

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

**Indianapolis, Indiana  
June 9-11, 2011**

***Draft AGENDA***

**Thursday, June 9, 2011**

**7:15-8:30 AM            REGISTRATION & CONTINENTAL BREAKFAST**

**8:15-8:30 AM            WELCOMING REMARKS**

*Bill Marsh, Chief Federal Public Defender, Indiana Federal Community  
Defender*

*Eric Vos, Attorney-Advisor, Office of Defender Services, Training Branch,  
Washington, D.C.*

**8:30-9:30 AM            KEYNOTE ADDRESS: Rethinking Probation, Supervised Release and  
Helping Your Client Succeed Outside of Incarceration**

*Douglas Burris, Chief U.S. Probation Officer, St. Louis, MO  
Kevin Wayne Thomas, Community Resource Specialist, United States  
Probation, St. Louis, MO*

Spend an hour with one of the strongest client advocates imaginable and see what effectively helps defendants in a post-conviction world. An inspiring look at what clients *really* go through, what makes them succeed and a moving reminder of why we are committed to helping indigent defendants.

**9:30-10:30 AM           EXPERTS: HOW TO USE THEM, ABUSE THEM AND KEEP THEM OFF THE  
STAND**

*Eric Vos, Attorney-Advisor, Office of Defender Services, Training  
Branch, Washington, D.C.*

“Experts win cases” and thus, attorneys must consider using experts with every theory of defense when presenting their case to the jury. There simply are few better tools when convincing a jury than a well presented expert. In the alternative, when the government employs an expert a properly prepared defense attorney can turn the government’s devastating tool into a defendant’s advantage. This session will look at how best to prepare and use experts, both pretrial and during trial, including admissibility of evidence, qualifying the expert to testify and taking the government’s key witness and turning him into their train wreck.

(Thursday, June 9, 2011 Continued)

10:30-10:45 AM      **BREAK - COFFEE & TEA**

10:45-11:45 AM      **BREAK-OUT SESSIONS\***

1.      **THE NUTS AND BOLTS OF FEDERAL FIREARMS LAW**

*Rafael Andrade, Assistant Federal Public Defender, District of Puerto Rico*

A look at common, and very uncommon, defenses when your client is charged with a firearm's offense. Common legal issues will be discussed with an additional look at defense possibilities from *a gun enthusiast's* intense point of view. Additionally, the presentation addresses sentencing issues pursuant to 18 U.S.C. §922(g) (1) (the felon in possession statute) prosecutions and the corresponding sentencing guidelines under USSG §2K2.1.

2.      **THE FINE PRINT AND CONVICTED SEX OFFENDERS: STRATEGIES FOR AVOIDING RESTRICTIVE CONDITIONS OF SUPERVISED RELEASE**

*Jennifer Gilg - Research & Writing Specialist, District of Nebraska  
Visiting Attorney, Office of Defender Services Training Branch*

Courts, Probation Officers and United States Attorneys have varying degrees of concern when convicted sex offenders return to the community on supervised release. For these offenders there are issues abound - internet access, monitoring software/hardware, employment, housing, child visitation, and even what kinds of magazines and tv programs your client may view. Sex offenders are subject to far more rules and restrictions than most clients, and you need to know what they are and how to fight against them. This session will raise important questions and offer helpful hints for keeping your clients free upon release.

3.      **OTHER COMPUTER CRIMES - CHILD PORNOGRAPHY ISN'T THE ONLY GAME IN TOWN**

*Patrick Black, Chief Federal Defender, Eastern District of Texas  
Ken Hawk, Assistant Federal Public Defender, Eastern District of Texas*

Computers are gifts which just seem to keep on giving when it comes to federal criminal prosecutions. With desktops, laptops, iPads, smart-phones, etc. our clients have a bevy of ways to get

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\*      "Breakout Sessions" allow attendees to choose from one of a number of simultaneously offered one-hour sessions. All sessions will be repeated twice allowing for attendance in two of the offered "breakout sessions" - one during the morning sessions and another during the afternoon sessions.

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indicted. And it certainly is not slowing down. Despite all the attention given to Child Pornography (CP) cases there is also a large increase in prosecutions concerning alleged computer crimes which have little to nothing to do with CP. This session will focus on federal computer and internet crimes such as hacking, identity theft, cyber-stalking, unauthorized password use, and fraud.

