



Winning Strategies Seminar - Virtual

Administrative Office of the U.S. Courts,
Defender Services Office Training Division

June 27 & 29, 2023

All Times are in Eastern Daylight Time (EDT)

The Winning Strategies Seminar – Virtual brings together a dynamic group of attorneys and other legal professionals to speak on a wide variety of topics, all specifically designed to keep CJA practitioners and Defenders abreast of the most recent and important developments in federal criminal defense. The anticipated sessions will include such topics as Police Body Worn Cameras, 2023 Sentencing Guideline Amendments, Developments in Federal Search and Seizure Law, Challenging the Toxicology of Drug Cases Resulting in Death, *Apprendi* Arguments re: ACCA’s “occasion” Clause post-*Wooden*, Supreme Court Update, Psychology of Trauma, and Ethics. This program will take place on June 27 and 29, 2023, between 12:00 to 5:00 PM EDT each day, with 15-minute breaks in between sessions.

This virtual seminar will include eight live presentations (which will be recorded) on the GoToWebinar platform. Instructions on how to join this virtual seminar will be emailed to you from noreply@goto.com after you register. Detailed instructions, with pictures, are also available at <https://www.fd.org/winning-strategies-seminar-virtual#overlay-context=>

This program is open to everyone working with federal defender and CJA panel attorneys. Yes, that means both attorneys and non-attorneys, investigators, paralegals, legal assistants, and any defense professional who will find the program’s content valuable to their work.

If you have questions about the content of this virtual program, please contact [George Couture@ao.uscourts.gov](mailto:George.Couture@ao.uscourts.gov).

Continuing Legal Education (CLE) accreditation for this program will be sought in all applicable jurisdictions. This program may satisfy CLE requirements in ethics and technology. See [CLE Information Center](#) and [CLE FAQs](#) for more information.

Thank you for joining us on this journey for our first Winning Strategies Seminar – Virtual.

Tuesday, June 27, 2023

12:00-1:00 p.m. *The Trauma is Real*

Holly Salisbury, *Psy.D., Clinical Psychologist, President of Maitri Psychological Services, PLLC, Phoenix, AZ*

Many of our clients have been exposed to traumatic events that have resulted in various manifestations of post-traumatic distress. This session will address the impact of trauma on our clients and how to approach our work with clients from a trauma-informed perspective.

1:00-1:15 p.m. *Break*

1:15-2:15 p.m. *Police Body Worn Cameras: Are We Really Seeing Everything?*

Giselle Pomerleau, *Litigation Technology Attorney, Office of the Federal Defender for the District of New Jersey, Camden, NJ*

Across the country, police departments are increasingly using body-worn cameras to better monitor what officers are doing in the field. Reliance on this technology requires knowing exactly what this technology can and cannot do. This session will provide an overview of body worn cameras—what they are, how they work; tips and tricks for efficient video evidence review, such as signs of video tampering or manipulation; legal strategies for obtaining discovery to ensure the defense is getting everything it is entitled to; and how to challenge this evidence.

2:15-2:30 p.m. *Break*

2:30-3:45 p.m. *Equal to the Occasion: Apprendi Arguments re ACCA’s “occasions” Clause post-Wooden*

Davina Chen, *Attorney, National Sentencing Resource Counsel, Los Angeles, CA*
Shelley Fite, *Attorney, National Sentencing Resource Counsel, Madison, WI*

Last spring the Supreme Court in *Wooden v. United States*, 142 S. Ct. 1063 (2022), addressed the Armed Career Criminal Act’s “occasions” clause for the first time. *Wooden* holds that this clause requires a “multi-factored inquiry” into the circumstances of the criminal conduct underlying each potential ACCA predicate, to determine whether the offenses were “committed on occasions different from one another.” The elephant in the room is that this multi-factored inquiry is utterly incompatible with the “categorical approach,” which permits judges

rather than juries to determine whether a particular prior offense is an ACCA predicate (either a “violent felony” or a “serious drug offense”). And about a year ago, Main Justice recognized that elephant, leading to concessions around the country that ACCA is now, to some extent, a jury question. This is an issue that has been evolving too rapidly over the last year for a CLE-type presentation, but we are finally ready to try. Join us as we talk through *Wooden*; ongoing litigation related to *Wooden*; and strategic issues related to pretrial motions, plea negotiations, and trial prep in potential ACCA cases.

3:45-4:00 p.m. Break

4:00-5:00 p.m. Developments in Federal Search and Seizure Law

Liz Daily, *Assistant Federal Defender and Appellate Chief, Office of the Federal Defender for the District of Oregon, Portland, OR*

Stephen Sady, *Chief Deputy Federal Defender, Office of the Federal Defender for the District of Oregon, Portland, OR*

This session will focus on recent search and seizure cases that should be part of your motions practice. For over thirty years, Liz Daily and Stephen Sady have been compiling cases in which defendants and civil rights plaintiffs have prevailed. By focusing on successful Fourth Amendment arguments, this session provides raw material for criminal defense lawyers to fashion suppression motions, based on chronology and causation, that can enforce our clients’ rights against government overreach while supporting an expansive view of the Fourth Amendment’s protections. Case analyses include helpful counterpoints and positive law alerts.

Thursday, June 29, 2023

12:00-1:00 p.m. Supreme Court Update

Easha Anand, Supreme Court & Appellate Counsel, Roderick & Solange MacArthur Justice Center, and Visiting Professor, Stanford Supreme Court Clinic, Palo Alto, CA

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

1:00-1:15 p.m. Break

1:15-2:30 p.m. Challenging the Toxicology of Drug Cases Resulting in Death

Glenn Farr, PhD., Professor Emeritus of Clinical Pharmacy & Translational Science, University of Tennessee College of Pharmacy, Knoxville, TN

Holly Sullivan, Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA

Trial preparation and litigation strategies for “resulting in death cases” focuses on the interplay between use of experts and litigation. The goal of the presentation is to give the defense team the ability to determine what information to request and how to digest that information. Ultimately, the presentation will provide strategies that weave the holes in the government case into your litigation practice and trial defenses/theories. An overview of the case law will be discussed as a framework from which to view the discovery received.

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

2:45-3:45 p.m. 2023 Guideline Amendments Overview: The Good, The Bad, and The Ugly

Jayne Feldman, Attorney, National Sentencing Resource Counsel, Washington, DC

Leslie Scott, Attorney, National Sentencing Resource Counsel, Grosse Pointe Farms, MI

This session will provide an overview of the 2023 Sentencing Guideline Amendments, which were transmitted to Congress on April 27, 2023, and will go into effect on November 1, 2023, absent congressional action to the contrary. We will review the guideline amendment process and discuss the most important amendments promulgated by the Commission this year. We will identify and brainstorm strategies for

sentencing advocacy in light of the amendments, including how to use the ameliorative ones now and how to argue for the narrowest possible reading of the harmful ones down the line. By the end of the session, participants should understand the sentencing guideline amendment process; be familiar with the 2023 guideline amendments; and identify related strategies for success at sentencing.

3:45-4:00 p.m. Break

4:00-5:00 p.m. Ethics: Excellence in Practice

Pamela R. Metzger, *Director of the Deason Criminal Justice Reform Center and Professor of Law, Southern Methodist University Dedman School of Law, Dallas, TX*

This presentation will address current and emerging topics in ethics and professionalism for federal criminal practitioners. Topics to be addressed include obligations of confidentiality, the management of metadata, and the challenges of e-discovery duties of candor to the court; why data and other electronic recordkeeping is a critical part of professional practice.