



OFFICE OF THE FEDERAL DEFENDER
Eastern District of California

801 I Street, 3rd Floor
Sacramento, CA 95814-2510
(916) 498.5700
FAX (916) 498.5710

2500 Tulare Street, Suite 330
Fresno, CA 93721-3121
(559) 487.5561
FAX (559) 487.5950

HEATHER E. WILLIAMS
Federal Defender

LINDA C. HARTER
Chief Assistant Defender

CHARLES LEE
Fresno Branch Chief

RACHELLE BARBOUR, Editor

Federal Defender Newsletter

February 2014

CJA PANEL TRAINING

Sacramento CJA Panel Training will be held on February 19, 2014 (Third Wednesday) at 5:00 p.m. in the grand jury room at the U.S. District Court, 501 I St. Defense attorney, Sacramento D.A. candidate, and former AUSA **Todd Leras**, esq., will present on the ethical obligations of prosecutors under Brady and Henthorn. The session will provide one hour of ethics credit for the California Bar.

Fresno CJA Panel Training will be on February 18, 2014 (Third Tuesday) at 5:30 p.m. AFDs **Ann McGlenon** and **Victor Chavez** and CJA Panel Attorney **Peter Jones** will present "Strategizing Your Federal Criminal Case." The training will be held in the jury room of the U.S. District Court, 2500 Tulare St. in Fresno.

2013 FEDERAL DEFENDER'S GOLF CHAMPIONSHIP



Congratulations to **Danny Brace**, the winner of the 2013 Federal Defender's Golf Championship. Investigator **Terry Butrym** was the

runner up, again!

CJA REPRESENTATIVE

Panel lawyers: Your CJA representative is **Carl Faller**, (559) 226-1534, carl.faller@fallerdefense.com.

Chief Judge Morrison C. England has authorized for the Eastern District a back-up CJA Representative. We suggested creating this back-up representative who would be:

- Based in the other court from the primary CJA representative's practice, to offer representation to all Panel lawyers in Sacramento and in Fresno who may face different practices and issues;
- Become the primary CJA representative once the incumbent's 3 year term ended, with a new back-up appointed in the other court.

Our Back-up CJA Representative is **Scott Cameron**, 916-769-8842, snc@snc-attorney.com.

TOPICS FOR FUTURE TRAINING SESSIONS

Do you know a good speaker for the Federal Defender's panel training program, or would you like the office to address a particular legal topic or practice area?

Email suggestions to:

Fresno - Janet Bateman,
janet_bateman@fd.org,
Ann McGlenon,
ann_mcglendon@fd.org, or
Karen Mosher, karen_mosher@fd.org,
or

Sacramento: Lexi Negin,
lexi_negin@fd.org.

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Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice.

### **ONLINE MATERIALS FOR CJA PANEL TRAINING**

The Federal Defender's Office distributes panel training materials through our website: [www.cae-fpd.org](http://www.cae-fpd.org). We will try to post training materials **before** trainings for you to printout and bring to training for note taking. Any lawyer not on the panel, but wishing training materials should contact Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org).

### **ADDRESS, PHONE OR EMAIL UPDATES**

We want to be sure you receive this newsletter. If your address, phone number or email address has changed, or if you are having problems with the e-version of the newsletter or attachments, please call Kurt Heiser, (916) 498-5700. Or if you receive a hard copy of the newsletter but would prefer to receive the newsletter via email, contact Calvin Peebles at the same number.

Defender Services Office  
Training Branch  
National Trainings

[http://www.fd.org/navigation/training-  
events](http://www.fd.org/navigation/training-events)

### **UPCOMING TRAINING**

#### **ELECTRONIC SURVEILLANCE & CONSTITUTIONAL/LEGISLATIVE PROTECTIONS**

February 18 2014 10:00 AM - 11:00 AM **EST**

#### **ELECTRONIC SURVEILLANCE & CONSTITUTIONAL/LEGISLATIVE PROTECTIONS (REPEAT)**

February 20 2014 2:00 PM - 3:00 PM **EST**

#### **SENTENCING ADVOCACY WORKSHOP LONG BEACH, CALIFORNIA | March 06-08 2014**

#### **TRIAL SKILLS ACADEMY SAN DIEGO, CALIFORNIA | April 27-May 02 2014**

#### **SENTENCING ADVOCACY WORKSHOP PHILADELPHIA, PENNSYLVANIA | June 19-21 2014**

#### **FUNDAMENTALS OF FEDERAL CRIMINAL DEFENSE MINNEAPOLIS, MINNESOTA | July 31 2014**

#### **MULTI-TRACK FEDERAL CRIMINAL DEFENSE SEMINAR MINNEAPOLIS, MINNESOTA | July 31-August 02 2014**

### ♪ **NOTABLE CASES** ♪

### **SUPREME COURT**

*Burrage v. United States*, No. 12-7515 (1-27-14). Scalia, J. Defendant was charged with unlawfully distributing heroin and that "death . . . resulted from the use of th[at] substance." This provision subjected defendant to a 20-year mandatory minimum sentence under 21 U. S. C. §841(b)(1)(C). There was medical testimony suggesting that the deceased would have died even if he had not taken the heroin. Defendant moved for judgment of acquittal, but the trial court ruled that the heroin only needed to be a contributing factor, not the "but for" factor. The

Supreme Court reversed the conviction, ruling that the statutory language required "but for" causation. Where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable for penalty enhancement under §841(b)(1)(C) unless such use is a but-for cause of the death or injury.

