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Federal Defender Newsletter

February 2016

CJA PANEL TRAINING

The next Sacramento CJA panel training will on Wednesday, February 17, 2016 at 5:00 p.m. in the jury lounge on the 4th floor of the federal courthouse, 501 I St. Nicholas Briscoe, from the Forensic & Valuations Services unit of Crowe Horwath LLP will present "Effective Use of a Financial Expert in Federal Cases."

The Fresno CJA panel training will not be held in February. The next Fresno training will be in March.

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Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice. You can also sign up on the website to automatically receive emails when [fd.org](http://fd.org) is updated.

The Federal Defender Training Division also provides a telephone hotline with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

### PLEASE DONATE TO CLIENT CLOTHES CLOSET

The Federal Defender's Office maintains a clothes closet that provides court clothing to your clients. We are in dire need of court-appropriate clothing for women. Please consider donating any old suits, or other appropriate professional clothing to the client clothes closet.

The Federal Defender for the Eastern District of California, Heather E. Williams, is being evaluated for possible reappointment by the United States Court of Appeals for the Ninth Circuit. For information on this process and to submit your comments, [click here](#).

### ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office distributes panel training materials through its website: [www.cae-fpd.org](http://www.cae-fpd.org). We will try to post training materials before trainings to print out and bring to training for note taking. Not on the panel, but wishing training materials? Contact Lexi Negin, [lexi.negin@fd.org](mailto:lexi.negin@fd.org)

### PODCAST TRAINING

The Federal Defender's Office for the Southern District of West Virginia has started a training podcast, "In Plain Cite." The podcast is available at <http://wvs.fd.org>. The podcast may be downloaded using iTunes.

## CJA REPRESENTATIVES

Scott Cameron, (916) 769-8842 or [snc@snc-attorney.com](mailto:snc@snc-attorney.com), is our District CJA Panel Attorneys' Representative handling questions and issues unique to our Panel lawyers. David Torres of Bakersfield, (661) 326-0857 or [dtorres@lawtorres.com](mailto:dtorres@lawtorres.com), is the Backup CJA Representative.

## NEW & IMPROVED WEBSITE

Check out our updated website – same URL <http://www.cae-fpd.org/>. If you notice any typos or misinformation, please contact Mark Lie, [mark.lie@fd.org](mailto:mark.lie@fd.org). Suggestions for content? Let Mark know

## TOPICS FOR FUTURE TRAINING SESSIONS

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno – Peggy Sasso, [Peggy\\_Sasso@fd.org](mailto:Peggy_Sasso@fd.org), Andras Farkas, [Andras\\_Farkas@fd.org](mailto:Andras_Farkas@fd.org), or Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org).

Sacramento: Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org) or Ben Galloway, [ben\\_d\\_galloway@fd.org](mailto:ben_d_galloway@fd.org).

## NATIONAL DEFENDER SERVICES TRAININGS

**LAW & TECHNOLOGY SERIES: ELECTRONIC COURTROOM PRESENTATION WORKSHOP**  
HOUSTON, TEXAS | February 04 - February 06, 2016

### ANDREA TAYLOR SENTENCING ADVOCACY WORKSHOP

SAN DIEGO, CALIFORNIA | March 03 - March 05, 2016

**LAW & TECHNOLOGY SERIES: TECHNIQUES IN ELECTRONIC CASE MANAGEMENT WORKSHOP**  
SALT LAKE CITY, UTAH | March 10 - March 12, 2016

**TRIAL SKILLS ACADEMY**  
SAN DIEGO, CALIFORNIA | April 24 - April 29, 2016

### FUNDAMENTALS OF FEDERAL CRIMINAL DEFENSE SEMINAR

DENVER, COLORADO | May 19 - May 20, 2016

### WINNING STRATEGIES SEMINAR

DENVER, COLORADO | May 19 - May 21, 2016

For more information and to register, please visit [www.fd.org](http://www.fd.org).

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**Announcements**  
Announcements pertaining to the U.S. Court of Appeals for the Ninth Circuit.  
• **Change in Process for Submitting Exhibits of Record**  
Date published: 10/30/2015  
• **View Appellate Case Statistics**  
Date published: 04/29/2015  
• **Appellate Practice Guide**  
Date published: 05/26/2014

### The Office of the Federal Public Defender

The Office of the Federal Defender for the Eastern District of California is authorized under Title 18 U.S.C. § 3005A, the Criminal Justice Act, to provide legal representation to persons financially unable to retain counsel in federal criminal and related proceedings. Representation includes counsel and investigative, expert and other services.

Members of the Federal Defender's Office share a commitment to excellence and a passion for justice in representing indigent people accused of a myriad of federal criminal offenses. We provide quality legal representation and/or advice to individuals financially unable to employ counsel in federal criminal cases and related matters in the federal courts. We handle a wide range of cases including felonies, misdemeanors, appeals, non-capital habeas matters and capital habeas matters. We are advocates for our clients – we want our legal system to be fair to all. Our mission is to exceed the expectations of our clients every day by providing the highest caliber of legal counsel and advice.

