

Below is the agenda for the

**FEBRUARY 2015 WINNING STRATEGIES & FUNDAMENTALS OF FEDERAL
CRIMINAL DEFENSE SEMINARS**

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
DEFENDER SERVICES OFFICE TRAINING DIVISION

Winning Strategies Seminar

February 19 - 21, 2015

Omni Hilton Head Oceanfront Resort
Hilton Head Island, South Carolina

Agenda

Thursday, February 19, 2015

7:30 to 8:30 a.m. Registration & Continental Breakfast - Sabal

8:30 to 9:00 a.m. INTRODUCTIONS & WELCOMING REMARKS - Palmetto Ballroom

Frank Draper, *Attorney-Advisor, Defender Services Office Training Division, Washington, D.C.*

Parks Small, *Federal Public Defender, District of South Carolina, Columbia, SC*
Russell Mace, *CJA Panel Attorney, The Mace Firm, Myrtle Beach, SC*

9:05 to 10:05 a.m. Plenary: SUPREME COURT UPDATE - Palmetto Ballroom

Paul Rashkind, *Supervisory Assistant Federal Public Defender and Chief of the Appellate Division of the Federal Public Defender, Southern District of Florida*

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

10:05 to 10:20 a.m. Break - Sabal

10:20 to 11:20 a.m. Plenary: ATTACKING THE GOVERNMENT'S FIREARM AND TOOLMARK IDENTIFICATION EVIDENCE - Palmetto Ballroom

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

This session will address how to effectively challenge the lack of a scientific basis of "forensic" evidence presented in cases involving firearms/toolmark identification. With the findings in the National Academy of Sciences (NAS) Report there is now evidence based research for use when attacking forensics and being able to repudiate laboratory claims. No longer can we merely accept the notion that firearms produce unique markings on bullets/casings when there is a lack of standards for identifying so-called individual markings, lack of statistical basis for declarations of a match between a gun and bullet, and prejudice from unsupported "expert" testimony.

11:20 to 11:30 a.m. Break

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

1. **SIX AREAS TO WORRY ABOUT IN FIREARMS CASES**
Leigh Skipper, *Chief Federal Defender, Eastern District of Pennsylvania*
Palmetto Ballroom

Firearms prosecutions still make up much of the cases brought in federal criminal court and there are a multitude of issues which seem to keep repeating themselves. While an hour is not enough to cover all gun related issues, this session will take a look at six important areas of concern and how to go about addressing them.

2. **STORYTELLING**
Shaffy Moeel, Esq., *Moeel Law Office, APC, San Francisco, CA*
Beaufort

"Let him who would move the world first move himself." Socrates knew that the words that come out of our mouths mean nothing if we do not believe their truth. We are the vessels through which our client's stories come alive before the jury. How do we do those stories justice and tell them well? This presentation addresses both how to tell a story and how to effectively present the story.

3. **LOSS CALCULATIONS IN FRAUD AND WHITE COLLAR CASES**
Kevin Tate, *Assistant Federal Defender, Federal Community Defender, Western District of North Carolina, Charlotte, NC*
Broad 1

Few sentencing issues can be more complex than getting to the bottom of what your client needs to own up to when loss comes to town. Loss drives the Guidelines and can chain your client to restitution for decades to come. Learn the tricks, pitfalls and danger zones when battling Probation, United States Attorneys and the Court's calculations.

* "Breakout Sessions" allow attendees to choose from one of a number of simultaneously offered one hour sessions. Sessions 1-5 will be repeated twice per day allowing for attendance in two of the offered "breakout sessions" - one during the morning sessions and another during the afternoon sessions.

4. **WORKING WITH EXPERTS IN RECOGNIZING AND CONFRONTING MENTAL HEALTH ISSUES IN YOUR SENTENCING PRACTICE**

Frank Draper, *Attorney-Advisor, Defender Services Office Training Division, Washington, D.C.*

Broad 2

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. Your client's mental health is an important sentencing consideration for the court as it is part of the history and characteristics of the client and therefore relevant to sentencing in the post-*Booker* world. This session is a brief overview on 1) why mental health information is relevant to sentencing, 2) how to develop the client's mental health history, and 3) what to do with the information once you have it, including effectively working with experts. This session will provide you with the basics on how to use a history and symptoms of mental illness to inform the sentencing judge of the appropriate, and below guidelines sentence.

