

Below is the agenda for the

MAY 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.

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

**Hilton Hotel
Portland, Oregon
May 7-9, 2009**

AGENDA

Thursday, May 7, 2009

- 7:45-8:15 AM Registration & Continental Breakfast**
Broadway Foyer
- 8:15-8:30 AM **Welcoming Remarks**
Broadway - Plaza Level
Tom Coan, CJA Panel Rep., District of Oregon
*Douglas C. Greene, Attorney-Advisor, Office of Defender Services
Training Branch, Washington, D.C.*
- 8:30-9:00 AM **Keynote Address**
Broadway - Plaza Level
Steve Wax, Federal Public Defender, District of Oregon
- 9:00-10:30 AM **Computer Crimes**
Broadway - Plaza Level
Ken Hawk, AFD, 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**
- 10:45-11:45 AM **BREAK OUTS**

1. **The Nuts and Bolts of Federal Firearms Law**
Forum Ste-3rd Floor
Leigh Skipper, Federal Public Defender, 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. **Computer Forensics**
Council Ste-3rd Floor
Tami Loehrs, Loehrs & Associates; Forensic Expert, Tucson, Arizona

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.

3. **Aggravated Identity Theft**
Broadway - Plaza level
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.

4. [Attacking Wiretaps](#)
Director's Ste-3rd Floor
Liliana Coronado, AAFP, Central District of California

A step-by-step discussion of how to attack wiretap evidence.

5. **Sentencing Guidelines 101**
Alexander Room-23rd Floor
Stephen Marley, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.
Lori Green, Attorney-Advisor, Office of Defender Services, Training Branch, 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.

6. [RICO & Gangs - A Defense Perspective](#)
Studio Ste-3rd Floor
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, Kimbrough & Spears: A View from the District Court Bench

Broadway-Plaza Level

Moderator: Steve Wax, Federal Public Defender-District of Oregon

Panelists:

Honorable Ivan Lemelle, Judge, U.S. District Court, Eastern District of Louisiana

Honorable Ann Aiken, Chief Judge, U.S. District Court, District Of Oregon

Honorable Charles R. Breyer, Judge, U.S. District Court, Northern District of California

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, Kimbrough* and *Spears*, so that counsel may learn ways to improve sentencing advocacy.

2:00-3:00 PM

Putting the Guidelines in a Half-Nelson: Fighting For and Winning Lower Sentences

Broadway-Plaza Level

Alison Siegler, Assistant Clinical Professor of Law, University of Chicago Law School, Chicago, IL

This session will focus on using 18 U.S.C. § 3553(a) and recent sentencing cases to advocate for and achieve below-guidelines sentences for our clients. It will include a detailed, step-by-step explanation of how to make persuasive § 3553(a) sentencing arguments for many different types of clients, including clients who are mentally ill or drug addicted; clients with families; and clients who have cooperated but are not receiving a § 5K1.1 reduction. The session will also provide citations to cases in which circuit courts have affirmed below-guidelines sentences based on overstatement of criminal history, mitigating circumstances of the offense, and other grounds, and will talk about how to use those cases to win lower sentences.

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. [The Nuts and Bolts of Federal Firearms Law](#)
Forum Ste-3rd Floor
2. [Computer Forensics](#)
Council Ste-3rd Floor
3. [Aggravated Identity Theft](#)
Broadway-Plaza Level
4. [Attacking Wiretaps](#)
Directors Ste-3rd Floor
5. **Sentencing Guidelines 202**
Alexander-23rd Floor
*Stephen Marley, Attorney-Advisor, Office of Defender Services,
Training Branch, Washington, D.C.*
*Lori Green, Attorney-Advisor, Office of Defender Services,
Training Branch, 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.

6. [RICO & Gangs - A Defense Perspective](#)
Studio Ste-3rd Floor

4:30-5:45 PM

[Supreme Court Update](#)
Broadway-Plaza Level
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.

Friday, May 8, 2009

8:00-8:30 AM **Continental Breakfast**
Broadway Foyer-Plaza Level

8:30-9:45 AM **Developing Theories and Themes and How to Use Them Effectively in
Opening Statements and Closing Arguments**
Broadway-Plaza Level
*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.

