

Below is the agenda for the

2012 MULTI-TRACK FEDERAL CRIMINAL DEFENSE 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

*Multi-Track Federal Criminal Defense Seminar:*

*1) Sentencing in a post-Booker world; 2) Immigration and a closer look at Padilla; 3) Computer crimes, social networking and the electronic footprint we leave; 4) Science, experts and the National Academy of Science Report; and 5) Trial skills: techniques and issues.*

August 23-25, 2012

Hotel Sax

Chicago, Illinois

Final Agenda

The agenda for the Multi-Track Federal Criminal Defense Seminar follows this cover page. The seminar is designed to offer in-depth instruction in a variety of substantive criminal defense areas. The five tracks for 2012 in Chicago are: 1) **Sentencing in a post-Booker world**; 2) **Immigration and a closer look at Padilla**; 3) **Computer crimes, social networking and the electronic footprint we leave**; 4) **Science, experts and the National Academy of Science Report (NAS)**; and 5) **Trial Skills: Techniques & Issues**. Tracks 1-4 will be presented in four distinct hour-long time blocks. These sessions will be presented on Thursday, August 23, 2012 and then repeated on Friday, August 24, 2012. This design will provide seminar participants with the opportunity to attend two of the four separate tracks taking place on Thursday and Friday.

On Saturday, August 25, 2012, seminar participants will have the opportunity to attend both plenary and small group breakout sessions for the 5<sup>th</sup> track, **Trial Skills: Techniques & Issues**. Saturday sessions will address topics of general interest and importance to criminal defense practitioners during trials. Each Saturday session is provided twice so attendees may attend two areas of interest concerning trial techniques & issues.

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Chicago, Illinois

Hotel Sax

Thursday, August 23, 2012

Final Agenda

- 7:30 - 8:30 A.M.      **Registration - Americas Ballroom**
- 7:30 - 8:30 A.M.      **Continental Breakfast - Tokyo/Rio De'Janerio**
- 8:30 - 8:45 A.M.      **Welcoming Remarks - Americas Ballroom**  
*Eric Vos, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.*  
*Carol A. Brook, Executive Director, Federal Defender Program for the Northern District of Illinois*  
*Kenneth Cunniff, CJA Representative for the Northern District of Illinois*
- 8:45 - 9:45 A.M.      **THE SCIENCE OF FALSE RECOLLECTION: MISTAKEN MEMORIES AND HOW TO ATTACK IDENTIFICATION AND OTHER WITNESS MEMORIES - Americas Ballroom**  
*Shari R. Berkowitz, Ph.D., Assistant Professor of Psychology, Roosevelt Univ., Chicago, IL*  
Witnesses, including ones who provide identification, are highly susceptible to false memories based on suggestive police interviews and interrogations as well as the mere passing of time. Everyday people are called upon to identify your clients, clients provide confessions of alleged acts and witnesses take the stand to "recollect" - sometimes months, if not years, after the fact. Hear about important research and real-life cases to better understand the science of memory and how memory, by its nature, is malleable and reconstructive. It's not that memories or witnesses are "bad" per se, but instead the memories are simply false.
- 9:45 - 10:45 A.M.      **INEFFECTIVENESS OF COUNSEL AND HOW NOT TO BE Americas Ballroom**  
*Paul Rashkind, Assistant Federal Defender, Southern District of Florida*  
Avoiding bad lawyering by identifying the duties of counsel, from arrest through Supreme Court review. Litigating inadequate lawyering to benefit the client. And, what to do when you are a witness in collateral review proceedings questioning your own representation.
- 10:45 - 11:00 A.M.      **Coffee Break - Tokyo/Rio De'Janerio**

## **Track Descriptions**

### **1. Immigration and a closer look at *Padilla***

*Representing illegal entry/reentry matters is not “plug and play” and there are a host of creative ways of helping this large portion of our clientele. Immigration cases present a variety of issues often not encountered in the defense of other types of cases and with the new holding in Padilla, immigration matters seem to have become even more complex. The immigration track helps clarify the Court’s new requirements in Padilla, explores important defenses available in illegal entry/reentry cases and provides dynamic ideas on presenting mitigation evidence during sentencing.*

### **2. Sentencing in a post-*Booker* world**

*Over 95% of the defendants in federal cases will be sentenced and all attorneys owe it to their clients to remain informed and up-to-date on the best, and most effective, sentencing practices. Sentencing in federal criminal cases is no longer limited to a mere guideline calculation and this track highlights new avenues available to defense counsel as to obtain better sentences for their clients. This track will involve planning from the onset of representation, guideline deconstruction, interpretations of sentencing statues by the Supreme Court, and the use of experts and mitigation arguments now allowed in a post-Booker framework.*