5. **LITIGATION SUPPORT - STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY**

Sean Broderick, *National Litigation Support Administrator, Oakland, California*

Edisto

As an increasing number of CJA panel attorneys are finding out, the information provided in any given case continues to grow in size and complexity. Cases that were a few folders of paper are now CDs, DVDs and hard drives of electronic files of various types that may prove difficult to open on your computer. The National Litigation Support Team will present a primer on various file formats that are being provided in discovery, and some of the options available for reviewing and analyzing the discovery more effectively. [Note: The National Litigation Support Team will be available during the seminar to discuss individual cases.]

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

1:45 to 2:45 p.m. Plenary: ADVANCING YOUR THEORY AND THEMES THROUGH OPENING AND CLOSING - Palmetto Ballroom

Anthony "Tony" Natale, *Second Level Supervisory Assistant Federal Public Defender, Federal Public Defender Organization, Southern District of Florida, West Palm Beach, Florida*

Primacy and recency are important components of persuasion. This session will discuss the elements of effectively advancing your trial theory during opening and closing.

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

3:00 to 4:00 p.m. **Plenary: CHALLENGING ASSUMPTIONS ABOUT REASONABLENESS IN POLICE STOPS IN MINORITY COMMUNITIES - Palmetto Ballroom**
Juval Scott, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

Litigation over New York City's stop and frisk practices and the killing of unarmed minorities by police officers has placed a new focus on the reasonableness of law enforcement stops of minorities. This session will address how previous assumptions about their reasonableness may be challenged.

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

4:15 to 5:15 p.m. **Break-Out Sessions (Repeat of Morning Sessions 1-5)**

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5:15 p.m.

Adjournment

Friday, February 20, 2015

7:30 to 8:30 a.m. Continental Breakfast - Sabal

8:30 to 9:30 a.m. Plenary: IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS - Palmetto Ballroom

Norma Aguilar, *Visiting Attorney Advisor, Defender Services Office Training Division, Assistant Federal Defender, Southern District of California*
Claudia Valenzuela, *Heartland Alliance, National Immigrant Justice Center, Chicago, IL*

This session will address immigration consequences to non-citizens resulting from criminal offenses. The presentation will provide an overview of criminal grounds of inadmissibility and deportability under the Immigration & Nationality Act and how certain crimes fit within these categories. It will address how criminal grounds of inadmissibility and deportability make a client removable and affect eligibility for applications to remain in the United States. The session will also address strategies for defense attorneys seeking to avoid adverse immigration consequences for their non-citizen clients.

9:35 to 10:35 a.m. Plenary: CULTURAL DEFENSES - Palmetto Ballroom

Fredilyn Sison, *Assistant Federal Defender, Western District of North Carolina, Asheville, NC*

Our clients' cultural backgrounds can form the basis for a cultural defense such as intent, justification or excuse. It can also provide mitigating circumstances for sentencing. This session will help identify factors related to cultural defenses, improve your cultural competence and locate experts to support your theory of defense/sentencing.

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

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

1. **FINANCIAL DOCUMENTS - THEY'RE NOT JUST FOR MONEY FLOW ANYMORE -Beaufort**

Pamela Bishop, *Commonwealth Litigation Support Services, Inc., Ashland, Virginia*

This session will cover the anatomy of a financial transaction and the trove of information you can learn from financial transactions, other than the general movement of funds. The "anatomy" of a financial transaction will be covered in detail, as well as currency reporting documents required by the Bank Secrecy Act. Suggestions for obtaining, organizing and analysis of financial documents will also be illustrated. The second part of the session will cover a few of the alternative uses for financial transactions, such as potential witness leads, determination of lifestyle, alibi, and corroboration of witness statements. Lastly, using an actual case scenario, you will be shown how a financial analysis can be used to mitigate the impact of

Sentencing Guidelines calculations regarding loss amounts.

