

Below is the agenda for the

MARCH 2010 SENTENCING ADVOCACY WORKSHOP

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

“SENTENCING ADVOCACY WORKSHOP:  
THINKING OUTSIDE THE GUIDELINE BOX”

NEW ORLEANS HOTEL  
MONTELEONE  
MARCH 18-20, 2010

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Thursday, March 18

- 8:00 a.m. Registration and Continental Breakfast **\*\*La Nouvelle Orleans East Foyer**
- 9:00 a.m. Welcoming Remarks **\*\*La Nouvelle Orleans East**  
Virginia Schlueter, Federal Public Defender, New Orleans, Louisiana  
Billy Gibbens, Panel Attorney Representative, New Orleans, Louisiana
- 9:15 a.m. Introduction to Workshop **\*\*La Nouvelle Orleans East**  
Andrea Taylor, Deputy Training Branch Chief, Office of Defender Services,  
Administrative Office of the U.S. Courts, Washington, D.C.
- 9:20 a.m. [Confronting the Guidelines With §3553\(a\)'s Spears: Fighting For and Winning Lower Sentences](#) **\*\*La Nouvelle Orleans East**  
Alison Siegler, Assistant Professor of Law, University of Chicago Law School,  
Chicago, Illinois
- This session will focus on using 18 U.S.C. §3553(a) and recent sentencing rulings from the Supreme Court and lower courts to advocate for and achieve below-guidelines sentences.
- 10:30 a.m. BREAK
- 10:45 a.m. Judging at Sentencing **\*\*La Nouvelle Orleans East**  
Moderator, Marilyn Bednarski, Partner, Kaye, McLane & Bednarski, Pasadena, California  
Honorable Robert Pratt, Chief Judge, U.S. District Court, Des Moines, Iowa  
Honorable Patti B. Saris, U.S. District Court, Boston, Massachusetts  
Honorable Jay Zainey, U.S. District Court, New Orleans, Louisiana
- A panel of federal judges will give their perspective on how federal criminal defense lawyers can be more persuasive in their sentencing advocacy now that Booker and Gall have allowed them the discretion to consider more factors at sentencing.

12:00 p.m. LUNCH - ON YOUR OWN

- 1:00 p.m. [Conceptualizing Mitigation](#) **\*\*La Nouvelle Orleans East**  
Robert Dunham, Assistant Federal Public Defender, Harrisburg, Pennsylvania  
Stu Lev, Assistant Federal Defender, Philadelphia, Pennsylvania

This session will provide an integrated framework for understanding what mitigating evidence is, and how to investigate and present it. The session will teach 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 poverty as a stepping-off point 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.

- 2:00 p.m. [Interviewing for Mitigation](#) **\*\*La Nouvelle Orleans East**  
Jim Tibensky, Mitigation Specialist, Federal Defender Program, Chicago, Illinois

How do you uncover the mitigating facts in your client's case? This session will hone your interviewing for mitigation skills. It will demonstrate both the manner of effective interviewing and types of effective questions to be asked.

- 2:30 p.m. [Brainstorming the Facts of the Case](#) **\*\*La Nouvelle Orleans East**  
Joseph Ross, Assistant Federal Public Defender, Raleigh, North Carolina

This session will explain the elements of brainstorming and use the facts of the mock case to demonstrate techniques for discussing and understanding the facts of a case in a manner which will maximize the potential of developing those facts into a persuasive sentencing theory.

- 3:15 p.m. BREAK

- 3:25 p.m. Small Group Sessions –Brainstorm Facts of Own Case  
**Room names and group assignments posted at the registration desk**  
Manny Atwal, Assistant Federal Public Defender, Minneapolis, Minnesota  
Marilyn Bednarski, Partner, Kaye, McLane & Bednarski, Pasadena, California  
Frank Draper, Assistant Federal Public Defender, Baltimore, Maryland  
Robert Dunham, Assistant Federal Public Defender, Harrisburg, Pennsylvania  
Michelle Engert, Assistant Federal Public Defender, Baltimore, Maryland  
Denise Hines, Paralegal Specialist, Office of the Federal Public Defender, Reno, Nevada  
Janet Hinton, Paralegal, Office of the Federal Public Defender, St. Louis, Missouri  
Tina Hunt, Assistant Federal Defender, Spokane, Washington  
Steve Jacobson, Assistant Federal Public Defender, Portland, Oregon

Lee Lawless, Federal Public Defender, St. Louis, Missouri  
Stu Lev, Assistant Federal Defender, Defender Association of Philadelphia, Philadelphia, Pennsylvania  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, New York  
John Rhodes, Assistant Federal Defender, Missoula, Montana  
Jay Rorty, Deputy Director, ACLU Drug Reform Project, Santa Cruz, California  
Molly Roth, Assistant Federal Public Defender, San Antonio, Texas  
Fredilyn Sison, Assistant Federal Public Defender, Asheville, North Carolina  
Jim Tibensky, Mitigation Specialist, Federal Defender Program, Chicago, Illinois  
Ron Tyler, Assistant Federal Public Defender, San Francisco, California  
Carlos Williams, Executive Director, Southern Federal Defender Program, Mobile, Alabama

Participants will break into small groups led by a facilitator and brainstorm the facts of their own cases.

