

NATIONAL DEFENDER INVESTIGATOR ASSOCIATION

2015 Federal Paralegal and Investigator Seminar & NDIA National Conference Agenda

April 15-17, 2015

Town & Country Resort & Convention Center
500 Hotel Circle North
San Diego, CA 92108
Draft Agenda (3/26/2015)

Thursday, April 16, 2015 (NDIA Conference)

7:30 to 8:45 a.m. Registration

8:45 to 9:15 a.m. Introductions and NDIA Welcoming Remarks

9:15 to 10:15 a.m. Plenary: Wrongfully Convicted: A First-Hand Account of Why the Client and Investigations Matter

Joe D'Ambrosio and Reverend Neil Kookoothe, *North Olmsted, Ohio*

Joe D'Ambrosio is the 140th death row inmate to be exonerated since 1973 and the 6th from Ohio. Some of the factors contributing to Joe's wrongful conviction included prosecutorial misconduct, false accusations, false and misleading forensic evidence, and withheld forensic evidence that was in the possession of the police, the prosecutor and the coroner. After 20 years on death row, Joe is finally a free man, thanks in large part due to the investigation and legal assistance of Father Neil Kookoothe and others. Learn about the post-conviction investigation that ultimately lead to Joe's release, and the lessons they learned that can help others prevent similar future injustices.

10:15 to 10:30 a.m. Break

10:30 to 11:45 a.m. Concurrent Sessions

1. The Seven Deadly Sins of Poor Writing: Tips for Improving Reports and Sentencing Memos

Vidalia Patterson, *Legal Research and Writing Attorney, Federal Public Defender, Eastern District of North Carolina, Raleigh, NC*

Laura Wasco, *Legal Research and Writing Attorney, Federal Public Defender, Eastern District of North Carolina, Raleigh, NC*

This interactive presentation will provide writing and editing tips that will efficiently produce clear and concise prose. Through examples and exercises we will focus on incorporating storytelling, theme development, and persuasion in both investigative reports for attorneys and sentencing memos for the court.

2. DNA Mixtures & Transfer: An Introduction to Challenging the Latest Trends in DNA Testing

Ellen Leonida, *Assistant Federal Public Defender, Federal Public Defender, Northern District of California, Oakland, CA*

Advances in DNA testing are enabling forensic scientists to extract DNA from smaller and smaller samples. “Touch DNA” will be showing up in more of our cases as the government tests guns and other evidence items for DNA. This presentation is designed as a basic introduction to DNA testing for people who are otherwise allergic (or just morally opposed) to math and science. It will provide enough background to be able to identify issues around DNA testing in your cases and help you figure out what to look for, what to ask for, and when to call in reinforcements.

3. Organizational Strategies and Technology for Complex Cases

Russell M. Aoki, *Principal, Aoki Law PLC, Seattle, WA*

Sean Broderick, *National Litigation Support Administrator, Defender Services Office Training Division, Oakland, CA*

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

As investigators and paralegals know all too well, 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 presenters will give 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. Though there is no one size fits all, as each office and district is different, there are tools and organizational strategies that can assist you in your cases from the small and medium to the large.

4. Ballistics & Toolmark Identification: Farther Beyond the Gun and the Bullet

Paul Paradis, *Criminologist, State of Colorado, Office of the Public Defender, Pueblo, CO*

What are the other points in firearm reports that you are unaware of? This session will discuss what you need to look for, how to find it and the potential flaws in the processing that they are not telling you about. We will also explain sub-class characteristics, the General Rifling Characteristic file (GRC data) and points to be aware of in distance determination testing. Many tests are subject to potential variations and concerns that often the defense is not aware of.

11:45 to 1:15 p.m. Lunch

1:15 to 2:30 p.m. Concurrent Sessions

1. Strategies for Wrestling Public Records from Government Agencies

Jennifer Lynch, *Senior Staff Attorney, Electronic Frontier Foundation, San Francisco, CA*

Learn the basics of public records access laws and how to ask for information from local, state and federal agencies that may be helpful to your cases. Hear examples of Electronic Frontier Foundation’s successful (and unsuccessful) attempts to wrest records and data from the government, learn what kind of records you can ask for and how long you should expect to wait for them, and hear about the strategies that have worked for us.

