

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

***Multi-Track Federal Criminal Defense Seminar***

***(1) Creative Motion Practice; (2) Evidence; (3) Forensics; (4) Sentencing Mitigation; (5)  
Mental Health***

**The Roosevelt Hotel New Orleans  
New Orleans, Louisiana  
August 11-13, 2016**

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 federal criminal defense areas through both plenary and breakout sessions. The plenary sessions will address topics of general interest and importance to criminal defense practitioners. The five tracks (breakout sessions) are: 1) Creative Motion Practice; 2) Evidence; 3) Forensics; 4) Sentencing Mitigation; and 5) Mental Health. The tracks will be presented in four distinct hour-long time blocks. These sessions will be presented on Thursday, August 11, 2016 and then repeated on Friday, August 12, 2016. This design will provide seminar participants with the opportunity to attend two of the five separate tracks taking place on Thursday and Friday.

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*Multi-Track Federal Criminal Defense Seminar*

*(1) Creative Motion Practice; (2) Evidence; (3) Forensics; (4) Sentencing Mitigation; (5) Mental Health*

The Roosevelt Hotel New Orleans  
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August 11-13, 2016

Thursday, August 11, 2016

7:30 to 8:30 a.m. REGISTRATION & CONTINENTAL BREAKFAST

8:30 to 8:45 a.m. WELCOMING REMARKS-Roosevelt Ballroom

Juval O. Scott, *Attorney Advisor, Office of Defender Services Training Division, Washington D.C.*

Claude Kelly, *Federal Public Defender, Eastern District of Louisiana, New Orleans, Louisiana*

8:45 to 9:45 a.m. COMING BACK TO LIFE: ONE MAN'S STORY OF WRONGFUL CONVICTION-Roosevelt Ballroom

Anne-Marie Moyes, *Research & Writing Attorney, Middle District of Tennessee, Nashville, Tennessee*

Ndume Olatushani, *Artist & Former Death Row Inmate, Nashville, Tennessee*

Ndume Olatushani and Anne-Marie Moyes will share the powerful story of their decades-long fight to overturn Ndume's wrongful conviction. Ndume was wrongly convicted of capital murder and sentenced to death in Memphis in 1985. Eight years later -- while sitting on Tennessee's death row -- he met Anne-Marie. Convinced of his innocence, she recruited appellate counsel to represent him, went to law school herself, and then conducted an intensive investigation of his case. In 2011, the Tennessee Court of Criminal Appeals overturned Ndume's conviction based on powerful new evidence of innocence uncovered in her investigation. Anne-Marie and Ndume—who married after Ndume's release—will discuss the perseverance and faith it took to win his freedom.

**9:50 to 11:05 a.m. CLIENT-CENTERED REPRESENTATION- Roosevelt Ballroom**

Ron Tyler, Associate Professor of Law and Director, Criminal Defense Clinic,  
Stanford University School of Law, Palo Alto, California

This interactive workshop invites each of us to re-visit the values of our practice. The presentation and exercises will focus on understanding and accepting our clients and directing our energies and talents towards accomplishing their goals.

**11:05 to 11:20 a.m. BREAK**

**TRACK PRESENTATION DESCRIPTIONS**

**1. Creative Motion Practice-Chambers 1**

*The ability to contemplate and craft thoughtful, meaningful motions is an ever-evolving skill. These sessions will discuss potential motions counsel should think about filing to win their client's cases before or during trial.*

**2. Evidence-Chambers 2**

*Practice in federal criminal courts is a chess game that is dominated by rules of evidence. The player that knows these rules and their applications the best has the upper hand in the game. These sessions are designed to reinforce some often overlooked ways to give the defense the advantage in the litigation process.*

**3. Forensics-Salon 2**

*A fundamental understanding of science and processes is critical to representing a client in federal cases, particularly as the government continues to rely upon computer and cell phone information to bolster their evidence. These sessions are designed to provide a basic overview of frequently encountered forensic issues. They will further discuss ways defense attorneys can either refute the evidence or use it to their advantage.*

**4. Sentencing Mitigation-Chambers 3**

*Strategies for obtaining the lowest sentence possible for your client are ever-changing and require both creative thinking and skill. These sessions are designed to push the participant to think outside the box when approaching the sentencing process with their client in hopes of reducing the amount of time, in any, the client spends in prison.*

