

Below is the agenda for the

**MAY 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
May 7-9, 2015
Drury Inn Hotel
Santa Fe, New Mexico

Thursday, May 7, 2015

- 7:30 to 8:30 a.m.** **Registration & Continental Breakfast – Outside the Palace Ballroom**
- 8:30 to 8:45 a.m.** **INTRODUCTIONS & WELCOMING REMARKS – Palace Ballroom**
Juval Scott, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*
Stephen McCue, *Federal Defender, District of New Mexico, Albuquerque, New Mexico*
Ken Gleria, *CJA Panel Representative, District of New Mexico, Albuquerque, New Mexico*
- 8:50 to 9:50 a.m.** **Plenary: SUPREME COURT UPDATE – Palace Ballroom**
Paul Rashkind, *Supervisory Assistant Federal Public Defender and Chief of the Appellate Division of the Federal Public Defender, Southern District of Florida, Miami, Florida*
- This session provides an update on recent Supreme Court decisions affecting federal criminal practice, and reviews issues currently under consideration.
- 9:50 to 10:05 a.m.** **Break – Outside the Palace Ballroom**
- 10:05 to 11:05 a.m.** **Plenary: BEATING CONVICTION-BASED ENHANCEMENTS WITH A LAWYER'S BEST FRIEND: A PRACTICAL APPROACH TO HOW THE CATEGORICAL APPROACH WORKS – Palace Ballroom**
Norma Aguilar, *Visiting Attorney Advisor, Defender Services Office Training Division, Assistant Federal Defender, Southern District of California, San Diego, California*
- How can we defeat the application of statutory enhancements like Armed Career Criminal Act (ACCA), 924(c) or guidelines enhancements for Illegal Re-entry, Felon in Possession or Career Offender? In *Taylor v. United States*, the Supreme Court gave us a powerful tool in challenging conviction-based enhancements. But as courts made sense of the "Taylor/Categorical" approach, its elements-based analysis was obscured by the increasing use of what's called the "modified" categorical approach. In this session, we'll talk about what all this means for our clients and how *Descamps v. United States* has breathed new life into the original purpose of *Taylor*.
- We'll approach the *Taylor* analysis practically and find ways to simplify it for sentencing courts.
- 11:05 to 11:15 a.m.** **Break**

11:15 a.m. **Break-Out Sessions**
to 12:15 p.m.

- 1. BUILDING RELATIONSHIPS WHEN DEFENDING PERSONS CHARGED WITH CHILD PORNOGRAPHY – Meem**
Kenneth Riggins, Esq., *The Law Office of Kenneth L. Riggins, Indianapolis, Indiana*

This session is designed to help you build relationships with persons charged with crimes against children while aggressively pursuing the best possible result. It will include how to analyze the government’s technical data and provide some strategies for how to counter their evidence.
- 2. BURRAGE V. UNITED STATES, CAUSATION IN THE CRIMINAL CONTEXT – Rivera A**
Angela Campbell, Esq., *Dickey & Campbell Law Firm, Des Moines, Iowa*

What kind of “causation” can subject someone to criminal liability? This session offers a step by step explanation of the *Burrage* case from trial to the Supreme Court, a discussion about the causation issues raised in the Supreme Court and what the Court did and did not decide in its opinion, and what it means for people who are either currently charged, or already convicted, of crimes which include a “death results” provision.
- 3. THE FINE ART OF RE-ENACTMENT: FINDING AND EXPLORING THE STORY – CANCELLED**

Re-enacting an event—be it the offense conduct or a meaningful moment in our client’s life—can help us relate our client’s story better than reading or listening to a recitation of facts. This session will introduce action methods in acquiring and understanding important aspects of the case and further develop counsel’s listening skills. It will also help counsel identify what further investigation is necessary for the case. Please note that this is an interactive session that interweaves aspects of focus group experience, requiring an active audience.
- 4. LITIGATION SUPPORT - STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY – Palace Ballroom**
Sean Broderick, *National Litigation Support Administrator, Oakland, California*

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.

12:15 to 1:30 p.m. Lunch

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.