### Our Services

The Federal Defender Office for California's Eastern District strives to:

- Provide vigorous and high quality representation to indigent defendants in Federal Court;
- Foster and promote the high standards and ideals required by the Bill of Rights and the Criminal Justice Act;
- Ensure justice in the federal courts is administered to all persons on a fair and equal basis; and
- Advance the effectiveness of the federal legal system through excellence in legal scholarship, on-going education, and training the criminal defense bar.

The information supplied on this website is for informational purposes only and should not be relied upon to make legal decisions. Interacting by e-mail or otherwise through this site does not create an attorney/client relationship with the Federal Defender's Office for the Eastern District of California or any of its

## CARDONE COMMITTEE TO REVIEW THE CJA PROGRAM MEETS IN SAN FRANCISCO MARCH 2-3, 2016

The Committee, appointed by Chief Justice John Roberts, to review the Criminal Justice Act Program has been holding hearings around the United States. SDTX District Judge Kathleen Cardone heads the Committee.

The Cardone Committee holds hearings in San Francisco March 2 and 3, 2016. EDCA-Magistrate Judge Carolyn K. Delaney, EDCA CJA Representative Scott Cameron, and Federal Defender Heather Williams are scheduled to testify, though a specific date and time are unknown at this time. Hearings are open to the public and each witness's written and spoken testimony will be available on the Committee's website.

<http://cjastudy.fd.org/>

## SUPREME COURT CERTS GRANTED

Welch v. US, No. 15-6418: To address the retroactive impact of the Supreme Court's ruling in Johnson that the residual clause of ACCA is void for vagueness.

Mathis v. US, No. 15-6092: To resolve a circuit split and decide the question whether the modified categorical approach may be used whenever there is an "or" between what the government calls "methods" of committing the offense, or may be used only when those methods are elements, i.e., the factfinder must find one or the other to convict.

Salman v. US, No. 15-628: "Does the personal benefit to the insider that is necessary to establish insider trading under Dirks v. SEC, 463 U.S. 646 (1983), require proof of 'an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature,' as the Second Circuit held in US v. Newman, 773 F.3d 438 (2d Cir. 2014) . . . or is it enough that the insider and the tippee shared a close family relationship, as the Ninth Circuit held in this case?"

Deitz v. Bouldin, No. 15-408: "Whether, after a judge has discharged a jury from service in a case and the jurors have left the judge's presence, the judge may recall the jurors for further service in the same case."

McDonnell v. US, No. 15-474 "Under the federal bribery statute, Hobbs Act, and honest-services fraud statute, 18 U.S.C. §§ 201, 1346, 1951, it is a felony to agree to take 'official action' in exchange for money, campaign contributions, or any other thing of value. The question presented is whether 'official action' is limited to exercising actual governmental power, threatening to exercise such power,

or pressuring others to exercise such power, and whether the jury must be so instructed; or, if not so limited, whether the Hobbs Act and honest-services fraud statute are unconstitutional."

## NOTABLE CASES

### SUPREME COURT

Montgomery v. Louisiana, No. 14-280 (1-27-16): The Court held that the rule prohibiting mandatory life without parole for a juvenile convicted of a homicide offense is a substantive rule to which courts must give retroactive effect on collateral review.

### NINTH CIRCUIT

Liao v. Junious, No. 14-55897 (1-29-16)(Trott with Pregerson and Stafford, D.J.). The Ninth Circuit reversed denial of petitioner's habeas ineffective assistance of counsel claim. The petitioner had alleged his counsel was ineffective because counsel failed to get a sleep study conducted that would have bolstered petitioner's "sleepwalking" defense. The Ninth Circuit agreed, because a sleep study would have supported the defense, added credence, and lent credibility to the expert. Moreover, the state court had granted a motion for such a study but the court clerk had incorrectly told counsel it was denied. The Ninth Circuit found this was prejudicial.

In re Grand Jury Investigation, No. 15-50450 (1-14-16). Judge Gould creates a new rule for the Ninth (and follows the Sixth Circuit in holding that a district court must first review attorney-client privileged documents in camera, before compelling disclosure under the crime-fraud exception.

## LETTER FROM THE DEFENDER

I recently read an article by Michael Lee titled *Just Because You Do Good Work Doesn't Mean You're Good*. <http://www.michaelleewrites.com/blog/previous/2> Coincidentally, I've been listening to Pema Chödrön's *Bodhisattva Mind: Teachings to Cultivate Courage and Awareness in the Midst of Suffering* where the American Tibetan Buddhist nun teaches Shantideva's *The Way of Bodhisattva* chapter on *sheshin*, translated as "guarding alertness" or "enthusiasm."

Lee observes that, just because one does good work to help others, those efforts don't make the person "good." He questions service dependent upon a "system of inequality, especially when that 'good' work can, and often does, quite literally reify the power dynamics which created the need for that work in the first place."

Chödrön (and forgive my oversimplification here) talks about the *pāramitā* (step to reach perfection) of "good works, giving of oneself." To reach perfection, it is not just the fact of one's giving, but one's intention in giving, one's presence or mindfulness when giving.

