

DAVINA T. CHEN, FEDERAL SENTENCING LAW EXPERT

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EDUCATION

New York University School of Law, J.D., *magna cum laude* 1998
University of California, Berkeley, B.A., *summa cum laude* 1992

EXPERIENCE

Founder and Principal October 2013–February 2020, January 2024–present
Law Office of Davina T. Chen, Los Angeles, California

Represent individuals in federal criminal appeals and post-conviction proceedings. Provide expert consultation on federal sentencing law. Consult with trial counsel regarding complex criminal and immigration matters in pretrial, trial, and sentencing proceedings. Train attorneys, judges, and probation officers. Maintain private federal appellate practice, including Criminal Justice Act appointments in the Ninth Circuit Court of Appeals.

National Sentencing Resource Counsel February 2020–December 2023
Federal Public and Community Defenders

Led litigation for national non-capital sentencing project within the Federal Defender organization. Developed constitutional, statutory, and guideline litigation strategies for federal sentencing. Provided litigation support from district court to United States Supreme Court. Authored amicus briefs. Encouraged inter-district collaboration. Trained attorneys. Responded to congressional requests for information and analysis on criminal justice matters in support of the Federal Defender Legislative Committee. Worked with Federal Defender Sentencing Guidelines Committee and represented Defender interests before the U.S. Sentencing Commission. Coordinated national litigation responses to incarceration during COVID-19 pandemic.

Deputy Federal Public Defender October 1999–October 2013
Office of the Federal Public Defender, Los Angeles, California

Represented individuals at all stages of federal criminal proceedings: trial unit (1999–2006); appeals and writs unit (2006–2013). Collaborated in developing national litigation strategies to anticipate and respond to emerging legal issues, including the expansion of the Sixth Amendment’s right to jury trial and confrontation, sentencing reform, and changing immigration consequences of criminal convictions. Trained various actors in the federal criminal legal system, including judges, prosecutors, defense attorneys, and probation officers.

Special Counsel May 2003–December 2003
U.S. Sentencing Commission, Washington, D.C.

On detail from the Office of the Federal Public Defender, advocated for interests of criminal defendants at the U.S. Sentencing Commission.

Attorney Advisor, Legal and Policy Division December 2003–June 2004
Office of Defender Services, Administrative Office of the U.S. Courts, Washington, D.C.

On detail from the Office of the Federal Public Defender, provided U.S. Judicial Conference Standing Committee on Defender Services information and analysis with respect to administration of the Criminal Justice Act. Advised federal and community defender organizations and Criminal Justice Act panel attorneys on procedural and substantive issues of federal criminal practice.

Judicial Law Clerk to the Honorable Harry Pregerson September 1998–October 1999
U.S. Court of Appeals for the Ninth Circuit, Woodland Hills, California

Performed legal research, prepared bench memoranda, assisted judge in preparing for oral argument and drafting legal opinions.

SERVICE

National Association of Federal Defenders
Supreme Court Amicus Committee (2020-2023)

Ninth Circuit Court of Appeals
Advisory Committee on Rules of Practice and Procedure (2019–2022)

FAMM, NACDL, Washington Lawyers' Committee
Compassionate Release Clearinghouse COVID-19 Project, Steering Committee (2020–2021)

Ninth Circuit Judicial Conference
Appellate Lawyer Representative (2016–2019)

HONORS AND AWARDS

American Law Institute, member (elected 2021)

Order of the Coif, New York University School of Law (1998)
Law Review Alumni Association Award, New York University School of Law (1998)
Thurgood Marshall Fellow, New York City Bar Association (1997)
Root-Tilden Public Interest Scholar, New York University School of Law (1995–1998)

INVITED SENTENCING EXPERT

Crimes of Violence and the Categorical Approach, Roundtable Discussion. U.S. Sentencing Commission, Washington, D.C. (Invited Participant, October 2014).

Economic Crime Symposium. U.S. Sentencing Commission, Washington, D.C. (Invited Participant, September 2013).

The Sentencing Reform Act: 25 Years Later. U.S. Sentencing Commission Regional Hearings, Stanford University, Palo Alto, California (Defender Testimony, May 2009).

Impact of the Feeney Amendment, the Ashcroft Memoranda, and the Sentencing Commission's Revised Guidelines on the Discretion and Independence of Judges. Conference of Chief District Judges of the Ninth Circuit, Laguna Beach, California (Panel, January 2004).

SIGNIFICANT SENTENCING CASES

United States v. Franklin, 904 F.3d 793 (9th Cir. 2018). Represented appellant in appeal of sentence for drug distribution and possession of a firearm. Obtained reversal of 15-year mandatory minimum sentence by establishing prior state drug convictions from Washington covered too much conduct to trigger the sentencing enhancement.

United States v. Brown, 879 F.3d 1043 (9th Cir. 2018). Represented appellant in appeal of sentence for firearm offense. Obtained reversal of sentence by establishing that prior Washington state drug conspiracy conviction did not trigger sentence increase.

United States v. Garcia-Jimenez, 807 F.3d 1079 (9th Cir. 2015). Represented appellant in appeal of sentence in immigration offense. Obtained reversal of sentence and established that New Jersey aggravated assault is not a crime of violence triggering sentence increase.

United States v. Sahagun-Gallegos, 782 F.3d 1094 (9th Cir. 2015). Represented appellant in appeal of sentence in immigration offense. Obtained reversal of sentence and established that, in determining effect of prior state conviction on sentence, sentencing court may not rely on defense attorney's statement of factual basis for guilty plea and then use process of elimination to determine elements of state conviction.

