

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

**WINNING STRATEGIES SEMINAR**

June 12-14, 2008  
Embassy Suites Hotel  
Phoenix-Scottsdale  
Draft Agenda  
(April 14, 2008)

**Thursday, June 12, 2008**

**7:45-8:15 AM Registration & Continental Breakfast**

**8:15-8:30 AM Welcoming Remarks**

*Jon Sands, FPD, District of Arizona*

*Lori A. Green, Attorney-Advisor, Office of Defender Services Training  
Branch, Washington, D.C.*

**8:30-9:00 AM Keynote Address**

**TBA**

**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**

*Leigh Skipper, AFD, Defender Services of Philadelphia*

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**  
*TBA*  
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. **Plea Negotiations and Proffers**  
*Yasmine Cader, 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. **Sentencing Guidelines 101**  
*John Rhodes, AFPD, District of Montana*  
*Alan Dorhoffer, United States Sentencing Commission, Washington, D.C.*  
This session will cover the basics of applying the federal sentencing guidelines. It will be of particular use to those practitioners who are new to federal criminal practice.

11:20-12:20 PM

**Vouching & Ethics: Improper Bolstering of Witness Credibility**

*Donna Elm, AFPD, District of Arizona*

We have been taught formulaic regulations for vouching, but we seldom appreciate how far vouching can go. When you understand the overarching basis for the vouching rules and ethics prescriptions, you can see that vouching is even more pervasive than we usually think. There are, therefore, many insidious instances of vouching that we defense attorneys may miss. This presentation explains what vouching is and what its underlying purpose is. It shows the many ways that vouching can occur: besides the better known types (personal opinions of lawyers, facts not in evidence, and using the prestige of the prosecution/police), other types of improprieties constituting vouching (offering personal opinions of others, negative vouching, arguing the risks of testifying, melodramatic implications of acquittal, non-verbal vouching, and vouching by implication). It ends with a discussion of the dangerous waters of Invited Response, and creative remedies to vouching. (This presentation qualifies for ethics credit in Arizona.)

12:20-1:30 PM

**Lunch**

1:30-2:30 PM

**Crawford: A Sixth Amendment Revolution in the Use of Hearsay at Trial**

*Donna Coltharp, AFPD, Western District of Texas*

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. **Plea Negotiations and Proffers**
6. **Sentencing Guidelines 202**

*John Rhodes, AFPD, District of Montana*

*Alan Dorhoffer, United States Sentencing Commission,  
Washington, D.C.*

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, ACPD, 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

**Booker, Gall and Kimbrough: A View from the District Court Bench**

*Moderator: Jon Sands, Federal Public Defender, District of Arizona*

*Panelists: The Honorable Robert W. Pratt, Chief Judge, United States District Court for the Southern District of Iowa*

*The Honorable Raner Collins, United States District Court for the District of Arizona*

*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, Gall and Kimbrough so that counsel may learn ways to improve sentencing advocacy.

**Friday, June 13, 2008**

8:00-8:30 AM

**Continental Breakfast**

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: Jon Sands, Federal Public Defender, District of Arizona  
Heather Williams, AFPD, District of Arizona  
D. Majeeda Snead, Esq., Associate Clinical Professor of Law Loyola University, 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. **Computer Based Sex Crimes: Defending Enticement and Child Pornography Cases**

*Carl Lietz, Esq., Kish & Lietz, P.C., Atlanta, GA*

*Jake Waldrop, AFPD, Northern District of Georgia*

This session will focus on some of the issues that often arise in connection with the defense of internet based sex crimes. Among other topics, this session will cover the most commonly charged offenses, detention issues, pretrial motions, trial defenses, and sentencing issues.

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. **Defending Alien Smuggling Cases**

*Selena Solis, AFPD, Western District of Texas*

Representing clients in alien smuggling cases presents a number of issues not found in other types of cases. This session outlines those issues and discusses how to present an effective defense.

4. **Cross-Examination**

*Juval O. Scott, AFD, Northern District of Indiana Community Defender, Inc.*

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. **Attacking Wiretaps**

*Dale L. Smith, Attorney-at-Law, New York, NY*

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

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

*TBA*

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

10:35-10:45 AM

**Break**

10:45-11:45 AM

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

*Kathy Love, McGuinn, Carpenter, Montoya & Love, P.A., Albuquerque, NM*

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

11:50-12:50 PM

**BREAK-OUTS (Repeat of Morning Sessions)**

1. **Defending Enticement and Child Pornography Cases**
2. **F.R.E. 404 and 405**
3. **Defending Alien Smuggling Cases**
4. **Cross-Examination**
5. **Attacking Wiretaps**
6. **Defending Unlawful Re-Entry Cases**

12:50-2:00 PM

**Lunch**

2:00-3:00 PM

**Resources for CJA Panel Attorneys: A Panel Discussion**

*TBA*

The CJA Guidelines specify how panel attorneys obtain funding for expert services and other resources to defend their clients in appointed criminal cases. Seasoned CJA practitioners and others 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, June 14, 2008**

**8:00-8:30 AM Continental Breakfast**

**8:30-9:30 AM Retroactivity of the Amended Crack Cocaine Guideline**

*Martin Richey, AFDP, District Of Massachusetts*

*Molly Roth, AFD, Western District of Texas*

This session will focus on the effective representation of clients who may benefit from the retroactive application of the new (lower) crack cocaine sentencing guideline.

**9:35-10:35 AM BREAK-OUTS**

**1. Mental Health**

*Ken Murray, AFD, Capital Habeas Unit, District of Arizona*

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.

**2. Preserving Issues for Appeal**

*TBA*

Make sure that your client is in the best possible position to litigate issues beyond the trial court. This presentation looks at how you can effectively preserve issues for appeal.

**3. Deconstructing The Guidelines**

*TBA*

An update on the sentencing guidelines amendments in 2007 and a discussion of the potential areas for Guideline amendments in 2008. This presentation will also look at how to make effective anti-guideline arguments at sentencing.

**4. 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-Advisor, Office of Defender Services, Legal Policy Branch, 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. The session will also examine the implications of Rita v. United States on the courts' sentencing process.

5. **Representation of Material Witnesses**

*Marilyn B. Gunner, Law Office of Marilyn B. Gunner, La Mesa, CA*

The session details what you need to know when appointed to represent a material witness. Knowing what 5<sup>th</sup> Amendment issues arise, whether there is a right to bail, special issues that arise when your client is a trafficking victim and any possible immigration relief are some of the topics addressed in this presentation.

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**

10:45-11:45 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, AFPD, 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.

11:45-1:15 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.

1:15-1:30 PM

**CLOSING REMARKS**