2. **IMPEACHING TESTIFYING WITNESSES - Broad 1**
Kevin Tate

The credibility and believability of alleged co-conspirators or cooperating informants is often central to the prosecution's proof against defendants going to trial. This session offers an insightful overview of pretrial investigation and cross-examination techniques when defending a client whose liberty hangs in the balance based primarily on whether a jury believes the testimony of a co-conspirator or informant.

3. **GETTING THE MOST OUT OF COOPERATION AND NAVIGATING THE DANGERS OF A PROFFER - Broad 2**
Patrick Ehlers, *Assistant Federal Public Defender, District of Oregon*

Like it or not, many of our clients intelligently decide cooperation is in their best interests. Unfortunately, too many clients make this the trickiest of areas and proffer sessions can quickly devolve into train wrecks with clients getting no benefit and all the added risk we lose sleep over. This session explores common benefits and dangers associated with cooperation while addressing the many land mines just waiting for your client in the proffer room.

4. **SENTENCING 201 - Sentencing Scenarios - Palmetto Ballroom**
Stephen Marley, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

Current federal criminal law requires sentencing courts to properly calculate a client's advisory guideline range, and to evaluate various other considerations before imposing judgement. As a result, practitioners need to maintain expertise in this critical aspect of federal criminal defense. This session will cover applications of the advisory guidelines previously discussed in *Introduction to the Federal Sentencing Guidelines*, and it will look at common issues involving them by working through sample sentencing scenarios.

5. **LITIGATION SUPPORT - STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY - DISCUSS YOUR OWN CASES**
Sean Broderick, *National Litigation Support Administrator, Oakland, California*
Edisto

Note: During this time, these National Litigation Support Team members will be available to discuss individual cases.]

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

Lunch

1:00 to 2:00 p.m.

Plenary: DEFENSES IN STASH HOUSE STING CASES
Shaffy Moeel, Esq.

Palmetto Ballroom

These troubling and criticized sting operations are becoming more and more common across the country. This session will describe them and discuss possible guilt and sentencing defenses.

2:05 to 3:05 p.m.

Plenary: USE OF THE SMARTER SENTENCING ACT, THE JUSTICE SAFETY VALVE ACT, THE HOLDER MEMOS, AND OTHER RECENT EVIDENCE TO OBTAIN SUBSTANTIAL VARIANCES AND CHALLENGE THE CONSTITUTIONALITY OF MANDATORY MINIMUMS

Amy Baron-Evans, *Sentencing Resource Counsel, Boston, Massachusetts*

Palmetto Ballroom

Recent bipartisan legislation introduced in Congress, directives from the Attorney General, reports from the Sentencing Commission, district court opinions, reports from well-respected policy research organizations, and other influential sources reflect an unprecedented consensus that sentences recommended by the sentencing guidelines and required by mandatory minimum statutes serve no purpose of sentencing. Learn how to use these materials to obtain a substantial variance from the guideline range, and to prove that the mandatory minimum violates the Due Process Clause, the Eighth Amendment, and/or the Equal Protection Clause.

3:05 to 3:20 p.m.

Break - Sabal

3:20 to 4:20 p.m.

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4:20 to 5:20 p.m.

Plenary: RESOURCES FOR CJA PANEL ATTORNEYS

Lori A. Green, *Attorney-Advisor, Defender Services Office, Training Division, Washington, D.C.*

Jack Cunha

Palmetto Ballroom

The CJA Guidelines specify how panel attorneys obtain funding for expert services and other resources to defend their clients in appointed criminal cases. This panel will help you make sense of it all. Learn some new ideas and tips on how to obtain

technical and litigation support funding and the best ways to use those funds. The panel will also explore potential roles of investigators, mitigation specialists and other experts, as well as resource available through www.fd.org and the Defender Services Office Training Division. Questions welcomed.

