Thursday, January 30, 2020

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

8:30 to 8:45 a.m.  Introduction & Welcoming Remarks
Anthony Solis, CJA Panel Representative, Central District of California, Calabasas, CA
Craig Crawford, Attorney Advisor, Defender Services Office Training Division, Washington, DC

8:45 to 9:45 a.m.  Plenary 1: Trial Strategies to Attack Cell Site Location Information, Electronic Data, and Other Electronic Surveillance
John Ellis, Jr., Law Offices of John Ellis, Jr., Inc., San Diego, CA

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 using historic cell site location information (CSLI). Some in law enforcement describe these devices as “the virtual biographer of our daily activities.” Not so fast! Use of CSLI contains pitfalls, misleading data and misunderstood technology which may lead to erroneous conclusions by law enforcement, attorneys, and most importantly, juries. This presentation will get attorneys started on learning the lay of the land, help elucidate the issues, the technology and the problems with over-reliance on CSLI, and present strategies for attacking the reliability of law enforcement opinions as to your client’s location based upon cell phone use. This presentation will also address issues involving other forms of electronic surveillance.

9:45 to 10:00 a.m.  Break
10:00 to 11:00 a.m. Concurrent Sessions 1

1. Practical Tips If Your Client Faces Incarceration in a Federal Prison
   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.

2. Blind Mule and Duress Defenses in Border Crossing Cases
   Walter Goncalves, Assistant Federal Public Defender, District of Arizona, Tucson, AZ

   This session is tailored towards practitioners in border districts, however, blind mule and duress defenses come up in other contexts as well. The session is aimed at providing useful tools for those defending clients charged with any drug case involving duress or blind mule defenses (although certain aspects can also be applied to illegal entry cases). There will be a summary of critical case law, a discussion of jury instructions, and useful tips for pre-trial and trial strategy.

3. Trial Strategies in RICO Cases
   Anthony Solis, CJA Panel Representative, Central District of California, Calabasas, CA
   Craig Wilke, Law Office of Craig Wilke, Fullerton, CA

   This session will discuss strategies for pre-trial litigation to prepare for trial in as well as strategies for in-trial litigation in RICO cases. This will include a discussion of pre-trial motions, expert witnesses, jury instructions and motions in limine as well as a discussion of pertinent RICO case law.

4. PATTERN in Practice: Navigating the First Step Act’s Earned Time Credits and Risk and Needs Assessment System
   Laura E. Mate, Sentencing Resource Counsel, Des Moines, IA

   Among its many provisions, the First Step Act (FSA) provides opportunities for certain individuals to earn time credits (separate from good time credits) and be released from prison based on those credits. Beginning January 2020, some of our incarcerated clients may be assigned programming through which they can earn these credits. Whether our clients will benefit from this aspect of the FSA depends on whether they are excluded (due to immigration status, conviction, or judicial findings at sentencing), their risk score (as determined by BOP’s new risk assessment tool: PATTERN), their participation in programming, and the availability of programming. This session will provide an overview of these custodial provisions of the FSA, identify what we know and don’t yet know about BOP’s implementation of these provisions, and discuss how to best set our clients up to take advantage of the new potential benefits.

11:00 to 11:15 a.m. Break

11:15 a.m. to 12:15 p.m. Concurrent Sessions 2
1. **Practical Tips If Your Client Faces Incarceration in a Federal Prison**  
   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.

2. **New Opportunities for Compassionate Release Under the First Step Act**  

   The First Step Act made important changes to how federal compassionate release works. This presentation will cover how the Act: (1) changed and expanded compassionate release eligibility criteria; (2) ensures that prisoners have the right to appeal the Bureau of Prison’s denial or neglect of a prisoner’s request for compassionate release directly to court; and (3) provides other important features, such as notification, assistance, and visitation rules. This session will also discuss successful litigation strategies emerging from the first year of implementing the Act.

3. **Trial Strategies in RICO Cases**  
   Anthony Solis, *CJA Panel Representative, Central District of California, Calabasas, CA*  
   Craig Wilke, *Law Office of Craig Wilke, Fullerton, CA*

   This session will discuss strategies for pre-trial litigation to prepare for trial in as well as strategies for in-trial litigation in RICO cases. This will include a discussion of pre-trial motions, expert witnesses, jury instructions and motions in limine as well as a discussion of pertinent RICO case law.

