



## OFFICE OF THE FEDERAL DEFENDER

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# Federal Defender Newsletter

## November 2017

### CJA PANEL TRAINING

- Sacramento: Wednesday, November 15, 2017, 5:00 p.m. in the jury lounge, US District Court, 4th floor, 501 I Street, AFD David Porter will present the Supreme Court and Ninth Circuit Criminal Case Law Update.
- Fresno: Tuesday, November 14, 2017, 5:30 - 6:30 p.m. in the jury room of the Fresno federal courthouse, 2400 Tulare St., AFD Ann McClintock will present the Supreme Court Update.

### 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),  
or Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org).  
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#### **CJA Representatives**

Scott Cameron, (916) 769-8842, [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, [dtorres@lawtorres.com](mailto:dtorres@lawtorres.com), is the Backup CJA Representative.

CONGRATULATIONS TO LEE WHITAKER THE  
WINNER OF THE 2017  
FEDERAL DEFENDER'S  
GOLF TOURNAMENT,  
WITH A GROSS SCORE OF 67  
AND A NET SCORE OF 64.



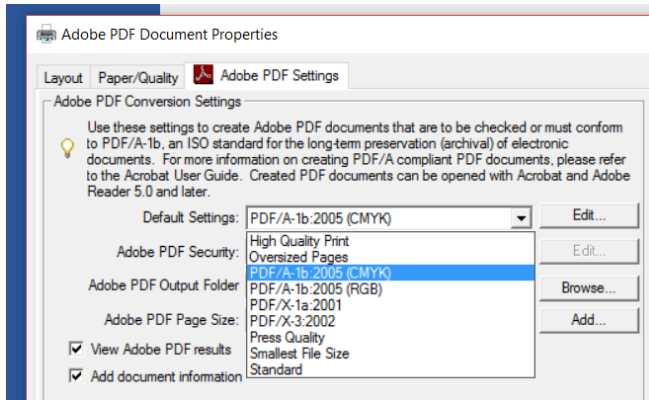
THANKS TO EVERYONE WHO PARTICIPATED!

**LAURA PAUL, 9<sup>TH</sup> CIRCUIT CJA  
RESOURCE ATTORNEY NEWSLETTER**  
Laura Paul, our District's Circuit CJA Resource Attorney who recently spoke in Fresno and Sacramento, hopes to present a monthly newsletter. Her October edition is attached to this newsletter.

### **NEW ELECTRONIC FILING REQUIREMENT IN U.S. SUPREME COURT**

The U.S. Supreme Court is requiring electronic filing, in addition to paper filing, beginning November 13th. Registering as an electronic filer is now open for members of the Supreme Court bar. Additional information is available at:

<https://www.supremecourt.gov/filingandrules/elctronicfiling.aspx>. Info is available on the Court's website. Please note that, in contrast to the E.D. Cal. and the Ninth Circuit, documents filed in the Supreme Court must be in text searchable PDF/A format. This requires an extra step when formatting your PDF for filing. To print: Adobe .pdf > Properties and choose PDF/A-1b-2005 (CMYK) or (RGB).



**PODCAST RECOMMENDATION**

*Ear Hustle*: Hosted by San Quentin inmates Earlonne Woods and Antwan Williams and San Francisco artist Nigel Poor, *Ear Hustle* allows San Quentin inmates to produce and tell their personal stories in their own words in prison.

**CJA Online & On Call**

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 receive emails when fd.org is updated. CJA lawyers can log in, and any private defense lawyer can apply for a login from the site itself. Register for trainings at this website as well.

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.

**IMMIGRATION LEGAL SUPPORT**

The Defender Services Office (DSO) collaborated with Heartland Alliance's National Immigrant Justice Center (NIJC) to provide training and resources to CJA practitioners (FPD and Panel lawyers) on immigration-related issues. Call NIJC's Defenders Initiative at (312) 660-1610 or e-mail [defenders@heartlandalliance.org](mailto:defenders@heartlandalliance.org) with questions on potential immigration issues affecting their clients. An NIJC attorney will respond within 24 business hours. Downloadable practice advisories and training materials are also available on NIJC's website: [www.immigrantjustice.org](http://www.immigrantjustice.org).

