

2022 FPD SEMINAR AGENDA

Course Title: Annual Federal Criminal Practice Seminar

Course No. 174163278

July 27, 2022 & July 28, 2022

UNT Law; 1901 Main Street, Dallas, Texas 75202

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Zoom Webinar

Presented by:

The Office of the Federal Public Defender, Northern District of Texas

Overview

The Annual Federal Criminal Practice Seminar offers an assortment of cutting-edge material and instruction to benefit the less-experienced and experienced federal practitioner alike. This year's seminar will take place at UNT Law School in Downtown Dallas (1901 Main Street, Dallas, Texas 75202) and via Zoom webinar. We have requested approval from the State Bar of Texas for a total of fourteen (14) hours of continuing legal education credit, of which one (1.0) hour qualifies for ethics credit.

The **first day** is **July 27, 2022**. The focus of the material has been tailored to benefit the less-experienced attorney or attorneys who would like a refresher of the federal system by dedicating day one almost exclusively to guideline calculations. We have requested that the State Bar to approve a total of seven hours (7) of continuing legal education credit, including one (1.0) hour of ethics credit, for this session.

The **second day** is **July 28, 2022**. The emphasis of this material is to cover a broad range of topics; it is suited for experienced and new attorneys alike. We have requested that the State Bar approve a total of seven hours (7) of continuing legal education credit for this session.

There is no cost to attend the seminar this year. Advanced registration is required. You may register by going to the Federal Public Defender website at <http://txn.fd.org>. **Please indicate your preference to attend in-person or virtual. However, please be aware that there is a fifty (50) person cap on in-person attendance.** Spaces for in-person attendees will be given on a first-come, first-served basis. After the fifty in-person spaces are filled, a wait list will be maintained.

Seminar materials will be available on the Federal Public Defender website (<http://txn.fd.org>) beginning on July 13, 2022.

If you have any questions, you may contact Charnese M. Toro at (214) 767-2746 or charnese_toro@fd.org.

The agenda and faculty are on the pages below. We have an exciting agenda with wonderful speakers and we are looking forward to working with you this year!

Agenda

Day One - July 27, 2022

8:30-8:45 Opening Remarks

8:45-9:45 Making the Most of Your CJA Appointment
Speakers: Kim Schaefer

This presentation will cover the scope and responsibilities of an appointment under the Criminal Justice Act, how to obtain authorizations for service providers, budgeting, and how to prepare vouchers that are more likely to be paid quickly and in full.

9:45-10:00 Break

10:00-11:00 Initial Appearances, Preliminary Hearings, and Detention Hearings
Speaker: The Honorable Rebecca Rutherford, Magistrate Judge, Northern District Texas, Dallas Division

The preliminary stages of a federal criminal case are as important as every other stage of the case. As a Magistrate, Judge Rutherford routinely presides over initial appearances, preliminary hearings, and detention hearings; she will provide tips for federal practitioners to give their clients the best representation at these critical early stages of a case.

11:00-12:00 Case Law Update – Fifth Circuit and United States Supreme Court
Speaker: Jessica Graf, AFPD

This presentation will review recent significant decisions from the United States Supreme Court and the Fifth Circuit Court of Appeals related to federal criminal practice.

12:00-1:00 Lunch On Your Own

1:00-2:00 Introduction to Sentencing – Statutory vs. Guideline Ranges
Speakers: Matthew Wright, AFPD

This presentation will be a bird's eye view of federal sentencing according to the statutes and the guidelines. It is designed for the beginner and for those who need a new beginning. We will briefly cover determining the statutory maximum and minimum from the indictment, trying to calculate the offense level and criminal history category from the information typically provided in discovery, and negotiation strategies informed by this analysis.

2:00-3:00 Differences Between Federal and State Criminal Defense Practice
Speakers: Sarah Gunter, AFPD

The practice of federal criminal defense is vastly different from the practice of state criminal defense. This presentation will detail some of the biggest differences between federal and state criminal defense as well as provide tips for those who are new to federal criminal defense.