5:00 p.m. [Developing Theories and Themes](#) \*\* La Nouvelle Orleans East  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, New York

This session will define a theory and theme and use the facts brainstormed in the previous session to develop a persuasive sentencing theory and theme..

6:00 p.m. Adjourn for the Day

Friday, March 19

8:00 a.m. Registration and Continental Breakfast **\*\*La Nouvelle Orleans East Foyer**

8:30 a.m. Small Group Sessions - Theories and Themes  
**Room names and group assignments posted at the registration desk**  
Manny Atwal, Assistant Federal Public Defender, Minneapolis, Minnesota  
Marilyn Bednarski, Partner, Kaye, McLane & Bednarski, Pasadena, California  
Frank Draper, Assistant Federal Public Defender, Baltimore, Maryland  
Robert Dunham, Assistant Federal Public Defender, Harrisburg, Pennsylvania  
Michelle Engert, Assistant Federal Public Defender, Baltimore, Maryland  
Denise Hines, Paralegal Specialist, Office of the Federal Public Defender, Reno, Nevada  
Janet Hinton, Paralegal, Office of the Federal Public Defender, St. Louis, MO  
Tina Hunt, Assistant Federal Defender, Spokane, Washington  
Steve Jacobson, Assistant Federal Public Defender, Portland, Oregon  
Lee Lawless, Federal Public Defender, St. Louis, Missouri  
Stu Lev, Assistant Federal Defender, Defender Association of Philadelphia, Philadelphia, Pennsylvania  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, NY  
John Rhodes, Assistant Federal Defender, Missoula, Montana  
Jay Rorty, Deputy Director, ACLU Drug Reform Project, Santa Cruz, California  
Molly Roth, Assistant Federal Public Defender, San Antonio, Texas  
Fredilyn Sison, Assistant Federal Public Defender, Asheville, North Carolina  
Jim Tibensky, Mitigation Specialist, Federal Defender Program, Chicago, Illinois  
Ron Tyler, Assistant Federal Public Defender, San Francisco, California  
Carlos Williams, Executive Director, Southern Federal Defender Program, Mobile, Alabama

Participants will break into small groups led by a facilitator and apply theories and themes to the facts of their own cases.

10:00 a.m. BREAK

10:15 a.m. [Storytelling at Sentencing](#) **\*\*La Nouvelle Orleans East**  
Tony Natale, Assistant Federal Public Defender, Miami, Florida

This session will discuss storytelling techniques and use the facts of the mock case to explain their importance to advancing a persuasive sentencing theory

11:15 a.m. [Persuasive Writing](#) **\*\*La Nouvelle Orleans East**  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, New York

This session will provide persuasive writing techniques to advance the sentencing theory using the facts of the mock case

12:30 p.m. LUNCH - ON YOUR OWN

- 1:30 p.m.      **Small Group Sessions - Persuasive Writing**  
**Room names and group assignments posted at the registration desk**  
Manny Atwal, Assistant Federal Public Defender, Minneapolis, Minnesota  
Marilyn Bednarski, Partner, Kaye, McLane & Bednarski, Pasadena, California  
Frank Draper, Assistant Federal Public Defender, Baltimore, Maryland  
Robert Dunham, Assistant Federal Public Defender, Harrisburg, Pennsylvania  
Michelle Engert, Assistant Federal Public Defender, Baltimore, Maryland  
Denise Hines, Paralegal Specialist, Office of the Federal Public Defender, Reno, Nevada  
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Steve Jacobson, Assistant Federal Public Defender, Portland, Oregon  
Lee Lawless, Federal Public Defender, St. Louis, Missouri  
Stu Lev, Assistant Federal Defender, Defender Association of Philadelphia, Philadelphia, Pennsylvania  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, New York  
John Rhodes, Assistant Federal Defender, Missoula, Montana  
Jay Rorty, Deputy Director, ACLU Drug Reform Project, Santa Cruz, California  
Molly Roth, Assistant Federal Public Defender, San Antonio, Texas  
Fredilyn Sison, Assistant Federal Public Defender, Asheville, North Carolina  
Jim Tibensky, Mitigation Specialist, Federal Defender Program, Chicago, Illinois  
Ron Tyler, Assistant Federal Public Defender, San Francisco, California  
Carlos Williams, Executive Director, Southern Federal Defender Program, Mobile, Alabama

Participants will break into small groups led by a facilitator and apply storytelling and persuasive writing techniques to the facts of their own cases. Each participant will write the first two paragraphs of their sentencing memorandum or downward departure motion in a persuasive fact-based manner. Participants will receive feedback on the writing and rewrite it focusing on the feedback.

