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Federal Defender Newsletter

November 2015

CJA APPLICATION &

CJA PANEL TRAINING

Sacramento CJA Panel training will be held on Wednesday, **November 18 at 5pm** in the Jury Lounge, 4th Floor, District Court, 501 I St. Legal Fellow Jamie L. Williams, from the Electronic Frontier Foundation, will present on "Understanding and Challenging New Surveillance Tools"

Fresno CJA Panel training will be held on Tuesday, **November 17 at 5:30 pm** in the Jury Room at the Fresno District Court. Christina A. Valdez-Roup, Director of NAMI Fresno will present "NAMI and the Lived Experience of Mental Illness."

SAVE THE DATE FOR THE ANNUAL FEDERAL DEFENDER & CJA HOLIDAY PARTY



Get ready to jingle and mingle as we deck our hall for the Annual Holiday Party on Friday, **December 11** from 4 to 7 pm at 801 I Street. Please save the date!

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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://www.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.

#### **REAPPLICATION DEADLINE**

Panel Selection Committees will be reviewing CJA Applications and Reapplications in the next few months.

We are striving to increase our Panels' diversity and ask current Panel members to reach out to and encourage dedicated defense counsel in our communities to apply for our Panels.

Applications can be found at

[http://www.cae-fpd.org/cja\\_app.html](http://www.cae-fpd.org/cja_app.html) .

#### **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.

#### **DRUGS-2 UPDATE**

Starting November 1, 2014, the

Sentencing Guidelines permitted courts to start granting sentence modifications based upon the Guidelines' retroactive application of an across-the-board Base Offense Level 2-level reduction in drug cases.

In October, 36 amended judgments were filed resulting in a total time reduction of approximately 55 years. While the value of early release is inestimable for defendants, their families, and their friends, the early releases in October resulted in a taxpayer cost savings of approximately \$1,620,804.

So far, 292 defendants in this district have received reductions in their sentences under Amendment 782. These prisoners were released from BOP custody starting October 30.

## SENTENCING COMMISSION OFFERS E-TRAINING ON NEW GUIDELINE AMENDMENTS

New Guideline amendments on important issues like financial crimes, relevant conduct, and minor role reductions took effect on November 1. The Sentencing Commission began offering on-line training on the impact of those amendments. The quick, focused trainings are available at [www.ussc.gov](http://www.ussc.gov).

## 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.

## 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.

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**Announcements**  
Announcements pertaining to the U.S. Court of Appeals for the Ninth Circuit:  
• [Change in Process for Submitting Requests of Review](#)  
Date published: 10/30/2015  
• [View Appellate Case Statistics](#)  
Date published: 04/29/2015  
• [Appellate Training 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 Defenders Office for the Eastern District of California or any of the

## 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).

### 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.

## ♪ NOTABLE CASES ♪

Crittenden v. Chappell, No. 13-17327 (10-26-15)(Fisher with Berzon; dissent by McKeown). The Ninth Circuit affirmed the grant of habeas relief in a California capital case. The relief was given because of a Batson violation. The Ninth Circuit affirmed the district court's finding that the prosecutor's motivation in striking an African-American was substantially racial. The finding was not clearly erroneous. A Batson violation occurs and relief can be granted, holds the court, even if the strike would have occurred for a nonracial reason, like the juror's qualms about capital punishment. See Cook v. LaMarque, 593 F.3d 810 (9th Cir 2010). AEDPA deference is not applicable because the California Supreme Court's decision was contrary to established federal law.

United States v. Galan, No. 14-30145 (11-4-15) (Fernandez with Tashima and Bea) - -- The Ninth Circuit vacated a restitution award in a child porn case, holding that the district court erred in failing to limit the amount of the award to the harm proximately caused by the defendant's crimes, as required by the Supreme Court's decision in Paroline v. United States, 134 S. Ct. 1710 (2014). The defendant here was convicted of distribution of images of a girl known as "Cindy" that were created eleven years prior to the defendant's crime. The district court was required to impose restitution to compensate for the harms that Cindy suffered, and did so without disaggregating from the award the amount of the restitution award attributable to the harm inflicted by the creator of the original images. The Ninth Circuit held that restitution in this context should be limited to the harm proximately caused by the defendant's actions, which were here

limited to viewing and distributing already existing images. That means that harms due to the abuse and the creation of the original images cannot be included in determining the harms for restitution purposes.

United States v. Johnson, No. 13-10320 (11-6-15) (Reinhardt, Tashima, and Callahan) (unpublished). The Ninth Circuit affirmed Judge Mendez's order dismissing Johnson's indictment after the government's appeal. Judge Mendez found AUSA Flynn's representations to the unrepresented Johnson, who then testified before the grand jury constituted a non-prosecution agreement. After AUSA Flynn left the U.S. Attorney's Office, a second AUSA, unaware of the representations and the testimony, indicted Johnson. Judge Mendez held the government to its original representations and dismissed Johnson's case.

**Kudos to Tom Johnson for his investigation, persistence, and justice for his client.**

**NEXT MONTH'S LETTER FROM THE DEFENDER** will be *Before the Sentence, the Priors* and include information on client prior convictions which, by recent court decision or statutory changes, may no longer be crimes of violence or felonies, or may be reduced or dismissed by filing a simple motion.