4. **Documentary Video and Editing for Sentencing Advocacy, Part One**  
   Marcos Barbery, *Mitigation Specialist, Federal Defender Program for the Northern District of Illinois, Chicago, IL*

   This two-part training emerged out of a Sentencing Advocacy Workshop presentation. The dual breakout sessions offer a hands-on learning experience in both documentary production and editing for sentencing. The training draws on the use of inexpensive tools — including smart phones and a $90 editing software — to teach basic skills on how to make short, inexpensive, high-quality documentaries that demonstrate the truth about your clients. During the first hour, several short sentencing videos will be screened; then, in step-by-step process, the production process — from shooting to interviewing — will be unpacked and dissected, followed by a learn-by-doing production tutorial. Attendance at both breakout sessions is preferred.

12:15 to 1:45 p.m.  **Lunch**

1:45 to 2:45 p.m.  **Plenary 2: Busting Bond Myths and Winning Pretrial Release**  
   Alison Siegler, *Director of the Federal Criminal Justice Clinic, University of Chicago Law School, Chicago, IL*
Key provisions of the Bail Reform Act are routinely misinterpreted or ignored at initial appearances and detention hearings, resulting in the improper detention of our clients. This session will include a thorough discussion of these misconceptions and will provide tools for fighting detention, beating the presumptions, filing bond motions, and obtaining release.

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

3:00 to 4:00 p.m. **Concurrent Sessions 3**

1. **PATTERN in Practice: Navigating the First Step Act’s Earned Time Credits and Risk and Needs Assessment System**  
   Laura E. Mate, *Sentencing Resource Counsel, Des Moines, IA*

   Among its many provisions, the First Step Act (FSA) provides opportunities for certain individuals to earn time credits (separate from good time credits) and be released from prison based on those credits. Beginning January 2020, some of our incarcerated clients may be assigned programming through which they can earn these credits. Whether our clients will benefit from this aspect of the FSA depends on whether they are excluded (due to immigration status, conviction, or judicial findings at sentencing), their risk score (as determined by BOP’s new risk assessment tool: PATTERN), their participation in programming, and the availability of programming. This session will provide an overview of these custodial provisions of the FSA, identify what we know and don’t yet know about BOP’s implementation of these provisions, and discuss how to best set our clients up to take advantage of the new potential benefits.

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   The First Step Act made important changes to how federal compassionate release works. This presentation will cover how the Act: (1) changed and expanded compassionate release eligibility criteria; (2) ensures that prisoners have the right to appeal the Bureau of Prison’s denial or neglect of a prisoner’s request for compassionate release directly to court; and (3) provides other important features, such as notification, assistance, and visitation rules. This session will also discuss successful litigation strategies emerging from the first year of implementing the Act.

3. **Blind Mule and Duress Defenses in Border Crossing Cases**  
   Walter Goncalves, *Assistant Federal Public Defender, District of Arizona, Tucson, AZ*

   This session is tailored towards practitioners in border districts, however, blind mule and duress defenses come up in other contexts as well. The session is aimed at providing useful tools for those defending clients charged with any drug case involving duress or blind mule defenses (although certain aspects can also be applied to illegal entry cases). There will be a summary of critical case law, a discussion of jury instructions, and useful tips for pre-trial and trial strategy.

4. **Documentary Video and Editing for Sentencing Advocacy, Part Two**  
   Marcos Barbery, *Mitigation Specialist, Federal Defender Program for the Northern District of Illinois, Chicago, IL*
This two-part training emerged out of a Sentencing Advocacy Workshop presentation. The dual breakout sessions offer a hands-on learning experience in both documentary production and editing for sentencing. The training draws on the use of inexpensive tools — including smart phones and a $90 editing software — to teach basic skills on how to make short, inexpensive, high-quality documentaries that demonstrate the truth about your clients. During the second hour, participants will watch and participate in the live editing of an original sentencing documentary. Participants will learn how to shoot, light, frame, cut, split video from audio, and capture and insert archival — such as family pictures — that once edited together, will illustrate your client’s humanity, and capacity to heal and rehabilitate, and ultimately, help justify your sentencing argument. Attendance at both breakout sessions is preferred.

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

4:15 to 5:15 p.m.  Plenary 3: Dismantling the Conspiracy Charge: Pretrial Through Trial
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.

5:15 p.m.  Adjournment

Friday, January 31, 2020

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

8:30 to 9:30 a.m.  Plenary 4: Supreme Court Update

This session provides an update on recent Supreme Court decisions affecting federal criminal practice, and reviews issues currently under consideration.