10:00-11:00 AM **BREAK OUTS**

1. **Introduction to Defending Internet Pornography Cases**
Directors Ste-3rd Floor
Colin Fieman, AFPD, Western District of Washington

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**
Executive Ste-3rd Floor
Frank Draper, AFPD, District of Maryland

Forty-five percent of Federal prisoners have had a mental health problem, and 40% of federal prisoners have had symptoms of a mental health disorder. In the post-*Booker* world, the history and characteristics of the offender are important sentencing considerations for the court. This session focuses on how to use a history and symptoms of mental illness to inform the sentencer of the appropriate, and below guidelines sentence. 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**

Studio Ste-3rd Floor

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**

Forum Ste-3rd Floor

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. **Defending Against Armed Career Criminal Designation**

Council Ste-3rd Floor

*Rene Valladares, Supervisory AFPD, District of Nevada
Brenda Weksler, AFPD, District of Nevada*

Learn how to attack, defend and deflect the ACCA designation.

6. [Evidence Meets Hollywood: Training the Litigator's Ear to make, Meet, and Win Trial Objections](#)

Alexander room-23rd Floor

Francisco Morales, AAFP, 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](#)

Broadway-Plaza Level

Russ Aoki, Esq. Aoki, Sakamoto & Grant LLP

Seattle, Washington

Alex Roberts, Automated Litigation Support Analyst, Foster,

Pepper PLLC

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.

11:00-11:15 AM **Break**

11:15-12:45 PM

Introduction to Mortgage Fraud Terms, Players, Defense Strategies, Pretrial Motions and Defenses

Broadway-Plaza Level

Kevin Tate, AFPD, Western District of North Carolina

Angela Parrott, AFPD, 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.

12:45-2:00 PM

Lunch

2:00-3:00 PM

BREAK OUTS (Repeat of Morning Sessions)

1. **Child Porn: Computer Based Sex Crimes - Defending Enticement and Child Pornography Cases**
Directors Ste-3rd Floor
2. **Mental Health**
Executive Ste-3rd Floor
3. **Conspiracy, CCE, RICO and Co-Defendant Issues**
Studio Ste-3rd Floor
4. **Cross-Examination**
Forum Ste-3rd Floor
5. **Defending Against Armed Career Criminal Designation**
Council Ste-3rd Floor
6. **Evidence Meets Hollywood: Training the Litigator's Ear to Make, Meet, and Win Trial Objections**
Alexander room-23rd Floor
7. **Discovery Software**
Broadway-Plaza Level

3:15- 4:15 PM

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

Broadway-Plaza Level

Robert Epstein, AFPD, 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.

4:15- 4:30 PM

Break

4:30- 5:30 PM

[Resources for CJA Panel Attorneys: A Panel Discussion](#)

Broadway-Plaza Level

Randall Schnack, CJA Supervising Attorney, Central District of California

Russ Aoki, Esq. Aoki, Sakamoto & Grant LLP, Seattle, Washington

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.

Saturday, May 9, 2009

7:30-8:30 AM

Continental Breakfast

Broadway Foyer-Plaza Level

8:30-9:45AM

Sentencing Update Panel Discussion

Broadway-Plaza Level

Jennifer Coffin, Research & Writing Attorney, Sentencing Resource Project, Nashville, TN

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.

10:00- 11:00 AM

BREAK-OUTS

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

Directors Ste-3rd Floor

Jim Langell, AFPD, 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**

Council Ste-3rd Floor

Alan DuBois, AFPD, Western District of North Carolina

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**

Broadway-Plaza Level

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](#)

Executive Ste-3rd Floor

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. [Plea Negotiations and Proffers](#)

Studio Ste-3rd Floor

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. [The Impact of the Victim Witness Protection Act on the Federal Sentencing Process](#)

Forum Ste-3rd Floor

Dan Wannamaker, Wannamaker & Associates, Austin, TX

There have been a variety of amendments to the Federal Victim Witness Protection Act. These amendments have greatly increased victim's rights in the federal sentencing process. 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.

11:00-11:15 AM

Break

11:15 - 12:30 PM

Discovery Issues with a Twist: Rule 16 and More

Broadway-Plaza Level

Michael Kennedy, 1st Assistant, FPD, District of Nevada

David Anthony, AFPD, 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

Broadway-Plaza Level

Moderator: Michael Sokolow, 1st Assistant, FPD, Southern District of Texas

Panelists: Tom Coan, CJA Panel Representative, District of Oregon

Dan Wannamaker, Esq., Western District of Texas

Michael Meetze, AFPD, District of South Carolina

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

Broadway-Plaza Level

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