**5. Mental Health-Chambers 4**

*Recent statistics show that a growing number of the indigent accused suffer from varying forms of mental health issues. These sessions are designed to help the participant identify issues that may plague the client and present them to the court so that the client can gain relief.*

## 11:20 to 12:20 p.m. TRACK PRESENTATIONS

### 1. **Creative Motion Practice**

#### **CHANGING THE NARRATIVE IN FOURTH AMENDMENT CHALLENGES FROM A CULTURE OF FEAR TO A CULTURE OF FREEDOM-Chambers 1**

Omodare Jupiter, *Federal Defender, District of the United States Virgin Islands, St. Croix, U.S.V.I.*

In any Fourth Amendment challenge, the government seeks to appeal to the fear of a 'weakened ' law enforcement officer, or disarmed police force, while we emphasize the rights of the individual to live in a free society. In this session, we will explore some of the language or terminology developed in landmark search and seizure cases, and challenge how the courts interpret, define and even visualize imagery that fosters fear, and curtails freedom. We will devise strategies that enhance our ability to illustrate our client's perspective of what it means to be detained, to be searched, and to be questioned by an authority figure.

### 2. **Evidence**

#### **RULE 16 & E-DISCOVERY-Chambers 2**

C. Mark Donahoe, Esq., *Hardee, Martin, Donahoe & Owens, P.A., Jackson, Tennessee*

This section will discuss Rule 16, Rule 26.2, Jenks, Giglio, and Brady material requests. It will give suggestions of what to ask for and additional requests to make based on what has been revealed so far and the facts of the particular case. It will make suggestions on motions to file and cases to argue to get all the information and discovery that Rule 16 allows, in order to make a proper evaluation of the case and to present a proper defense of your client.

### 3. **Forensics**

#### **DIGITAL PRIMER-Salon 2**

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

This session will provide an overview of the challenges facing criminal defense attorneys with electronic discovery and digital forensics. From terabyte hard drives, encryption, the cloud, and social media, we will discuss the frequent forms of digital data being utilized in criminal cases (both content and metadata). We will discuss what tools can be used to view, search and

analyze the information, and considerations for when and if you get outside assistance.

**4. Sentencing Mitigation**

**REDEMPTION SONGS: SOCIAL HISTORIES THAT SING TO YOU! -  
Chambers 3**

*Foongy Lee, Trial Investigator, California Central Federal Public Defender, Los Angeles, California*

*Callie Glanton Steele, Senior Litigator, California Central Federal Public Defender, Los Angeles, California*

Won't you help to sing  
These songs of freedom?  
'Cause all I ever have  
Redemption songs  
Redemption songs

*Bob Marley*

This session will show participants how to uncover the essential facts of the client's story through comprehensive investigation, identify key elements and shape them into a compelling narrative of a path to redemption that truly sings to the judge.

**5. Mental Health**

**IDENTIFYING AND ADDRESSING DEVELOPMENTAL DISORDERS-  
Chambers 4**

*Brittany Larson, LMSW, Client & Mitigation Specialist, Southern District of New York, New York, New York*

*Ellen Shultz, M.S.W., Mitigation Investigator, Eastern District of Virginia, Alexandria, Virginia*

*Rachelle Veasley, LCSW, Director of Client & Mitigation Services, Southern District of New York, New York, New York*

This session will define developmental disorders that occur often in criminal defendants, offer insight on how to interview for and identify such disorders, discuss the investigation that is needed to corroborate a diagnosis and identify how to find appropriate experts. Practical examples will be provided from case inception to BOP designation with a focus on how to advocate for your client at every step in the process.

**12:20 to 1:30 p.m. LUNCH**

## 1:30 to 2:30 p.m. TRACK PRESENTATIONS

### 1. Creative Motion Practice

#### **EXPERTS – HOW TO USE THEM AND KEEP THEM OUT-Chambers 1**

James Smith, Esq., *CPLS, P.A., Orlando, Florida*

This session will provide an overview of how to effectively use and challenge experts in federal court. The session will provide an overview of the Federal Rules of Evidence and Procedure concerning expert witnesses. This session will also talk about how to effectively challenge expert witnesses offered by the United States Attorney by using motions in limine and effective cross-examination.