United States v. Doss, 630 F.3d 1181 (9th Cir. 2011). Represented appellant in appeal of convictions and sentence for witness tampering and sex-trafficking offenses. Obtained reversal of witness tampering conviction by establishing that statute does not criminalize advising an individual with a privilege not to testify; obtained reversal of mandatory life sentence on ground that government is required to prove sentencing enhancement facts to jury beyond a reasonable doubt.

United States v. Locklin, 530 F.3d 908 (9th Cir. 2008). Represented appellant in appeal of sentence for failure to appear offense. Obtained reversal of felony sentence by establishing that evidence at trial proved only misdemeanor.

United States v. Barsumyan, 517 F.3d 1154 (9th Cir. 2008). Represented appellant in appeal of sentence for fraud offenses. Established that ban on computer use was inappropriate condition of supervision where government did not establish that offense involved computers.

Butler v. Curry, 528 F.3d 624 (9th Cir. 2008), *cert. denied*, 555 U.S. 1089 (2008). Represented appellee in State appeal of grant of writ of habeas corpus. Established that Supreme Court decision holding California's Determinate Sentencing Law unconstitutional applied retroactively on habeas corpus and that probationary status must be proved to a jury to enhance sentence.

AMICUS BRIEFS

Erlinger v. United States, No. 23-370 (January 2024), Brief of National Association of Federal Defenders in Support of Petitioner

United States v. Taylor, No. 20-1459 (October 2021), Brief of National Association of Federal Defenders in Support of Respondent

Wooden v. United States, No. 20-5279 (May 2021), Brief of National Association of Federal Defenders in Support of Petitioner.

SIGNIFICANT PRESENTATIONS ON FEDERAL SENTENCING: I have been invited to present legal education to a variety of actors in the federal criminal legal system, including judges, prosecutors, defense attorneys, and probation officers.

The Categorical Approach: What, When, Why, and How. Orientation Seminar for Assistant Federal Defenders, Federal Judicial Center, Kansas City, Missouri (Faculty, December 2023).

Fentanyl Sentencing: Nuts and Bolts. District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, Southern District of Ohio (Faculty, October 2023).

The 2023 Guideline Amendments. District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, Southern District of Ohio (Faculty, October 2023).

FSA Time Credits, Etc. Training for Assistant Federal Defenders and CJA Panel Attorneys, Federal Defenders of New York (Faculty, May 2023).

Equal to the Occasions: Wooden and the Next Frontier of ACCA Litigation. Training for Federal Defenders and CJA Panel Attorneys, Federal Community Defender of the Eastern District of Michigan (Faculty, April 2023); Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts (Faculty, June 2023).

There's No "Sex Offense" Exception to the Fifth and Sixth Amendments. Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts (Faculty, September 2021).

One of These Things is Not Like the Others: Challenging Drug Predicates. Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts (Faculty, November 2020); District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, District of Kansas (Faculty, March 2021).

Stepping Up Implementation of the First Step Act. 2020 Presidential Summit and Symposium on Sentencing. National Association of Criminal Defense Lawyers (Faculty, October 2020).

Challenging Drug and Other Predicates. Winning Strategies, Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts, Los Angeles, California (Faculty, January 31, 2020); Advanced Seminar for Assistant Federal Defenders, Federal Judicial Center, Detroit, Michigan (Faculty, May 2019); Multi-Track Federal Criminal Defense Seminar, Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts, Los Angeles, California (Faculty August 2018); Advanced Seminar for Assistant Federal Defenders, Federal Judicial Center, Kansas City, Missouri (Faculty, May 2018); District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, Eastern District of California (Faculty, October 2017); Advanced Seminar for Assistant Federal Defenders, Federal Judicial Center, New Orleans, Louisiana (Faculty, May 2017).

Defining Crime of Violence. District Training, Office of the Federal Public Defender, Central District of California (Faculty, May 2016); Criminal Justice Act Trial Panel Training, Central District of California (Faculty, May 2016); District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, District of Arizona (Faculty, April 2016).

Role in the Offense. 2015 Annual National Training Seminar on the Federal Sentencing Guidelines. U.S. Sentencing Commission, New Orleans, Louisiana (Faculty, September 2015).

Reverse Engineering: Laying the Seeds for Sentencing from the Start. 4th Annual West Coast White Collar Conference. National Association of Criminal Defense Lawyers (Faculty, June 2014).

Moncrieffe *and* Descamps. District Training, Office of the Federal Public Defender and Criminal Justice Act Attorneys, Central District of California (Faculty, August 2013).

Sentencing Advocacy Workshop. Office of Defender Services-Training Branch, Administrative Office of the U.S. Courts, San Antonio, Texas (Faculty, March 2004); Santa Monica, California (Faculty, March 2005); Miami Beach, Florida (Faculty, March 2006).

Recent Supreme Court Jurisprudence from Apprendi to Blakely. 10th, 11th, and 13th Annual National Seminar on the Federal Sentencing Guidelines, Federal Bar Association and the U.S. Sentencing Commission, Palm Springs, California and Miami Beach, Florida (Panels, May 2001, 2002, 2004).

New Legal Challenges After Apprendi v. New Jersey. Seminar for Federal Defender Investigators and Paralegal Specialists, Federal Judicial Center, Kansas City, Kansas (Faculty, March 2001); Orientation Seminar for Assistant Federal Defenders, Federal Judicial Center, Nashville, Tennessee (Faculty, November 2000).