4. **LOSS CALCULATIONS IN FRAUD & WHITE COLLAR CASES**

*Kevin Tate, Assistant Federal Public Defender, Western District of North Carolina*

Few sentencing issues can be more complex than getting to the bottom of what your client needs to own up to when loss comes to town. Loss drives the Guidelines and can chain your client to restitution for decades to come. Learn the tricks, pitfalls and danger zones when battling Probation, United States Attorneys and the Court's calculations.

5. **LITIGATING MITIGATING FACTORS: DEPARTURES, VARIANCES, AND ALTERNATIVES TO INCARCERATION**

*Amy Baron-Evans, National Sentencing Resource Counsel*

*Dr. Paul Hofer, National Sentencing Resource Counsel*

The 2010 Guideline amendments specifically set forth sentencing possibilities which may serve as an alternatives to incarceration. Alternatives such as treatment for substance abuse and mental health conditions as well as departures for age, physical condition (including substance abuse), mental and emotional conditions, and military service must be revisited and offered up to the sentencing court as appropriate alternative options to fulfill the sentencing requirements set forth in 18 U.S.C. § 3553(a). This session will explore the practical implications of the amendments and ways to advocate for options which move away from incarceration.

6. **HOW FEDERAL CONVICTIONS WILL IMPACT YOUR CLIENTS' IMMIGRATION STATUS - LOOKING CLOSER AT *PADILLA***

*Mary Kramer, Esq., Law Offices of Mary Kramer, Miami, FL*

This session provides a careful examination of the types of convictions which lead to deportation of your clients who are not United States citizens. This is important information to consider when advising clients of their options in a criminal proceeding.

11:45-1:00 PM

**LUNCH**

(Thursday, June 9, 2011 Continued)

**1:00 - 2:00 PM**

***BOOKER, GALL, KIMBROUGH & SPEARS: A VIEW FROM THE DISTRICT COURT BENCH***

Judicial Panel:

*The Honorable Sarah Evans Barker, Southern District of Indiana*

*The Honorable William T. Lawrence, Southern District of Indiana*

Moderator:

*Bill Marsh, Chief Federal Public Defender, Indiana Federal Community Defender*

In 2005, *Booker* redefined the sentencing landscape – or did it? Somewhere between rarely and never do attorneys get to hear from sentencing judges as to what works, hurts and/or is effective when parties advocate for a more favorable sentence. This very special panel discussion features the most important point of view - that of the District Court Sentencing Judge. Our panel of judges comes from around the country and each judge will discuss his/her individual perspectives on the sentencing process post-*Booker, Gall, Kimbrough* and *Spears*.

**2:00-3:00 PM**

**DEFENDING IMMIGRATION CASES**

*Jodi Linker, Assistant Federal Public Defender, Northern District of California*

Immigration defense is NOT “plug and play” but rather filled with subtleties, tricks and sinkholes. A great session which explores 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. Learn ways of snapping back in what too many of us think as bad cases with no wiggle room.

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

**BREAK**

**3:15-4:15 PM**

**BREAK OUTS (Repeat of Morning Sessions 1-6. Session #7 is the more advanced Sentencing Guidelines’ Session which builds on the morning Sentencing Guideline’s Session - See footnote)**

1. **THE NUTS AND BOLTS OF FEDERAL FIREARMS LAW**
2. **THE FINE PRINT AND CONVICTED SEX OFFENDERS: STRATEGIES FOR AVOIDING RESTRICTIVE CONDITIONS OF SUPERVISED RELEASE**

**(Thursday, June 9, 2011 Continued)**

3. ***OTHER* COMPUTER CRIMES - CHILD PORNOGRAPHY ISN'T THE ONLY GAME IN TOWN**
4. **LOSS CALCULATIONS IN FRAUD & WHITE COLLAR CASES**
5. **LITIGATING MITIGATING FACTORS: DEPARTURES, VARIANCES, AND ALTERNATIVES TO INCARCERATION**
6. **HOW FEDERAL CONVICTIONS WILL IMPACT YOUR CLIENTS' IMMIGRATION STATUS - LOOKING CLOSER AT *PADILLA***

**4:15-4:30 PM**

**BREAK**

**4:30-5:30 PM**

**SUPREME COURT UPDATE**

*TBA*

While we toil away in the trenches there is a small group of people, far far away, we always need to keep well focused on - THE SUPREME COURT!! This important hour provides a critical update concerning Supreme Court decisions, trends and the possible future - all of which will undoubtedly affect our federal criminal trial practice, sentencing advocacy and possible appellate matters.

