

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

WINNING STRATEGIES SEMINAR  
May 19-21, 2016  
Embassy Suites Denver Downtown  
Denver, Colorado

Thursday, May 19, 2016

7:30 to 8:30 a.m. Registration **Crystal B/C Foyer**

8:30 to 8:45 a.m. INTRODUCTIONS & WELCOMING REMARKS – **Crystal B/C**  
Virginia Grady, *Federal Public Defender, Districts of Colorado and Wyoming*  
Juval O. Scott, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

8:50 to 10:00 a.m. A CONVERSATION WITH JUDGE CARDONE – CHAIR OF THE AD HOC COMMITTEE TO REVIEW THE CRIMINAL JUSTICE ACT  
**Crystal B/C**  
Honorable Kathleen Cardone, *United States District Judge for the Western District of Texas, El Paso, Texas*

Attendees will engage in a guided discussion with Judge Kathleen Cardone – Chair of the Ad Hoc Committee to Review the Criminal Justice Act. Topics of discussion will focus on the CJA study issues specific to panel attorney representation, such as judicial involvement in panel attorney appointments, voucher review, and the approval of expert services; fear of retaliation for zealous advocacy; the impact of unwarranted voucher reductions on the quality of CJA representation; and structural components of panel administration. Questions are welcomed and encouraged.

10:00 to 10:15 a.m. Break

10:15 to 11:15 a.m. Break-Out Sessions

1. **CHALLENGING PATTERN RECOGNITION EVIDENCE - FINGERPRINTS & FIREARM TOOLMARK ANALYSIS (AKA "BALLISTICS") - Crystal A**

Jack H. Cunha, Esq., *Cunha & Holcomb, P.C. Boston, Massachusetts*

This session will address how to challenge pattern-recognition evidence/examiners, focusing on attacking the assumptions made by examiners and exposing the lack of a scientific basis when claims of

individualization are made. With the findings in two National Academy of Sciences (NAS) Reports, there is now authority to use when attacking such forensics. No longer can we merely accept the notion that examiners can individualize latent fingerprints and markings on bullets/casings by detecting "unique" characteristics, particularly when both are usually damaged and partial. If you cannot exclude it, where there is a lack of standards for identifying and quantifying so-called individualizing characteristics and a lack of statistical bases for declarations of a match, the jury must be taught that these "experts" are wearing the Emperor's new clothes when they subjectively declare "I know it when I see it."

2. **IDENTIFYING AND ADDRESSING CLIENT MENTAL HEALTH ISSUES - Aspen A**

Frank Draper, *Attorney Advisor, Defender Services Office Training Division*

Many, if not most, of our clients have mental health issues reaching back to childhood. This session is designed to help participants learn how to recognize the signs and symptoms of mental health issues, what role they play in the offense, why these issues warrant a lower sentence, and how to present this information to the judge.

3. **SUPERVISED RELEASE ISSUES IN SEX OFFENSE CASES Cripple Creek 2**

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

Scott Varholak, *Assistant Federal Defender, District of Colorado, Denver, Colorado*

The presenters 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 presenters also will discuss recent developments in the various Circuits in the area of supervised release conditions.

4. **LITIGATION SUPPORT - STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY - Cripple Creek 1**

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.

5. **EVALUATION AND DEFENSE OF DNA EVIDENCE - Aspen B**

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.

**11:15 to 11:30 a.m. Break**

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

1. **A SURVIVAL GUIDE: NOVEL TIPS FOR NAVIGATING THE WILDS OF WHITE COLLAR CRIME - Aspen B**

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

Effectively defending white collar cases requires thinking outside the box. Always. The goal for this talk is simple: to provide folks with succinct, easy-to-implement tips for working a white collar case from start to finish.

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3. **REPRESENTING AQUALUNG: THE PREPARATION AND TRIAL OF A FEDERAL CHILD PORNOGRAPHY OFFENSE - Cripple Creek 2**

Gilbert Schaffnit, *Law Offices of Gilbert A. Schaffnit, Gainesville, Florida*

This session will suggest various pretrial measures for attorneys to take when faced with the prospect of going to trial. The presentation will also

discuss evaluation of the strengths and weaknesses of the forensic evidence in the case and the approaches for handling the cross-examination of the Government's forensic expert.

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

**1:45 to 2:45 p.m. 18 U.S.C.(C) AND SOCIAL MEDIA: THREATS IN THE INTERNET AGE - Crystal B/C**

Brian Leedy, *Assistant Federal Public Defender, District of Denver, Denver, Colorado*

J. Richard Stevens, Ph.D., *Associate Professor of Media Studies, University of Colorado at Boulder*

The presentation will consist of an overview of recent case law pertaining to 18 USC 875(c), and its application in the context of common social media communications.

