



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

WINNING STRATEGIES SEMINAR – HYBRID

Sheraton Grand Los Angeles
711 S Hope Street
Los Angeles, CA 90017

June 6-8, 2024

Agenda

All times listed are in Pacific Time (PT)
All meeting rooms are on the Ballroom Level
LSR = Live Streamed & Recorded Session
LS = Live Streamed Session (Not Recorded)

Thursday, June 6, 2024

- 7:30 – 8:30 a.m. **Registration & Continental Breakfast**
California Ballroom Foyer
- 8:30 – 8:45 a.m. **Welcoming Remarks – LSR – California DEF**
Cuauhtemoc Ortega, *Federal Public Defender, Federal Public Defender’s Office for the Central District of California, Los Angeles, CA*
Anthony M. Solis, *CJA Panel Representative for the Central District of California, Calabasas, CA*
George Couture, *Attorney Advisor, Defender Services Office Training Division, Washington, D.C.*
- 8:45 – 9:45 a.m. **Plenary 1: LSR – California DEF**
Celebrating the Guardians of Indigent Criminal Defense
Christina Swarns, *Executive Director, Innocence Project, New York, NY*

In *Gideon v. Wainwright*, the United States Supreme Court unanimously ruled that every person accused of a crime in America must be provided with legal defense counsel, regardless of their economic status or ability to pay. While there remains much work yet to do before we can declare victory in the fight for racial justice, civil rights and human rights, we celebrate the Federal Defenders and CJA panel attorneys who strive to provide equal justice for marginalized communities.

9:45 – 10:00 a.m. Refreshment Break – *California Ballroom Foyer*

10:00 – 11:00 a.m. Break-Out Sessions 1

1. ***LSR – California DEF***
Defender Digest: An Overview of the 2024 Guideline Amendments
Cherrelle Herbert, *Attorney, National Sentencing Resource Counsel Project, Christiansted, VI*
Christin Thayer, *Visiting Attorney, National Sentencing Resource Counsel Project, Las Vegas, NV*

This session will provide an overview of the 2024 Sentencing Guideline Amendments, which will be transmitted to Congress before this seminar, and will go into effect on November 1, 2024, absent congressional action to the contrary. We will review the guideline amendments and brainstorm strategies for sentencing advocacy in light of the amendments. By the end of the session, participants should understand the sentencing guideline amendment process; be familiar with the 2024 guideline amendments; and be able to identify related strategies for success at sentencing.

2. ***California A/B***
Using Body-Worn, Cruiser, and Pole-Mounted Cameras to Your Client's Advantage During Motions Practice
Rich McWilliams, *Assistant Federal Defender, Federal Public Defender's Office for the District of Nebraska, Omaha, NE*

The proliferation of camera use by police departments has at once narrowed and expanded the scope of motions practice. In this session, we will address how to harness the increased precision this footage offers during pretrial-motions practice to our client's advantage.

3. ***California C***
Navigating Federal Jury Selection: The Law, and Effective Strategy
Phillip C. Hamilton, *Managing Partner, Hamilton Clarke, LLP, New York, NY*

An overview of the applicable law governing federal jury selection, and effective strategies incorporating the law to select, and deselect, the right jurors for your case.

4. ***The Orpheum***
Firearms Sentencing Update
Patricia Richman, *Assistant Federal Defender, Federal Public Defender's Office for the District of Maryland, Greenbelt, MD*
Tina Woehr, *Attorney, Sentencing Resource Counsel Project, Phoenix, AZ*

Last year saw the biggest overhaul to §2K2.1 in years. This session will cover legislative and guidelines updates, as well hot topics in firearms sentencing litigation. Participants will discuss strategies for sentencing advocacy in firearms cases, with a focus on §2K2.1 cases.

11:00 – 11:15 a.m. Break

**11:15 a.m. –
12:15 p.m. Break-Out Sessions 2**

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12:15 – 1:45 p.m. **Lunch (*lunch on your own*)**

- 1:45 – 3:00 p.m. **Plenary 2: – LSR – California DEF**
How to Litigate Geofence Warrants
Spencer McInville, *Digital Forensics Examiner, Envista Forensics, Morrisville, NC*
Michael Price, *Litigation Director for the Fourth Amendment Center at NACDL, Washington, DC*

Geofence warrants require a provider—almost always Google—to search its entire reserve of user location data to identify all users or devices located within a geographic area during a time period specified by law enforcement. The criminal defense community believes these warrants violate the Fourth Amendment because they are not targeted to a particular individual or device. This session will address how to effectively investigate, and challenge evidence derived from the government's geofence warrants, including how to get the discovery you need and how to identify and leverage appropriate technology experts to support your client's efforts.