### **3. Computer crimes, social networking and the electronic footprint we leave**

*Cell Phones, Social Networking, Twitter, GPS Enabled Gadgets and Data Aggregation are being used in a host of criminal activities all while helping investigators reconstruct the electronic footprints and digital biographies left behind. In addition to electronic footprints, many criminal offenses increasingly use computers and require attorneys to better understand the technology and the forensic techniques utilized to evaluate evidence. The aim of these sessions is to provide an overview of some of the specific crimes associated with computers, the forensic science involved in evaluating the strengths and weaknesses of the government’s case, the handling of electronic discovery and how an individual’s use of technology may provide investigators with a robust digital biography.*

### **4. Science, experts and the National Academy of Science (NAS) Report**

*Government cases are relying more and more on “science” and experts to prosecute defendants in federal cases. Yet, the recently released NAS report has raised a number of vital issues regarding the validity, and admissibility, of the government’s proffered “scientific” evidence and judges are more willing than ever to take a second look at what used to be otherwise accepted scientific evidence. These sessions will look at how to attack different types of scientific evidence such as fingerprints, tool marks and ballistics while additionally discussing how defense teams may employ their own experts for investigative and trial strategies.*

### **5. Trial Skills: Techniques & Issues**

*Even the most accomplished professionals need to revisit and rethink the basics. This track will look at how to develop powerful and emotional themes and theories of defense and how to use your well developed theory to drive home effective points during the entirety of the trial. Additionally, the track will include demonstrations of courtroom technology and how computers may greatly increase the effectiveness of your presentations to the jury.*

**1) Immigration - Chicago**

**MOVING AWAY FROM THE SENTENCING GUIDELINES AND CONVINCING THE COURT TO IMPOSE A LOWER STATUTORY BASED SENTENCE IN IMMIGRATION CASES.** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 9:45 - 10:45 A.M.)

*Marc Robert, Assistant Federal Defender, District of New Mexico*

Maybe too much emphasis is placed on the Guideline calculations when arguing for a lower sentence in immigration matters. The Supreme Court has held, in a number of cases, that when the Guidelines are based neither on empirical data or other studies, the Sentencing Court may give the Guidelines less weight or ignore them all together. Learn how the Immigration Guidelines are based on little study and empirical data and how you can effectively argue for a sentence far below the prescribed range. Learn how to deconstruct the range and get a fairer statutory sentence in your next immigration case.

**2) Sentencing - Paris**

**GUIDELINE DEVELOPMENTS: NEW IMPORTANT AREAS OF CONCERN AND RECENT CHANGES IN THE FEDERAL SENTENCING GUIDELINES** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 9:45 - 10:45 A.M.)

*Rafael Andrade, Assistant Federal Defender, District of Puerto Rico*

Each and every year the Guidelines are updated, significant changes are made and courts are still issuing holdings which effect how the Guidelines may, or may not, be interpreted. Lastly, as courts are more and more apt to deconstruct/minimize the importance of the Guidelines, the Manual is coming up with a number of ways to ensure the Commission still has a say in the sentencing process. While many practitioners would like to have the Court ignore the Guidelines, this manual still has sway and defense attorneys need to have a strong understanding of this important area of federal defense.

**3) Computer crimes, social networking and the electronic footprints we leave**  
**WHERE'S WALDO?: TRACKING PEOPLE USING THEIR CELL PHONES, IPADS, BLACKBERRYS, GPS ENABLED GADGETS AND OTHER DEVICES.** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 9:45 - 10:45 A.M.)

**Americas Ballroom**

*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

Law enforcement's tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police alike with hundreds of departments aggressively tracking cell phones with little to no court oversight. The practice of tracking cell phones and smartphones has become big business for companies with some carriers marketing a host of services to law enforcement for "surveillance fees." That smartphone in a client's pocket may be able to determine a suspect's location, trace phone calls and texts or provide other services to inquiring law enforcement. Some in law enforcement describe these devices as "the virtual biographer of our daily activities" and yet, there are pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement and attorneys alike. This discussion will get attorneys started on learning the lay of the land and help attendees understand the issues, the technology and the problems with over reliance on these "virtual biographers."

**4) Science, experts and the National Academy of Science (NAS) Report**  
**UNDERSTANDING THE NAS REPORT AND FILING PRE-TRIAL MOTIONS TO ATTACK**  
**THE GOVERNMENT’S INTRODUCTION OF EXPERT TESTIMONY** (WILL BE REPEATED  
AGAIN ON FRIDAY, AUGUST 24, AT 9:45 - 10:45 A.M.)