1:30 to 2:30 p.m. Plenary: CHALLENGING CELL PHONE LOCATION EVIDENCE—TAIN'T RELIABLE – Palace Ballroom

Jack Cunha, Esq., *Cunha & Holcomb, Boston, Massachusetts*

Law enforcement's aggressive tracking of cell phones has become a powerful and widely used surveillance tool for both federal authorities and local police. Law enforcement claims that your client's location can be pinpointed with the smart phone in his pocket. Some in law enforcement describe these devices as "the virtual biographer of our daily activities." Not so fast! There are pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement and attorneys alike, particularly with use of historical cell site data. This discussion will get attorneys started on learning the lay of the land, help attendees understand the issues, the technology and the problems with over reliance on these "virtual biographers," and present strategies for attacking the reliability of law enforcement opinions as to your client's location based upon cell phone use.

2:30 to 2:45 p.m. Break

2:45 to 3:45 p.m. Plenary: LITIGATING CONFRONTATION ISSUES—TEN YEARS OF CRAWFORD – Palace Ballroom

Craig Albee, *Senior Litigator, Federal Defender Services of Wisconsin, Milwaukee, Wisconsin*

A decade has passed since Crawford and the smoke still hasn't cleared. Confrontation Clause challenges remain a live issue for a variety of different statements—lab reports, autopsy reports, dying declarations, the statements of children, and others. This session explores the hazy state of the law, highlighting areas where confrontation, due process, and hearsay objections should be raised, and provides practical strategies for litigating these issues and using them to your advantage.

3:45 to 4:00 p.m. Break

4:00 to 5:00 p.m. Break-Out Sessions (Repeat of Morning Sessions 1-4)

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5:00 p.m. **Adjournment**

Friday, May 8, 2015

7:30 to 8:30 a.m. **Continental Breakfast – Outside the Palace Ballroom**

8:30 to 9:30 a.m. **CHALLENGING CONSPIRACY LIABILITY – Palace Ballroom**

Rene Valladares, *Federal Defender, Nevada Federal Public Defender, Las Vegas, Nevada*

Heidi Ojeda, *Assistant Federal Defender, Nevada Federal Public Defender, Las Vegas, Nevada*

This presentation will discuss why conspiracy charges are so dangerous for our clients, the basic elements of conspiracy, common defenses, practice tips on how to manage a conspiracy case, including pre-trial litigation, how to handle co-conspirators, and how to handle big-paper conspiracy cases.

9:35 to 10:35 a.m. **Plenary: IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS – Palace Ballroom**

Hena Mansori, *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.

10:35 to 10:50 a.m. Break – Outside the Palace Ballroom

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

1. DEFENDING ILLEGAL REENTRY CASES A-Z – Meem

Kari Converse, *Assistant Federal Defender, New Mexico Federal Public Defender, Albuquerque, New Mexico*

Welcome to New Mexico, where immigration crimes are the majority of the cases we handle. Whether you're in a district like NM, or one where the charge is rarely made, don't assume that just because the charge is illegal reentry that there's no defense. And you don't always get the fast track. In this session, we'll discuss what defenses to the charge may exist, as well as how to creatively and effectively represent your client at sentencing (prize to the participant who brings the most creative sentencing strategy!).

2. SENTENCING UPDATE: NEWS YOU CAN USE FROM COURTS, DOJ, CONGRESS, SENTENCING COMMISSION, AND POLICY ANALYSTS – Palace Ballroom

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

Learn about pending legislation, new DOJ policies, recent Sentencing Commission reports, new and proposed guideline amendments, and the latest policy research, and how to use them to get the lowest sentence possible.

3. HOW TO MAKE A JUDGE CRY – Rivera A

Christina Hunt, *Executive Director, Federal Defenders of the Middle District of Georgia, Inc., Macon, Georgia*

Sentencing advocacy is one of the most critical skills a federal criminal defense lawyer must possess. This session is designed to give you basic ideas and skills to learn how to think outside the box when developing sentencing arguments, and focuses on the preparation, presentation and storytelling skills necessary to move the judges away from looking at clients as numbers to seeing them as humans.