### 2. Evidence

#### **A BUSY LAWYER'S GUIDE TO HEARSAY AND CHARACTER EVIDENCE-Chambers 2**

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

Hearsay and character evidence are amongst the most important concepts in evidence. Unfortunately, the state of the law for both concepts can seem muddled and disjointed. If you find yourself wondering whether a statement is hearsay or not, or if you just want to brush up on your evidence, this lecture is for you. You will walk out of this presentation with an approach to hearsay and character evidence that is simple, practical and that you will be able to apply at your next trial.

### 3. Forensics

#### **CELL PHONE LOCATION EVIDENCE FOR LEGAL PROFESSIONALS-Salon 2**

Larry Daniel, *Digital Forensic Examiner and Cellular Analyst, Guardian Digital Forensics, Raleigh, North Carolina*

This topic covers the methods and purpose of cellular data analysis that is widely used in criminal and civil cases to “place” a person at a particular location based on their cell phone usage. Attendees will learn about the “scientific” basis claimed to support this evidence, how analysts actually interpret and prepare this data for court presentation and how to challenge this type of analysis.

4. **Sentencing Mitigation**

**STORYTELLING AT SENTENCING-Chambers 3**

Anthony “Tony” Natale, *Supervisory Assistant Federal Public Defender, Southern District of Florida, Miami, Florida*

This presentation will focus on how to investigate, develop and present the story of the client past, how it affected his present situation and most importantly the things which will be done to put him on a path of atonement.

5. **Mental Health**

**NEUROPSYCHOLOGY 101: WHAT EVERY DEFENSE ATTORNEY SHOULD KNOW-Chambers 4**

Dr. Joette James, *Washington, District of Columbia*

What is a neuropsychologist? More importantly, when should I hire one? This seminar is an introduction to the field of neuropsychology, a subspecialty area in clinical psychology. In this session, participants will learn the distinction between a clinical psychologist and a neuropsychologist, and the types of situations in which a specialist in brain-behavior relationships can be helpful as a consultant or evaluator. There will be a brief review of brain structure and function, as well as a tour through the functional behavioral domains typically assessed by the neuropsychologist. A number of case examples will be used to illustrate the various ways in which neuropsychological expertise can be valuable.

**2:35 to 3:35 p.m. TRACK PRESENTATIONS**

1. **Creative Motion Practice**

**LEGAL ISSUES AT TRIAL: JURY INSTRUCTIONS, MOTIONS IN LIMINE, AND RULE 29-Chambers 1**

Craig Albee, *Senior Litigator, Eastern District of Wisconsin, Milwaukee, Wisconsin*

Defense lawyers who put off jury instructions and motions in limine until the eve of trial do so at their own peril. From the outset of the case, counsel should begin developing instructions and motions in limine that promote the theory of defense. This session addresses creative approaches to crafting jury instructions and motions in limine that will help you succeed at trial as well as provide ways to use your theory of the case to mount a successful Rule 29 challenge.

2. **Evidence**

**PRIOR ACTS EVIDENCE - USING FRE 404 AS A SHIELD AND SWORD-  
Chambers 2**

Patrick Bouldin, *Assistant Federal Public Defender, Western District of Kentucky, Louisville, Kentucky*

This session will discuss how to keep bad acts evidence out of trial when the prosecutor is trying to use it against your client, and how to use it proactively to advance your theory of the case.

3. **Forensics**

**WHAT'S NEW IN ELECTRONIC SURVEILLANCE: STINGRAYS AND  
NIT'S-Salon 2**

Hanni Fakhoury, *Assistant Federal Defender, District of Northern California, Oakland, California*

Technological advances have given law enforcement powerful new tools to conduct surveillance. While techniques like cell site tracking are widely known to the defense community, newer technologies like IMSI catchers or "Stingrays" and Network Investigative Techniques ("NIT") have only recently come to light after being shrouded in government secrecy. This presentation will provide an overview of these technologies, review the growing body of case law concerning these technologies and discuss defense strategies to discover and challenge these technologies when used in your case.