**New Orleans**

*Melinda Sarafa, Sarafa Law, LLC New York, NY*

Before the government introduces “expert” testimony during a sentencing hearing or trial there are a number of effective and creative motions to bar the government from polluting your judge or jury with weak conclusions based on “junk science.” The NAS has identified a number of suspect areas such as fingerprints, bite marks, ballistics and other trace evidence and attorneys need to attack early and often before the judge and jury gets polluted.

**12:00 - 1:15 P.M. LUNCH**

**1:15 - 2:15 P.M. Track Presentations/Breakouts**

**1) Immigration - Americas Ballroom**

**SENTENCING GUIDELINE ISSUES IN ILLEGAL REENTRY CASES: GETTING THE**  
**CORRECT GUIDELINE CALCULATIONS AND DEPARTURES YOUR CLIENT DESERVES**  
(WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 11:00 A.M. - 12:00 P.M.)

*James Langell, Assistant Federal Defender, District of New Mexico*

This session will address making sure the Guideline calculations are correctly obtained. Even though we are trying to get away from the Guidelines, the Supreme Court has directed the sentencing judge to first correctly calculate the range. You do not want to get turned around and confused with the many factors which drive the Immigration Guidelines both up and down and start off on the wrong foot.

**2) Sentencing - Chicago**

**LITIGATING MITIGATING FACTORS: DEPARTURES, VARIANCES, AND ALTERNATIVES**  
**TO INCARCERATION** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 11:00  
A.M. - 12:00 P.M.)

*Amy Baron-Evans, National Sentencing Resource Counsel*

The 2010 Guideline amendments specifically set forth sentencing possibilities which may serve as alternatives to incarceration. Alternatives such as treatment for substance abuse and mental health conditions as well as departures for age, physical condition (including substance abuse), mental and emotional conditions, and military service must be revisited and offered up to the sentencing court as appropriate alternative options to fulfill the sentencing requirements set forth in 18 U.S.C. § 3553(a). This session will explore the practical implications of the amendments and ways to advocate for options which move away from incarceration.

**3) Computer crimes, social networking and the electronic footprints we leave  
SUBPOENAS AND ETHICAL ISSUES WHILE INVESTIGATING CO-DEFENDANTS,  
COOPERATING WITNESSES, LAY WITNESSES AND LAW ENFORCEMENT AS THEY  
ENGAGE IN SOCIAL NETWORKING AND OTHER INTERNET ACTIVITIES (WILL BE  
REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 11:00 A.M. - 12:00 P.M.)**

**New Orleans**

*Mary Lou Newberger, Chief Federal Defender, Southern District of West Virginia*

The night before the government's witness took the stand she was, amongst other things, posting on Facebook, sending tweets and blogging. Some of these communications were private, some were public and others required inquiring minds to become "friends." How do we get this information without violating ethical rules of responsibility and how can we subpoena Facebook, Google, Twitter and similar services? Learn what is out there in the Internet ether, what may be important and how to ethically obtain it when investigating witnesses.

**4) Science, experts and the National Academy of Science Report**

**CHALLENGING LABORATORY REPORTS RECEIVED IN DISCOVERY** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 11:00 A.M. - 12:00 P.M.)

**Paris**

*Marc Scott Taylor, Laboratory Director, Technical Associate, Inc., Ventura, CA*

As per Rule 16, you have received laboratory reports and you know the government's expert is going to use these reports to hurt your client - what can you do? This session will detail how to meaningfully challenge the forensic evidence in your case by making specific discovery requests about the analyst, all information relied upon by the analyst in reaching a conclusion, manuals, protocols, databases, policies and accreditation of the lab and its personnel. Do not take these reports for granted and do not take them on face value - dig deeper and hear how to vigorously attack the government's conclusions.

**2:15 - 2:30 P.M.      Break**

**2:30 - 3:30 P.M.      Plenary: SOCIAL NETWORKS, THE DEATH OF PRIVACY & HOW ALL THE DATA WE LEAVE BEHIND DURING INTERNET SURFING IS BEING AGGREGATED, ANALYZED AND POSSIBLY USED BY LAW ENFORCEMENT**

**Americas Ballroom**

*Jonathan Lyon, Chicago, IL*

You have updated to the newest browser, installed a host of *anti-viral* software, set your browser security settings to "high," tweaked your Facebook settings to let no one see you, deleted your "browsing history," deleted any lingering *cookies* and blocked their future installation, blocked any possible *pop-ups*, secured your home WiFi network with an impossible password, dreamt up passwords for your computer which no one may crack, created secret Gmail accounts, drawn all the shades and set your computer up in Get Smart's *Dome of Silence* - **PRIVACY IS YOURS!** Or is it? Well, it simply isn't unless you consider an old fashion postcard private. Law enforcement, employers, marketers, etc. all have an alarming window into exactly who we are and what we are doing as we bounce around the electronic ether with our blissful misunderstandings of anonymity.

