WINNING STRATEGIES

Persuasive Writing Workshop

SEMINAR

PORTLAND, OREGON
MAY 7-9, 2009

HILTON PORTLAND & EXECUTIVE TOWER
921 SW SIXTH AVENUE
PORTLAND, OREGON

Attendance is free and is limited to CJA Panel Attorneys

Winning Strategies is a valuable educational opportunity that focuses on the nuts and bolts of federal criminal practice, including the sentencing guidelines and sentencing mitigation. Experienced and new panel attorneys can benefit from attending the Winning Strategies seminars. These programs offer varied presentations on topics of interest in both large and small group settings.

****BONUS****
In conjunction with the Winning Strategies Seminar, the Persuasive Writing Workshop for Trial Lawyers will offer CJA panel attorneys the opportunity to participate in an intensive writing program. During the course of this 1 and a half-day workshop, participants will learn how to use storytelling techniques to make legal writing persuasive, and how to make their writing clear and concise.

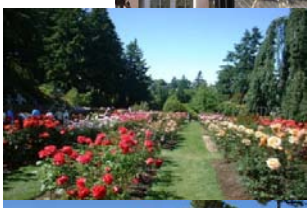
"I look forward to attending more of these trainings as I grow into a more proficient federal defense attorney."

"High quality speakers, content, organization, administration writing was just superb. Thank you!"

Please continue these fabulous programs. The speakers are top-notch and they make learning enjoyable."

Thank God for the Training Branch, www.fd.org and a government that still pays to help defend the same people it accuses and imprisons."

-- Testimonials from
2008 Winning Strategies Seminars,
New Orleans, LA & Scottsdale, AZ



Limited Financial Assistance for lodging and transportation is available for this program.

For a complete list of training programs and the Financial Assistance application offered by the Office of Defender Services/Training Branch, please visit our website at **WWW.FD.ORG**

ADMINISTRATIVE OFFICE OF THE U.S. COURTS
OFFICE OF DEFENDER SERVICES TRAINING BRANCH
WINNING STRATEGIES SEMINAR

Hilton Hotel
Portland, Oregon
May 7-9, 2009

Final Draft Agenda

Thursday, May 7, 2009

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

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

Tom Coan, CJA Panel Rep., District of Portland
Douglas C. Greene, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.

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

Steve Wax, Federal Public Defender, District of Portland

9:00-10:30 AM **Computer Crimes**

Ken Hawk, AFPD, 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.

10:30-10:45 AM **Break**

10:45-11:45 AM **BREAK-OUTS**

1. **The Nuts and Bolts of Federal Firearms Law**

Leigh Skipper, Chief Federal Defender, Federal Community Defender Office for the Eastern District of Pennsylvania *

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, USSG §2K2.1. Common trial defenses and sentencing enhancements (including the statutory enhancement for armed career criminals) will be reviewed.

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

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. **Computer Forensics (TBA)**

Tami Loehrs, Loehrs & Associates; Forensic Expert, *Tucson, Arizona*

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. **Aggravated Identity Theft**

Martin Richey, Third Level Supervisory AFPD, District of Massachusetts

*Francisco Morales, AFPD, Western District of Texas**

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

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

6. **Sentencing Guidelines 101**

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

7. **RICO & Gangs a Defense Perspective**

Martin Sabelli, Esq., Law Offices of Martin Sabelli, San Francisco, CA
Kate Corrigan, Esq., Corrigan Law Corporation, APLC, Newport Beach, CA
In today's times, indictments alleging conspiracy and RICO (and conspiracy to commit RICO) have become the darlings of the United States Attorney's Office. Massive "takedowns" of local street gangs (and some not so local) are occurring across the country and will likely visit most panel lawyers. This panel will focus on issues that arise in these cases and suggest approaches to defending the alleged gang member client in conspiracy and RICO cases. A gang is a gang; but is a gang a RICO enterprise? Maybe not.

11:45-1:00 PM **Lunch**

1:00- 2:00 PM ***Booker*, *Gall, Kimbrough & Spears*: A View from the District Court Bench**

Moderator: Steve Wax, FPD- District of Portland,
Judges: 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.