4. **Sentencing Mitigation**

**NOT QUITE A GET OUT OF JAIL FREE CARD, BUT: INSIDER  
TIPS ON ALLOCUTION AND OTHER SENTENCING ISSUES-Chambers 3**

The Honorable Mark W. Bennett, *United States District Judge, United States District Court for the Northern District of Iowa, Sioux City, Iowa*

Judge Bennett has written extensively on allocution – as the first federal judge to write for a national magazine (The Champion) and the first to publish an empirical study (University of Alabama L. Rev.), along with Professor Ira Robins, on federal judges' views and practices with regard to allocution. His presentation will discuss what factors and strategies actually help and hurt defendants in their allocutions. Judge Bennett has sentenced more than 4000 defendants in four different districts spanning the Northern District of Iowa to the District of the Northern Mariana Islands.

**5. Mental Health**

**DEFENDING VETERANS IN CRIMINAL COURT-Chambers 4**

*Art C. Cody, Captain, USN (Retired), Legal Director, Veterans Defense Program, New York State Defender Association, Albany, NY*

Military Veterans undergo an experience far removed from the vast majority of those who sit in judgment of them in the Criminal Justice system. The military experience, particularly if it involves combat, indelibly shapes the veteran and often has significant causal or mitigation implications relating to a charged offense. At core, the defender's role in a veteran's case is to tell that vet's story -- to translate this uncommon experience into a human narrative that engenders the comprehension of a prosecutor, judge, and jury and evokes their compassion.

This practical presentation will assist that effort by exploring the veteran experience, the "typical" veteran, veteran-client interaction, sources of documentary and testimonial evidence, military mitigation, and military culture playing out in the civilian world.

**3:35 to 3:50 p.m. BREAK**

**3:50 to 4:50 p.m. TRACK PRESENTATIONS**

**1. Creative Motion Practice**

**THE BEST DEFENSE IS A GOOD OFFENSE: AFFIRMATIVE DEFENSES IN FEDERAL COURT-Chambers 1**

*Michael Caruso, Federal Public Defender, Southern District of Florida, Miami, Florida*

A survey of the various affirmative defenses that may be raised in a federal criminal case. Discussion will include issues involving elements, burden of proof, jury instructions, and pre-trial motions.

**2. Evidence**

**WINNING THE EVIDENTIARY BATTLES AT BOND, SENTENCING,  
AND REVOCATION HEARINGS-Chambers 2**

Juval O. Scott, *Attorney Advisor, Office of Defender Services Training Division,  
Washington D.C.*

Even when the rules of evidence aren't in play, there are limits on what information the court can consider at a hearing. This session will discuss strategies for combatting government efforts to rely on prejudicial and unreliable evidence at hearings and offer suggestions for getting the evidence you need into the record.

**3. Forensics**

**EVALUATION AND DEFENSE OF DNA EVIDENCE-Salon 2**

Dave Klucas, *Law Office of David Klucas, Toledo, Ohio*

This session is intended to walk the participant through a case involving DNA evidence, starting from receiving the report, shopping for the right expert, the additional discovery you need, basic DNA data reading, things that should be considered red flags, does it make sense with the rest of the evidence, what to do about the stats, the difference between STR profiling and Y-STR profiling, and cross examination suggestions.

**4. Sentencing Mitigation**

**SUPERVISED RELEASE ISSUES IN SEX OFFENSE CASES-Chambers 3**

Timothy O'Hara, *Assistant Federal Defender, District of Colorado, Denver,  
Colorado*

This session will discuss how to confront the imposition of various supervised release terms in sex offender cases as well as how to defend against alleged violations of those conditions. The presenter will also discuss recent developments in the various Circuits in the area of supervised release conditions.

5. **Mental Health**

**ALL ABOUT DRUGS: HOW WE ASSESS, TREAT, AND REPRESENT CLIENTS WITH SUBSTANCE ABUSE ISSUES-Chambers 4**

*Vivianne Guevara, LMSW, Director of Mitigation and Client Services, Eastern District of New York, Brooklyn, New York*

*Mary Veral, MSW, Social Worker and Investigator, Central District of California, Los Angeles, California*

Our clients use and abuse substances for a variety of reasons: because of a dependence on prescription pain medication, as a way to cope with trauma and PTSD, because it's normalized in their families or communities, and a combination of many reasons. This session will use case examples and cover the following topics: (1) how to recognize symptoms of substance abuse; (2) co-occurring disorders; (3) techniques for talking with clients about their addiction; (4) experts and evidence-based practices for treating substance abuse; and (5) how to present substance abuse issues and treatment in the courtroom.