**3:30 - 3:40 P.M. Break -Tokyo/Rio De'Janerio**

**3:40 - 4:40 P.M. Track Presentations/Breakouts**

**1) Immigration - Chicago**

**HOW A CRIMINAL CONVICTION WILL IMPACT YOUR CLIENT'S FUTURE**

**IMMIGRATION STATUS (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 2:50 P.M. - 3:50 P.M.)**

*Mary Kramer, Esq., Law Offices of Mary Kramer, Miami, FL*

This session provides a careful examination of the types of convictions which lead to deportation of your clients who are not United States citizens. This is important information to consider when advising clients of their options in a criminal proceeding and vital when living up to the *Padilla* requirements.

**2) Sentencing - Americas Ballroom**

**MITIGATION EXPERTS/TOOLS/TRICKS/FIREWORKS WHEN ARGUING FOR A BETTER SENTENCE (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 2:50 P.M. - 3:50 P.M.)**

*Raquel Lazo, Assistant Federal Defender, District of Nevada*

*Brenda Weksler, Assistant Federal Defender, District of Nevada*

A lively romp through the fantastic possibilities of bringing your client's story to life during the sentencing phase. There are a variety of experts and tools you can use when empathically telling the court about the mitigating factors which should result in your client's lower sentence. This well regarded presentation takes aim at opening your mind up to re-thinking strategies which may result in the court embracing your pitch for a variant/lesser sentence. Judges are repeatedly telling us they want more information and this session discusses that information and how to effectively present it.

**3) Computer crimes, social networking and the electronic footprints we leave SIX IMPORTANT ISSUES TO CONSIDER WHEN DEFENDING CLIENTS IN CHILD PORN CASES (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 2:50 P.M. - 3:50 P.M.)**

**New Orleans**

*Alina Shell, Assistant Federal Defender, District of Nevada*

Child pornography prosecutions seem to be on the upswing, have Guidelines which quickly shoot through the roof, have mandatory minimums usually reserved for violent felonies and involve complicated technological issues. In other words the learning curve on these cases is steep and dangerous. This session will discuss important issues to think about as you address the charges, the defenses and the ultimate sentences which are unique to this difficult area of defense.

**4) Science, experts and the National Academy of Science (NAS) Report**

**EXPERTS: HOW TO USE THEM, ABUSE THEM AND KEEP THEM OFF THE STAND (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 2:50 P.M. - 3:50 P.M.)**

**Paris**

*Eric Vos, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.*

"Experts win cases" and thus, attorneys must consider using experts with every theory of defense when presenting their case to the jury. There simply are few better tools when convincing a jury than a well presented expert. In the alternative, when the government employs an expert a properly prepared defense attorney can turn the government's devastating tool into a defendant's advantage. This session will look at how best to prepare

and use experts, both pretrial and during trial, including admissibility of evidence, qualifying the expert to testify and taking the government's key witness and turning him into their train wreck.

**4:40 - 4:50 P.M. Break**

**4:50 - 5:50 P.M. Track Presentations/Breakouts**

**1) Immigration - Americas Ballroom**

**PADILLA AND ATTORNEYS' OBLIGATIONS WHEN ADVISING CLIENTS** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 4:00 P.M. - 5:00 P.M.)

*Jennifer Gilg, Research & Writing Specialist, District of Nebraska*

*Sarah Rose Weinman, National Immigrant Justice Center, Chicago, IL*

The Supreme Court's recent holding in Padilla v. The Commonwealth of Kentucky now means the lawyer for an alien charged with a crime has a constitutional obligation to tell the client that a guilty plea carries a risk that he will be deported. Yet, under what circumstances does this new constitutional obligation arise and to what degree must the criminal defense attorney delve into advising the client about civil immigration law? This session will help explain how attorneys can best handle not killing their client's chances of remaining in the country and to what degree a criminal defense lawyer must take on the new role of Immigration Lawyer.

**2) Sentencing - Chicago**

**RECIDIVISM, RECIDIVISM, RECIDIVISM: HOW TO MITIGATE YOUR CLIENT'S CRIMINAL HISTORY** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 4:00 P.M. - 5:00 P.M.)

*Jane McClellan, Assistant Federal Defender, District of Arizona*

Attacking the Guideline's "second axis," criminal history, requires a keen understanding of how the Sentencing Commission justified guideline range increases based on past convictions and how the "science" behind the guidelines may be lacking. This session will discuss some of the common tools used to predict recidivism (criminal history scores, actuarial risk assessments) and how attorneys can use them to advocate for lower sentences. It will also discuss common barriers to reentry and how they may be used to explain why your client may not be as "bad" as the criminal history score suggests. An important session, which explores how to advocate for departures based upon over representation of criminal history and variances based on 18 U.S.C. § 3553(a) factors.