2:00 - 3:00 PM_____**Conceptualizing Mitigation**

Robert Dunham, AFD, Eastern District of Pennsylvania
Stuart Lev, AFD, Eastern District of Pennsylvania
This session will provide an integrated framework for understanding what mitigating evidence is, and how to investigate and present it. It will start with a summary of recent Supreme Court case law reaffirming the core principle that defendants have a constitutionally protected right to present mitigating evidence, and that state statutes, instructions, and evidentiary rules must provide juries a meaningful opportunity to give effect to what makes the evidence mitigating. The session will teach new lawyers how to "think large" about mitigating circumstances: describing the multiple dimensions and interrelatedness of what may sometimes appear to be different kinds of mitigating evidence; explaining how to investigate and develop testimony from family and lay witnesses, institutional records, case-related institutional witnesses, and defense social history and mental health experts to most persuasively present interrelated mitigation themes. It will use age, poverty, and antisocial personality disorder as stepping-off points to illustrate the personal, social, psychological, and neuropsychological dimensions of mitigating evidence and explore the differences between the type of superficial investigation and presentation of these factors that are frequently seen at trial and the type of thorough investigation and presentation the Constitution requires and our clients deserve.

3:00-3:15 PM **Break**

3:15- 4:15 PM **BREAK OUTS** (Repeat of Morning Sessions 1-7; Session 6 is Part II of a two-part presentation on applying the Federal Sentencing Guidelines)

1. **Firearms -**
2. **The Lazy Susan: Federal Rules of Evidence 404 and 405 -**
3. **Computer Forensics -**
4. **Identity Theft -**
5. **Attacking Wiretaps** -
6. **Sentencing Guidelines 202 -**
   Stephen Marley, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.
   Lori Green, Attorney-Advisor, Office of Defender Services, Training Branch, 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.
7. **Gangs -**

4:25- 5:40 PM **Supreme Court Update**

Paul Rashkind, AFPD, Southern District of Florida
This session provides an update on recent Supreme Court decisions affecting federal criminal practice, and reviews issues currently under consideration.

Friday, May 8, 2009

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

8:30 - 9:45 **Sentencing Update Panel Discussion**

Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA
Paul Hofer, Esq., Washington, D.C.
The panelists will discuss the impact of the Supreme Court's decisions in *Rita*, *Gall* and *Kimbrough*; the changes to the Sentencing Guidelines effective November 1, 2008; and the potential areas for Guideline amendments in 2009.

9:50-10:50 AM BREAK-OUTS

1. **Child Porn: Computer Based Sex Crimes - Defending Enticement and Child Pornography Cases**

   Colin Fieman*, AFD,* Western District of Washington

   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. **Mental Health**

   Frank Draper, AFD, District of Maryland

   Does your client 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.

3. **Conspiracy, CCE, RICO and Co-Defendant Issues**
Richard G. Novak, Esq., Law Offices of Richard G. Novak, Pasadena, CA

For a number of political and budgetary reasons, federal law enforcement agencies and prosecutors are increasingly devoting their attention and resources to the development of mega-cases filed against members of street gangs under federal racketeering statutes. This session will address a number of strategic challenges and opportunities that recur in these cases. Discovery, severance ("grouping"), cooperating informants, co-conspirator statements, 404(b) issues, and jury instruction issues will all be addressed.

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. **Defending Against Armed Career Criminal Designation**
*Rene Valladares, Supervisory AFPD, District of Nevada**
*Brenda Weksler, AFPD, District of Nevada **

Learn how to attack, defend and deflect the ACCA designation.

6. **Evidence Meets Hollywood: Training the Litigator's Ear to Make, Meet, and Win Trial Objections**

*Francisco Morales, AFPD, Western District of Texas **
Making, meeting, and winning trial objections starts with listening to everything that occurs in the courtroom setting. This session uses a multimedia approach (television, movies, music, etc.) to train the litigator's ear in spotting, meeting, and winning evidentiary objections.

7. **Discovery Software**
Russ Aoki, Esq. Federal Court Appointed Coordinating Attorney, Seattle, Washington
This session will provide strategies to handle two file formats that the government is using for electronic discovery: Tiff files that are provided with the run-time IPRO viewer, and PDF files which may or may not have searchable text. During this presentation, we

will provide an overview of how CJA Panel attorneys can use discovery provided in IPRO by the government to search for information, tag documents and add annotations - all using the free version of the program. In addition we will discuss Adobe Acrobat Professional (not the free Adobe Reader), and how you can use it for reviewing, editing, and annotating discovery that has come in PDF or Tiff format. Though not a database, it provides excellent tools for attorneys wanting to manage their electronic discovery.