3:15-3:30 Break

3:30-4:30 Ethics and Attorney Mental Health*
Speaker: Mark Snodgrass

This presentation will focus on keeping your bar card and your sanity post-Covid.

4:30-5:30 Estimating BOP Security Classification and Requesting Facility Placement
Recommendations
Speaker: Sarah Gunter, AFPD

We often hear attorneys make requests for a BOP placement recommendation for their clients, but there are ways clients to help clients make an educated request. This presentation will show the formula used by the BOP to determine security classifications; it will also show how to use the security classification estimation and occupational training directory to assist client's in deciding which facility they want to request.

Day Two – July 28, 2022

8:30-8:45 Opening Remarks

8:45-9:45 Restitution
Speaker: Brandon Beck, AFPD

While the sentence of imprisonment is rightfully in the front of the mind of the client and attorney, a restitution award can have an enormous impact on a client's life once they are released. This is particularly prominent in cases involving fraud and cyber-crimes. To make matters worse, the law of restitution can be difficult, both at the trial and appellate level. This presentation will work through the fundamental principles of restitution law with an eye toward contemporary issues.

9:45-10:45 Substantive Reasonableness and Sentencing Hearings
Speaker: T.W. Brown, AFPD

What makes a sentence substantively unreasonable? The Fifth Circuit recognizes three types of errors that will render a sentence unreasonable in light of the sentencing factors outlined in 18 U.S.C. § 3553(a). This presentation reviews each type of error and provides real-world examples from the Fifth Circuit and elsewhere to flesh out their meaning. The goal of this presentation is to help participants identify and preserve specific substantive-reasonableness objections.

10:45-11:00 Break

11:00-12:00 Nothing but a Good Time
Speakers: Michael King

This presentation will focus on the pitfalls of time calculation by the Bureau of Prisons.

12:00-1:00 Lunch On Your Own

1:00-2:00 Representing People with Mental Health Disabilities
Speaker: Elizabeth Kelley

Ms. Kelley will describe the role of mental disabilities for people accused of crimes throughout every stage of the criminal process: from arrest through interrogation, bond, competency and sanity evaluations, plea negotiations, trial, sentencing and mitigation, through post-conviction proceedings. Additionally, she will provide guidance for working with mental health experts including the selection process, what information to provide and how to most effectively use the expert.

2:00-3:00 Vicarious Trauma
Speaker: Cori Hill

The research is clear: those in the helping professions often experience trauma *vicariously* when exposed to the difficult challenges of those they help. This session will explore the phenomenon, its impact (e.g., compassion fatigue and burnout), and strategies public defenders can use to be effective *and* emotionally well attorneys.

3:00-3:15 Break

3:15-4:15 Judiciary Sentencing Information (JSIN)
Speaker: Tina Woehr

Data has become increasingly relevant to our sentencing practice. In 2022, the US Sentencing Commission dramatically revamped JSIN, its newest interactive data tool, which has started appearing in some PSRs. This session starts with an introduction to JSIN, as well as the recent 2022 changes to JSIN's inputs and outputs. We then discuss thinking critically about the tool, as well as how the overhauled JSIN tool may affect defense strategies at sentencing. We close by considering when to use data offensively in your sentencing practice (and beyond!), and we introduce additional resources for attorneys facing data dilemmas.

4:15-5:15 Career Offender and ACCA for New Attorneys
Speaker: Joel Page, AFPD

Clients with serious prior criminal history may be exposed to draconian sentences under the Armed Career Criminal Act and the Career Offender Guideline. So missing a possible enhancement at the plea stage can be an extraordinarily unpleasant surprise; missing a sentencing objection can be a life altering event. Joel will walk you through the basic principles that inform these enhancements as well as recent controlling precedents that include or exclude prior offenses as triggering predicates. He will help you predict when enhancements will apply early in your assessment of the case, and fight them when you can.

*Denotes presentations that are expected to contain ethics

FACULTY BIOGRAPHIES

Brandon Beck

Brandon Beck has worked in the appellate section of the Federal Public Defender's Office for the Northern District of Texas since 2015. He also teaches legal writing at the Texas Tech University School of Law. In 2019, he argued and won *United States v. Davis* before the United States Supreme Court.

