

National Seminar for Federal Defenders

Program Description

This seminar is held annually and is designed for assistant federal defenders who have been practicing criminal law a minimum of three years. It includes a mix of topics on substantive federal criminal law, trial tactics, evidence, computer technology, ethics, and sentencing issues. The topics are presented in both plenary and breakout sessions.

Wednesday, June 01, 2016

8:30 am - 9:00 am

Welcome and Opening Remarks (Plenary)

Allegheny Ballroom

Presenters:

Joy Flowers Conti, Lisa Freeland, Cait Clarke, Charles S. Arberg

9:00 am - 10:00 am

Keynote (Plenary) Allegheny Ballroom

Presenter: John Gleeson

[Some Things Federal Criminal Defense Lawyers Should Be Thinking About in 2016](#)

10:00 am - 10:15 am

Break

[From Old School Bigotry to Implicit Bias: The Science of Racial Disparity in the Criminal Justice System \(Plenary\)](#)

Allegheny Ballroom

10:15 am - 11:30 am

Presenter:

David Harris

11:30 am - 12:45 pm

Lunch Break

12:45 pm - 2:00 pm

Sentencing Update: News You Can Use (Plenary)

Allegheny Ballroom

Much is happening with sentencing reform that clients often ask about and that can be useful at sentencing. This session provides a legislative update, discusses the Holder policies and whether those policies are being followed, flags recent Supreme Court sentencing cases, provides a summary of guideline amendments that will take effect November 1, 2016, and discusses a DOJ-commissioned study on disparity, a Sentencing Commission study of recidivism, and long-term trends in post-Booker sentencing.

Presenters:

Amy Baron-Evans, Paul J. Hofer, David Porter

2:00 pm - 2:15 pm

Break

2:15 pm - 3:30 pm

Concurrent Sessions I (choose one)

Option #1: Theories, Themes, and the Creative Demonstration of Truth

Cambria (2nd Floor)

Good lawyers develop solid theories and themes not just for trial, but for sentencing as well. Theories and themes help us win our cases and our sentencing by allowing us to dig deep to uncover universal, emotional truths underlying our arguments. This is an entertaining and informative presentation that draws heavily from cinematic storytelling techniques to illustrate the points and help us sharpen our persuasive power.

Presenter:

Douglas A. Passon

Option #2: How to Prepare for a Terrorism Case

Fayette (2nd Floor)

Presenter:

Manny Atwal

Option #3: How Adolescent Brain and Behavioral Development Can Affect Competency, Culpability, and Other Determinations

Pennsylvania East/West (2nd Floor)

2:15 pm - 3:30 pm

Courts are increasingly factoring adolescent brain and behavioral development into a range of legal assessments including competency, culpability and suppression issues. In this session, we will provide an introduction to adolescent development science and research, followed by a discussion of the various ways in which we can use this science in the defense of teenagers and young adult clients.

Presenter:

Cathryn Crawford

2:15 pm - 3:30 pm

Option #4: Taking the Best Advantage of the New Definition of "Crime of Violence" in 4B1.2

Allegheny (3rd Floor)

Presenters:

Amy Baron-Evans, Jennifer Coffin

2:15 pm - 3:30 pm

Option #5: Down at the Border: Developments in Immigration Law

Crawford (3rd Floor)

Presenters:

Milagros Cisneros, Brenda Sandoval

Option #6: Error Preservation

Butler (2nd Floor)

This session will cover fundamentals of error preservation in federal criminal cases, discuss how appellate courts actually use the **appellate record in the decision-making process**, and offer **practical tips for maximizing the persuasive value of an appellate record**.

Presenter:

Dean Sanderford

3:30 pm - 3:45 pm

Break

3:45 pm - 5:00 pm

Concurrent Sessions II (choose one)

Option #1: Improper Prosecutorial Argument

Butler (2nd Floor)

This interactive seminar explores the many ways that prosecutors can commit misconduct during closing argument, tactical considerations relative to such misconduct, and appropriate ways for preserving the record for appeal. Concrete examples from your circuit will be presented.

