

**ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH**

WINNING STRATEGIES SEMINAR

February 14-16, 2008
Hilton New Orleans Riverside
New Orleans, LA
Draft Agenda
(December 3, 2007)

Thursday, February 14, 2008

8:15-8:30 AM

Welcoming Remarks

The Honorable Ginger Berrigan, Chief Judge, United States District Court for the Eastern District of Louisiana
Virginia Schlueter, Federal Public Defender, Eastern District of Louisiana
Martin Richey or Lori A. Green, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.

8:30-9:00 AM

Keynote Address

Denny LeBoeuf, Esq., Founding Director of the Capital Post-Conviction Project of Louisiana, New Orleans, LA

9:00-10:00 AM

Computer Crimes

Patrick Black, FPD, Eastern District of Texas
This presentation will focus broadly on federal computer and internet crimes, including child pornography, hacking, identity theft, cyberstalking, unauthorized password use, and fraud. The session will provide tips on how to investigate an alleged computer crime, and will include a discussion of the pertinent statutory, constitutional, search and seizure, pretrial detention, and sentencing issues.

10:00-10:15 AM

Break

10:15-11:15 AM

BREAK-OUTS

1.

The Nuts and Bolts of Federal Firearms Law

Gary Schwabe, AFD, Eastern District of Louisiana
This presentation will cover the most common legal issues arising during both the guilt-innocence phase and the sentencing phase of federal firearms cases, with particular emphasis on prosecutions under 18 U.S.C. §922(g) (1) (the felon in possession statute) and the corresponding sentencing guideline, USSC §2K2.1. Common

trial defenses and sentencing enhancements (including the statutory enhancement for armed career criminals) will be reviewed.

2. **The Adam Walsh Act**

Nicole Kaplan, AFPD, Northern District of Georgia

The Adam Walsh Child Protection and Safety Act of 2006 was enacted on July 27, 2006. In addition to establishing a national sex offender registry law, the Act made significant changes to sexual abuse, exploitation, and transportation crimes. The Act created new substantive crimes, expanded federal jurisdiction over existing crimes, and increased statutory minimum and/or maximum sentences. This session will provide an overview of the Act and discuss bail, discovery and prophylactic measures.

3. **Computer Forensics**

Troy Schnack, CSA, Western District of Missouri

All is not as it seems when it comes to computers. Is the picture on the screen really there? And how and when did it get there? Does it belong to your client? These questions may be key to your defense. This session addresses those and similar issues that arise in cases involving computers.

4. **Identity Theft**

Martin Richey, AFPD, District of Massachusetts

Identity theft is the crime du jour. This session will provide an overview of federal identity theft and identity fraud cases, including review of the relevant statutes and sentencing guidelines, and potential pretrial, trial, and sentencing issues.

5. **Attacking Wiretaps**

Liliana Coronado, AFPD, Central District of California

Callie Glanton Steele, AFPD, Central District of California

A step-by-step discussion of how to attack wiretap evidence.

6. **Sentencing Guidelines 101**

*Stephen Marley, Attorney-Advisor, Training Branch, Office of
Defender Services, Washington, D.C.*

Instructor TBA

This session will cover the basics of applying the federal sentencing guidelines.

- 11:20-12:20 PM **Conspiracy, CCE, RICO and Co-Defendant Issues**
Jon Sands, FPD, District of Arizona
 Most of the cases that are being paneled are co-defendant cases, primarily conspiracies. These cases are increasingly focusing on gangs and charging CCEs and RICO. This session will discuss what the government has to show to prove a bona fide conspiracy; what motions (severance, bill of particulars, exclusion of evidence, etc.) to file; how to find out who the government's informants are; and how to get interviews with them.
- 12:20-1:30 PM **Lunch**
- 1:30-2:30 PM **Crawford: A Sixth Amendment Revolution in the Use of Hearsay at Trial**
Franny Forsman, FPD, District of Nevada
 This session reviews the right to confront witnesses after Crawford and its progeny, and provides tips on using Crawford at trial and on appeal.
- 2:30-3:30 PM **BREAK OUTS** (Repeat of Morning Sessions 1-5; Session 6 is Part II of a two-part presentation on applying the Federal Sentencing Guidelines)
1. **Firearms**
 2. **Adam Walsh**
 3. **Computer Forensics**
 4. **Identity Theft**
 5. **Attacking Wiretaps**

 6. **Sentencing Guidelines 202**
Stephen Marley, Attorney-Advisor, Training Branch, Office of Defender Services, Washington, D.C.
Instructor TBA
 This session will cover more complicated sentencing guideline application issues, focusing particularly on how prior offenses (especially crimes of violence and controlled substance offenses) may trigger the Career Offender, Armed Career Criminal, and other recidivist enhancements
- 3:30-3:45 PM **Break**
- 3:45-4:45 PM **Supreme Court Update**
Paul Rashkind, AFD, Southern District of Florida
 This session provides an update on recent Supreme Court decisions affecting federal criminal practice, and reviews issues currently under consideration.