2. The Suggestibility of Child Witnesses: Evaluating the Risk of False Allegations of Child Abuse

Julie A. Buck, *Eyewitness Memory Consultant, San Diego, CA*

In child abuse cases, the child's testimony is often the key evidence. However, the accuracy of children's accounts can vary drastically. Under certain circumstances children do make completely false reports, including reports involving explicit reports of sexual abuse. In this presentation, you will learn how to evaluate the risk of false allegations made by child witnesses by understanding children's suggestibility. Despite popular opinion, children's accuracy can be influenced by factors other than just the forensic interview. While this topic is especially relevant to allegations of child sexual abuse, there are also broader implications to other cases where a child witness is key to the allegation. During this presentation, there will be time to discuss cases that participants are seeing involving child witnesses. At the end of this presentation you will better understand how to evaluate a case for risk factors relevant to the suggestibility and memory limitations of child witnesses.

3. Using "Moving Pictures" to Persuade

Doug Passon, *President & Creative Director at D Major Films, LLC, Phoenix, AZ*

At sentencing, a picture is worth at least a thousand words, and will often add layers of credibility and emotion to your client's mitigation story. Moving pictures help the judge connect with and understand your client. This session will discuss how to incorporate powerful and persuasive images into your sentencing practice, ranging from inclusion of still photos in sentencing memoranda to the creation of mini documentary films. We will discuss factors to consider in determining what types of images would be most persuasive in a given case, as well as the various means for producing a video using the resources available in your office. NOTE: Participants at this session are invited to attend an additional session, immediately following this presentation, at which Doug Passon will demonstrate various software/hardware, and participants can discuss how to apply techniques in their own cases.

4. Working With Attorneys: How to Become a More Effective Team or Dynamic Duo

Karen Jackson, *Chief Investigator, Public Defender Services for DC, Washington DC*
(Moderator)

Rudolph Acree, Jr., *Deputy Director, Public Defender Services for DC, Washington DC*

Eric Hirst, *Chief Information Officer, Public Defender Services for DC, Washington DC*

Mark Neer, *Chief Paralegal, Federal Public Defender, Central District of California, Los Angeles, CA*

Whether it's a complex case with team members across the country or a small case where you are working directly with the attorney, team work, coordination and communication are essential for best serving the client. This session will address practical ways to get paralegals, investigators, IT staff and attorneys to work together effectively and ways to identify key issues to be addressed in order for the defense team to proceed with any case from both the trial and sentencing perspectives.

****1:15 to 5:15 p.m. Special Concurrent Session**

5. Mobile Forensics: Hands-On Training, Session 2, Part 1

Kevin DeLong, *Vice President of Mobile, Synticate, Lindon, UT*

Michael Yasumoto, *Managing Principal, Deadbolt Forensics, Beaverton, OR*

Sean Broderick, *National Litigation Support Administrator, Defender Services Office Training Division, Oakland, CA*

The Mobile Forensics: Hands-on Training is an eight hour hands-on introductory course designed specifically for federal defender investigators and paralegals. The first half of the training will teach you the basics on how to use Mobile Phone Examiner Plus (MPE+) Investigator and Cellebrite Reader, two popular tools for reviewing mobile evidence. Students will get hands-on training on how to review mobile forensic evidence that has been processed by the government or by an independent forensic examiner. They will learn how to search and tag potentially relevant evidence for their case, and how to generate reports for attorneys and other defense team members. The second half of the training will focus on how to review and analyze historical cell site location information that the government has obtained from phone companies through sealed applications and orders. The session will include instruction on how cell phone technology works, covering 1G, 2G, and 3G technologies, and how call detail records (CDR) obtained from phone companies can include geo-location information that can be used to create maps showing the approximate location of a cell phone during a period of time. During the class, students will analyze sample CDRs to better understand the factors to consider when assessing the accuracy of this type of data in a case.

****NOTE:** Part 2 of the Thursday session will be the following day, Friday, from 10 a.m. to 2:30 p.m. Selection of the participants will be determined prior to the program.

2:30 to 2:45 p.m. Break

2:45 to 4:00 p.m. Concurrent Sessions

1. Mobile Device Forensics (Note: this session will be offered again on Friday at 1:15 p.m.)

Jerry Grant, *Digital Forensics Investigator, Federal Public Defender, Western District of New York, Rochester, NY*

With modern smart phones, we carry a wealth of information in a small device. The smart phone in your pocket is a computer carrying your most personal details from location to love notes. The demand for cell phone forensics has grown tremendously over the last few years. Hidden location information that is stored even if the phone is not being used can be retrieved. Internet history, text messages, call detail and maps are just some of the additional information that can be used to present a timeline and/or profile of the user. With so many different types of phones in the marketplace, specialty software and hardware has been developed to extract this data. You will see a live demonstration of a cell phone extraction and how that information is used.