5:20 p.m. Adjournment

Saturday, February 21, 2015

7:30 to 8:30 a.m. Continental Breakfast - Sabal

8:30 to 9:30 a.m. Plenary: TECHNIQUES in ELECTRONIC INVESTIGATION
Jonathan Lyon, *Chicago, IL* - **Palmetto Ballroom**

This session will teach participants techniques for using the internet as an investigative aid. The participants will learn a better way of using search engines to get results that are more relevant, and less daunting in number. The introduction of a metasearch engine and the new technology of clustering will be discussed.

9:30 to 9:40 a.m. Break - Sabal

9:40 to 10:40 a.m. Break-Out Sessions

1. **CONTROLLED SUBSTANCE ANALYSIS - Broad 1**
Heather L. Harris, M.F.S., J.D., *Philadelphia, PA*

Learn the basics of forensic drug chemistry, novel and new compounds (are they legal?), and potential challenges to drug cases new and old.

2. **PUT A PH.D. ON IT—USING SOCIAL SCIENCE AT SENTENCING**
Denise Barrett, *National Sentencing Resource Counsel Project*
Broad 2

Recent research in criminology and other related social and behavioral sciences provides empirical evidence relevant to the purposes of sentencing. This session will review some of this research, show where to find more of it, and provide ideas on how to use it to obtain lower sentences for clients.

3. **CRIMINAL HISTORY – TAYLOR, DESCAMPS, AND THE CHANGES THEY HAVE WROUGHT**
Paresh Patel, *Research and Writing Specialist Attorney, Maryland Federal Defender's Office, Greenbelt, MD*
Palmetto Ballroom

The landscape of calculating criminal history for purposes of sentencing continually evolves. Learn how to stay on top of the developments. Hear the way you can use *Taylor* and *Descamps* to devastate the Government's attempt to increase sentences, how to use the categorical and modified categorical approach for plea negotiation, and how recent changes in this area of the law may benefit your client.

10:40 to 10:50 a.m. Break

10:50 to 11:50 a.m. Break-Out Sessions (Repeat of Morning Sessions)

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11:50 a.m. to noon Break - Sabal

Noon to 1:00 p.m. Plenary: PANEL DISCUSSION: ETHICAL ISSUES CONFRONTING CRIMINAL DEFENSE ATTORNEYS - Palmetto Ballroom

Francisco Morales, *Assistant Federal Defender, Southern District of Texas, Corpus Christi, Texas*

Fredilyn Sison

Watch experienced lawyers discuss how best to handle clients, even difficult ones, in different ways. While the speakers may not always agree on what is best, they ask meaningful questions, give thought-provoking answers, and make us all laugh about the trials and tribulations we experience when trying to make even the most difficult clients happy - and all while making sure we meet our ethical obligations.

1:00 p.m. Closing Remarks - Palmetto Ballroom

Frank Draper

**ADMINISTRATIVE OFFICE OF THE U.S. COURTS
DEFENDER SERVICES OFFICE TRAINING DIVISION**

FUNDAMENTALS OF A FEDERAL CRIMINAL CASE

February 19-20, 2015

**Omni Hilton Head Oceanfront Resort
Hilton Head Island, South Carolina**

Agenda

May Ballroom 1 & 2

Thursday, February 19, 2015

- 7:30 to 8:30 a.m. Registration & Continental Breakfast - Sabal**
- 8:30 to 9:00 a.m. INTRODUCTIONS & WELCOMING REMARKS**
Lori Green, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*
- 9:05 to 10:05 a.m. CLIENT INTERVIEWING AND RELATIONS**
Christina L. Hunt, *Executive Director, Federal Defenders of the Middle District of Georgia, Inc., Macon, Georgia*
This session will focus on important aspects of the attorney-client relationship, as well as the elements of, and techniques for, effective interviewing that promotes obtaining information from a client and others that will best allow the creation of a persuasive theory of the case.
- 10:05 to 10:20 a.m. Break - Sabal**
- 10:20 to 11:20 a.m. THE BAIL REFORM ACT**
Francisco Morales, *Assistant Federal Defender, Southern District of Texas, Corpus Christi, Texas*
Your performance at the bail hearing will be your first strut for your client. Win or lose, your ability to fight goes a long way. In this session, you will learn to maximize your chances of getting your client released on bond under the Bail Reform Act. This session will address pretrial interviews, third party custodians, favorable witnesses, good pre-discovery discovery, ethics issues, the detention hearing, the appeal of a detention order, and release pending appeal.
- 11:20 to 11:30 a.m. Break**
- 11:30 to 12:30 p.m. PRETRIAL MOTIONS: STUFF TO KNOW TO GET THE DISCOVERY YOU NEED**
Jay McEntire, *Assistant Federal Defender, Federal Defenders of Eastern Washington & Idaho, Spokane, Washington*
This session will be divided into two parts. The first part will be a series of helpful tips for getting discovery using Rule 16 and Rule 17, as well as how to protect you and your client from reciprocal discovery. The second part will focus on writing tips - specifically, how to craft memorable pretrial motions that both advance your theme and get you the discovery you need.