4. SENTENCING 201 - SENTENCING SCENARIOS – Rivera B

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. WHAT 702 CAN DO FOR YOU: PREPARING AND CHALLENGING EXPERT WITNESSES – Lamy

Steven Barth, *Assistant Federal Defender, District of Vermont, Burlington, Vermont*

This session will provide participants with tip and strategies on how to keep junk science experts off the stand in federal court. The session will begin with an overview of the federal rules concerning expert testimony and then will provide participants with the skills and information necessary to keep government "experts" off the stand.

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

1:00 to 2:00 p.m. Plenary: **PUT A PH.D. ON IT—USING SOCIAL SCIENCE AT SENTENCING**
– **Palace Ballroom**

Denise Barrett, *National Sentencing Resource Counsel Project, Jarrettsville, Maryland*

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.

2:05 to 3:05 p.m. Plenary: **TALKING ABOUT RACE AND ETHNICITY AT SENTENCING**
– **Palace Ballroom**

Melody Evans, *Federal Defender, Kansas Federal Public Defender, Topeka, Kansas*

Over 95% of federal cases will conclude with a sentencing hearing. Federal sentencing continues to overpunish persons of color, for a variety of reasons. Race and ethnicity are integral to our clients' identity and experience, and the more we can understand our client's perspective, the better advocates we are. Race and ethnicity are often ignored as too sensitive or too uncomfortable or even as irrelevant. But there are ways to talk about race at sentencing that educate the court and explain why it matters to the court's decision. We will talk about data and empirical evidence, legal challenges to disparate sentencing practices, and how to present our client's personal experience to the court.

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3:20 to 4:20 p.m. Break-Out Sessions (Repeat of Morning Sessions 1-5)

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4:20 to 5:20 p.m.

Plenary: RESOURCES FOR CJA PANEL ATTORNEYS – Palace Ballroom

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

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

Sharon Samek, *Attorney-Advisor, Defender Services Office, Legal and Policy Division, 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 resource available through www.fd.org and the Defender Services Office Training Division. Questions welcomed.

5:20 p.m.

Adjournment

Saturday, May 9, 2015

7:30 to 8:30 a.m. Continental Breakfast – **Outside the Palace Ballroom**

8:30 to 9:30 a.m. Plenary: **SIX AREAS TO WORRY ABOUT IN FIREARMS CASES**
– **Palace Ballroom**

Leigh Skipper, *Chief Federal Defender, Eastern District of Pennsylvania, Philadelphia, Pennsylvania*

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.

9:30 to 9:40 a.m. Break – **Outside the Palace Ballroom**

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

1. **DEFENSES IN STASH HOUSE STING CASES – Meem**

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

Erica Zunkel, *Acting Associate Director, Federal Justice Clinic, University of Chicago Law School, Chicago, Illinois*

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. **HOT TOPICS IN FRAUD – Rivera A**

Kathy Nester, *Federal Defender, Utah Federal Public Defender, Salt Lake City, Utah*

Robert Hunt, *Assistant Federal Defender, Utah Federal Public Defender, Salt Lake City, Utah*

This session will address timely issues we are facing in fraud cases from the pre-indictment stage through sentencing. Some of the issues addressed will include the challenge of collateral actions being brought by the SEC/IRS/CFTC during pre-indictment representation, the ethical implications of holding original client files during discovery, challenging the use of oversimplified demonstrative exhibits at trial, ways to attack Government accounting methods, raising the issue of solvency, keeping out catch phrases in trial and sentencing issues including white collar registries and new guideline amendments on loss amounts.

3. **THE ART OF INVESTIGATING, INTERVIEWING, AND CROSS EXAMINING A CHILD WITNESS IN CASE INVOLVING SEXUAL ABUSE – Palace Ballroom**

Callie Glanton Steele, *Supervising Deputy Federal Public Defender, California Central Federal Public Defender, Los Angeles, California*

One of the most difficult tasks as a defense attorney is to cross-examine an alleged child sex abuse victim. This session will explore how to obtain the information that helps your client through effective cross examination and impeachment.