2. Strategies and Techniques for Interviewing Difficult Witnesses

Bruce Johnson, *Investigator, Federal Public Defender, District of Alaska, Anchorage, AK*

Deatrich Sheffield, *Investigator, Federal Public Defender, District of Alaska, Anchorage, AK*

Victims and hostile witnesses really want to tell their story, we just need to convince them to tell it to us! Interviewing is more an art than a science. This session will discuss strategies and techniques for interviewing witnesses and crime victims who may be hostile to the defense.

3. Medical Records Review: Finding the Information You Need Without “Googling” Every Medical Term

Tara M. Godoy, *BSN, RN, LNC, Forensic and Nurse Consultant, Godoy Medical Forensics, Inc., Livermore, CA*

The records included in this presentation follow an attempted murder case and highlight not only what it is in the records but also what might be missing. The purpose of the presentation is to assist paralegals and investigators in focusing their review of medical records and to be able to locate records that contain the information that paralegals and investigators are commonly seeking.

4. Mobile Tools, Trial Presentation and New Technology for Investigators and Paralegals

Ellen Leonida, *Assistant Federal Public Defender, Federal Public Defender, Northern District of California, Oakland, CA*

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

Jesse Wallis, *Chief of Information Technology, Federal Public Defender, Central District of California, Los Angeles, CA*

This session will showcase some of the state-of-the-art applications and mobile devices being used by investigators and paralegals in the field, office, and courtroom. The focus will be on mobile computing devices such as smartphones, iPads, portable scanners and printers. We will also be demonstrating some popular free and low-cost programs, many of which allow for the collection, organization, review and presentation of case-related materials.

4:00 to 4:15 p.m. Break

4:15 to 5:15 p.m. Plenary: Online Investigation and Social Media

Jonathan Lyon, *Legal Investigator, Chicago, IL*

This session will teach participants techniques for using the internet as an investigative and research tool for their cases. Participants will discover new sites and software; learn a better way of using search engines to get results that are more relevant, and less daunting in number; and discuss the best practices of social networking investigations.

5:15 to 6:00 p.m. NDIA General Business Meeting

6:30 to 9:00 p.m. NDIA Reception

Friday, April 17, 2015

9:00 to 10:15 a.m. Plenary: Eyewitness ID, Crime Labs and DNA: Modern Day Forensics Challenges for Investigators and Paralegals

Barry Scheck, *Co-Director, Innocence Project, New York, NY*

With the advent of DNA evidence, we now know with absolute certainty that certain convictions were mistakes. 125 exonerations were recorded in 2014, the most recorded in history. From new research discrediting long-held assumptions about eyewitness identification to reports of crime lab failures across the country, the forensic field has never been more important. Hear from Barry Scheck, the Co-Director and Co-Founder of the Innocence Project, about the critical role that investigators and paralegals play in challenging the misuse of forensic science in indigent criminal cases.

10:15 to 10:30 a.m. Break

10:30 to 11:45 a.m. Concurrent Sessions

1. Anatomy of a Wrongful Arson Conviction

R. Paul Bieber, *Founder & Director, The Arson Research Project, Seaside, CA*

Standard practices, reliability and validity, performance standards, error rates: these terms make up the foundation of modern forensic science. Yet in the forensic discipline of fire investigation, these core concepts are largely ignored, misunderstood or non-existent. Fire scene examination applies a uniquely vague and imprecise methodology in an environment steeped in domain-irrelevant and potentially biasing information. This presentation will describe a first step in establishing a best practice protocol in this area. Case study examples of forensic errors in fire investigation and their horrible consequences will be used to introduce a framework developed to recognize the unreliable forensic methods and biases at the root of dozens of wrongful arson convictions - a standard rubric explaining what to look for, how to recognize it and what it means. The Arson Research Project has partnered with the National Association of Fire Investigators to create a standardized review process for performing independent, blind forensic audits of fire origin and cause conclusions. An overview of the program will provide a blueprint for implementation by public defenders and indigent defense advocates. Strategies for recognizing some of the most common and concerning practices in modern fire investigation, and a discussion of the subtle, yet powerful effects of cognitive bias, will follow.

2. Echoes of War: Defending Combat Veterans in Criminal Court

Brock Hunter, Esq., *Law Office of Brockton D. Hunter, P.A., Minneapolis, MN*

For as long as warriors have returned from battle, some have brought their war home with them, bearing invisible wounds that haunt in the present. These echoes of war - manifested in self-destructive, reckless and violent behavior - reverberate through society, destroying not only the lives of these heroes, but their families and communities. A new generation of veterans, more than 2.6 million, is now returning home from Iraq and Afghanistan and there is good reason to believe more of them will bring their war home with them than ever before. Unlike previous generations, this one is relatively small, yet it has fought the two longest wars in our country's history - simultaneously. Many of this generation will have survived combat injuries that would have killed them in the past, but will nonetheless bear the psychological scars of their

brush with death. This program will cover the history of combat trauma, its ties to criminal behavior, and how we can do a better job with this generation of veterans in the justice system this time around, from pre-trial strategies, to trial defenses and sentencing. It will also cover investigation approaches, including obtaining and interpreting military and VA records, building trust with veteran clients, and identifying and interviewing key witnesses.