3:00 – 3:15 p.m. **Refreshment Break – California Ballroom Foyer**

3:15 – 4:15 p.m. Break-Out Sessions 3

1. *LSR – California DEF*

Plea Negotiations: You Gotta Know When to Hold ‘Em and Know When to Fold ‘Em.

Sara Peloquin, *Assistant Federal Defender, Federal Defenders of San Diego, Inc., San Diego, CA*

This presentation will cover the importance of client-centered negotiation. We will review the five stages of negotiation theory: 1) preparation, 2) information gathering, 3) distribution, 4) closing, and 5) evaluation. We will cover strategies and tactics for a successful negotiation result. And we will sing karaoke (not a joke, come prepared).

2. *California A/B*

Communication is Key: How to Be an Active Listener

Fredilyn Sison, *CJA Panel Attorney, Asheville, NC*

“You’re not listening to me!”

Unfortunately hearing this statement, no matter how diligent we have been as appointed counsel, is disappointing. We try very hard to be responsive to our clients, but despite our best efforts, we sometimes do not hear what they say. Not listening or hearing can prove to be devastating to our case.

In this session, we will learn how to be active listeners. Being an active listener will help your law practice immeasurably. We will discover what gets in the way of hearing what others say. We will experience being fully present as others speak. Your relationship with your clients will improve when you become an active listener.

An interactive session, this skill-building session will help you not only with clients, but with others in your professional and personal lives.

3. *California C*

Combatting AI – Identifying and Challenging AI Applications in Law Enforcement

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

Artificial intelligence (AI) is everywhere these days and law enforcement is no exception. This session highlights and addresses three emerging issues related to AI: (1) credibility (*e.g.*, what if law enforcement use AI to profile a driver and then create a pretext for a traffic stop); (2) reliability (*e.g.*, when AI is used as evidence or starting point of investigation, how do we use *Daubert?*—think ShotSpotter);

and, (3) admissibility and authentication (e.g., how to deal with possibility of deep fakes). This presentation will be interactive, utilize hypotheticals and review case examples as a basis for group discussion.

4. ***The Orpheum***
Are You Stuck In The Waiting Place? How To Keep Things Moving (And Maybe Even Win Release) For Your Incompetent Clients

Jackie Tarlton, Assistant Federal Defender, Federal Defender's Office for the Eastern District of North Carolina, Raleigh, NC

Any of us can find ourselves with an incompetent client, whether we handle revocations, misdemeanors, or felonies. But too often, these most vulnerable clients fall to the wayside because courts, prosecutors, and unfortunately sometimes even defense lawyers aren't sure how to keep these cases moving. The bad news is that there is an egregious nationwide backlog in obtaining competency evaluations and restoration treatment. The good news is that this is a place where the statute and case law are actually good for us! In this presentation, we will walk through the governing statute, 18 USC 4241; nationwide caselaw; and sample pleadings that can protect these clients from languishing indefinitely in competency and restoration proceedings, avoid civil commitment, and perhaps even get these cases dismissed.

4:15 – 4:30 p.m. Break

4:30 – 5:30 p.m. Plenary 3 – *LSR – California DEF*
From Presentence to Release – Avoiding BOP Pitfalls So Your Client Doesn't Serve More Time Than Necessary

Jack Donson, Executive Director, Executive Director, The Federal Prison Education and Reform Alliance (PERA), Dingmans Ferry, PA

This session will provide practical tips if your client faces federal imprisonment. It will include factors to consider for your client to receive the earliest feasible release date.

5:30 p.m. Adjourn for the Day

Friday, June 7, 2024

7:30 – 8:30 a.m. Check-in & Continental Breakfast – *California Ballroom Foyer*

8:30 – 9:30 a.m. Plenary 4: – *LSR – California DEF*
Black Drivers Have a Problem in Richmond, Virginia: How to Win a Selective Enforcement Claim

Laura Koenig, *Assistant Federal Defender, Federal Public Defender's Office for the Eastern District of Virginia, Richmond, VA*

Eli Coston, Ph.D., *Assistant Professor, Virginia Commonwealth University, Richmond, VA*

In selective enforcement cases, the party challenging prosecution carries a heavy burden. They must show discriminatory effect and discriminatory intent in order to prove that the police targeted a person because of their race, ethnicity, or other impermissible factor. So how do you prove a selective enforcement claim based on the police selectively stopping black drivers, for example? This session will discuss how to investigate, develop, and present a winning selective enforcement claim, including use of experts to prove discriminatory effect and discriminatory purpose.