**3) Computer crimes, social networking and the electronic footprints we leave THAT ELECTRONIC DISCOVERY YOU ARE RECEIVING: STRATEGIES FOR THE PRODUCTION OF ELECTRONICALLY STORED INFORMATION (ESI)** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 4:00 P.M. - 5:00 P.M.)

**New Orleans**

*Emma M. Greenwood, Attorney at Law, New York, NY*

Did you know there is a new recommended national protocol on how to address the production of electronically stored information (ESI)? The Joint Electronic Technology Working Group (JETWG), comprised of representatives from the Federal Defenders, CJA Panel Attorneys, Office of Defender Services and Department of Justice as well as liaisons from the U.S. Judiciary, released its Recommendations for ESI Discovery in Federal Criminal Cases in February of this year. This ESI protocol provides the first ever guidance on how to manage the challenges of dealing with electronically stored information (ESI) - DISCOVERY! - in criminal cases. This presentation will be given by a Coordinating

Discovery Attorneys (CDA) who will discuss what you need to know when discussing discovery production with the Government when it involves ESI, and how you can better take advantage of the electronic discovery that you might receive.

**4) Science, experts and the National Academy of Science (NAS) Report**  
**ATTACKING TRACE EVIDENCE SUCH AS FINGERPRINTS, TOOL MARKS AND FIRE ARM MATCHES** (WILL BE REPEATED AGAIN ON FRIDAY, AUGUST 24, AT 4:00 P.M. - 5:00 P.M.) - **Paris**

*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

Trace evidence is often used to place your client at the scene of the crime or to put damning evidence in his hand. While there is much trace evidence to be had, fingerprints, firearm evidence and tool marks make up much of the evidence we have to worry most about. Learn how these examples of trace evidence are weak on their best days, their reliability has been attacked by academic groups, excluded by judges and how best to attack the government's use of such evidence.

**5:50 P.M.                      Adjournment**

## Friday, August 24, 2012

7:30 - 8:30 A.M.

Continental Breakfast - **Tokyo/Rio De'Janerio**

8:30 - 9:30 A.M.

Plenary: CJA Resources - **Americas Ballroom**

*Geoff Cheshire, Assistant Federal Defender, District of Arizona*  
*Eric Vos, Attorney-Advisor, Office of Defender Services Training Branch, 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 resources available through [www.fd.org](http://www.fd.org) and the Office of Defender Services Training Branch. This session offers CJA practitioners an opportunity to ask very knowledgeable and experienced panel experts/administrators any questions you have about CJA administrative policies.

9:30 - 9:45 A.M.

Coffee Break - **Tokyo/Rio De'Janerio**

9:45 - 10:45 A.M.

Track Presentations/Breakouts

### 1) Immigration - **Chicago**

#### MOVING AWAY FROM THE SENTENCING GUIDELINES AND CONVINCING THE COURT TO IMPOSE A LOWER STATUTORY BASED SENTENCE IN IMMIGRATION CASES

*Marc Robert, Assistant Federal Defender, District of New Mexico*

Maybe too much emphasis is placed on the Guideline calculations when arguing for a lower sentence in immigration matters. The Supreme Court has held, in a number of cases, that when the Guidelines are based neither on empirical data or other studies, the Sentencing Court may give the Guidelines less weight or ignore them all together. Learn how the Immigration Guidelines are based on little study and empirical data and how you can effectively argue for a sentence far below the prescribed range. Learn how to deconstruct the range and get a fairer statutory sentence in your next immigration case.

### 2) Sentencing - **New Orleans**

#### **GUIDELINE DEVELOPMENTS: NEW IMPORTANT AREAS OF CONCERN AND RECENT CHANGES IN THE FEDERAL SENTENCING GUIDELINES**

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Each and every year the Guidelines are updated, significant changes are made and courts are still issuing holdings which effect how the Guidelines may, or may not, be interpreted. Lastly, as courts are more and more apt to deconstruct/minimize the importance of the Guidelines, the Manual is coming up with a number of ways to ensure the Commission still has a say in the sentencing process. While many practitioners would like to have the Court ignore the Guidelines, this manual still has sway and defense attorneys need to have a strong understanding of this important area of federal defense.

