

Below is the agenda for the

FEBRUARY 2009 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.

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.

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

**Mills House Hotel
Charleston, South Carolina
February 5-7, 2009**

Final Agenda

Thursday, February 5, 2009

- 7:45-8:15 AM **Registration & Continental Breakfast**
Queen Street Gallery
- 8:15-8:30 AM **Welcoming Remarks**
Signers' Ballroom
Parks Small, Federal Public Defender, District of South Carolina
Douglas C. Greene, Attorney-Advisor, Office of Defender Services
Training Branch, Washington, D.C.
- 8:30-9:00 AM **Keynote Address**
Signers' Ballroom
Julie Stewart, President
Families Against Mandatory Minimums, Washington, D.C.
- 9:00-10:30 AM **Computer Crimes**
Signers' Ballroom
Pat Black, Federal Public Defender, Eastern District of Texas
Ken Hawk, AFPD, Eastern District of Texas
This presentation will focus broadly on federal computer and internet crimes, including child pornography, hacking, identity theft, cyberstalking, unauthorized password use, and fraud. The session will provide tips on how to investigate an alleged computer crime, and will include a discussion of the pertinent statutory, constitutional, search and seizure, pretrial detention, and sentencing issues.
- 10:30-10:45 AM **Break**

1. [**The Nuts and Bolts of Federal Firearms Law**](#)
Lynch Room
Leigh Skipper, Chief Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania
This presentation will cover the most common legal issues arising during both the guilt-innocence phase and the sentencing phase of federal firearms cases, with particular emphasis on prosecutions under 18 U.S.C. §922(g) (1) (the felon in possession statute) and the corresponding sentencing guideline, USSG §2K2.1. Common trial defenses and sentencing enhancements (including the statutory enhancement for armed career criminals) will be reviewed.

2. [**The Lazy Susan: Federal Rules of Evidence 404 and 405**](#)
Cotton Exchange Room
Omodare Jupiter, AFPD, Southern District of Mississippi
This session reviews the basics of Rule 404(b), but wait: what could be more fun than turning the tables on the prosecutor? While we are naturally more comfortable playing defense in trial, this presentation also explores the benefits of going on offense by using rules 404 and 405 to introduce character evidence of an alleged victim or a government witness.

3. [**Computer Forensics**](#)
Heyward Room
Rick Lavaty, Computer Services Administrator, District of Arizona
Eddy Archibeque, Computer Services Administrator, District of New Mexico
All is not as it seems when it comes to computers. Is the picture on the screen really there? And how and when did it get there? Does it belong to your client? These questions may be key to your defense. This session addresses those and similar issues that arise in cases involving computers.

4. [**Aggravated Identity Theft**](#)
Rutledge Room
Martin Richey, Third Level Supervisory AFPD, District of Massachusetts
Francisco Morales, AFPD, Western District of Texas
Identity theft is the crime du jour. 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.

5. [Attacking Wiretaps](#)
Rice Planters Room
Liliana Coronado, AFPD, Central District of California
Callie Glanton Steele, AFPD, Central District of California
A step-by-step discussion of how to attack wiretap evidence.

6. **Sentencing Guidelines 101**
Indigo Room
*Stephen Marley, Attorney-Advisor, Office of Defender Services,
Training Branch, Washington, D.C.*
*Alan Dorhoffer, United States Sentencing Commission,
Washington, D.C.*
This session will cover the basics of applying the federal sentencing guidelines. It will be of particular use to those practitioners who are new to federal criminal practice.

7. [Gangs](#)
Middleton Room
*Martin Sabelli, Esq., Law Offices of Martin Sabelli, San
Francisco, CA*
*Kate Corrigan, Esq., Corrigan Law Corporation, APLC, Newport
Beach, CA*
In today's times, indictments alleging conspiracy and RICO (and conspiracy to commit RICO) have become the darlings of the United States Attorney's Office. Massive "takedowns" of local street gangs (and some not so local) are occurring across the country and will likely visit most panel lawyers. This panel will focus on issues that arise in these cases and suggest approaches to defending the alleged gang member client in conspiracy and RICO cases. A gang is a gang; but is a gang a RICO enterprise? Maybe not.