4:45-5:45 PM

JUDGES' PANEL

Expectations after Booker: How have things changed three years down the road and what (if any) changes are on the horizon?

Moderator: Virginia Schlueter, FPD, Eastern District of Louisiana

Panelists: The Honorable Carl J. Barbier, U.S. District Court for the Eastern District of Louisiana

Other Panelists TBA

In 2005, Booker redefined the sentencing landscape – or did it? This panel discussion features district judges from around the country who will discuss their perspectives on sentencing post-Booker so that counsel may learn ways to improve sentencing advocacy. Attendees will also have the opportunity to submit questions to the panel.

Friday, February 15, 2008

8:30-9:30 AM

Panel Discussion “Ethical Issues Confronting Criminal Defense Attorneys”

Moderator: Dan Stiller, Executive Director and Federal Defender, Federal Defender Services of Wisconsin

Panelists: Dane Ciolino, Alvin Cronvich Professor of Law, Loyola University, New Orleans

Jon Sands, Federal Public Defender, District of Arizona

Majeeda Snead, Esq, New Orleans, LA

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.

9:35-10:35 AM

BREAK-OUTS

1. **Defending Child Pornography Cases**

Miriam Conrad, FPD, Districts of Massachusetts, New Hampshire, and Rhode Island

A discussion of how to defend a client charged with child pornography.

2. **The Lazy Susan: Federal Rules of Evidence 404 and 405**

Michael Maloney, AFPD, District of Nebraska

Pamela Hamrin, AFPD, Western District of Tennessee

This session reviews the basics of Rule 404(b), but wait: what could be more fun than turning the tables on the prosecutor? While we are naturally more comfortable playing defense in trial, this presentation also explores the benefits of going on offense by using rules 404 and 405 to introduce character evidence of an alleged victim or a government witness.

3. **Using Fed.R.Crim.P. 29, 30, 32, 33, 34 and 35 and Rita to Win Trials and Influence Sentencing**

Robert Truitt, Staff Attorney, Federal Community Defenders for the Northern District of Indiana

Windy Venable, Attorney, Office of Defender Services, Washington, D.C.

This presentation will examine Federal Rules of Criminal Procedure 29, 30, 32, 33, 34, and 35 in the context of trial and sentencing. The session will examine how these rules work together to form a defense strategy which will either terminate the litigation in our client’s favor or provide the necessary support for a new trial in the event of a faulty conviction. The sentencing

process found in Rules 32 and 35 arm the defense with the tools to obtain the lowest possible sentence for our clients. Lastly, the session will examine the implications of Rita v. United States on the courts' sentencing process.

4. **Cross-examination**

Cynthia Roseberry, Assistant Clinical Professor, DePaul University, College Of Law, Chicago, IL

This presentation will provide a discussion of cross-examination techniques, and the need to fully investigate the background of the witness – including the details of his/her deal with the government.

5. **Plea Negotiations and Proffers**

Callie Glanton Steele, AFPD, Central District of California

A discussion of how to negotiate a plea, with a particular focus on providing charge alternatives that limit a client's exposure, and avoiding pitfalls as you guide your client through proffers to the government.

6. **Mental Health**

Instructor TBA

Is your client a difficult personality? Does he or she have mental health issues that impact his/her ability to assist the defense? Does the mental health issue provide a defense or significant mitigation evidence? Learn about the signs that could indicate the need for further evaluation and what to do with the information once you have it.

10:35-10:45 AM

Break

10:45-11:45 AM

Sentencing Update Panel Discussion

*Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA
Barry Boss, Esq., Cozen O'Connor, Washington, D.C.*

The panelists will discuss: the Supreme Court's decision in *Rita v. United States*; how the sentencing landscape could be changed by the Courts' decisions in *Gall v. United States* and *Kimbrough v. United States*; the changes to the Sentencing Guidelines effective November 1, 2007; and the potential areas for Guideline amendments in 2008.