**3) Computer crimes, social networking and the electronic footprints we leave**  
**WHERE'S WALDO?: TRACKING PEOPLE USING THEIR CELL PHONES, iPADS, BLACKBERRYS, GPS ENABLED GADGETS AND OTHER DEVICES**

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*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

Law enforcement's tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police alike with hundreds of departments aggressively tracking cell phones with little to no court oversight. The practice of tracking cell phones and smartphones has become big business for companies with some carriers marketing a host of services to law enforcement for "surveillance fees." That smartphone in a client's pocket may be able to determine a suspect's location, trace phone calls and texts or provide other services to inquiring law enforcement. Some in law enforcement describe these devices as "the virtual biographer of our daily activities" and yet, there are pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement and attorneys alike. This discussion will get attorneys started on learning the lay of the land and help attendees understand the issues, the technology and the problems with over reliance on these "virtual biographers."

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**UNDERSTANDING THE NAS REPORT AND FILING PRE-TRIAL MOTIONS TO ATTACK THE GOVERNMENT'S INTRODUCTION OF EXPERT TESTIMONY**

**Americas Ballroom**

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**11:00 - 12:00 P.M.                      Track Presentations/Breakouts**

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**SENTENCING GUIDELINE ISSUES IN ILLEGAL REENTRY CASES: GETTING THE CORRECT GUIDELINE CALCULATIONS AND DEPARTURES YOUR CLIENT DESERVES**

*James Langell, Assistant Federal Defender, District of New Mexico*

This session will address making sure the Guideline calculations are correctly obtained. Even though we are trying to get away from the Guidelines, the Supreme Court has directed the sentencing judge to first correctly calculate the range. You do not want to get turned around and confused with the many factors which drive the Immigration Guidelines both up and down and start off on the wrong foot.

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**LITIGATING MITIGATING FACTORS: DEPARTURES, VARIANCES, AND ALTERNATIVES TO INCARCERATION**

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COOPERATING WITNESSES, LAY WITNESSES AND LAW ENFORCEMENT AS THEY  
ENGAGE IN SOCIAL NETWORKING AND OTHER INTERNET ACTIVITIES**

**New Orleans**

*Mary Lou Newberger, Chief Federal Defender, Southern District of West Virginia*

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**4) Science, experts and the National Academy of Science (NAS) Report  
CHALLENGING LABORATORY REPORTS RECEIVED IN DISCOVERY**

**Americas Ballroom**

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**12:00 - 1:30 P.M.**

**Lunch**

**1:30 - 2:45 P.M.**

**Plenary - Americas Ballroom**

**CRITICAL ISSUES TO CONSIDER WHEN DEFENDING  
IMMIGRATION MATTERS**

*Mary Kramer, Esq., Law Offices of Mary Kramer, Miami, FL*

*Maria E. Andrade, AILA Amicus Committee Member, Boise, ID*

According to the U.S. Sentencing Commission, at 34.9%, immigration matters make up the largest category of federal prosecutions. With the new *Padilla* holding this area has not become easier. This comprehensive presentation will cover:

**! Elements of Illegal Reentry Cases**

**! Collateral Attacks on Unlawful Removal Orders as a Defense to  
Illegal Reentry**

- ! Getting Appointed on Illegal Reentry Cases
- ! Interplay Between Illegal Reentry Defense & Reinstatement
- ! Challenging Reinstatement in the Context of Criminal Cases
- ! Reopening Immigration Cases
- ! Understanding the A-File
- ! Impact of *Padilla*

2:50 - 3:50 P.M.

**Track Presentations/Breakouts**

**1) Immigration - New Orleans**

**HOW A CRIMINAL CONVICTION WILL IMPACT YOUR CLIENT'S FUTURE**

**IMMIGRATION STATUS**

*Mary Kramer, Esq., Law Offices of Mary Kramer, Miami, FL*

This session provides a careful examination of the types of convictions which lead to deportation of your clients who are not United States citizens. This is important information to consider when advising clients of their options in a criminal proceeding and vital when living up to the *Padilla* requirements.

**2) Sentencing - Chicago**

**MITIGATION EXPERTS/TOOLS/TRICKS/FIREWORKS WHEN ARGUING FOR A BETTER SENTENCE**

*Raquel Lazo, Assistant Federal Defender, District of Nevada*

*Brenda Weksler, Assistant Federal Defender, District of Nevada*

A lively romp through the fantastic possibilities of bringing your client's story to life during the sentencing phase. There are a variety of experts and tools you can use when empathically telling the court about the mitigating factors which should result in your client's lower sentence. This well regarded presentation takes aim at opening your mind up to re-thinking strategies which may result in the court embracing your pitch for a variant/lesser sentence. Judges are repeatedly telling us they want more information and this session discusses that information and how to effectively present it.

**3) Computer crimes, social networking and the electronic footprints we leave  
SIX IMPORTANT ISSUES TO CONSIDER WHEN DEFENDING CLIENTS IN CHILD PORN  
CASES - PARIS**

*Alina Shell, Assistant Federal Defender, District of Nevada*

Child pornography prosecutions seem to be on the upswing, have Guidelines which quickly shoot through the roof, have mandatory minimums usually reserved for violent felonies and involve complicated technological issues. In other words the learning curve on these cases is steep and dangerous. This session will discuss important issues to think about as you address the charges, the defenses and the ultimate sentences which are unique to this difficult area of defense.

