

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

***Multi-Track Federal Criminal Defense Seminar:
Strategies For Defending Complex Cases***

August 18-20, 2011

**Fairmont Olympic Hotel
Seattle, Washington**

The agenda for the Multi-Track Federal Criminal Defense Seminar follows this cover page. The seminar is designed to offer in-depth instruction in a variety of substantive criminal defense areas. The five tracts for 2011 in Seattle are: 1) Immigration with a focus on *Padilla*; 2) Sentencing in a post-*Booker* world; 3) Experts, Forensics & Science; 4) Computer Crimes and Handling of Electronic Discovery; and 5) Drugs, Guns and Money. Tracks 1-4 will be presented in four distinct hour-long time blocks. These sessions will be presented on Thursday, August 18, 2011 and then repeated on Friday, August 19, 2011. This design will provide seminar participants with the opportunity to attend two of the four separate tracks taking place on Thursday and Friday.

On Saturday, August 20, 2011, seminar participants will have the opportunity to attend both plenary and small group breakout sessions for the 5th track, Drugs, Guns & Money. These Saturday sessions will address topics of general interest and importance to criminal defense practitioners and each session is provided twice so attendees may attend at least to areas of interest be it drugs, guns or money (fraud).

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***Multi-Track Federal Criminal Defense Seminar:
Strategies For Defending Complex Cases***

**Fairmont Olympic Hotel
Seattle, Washington
Draft Agenda**

Thursday, August 18, 2011

7:30 to 8:30 A.M. Registration

7:30 to 8:30 A.M. Continental Breakfast

8:30 to 8:45 A.M. Welcoming Remarks

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

**8:45 to 9:15 A.M. KEYNOTE ADDRESS: Rethinking Probation, Supervised Release and
Helping Your Client Succeed Outside of Incarceration**
Douglas Burris, Chief U.S. Probation Officer, 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.

**9:20 to 10:20 A.M. Plenary: Facebook, Myspace, The Joys/Dangers of Internet Social
Networks and How to Use Them as a Litigation Tool**

*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*

*Lou Newberger, Federal Public Defender, Southern District of West
Virginia*

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.

10:20 to 10:35 A.M. Break

Track Descriptions

1. Immigration and a closer look at *Padilla*

*Immigration cases present a variety of issues often not encountered in the defense of other types of cases and with the new holding in **Padilla** immigration matters seem to have become even more complex. Defense attorneys are now directed, by the Supreme Court, to provide warnings as to how convictions will effect non-citizens and their immigration status. With the new case-law attendees will be able to attend sessions which will help clarify the Court's new requirements, as well as other specific defenses available in illegal reentry cases and how to make effective use of mitigation evidence. All of those issues and more will be covered during the sessions in this track.*

2. Sentencing in a post-Booker world

*Sentencing in federal criminal cases no longer is limited to a mere guideline calculation. This track highlights avenues available to defense counsel to obtain a better sentence for their clients. This track will look at guideline deconstruction, interpretations of sentencing statues by the Supreme Court and mitigation arguments now allowed in a **post-Booker** framework.*

3. Experts, Forensics & Science

The recently released NAS report has raised a number of questions regarding the "science" the government has used to support its prosecutions. These sessions will look at specific areas where the formerly relied upon and accepted science has been debunked. These sessions will also provide the basis for understanding the science itself, or the lack of it, to better prepare defense counsel to challenge the use of such evidence in their cases. Best of all, these sessions will help you find and attack experts in your upcoming cases.

4. Computer Crimes & Handling Electronic Discovery

Computer technology is playing an increasing role in criminal cases. Specific criminal offenses involve the use of computers, requiring increased knowledge of the technology and the forensic techniques utilized to evaluate evidence. The aim of these sessions is to provide an overview of some of the specific crimes associated with computers and the forensic science involved in evaluating the strengths and weaknesses of the government's case.

5. Guns, Drugs & Money

Gun crimes, drug offenses and fraud still remain front and center as practitioners take on

representing clients in federal courts. This tract, which will be available to all on Saturday, August 20, 2011, will include “hot” developing areas and new ways of looking at common offenses. Each session is given twice over so attendees will be able to attend at least two areas of interest.

