, the United States Sentencing Commission reported that 29.3% of all federal criminal cases were immigration-related, or more than 22,000 cases. Section 1326(d) limits the collateral attack on underlying deportation orders unless the defendant can show that all administrative remedies have been exhausted, the deportation proceedings deprived the alien the opportunity for judicial review, and that the entry of the order was fundamentally unfair. This session will review the elements of the offense, outline diligent trial preparation and discovery strategies, and examine current examples of effective 1326(d) challenges to prior deportation orders that have led to dismissal of charges or other favorable outcomes for the non-citizen defendant.

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3. **LEGAL ISSUES AT TRIAL: JURY INSTRUCTIONS, MOTIONS IN LIMINE, AND RULE 29 - *Pacific II 2nd Floor***

Craig Albee, *Federal Defender, Eastern and Western Districts of Wisconsin, Milwaukee, Wisconsin*

Defense lawyers who put off jury instructions and motions in limine until the eve of trial do so at their own peril. From the outset of the case, counsel should begin developing instructions and motions in limine that promote the theory of defense. This session addresses creative approaches to crafting jury instructions and motions in limine that will help you succeed at trial as well as provide ways to use your theory of the case to mount a successful Rule 29 challenge.

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

4:30 to 5:30 p.m. THERE'S NO SUCH THING AS A CRIME OF VIOLENCE

International Ballroom III, IV & V, 2nd Floor

Brianna Mircheff, Assistant Federal Public Defender, Central District of California, Los Angeles

The *Johnson* earthquake hit us in 2014, and the aftershocks continue to ripple through the circuits to this day. In this session, participants will learn how to quickly spot the fault lines in any state or federal statute in order to effectively avoid crime-of-violence hammers.

5:30 p.m. Adjournment

Saturday, January 14, 2017

7:30 to 8:30 a.m. Registration - Promenade 2nd Floor

8:30 to 9:30 a.m. RESOURCES FOR CJA PANEL ATTORNEYS

International Ballroom III, IV & V, 2nd Floor

Jack H. Cunha, Esq., Cunha & Holcomb, P.C. Boston, Massachusetts
Sharon Samek, Attorney Advisor, Defender Services Office Legal & Policy Division, 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 Defender Services Office Training Division. Questions welcomed.

9:30 to 9:40 a.m. Break - Promenade 2nd Floor

9:40 to 10:40 a.m. "LITIGATING" INSIDE AND OUTSIDE OF THE COURTROOM: LESSONS FROM BUCK V. DAVIS

International Ballroom III, IV & V, 2nd Floor

Christina Swarns, Litigation Director, NAACP Legal Defense Fund, New York, New York

Effective advocacy often requires more than just writing an excellent brief, or presenting a powerful argument. The decision makers in our cases are influenced by not only what happens inside the courtroom, but also what happens in the community, the media, the legislature and at the dinner table. Christina Swarns will explain how the defense team for Duane Buck, a death sentenced prisoner in Texas, used all of these advocacy vehicles – and more – to effectively and strategically advantage their client.

10:45 to 11:45 a.m. ETHICS WHEN GATHERING SOCIAL MEDIA EVIDENCE

International Ballroom III, IV & V, 2nd Floor

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

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.

11:45 a.m. to noon Closing Remarks