Presenter:

Keith Hilzendeger

3:45 pm - 5:00 pm

Option #2: The Unwinnable Appeal: Handling Cases Involving Bad Issues, No Issues, and Appeal Waivers

Pennsylvania East/West (2nd Floor)

Not every appeal is a winner; in fact, most aren't. This session will focus on those cases. We will discuss how to find issues where none appear obvious, how to distinguish between "non-winning" issues and those that are truly frivolous, and what to do when your appeal truly is unwinnable. Along those lines, we will review issues arising in the most common "unwinnable" appeal – a guilty plea involving the waiver of appellate rights. Finally, we will discuss the dreaded Anders brief: what it is, what it requires, when to file it, and why, in some cases, it may be the best option for your client.

Presenters:

Tony Axaam Jr., Alan DuBois

3:45 pm - 5:00 pm

Option #3 [Black Jurors Matter: A Dialogue on Strategies and Practice Tips to Improve Jury Diversity](#)

Crawford (3rd Floor)

The Black Lives Matter movement has focused attention on various problems relating to race and the treatment of black people in the criminal justice system. It has provided the impetus for nationwide discussions regarding necessary reforms to eliminate racial bias in the criminal justice system. **This session will focus on jury diversity and will identify specific strategies, practice tips and techniques, including motions for lawyer led voir dire, circulation of juror bias questionnaires and creative ways to talk about racial bias with judges and prospective jurors.**

Presenter:

George Chaney

3:45 pm - 5:00 pm

Option #4 [High Times and Low Sentences: Successful Sentencing Strategies for Synthetic and Analogue Drugs](#)

Fayette (2nd Floor)

Clever clandestine chemists are constantly changing their formulas to create new recreational drugs. The sentencing guidelines fail to address these emerging substances and instead instruct courts to use the marijuana equivalency of the "most closely related" listed drug. This presentation will focus on using chemistry, toxicology, and creativity to exploit this guideline's ambiguity in order to secure a reduced sentence.

Presenter: Chase Scolnick

3:45 pm - 5:00 pm

Option #5 Developments in Sex Offense Cases

Allegheny (3rd Floor)

Ideas for trying the tough cases of sex trafficking, and production, possession, receipt and distribution of child pornography.

Presenter: Jennifer Thompson

3:45 pm - 5:00 pm

Option #6 [Johnson: Filing and Litigating 2255s: The Basics](#)

Cambria (2nd Floor)

This session will cover the statute of limitations to file Johnson-based § 2255s (3 weeks away), relevant caselaw about the cognizability of Johnson claims, the retroactivity of the rule announced in Johnson, and caselaw about presenting a claim in a second or successive §2255 that was presented in a prior petition (§ 2244(b)(1)). It will also cover what should be included in the basic motion and the basic reply for ACCA, Guidelines, and 18 U.S.C. §§ 16(b) and 924(c) cases.

Presenters:

Amy Baron-Evans, Paresh Patel

5:00 pm - 5:15 pm

Break

5:15 pm - 5:45 pm

**Lawyers Without Rights: Discrimination, Degradation, Defiance --
Jewish Lawyers in Nazi Germany (Plenary) Allegheny Ballroom**

Between the end of World War I in 1918 and the beginning of the Nazi era in 1933, Jewish lawyers were leaders in Germany's legal profession, especially in the criminal defense bar. After the Nazi seizure of power and despite incessant attacks against them, Jewish lawyers could continue to practice law for almost six more years, until shortly before World War II. But they faced intimidation, harassment, humiliation, abuse, injustices and oppression that would be hard for many of us to imagine.

Presenter:
Douglas Morris

5:45 pm

Adjourn for the Day

6:00 pm

Social Event

You are cordially invited to join colleagues at The August Wilson Center for an evening of fun and fellowship.