Track Presentations

10:35 to 11:35 A.M. 1) Immigration

How a Criminal Conviction Will Impact Your Client’s Future Immigration Status

Mary Kramer, 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 and important when living up to the Padilla requirements.

2) Sentencing

Deconstructing the Guidelines and Constructing a Purpose-Driven Sentence

Jennifer Coffin, Research and Writing Specialist, National Sentencing Resource Counsel, Nashville, TN

Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA

This presentation will demonstrate how to deconstruct some of the most frequently-applied and severe guidelines, showing that they are not based on national sentencing data or empirical research. Child Pornography, Immigration, Drugs, Relevant Conduct and Career Offender guidelines will be covered. Further discussions will be held concerning how to best construct a sentence which addresses specific goals.

3) Experts, Forensics & Science

Fingerprints: Understanding & Challenging Science

Robert Epstein, Assistant Federal Defender, Eastern District of PA

This presentation looks at the science behind fingerprint identification. Learn how an expert matches one fingerprint to another and how to challenge the accuracy of the identification. Fingerprints are not we know them to be and the science is far shakier than every imagined. An interesting session which goes far beyond the science of fingerprints.

4) Computer Crimes

An Overview of Computer Crimes

Faculty TBA

This presentation will focus on federal computer and internet crimes

including hacking, identity theft, cyberstalking, unauthorized password use, and fraud. This session will also provide tips on how to investigate alleged computer crimes and will focus on child pornography cases with an in-depth discussion of statutes, constitutional issues, search and seizure, pretrial detention, sentencing guidelines and other related issues. **(This session will be presented in two parts. The second session immediately follows.)**

Track Presentations

11:45 to 12:45 P.M. 1) Immigration

Defending Against Charges of Alien Smuggling, Alien Transportation, and Alien Harboring

Faculty TBA

Key to the government's prosecution is the testimony from "material witnesses," who are themselves alleged undocumented immigrants. Learn how to interview these witnesses and prepare effectively for cross-examination (either in a deposition or at trial) and challenge the use of deposition testimony. This session will also suggest pretrial motions and trial strategies which will help you counter the assertion that your client knew the people with whom he was traveling were undocumented immigrants, and the allegation that the offense charged was committed for profit.

2) Sentencing

Litigating Mitigating Factors: Departures, Variances, and Alternatives to Incarceration

Jennifer Coffin, Research and Writing Specialist, National Sentencing Resource Counsel, Nashville, TN

Amy Baron-Evans, National Sentencing Resource Counsel, Boston, MA

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.

**3) Experts, Forensics & Science
Firearm and Toolmark Identification**

Jack Cunha, 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 firearms/toolmark identification in light of the recent findings in the National Academy of Sciences (NAS) Report. Arguments to repudiate claims that firearms produce unique markings on bullets/casings, 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 will be presented.

**4) Computer Crimes -
Computer Crimes Overview 2nd Hour Continued from 10:35 Session!!**

12:45 to 2:00 P.M. LUNCH

2:00 to 3:00 P.M. PLENARY

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

Judicial Panel:

*Honorable George Z. Singal, District Court of Maine
TBA*

Moderator:

TBA

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.

3:00 to 3:15 P.M. Break

Track Presentations

3:15 to 4:15 P.M.

1) Immigration

Defending Against the Illegal Entry and Illegal Reentry Charges

Jodi Linker, AFPD, District of Northern District of California

Element by element, this session will discuss concrete defenses to raise against a charge of illegal entry or illegal reentry. Participants will gain an understanding of defenses related to derivative and acquired citizenship, collateral attacks on prior removals, the required mens rea, inadequate corroboration of a confession, permission to reapply for admission, and voluntariness. Participants will also gain an understanding of the documents contained in an “A-file” and learn how to use information found within them.

2) Sentencing

Mitigation Experts/Tools/Tricks/Fireworks

Paula Xinis, AFPD, Federal Defenders of Maryland

A lively romp through the fantastic possibilities of bringing your client’s story to life during the sentencing phase. There are a variety of experts and tools you can use in screaming to the court about mitigation. This well regarded presentation takes aim at opening your mind up to re-thinking strategies which may result in the court embracing your pitch for a variant/lesser sentence.