4:00 p.m.      **BREAK**

- 4:15 p.m.      **Working With Probation \*\*La Nouvelle Orleans East**  
Lee Lawless, Federal Public Defender, St. Louis, Missouri  
Doug Burris, Chief United States Probation Officer, St. Louis, Missouri

The probation officer plays a critical role at sentencing which often influences the judge's opinion. This session will discuss how to work with the probation officer in order to persuade them to adopt (or not oppose) your theory of sentencing.

5:15 p.m.      **ADJOURN**

- 6:00 p.m.      **Cocktail Reception \*\*Riverview Room, on the Rooftop**  
Join us for light fare and the good company of your fellow workshop participants. Informal attire. Cash Bar.

Saturday, March 20

8:00 a.m. Registration and Continental Breakfast **\*\*La Nouvelle Orleans East Foyer**

8:30 a.m. Small Group Sessions - Sam Bradshaw Sentencing Memo  
**Room names and group assignments posted at the registration desk**  
Manny Atwal, Assistant Federal Public Defender, Minneapolis, Minnesota  
Marilyn Bednarski, Partner, Kaye, McLane & Bednarski, Pasadena, California  
Frank Draper, Assistant Federal Public Defender, Baltimore, Maryland  
Robert Dunham, Assistant Federal Public Defender, Harrisburg, Pennsylvania  
Michelle Engert, Assistant Federal Public Defender, Baltimore, Maryland  
Denise Hines, Paralegal Specialist, Office of the Federal Public Defender, Reno, Nevada  
Janet Hinton, Paralegal, Office of the Federal Public Defender, St. Louis, Missouri  
Tina Hunt, Assistant Federal Defender, Spokane, Washington  
Steve Jacobson, Assistant Federal Public Defender, Portland, Oregon  
Lee Lawless, Federal Public Defender, St. Louis, Missouri  
Stu Lev, Assistant Federal Defender, Defender Association of Philadelphia, Philadelphia, Pennsylvania  
Ira Mickenberg, Public Defender Trainer and Consultant, Saratoga Springs, New York  
John Rhodes, Assistant Federal Defender, Missoula, Montana  
Jay Rorty, Deputy Director, ACLU Drug Reform Project, Santa Cruz, California  
Molly Roth, Assistant Federal Public Defender, San Antonio, Texas  
Fredilyn Sison, Assistant Federal Public Defender, Asheville, North Carolina  
Jim Tibensky, Mitigation Specialist, Federal Defender Program, Chicago, Illinois  
Ron Tyler, Assistant Federal Public Defender, San Francisco, California  
Carlos Williams, Executive Director, Southern Federal Defender Program, Mobile, Alabama

Participants will break into small groups and discuss the Sam Bradshaw sentencing memo which they prepared.

10:00 a.m. BREAK

10:15 a.m. Persuasive Sentencing Hearing **\*\*La Nouvelle Orleans East**  
Tina Hunt, Assistant Federal Defender, Federal Defenders of Eastern Washington, Spokane, Washington  
Fredilyn Sison, Assistant Federal Public Defender, Asheville, North Carolina

This session will discuss how to persuasively present mitigation evidence at the sentencing hearing. It will include the power of images and the use of sentencing videos and pictures, and will examine factors to consider in making decisions about what to present and how to conduct the hearing.

- 11:15 a.m. [Practical Tips if Your Client Faces Incarceration in a Federal Prison](#)  
\*\*La Nouvelle Orleans East  
Manny Atwal, Assistant Federal Public Defender, Minneapolis, Minnesota

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.

- 12:15 p.m. Meet Sam Bradshaw - A Client's Perspective on Sentencing Advocacy  
\*\*La Nouvelle Orleans East  
"Sam Bradshaw", Former CJA Client

- 12:45 p.m. Closing Remarks \*\*La Nouvelle Orleans East  
Andrea Taylor, Deputy Training Branch Chief, Office of Defender Services,  
Administrative Office of the U.S. Courts, Washington, D.C.

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