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

**3:00 to 4:00 p.m. Break-Out Sessions**

**1. THE “MY CLIENT IS A PIMP, NOT A SEX TRAFFICKER” DEFENSE: SOCIO-LEGAL CHALLENGES - Cripple Creek 2**

Kathleen Williamson, J.D., Ph.D., LL.M., *Law Office of Williamson and Young, P.C., Tucson, Arizona*

This breakout session will provide a cursory overview of defending Sex Trafficking cases. Such cases involve a terrain fraught with many extremely complex legal and deeply embedded cultural, social, and racial biases alongside sentences that often exceed those of homicides. This is a relatively new, increasing, and selective prosecution “war,” and this session will warn of the expensive and time consuming pitfalls of defending these cases. We will discuss the changing law and strategies dealing with issues of selective prosecution/enforcement, racial and cultural biases, electronic discovery, spoliation and forensics, Daubert challenges, objections to government uses of FRE 404(b) and 412, typical Government strategies with cooperating codefendants (so called “bottoms”) and alleged victims, the sociological, economic, and anthropological expert testimony, some jurisdictional and vagueness issues, the history of the Sex Trafficking laws and government media campaigns, voir dire and jury instructions, sentencing and SORNA issues, and plea negotiations. There will also be a discussion for CJA panel about the need for ample time for complex investigation, motion practice and trial preparation as well as obtaining sufficient funding for your work, staff, resources, and experts. A bibliography including jurisprudential, social science and history articles will be provided with materials.

**2. THE ART OF EFFECTIVE PERSUASION IN THE COURTROOM Aspen A**

Harry Zimmerman, *Law Office of Harry Zimmerman, Albuquerque, New Mexico*

This small interactive workshop will show how use of voice, use of body (by lawyer, by witness, judge, or juror), and using improvisational skills--allow the lawyer to move around the courtroom with greater comfort, gain a psychological advantage on the opponent, and become a more persuasive advocate in presentation. (Limited to 20 attendees)

3. **TO ERR IS HUMAN; TO PRESERVE ERROR, DIVINE: STRATEGIES FOR MAKING THE RECORD ON APPEAL - Cripple Creek 1**

Dean Sanderford, *Assistant Federal Public Defender, Appellate Division, Districts of Colorado and Wyoming*

An appellate court generally has a singular purpose: to review the decision below on the basis of the record that was made before the district court. This is why appellate lawyers can't stop talking about error preservation. But what does it really mean to "make a record"? And how is it even possible to focus on building a "frozen record" for appeal while in the midst of a heated battle at trial? The answer is to consider the potential for appellate litigation as a part of the overall trial strategy. 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.

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The presenters 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 presenters also will discuss recent developments in the various Circuits in the area of supervised release conditions.

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

4:15 to 5:30 p.m. **CONSPIRACY CASES – HOW TO HANDLE AND WIN THEM  
Crystal B/C**

Michael Kennedy, *Law Office of Michael Jerome Kennedy, PLLC, Reno, Nevada*

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

Kevin Tate, *Assistant Federal Defender, Western District of North Carolina, Charlotte, North Carolina*

This session will address the big issues that arise when a client is charged with being part of a conspiracy. The panelists will discuss pretrial challenges, trial tactics, and sentencing issues.

5:30 p.m.      **Adjournment**

### Friday, May 20, 2016

7:30 to 8:30 a.m.      **Registration – Crystal B/C Foyer**

8:30 to 9:30 a.m.      **SUPREME COURT UPDATE – Crystal B/C**

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.

9:35 to 10:35 a.m.      **SEARCH AND SEIZURE IN THE ROBERTS' COURT – Crystal B/C**

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

This session will look at the key Fourth Amendment cases decided by the Roberts' Court in its ten year tenure. During this time, the Roberts' Court has radically changed whole areas of search and seizure law. While many of these changes have weakened the exclusionary rule, others have given us new avenues to challenge searches and seizures. We will discuss the good and the bad cases focusing on how to minimize the impact of the negative ones and how to maximize the opportunities presented by the positive ones.

10:35 to 10:50 a.m. **Break**

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

1. **LITIGATING MITIGATING FACTORS: VARIANCES, DEPARTURES, AND ALTERNATIVES TO INCARCERATION – Crystal A**

Jennifer Niles Coffin, *Sentencing Resource Counsel Project, Nashville, Tennessee*

It can be hard to keep up with the ever-evolving changes in guideline applications. This session will discuss challenges that should be made based on current trends in the law and what may be on the horizon. It will also address how to deconstruct specific sentencing guidelines to your client's advantage.