11:50-12:50 PM

BREAK-OUTS (Repeat of Morning Sessions)

1. **Firearms**
2. **F.R.E. 404 and 405**
3. **Fed.R.Crim.P. 29, 30, 32, 33, 34, 35**
4. **Cross-examination**
5. **Plea Negotiations and Proffers**
6. **Mental Health**

12:50-2:00 PM

Lunch

2:00-3:00 PM

CJA Panel Resources Panel Discussion

Herbert Larson, Esq., New Orleans, LA

Jeffery Lindy, Esq., Eastern District of Pennsylvania CJA Panel

Representative, Law Office of Jeffery Lindy, Philadelphia, PA

Investigator TBA

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 of seasoned CJA practitioners and an investigator who has provided investigative services to panel attorneys will discuss how to obtain funding when you need technical and other litigation support and the best ways to make use of the funds. There will be an opportunity to ask questions regarding these issues.

3:00-4:00 PM

Experts: When You Should Consider Using Them

Eric Vos, AFPD, District of Maine

A discussion of the use of experts in a criminal case, both pretrial and during trial, including admissibility of evidence, qualifying the expert to testify and cross-examining the government's expert.

4:00-4:15 PM

Break

4:15-5:15 PM

Using a Mitigation Specialist and Presenting a Comprehensive Case for Mitigation at Sentencing

Paula Xinis, AFPD, District of Maryland

A discussion of the development of mitigation evidence. Learn what a mitigation specialist does and how to make effective use of one in your case. This session will also provide tips on how you or your investigator/paralegal can do the mitigation legwork. Finally, there will be a discussion on how to effectively present mitigation evidence through the sentencing memo and at a sentencing hearing.

Saturday, February 16, 2008

8:30-9:30 AM

Discovery Issues With a Twist – Rule 16 and More

Michael Kennedy, First Assistant Federal Public Defender, District of Nevada

Brian Abbington, Chief of the Capital Habeas Unit, District of Nevada

David Anthony, AFD, Nevada Capital Habeas Unit, District of Nevada

A look at discovery issues from the combined perspectives of a trial attorney and attorneys working on cases post-conviction. This session addresses the requirements of Rule 16, but goes beyond it by looking at discoverable evidence from the perspective of a lawyer seeking post conviction relief. Learn about other avenues to discoverable evidence that might be helpful if considered while mounting a defense to criminal charges.

9:35-10:35 AM

BREAK-OUTS

1. **Defending Unlawful Re-Entry Cases**

Edgar Holguin, AFD, Western District of Texas

This session discusses how to get and understand critical documents in the A-file; 4th Amendment issues and current circuit split in 1326 cases; how to raise collateral attacks to deportation or removal; how to parole in a material witness matter; derivative citizenship and other alienship defenses

2. **A “Devil’s Advocate” Approach to Brainstorming: Seven Unconventional Ideas that will Help You Write a Better Brief on Appeal**

Beverly Dyer, AFD, District of the District of Columbia

Kristen Rogers, AFD, Southern District of Alabama

Don’t know where and how to get started with an appeal? This presentation provides creative approaches to getting started and to putting together an effective written product.

3. **Using PowerPoint to Create Effective and Dynamic Closing Arguments**

Thomas C. Plunkett, Esq., St. Paul, Minnesota

Technology can be a powerful tool in the courtroom. Learn how to use Powerpoint to make your closing arguments come alive for the jury.

4. **Jury: Fair Cross-section Claims and Batson Challenges**

Robin Schulberg, AFPD, Eastern District of Louisiana

This presentation will examine the defendant's right to a jury drawn from a fair cross-section of the community, and review the current state of Batson-related claims.

5. **Developing Theories and Themes and How to Use Them Effectively in Opening Statements and Closing Arguments**

Anthony Natale, AFPD, Southern District of Florida

Having a theme and/or theory of defense organizes your presentation and helps you tell a compelling story that benefits your client. This session will address how you develop theories and themes and weave them into your defense.

6. **Bail Reform Act**

Frank Morales, AFPD, Western District of Texas

How can you maximize your chances of getting your client released under the Bail Reform Act? This session will address pretrial interviews, third party custodians, other favorable witnesses, the detention hearing, the appeal of a detention order and release pending appeal

10:35-10:45 AM

Break

10:45-12:15 PM

Client-Centered Representation

Ronald Tyler, AFPD, Northern District of California

This presentation focuses on the recognition of the commonplace loss of perspective on who controls the defense in our cases. The session explores the disadvantages of the often-dominant paradigm and suggests possible alternatives, using practical tools. Attendees can expect an engaging, interactive session)

12:15-12:30 PM

CLOSING REMARKS