



WINNING STRATEGIES SEMINAR II

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

ATLANTA MARRIOTT BUCKHEAD HOTEL & CONFERENCE CENTER
3405 LENOX ROAD NE
ATLANTA, GEORGIA 30326
JUNE 7-9, 2018
DRAFT AGENDA

Thursday, June 7, 2018

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

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

Leigh Burton Finlayson, Panel Representative, Northern District of Georgia, Atlanta, Georgia

George Couture, Attorney Advisor, Defender Services Office Training Division, Washington, D.C.

8:45 to 10:00 a.m. Searching and Candid Voir Dire

Kyana Givens, Assistant Federal Defender, Western District of Washington, Seattle, Washington

This session will focus on innovative ways to ignite rich discussion about unconscious bias during voir dire. These skills will be illustrated through a voir dire case study that is transforming jury education and voir dire discussions on race.

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

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

1. Trial Strategies in RICO Cases

Jack H. Cunha, Esq., Cunha & Holcomb, Boston, Massachusetts

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.

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

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. Challenging Conditions of Supervised Release

Nicole Kaplan, *Assistant Federal Defender, Northern District of Georgia, Atlanta, Georgia*

Conditions of supervised release are tacked on to the end of most federal prison terms, often as an afterthought, with the court and parties focused on the term of imprisonment. In many cases, district judges simply list the conditions of supervised release that they impose, devoting little time at sentencing explaining or justifying the conditions. This session will address challenging improper conditions of supervised release in light of recent court developments.

4. Challenging Criminal Forfeiture and Restitution Amounts and the Interplay with Loss Amounts after the Revised Economic Crime Guidelines

Kevin Tate, *Senior Litigator, Western District of North Carolina, Charlotte, North Carolina*

For many cases, restitution and forfeiture related issues are treated as an afterthought. Restitution and forfeiture are not duplicative. Each has a distinct purpose and each is governed by a different legal framework. This session will address challenging restitution and forfeiture amounts generally, as well as examining the interplay between those amounts and the calculation of loss amounts under the revised economic crime Guidelines.

11:15 to 11:30 a.m. Break**11:30 a.m.
to 12:30 p.m. Break-Out Sessions****1. Trial Strategies in RICO Cases**

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

1:45 to 3:00 p.m. Channeling Mr. Rogers

Jay McEntire, *Senior Litigator, Federal Defenders of Eastern District of Washington and Idaho, Spokane, Washington*

On May 1, 1969, Fred Rogers testified before a senate subcommittee to save PBS from budget cuts. In just 6 minutes, Mr. Rogers turned the subcommittee from deep skeptics into passionate supporters. It was remarkable. In this talk, we'll discuss how to blend the moral psychology that Mr. Rogers relied on with classy writing to craft persuasive motions and briefs – no matter the audience.

3:00 to 3:15 p.m. Break

3:15 to 4:15 p.m. Break-Out Sessions

1. Making the Impossible Possible: Trial Tactics for Defending Illegal Re-entry and Transporting Cases

Francisco "Frank" Morales, *Assistant Federal Public Defender, Office of the Federal Public Defender, Corpus Christi, Texas*

So you say you have no defense? We'll find you one. In this session, attendees will receive various trial tactics that could be helpful in hearing the words "Not guilty" following a jury trial in illegal re-entry cases (1326) and transporting cases (1324). The topics range from fighting citizenship claims to humanitarian defenses in the defeat of transporting charges.

2. Minimizing the Defendant's Relevant Conduct

Fritz Scheller, *Fritz Scheller PL, Orlando, Florida*

Federal practitioners know well that conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range

and have an outsize influence on the defendant's sentence. This session will address tactics and techniques for minimizing a defendant's relevant conduct at sentencing.

3. The Preparation and Trial of a Federal Child Pornography Offense
TBD

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. Revving Up the Cross Examination Engine
TBD

Wigmore said that cross-examination is the greatest legal engine for the discovery of truth. An effective cross examination can elicit favorable information from a government witness, or impeach the credibility of a government witness to lessen the weight of unfavorable testimony. This session will focus on tactics and techniques of effective cross-examination.