10:50-11:00 AM **Break**

11:00 - 12:30 AM **Introduction to Mortgage Fraud Terms, Players, Defense Strategies, Pretrial Motions and Defenses**

*Kevin Tate, AFD, Western District of North Carolina**
Angela Parrott, AFD, Western District of North Carolina *
This session will provide an overview of the unique terms and forms associated with the mortgage application process and the role of the different players in the typically charged mortgage fraud scheme.

12:30-2:00 PM **Lunch**

2:00-3:00 PM **BREAK-OUTS** (Repeat of Morning Sessions)

1. **Defending Enticement and Child Pornography Cases -**
2. **Mental Health -**
3. **Conspiracy, CCE, RICO and Co-Defendant Issues -**
4. **Cross-Examination -**
5. **Defending Against Armed Career Criminal Designation**
6. **Evidence Meets Hollywood: Training the Litigator's Ear to Make, Meet, and Win Trial Objections -**
7. **Discovery Software -**

3:00 - 4:00 PM **Attacking the Government's "Junk Science"**

Robert Epstein, AFD, Eastern District of Pennsylvania
A discussion of how to challenge the reliability of the government's "junk science" experts with a particular focus on firearms and tool mark examiners, fingerprint experts and forensic document examiners.

4:00- 4:15 PM **Break**

4:15- 5:30 PM **Resources for CJA Panel Attorneys: A Panel Discussion**

Randall Schnack, CJA Supervising Attorney, Central District of California
Russ Aoki, Esq. Federal Court Appointed Coordinating Discovery Attorney, Seattle, Washington

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 includes a seasoned CJA practitioner, a Supervising CJA Attorney, and the National Litigation Support Administrator who will discuss how to obtain funding when you need technical and other litigation support and the best ways to make use of the funds. In addition, they will address the potential role of investigators and mitigation specialists. There will be an opportunity to ask questions regarding these issues

Saturday, May 9, 2009

7:30-8:30 AM **Continental Breakfast**

8:30 - 9:30 AM **Discovery Issues with a Twist: Rule 16 and More**

Michael Kennedy, First Assistant, AFPD, 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 a post-conviction attorney. 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**

Dennis Candelaria, AFD, New Mexico
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. **Anders Briefs & Other Issues for Appeal**

Alan DuBois, AFPD, Western District of North Carolina
Don't know where and how to get started with an appeal? This presentation provides creative approaches to getting started and 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. **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.

5. **Developments in Federal Search & Seizure Law**
TBA

6. **Plea Negotiations and Proffers**
Michael Meetze, AFPD, District of South Carolina
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

7. **The Impact of the Victim Witness Protection Act on the Federal Sentencing Process**

Paul Kish, Esq., Kish and Lietz, P.C., Atlanta, GA
There have been a variety of amendments to the federal Victim Witness Protection Act, the most recent occurring in 2005. These amendments have greatly increased victim's rights in the federal sentencing process. For too long, defense attorneys only thought about how to work with victims in death penalty cases or prosecutions involving violent acts. However, the recent VWPA

amendments mean that more and more victims will show up in court to talk during the sentencing of our clients in cases where no violence is involved. More and more prosecutions for economic crimes are defended by appointed counsel, with the defendant having long lost his or her assets prior to indictment. Appointed counsel need to: 1) be aware of these changes to the VWPA which give greater voice to victims in such cases, 2) must recognize how a "live" victim in court at the sentencing hearing can completely change the dynamic of the sentencing process, and 3) should be prepared to work on some of the strategies learned in the death penalty context for trying to communicate with and at least neutralize the impact of victims at the sentencing hearing.

10:35-10:45 AM **Break**

10:45- 11:45 AM **Developing Theories and Themes and How to Use Them Effectively in Opening Statements and Closing Arguments**

Douglas C. Greene, Attorney-Advisor, Office of Defender Services, Training Branch, Washington, D.C.

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.

11:45-1:15 PM **Panel Discussion: Ethical Issues Confronting Criminal Defense Attorneys**

Signers' Ballroom

Moderator: Michael Sokolove , 1st Asst, FD, Southern District of Texas

Panelists: Tom Coane, CJA Panel Representative, District of Oregon

TBA

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.

1:15-1:30 PM **CLOSING REMARKS**

Douglas C. Greene, Attorney-Advisor, Office of Defender Services Training Branch, Washington, D.C.