3) Experts, Forensics & Science

Discovery and Challenges to Crime Labs

Christopher McKee, Esq., Adjunct Professor, Colorado University School of Law at Boulder, former Special Counsel, Public Defender Service for the District of Columbia

This session will detail how to meaningfully challenge the forensic evidence in your case by making specific discovery requests about the analyst, all information relied upon by the analyst in reaching a conclusion, manuals, protocols, databases, policies and accreditation of the lab and its personnel.

4) 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.

4:15 to 4:30 P.M. BREAK

Track Presentation

4:30 to 5:30 P.M.

1) Immigration

Sentencing Issues in Illegal Reentry Cases and Fighting Aggravating Criminal History

James Langell, AFPD, District of New Mexico

Clients convicted of illegal reentry often face far longer sentences than they did when convicted of more serious offenses prior to their deportation. This session will help you assert § 3553(a) factors post- Rita, Gall, and Kimbrough; argue against upward adjustments based on prior aggravated felonies and drug-trafficking offenses; and make creative sentencing presentations to the court

2) Sentencing

Recidivism, Recidivism, Recidivism: How to Mitigate Your Client's Criminal History

Jane McClellan, AFPD, District of Arizona

Attacking the Guideline's "second axis," criminal history, requires a keen understanding of how the Sentencing Commission justified guideline range increases based on past convictions and how the "science" behind the guidelines may be lacking. This session will discuss some of the common tools used to predict recidivism (criminal history scores, actuarial risk assessments) and how attorneys can use them to advocate for lower sentences. It will also discuss common barriers to reentry and how they may be used to explain why your client may not be as "bad" as the criminal history score suggests. An important session, which explores how to advocate for departures based upon over representation of criminal history and variances based on 18 U.S.C. § 3553(a) factors.

3) Computer Crimes

Computer Based Sex Crimes: Defending Enticement and Child Pornography Cases

Faulty TBA

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

4) Experts, Forensics & Science
Attacking and Understanding DNA
Faculty TBA

This session will cover ways to successfully challenge the presence of DNA evidence in your case. If the government claims to have located your client's DNA at the crime scene, your client may not have put it there. Evidentiary issues involved with certification, testing, and transfer will be covered.

5:30 P.M.

Adjournment

Friday, August 19, 2011

7:30 to 8:30 A.M. Continental Breakfast

8:30 to 9:30 A.M. Plenary: CJA Resources

Panelists: 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 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 resources available through www.fd.org and the Office of Defender Services Training Branch. This session offers CJA practitioners an opportunity to ask very knowledgeable and experienced panel experts/administrators any questions you have about CJA administrative policies.

Repeat of Thursday Track Presentations

9:45 to 10:45 A.M. 1) Immigration

How a Criminal Conviction Will Impact Your Client's Future Immigration Status

Mary Kramer, Law Offices of Mary Kramer, Miami, FL

This session provides a careful examination of the types of convictions which can 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.

2) Sentencing

Deconstructing the Guidelines and Constructing a Purpose-Driven Sentence

Jennifer Coffin, Research and Writing Specialist, National Sentencing Resource Counsel, Nashville, TN

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This presentation will demonstrate how to deconstruct some of the most frequently-applied and severe guidelines, showing that they are not based on national sentencing data or empirical research. Child Pornography, Immigration, Drugs, Relevant Conduct and Career Offender guidelines will be covered. Further discussions will be held concerning how to best construct a sentence which addresses specific goals.

3) Computer Crimes
An Overview of Computer Crimes
Faculty TBA

This presentation will focus on federal computer and internet crimes including hacking, identity theft, cyberstalking, unauthorized password use, and fraud. This session will also provide tips on how to investigate alleged computer crimes and will focus on child pornography cases with an in-depth discussion of statutes, constitutional issues, search and seizure, pretrial detention, sentencing guidelines and other related issues. **(This session will be presented in two parts. The second session immediately follows.)**

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10:45 to 11:00 A.M. Break

Track Presentations

11:00 to 12:00 P.M. 1) Immigration

Defending Against Charges of Alien Smuggling, Alien Transportation, and Alien Harboring

Faculty TBA

Key to the government's prosecution is the testimony from "material witnesses," who are themselves alleged undocumented immigrants. Learn how to interview these witnesses and prepare effectively for cross-examination (either in a deposition or at trial) and challenge the use of deposition testimony. This session will also suggest pretrial motions and trial strategies which will help you counter the assertion that your client knew the people with whom he was traveling were undocumented immigrants, and the allegation that the offense charged was committed for profit.