**ARE YOU INTERESTED IN BEING A CJA REPRESENTATIVE?**

Scott Cameron's term as our District CJA Representative expires this year. David Torres will then become our District's Representative for 2018-2020.

If you are on the Sacramento CJA Panel and are interested in being the Back-up CJA Representative during David's term, segueing into being CJA Representative for 2021-2023, please let Heather Williams [heather\\_williams@fd.org](mailto:heather_williams@fd.org) or Kurt Heiser [kurt\\_heiser@fd.org](mailto:kurt_heiser@fd.org) know. The below explains the expectation of and support for CJA representatives:

**The Role of Panel Attorney District Representative**

CJA district representatives have many roles. They are the point of contact in our CJA program between a District's panel members and other judiciary components (e.g., the court, federal defenders, and the Administrative Office of the U.S. Courts (AO)). They are the voice of their panels at the National Conference of Panel Attorney District Representatives (PADRs). They are mentors for their District's new panel members. They assist the Defender Services Training Division in developing relevant training programs for their districts, and are advocates for making positive changes in the national and local CJA programs. The next three years will be a historic time for PADRs to work on programmatic CJA policy issues informed by the anticipated report from the Ad Hoc Committee to Review the Criminal Justice Act. To learn more about this Criminal Justice Act program review, visit the Committee's workplace at <https://cjastudy.fd.org/>.

**Resources for PADRs**

There are many resources to draw upon to be a successful PADR. The Defender Services Advisory Group (DSAG) advises the AO, the Defender Services Committee, and other Judicial Conference committees about policies affecting legal service delivery under the Criminal Justice Act. DSAG

includes eight PADRs and eight chief Federal Defenders, thereby facilitating and enhancing communication between federal defenders and private panel attorneys on issues of common interest. The eight PADRs are elected to serve on Panel Representatives' behalf and each represents one or more federal circuits. Your DSAG representative will be a good point of contact for you.

The Defender Services Office is also available to help. The Training Division of Defender Services hosts an invaluable website, <http://www.fd.org/>. Spend some time familiarizing yourself with it. The site not only provides up-to-date information about current substantive law and upcoming training events, but also has answers to many recurring CJA questions.

## SUPREME COURT CERT. GRANTS

On October 16, 2017, the Supreme Court granted cert. in Dahda v. United States (No. 17-43) on the use of evidence from wiretap orders that exceed the jurisdiction of the issuing court. Specifically, the Court will consider: "whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510–2520, requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the judge's territorial jurisdiction."

The Court also granted cert. in Currier v. Virginia, which asks whether a defendant who consents to severance of multiple charges into sequential trials loses his right under the double jeopardy clause to the issue-preclusive effect.

Finally, U.S. v. Microsoft asks whether a United States provider of email services must comply with a probable-cause-based warrant issued under 18 U.S.C. § 2703 by making disclosure in the United States of

electronic communications within that provider's control, even if the provider has decided to store that material abroad.

## NINTH CIRCUIT OPINONS

Kirkpatrick v. Chappell, No. 14-99001 (10-10-17)(Reinhardt w/Wardlaw; dissent by Kozinski). In a capital petition, the Ninth Circuit holds that the district court erred in dismissing 20 claims as unexhausted. The dismissal was based on a letter the petitioner had handwritten and filed with the California Supreme Court asking that his claims be dismissed as he wanted his sentence carried out. The state court appointed a referee to determine if the waiver was knowing and voluntary. The referee said "no," but the state court declined to follow the recommendation and dismissed. The federal district court dismissed federal claims for being unexhausted based on AEDPA deference. The Ninth Circuit parsed AEDPA's language, concluding that the deference refers to claims adjudicated on merits. This dismissal was based was not on the merits of claims, but was whether it was knowing and voluntary. The record does support that this was a knowing and valid waiver.

US v. Slade, No. 16-30150 (10-10-17)(Bea w/McKeown & N. Smith). The Ninth Circuit vacates a sentence and remands because Washington's second degree assault statute, 9A.36.021, is not a "crime of violence" under the guidelines. Applying the categorical approach, the panel holds the statute is not divisible. The court concludes that the Supreme Court's decisions in Deschamps and Mathis overrule prior Ninth Circuit precedent finding this statute divisible.

