



WINNING STRATEGIES SEMINAR

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

KIMPTON EPIC HOTEL
270 BISCAYNE BOULEVARD WAY
MIAMI, FLORIDA 33131

JANUARY 10-12, 2019

FINAL AGENDA

Thursday, January 10, 2019

7:30 to 8:30 a.m. Registration & Continental Breakfast – **Metropolis Foyer**

8:30 to 8:45 a.m. Introduction & Welcoming Remarks – **Metropolis**

Hector Dopico, *Chief Assistant Federal Public Defender, Office of the Federal Public Defender for the Southern District of Florida, Miami, FL*
Henry Bell, *CJA Panel Representative, Southern District of Florida, Bell Rosquete Reyes, Coral Gables, FL*
Frank Draper, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

8:45 to 9:45 a.m. Plenary: Who Tells Your Story: Better Advocacy is When You Remember, Feel and It Moves You – **Metropolis**

Joseph Ross, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of North Carolina, Raleigh, NC*
Having a theory for sentencing and supporting themes is critical to your organization of the case and forms the basis of your sentencing story. This session will define a theory and theme and will address how to develop theories and themes and weave them into your story of mitigation for sentencing. It will also discuss the elements of storytelling and how to effectively use storytelling to make a compelling argument at sentencing.

9:45 to 9:55 a.m. Break – **Metropolis Foyer**

9:55 to 10:55 a.m. Break-Out Sessions

1. **The Attorney Client Relationship: Crossing All Lines**
(repeats today at 1:20) – **Sanctum B**
LaRonda R. Martin, Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of Tennessee, Jackson, TN
Every case begins and ends with the client. The attorney client relation is the foundation of any preparation for trial or sentencing. If it hasn't been built, neither will thrive. Whether the challenge be race, sexual orientation, language, education, or religious – the attorney client relationship cannot grow without addressing these issues. Join a discussion about building better client relationships.

2. **Creative Use of Technology at Sentencing – Parker**
(repeats today at 1:20)
Kyana Givens, Visiting Attorney Advisor, Defender Services Office Training Division, Washington, DC
If a picture is worth a thousand words, talk less, illustrate more. This session will address the elements of the effective use of audio-visual aids at sentencing.

3. **Battling 851 Notices: Avoid Mandatory Minimums Sentences of 10 Years, 20 Years, or Life! – Sanctum A**
(repeats today at 1:20)
Jim Skuthan, First Assistant Federal Public Defender, Office of the Federal Public Defender for the Middle District of Florida, Orlando, FL
Section 851 notices can either double your client's mandatory minimum or subject them to mandatory LIFE! There are fewer things scarier in a mandatory minimum drug case than getting one, two, or more Section 851 notices. Know how to battle back and help your client avoid unwarranted and horrific mandatory sentences. Just because the government files a Section 851 notice doesn't mean you have to grin and bear it. Learn how to fight back!

4. **Conditions of Supervised Release – Metropolis**
(repeats today at 1:20)
Johanna M. Christiansen, Assistant Federal Public Defender, Office of the Federal Public Defender for the Central District of Illinois, Peoria, IL
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. Strategies for obtaining humane and appropriate supervised release conditions for clients charged with sex offenses will also be discussed as well as appropriate conditions for clients with substance use disorders.

10:55 to 11:05 a.m. Break – Metropolis Foyer

11:05 a.m.

to 12:05 p.m. Plenary: Dismantling the Conspiracy Charge: Pretrial Through Trial – Metropolis

Michael Kennedy, *Law Offices of Michael Jerome Kennedy, PLLC, Reno and Las Vegas, NV*

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

12:05 to 1:20 p.m. Lunch

1:20 to 2:20 p.m. Break-Out Sessions

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2:20 to 2:30 p.m. Break – Metropolis Foyer

2:30 to 3:30 p.m. Break-Out Sessions

1. **Discovery Management and Review Strategies in the Electronic Age – Metropolis**
(repeats Friday at 10:50)
Tim Watkins, *Director's Leadership Program Resident, Administrative Office of the U.S. Courts, Washington, DC*
Thanks to the computer revolution, the legal system has moved from a paper world to one where the vast majority of information is created, transmitted and stored electronically. In addition to the explosion of documents in electronic, even a "simple" single defendant prosecution may feature hours of audio and video, your client's several cellphones, and other detritus culled from the "internet of things." This session will use the Joint Working Group on Electronic Discovery's "ESI Protocol" as a framework to

discuss strategies for organizing and effectively reviewing the increasingly complex discovery productions that are becoming the new normal in federal criminal defense.

