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Federal Defender Newsletter

February 2017

CAE'S FIRST FEDERAL DEFENDER

It is with great sadness we pass on the news of E. Richard Walker's death on January 25, 2017. Dick Walker created the Office of the Federal Defender for the Eastern District of California in 1971. He then served as Federal Defender for 16 years. His most well-known client was Charles Manson family member, Lynette "Red" "Squeaky" Fromme, after her attempt to assassinate President Gerald Ford on September 5, 1975.

His obituary is here:

<http://www.legacy.com/obituaries/sacbee/obituary.aspx?page=lifestory&pid=1839652>
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CJA On-Line & On Call

Check out 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 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.

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 PANEL TRAINING

There will be no **Sacramento** panel training in February. Instead, panel members are encouraged to attend the judicial investiture of long time CJA panel attorney Scott Tedmon at Foundation Restaurant on February 15 at 5:30 p.m. with a reception immediately following. Please send RSVPs to Ken Addison at kfaddison@sbcglobal.net

The next panel training will be March 15.

Fresno February CJA Training: On February 21, 2017, there will be a 2-hour session from 5:00 to 7:00 p.m. with Samuel Eaton and Susan Leff on cross-examination strategies.

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,
or Karen Mosher, karen_mosher@fd.org.

Sacramento: Lexi Negin, lexi_negin@fd.org or
Ben Galloway, ben_galloway@fd.org.

PLEASE DONATE TO CLIENT CLOTHES CLOSET

The Federal Defender's Office maintains a clothes closet providing 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.

CJA REPRESENTATIVES

Scott Cameron, (916) 769-8842 or 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, is the Backup CJA Representative.

NATIONAL DEFENDER SERVICES TRAININGS

(register at www.fd.org)

Law & Technology Series: Techniques in Electronic Case Management Workshop
Long Beach, California
March 2 - 4, 2017

IMPORTANT SUPREME COURT CERT. GRANTS

Maslenjak v. United States, No. 16-309
Question Presented: Whether a naturalized American citizen can be stripped of her citizenship in a criminal proceeding (specifically, 18 U.S.C. 1425) based on an immaterial false statement.

McWilliams v. Dunn, No. 16-5294
Question Presented: Whether, when the Supreme Court held in Ake v. Oklahoma that an indigent defendant is entitled to meaningful expert assistance for the "evaluation, preparation and presentation of the defense" it clearly established that the expert should be independent of the prosecution.

Weaver v. Massachusetts, No. 16-240
Question Presented: Whether a defendant asserting ineffective assistance of counsel that results in a structural error must, in addition to demonstrating deficient performance, show that he was prejudiced by counsel's ineffectiveness.

Davila v. Davis, No. 16-6219
Question Presented: Whether the rule established in Martinez v. Ryan and Trevino v. Thaler, that ineffective state habeas counsel can be seen as cause to overcome the procedural default of a substantial ineffective assistance of trial counsel claim, also applies to procedurally defaulted, but substantial, ineffective assistance of appellate counsel claims.

LETTER FROM THE DEFENDER

IN DEFENSE OF READING

When my kids were young, we told them, "If you can read, you can learn how to do anything, you can be anything." Now, you can learn how to do so much through

YouTube (I replaced the center mount light bulb on my car assisted by a YouTube video, thank you). Heck, you can be president “not need[ing] to read extensively” because he reaches the right decisions “with very little knowledge other than the knowledge I [already] had, plus the words ‘common sense,’ because I have a lot of common sense and I have a lot of business ability.”ⁱ

If you were like me, law school reading quickly evicted reading for pleasure and curiosity. And it’s taken me quite a while, with all the reading we do as practicing lawyers – to keep abreast of trends and case law, as well as researching that latest pleading, to intentionally carve out time to read for pleasure (I include in this audio books because you still use your imagination to conjure the images relayed in the book). Even just a few moments a day, to clean the mental palette, to visit someone else’s life, to try understand a non-legal area of our universe, or explore our past.