**4) Science, experts and the National Academy of Science (NAS) Report  
EXPERTS: HOW TO USE THEM, ABUSE THEM AND KEEP THEM OFF THE STAND  
Americas Ballroom**

*Eric Vos, Attorney-Advisor, Office of Defender Services, Training  
Branch, Washington, D.C.*

"Experts win cases" and thus, attorneys must consider using experts with every theory of defense when presenting their case to the jury. There simply are few better tools when convincing a jury than a well presented expert. In the alternative, when the government

employs an expert a properly prepared defense attorney can turn the government's devastating tool into a defendant's advantage. This session will look at how best to prepare and use experts, both pretrial and during trial, including admissibility of evidence, qualifying the expert to testify and taking the government's key witness and turning him into their train wreck.

**3:50 - 4:00 P.M.**

**Break - Tokyo/Rio De'Janerio**

**4:00 - 5:00 P.M.**

**Track Presentations/Breakouts**

**1) Immigration - Paris**

**PADILLA AND ATTORNEYS' OBLIGATIONS WHEN ADVISING CLIENTS**

*Jennifer Gilg, Research & Writing Specialist, District of Nebraska*

*Sarah Rose Weinman, National Immigrant Justice Center, Chicago, IL*

The Supreme Court's recent holding in Padilla v. The Commonwealth of Kentucky now means the lawyer for an alien charged with a crime has a constitutional obligation to tell the client that a guilty plea carries a risk that he will be deported. Yet, under what circumstances does this new constitutional obligation arise and to what degree must the criminal defense attorney delve into advising the client about civil immigration law? This session will help explain how attorneys can best handle not killing their client's chances of remaining in the country and to what degree a criminal defense lawyer must take on the new role of Immigration Lawyer.

**2) Sentencing - Chicago**

**RECIDIVISM, RECIDIVISM, RECIDIVISM: HOW TO MITIGATE YOUR CLIENT'S CRIMINAL HISTORY**

*Jane McClellan, Assistant Federal Defender, District of Arizona*

Attacking the Guideline's "second axis," criminal history, requires a keen understanding of how the Sentencing Commission justified guideline range increases based on past convictions and how the "science" behind the guidelines may be lacking. This session will discuss some of the common tools used to predict recidivism (criminal history scores, actuarial risk assessments) and how attorneys can use them to advocate for lower sentences. It will also discuss common barriers to reentry and how they may be used to explain why your client may not be as "bad" as the criminal history score suggests. An important session, which explores how to advocate for departures based upon over representation of criminal history and variances based on 18 U.S.C. § 3553(a) factors.

**3) Computer crimes, social networking and the electronic footprints we leave**

**THAT ELECTRONIC DISCOVERY YOU ARE RECEIVING : STRATEGIES FOR THE PRODUCTION OF ELECTRONICALLY STORED INFORMATION (ESI)**

**New Orleans**

*Emma M. Greenwood, Attorney at Law, New York, NY*

Did you know there is a new recommended national protocol on how to address the production of electronically stored information (ESI)? The Joint Electronic Technology Working Group (JETWG), comprised of representatives from the Federal Defenders, CJA Panel Attorneys, Office of Defender Services and Department of Justice as well as liaisons from the U.S. Judiciary, released its Recommendations for ESI Discovery in Federal Criminal Cases in February of this year. This ESI protocol provides the first ever guidance on how to manage the challenges of dealing with electronically stored information (ESI) - DISCOVERY! - in criminal cases. This presentation will be given by a Coordinating

Discovery Attorneys (CDAs) who will discuss what you need to know when discussing discovery production with the Government when it involves ESI, and how you can better take advantage of the electronic discovery that you might receive.

**4) Science, experts and the National Academy of Science (NAS) Report**  
**[ATTACKING TRACE EVIDENCE SUCH AS FINGERPRINTS, TOOL MARKS AND FIRE ARM MATCHES - Americas Ballroom](#)**

*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

Trace evidence is often used to place your client at the scene of the crime or to put damning evidence in his hand. While there is much trace evidence to be had, fingerprints, firearm evidence and tool marks make up much of the evidence we have to worry most about. Learn how these examples of trace evidence are weak on their best days, their reliability has been attacked by academic groups, excluded by judges and how best to attack the government's use of such evidence.

**5:00 P.M.    Adjournment**

## Saturday, August 25, 2012

7:30 - 8:30 A.M.