**4:50 to 5:00 p.m. BREAK**

**5:00 to 6:00 p.m. IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS- Roosevelt Ballroom**

*Hena Mansori, Attorney, National Immigrant Justice Center's Defenders Initiative Program, Chicago, Illinois*

*Claudia Valenzuela, Attorney, National Immigrant Justice Center's Defenders Initiative Program, Chicago, Illinois*

This session will address the immigration consequences for noncitizens resulting from federal 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 noncitizen clients, and strategies to challenge §1326 illegal re-entry charges.

**Friday, August 12, 2016**

**7:30 to 8:30 a.m. REGISTRATION & CONTINENTAL BREAKFAST**

**8:30 to 9:30 a.m. SUPREME COURT UPDATE- Roosevelt 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.

**9:30 to 9:40 a.m. BREAK**

**9:40 to 10:40 a.m. TRACK PRESENTATIONS**

**1. Creative Motion Practice**

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case. It will make suggestions on motions to file and cases to argue to get all the information and discovery that Rule 16 allows, in order to make a proper evaluation of the case and to present a proper defense of your client.

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**10:40 to 10:50 a.m. BREAK**

**10:50 to 11:50 a.m. TRACK PRESENTATIONS**

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*Michael Caruso, Federal Public Defender, Southern District of Florida, Miami, Florida*

A survey of the various affirmative defenses that may be raised in a federal criminal case. Discussion will include issues involving elements, burden of proof, jury instructions, and pre-trial motions.

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**ALL ABOUT DRUGS: HOW WE ASSESS, TREAT, AND REPRESENT CLIENTS WITH SUBSTANCE ABUSE ISSUES-Chambers 4**

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Mary Veral, *MSW, Social Worker and Investigator, Central District of California, Los Angeles, California*

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**3:30 to 3:45 p.m. BREAK**

**3:45 to 5:15 p.m. POLICY DISAGREEMENTS, SENTENCING DATA, POLICY RESEARCH- Roosevelt Ballroom**

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

The Honorable Mark W. Bennett, *United States District Judge, United States District Court for the Northern District of Iowa, Sioux City, Iowa*

Learn how to convince the judge to disagree with the Guidelines (even if she doesn't say so), and how to use Sentencing Commission data and expert policy research to unseat the Guidelines and obtain significant variances.

**Saturday, August 13, 2016**

**7:30 to 8:30 a.m. REGISTRATION & CONTINENTAL BREAKFAST**

**8:30 to 9:30 a.m. THE MYTH OF COLORBLIND JUSTICE- Roosevelt Ballroom**

L. Song Richardson, *Professor of Law, University of California, Irvine School of Law, Irvine, California*

This session will discuss how implicit (i.e. unconscious) biases can influence decision-making and judgments in ways that are consequential to criminal justice system outcomes. The talk will address how these biases are formed, how they affect behaviors and perceptions, and how to safeguard against their influence.

**9:35 to 10:35 a.m. WRITING, WITH STYLE- Roosevelt Ballroom**

Jay McEntire, *Senior Litigator, Eastern District of Washington, Spokane, Washington*

Good lawyering depends on good communicating, and good communicating requires clear writing. The goal for this talk: to provide succinct, easy-to-implement writing tips to generate clear writing, which will enable better communicating, which result in better lawyering - plain and simple.

**10:35 to 10:45 a.m. BREAK**

**10:45 to Noon ATTORNEY WELLNESS: DEFENSES TO COMPASSION FATIGUE AND BURNOUT- Roosevelt Ballroom**

Raul Ayala, *Visiting Attorney Advisor, Defender Services Office Training Division, Assistant Federal Defender, Central District of California, Los Angeles, California*

Ron Tyler, *Associate Professor of Law and Director, Criminal Defense Clinic, Stanford University School of Law, Palo Alto, California*

Lawyers are at significantly higher risk for substance abuse and mental health issues, as demonstrated by numerous studies, including recent findings by the American Bar Association and the Hazelden Betty Ford Foundation. The negative impacts of lawyering are particularly high for those in criminal defense and other high-stress high-touch practice areas. This plenary session will review risk factors and will engage

participants in the exploration of tools and strategies to address those risks and increase their resiliency and long-term wellbeing to benefit themselves, their families and their clients.