**Friday, June 10, 2011**

**7:30-8:30 AM**

**CONTINENTAL BREAKFAST**

**8:30-9:45 AM**

**INTRODUCTION TO MORTGAGE FRAUD TERMS, PLAYERS, DEFENSE STRATEGIES, PRETRIAL MOTIONS AND DEFENSES**

*Kevin Tate, Assistant Federal Public Defender, Western District of North Carolina*

With the recent housing market implosion and all those “creative” mortgages bubbling to the top, this new area is ripe for prosecution. A new and important wave we all need to learn about. 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.

**9:45-10:00 AM**

**BREAK**

**10:00-11:00 AM**

**BREAK OUTS**

**1. INTRODUCTION TO DEFENDING COMPUTER BASED CHILD PORNOGRAPHY CASES**

*Patrick Black, Chief Federal Defender, Eastern District of Texas*

*Ken Hawk, Assistant Federal Public Defender, Eastern District of Texas*

If you have ever defended a Child Porn case, or think one may be in your future, you know how quickly even first time offenders with no "hands on" offenses may be facing a shockingly long potential sentence. These cases are being filed all over the country and anyone who will be taking on federal criminal matters should consider this session. This survey discussion focuses on issues which often arise in connection with the defense of internet based sex crimes and other commonly charged sex offenses. The session will address the basics of computer forensics, detention issues, pretrial motions, potential defenses, and important sentencing and mitigation issues.

2. **SENTENCING GUIDELINES 202**

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

*Robert Truitt, Assistant Federal Defender, Indiana Federal Community Defender*

Current federal criminal case law requires that sentencing courts properly calculate your client's Guideline Range, and also to evaluate other considerations. Thus, we all need to remain experts in this vital area of Federal Criminal Defense. This well designed session covers areas which are beyond the Guideline *basics*, and looks at the more complex issues involving the Federal Sentencing Guidelines.

3. **STORYTELLING FOR TRIAL —HOW TO KEEP THE JUROR'S UNDIVIDED ATTENTION**

*Cynthia Roseberry, Executive Director, Federal Defenders of the Middle District of Georgia*

In a world where criminal defense attorneys have to compete with CSI, video games and streaming video there is hope when trying to keep the jury's receptive attention. This session explores dynamic ways of telling your client's story, before the Court and jury, as to best present your theory of defense/sentencing. Our culture reveres "good" story tellers and loathes a narrator who just can not get the point across as they lose our fickle attention. Don't get caught on the wrong side of the equation - be the best storyteller you can be.

4. **UNRAVELING AND "DECONSTRUCTING" THE CAREER OFFENDER GUIDELINE -**

*Amy Baron-Evans, National Sentencing Resource Counsel*

*Dr. Paul Hofer, National Sentencing Resource Counsel*

Sentences recommended by the career offender guideline are among the most severe and least likely to promote the stated statutory purposes of sentencing. This presentation identifies how the current Career Offender Guideline is not the result of empirical evidence, careful study, or independent expertise and thus, will equip practitioners with powerful/critical arguments for advocating for below-guideline sentences.

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5. **BATTLING 851 NOTICES: AVOID MANDATORY MINIMUM SENTENCES OF 10 YEARS, 20 YEARS OR LIFE!**

*Jim Skuthan, Chief Assistant Federal Public Defender, Middle District of Florida*

Section 851 Notices can either double your client's mandatory minimum or subject them to mandatory LIFE! There are fewer things scarier in a mandatory minimum drug case than getting one, two, or more Section 851 notices. Know how to battle back and help your client avoid unwarranted and horrific mandatory sentences.