9:30 – 9:45 a.m. Refreshment Break – *California Ballroom Foyer*

9:45 – 10:45 a.m. Plenary 5: – *LSR – California DEF*
Supreme Court Update

Andrew Adler, *Assistant Federal Defender and Chief of the Appellate Division, Federal Public Defender's Office for the 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.

10:45 – 10:55 a.m. Break

10:55 – 11:55 a.m. Break-Out Sessions 4

1. *LSR – California DEF*
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11:55 a.m. –

1:00 p.m. Lunch (*on your own*)

1:00 – 2:00 p.m. Plenary 6: – *LSR – California DEF*

Writing Effective Sentencing Memoranda

Fritz Scheller, *Fritz Scheller P.L., Orlando, FL*

The importance of clear and concise written advocacy in federal criminal proceedings cannot be overestimated, especially for sentencing. This session will cover the principles of crafting a persuasive and fact-driven sentencing memorandum that tells your client's story and individualizes them, instead of an argument that reads like a law review article.

2:00 – 2:10 p.m. Break

2:10 – 3:10 p.m. Break-Out Sessions 5

1. *LSR – California DEF*

“Dear Judge:” How to Really Connect with the Court

Jennifer Uyeda, *Chief of Training, Federal Public Defender's Office for the Central District of California, Los Angeles, CA*

Mitigation is at the heart of a client-centered approach. At its core, it means knowing our clients well enough to convey who they are – and why that matters – to prosecutors, probation officers, judges, and juries. This session will explore techniques in discovering and enhancing our client's voice as the main character in our thematic story to the Court. We will focus on the core aspects of an effective letter, developing letters from our client and family members, painting vivid pivotal moments in our client's life, and guiding our clients in a meaningful allocution at the sentencing hearing. Feedback from the court and concrete examples of letters and position papers will be provided.

2. **California A/B**
The Best Offense is a Good Defense: Tips for Challenging the Application of Criminal History Points
Cherrelle Herbert, *Attorney, National Sentencing Resource Counsel Project, Christiansted, VI*
Christin Thayer, *Visiting Attorney, National Sentencing Resource Counsel Project, Las Vegas, NV*

Criminal history points play a significant role in sentencing decisions. Objecting to the criminal history score computation is often an important part of preparing for sentencing. During this session we will review Chapter 4 of the Guidelines Manual. We will discuss tips for avoiding sentencing pitfalls and strategies for challenging the assessment of criminal history points at sentencing. By the end of the session, participants should be familiar with Chapter 4 of Guidelines Manual and litigation strategies for challenging their clients' criminal history scores.

3. **California C**
What's Been Brewin' Since *Bruen*? Defending Gun Cases in the Era of the Individual Right Based in the Core Concept of Self-Defense
Jackson Whetsel, *Assistant Federal Defender, Federal Public Defender's Office for the District of Puerto Rico, San Juan, PR*

This session will explore legal strategies for defending people charged with federal gun crimes in the post-*Bruen* era. Three recent Supreme Court Cases – *Heller*, *McDonald*, and *Bruen* – have fundamentally shifted the landscape of Second Amendment jurisprudence. Now, the right is undoubtedly an individual right, and it is so because it is based on the fundamental (human) right to self-defense. Additionally, means-end scrutiny is no longer applicable in the Second Amendment context, and the *Bruen* Court has promulgated a new, historically driven analysis to determine if the firearm prohibition accords with our nation's "longstanding history" of firearm prohibition. This session focuses on legal strategies for defending gun cases. However, due to the Supreme Court's newly promulgated historical analysis in the Second Amendment context, it is important to pay attention to some of the unfortunate aspects of our nation's "longstanding history." In so doing, this seminar will also discuss the racial implications of federal firearm prohibitions and how those issues might be utilized in defense of alleged gun crimes.

4. ***The Orpheum***

A Deep Dive into BOP Inmate Classification, Programs and the First Step Act

Jack Donson, *Executive Director, Executive Director, The Federal Prison Education and Reform Alliance (PERA), Dingmans Ferry, PA*

A web of program statements and institutional practices guide the Federal Bureau of Prisons in making decision relating to confinement and release. This session will include an in depth conversation about custody classifications (the review process to assign a custody level based on an individual’s criminal history, current offense, and institutional adjustment), programs and services available to help federal inmates successfully return to the community, and the First Step Act. Jack Donson welcomes robust Q&A.