4. **CONDITIONALLY SPEAKING: CHALLENGING STANDARD AND SPECIAL CONDITIONS OF SUPERVISED RELEASE – Rivera B**

Johanna Christiansen, *Assistant Federal Defender, Peoria, Illinois*

Although mandatory in fewer than half of cases, most defendants convicted in federal court will receive terms of supervised release in addition to their sentences of imprisonment. The conditions of supervised release imposed at sentencing will have a tremendous impact on the defendant's life after release from imprisonment but most are vague, overly broad, ambiguous, and unnecessary. This session will demonstrate how to successfully challenge both standard and special conditions of supervised release in the district court and on appeal.

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**

Noon to 1:00 p.m. **Plenary: ETHICS – Palace Ballroom**

Selena Solis, *Assistant Federal Defender, Texas Western Federal Public Defender, El Paso, Texas*

Kathy Nester, *Federal Defender, Utah Federal Public Defender, Salt Lake City, Utah*

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 while making sure we meet our ethical obligations.

1:00 p.m. **Closing Remarks**

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
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FUNDAMENTALS OF FEDERAL CRIMINAL DEFENSE

May 7-8, 2015

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Lamy Meeting Room

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- 8:30 to 8:45 a.m.** **INTRODUCTIONS & WELCOMING REMARKS**
Stephen Marley, *Attorney Advisor, Defender Services Office, Training Division, Washington D.C.*
- 8:50 to 9:50 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.
- 9:50 to 10:05 a.m.** **Break**
- 10:05 to 11:05 a.m.** **PRETRIAL MOTIONS: STUFF TO KNOW TO GET THE DISCOVERY YOU NEED**
Michael Kennedy, *Chief Assistant Federal Defender, Nevada Federal Public Defender, Reno, Nevada*
David Anthony, *Assistant Federal Defender, Nevada Federal Public Defender, Reno, Nevada*
- Tired of simply begging the federal prosecutor for the discovery and materials you need? This session will explore the advantages to taking a proactive, rather than a passive, approach to using multiple pretrial motions in combination with third party subpoenas to get more of the discovery and evidence you need. Learn from the combined perspective of a trial lawyer and a death penalty post-conviction attorney about other avenues, in addition to Rule 16, to obtain discoverable evidence that might be helpful if considered while mounting a defense to any federal criminal prosecution.
- 11:05 to 11:15 a.m.** **Break**

11:15 to 12:15 p.m. CAN I GET A BOND?: EFFECTIVE BAIL REFORM ACT PRACTICE
Marc Robert, *Assistant Federal Defender, New Mexico Federal Public Defender, Albuquerque, New Mexico*

This session will provide an overview of the Bail Reform Act and will provide participants with tips and strategies on how to effectively litigate Bail Reform Act issues. Topics covered will include how to prepare for bond hearings, how to overcome the dreaded presumption cases, recent case law developments concerning the Bail Reform Act, and how to appeal adverse decisions under the Bail Reform Act.

12:15 to 1:30 p.m. Lunch

1:30 to 2:45 p.m. THE ESSENTIAL ROLE OF INVESTIGATION IN CJA CASES
Lori A. Green, *Attorney Advisor, Defender Services Office, Training Division, Washington, D.C.*
Bill Elliott, *Private Investigator, Elliott & Associates, Albuquerque, New Mexico*

As cases continue to grow complex with more discovery and information regarding the guilt phase as well as the sentencing phase, the services of a trained and dedicated investigator can be invaluable. Hear from a long time indigent defense investigator about the road map towards a successful investigation in all phases of a CJA case. An attorney will join the discussion of how the investigator can assist throughout the life cycle of a case, including quickly locating and interviewing witnesses, obtaining information from digital and paper records and seeking 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 investigative and other expert services.

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

3:00 to 4:00 p.m. GETTING THE MOST OUT OF PLEA AGREEMENTS, COOPERATION, AND NAVIGATING THE DANGERS OF A PROFFER
Callie Glanton Steele, *Supervising Deputy Federal Public Defender, California Central Federal Public Defender, Los Angeles, California*

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.

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

4:15 to 5:15 p.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.

5:15 p.m. **Adjournment**

Friday, May 8, 2015

7:30 to 8:30 a.m. **Continental Breakfast**

8:30 to 9:30 a.m. **STORYTELLING**
Shaffy Moeel, Esq., *Moeel Law Office, APC, San Francisco, CA*

"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.

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.