6. **LITIGATION SUPPORT: STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY**

*Kelly Scribner, Assistant National Litigation Support Administrator, Office of Defender Services, Training Branch, Oakland, California*

*Alex Roberts National Litigation Support Paralegal, Office of Defender Services, Training Branch, Oakland, CA*

As an increasing number of CJA panel attorneys are finding out, the information provided in any given case continues to grow in size and complexity. Cases that were a few folders of paper are now CDs, DVDs and hard drives of electronic files of various types that may prove difficult to open on your computer. The National Litigation Support Team will present a primer on various file formats that are being provided in discovery, and some of the options available for reviewing and analyzing the discovery more effectively.

**11:00-11:15 AM      BREAK**

**11:15-12:30 PM      RESOURCES FOR CJA PANEL ATTORNEYS: A PANEL DISCUSSION**

*Mark Cedrone Esq., The Law Offices of Mark E. Cedrone P.C., Philadelphia, Pennsylvania*

*Kelly Scribner, Assistant National Litigation Support Administrator, Office of Defender Services, Training Branch, Oakland, CA*

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



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potential roles of investigators, mitigation specialists and other experts, as well as resource available through [www.fd.org](http://www.fd.org) and the Office of Defender Services Training Branch. Questions welcomed.

**12:30-1:45 PM**

**LUNCH**

**1:45-2:45 PM**

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

1. **INTRODUCTION TO DEFENDING COMPUTER BASED CHILD PORNOGRAPHY CASES**
2. **SENTENCING GUIDELINES 202**
3. **STORYTELLING FOR TRIAL —HOW TO KEEP THE JUROR’S UNDIVIDED ATTENTION**
4. **UNRAVELING AND “DECONSTRUCTING” THE CAREER OFFENDER GUIDELINE**
5. **BATTLING 851 NOTICES: AVOID MANDATORY MINIMUM SENTENCES OF 10 YEARS, 20 YEARS OR LIFE!**
6. **LITIGATION SUPPORT: STRATEGIES FOR DEALING WITH ELECTRONIC DISCOVERY**

**2:45-3:00 PM**

**BREAK**

**3:00- 4:00 PM**

**PUTTING THE SENTENCING SOUP TOGETHER**

*Eric Vos, Attorney-Advisor, Office of Defender Service*

*Legal, Policy & Training Division, Washington, D.C.*

This session gives practical look, at how to address de-construction of the Guidelines during the sentencing phase, new ways to enter the Post - Booker World and how best to present Sentencing arguments to the court in writing, multi-media content, and during oral argument.

**4:00-5:15 PM**

**DEFENDING AGAINST ARMED CAREER CRIMINAL & CAREER OFFENDER DESIGNATIONS**

*Rene Valladares, Supervisory Assistant Federal Public Defender, District of Nevada*

*Brenda Weksler, Assistant Federal Public Defender, District of Nevada*

Few areas of defense are more frustrating than dealing with this draconian fifteen year mandatory. We know the dread of seeing our client’s three relevant prior convictions and yet, after that dread clears we can attack, defend and deflect the ACCA and Career Offender designations - learn how!

**Saturday, June 11, 2011**

**7:30-8:30 AM**

**CONTINENTAL BREAKFAST**

**8:30-9:45AM**

**FACEBOOK, MYSPACE, THE JOYS/DANGERS OF INTERNET SOCIAL NETWORKS AND HOW TO USE THEM AS LITIGATION TOOLS**

*Kelly Scribner, Assistant National Litigation Support Administrator,  
Office of Defender Services, Training Branch, Oakland, California*

*Alex Roberts, National Litigation Support Paralegal, Office of Defender  
Services, Training Branch, Oakland, California*

*Additional Faculty - TBA*

It seems like everyone these days has a darn Facebook page! What is with all these youngsters posting pictures of themselves on MySpace? Who wants to see strangers engaging in illegal activity, taking drugs, bragging about their exploits and making darn fools of themselves? **You do!!!!** There is a bevy of great material out there to impeach snitches, lay witnesses, police officers and just about anyone who logged off the night before and showed up to testify against your client at trial the very next morning. An important look at the new frontier of Internet Social Networks and your next trial.