3:10 – 3:25 p.m. Refreshment Break – *California Ballroom Foyer*

3:25 – 4:25 p.m. Break-Out Sessions 6

1. ***LSR – California DEF***

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4:25 – 4:35 p.m. Break

4:35 – 5:35 p.m. Plenary 7: – *LSR – California DEF*
Obtaining and Effectively Using Cellebrite Data at Trial
Neha Christerna, *Assistant Federal Defender, Federal Public Defender’s Office for the Central District of California, Los Angeles, CA*
Callie Glanton Steele, *Chief Trial Deputy, Santa Barbara County Office of the Public Defender, Santa Barbara, CA*

These days, our clients text, e-mail, send audio messages, and take photos constantly with their cellphones. The result is a data trail of everything they do each day, which can either help or hurt the case. In many cases, the government seizes cellphones of the client, co-defendants, and witnesses (and in some cases, the decedent) to retrieve data in an attempt to solve the case. In order to properly assist our clients, we need to know how to access that data and use it to our client’s advantage at trial. In this session, attendees will learn what language to use in discovery requests and motions to obtain Cellebrite data, how to access the information once it is provided, and how to effectively use and present it in the courtroom to maximize its impact on the jury.

5:35 p.m. Adjourn for the Day

Saturday, June 8, 2024

8:00 – 9:00 a.m. Check-in & Continental Breakfast – *California Ballroom Foyer*

9:00 – 10:00 a.m. **Plenary 8: – *LSR* – *California DEF***
Integrating the Science of Adolescent Brain Development into Federal Criminal Practice

Robert Kinscherff, Ph.D., J.D., *Professor, Doctoral Clinical Psychology Program at William James College (Forensic Psychology, Law and Mental Health, Ecology of Child Behavioral Health) & Senior Fellow in Law and Applied Neuroscience (2015-2017) for joint Fellowship of Center for Law, Brain & Behavior (Massachusetts General Hospital) and Petrie-Flom Center (Harvard Law School), Cambridge, MA*

The U.S. Supreme Court has repeatedly held that offenses committed by those under the age of eighteen must be treated differently from offenses committed by adults. The behavioral science adopted by the Supreme Court in the juvenile sentencing cases is supported and bolstered by neuroscience that demonstrates that critical regions of the human brain do not fully develop and become mature until an individual reaches their mid-twenties. Further, the U.S. Sentencing Commission has proposed amending the Sentencing Guidelines to explicitly include considerations of youth for purposes of downward departures from the guidelines range based on consensus science. This session will address how to effectively integrate the science of adolescent brain development into your federal criminal practice to mitigate a youthful client's sentence and/or youthful criminal history, including the use of experts. We will also discuss why certain recidivism studies suggesting the propensity of youthful individuals to reoffend are problematic and unreliable.

10:00 – 10:10 a.m. Refreshment Break – *California Ballroom Foyer*

10:10 – 11:10 a.m. **Plenary 9: – *LSR* – *California DEF***
Ethics: Artificial Intelligence and the Law -- Ethical Dystopia or Utopia?

Anthony Gallagher, *CJA Attorney, Great Falls, MT*

AI will raise complex and challenging ethical questions that implicate the principles of confidentiality, competence, practice management, and honesty. After this session, attendees may not be able to fully understand AI and its myriad applications in the law, but they will understand the parameters that the ethical rules impose on its use (or abuse).

11:10 – 11:15 a.m. Break

11:15 a.m. –

12:15 p.m. Plenary 10: – LSR – California DEF

Defending My Former Self

Antonio Howard, *Paralegal, Federal Public Defender's Office for the Western District of Pennsylvania, Erie, PA*

Antonio Howard is a paralegal with the Western District of Pennsylvania Federal Public Defender's Office. Before doing this work, Mr. Howard was incarcerated and sentenced to life in prison at 15 years old. He served 26½ years in prison. Mr. Howard will share his personal story of growth and development while in prison and afterwards and give his insights in ways we as defense team members can better understand and communicate with clients.

12:15 p.m.

Closing Remarks – Adjourn

Michael Oppenheimer, *Attorney Advisor, Defender Services Office Training Division, Washington, D.C*