Continental Breakfast - **Tokyo/Rio De'Janerio**

8:30 - 9:30 A.M.

Plenary: [Developing a Theory and Theme Driven Trial Strategy](#) - **Americas Ballroom**

*Jed Stone, Jed Stone & Associates, Waukengan, IL* Brainstorming the facts of a case, developing emotional themes and ending with a unified theory of defense is a key ingredient as trial attorneys create effective openings, directs, crosses and closings. A highly disciplined theory of defense is the key to developing all aspects of a trial and allows a focused performance rather than a trial which suffers from entropy, wanders off road and provides the jury with no emotional reason to acquit. This session will demonstrate the practice of brainstorming, developing emotional themes and arriving at a laser focused theory of defense which will better direct all aspects of a defendant's trial strategy.

9:30 - 9:40 A.M.

Coffee Break - **Tokyo/Rio De'Janerio**

9:40 - 10:40 A.M.

**The following breakouts are for the Trial Skills: Techniques & Issues Track. Each Session is repeated and thus, offered twice - once during the early morning sessions and another time during the later morning sessions.**

1) [OPENINGS](#) (This session will be repeated at 11:00 A.M.)

**Americas Ballroom**

*Jason Ser, Assistant Federal Defender, Southern District of California Community Defender*

Some studies suggest that 80% of jurors will decide "guilty" or "not guilty" at the end of the opening statements so all defense attorneys must come out effectively swinging from the beginning. Opening statements are not mere recitations of "facts a jury will hear during a trial" or a time to introduce clients, attorneys and important players. Instead, an opening is a presentation where the defense attorney gets the chance to sear into the jurors' minds an emotional theory of defense which will be front and center throughout the trial. Hear about the critical concepts of "primacy" and "recency," weaving your emotional theory of defense into your opening and getting the jury to follow the pro-defendant narrative throughout the trial.

2) **CROSS EXAMINATION** (This session will be repeated at 11:00 A.M.)

**Chicago**

*Cynthia Roseberry, Chief Defender, Middle District of Georgia Community Defender*

Cross examination is the cornerstone of any defendant's case and some would say the "truth is only tested and arrived at during cross." Learn important exercises and principles to sharpen your most important trial tool. Learn such ideas as looping your questions, how to make sure only one question is asked at a time and how to create as little wiggle room as possible for the adverse witness. Be focused, present and highly effective when testing the truth of the government's next witness.

**3) COMPUTERIZED PRESENTATIONS IN THE COURTROOM** (This session will be repeated at 11:00 A.M.)

**Paris**

*Timothy Watkins, Assistant Federal Defender, District of Massachusetts*

It will be harder and harder to find a federal district court which is not already wired for the computerized presentation of demonstrative evidence and where large screens are not waiting for the fixated members of the jury. More and more attorneys are using computers to present evidence and jurors will be increasingly expecting, wanting and wishing for it. When properly utilized, the visuals provided by computerized presentations can be compelling and leave little room for confusion as attorneys present the finer points of their cases. See examples of several presentation softwares and how powerful they can be when used during openings, directs, crosses and closings.

**4) JURY INSTRUCTIONS TAILORED FOR YOUR THEORY OF DEFENSE AND GETTING THE COURT TO INNOCULATE YOUR PANEL, DURING THE TRIAL, FROM THE PREJUDICES OF THE MEDIA AND THE INTERNET** (This session will be repeated at 11:00 A.M.)

**New Orleans**

*Geoff Cheshire, Assistant Federal Defender, District of Arizona*

How to prepare jury instructions and special verdict forms which address the issues that arise in your criminal cases, including unanimity instructions, conspiracy instructions and other instructions relevant to multiple count and multiple defendant cases. Additionally, how to get the Court to deal with the jury's deep desire to jump on the Internet and learn more about the evidence, the investigation and your client.

**10:40 - 11:00 A.M. Break**

**11:00 A.M. -12:00 P.M. Repeat of earlier breakouts for the Trial Skills: Techniques & Issues Track.**

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**12:00 - 12:10 P.M.**

**Break**

**12:10 - 1:10 P.M.**

**PLENARY: PANEL DISCUSSION “[ETHICAL ISSUES CONFRONTING CRIMINAL DEFENSE ATTORNEYS](#)”**

**Americas Ballroom**

*Willie J. Epps, Jr., Shook, Hardy & Bacon, Kansas City, Missouri*

While lawyers may not always agree on what is best, this discussion provides meaningful questions, good answers and make us all laugh about the trials and tribulations we often experience when trying to make even the most difficult clients happy - and all while making sure we meet our ethical obligations.

**1:10 - 1:11 P.M.**

**CLOSING REMARKS AND ADJOURNMENT**

**Americas Ballroom**

*Eric Vos, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.*