T.W. Brown

T.W. Brown is an Assistant Federal Public Defender and works in the Fort Worth division. He graduated from the University of Arkansas School of Law in May 2013 and joined the FPD's office in January 2015. He spent a few years in the trial division and has been in appeals since May 2019. If you have any questions about his presentation, you can reach T.W. at Taylor_W_Brown@fd.org.

Jessica Graf

Jessica Graf is an AFPD in the Appellate Division. She joined the FPD's Office in 2015 after clerking for The Honorable Cathy Cochran and The Honorable David Newell at the Texas Court of Criminal Appeals. During her time with the office, Jessica has represented clients in the trial and appellate divisions as well as the Capital Habeas Unit. Jessica graduated *summa cum laude* from Texas Tech School of Law in 2014.

Sarah Gunter

Sarah Gunter has been an Assistant Federal Public Defender in the Lubbock Division since 2018. Prior to that, she spent 11 years in private practice, doing state and federal criminal defense. Her journey to the practice of criminal defense took a brief detour when she spent 5 years as an assistant district attorney in Lubbock. She just finished her 10th year as an adjunct professor for the Texas Tech University School of Law, where she teaches Trial Advocacy.

Cori Hill

Cori Hill is a licensed professional counselor (LPC), licensed marriage and family therapist (LMFT), and nationally certified counselor (NCC). She is the owner and clinical director of Chill Counseling where she helps clients across Texas navigate trauma, anxiety, relationships, and work stress and burnout.

Elizabeth Kelley

Elizabeth Kelley is a criminal defense lawyer with a nationwide practice focused on representing people with mental disabilities. Her family settled in the Palouse Country of Washington Territory in 1872, and she was born and raised in Spokane. She returned to the Inland Northwest in 2012. Elizabeth co-chairs the Criminal Justice Advisory Panel of The Arc's National Center on Criminal Justice and Disability. She is the editor of Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers (2018); Representing People with Autism Spectrum Disorders: A Practical Guide for Criminal Defense Lawyers (2020); Representing People with Dementia: A Practical Guide for Criminal Defense Lawyers (scheduled 2022), and co-editor of Suicide and Its Impact on the Criminal Justice System (2021), all published by the American Bar Association (ABA). She is active in the ABA, serving on the Council of the Criminal Justice Section, the Editorial Board of Criminal Justice Magazine, the Commission on Disability Rights, and the ABA President's Working Group on Building Trust in the American Justice System. She served as a Non-Governmental Organization Observer on behalf of the ABA of the Military Commission Hearings at Guantanamo in 2019. Elizabeth served three terms on the board of the National Association of Criminal Defense Lawyers (NACDL), chaired its Mental Health as well as Membership Committees, and is a Life Member. She served on the Problem-Solving Courts Task Force and Body Camera Task Force. She traveled to Liberia in 2009 and 2014 as part of a delegation sponsored by the U.N. Commission on Drugs and Crime and NACDL to train that country's criminal defense bar. She lectures across the United States as well as abroad on the intersection of mental disabilities and the criminal justice system. Elizabeth is the Secretary of the Washington Chapter of the Federal Bar Association, serves on the Editorial Board of *The Federal Lawyer*, and has regularly reviewed books for *The Federal Lawyer* since 2005. Elizabeth is admitted to the U.S. Supreme Court, the Sixth and Ninth Circuits, the Northern District of Ohio, the State of Ohio, and numerous other jurisdictions pro hac vice. She served as President of the Spokane Symphony and has completed her 200- and 500- hour Yoga certifications.

Michael King

Michael King graduated from the Texas Tech School of law in 2006. After spending a short time as a solo practitioner, Michael joined the Federal Public Defenders Office. While a public defender, he obtained "not guilty" verdicts in Lubbock and Amarillo. Michael left the Defender's office in 2016 and reopened King Law where he continues a steady criminal practice throughout west Texas.