4:15 to 4:30 p.m. Break

4:30 to 5:30 p.m. Neuropsychology of the Developing Brain and Trauma

James Garbarino, Ph.D., *Professor, Maude C. Clarke Chair in Humanistic Psychology, Loyola University, Chicago, Illinois*

The Supreme Court has recognized that adolescents are constitutionally different than adults for sentencing purposes. Adolescents are impulsive, lack maturity, have underdeveloped sense of responsibility that leads to recklessness, and are generally more vulnerable to negative outside influences and pressures. At the same time, an adolescent's character is not fixed, in part, because their brains are still developing well into early adulthood. This session will address the development of the adolescent brain into adulthood, the effects of trauma during that critical development, with an eye to developing powerful mitigation for adult offenders.

5:30 p.m. Adjournment

Friday, June 8, 2018

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

8:30 to 9:30 a.m. Using Traffic Stop Data to Challenge Racial Profiling Practices by Law Enforcement

Ian Mance, *Staff Attorney, Criminal Justice, Southern Coalition for Social Justice, Durham, North Carolina*

The Southern Coalition for Social Justice's Open Data Policing initiative works with community groups, defense lawyers, and police agencies interested in using data to improve the quality of policing in their communities. Drawing from public records generated by traffic stop data collection laws in a growing number of states, SCSJ has utilized this data to directly challenge racial profiling practices in court, as well as to push policymakers to adopt more racially equitable policies concerning stop-and-search practices. The website, www.OpenDataPolicing.com, currently publishes data on nearly 50 million traffic stops in the states of North Carolina, Maryland, and Illinois. This session will highlight how defense lawyers have used the data to defend clients in criminal cases, and how organizers have used the data to secure policy concessions—such as mandatory written-consent-to-search policies—in a number of jurisdictions with histories of racially disparate policing practices.

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

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

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10:40 to 10:50 a.m. Break

10:50 to 12:00 p.m. Sentencing from the Bench

Experienced District Court Judges will share their perspectives on effective sentencing advocacy.

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

1:00 to 2:00 p.m. Break-Out-Sessions

1. Crimes of Violence

Craig Crawford, Attorney Advisor, Defender Services Offices Training Division, Washington, D.C.

Attendees will leave this course with an understanding of the steps necessary to analyze whether a prior conviction may be used as a predicate offense for recidivist enhancements such as career offender and Armed Career Criminal. The step-by-step instruction will guide students through the new categorical approach post-*Mathis*, with an emphasis on determining whether the statute at issue is divisible.

2. A Survival Guide: Novel Tips for Navigating the Wilds Of White Collar Crime

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.

3. All I Do Is Win: New Immigration Guidelines, New Challenges

Laura Mate, *Sentencing Resource Counsel, Des Moines, Iowa*

This session will address the new and sweeping changes to the immigration guidelines effective November 1, 2016. We will use scenarios to help us identify the challenges in applying the new guidelines to help ensure the lowest possible sentence for our clients.

4. Gun Cases and the Art of War

Dumaka Shabazz, *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.

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

2:10 to 3:10 p.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.

3:10 to 3:20 p.m. Break

3:20 to 4:20 p.m. Break-Out Sessions

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

4:30 to 5:30 p.m. The Long Road to Innocence
Anthony Ray Hinton, *former Alabama Death Row Inmate*

Anthony Ray Hinton chronicles his 30-year struggle to prove his innocence despite overwhelming odds, ineffective assistance of counsel, and prosecutorial misconduct.

5:30 p.m. Adjournment

Saturday, June 9, 2018

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

8:30 to 9:30 a.m. Resources for CJA Panel Attorneys
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 and the Defender Services Office Training Division. Questions welcomed.

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

9:40 to 10:40 a.m. Dismantling the Conspiracy Charge: Pretrial Through Trial

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

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.

10:45 to 11:45 a.m. Ethics

TBD

This ethics session will address issues related to representing clients with mental health issues.

11:45 a.m. to noon Closing Remarks

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