11:45-1:00 PM

Lunch

1:00- 2:00 PM

Booker, Gall and Kimbrough: A View from the District Court Bench
Signers' Ballroom

Moderator: Parks Small, Federal Public Defender, District of South Carolina,

Judges: Honorable Cameron McGowan Currie, U.S. District Judge, District of South Carolina
Honorable Alexander Williams, U.S. District Judge, District of Maryland
Honorable Ruben Castillo, U.S. District Judge, Northern District of Illinois

In 2005, *Booker* redefined the sentencing landscape – or did it? This panel discussion features district judges from around the country who will discuss their perspectives on sentencing post-*Booker, Gall* and *Kimbrough* so that counsel may learn ways to improve sentencing advocacy.

2:00 - 3:00 PM

Conceptualizing Mitigation

Signers' Ballroom

Robert Dunham, AFD, Eastern District of Pennsylvania

Stuart Lev, AFD, Eastern District of Pennsylvania

This session will provide an integrated framework for understanding what mitigating evidence is, and how to investigate and present it. It will start with a summary of recent Supreme Court case law reaffirming the core principle that defendants have a constitutionally protected right to present mitigating evidence, and that state statutes, instructions, and evidentiary rules must provide juries a meaningful opportunity to give effect to what makes the evidence mitigating. The session will teach new lawyers how to "think large" about mitigating circumstances: describing the multiple dimensions and interrelatedness of what may sometimes appear to be different kinds of mitigating evidence; explaining how to investigate and develop testimony from family and lay witnesses, institutional records, case-related institutional witnesses, and defense social history and mental health experts to most persuasively present interrelated mitigation themes. It will use age, poverty, and antisocial personality disorder as stepping-off points to illustrate the personal, social, psychological, and neuropsychological dimensions of mitigating evidence and explore the differences between the type of superficial investigation and presentation of these factors that are frequently seen at trial and the type of thorough investigation and presentation the Constitution requires and our clients deserve.

3:00-3:15 PM

Break

3:15- 4:15 PM

BREAK OUTS (Repeat of Morning Sessions 1-7; Session 6 is Part II of a two-part presentation on applying the Federal Sentencing Guidelines)

1. **Firearms - Lynch Room**
2. **The Lazy Susan: Federal Rules of Evidence 404 and 405 - Cotton Exchange Room**
3. **Computer Forensics - Heyward Room**
4. **Identity Theft - Rutledge Room**
5. **Attacking Wiretaps - Rice Planters Room**
6. **Sentencing Guidelines 202 - Indigo Room**

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

*Alan Dorhoffer, Deputy Director, Office of Education and
Sentencing, United States Sentencing Commission,
Washington, D.C.*

This session will cover more complicated sentencing guideline application issues, focusing particularly on how prior offenses (especially crimes of violence and controlled substance offenses) may trigger the Career Offender, Armed Career Criminal, and other recidivist enhancements.

7. **Gangs - Middleton Room**

4:25- 5:40 PM

Supreme Court Update

Signers' Ballroom

Paul Rashkind, AFD, Southern District of Florida

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

6:00- 7:30 PM

Reception

Hosted by the Law Offices of David and Frank McCann

66 Hasell Street, Charleston, South Carolina

Friday, February 6, 2009

8:00-8:30 AM

**Continental Breakfast
Queen Street Gallery**

8:30 - 9:45 AM

**Resources for CJA Panel Attorneys: A Panel Discussion
Signers' Ballroom**

*Sean Broderick, National Litigation Support Administrator,
Office of Defender Services Training Branch, Oakland, CA
Randall Schnack, CJA Supervising Attorney, Central District of California
Jeffrey Lindy, Esq., CJA Panel Representative, Eastern District of
Pennsylvania*

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 includes a seasoned CJA practitioner, a Supervising CJA Attorney, and the National Litigation Support Administrator who will discuss how to obtain funding when you need technical and other litigation support and the best ways to make use of the funds. In addition, they will address the potential role of investigators and mitigation specialists. There will be an opportunity to ask questions regarding these issues.

9:50-10:50 AM

BREAK-OUTS

1. **Child Porn: Computer Based Sex Crimes - Defending
Enticement and Child Pornography Cases
Lynch Room**

Peter Fleury, AFD, Northern District of Texas

This session will focus on some of the issues that often arise in connection with the defense of internet based sex crimes. Among other topics, this session will cover the most commonly charged offenses, detention issues, pretrial motions, trial defenses, and sentencing issues.