2. **PRACTICAL TIPS IF YOUR CLIENT FACES INCARCERATION IN A FEDERAL PRISON - Cripple Creek 1**

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.

3. **REPRESENTING AQUALUNG: THE PREPARATION AND TRIAL OF A FEDERAL CHILD PORNOGRAPHY OFFENSE - Cripple Creek 2**

Gilbert Schaffnit, *Law Offices of Gilbert A. Schaffnit, Gainesville, Florida*

This session will suggest various pretrial measures for attorneys to take when faced with the prospect of going to trial. The presentation will also discuss evaluation of the strengths and weaknesses of the forensic evidence in the case and the approaches for handling the cross-examination of the Government's forensic expert.

4. **IT'S A DIALOGUE, NOT A MONOLOGUE: COMMUNICATING EFFECTIVELY WITH CLIENTS WHO ARE STRONG-WILLED, MENTALLY ILL, RETARDED, OR JUST PLAIN MAD - Aspen B**

Paige Nichols, *Research & Writing Attorney, District of Kansas, Topeka, Kansas*

In this hour, we will talk about different models of client communication and offer practical tools for setting our egos aside so that we can hear our clients, be heard by our clients, and work together for better results.

5. **THE ART OF EFFECTIVE PERSUASION IN THE COURTROOM Aspen A**

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This small interactive workshop will show how use of voice, use of body (by lawyer, by witness, judge, or juror), and using improvisational skills--allow the lawyer to move around the courtroom with greater comfort, gain a psychological advantage on the opponent, and become a more persuasive advocate in presentation. (Limited to 20 attendees)

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

**1:00 to 2:00 p.m.**      **JIU JITSU, JOHNSON, AND HOW TO MAXIMIZE THE DESTRUCTION OF THE RESIDUAL CLAUSE - Crystal B/C**

*Kirk Redmond, First Assistant Federal Public Defender, District of Kansas, Topeka, Kansas*

Residual clause precedent is the junk drawer of crimes of violence litigation. Now that *Johnson* has ripped away the government's favorite hidey-hole for characterizing crimes as violent, how do we best take advantage?

**2:00 to 2:10 p.m.**      **Break**

**2:10 to 3:10 p.m.**      **Break-Out Sessions**

**1.      CURRENT ILLEGAL REENTRY DEFENSE STRATEGIES: THAWING THE ICE-STORM - Aspen A**

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

*Donna Coltharp, First Assistant Federal Public Defender, Western District of Texas, San Antonio, Texas*

The prosecution of the reentry of deported aliens (Title 8 U.S.C. Section 1326) has been second only to drug offenses in all federal criminal charges for the past several years. In Fiscal Year 2014, for example, the United States Sentencing Commission reported that 29.3% of all federal criminal cases were immigration-related, or more than 22,000 cases. Section 1326(d) limits the collateral attack on underlying deportation orders unless the defendant can show that all administrative remedies have been exhausted, the deportation proceedings deprived the alien the opportunity for judicial review, and that the entry of the order was fundamentally unfair. This session will review the elements of the offense, outline diligent trial preparation and discovery strategies, and examine current examples of effective 1326(d) challenges to prior deportation orders that have led to

dismissal of charges or other favorable outcomes for the non-citizen defendant.

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4. **GUN CASES AND THE ART OF WAR - Cripple Creek 2**  
Shabazz Dumaka, *Assistant Federal Defender, Middle District of Tennessee, Nashville, Tennessee*

Across the nation, we are seeing a rise in firearms prosecutions. This session will explore various strategies and practical tips for defending a firearms case. We will discuss issues ranging from initial investigations, knowledge of firearms, pretrial strategies, negotiations, and trial defenses. For illustrative purposes, we will analyze different fact patterns and discuss how to proceed at each stage of representation.

5. **A LAWYER'S GUIDE TO UNDERSTANDING MOBILE DEVICES AND FORENSICS - Creston A/B**  
John Ellis, *Assistant Federal Defender, Southern District of California, San Diego, California*

Ninety percent of Americans have cell phones and there are more mobile devices in the world than people. Nearly every criminal case now involves at least one mobile device. This presentation explains what mobile devices are, how they work, and how forensic programs work. Additionally, the

presentation explains how storing data in the cloud can impact an investigation. Finally, the presentation explains how encryption works.