9:30 to 9:45 a.m.  Break

9:45 to 10:45 a.m.  Plenary 5: The Categorical Approach – A Primer
Kara Hartzler, Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA

“I love the categorical approach!” – said no federal practitioner (or court), ever. The categorical approach has been a thorn in our sides since it was created by the Supreme Court in Taylor v. United States, 495 U.S. 575 (1990). From the Armed Career Criminal Act, to Section 924(c); from the career offender guideline, to child pornography sentencing enhancements, the categorical approach cannot be avoided. But while it may be here to stay, this analytical framework has proven to be one of our greatest tools to achieve substantive relief for our clients. In this interactive
presentation, attendees will work through each step of the categorical and modified
categorical approach analyses. The presentation will place particular emphasis on
post-\textit{Mathis} issues of statutory divisibility and the use of \textit{Shepard}-approved
documents. 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.

10:45 to 11:00 a.m. Break

11:00 a.m. to 12:00 p.m. Concurrent Sessions 4

1. \textbf{What Goes Around Comes Around: How 40 Years of Immigration Policy Led}
\textit{to Our Current Border “Crisis” (and What You Can Do About It)}
Kara Hartzler, \textit{Assistant Federal Defender, Federal Defenders of San Diego, Inc., San}
Diego, CA

While immigration stories dominate our headlines, little time is spent considering
how decades of domestic and foreign policy led us to this point in history. This session
shares the speaker's personal reflections of working along the border for several
decades, how these experiences informed her approach to the intersection of criminal
and immigration law, and what creative challenges lawyers representing noncitizens
in illegal entry and reentry prosecutions can bring to help fight back against the
criminalization of immigration.

2. \textbf{Defending Noncitizens in Today’s Harsh Environment: Understanding}
Immigration Consequences of Criminal Offenses
Hena Mansori, \textit{Managing Attorney, National Immigrant Justice Center, A Heartland}
Alliance Program, Chicago, IL

Knowing whether your client's criminal offense will trigger adverse immigration
consequences may make the difference between remaining in the U.S. with their
family and being deported. This session will provide an overview of immigration law
as relevant to your clients and will educate attorneys on deportable and inadmissible
offenses, including aggravated felonies and crimes involving moral turpitude. This
session will also address recent crim-immigration decisions and provide practical tips
for plea negotiations.

3. \textbf{One of These Things is Not Like the Other: Challenging Drug Predicates}
Davina T. Chen, \textit{Law Office of Davina T. Chen, Glendale, CA}
Brianna Mircheff, \textit{Assistant Federal Public Defender, Office of the Federal Public
Defender for the Central District of California, Los Angeles, CA}

In this session we will share challenges to characterizing prior convictions as
controlled substance offenses (career offender), serious drug offenses (ACCA), serious
drug felonies and felony drug offenses (851). More ways to save your clients years –
even decades – of prison time.

Note: This session will not devote substantial time to the basics of the categorical and
modified categorical approaches, which will be covered in the earlier plenary: The
Categorical Approach – A Primer
4. **Firearm and Toolmark Identification**  
   Jack Cunha, *Cunha & Holcomb, P.C.*, Boston, MA

   This session will address how to effectively challenge the lack of a scientific basis of “forensic” evidence presented in cases involving firearms/toolmark identification in light of the findings in the 2009 National Academy of Sciences (NAS) and 2016 PCAST Reports. Arguments to repudiate claims that firearms produce unique markings on bullets/casings, lack of standards for identifying so-called individual markings, lack of statistical basis for declarations of a match between a gun and bullet, and prejudice from unsupported “expert” testimony will be presented.

5. **Strategizing/Brainstorming the Application of Recent Supreme Court Cases**  
   **Facilitators:** Paul Rashkind, *Supervisory Assistant Federal Public Defender and Chief of the Appellate Division, Office of the Federal Public Defender for the Southern District of Florida, Miami, FL*  
   Craig Crawford, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

   What is the impact of recent Supreme Court decisions, such as *Rehaif v. United States*, 139 S. Ct. 914 (June 21, 2019) and *United States v. Davis*, 139 S. Ct. 782 (June 24, 2019), on your clients’ cases? How might the upcoming Supreme Court decision of *Shular v. United States*, 2019 WL 26498511 (cert. granted June 28, 2019), affect the future? Come to this breakout with your cases to strategize and brainstorm ways to make the most of recent Supreme Court decisions and to preserve and to protect clients’ interests in changing times.

12:00 to 1:30 p.m.  Lunch

1:30 to 2:30 p.m. **Concurrent Sessions 5**

1. **What Goes Around Comes Around: How 40 Years of Immigration Policy Led to Our Current Border “Crisis” (and What You Can Do About It)**  
   Kara Hartzler, *Assistant Federal Defender, Federal Defenders of San Diego, Inc.*, San Diego, CA

   While immigration stories dominate our headlines, little time is spent considering how decades of domestic and foreign policy led us to this point in history. This session shares the speaker’s personal reflections of working along the border for several decades, how these experiences informed her approach to the intersection of criminal and immigration law, and what creative challenges lawyers representing noncitizens in illegal entry and reentry prosecutions can bring to help fight back against the criminalization of immigration.