There were times when I fortuitously was reading a non-legal book or article which, it turned out, applied to a current case or client. I read Dr. Leonard Mlodinow’s *The Drunkard’s Walk* just because I’m a fan of this mathematical physicist who explores other life areas. The statistics and probabilities described in the book were incredibly helpful when one of my cases had a DNA probabilities issue. I had recently read a *National Geographic* article about an archeological dig in a previously unknown-to-me town in México when I represented an undocumented immigrant who, answering my standard question “What type of work do you do?” said “Field work.” But when I asked where he was from and it was this same Mexican town, I told him I’d just read this article; he explained he’d been hired to work at the

dig for a while, saw some of the items I’d read about and, if he had more schooling, that is the work he would prefer doing.

I frequently tell people I think one of the important qualities a criminal defense lawyer can have – in fact, judges, prosecutors, pretrial and probation officers too - is to be a voyeur (in the clearly non-peeping Tom sense): to have an interest in others’ lives, to learn their histories, discern their motivations. Reading is wonderful training and practice in how other people feel and why they believe what they do, whether it’s fiction or non-fiction, books or articles.

Part of our lawyering stock-in-trade is engendering in others empathy or sympathy with our clients, and reading certainly helps this. There’s been much talk of empathy post-election to try to unify a divided country. Moral Reconciliation Therapy (MRT), employed in Probation’s supervisions, in part tries to teach supervisees empathy with victims of their crimes, as well as the impact of their behaviors on family and friends.

A recent *New York Times* article compares empathy and sympathy.ⁱⁱ

Empathy, after all, is not sympathy. Sympathy encourages a close affinity with other people: You feel their pain. Empathy suggests something more technical – a dispassionate approach to understanding the emotions of others.

The article then suggests, if one can empathize – “understand (another’s) pain just enough to get something out of it” – then one can manipulate that person. Makes it sounds like the empathizer’s commitment is not to unity, but to taking advantage instead. Yuck. Much prefer the

empathic Deanna Troi from *Star Trek, The Next Generation*.

In music, some instruments respond sympathetically to notes being played. To get technical for a moment, when we hear a musical note, we don't just hear the note, but also hear the harmonic series automatically generated (usually higher) by the note (the fundamental). If you looked inside a piano when a piano key is pressed, you might notice that other strings vibrate even though their keys weren't played. These strings are responding sympathetically with the key/strings being played because they are in that harmonic series: the note played resonates with those other strings. When we are sympathetic, another's emotion resonates with us.

Sympathy takes us beyond the Manichean struggle, because it shows us life is not simply black and white, but nuanced and

chromatic. And sympathy does not just mean "I feel your pain," but your joy, your frustration, your courage, your confusion, your insecurity, your embarrassment, your happiness, your pride.

Maybe, in what we want to read, in the tales attractive to us, we are actually engaged in the stories that resonate with us – our fears, our hopes, our experiences, our desires, our beliefs. It may be what we should seek in our advocacy is sympathy with our clients' facts resonating in the hearts, minds and experiences of judges and prosecutors, probation and pretrial officers, of jurors and the public.

Thus, to quote Groucho Marx: *Outside of a dog, a book is man's best friend. Inside of a dog it's too dark to read.*ⁱⁱⁱ

~ Heather E. Williams, FD-CAE

ⁱ Marc Fisher, *Donald Trump doesn't read much. Being president probably wouldn't change that.*, The Washington Post (7/16/2016). https://www.washingtonpost.com/politics/donald-trump-doesnt-read-much-being-president-probably-wouldnt-change-that/2016/07/17/d2ddf2bc-4932-11e6-90a8-fb84201e0645_story.html The article points out that Presidents Eisenhower, Reagan and Bush II were aural, rather than visual (reading) learners.

ⁱⁱ Amanda Hess, *Is Empathy Really What We Need?*, New York Times (11/29/2016). https://www.nytimes.com/2016/11/29/magazine/is-empathy-really-what-the-nation-needs.html?_r=0

ⁱⁱⁱ [Groucho Marx](#), Stefan Kanfer (Editor), T.S. Eliot *The Essential Groucho: Writings For, By, And About Groucho Marx* (Vintage Books, 2000).