2. **Mental Health
Cotton Exchange Room**

*Rikki Lynn Halavonich, M.D., Lowcountry Forensic Psychiatry
Charleston, SC*

Does your client have mental health issues that impact his/her ability to assist the defense? Does the mental health issue provide a defense or significant mitigation evidence? Learn about the signs that could indicate the need for further evaluation and what to do with the information once you have it.

3. [Conspiracy, CCE, RICO and Co-Defendant Issues](#)
Rice Planters Room
*Richard G. Novak, Esq., Law Offices of Richard G. Novak,
Pasadena, CA*
For a number of political and budgetary reasons, federal law enforcement agencies and prosecutors are increasingly devoting their attention and resources to the development of mega-cases filed against members of street gangs under federal racketeering statutes. This session will address a number of strategic challenges and opportunities that recur in these cases. Discovery, severance (“grouping”), cooperating informants, co-conspirator statements, 404(b) issues, and jury instruction issues will all be addressed.

4. [Cross-Examination](#)
Heyward Room
*Cynthia Roseberry, Assistant Clinical Professor, DePaul
University, College of Law, Chicago, IL*
This presentation will provide a discussion of cross-examination techniques, and the need to fully investigate the background of the witness – including the details of his/her deal with the government.

5. [Plea Negotiations and Proffers](#)
Indigo Room
*Callie Glanton-Steele, AFPD, Central District of California
Michael Meetze, AFPD, District of South Carolina*
A discussion of how to negotiate a plea, with a particular focus on providing charge alternatives that limit a client’s exposure, and avoiding pitfalls as you guide your client through proffers to the government.

6. [Evidence Meets Hollywood: Training the Litigator’s Ear to Make, Meet, and Win Trial Objections](#)
Middleton Room
Francisco Morales, AFPD, Western District of Texas
Making, meeting, and winning trial objections starts with listening to everything that occurs in the courtroom setting. This session uses a multimedia approach (television, movies, music, etc.) to train the litigator's ear in spotting, meeting, and winning evidentiary objections.

7. **Discovery Software**

Rutledge Room

*Sean Broderick, National Litigation Support Administrator,
Office of Defender Services Training Branch, Oakland, CA*

This session will provide strategies to handle two file formats that the government is using for electronic discovery: Tiff files that are provided with the run-time IPRO viewer, and PDF files which may or may not have searchable text. During this presentation, we will provide an overview of how CJA Panel attorneys can use discovery provided in IPRO by the government to search for information, tag documents and add annotations - all using the free version of the program. In addition we will discuss Adobe Acrobat Professional (not the free Adobe Reader), and how you can use it for reviewing, editing, and annotating discovery that has come in PDF or Tiff format. Though not a database, it provides excellent tools for attorneys wanting to manage their electronic discovery.

10:50-11:00 AM **Break**

11:00-12:30 PM **Sentencing Update Panel Discussion**

Signers' Ballroom

*Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA
Paul Hofer, Esq., Washington, D.C.*

The panelists will discuss the impact of the Supreme Court's decisions in *Rita, Gall* and *Kimbrough*; the changes to the Sentencing Guidelines effective November 1, 2008; and the potential areas for Guideline amendments in 2009.

12:30-2:00 PM **Lunch**

2:00-3:00 PM **BREAK-OUTS (Repeat of Morning Sessions)**

1. **Defending Enticement and Child Pornography Cases** - **Lynch Room**
2. **Mental Health** - **Cotton Exchange Room**
3. **Conspiracy, CCE, RICO and Co-Defendant Issues** - **Rice Planters Room**
4. **Cross-Examination** - **Heyward Room**
5. **Plea Negotiations and Proffers** - **Indigo Room**
6. **Evidence Meets Hollywood: Training the Litigator's Ear to Make, Meet, and Win Trial Objections** - **Middleton Room**
7. **Discovery Software** - **Rutledge Room**

3:05 - 4:05 PM

[Attacking the Government's "Junk Science"](#)

Signers' Ballroom

Robert Epstein, AFD, Eastern District of Pennsylvania

A discussion of how to challenge the reliability of the government's "junk science" experts with a particular focus on firearms and tool mark examiners, fingerprint experts and forensic document examiners.