What does this have to do with defending those accused of committing crimes? In a Gallup survey of the most trusted professions in December 2015, lawyers as a profession rated behind, amongst others, nurses, funeral directors, and journalists in trustworthiness, and ahead of car salespeople, telemarketers, and Congressional members. And, among our legal profession, the "criminal defense lawyer" probably fields the question "How can you represent those people?" more than any other legal specialty. Clearly, anyone willing to defend our Constitution, the legal rights of people accused of criminal acts, and dare to say police, prosecutors, and judges might be wrong, mistaken, even intentionally malicious, when the court of public opinion is heavily against us and our client – well, we must be doing good work.

I hope so, but I've recently heard incidents which make me hesitate to agree. Do any of these describe you?

- The lawyer who left a client meeting every 55 minutes so he could move his car. If it costs \$10-\$15 a day to park in an all-day lot and you earn 10 plus times more than that an hour (and I know you lawyers do), disappearing from a meeting for 15 minutes to move that car costs about \$25. Spring for the lot.
- Lawyer discusses another client's case with another lawyer, paralegal, etc. in front of the present client, and joked about the other client's case. That present client can only assume you're yukking it up about her case to others and you aren't taking her case, her pain, her fears seriously. And what ever happened to attorney-client and work product privilege? We have to guard it assiduously or it will become meaningless.
- Speaking of "yukking it up," be careful of your interactions with the prosecutor when Client is present. If you're chummy with the AUSA, Client may think you'll be more worried about staying friends with the AUSA than doing battle for Client. A good relationship with opposing counsel is important in our profession, to establish your character as someone level-headed who wouldn't make a federal case of something if the issue didn't need raising. And trust me when I say the AUSA will understand why you aren't cracking jokes when Client is present and will appreciate you not asking how the spouse and kids are doing in front of "The Defendant."
- Know how irritated you get when you schedule a 9 a.m. appointment with your doctor, are kept waiting 20 minutes and when she or he comes in, he is rushed, check his phone constantly for emails or messages, and when he's said what he planned to say, leave? Don't do it to your client, even if the client is in custody. Everyone's time is valuable – the out-of-custody client probably had to leave work or arrange later child care to meet with you and also pay for parking. The in-custody client may be missing a meal, rec time, a trustee job, to visit with you, giving prime

opportunity for her cellmate to rummage thru her papers and purchases. Treat the client's time the way you want others to respect yours.

Those are basics we shouldn't even have to discuss. But what about being a good lawyer doing good work?

That's about "being present," being mindful, being in the here-and-now when you are with Client. You have what you want or need to cover with the client, but then allow time to answer the client's concerns and questions.

*Legal Ink* magazine last year had an article *Why Is This Client So Difficult?* suggesting we explore that challenging attorney-client relationship by applying psychologist Andrew Maslow's *Hierarchy of Needs*. Dr. Maslow identified 8 areas of human needs which tend to motivate our behaviors, from the basic to the aspirational:

1. Physiological: food, water, shelter, warmth.
2. Safety: security, freedom from fear, stability.
3. Love & belonging: friends, family, spouse, partner, lover, acceptance.
4. Esteem: achieve mastery, attain recognition & respect.
5. Knowledge & understanding.
6. Need for aesthetics & beauty.
7. Self-actualization: pursue an inner talent, creativity, fulfillment.
8. Transcendence.

Our clients want us to understand what brought them to be charged. Was it to meet the basic physiological need, to be safe, to belong or gain respect? In resolving the case, is Client more concerned about what will happen to family by Client doing the time, or for the judge to understand why Client committed the crime? This checklist opens the discussion and invites Client to tell his story, his unique story, the one you will be passing on either to get the plea, reduce the time, or seek the "not guilty."

We owe it to our clients to respect they have a unique history. We need to pursue the African-

American man's fatherlessness, because we know these men will be more likely to abuse drugs and alcohol or to try to compensate for that absence in the pseudo-family of a gang. We need to investigate childhood histories of physical, emotional and sexual abuse, because substance abuse is more common in those who have suffered.

We lawyers also need to battle our own biases, our own stereotypes – the idea that we know best. I recently learned the word *sanism*: "discrimination and oppression against people who have, or who are labelled or perceived as having, a mental illness." The National Association for Public Defense, <http://www.publicdefenders.us/> (which CJA Panel members, by virtue of taking court-appointed cases can join) is offering a webinar February 29 by Dr. Michael Perlin, addressing lawyers who "(1) distrust their mentally disabled clients, (2) trivialize their complaints, (3) fail to forge authentic attorney-client relationships with such clients and reject their clients' potential contributions to case-strategizing, and (4) take less seriously case outcomes . . . adverse to their clients. This is particularly odious in criminal cases in which lawyers may, variously, fail to see signs of incompetency to proceed to trial, seek to impose insanity defenses over clients' objections, and inadequately fail to investigate potentially mitigating evidence in sentencing (both in death and non-death penalty cases)."

In the long view, it doesn't hurt to look inward occasionally.

Finally, I know some of our federal Sacramento County Jail clients read our newsletters. Help us help you. You are the experts in your cases, on your lives. We need your help to effectively represent you. Give us the information so we have a chance to do so. Thank you.

~ Heather E. Williams, FD-CAE