2. **Practical Tips If Your Client Faces Incarceration in a Federal Prison – Sanctum A**
(repeats Friday at 10:50)
David Merchant, *Assistant Federal Defender, Federal Defenders of Montana, Billings, MT*
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. **The Categorical Approach as Applied to Violent Felonies, Crimes of Violence, Controlled Substance Offenses, and Serious Drug Offenses – Sanctum B**
(repeats Friday at 10:50)
Jayme Feldman, *Sentencing Resource Counsel Project, Federal Public and Community Defenders, Washington, DC*
This session will present a step-by-step process on how to conduct a categorical/modified categorical analysis under the elements-based framework of *Descamps v. United States* and *Mathis v. United States*. Attendees will leave this session with a greater comfort in employing the categorical approach, will be able to identify common missteps and opportunities for advocacy, and will perhaps even leave with some fondness for the framework so many have grown to hate.
4. **Attacking Search Warrants (only time offered) – Parker**
Jodi Linker, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Northern District of California, San Francisco, CA*
Too often, challenges to search warrants are summarily rejected by the court. This session will explore creative ways to attack them, including the identification of favorable Fourth Amendment decisions.

3:30 to 3:45 p.m. Break – Metropolis Foyer

3:45 to 4:45 p.m. Plenary: Immigration – Law Enforcement Visas for Cooperating Witnesses – Metropolis
Mary E. Kramer, Attorney, the Law Offices of Mary E. Kramer, P.A., Miami, FL

As criminal defense lawyers, we all know that law enforcement agencies and prosecutors depend in large part on informants and witnesses to build a case. At the same time, cooperation may lead to consequences in the form of retribution in the native country upon deportation. If a foreign-born national is a witness, an informant or has cooperated with law enforcement,

their immigration status will be a key consideration in plea negotiations and sentencing stages. At the same time, negotiations may be complicated if the informant or witness is implicated in criminal activity that eventually subjects that person to removal proceedings. After covering the background and basics of “S”, “T” and “U” status, this session will delve deeper into strategies for negotiating “S”, “T” or “U” status, the timing of negotiations for status adjustment, and negotiating the government’s commitment to aid in protecting the witness-defendant from deportation to the home country. This presentation will also cover critical practice tips that will ensure that your foreign-born client is thoroughly informed about the immigration consequences and available forms of protective relief that stem from cooperation with law enforcement agencies and prosecutors.

4:45 p.m.

Adjournment

Friday, January 11, 2019

7:30 to 8:30 a.m. Registration & Continental Breakfast – Metropolis Foyer

8:30 to 9:30 a.m. Plenary: You Can't Win a Plea and Other Trial Strategies – Metropolis

David Oscar Markus, *Attorney at Law, Markus/Moss PLLC, Miami, FL*

This session will focus on preparing and successfully trying criminal cases. Mr. Markus will discuss how to deliver persuasive opening statements and closing arguments as well as conducting effective cross-examinations. And, beyond preparation and performance, he will discuss the psychological aspect of strategizing a criminal trial.

9:30 to 9:40 a.m. Break – Metropolis Foyer

9:40 to 10:40 a.m. Plenary: Race & Sentencing – Metropolis

Kyana Givens, *Visiting Attorney Advisor, Defender Services Office Training Division, Washington, DC*

Laura Mate, *Sentencing Resource Counsel Project, Federal Public and Community Defenders, Des Moines, IA*

At sentencing, we must educate the court on how our clients came to this pass and what should be done with them. Race and poverty are often relevant to that inquiry. This session will highlight ways to directly address race and poverty in your sentencing advocacy.

10:40 to 10:50 a.m. Break – Metropolis Foyer

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

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4. **The Great Divides: Identifying Federal Criminal Defense Issues Currently Splitting the Circuits – Parker**
(repeats Saturday at 9:40)
George Couture, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*
Ever identify a circuit split only to find out the split had been resolved? Or wished you had preserved a split long after your case had closed? We've all been there. Wouldn't it be nice to have a training session designated to reviewing unresolved circuit splits so that you can effectively exploit these gaps in the law to benefit your client? We thought so, too. In this session, we will review many of the federal criminal issues that are currently dividing the courts and discuss the preservation of these issues for potential appeal. We will identify circuit splits related to the issues you see most: searches and seizures, defendant statements, immigration, standards of review, the Sentencing Guidelines, and more. After this session, you will be able to recognize many of the current criminal defense issues dividing the Courts of Appeals so that you can use (and preserve) these issues to vigorously defend your clients.

5. **Greatest Hits in Defense of Our Noncitizen Clients – Gotham**

(repeats today at 2:10)

Claudia Valenzuela, *Detention Project Director, National Immigrant Justice Center, Chicago, IL*

The National Immigrant Justice Center provides immigration advice to defenders and CJA panel attorneys across the nation and has answered common questions that occur in federal criminal cases. This session will provide an overview of the top questions defense attorneys have and provide practical tips in defending noncitizens, including providing defenses to fraud and denaturalization cases.

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

1:00 to 2:00 p.m. Plenary: Excellence in Criminal Defense: Strategies to Address Implicit Bias, Racial Anxiety, and Stereotype Threat – Metropolis

Jessica MacFarlane, *Senior Research Associate, Perception Institute, New York, NY*

Even when we hold strong values of equity, unconscious processes linked to race, ethnicity, and other identity differences can get in the way. This presentation will draw upon research from the “mind sciences” to demonstrate how unconscious phenomena, such as implicit bias, racial anxiety, and stereotype threat, can affect decision-making and interactions – ultimately undermining goals of objectivity and fairness the criminal justice system. The presenter will share evidence-based strategies to address these phenomena, equipping defense attorneys with tools to align behavior with values.