4:05 - 4:20 PM

Break

4:20 - 5:35 PM

[Discovery Issues with a Twist: Rule 16 and More](#)

Signers' Ballroom

Michael Kennedy, First Assistant, AFD, District of Nevada

David Anthony, AFD, 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.

Saturday, February 7, 2009

7:30-8:00 AM **Continental Breakfast**
Queen Street Gallery

8:00- 9:30 AM **Introduction to Mortgage Fraud Terms, Players, Defense Strategies,**
Pretrial Motions and Defenses
Signers' Ballroom

Kevin Tate, AFD, Western District of North Carolina

Angela Parrott, AFD, Western District of North Carolina

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.

9:35-10:35 AM **BREAK-OUTS**

1. **Defending Unlawful Re-Entry Cases**

Cotton Exchange Room

Dennis Candeleria, AFD, District of New Mexico

This session discusses 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.

2. **Anders Briefs & Other Issues for Appeal**

Rice Planters Room

Alan DuBois, AFD, Western District of North Carolina

Brett G. Sweitzer, AFD, Appeals Unit, Federal Community

Defender Office for the Eastern District of Pennsylvania

Don't know where and how to get started with an appeal? This presentation provides creative approaches to getting started and putting together an effective written product.

3. **Using PowerPoint to Create Effective and Dynamic Closing**
Arguments

Lynch Room

Thomas C. Plunkett, Esq., St. Paul, Minnesota

Technology can be a powerful tool in the courtroom. Learn how to use PowerPoint to make your closing arguments come alive for the jury.

4. [Crawford: A Sixth Amendment Revolution in the Use of Hearsay at Trial](#)
Heyward Room
Donna Coltharp, AFPD, 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.

5. **Retroactivity of the Amended Crack Cocaine Guideline**
Rutledge Room
Martin Richey, AFDP, District Of Massachusetts
Molly Roth, AFPD, Western District of Texas
This session will focus on the effective representation of clients who may benefit from the retroactive application of the new (lower) crack cocaine sentencing guideline.

6. [Defending Against Armed Career Criminal Designation](#)
Middleton Room
Brenda Weksler, AFPD, District of Nevada
Learn how to attack, defend and deflect the ACCA designation.

7. [The Impact of the Victim Witness Protection Act on the Federal Sentencing Process](#)
Indigo Room
Paul Kish, Esq., Kish and Lietz, P.C., Atlanta, GA
There have been a variety of amendments to the federal Victim Witness Protection Act, the most recent occurring in 2005. These amendments have greatly increased victim's rights in the federal sentencing process. For too long, defense attorneys only thought about how to work with victims in death penalty cases or prosecutions involving violent acts. However, the recent VWPA amendments mean that more and more victims will show up in court to talk during the sentencing of our clients in cases where no violence is involved. More and more prosecutions for economic crimes are defended by appointed counsel, with the defendant having long lost his or her assets prior to indictment. Appointed counsel need to: 1) be aware of these changes to the VWPA which give greater voice to victims in such cases, 2) must recognize how a "live" victim in court at the sentencing hearing can completely change the dynamic of the sentencing process, and 3) should be prepared to work on some of the strategies learned in the death penalty context for trying to communicate with and at least neutralize the impact of victims at the sentencing hearing.

10:35-10:45 AM

Break

10:45- 11:45 AM

Developing Theories and Themes and How to Use Them Effectively in Opening Statements and Closing Arguments

Signers' Ballroom

*Douglas C. Greene, Attorney-Advisor, Office of Defender Services
Training Branch, Washington, D.C.*

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.

11:45-1:15 PM

Panel Discussion: Ethical Issues Confronting Criminal Defense Attorneys

Signers' Ballroom

Moderator: Dan Stiller, FD, Eastern and Western Districts of Wisconsin

Panelists: David McCann, Esq., CJA Panel Representative, District of South Carolina

Raquel Wilson, AFD, Western District of North Carolina

Paul Kish, Esq., Kish and Lietz, P.C., Atlanta, GA

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.

1:15-1:30 PM

CLOSING REMARKS

Signers' Ballroom

*Douglas C. Greene, Attorney-Advisor, Office of Defender Services
Training Branch, Washington, D.C.*