**NINTH CIRCUIT**

*Dickens v. Ryan*, No. 08-99017 (1-23-14)(en banc). In an en banc decision, the Ninth Circuit held that under Martinez v. Ryan the petitioner's claims of IAC may not be barred and so the matter was remanded for a hearing. One important holding is that Pinholster does not bar Martinez. The IAC claim was not adjudicated on its merits, the new IAC claims are distinct from the prior, and petitioner can overcome the procedural bar by showing cause and prejudice.

*US v. Williams*, No. 12-30353 (2-3-14). Rakoff, D.J., with McKeown and Clifton. The Ninth Circuit held that a defendant's Alford plea to a state charge is insufficient to prove commission of a state crime for purposes of a federal supervised release violation when the state itself does not treat it as sufficiently probative of the fact that the defendant actually committed the acts constituting the crime or crimes of conviction. The district judge refused to hold an evidentiary hearing on whether a state crime was committed, and instead relied on the state conviction. However, the release condition prohibits the *commission* of any crime, not simply the *conviction*. As the Ninth Circuit observes, usually the "commission" language hurts the defendant because a dismissed case or an acquittal can still result in violation;

here, it benefits him. The case is remanded for the court to determine whether the offense was actually committed.

**LETTER FROM THE DEFENDER**

The final week in January, I was in Washington, D.C. at the Federal Defender Conference. Not surprisingly, much of our discussions concerned the Defender Services budget.

- **CJA RATES:** Congress approved additional money for government agencies above sequestration levels in its *Bipartisan Budget Act of 2013*. So, while the Defender Services Office (DSO) originally faced 10% budget cuts in FY 2013, reduced by a slight anomaly later in the fiscal year, we understand DSO was funded at around 95% of FY 2012's budget. Cait Clarke, Chief of Defender Services, advised the Administrative Office (AO) of the U.S. Court's Executive Committee (EC) would be meeting February 10 to decide how DSO's budget would be applied between Federal Defender Offices (FDOs) and the CJA Panel. Cait planned to ask, first, for CJA hourly rates to be returned to \$125/\$175 an hour levels effective March 1, 2014. Next, she planned to request the hour rate be increased 1% to match the Government employees' COLA. No word on whether any request that CJA payment deferrals be reduced at this fiscal year's end will be made.

- **EXPERT & OTHER RATES:** Move is afoot to provide experienced-based hourly rates for certain CJA experts and paid assistance. These are:

| CATEGORY               | EXPERIENCED-BASED RANGE |
|------------------------|-------------------------|
| Law Students           | \$15 - \$25 per hour    |
| Paralegals             | \$25 - \$55 per hour    |
| Investigators          | \$55 - \$100 per hour   |
| Mitigation Specialists | \$75 - \$100 per hour   |
| Jury Consultants       | \$150 - \$225 per hour  |

Hiring someone with more experience who might charge more per hour could be supported through a declaration.

- **EXPERT AND OTHER CASE-RELATED TRAVEL:** This is likely to apply at a minimum to mega-cases (described below).

Unless a presiding judge otherwise approves, travel time for experts, investigators and other service providers will be billed at half the approved hourly rate for travel unless (a) it's the first 6 hours

travelling by automobile to or from a case-related destination, (b) reasonable travel at and around the case-related destination related to carrying out the assigned tasks, or (c) time spent traveling and doing case-related work while travelling (making the most of travel time). A Defender who had a high publicity case told of when he was typing a motion on the case while flying and cautioned all to be careful about nosy seatmates or flight attendants, as he got questions about the case from them.

- **MEGA-CASES:** A “mega-case” qualifying for case budgeting includes (1) all capital representations and (2) non-capital representations likely to become or have become “extraordinary” with potential cost – attorney hours will exceed 300 hours, expenses will exceed \$30,000 for counsel and other than counsel services. *Guide to Judiciary Policy*, Vol.7, Part A, §§ 230.26.10 and 640.10; <http://www.uscourts.gov/FederalCourts/AppointmentsOfCounsel/CJAGuidelinesForms/GuideToJudiciaryPolicyVolume7.aspx>.

More information on all this will be published once fully approved.

There is a chance the EC will bump its decision on DSO’s budget to get further information. Also, despite that Congress’ budget passage included FYs 2014 and 2015, we could go through the EC’s angst-provoking process as we get closer to FY 2015 if they don’t resolve FY 2015 along with FY2014.

It’s no way to run a government, eh?

~ Heather E. Williams  
Federal Defender, Eastern District of California

## Former Federal Defender Employees Looking for Employment

Becky Darwazeh, [darwazeh1@hotmail.com](mailto:darwazeh1@hotmail.com):  
Secretarial, Legal Assistant

Yvonne Jurado, [yvonneeee@live.com](mailto:yvonneeee@live.com),  
(916)230-0483: Paralegal, Secretarial,  
Legal Assistant, CJA voucher  
preparation and filing

Karen Sanders, [kvs.legaltech@gmail.com](mailto:kvs.legaltech@gmail.com),  
(916)454-2957 (h), (916)216-3106 (cell)  
Karen has over 20 years of experience  
as the computer systems administrator  
at FDO. She’ll be providing legal  
technical and litigation support  
services. Hourly reasonable rates are  
available.

Lupita Llanes, [lupitallanes@gmail.com](mailto:lupitallanes@gmail.com), (559)  
360-4754: Secretarial and Office  
Management work. Bilingual  
Spanish/English services.