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statistical basis for declarations of a match between a gun and bullet, and prejudice from unsupported “expert” testimony will be presented.

3. The Kitchen Sink: Other Challenges to Use of Prior Convictions to Increase Sentences
   Davina T. Chen, Law Office of Davina T. Chen, Glendale, CA

   In this session, we will share other challenges to using prior convictions to increase sentences based on the maximum term of imprisonment for the prior conviction (career offender, ACCA, 851), the separateness of offenses (ACCA), and other elements created by the First Step Act (851).

4. Six Areas to Worry About in Firearm Cases
   Leigh Skipper, Chief Federal Defender, Community Defender for the Eastern District of Pennsylvania, Philadelphia, PA

   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.

5. Combating Penalty Enhancements Where Death or Serious Bodily Injury Results from the Use of a Controlled Substance
   George Couture, Attorney Advisor, Defender Services Office Training Division, Washington, DC

   Deaths from drug overdoses have exploded in recent years, especially for opioids. The minimum and maximum statutory sentence a defendant faces may be increased if a drug offense resulted in death or serious bodily injury. This session provides an overview of the statutes at play in death and injury cases. The discussion will focus on issues of causation and toxicology that are relevant to understand and investigate for trial and sentencing.

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

2:45 to 3:45 p.m. Concurrent Sessions 6

1. Defending Noncitizens in Today’s Harsh Environment: Understanding Immigration Consequences of Criminal Offenses
   Hena Mansori, Managing Attorney, National Immigrant Justice Center, A Heartland Alliance Program, Chicago, IL

   Knowing whether your client’s criminal offense will trigger adverse immigration consequences may make the difference between remaining in the U.S. with their family and being deported. This session will provide an overview of immigration law as relevant to your clients and will educate attorneys on deportable and inadmissible offenses, including aggravated felonies and crimes involving moral turpitude. This session will also address recent crim-immigration decisions and provide practical tips for plea negotiations.
2. **Strategies for Dealing with Jury Deliberation Issues**  
   Brianna Mircheff, *Assistant Federal Public Defender, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA*

   After a jury has heard evidence from the government and defense and has been instructed on the law, the jury takes on the awesome responsibility of deliberating the fate of the accused. This session will examine myriad common problems that arise in jury deliberations — e.g., jury notes, deadlocked jury, excused juror, consideration of extraneous matter — and effective strategies for turning these problems into opportunities to advance the client’s case.

3. **Six Areas to Worry About in Firearm Cases**  
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4. **Combatting Penalty Enhancements Where Death or Serious Bodily Injury Results from the Use of a Controlled Substance**  
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3:45 to 4:00 p.m. **Break**

4:00 to 5:30 p.m. **Plenary 6: Implicit Bias: Not Just a Police Problem**  
   Natasha M. Dartigue, *Deputy District Public Defender for Baltimore City, Baltimore, MD*

   Description will be provided later.

5:30 p.m. **Adjournment**
Saturday, February 1, 2020

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

8:30 to 9:30 a.m.   Plenary 7: Resources for CJA Panel Attorneys
Sharon Samek, Attorney Advisor, Defender Services Office Legal & Policy Division, Washington, DC
Anthony Solis, Attorney and CJA Panel Representative, Central District of California, Calabasas, CA

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 resources available through www.fd.org and the Defender Services Office Training Division. Questions welcomed.

9:30 to 9:45 a.m.   Break

9:45 to 10:45 a.m.   Plenary 8: Evidence Meets Hollywood: Making, Meeting, and Preserving Objections for Appeal
Francisco “Frank” Morales, Assistant Federal Defender, Office of the Federal Public Defender for the Southern District of Texas, Corpus Christi, TX

Description will be provided later.

10:45 to 11:00 a.m.   Break

11:00 a.m. to 12:00 p.m.   Plenary 9: Ethics & Professionalism
Fredilyn Sison, Assistant Federal Defender, Training Coordinator & Director, Office of the Federal Public Defender for the Western District of North Carolina, Asheville, NC

This ethics and professionalism session will address issues related to conflicts of interest, confidentiality, the scope of representation, and practical ways to diffuse unethical and/or unprofessional conduct or situations.

12:00 p.m.   Closing Remarks and Adjournment