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Litigating Mitigating Factors: Departures, Variances, and Alternatives to Incarceration

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**3) Computer Crimes -
Computer Crimes Overview 2nd Hour Continued From 9:40-10:40
Session**

**4) Experts, Forensics & Science
Firearm and Toolmark Identification**

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This session will address how to effectively challenge the lack of a scientific basis of "forensic" evidence presented in cases involving firearms/toolmark identification in light of the recent findings in the National Academy of Sciences (NAS) Report. Arguments to repudiate claims that firearms produce unique markings on bullets/casings, 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 will be presented.

12:00 to 1:30 P.M. Lunch

1:30 to 2:45 P.M. Plenary: Complying with Padilla Pursuant to the new Supreme Court Holding: What is Expected of Attorneys When Representing and Advising Non-Citizen Clients Facing Federal Convictions
Faculty: TBA

The Supreme Court's recent holding in Padilla v. The Commonwealth of Kentucky now means the lawyer for an alien charged with crime has a constitutional obligation to tell the client that a guilty plea carries a risk that he will be deported. Yet, under what circumstances does this new constitutional obligation arise and to what degree must the criminal defense attorney delve into advising the client about civil immigration law? This session will help explain how attorneys can best handle not killing their client's chances of remaining in the country and to what degree a criminal defense lawyer must take on the new role of Immigration Lawyer.

Track Presentations

2:50 to 3:50 P.M.

1) Immigration

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Faculty TBA

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3:50 to 4:00 P.M. Break

Track Presentations

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Discovery and Challenges to Crime Labs

Christopher McKee, Esq., Adjunct Professor, Colorado University School of Law at Boulder, former Special Counsel, Public Defender Service for the District of Columbia

This session will detail how to meaningfully challenge the forensic evidence in your case by making specific discovery requests about the analyst, all information relied upon by the analyst in reaching a conclusion, manuals, protocols, databases, policies and accreditation of the lab and its personnel.

5:00 P.M.

Adjournment

Saturday, August 20, 2011

7:30 to 8:30 A.M. Continental Breakfast

8:30 to 9:30 A.M. Plenary: Putting the Sentencing Memo Together using *Booker*, Guidelines, Variances and Mitigation

Faculty TBA

9:40 to 10:40 A.M. The following breakouts are for the Drugs, Guns and Money (fraud) Track. Each Session is repeated and thus, offered twice.

Drugs, Guns & Money:

1) The Nuts and Bolts of Trying Firearms Cases

Richard O. Ely II, AFPD, Southern District of Texas

Rafael Andrade, AFPD, District of Puerto Rico

This session addresses the essentials of trying a gun case. The presentation will cover: jury selection issues (e.g., do you want gun owners, NRA members, ex-military members on your jury); how to handle firearms in court to demonstrate confidence and knowledge to the jury; firearms terms and the historical background of firearms laws; cross-examination of government witnesses; serialization of firearms as a defense; and a discussion of antique firearms.

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 about - 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) 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.

4) 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!

5) Reoccurring Issues With Drug Cases:

Faculty TBA

10:40 to 11:00 A.M. Break

Breakouts (repeated from morning session)

11:00 to 12:00 P.M.

1) The Nuts and Bolts of Trying Firearms Cases

Richard O. Ely II, AFD, Southern District of Texas

Rafael Andrade, AFD, District of Puerto Rico

This session addresses the essentials of trying a gun case. The presentation will cover: jury selection issues (e.g., do you want gun

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4) 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!

5) Reoccurring Issues With Drug Cases:

Faculty TBA

12:00 to 1:00 P.M. Plenary: Panel Discussion “Ethical Issues Confronting Criminal Defense Attorneys”

Moderator: TBA

Panel:

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

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

1:00 to 1:15 P.M. Closing Remarks and Adjournment