Thursday, June 02, 2016

8:30 am - 10:15 am

Supreme Court and Other Significant Cases Update (Plenary)

Allegheny Ballroom

Presenters:

Erwin Chemerinsky, Paul Rashkind, Susan Herman

10:15 am - 10:30 am

Break

10:30 am - 11:45 am

Concurrent Sessions III

(choose one)

10:30 am - 11:45 am

Option #1: Challenging Conditions of Probation and Supervised Release

Pennsylvania East/West (2nd Floor)

The Office of Probation and Pretrial Services as well as the Sentencing Commission have amended standard and special conditions of supervised release in response to rulings from the Seventh Circuit. This session discusses those changes and how they may be subject to attack.

Presenter: Daniel Kaplan

10:30 am - 11:45 am

Option #2: Storytelling in Brief Writing

Butler (2nd Floor)

Like trial attorneys, appellate attorneys are story-tellers. Our stories aren't simply vignettes we write, in an attempt to tug at heartstrings, before we get on to the "real work" of writing our legal arguments. Instead, stories—both factual and legal—should be the vehicle through which our briefs are written. In this session, we will discuss how to identify stories in our cases and how to use those stories to craft engaging and persuasive briefs.

Presenter: Donna Coltharp

10:30 am - 11:45 am

Option #3: Down at the Border: Developments in Immigration Law
Crawford (3rd Floor)

Presenters:

Milagros Cisneros, Brenda Sandoval

10:30 am - 11:45 am

Option #4: Discovery Strategies to Effectively Defend Your Client's Case

Allegheny (3rd Floor)

A case study in effective discovery techniques that resulted in the dismissal, with prejudice, of all charges pending against a defendant. Specifically, this discussion will identify, with supporting documents, strategies to obtain discovery, enforce your clients' Constitutional and Rule 16 rights to particular discovery and how to use those strategies to effectively litigate your cases.

Presenters:

Jared Westbroek, Gregory Blackmon

10:30 am - 11:45 am

Option #5: How Adolescent Brain and Behavioral Development Can Affect Competency, Culpability, and Other Determinations

Cambria (2nd Floor)

Courts are increasingly factoring adolescent brain and behavioral development into a range of legal assessments including competency, culpability and suppression issues. In this session, we will provide an introduction to adolescent development science and research, followed by a discussion of the various ways in which we can use this science in the defense of teenagers and young adult clients.

Presenter:

Cathryn Crawford

Option #6: Using Visual Advocacy to Build the Bridge of Empathy at Sentencing

10:30 am - 11:45 am

Fayette (2nd Floor)

At sentencing, a picture is worth at least a thousand words, and will often add layers of credibility and emotion to your client's mitigation story. Science supports the case for using pictures to persuade. Photographs, videos, and other visuals help the judge connect with and understand your client like nothing else can. This session will discuss how to incorporate powerful and persuasive images into your sentencing practice, ranging from inclusion of still photos in sentencing memoranda to the creation of mini-documentary films.

Presenter: Douglas A. Passon

11:45 am - 1:15 pm

Lunch Break

1:15 pm - 2:30 pm

Concurrent Sessions IV (choose one)

Option #1: Plain Error from Top to Bottom

Butler (2nd Floor)

This session is designed to assist appellate practitioners with all aspects of dealing with unpreserved error on appeal. In addition to strategies for arguing against plain-error review, the session will also provide tips for litigating all four prongs of plain-error review, with a special emphasis on the third and fourth prongs (effect on substantial rights and serious effect on fairness, integrity, and public reputation of judicial proceedings).

Presenters:

Timothy Crooks, Judy Madewell

1:15 pm - 2:30 pm

Option #2: [Mitigation for Skeptical Judges: Show Me the Money](#)

Allegheny (3rd Floor)

Advocating for your client during sentencing is one of the most important jobs of a criminal defense lawyer. This session focuses on effective storytelling techniques to unlock compassion, empathy, and mercy.