2:00 to 2:10 p.m. Break

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

1. **BOP and Mental Health: Will Your Client Receive Treatment?**

(repeats Saturday at 9:40) – **Sanctum A**

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

Will your client get the mental health treatment they need in BOP? In a 2017-18 survey, BOP reported that it does not track numbers on prisoners with serious mental illness. A 2017 BJS Report states about 1 in 7 state and federal prisoners meet the threshold for serious psychological distress (SPD) in the 30 days prior to a survey. Overall, 45% of federal prisoners have had a mental health problem (61.2% for women in federal prison). Yet BOP statistics suggest they are not receiving treatment. As of July 2018, 96% of the BOP population were not receiving any regular mental health services nor did they have a mental health treatment plan in place. This

session will discuss the data and brainstorm ways to inform the sentencing courts of the failure to provide adequate mental health care in BOP.

2. **Crimes of Violence & Violent Felonies: Challenges to be Made During a Time of Conflict, Chaos, & Confusion – Sanctum B**
(repeats today at 3:20)
Craig Crawford, *Attorney Advisor, Defender Services Offices Training Division, Washington, DC*
Does it seem like nothing should qualify as a crime of violence or violent felony? You would be right. In this session, we will apply the principles discussed in the categorical approach primer to the characterization of offenses as crimes of violence or violent felonies, saving your client years in prison.
3. **Shotspotter & Government Surveillance Technology--When in Doubt, Keep it Out; But if it Comes In, How to Win – Metropolis**
(repeats today at 3:20)
Katie Higgins, *Assistant Public Defender, Monroe County (NY) Public Defender's Office, Rochester, NY*
This session will explain how ShotSpotter technology works, what discovery is available, how to mount an admissibility challenge and attack in trial. We will also address how to more generally confront and limit the emerging technology and surveillance being developed for use against our clients in criminal cases.
4. **All I Do Is Win: New Immigration Guidelines, New Challenges**
(repeats today at 3:20) – **Parker**
Laura Mate, *Sentencing Resource Counsel Project, Federal Public and Community Defenders, Des Moines, IA*
This session will address the new and sweeping changes to the immigration guidelines effective November 1, 2016 and include the amendments added November 1, 2018. We will use scenarios to help us identify the challenges in applying the new guidelines to help ensure the lowest possible sentence for our client.
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4. **Using Childhood Trauma as Sentencing Mitigation Evidence**
(repeats Saturday at 9:40) – **Gotham**
Paul Gill, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Eastern District of Virginia, Richmond, VA*
Sarah Y. Vinson, M.D., *Lorio Psych Group, Atlanta, GA*
To borrow a Torts 101 adage, we take our clients as we find them, and we find many with an extensive history of acute and chronic childhood trauma. This session explores the research about how that can affect adult relationships and conduct, the targeted treatment options for those

suffering such trauma, and the ways to present this information in support of mitigation at sentencing.

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

4:30 to 5:30 p.m. Plenary: Guarding *Miranda* and Waivers Rancheros: Cultural Considerations in the Suppression of Confessions – **Metropolis**
Francisco Morales, Assistant Federal Public Defender, Office of the Federal Public Defender for the Southern District of Texas, Corpus Christi, TX

So you say your client gave a full confession? But before getting there, your client understood his rights and waived those rights. Right? This lecture deals with various aspects of *Miranda* litigation, especially the influence of culture and language as it relates to intelligent and knowing waivers of *Miranda* rights and statements that are knowingly and intelligently given. For many, the time they are arrested is the first time that they have the benefit of hearing *Miranda* rights. Is it possible for someone to hear *Miranda* for the first time and still not understand it? We will delve into the different ways that language, education, culture, and machismo, among other things, play a role in the knowing and intelligent calculus as it relates to *Miranda*.

5:30 p.m. Adjournment

Saturday, January 12, 2019

7:30 to 8:30 a.m. Registration & Continental Breakfast – Metropolis Foyer

8:30 to 9:30 a.m. Plenary: Resources for CJA Panel Attorneys – Metropolis

Sharon Samek, *Attorney Advisor, Defender Services Office Legal & Policy Division, Washington, DC*

Henry Bell, *CJA Panel Representative, Southern District of Florida, Bell Rosquete Reye, Coral Gables, FL*

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.

9:30 to 9:40 a.m. Break – Metropolis Foyer

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

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**11:45 a.m. Plenary: Ethical Issues Confronting Criminal Defense Attorneys
Metropolis**

James Smith, III, Esq., *CPLS, P.A., Orlando, FL*

A discussion of some of the recurring ethical issues faced by criminal defense attorneys, and tips on how to handle these issues while continuing to provide a zealous defense.

11:45 a.m. to noon Closing Remarks