6. **TO ERR IS HUMAN; TO PRESERVE ERROR, DIVINE: STRATEGIES FOR MAKING THE RECORD ON APPEAL - Cripple Creek 1**

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Dumaka Shabazz, *Assistant Federal Defender, Middle District of Tennessee, Nashville, Tennessee*

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**4:20 to 4:30 p.m. Break**

**4:30 to 5:30 p.m. CROSS EXAMINING COOPERATING WITNESSES - Crystal B/C**

Kevin Tate, *Assistant Federal Defender, Charlotte, North Carolina*

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.

**5:30 p.m. Adjournment**

Saturday, May 21, 2016

7:30 to 8:30 a.m. **Registration – Crystal B/C Foyer**

8:30 to 9:30 a.m. **RESOURCES FOR CJA PANEL ATTORNEYS – Crystal B/C**

Jack H. Cunha, Esq., *Cunha & Holcomb, P.C. Boston, Massachusetts*

Sharon Samek, *Attorney Advisor, Defender Services Office Legal & 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](http://www.fd.org) and the Defender Services Office Training Division. Questions welcomed.

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

9:40 to  
10:40 a.m. **A TO Z INTERNET SEARCHING FOR THE DEFENSE ATTORNEY –  
NO SEARCH ENGINE WILL BE HARMED DURING THIS LECTURE  
Crystal B/C**

Jonathan Lyon, *Chicago, Illinois*

While most of us can find basic information online, this session will go beyond the basics and provide immediately useful sites for your cases. Within the framework of the alphabet and a site per letter, we will get your case in a better place just by you walking into the room. Buckle your seatbelt, launch your favorite browsers, and have your pens ready for these hidden gems on the net.

10:45 to  
11:45 a.m. **YOU ARE WHAT YOU WRITE: THE ETHICAL IMPLICATIONS OF  
EVERYDAY WRITING – Crystal B/C**

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

Paige Nichols, *Research & Writing Attorney, District of Kansas, Topeka, Kansas*

How far can you dangle a participle without violating the rule of competence? How much language can you borrow from a treatise consistent with your duty of candor toward the court? Is humor or vitriol ever a good idea in written advocacy? Find out the answers to these questions and more in this presentation about ethical risks you may not have anticipated with respect to your everyday legal writing.

**11:45 a.m. to  
noon**

**Closing Remarks - *Crystal B/C***

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*Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, El Paso, Texas*

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**10:00 to 10:15 a.m. Break**

**10:15 to 11:30 a.m. *THE ESSENTIAL ROLE OF INVESTIGATION IN CJA CASES***

*Sharon Samek, Attorney Advisor, Defender Services Office Legal & Policy Division, Washington, D.C.*

Jim Tibensky, *Non-Capital Mitigation Specialist (Ret.), Northern District of Illinois, Chicago, Illinois*

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.

**11:30 to 11:35 a.m. Break**

**11:35 to 12:35 p.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.

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

**1:45 to 3:00 p.m. [PRETRIAL MOTIONS: STUFF TO KNOW TO GET THE DISCOVERY YOU NEED](#)**

Michael Kennedy, *Law Office of Michael Jerome Kennedy, PLLC, Reno, Nevada*

David Anthony, *Assistant Federal Defender, Nevada Federal Public Defender, Las Vegas, 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.

**3:00 to 3:05 p.m. Break**

**3:05 to 4:05 p.m. GETTING THE MOST OUT OF PLEA AGREEMENTS, COOPERATION, AND NAVIGATING THE DANGERS OF A PROFFER**

*Callie Glanton Steele, Senior Litigator, 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.

**4:05 to 4:15 p.m. Break**

**4:15 to 5:30 p.m. CONSPIRACY CASES – HOW TO HANDLE AND WIN THEM**

*Michael Kennedy, Law Office of Michael Jerome Kennedy, PLLC, Reno, Nevada*

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

*Kevin Tate, Assistant Federal Defender, Western District of North Carolina, Charlotte, North Carolina*

This session will address the big issues that arise when a client is charged with being part of a conspiracy. The panelists will discuss pretrial challenges, trial tactics, and sentencing issues.

**5:30 p.m. Adjournment**

**Friday, May 20, 2016**

**7:30 to 8:30 a.m. Registration - Crystal B/C Foyer**

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

*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. 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.

**10:40 to 10:45 a.m. Break**

**10:45 to 11:45 a.m. SENTENCING 201 - SENTENCING SCENARIOS**

*Stephen Marley, Attorney Advisor, Defender Services Office, Training Division, Washington, D.C.*

Current federal criminal law requires sentencing courts to properly calculate a client's advisory guideline range, and to evaluate various other considerations before imposing judgment. 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.

**11:45 a.m. Adjournment (Winning Strategies Seminar resumes at 1:00 p.m.)**