Joel Page

Joel Page has worked in the Federal Public Defender's office in Dallas since 2004. He started as a Research and Writing Attorney, became an Assistant Federal Public Defender in 2007, and now serves as the supervisor of the Appellate Division. He's written over 900 briefs to the Fifth Circuit, secured a merits opinion from the US Supreme Court in the client's favor in *Charles Earl Davis v. United States*, and helped write merits briefs for three of the office's cases that went to the Supreme Court.

Honorable Rebecca Rutherford

Rebecca Rutherford is a United States Magistrate Judge for the Northern District of Texas in Dallas, where she presides over a busy trial docket and hears both civil and criminal matters. Prior to taking the bench, Judge Rutherford practiced law at Thompson & Knight, LLP and worked as a judicial law clerk in the Northern District of Texas. Judge Rutherford attended SMU School of Law, where she was a member of the Barristers and an Articles Editor for the SMU Law Review Association. She graduated second in her class, magna cum laude, and was elected to the Order of the Coif. Judge Rutherford also attended Southern Methodist University as an undergraduate, earning a B.A. in History, summa cum laude, with Honors in the Liberal Arts. Judge Rutherford is a member of the State Bar of Texas, as well as various bar associations and Inns of Court. She is an adjunct professor at Texas A & M Law School and a frequent presenter at CLE events and bench bar conferences.

Kim Schaefer

Kim Schaefer has spent the last three years as an Attorney Advisor for the Northern District of Texas. In that role, she assists the court and private counsel in CJA-related matters, including attorney appointments, the authorization of service providers, budgeting, and voucher payment processing. Kim also works on internal administrative matters, attorney discipline issues, court history, and educational outreach. She is the 2022 recipient of the Nancy Garms Memorial Award from the State Bar of Texas for outstanding contribution to law-focused education in Texas. Prior to assuming her role as Attorney Advisor, Kim was a Death Penalty Law Clerk in the Northern District for nine years. Before embarking on her career with the federal court, Kim was an Assistant District Attorney in Dallas County for thirteen years and was named Appellate Prosecutor of the Year in 2010. She was admitted to practice before the Supreme Court of the United States in 2005 and has been certified by the Texas Board of Legal Specialization in Criminal Appellate Law since 2012. She earned a B.S. with honors from the University of Houston in 1988 and a J.D. with honors from George Washington University four years later. Kim was born and raised on the south shore of Long Island, New York, and is married to a third-generation Texan. When the weather permits, Kim can be seen riding her bicycle to work. In her spare time, she volunteers for her daughter's scout troop and indulges a passion for food history. Kim and her husband operate a medieval-themed food concession in Bastrop County, Texas.

Mark Snodgrass

Mark Snodgrass received his undergraduate degree from Texas Tech University and his law degree from St. Mary's School of Law. After completing law school Mark began practicing law in the law offices of the late Floyd Holder. In 1999, Mark started his own practice, opening the Law Office of Mark S. Snodgrass. Mark is the past president of the Texas Criminal Defense Lawyers Association, where he previously served as a director from 2003-2009. Mark also served as the president of the Lubbock Criminal Defense Lawyers Association. Mark is a member of the Texas Criminal Defense Lawyers Project and served that organization as vice chair in 2008 and served as chairman in 2009. A frequent speaker throughout the State of Texas, Mark has lectured other criminal defense lawyers on many topics related to the defense of people accused of crimes. Additionally, Mark has served on the faculty of the Tim Evans Trial College since 2008. Mark is licensed by the Supreme Court of Texas, United States District Court-Northern District of Texas, and United States Court of Appeals-Fifth Circuit.

Tina Woehr

Texas-born and Tucson-based, Tina is an attorney with the National Sentencing Resource Counsel Project. Before joining SRC, Tina was an Assistant Federal Public Defender in the District of Arizona and the Southern District of Texas. Prior to that she was an associate with the New York office of Simpson Thacher & Bartlett. Tina received a J.D. from Columbia Law School, and a B.A. from the University of Texas at Austin.

Matthew Wright

Matthew Wright is an assistant federal public defender in the appellate and post-conviction section; he is assigned to our Amarillo division. He has been with the office since 2008, minus one year when Congress refused to fully fund our office. He previously worked as a law clerk to a federal judge in Houston Texas.