Presenters:

Akin Adepoju, Vickie Piontkowski

1:15 pm - 2:30 pm

Option #3: [National Security Appellate Roundtable](#)

Crawford (3rd Floor)

Come share ideas in this brainstorming discussion regarding the challenges presented in preserving and litigating issues unique to national security cases. We will be discussing issues under the Classified Information Procedures Act such as selective declassification, substitute evidence, and the standard of "necessary" for defense access to classified documents. We also will be exploring notice issues regarding electronic surveillance and challenges to the constitutionality of warrantless surveillance under the FISA Amendments Act.

Presenter: Stephen Sady

1:15 pm - 2:30 pm

Option #4: [Reentry Begins at Arrest: Working With Clients to Successfully Reintegrate Into Our Communities](#)

Fayette (2nd Floor)

If we see reentry only as a back-end process that starts after sentencing, we have conceded to irrational notions of "punitive sentencing" and have diminished the importance of public safety and rehabilitation as purposes of sentencing. This session discusses efforts that defense teams can undertake pretrial and presentencing to help clients overcome barriers to successful reintegration into their communities—e.g., suspending child support obligations, ensuring safekeeping of identification documents, removing detainers, assessing medical needs, and mitigating collateral consequences of a conviction.

Presenters:

Danielle Azzarelli, Vivianne Guevara

1:15 pm - 2:30 pm

Option #5: [Network Investigative Techniques \(NITs\), Tor, and the Dark Web](#)

Pennsylvania East/West (2nd Floor)

Identifying and defending "Operation Pacifier" cases and emerging issues with the FBI's advanced computer search capabilities.

Presenter:

Colin Fieman

1:15 pm - 2:30 pm

Option #6: [The Art of the Reply Brief](#)

Cambria (2nd Floor)

Crafting an effective reply brief is a very particular skill. Ideally the brief will zero in on the key disputed issues, retain continuity with the opening brief, and refute the government's arguments, all while maintaining a tone that is cool, but firm. We will discuss strategies for systematically achieving these objectives.

Presenter:
Daniel Kaplan

2:30 pm - 2:45 pm

Break

2:45 pm - 4:00 pm

[The Residual Clause is Gone \(Or Should Be\). Now What?](#)
(Plenary) - Allegheny Ballroom

Presenters:
Paresh Patel, Jennifer Coffin

4:00 pm - 4:15 pm

Break

4:15 pm - 5:30 pm

Concurrent Sessions V (choose one)

4:15 pm - 5:30 pm

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Presenter:
Chase Scolnick

Option #6: [Federal Collaborative Courts: Defenders as a Driving Force](#)

Fayette (2nd Floor)

Over the past several years, the federal criminal justice system has seen the introduction of various permutations of collaborative, or problem-solving, courts that have been popular in state jurisdictions for more than two decades. In this breakout session, you can expect to learn about the various types of "alternative" programs—pretrial diversion, drug and reentry court, and mental health court—and the critical role that federal defenders have played in the formation and implementation of such programs in several districts across the United States. In addition, you will hear about evidence-based practices and corresponding research on what works in each setting, and how such programs may be proposed and initiated in your home district.

Presenters:
Raul Ayala, Douglas Burris, Nanci McCarthy, Hilary Potashner

4:15 pm - 5:30 pm

5:30 pm

Adjourn for the Day

Friday, June 03, 2016

8:30 am - 9:45 am

Unfair: [The New Science of Criminal Injustice](#) (Plenary) Allegheny

Ballroom

Presenter:

Adam Benforado

9:45 am - 10:00 am

Break

10:00 am - 11:15 am

[Ethics Issues Arising in Federal Criminal Practice](#) (Plenary)

Presenters:

H. Michael Sokolow, Akin

Adepoju, Carmen Smarandoiu

11:15 am

Closing Remarks, Completion of Evaluations, and Adjournment