3. Ethical Dilemmas for the Criminal Defense Team

Geoffrey Hansen, *First Assistant, Federal Public Defender, Northern District of California, San Francisco, CA (Moderator)*

Russell M. Aoki, *Principal, Aoki Law PLC, Seattle, WA*

Kevin Murphy, *Private Investigator, Kevin J. Murphy Investigations, LLC, Philadelphia, PA*

Jan Erickson, *Paralegal, Federal Public Defender, District of Arizona, Phoenix, AZ*

This session will discuss approaches to resolving the common ethical dilemmas that investigators and paralegals are likely to confront.

4. Understanding Your Client's Addiction and What It Means For Your Case

Dr. Melissa Piasecki, *Psychiatrist, University of Nevada School of Medicine, Reno, NV*

Substance use histories are a common finding in criminal defense work. This session focuses on the biological basis of addiction and the risk factors that make a person more vulnerable to addiction. We will explore the contributions of family history, childhood adversity and exposures to better understand how and why a person can become addicted. Lastly, we will review the impact of long term substance use on thinking, judgment, impulse control and memory.

11:45 to 1:15 p.m. Lunch

1:15 to 2:30 p.m. Concurrent Sessions

1. Mobile Device Forensics (repeat of Thursday session)

Jerry Grant, *Digital Forensics Investigator, Federal Public Defender, Western District of New York, Rochester, NY*

With modern smart phones, we carry a wealth of information in a small device. The smart phone in your pocket is a computer carrying your most personal details from location to love notes. The demand for cell phone forensics has grown tremendously over the last few years. Hidden location information that is stored even if the phone is not being used can be retrieved. Internet history, text messages, call detail and maps are just some of the additional information that can be used to present a timeline and/or profile of the user. With so many different types of phones in the marketplace, specialty software and hardware has been developed to extract this data. You will see a live demonstration of a cell phone extraction and how that information is used.

2. Safety in the Field: Tips, Techniques and Technology

Kevin Murphy, *Private Investigator, Kevin J. Murphy Investigations, LLC, Philadelphia, PA (Moderator)*

Herbert Duzant, *Investigator, Federal Public Defender, District of Nevada, Las Vegas, NV*

Efren Lapuz, *Chief Investigator, Federal Defenders of San Diego, Inc., San Diego, CA*

Linda Mroz, *Investigator, Federal Defender Services of Idaho, Inc., Boise, ID*

Criminal defense investigators face many security challenges on a daily basis, and the vast majority conduct their work without the use of weapons. Attendees of this session should expect to gain a better understanding of the various work related risks that are inherent in their duties and the safety measure that investigators, and other team members, need to apply while conducting their fieldwork. This session was designed specifically with the unarmed investigator in mind.

3. Mental Health Issues in Sentencing

Frank Draper, *Attorney Advisor, Defender Services Office Training Division, Washington, DC*

Forty-five percent of federal prisoners have had a mental health problem, and 40% of federal prisoners have had symptoms of a mental health disorder. Your client's mental health is an important sentencing consideration for the court as it is part of the history and characteristics of the client and therefore relevant to sentencing. This session is a brief overview on 1) why mental health information is relevant to sentencing, 2) how to develop the client's mental health history, and 3) what to do with the information once you have it. This session will provide you with the basics on how to use a history and symptoms of mental illness to inform the sentencing judge of the appropriate, and below guidelines sentence.

2:30 to 2:45 p.m. Break

2:45 to 4:00 p.m. Plenary: Understanding New Surveillance Tools: Cell Phone Tracking, Stingrays, Hemisphere and More

Hanni Fakhoury, *Senior Staff Attorney, Electronic Frontier Foundation, San Francisco, CA*

Technological advances have given law enforcement powerful new tools to conduct surveillance. While techniques like cell site tracking are widely known to the defense community, newer technologies like IMSI catchers or "stingrays" and databases like Hemisphere and the DEA's bulk call records collection program have only recently come to light after being shrouded in government secrecy. This presentation will review these technologies, steps investigators and attorneys can take to discover whether they've been used in their cases and legal challenges that can be made.

4:00 to 4:15 p.m. NDIA Closing Remarks and Adjournment