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

1:45 to 3:00 p.m. THE ESSENTIAL ROLE OF INVESTIGATION IN CJA CASES

Lori A. Green

Kevin J. Murphy, *Private Investigator, Philadelphia, Pennsylvania*

Jim Tibensky, *Non-Capital Mitigation Specialist, Federal Defender Program, Inc., Community Defender Organization, Northern District of Illinois, Chicago, Illinois (Ret.)*

As cases continue to grow more complex with more discovery and information regarding the guilt phase as well as the sentencing phase, it can be invaluable to have a trained and dedicated investigator and/or mitigation specialist at your side. Hear from a long time indigent defense investigator and one who has focused on mitigation about the road map towards a successful investigation in all phases of CJA case. Along with an attorney, they will discuss how they can assist throughout the life cycle of a case, including quickly locating and interviewing witnesses, to obtain information from digital and paper records and how to seek out information that can be important factors for the court to consider at sentencing. The discussion will include information about how to obtain funding for their services.

3:00 to 3:15 p.m. Break - Sabal

3:15 to 4:15 p.m. GETTING THE MOST OUT OF PLEA AGREEMENTS, COOPERATION, AND NAVIGATING THE DANGERS OF A PROFFER

Patrick Ehlers, *Assistant Federal Defender, District of Oregon, Portland, Oregon*

With an overwhelming percentage of clients entering pleas, this session will take a hard look at how to get the most out of deals with the government. Additionally, like it or not, many of our clients intelligently decide cooperation is in their best interests. Unfortunately, proffer sessions can quickly devolve into train wrecks with clients getting no benefit and all the added risk we lose sleep over. This session explores common benefits and dangers associated with cooperation while addressing the many land mines just waiting for your client in the proffer room.

4:15 to 4:30 p.m. Break

4:30 to 5:30 p.m. TRIALS - GENERALLY - THEORY, THEMES, AND STORY TELLING

Anthony J. Natale, *Second Level Supervisory Assistant Federal Public Defender, Federal Public Defender Organization, Southern District of Florida, West Palm Beach, Florida*

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 at trial and/or sentencing.

5:30 p.m. Adjournment

Friday, February 20, 2015

7:30 to 8:30 a.m. Continental Breakfast - Sabal

8:30 to 9:30 a.m. INTRODUCTION TO THE FEDERAL SENTENCING GUIDELINES
Stephen Marley, *Attorney-Advisor, Defender Services Office, Training Division, Washington, D.C.*

This uncomplicated session will cover the basics of applying the federal sentencing guidelines. Offense conduct, drug amount calculations, criminal history, and safety valve criteria are some of the topics included in this presentation. All federal criminal defense practitioners are invited to participate, but depending on one's individual level of federal experience, this session may be rudimentary.

9:35 to 10:35 a.m. PRACTICAL TIPS IF YOUR CLIENT FACES INCARCERATION IN A FEDERAL PRISON

David Merchant, *Assistant Federal Defender, Federal Defenders of Montana, Billings, Montana*

This session will provide practical tips if your client faces federal imprisonment. It will include factors to consider for your client to obtain a federal sentence at the least restrictive possible facility and receive the earliest feasible release date.

FUNDAMENTALS CONCLUDES AT 10:35 a.m.