US v. Preston, No. 15-10521 (10-17-17)(Berg w/Reinhardt; Kozinski

concurring). The Ninth Circuit reverses convictions for aggravated sexual abuse due to evidentiary errors and prosecutorial misconduct. The offenses allegedly occurred in 1998, and were only alleged in 2012, 14 years later, when the victim was in trouble with the law and had drug issues. At trial in 2015, the cumulative effect of the errors and misconduct was to render the trial fundamentally unfair. A treatment counselor gave improper expert testimony related to the victim's truthfulness as to the sexual abuse and characteristics of child sexual victims. Evidence admitted under FRE 404(b) from an ex-wife about sexual fantasies was improper when offered for intent. The prosecutor engaged in misconduct by vouching, alluding to defendant's failure to

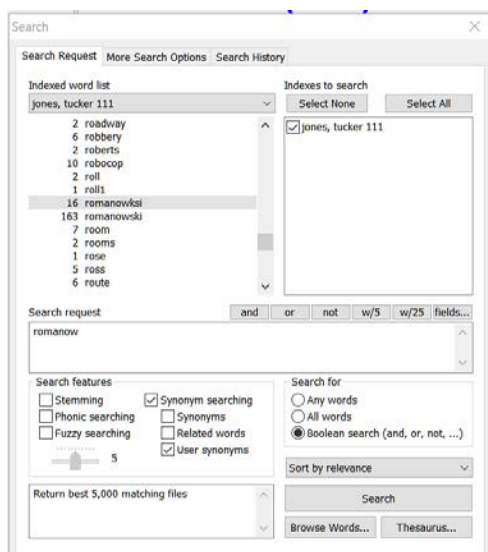
testify and rebut the accusations, and misstating the evidence.

US v. Wallen, No. 16-30033 (10-25-17)(Fisher w/O'Scannlain, Friedland). The defendant shot and killed three grizzly bears and was charged and convicted with three misdemeanors under the Endangered Species Act. The Ninth Circuit vacated the convictions because the magistrate judge, at the bench trial, used the wrong standard for self-defense. The Ninth Circuit holds that the "good faith belief" defense for a 16 USC § 1540 prosecution is subjective, not objective. It is satisfied when "a defendant actually, even if unreasonably, believes his actions are necessary to protect himself or others from perceived danger from a grizzly bear."

# NEWS YOU CAN USE

## DTSEARCH: A FREE DISCOVERY SEARCH TOOL FOR CJA ATTORNEYS

**dtSearch** is a free tool that you download to your PC, or your paralegal's PC. In a nutshell, the software catalogues all of the text both in filenames and in documents in your discovery and creates a searchable index. Once you have the index, you can search text from ALL of the files indexed, all at once – no more opening every single file, one at a time, to see what's in it.



### Great features about the index:

- ✓ The Indexed Word List – lets you quickly find relevant words to search for, and advises you about misspellings in the documents. See the Romanowski example on the left? Knowing that there is a misspelling allows you to adjust your search term in the “Search Request” box to capture all the times this person is mentioned.
- ✓ You can use the built-in Thesaurus to search for synonyms. Looking for every time that bar fight was mentioned by a witness, in a report, or in a transcript? Click the Synonym Searching feature in the “Search Features” box to include synonyms for the word “fight” in your search without looking for a needle in a haystack.
- ✓ Boolean searching is available as well, which allows you to limit searches to terms that appear together, or in the same document.

**dtSearch** will save you hours of tedious and marginally-productive work by eliminating the need to open every single file in the Government's discovery to see if it's relevant to your case. If the Government provides additional discovery, it's simple to add it to your PC's case file and update the index. **dtSearch** will index almost anything with readable text: PDFs, Bates numbers, spreadsheets, transcripts, word-processed documents, images with OCR'd text . . . in short, it capture a lot!

### HOW TO GET DTSEARCH

And best of all – it's FREE! **dtSearch** is available to CJA attorneys (and their paralegals, under the Panel Attorney's name) with an active CJA case. [Follow this link to the NLST website](#), and fill out the license request form. Once you receive the download license, download it and start experimenting! I am happy to walk you through the basics of using it over the phone, and there is an [excellent, 20-minute tutorial](#) available as well.

QUESTIONS? Always feel free to contact your Case Managing Attorney!

Laura Paul at [lpaul@ce9.uscourts.gov](mailto:lpaul@ce9.uscourts.gov) or 626-229-7197.