**9:45-10:00 AM**

**BREAK**

**10:00- 11:00 AM**

**BREAK-OUTS**

1. **MOTIONS IN LIMINE: NEW AREAS OF ATTACK WHEN AT THE THRESHOLD**

*Willie J. Epps, Jr., Shook, Hardy & Bacon, Kansas City, Missouri*

Have your pre-trial Motions in Limine been stuck on autopilot? Are you truly attacking the government during this critical juncture? If you want a new way of attacking and adding some firepower to this important part of the process this session is for you.

2. **CRAWFORD: A SIXTH AMENDMENT REVOLUTION IN THE USE OF HEARSAY AT TRIAL**

*Donna Coltharp, Assistant Federal Public Defender, Western  
District of Texas*

*Crawford* is one of the most important evidentiary changes to come our way in years and this session reviews the right to confront

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witnesses now that *Crawford* and its progeny are the law. The session also provides important practical tips on using *Crawford* at trial and on appeal.

3. **DETERMINING “CRIMES OF VIOLENCE” & “VIOLENT FELONIES”**

*Bill Marsh, Chief Federal Public Defender, Indiana Federal Community Defender*

No single sentencing calculation inflicts more harm than a determination that a client’s previous conviction(s) qualifies as a “crime of violence” or “violent felony.” Such a finding exposes the client to huge guideline offense-level enhancements and/or to increased statutory minimum sentences. But recent Supreme Court jurisprudence in *Johnson, James*, and *Begay* has significantly empowered defense counsel to combat these designations. This session will teach you how to determine whether a previous conviction actually qualifies as a crime of violence or violent felony and how to defend against any such erroneous characterization.

4. **THE ABC’S OF COMPUTER CRIMES’ FORENSICS**

*Rick Lavaty, Computer Systems Administrator, District of Arizona*  
*Eddy Archibeque, Computer Systems Administrator, District of New Mexico*

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

5. **JURY INSTRUCTIONS**

*Mark Cedrone, Esq., The Law Offices of Mark E. Cedrone, P.C., Philadelphia, PA*

Stop being forced to run to your colleagues for jury instructions from cases which you hope are similar. Learn how to prepare jury instructions and special verdict forms which address the issues that arise in criminal cases, including unanimity instructions, conspiracy instructions and other instructions relevant to multiple count and multiple defendant cases.

6. **FIREARM AND TOOLMARK IDENTIFICATION**

*Jack Cunha, Esq., Cunha and Holcomb Attorneys at Law, Boston, MA*

This session will address how to effectively challenge the lack of a scientific basis of "forensic" evidence presented in cases involving

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firearms/toolmark identification. With the new findings in the National Academy of Sciences (NAS) Report there is much more ammunition when attacking forensics and being able to repudiate laboratory claims. No longer can we merely accept such notions as firearms produce unique markings on bullets/casings when there is a lack of standards for identifying so-called individual markings, lack of statistical basis for declarations of a match between a gun and bullet, and prejudice from unsupported "expert" testimony. Simply a great presentation for helping attorneys shred experts who come into court and use bad science.

**11:00-11:15 AM      BREAK**

**11:15 - 12:15 PM      BREAK OUTS (Repeat of Morning Sessions)**

1.      **MOTIONS IN LIMINE: NEW AREAS OF ATTACK WHEN AT THE THRESHOLD**
2.      **CRAWFORD: A SIXTH AMENDMENT REVOLUTION IN THE USE OF HEARSAY AT TRIAL**
3.      **DETERMINING “CRIMES OF VIOLENCE” & “VIOLENT FELONIES”**
4.      **ABC’S OF COMPUTER CRIMES’ FORENSICS**
5.      **JURY INSTRUCTIONS**
6.      **FIREARM AND TOOLMARK IDENTIFICATION**

**12:15-12:30 PM      BREAK**

**12:30- 1:30 PM      PANEL DISCUSSION: ETHICAL ISSUES CONFRONTING CRIMINAL DEFENSE ATTORNEYS**

*Willie J. Epps, Jr., Shook, Hardy & Bacon, Kansas City, Missouri*  
*Mark Cedrone Esq., The Law Offices of Mark E. Cedrone P.C.,*  
*Philadelphia, Pennsylvania*

An oddly fun, and funny, 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.

**1:30-1:31 PM      CLOSING REMARKS**

*Eric Vos, Attorney-Advisor, Office of Defender Services,*  
*Training Branch, Washington, D.C.*