

**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

Thursday, January 12, 2017

7:30 to 8:30 a.m. Registration

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

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

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

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

1. TBD

2. IDENTIFYING AND ADDRESSING CLIENT MENTAL HEALTH ISSUES

Frank Draper, Attorney Advisor, Defender Services Office Training Division

Many, if not most, of our clients have mental health issues reaching back to childhood. This session is designed to help participants learn how to recognize the signs and symptoms of mental health issues, what role they

play in the offense, why these issues warrant a lower sentence, and how to present this information to the judge.

3. Defending a RICO Case

Anthony Solis,
Craig Wilkie,

4. DRUG BUSTS AT THE BORDER

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

5. TBD

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

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

1. DEFENDING A RICO CASE

Anthony Solis,
Craig Wilkie,

2. IDENTIFYING AND ADDRESSING CLIENT MENTAL HEALTH ISSUES

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3. TBD

4. TBD

5. TBD

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

1:45 to 2:45 p.m. TBD

2:45 to 3:00 p.m. Break

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

1. NOT YOUR FATHER'S OPENING STATEMENT

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. DRUG BUSTS AT THE BORDER

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

3. TBD

4. A SURVIVAL GUIDE: NOVEL TIPS FOR NAVIGATING THE WILDS OF WHITE COLLAR CRIME

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. TBD

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

4:15 to 5:30 p.m. CONSPIRACY CASES – HOW TO HANDLE AND WIN THEM

This panel discussion will address the big issues that arise when a client is charged with being part of a conspiracy. The panelists will discuss pretrial challenges, trial tactics, and sentencing issues.

5:30 p.m. Adjournment

Friday, January 13, 2017

7:30 to 8:30 a.m. Registration

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

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. TBD

10:35 to 10:50 a.m. Break

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

1. A BUSY LAWYER'S GUIDE TO HEARSAY AND CHARACTER EVIDENCE

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

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.

3. TBD

4. TBD

5. TBD

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

1:00 to 2:00 p.m. **WRITING, WITH STYLE**

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

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.

2. A BUSY LAWYER'S GUIDE TO HEARSAY AND CHARACTER EVIDENCE

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3. LEGAL ISSUES AT TRIAL: JURY INSTRUCTIONS, MOTIONS IN LIMINE, AND RULE 29

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.

4. TBD

5. TBD

6. TBD

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

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

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

4:30 to 5:30 p.m. ATTORNEY WELLNESS: DEFENSES TO COMPASSION FATIGUE AND BURNOUT

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.

5:30 p.m. Adjournment

Saturday, January 14, 2017

7:30 to 8:30 a.m. Registration

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

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

**9:40 to
10:40 a.m. TBD**

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