



## OFFICE OF THE FEDERAL DEFENDER

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# Federal Defender Newsletter

## October 2016

### CJA PANEL TRAINING

The next Sacramento CJA panel training will be on Wednesday, October 19, 2016 at 5:00 p.m. in the jury lounge on the 4th floor of the federal courthouse, 501 I St. AFD Tivon Schardl will be presenting the 2016 Supreme Court and Ninth Circuit Criminal Law Update.

The Fresno CJA panel training will be held on Tuesday, October 18, 2016 at 5:30 p.m. in the jury room at the Fresno District Courthouse: "A Conversation with U.S. Probation Continued."

### PANEL TRAINING ON BIAS

On Friday, October 7th, noon to 1:30 p.m. at the Federal Defender's Office, 801 I St., Sacramento, Professor Julie Mumma will present research on the influence of unconscious bias on the legal interpretation of the "materiality" element in federal fraud prosecutions. Specific precedents, and their use, will be examined. The presentation offers solutions for defense lawyers to eliminate bias in discovery motions and evidentiary rulings. The materiality element is NOT dead notwithstanding the 2016 *Lindsey* decision.

RSVP to [kurt\\_heiser@fd.org](mailto:kurt_heiser@fd.org) for Pizza (instructor will provide free pizza, but you must RSVP, or no pizza for you!) This MCLE qualifies for "elimination of bias" credit from the State Bar.

### 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).

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

### PATHWAYS TO PROGRESS EMPOWERMENT FAIR

The Pathways to Progress Empowerment Fair was a huge success! Thanks to all the CJA attorneys who encouraged their clients to attend. Please stay tuned for more opportunities, including a mentoring program, workshops, and an employment fair.

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 is updated

Train the Trainers Workshop  
Atlanta, Georgia  
November 2 - November 4, 2016

## 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.

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 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.

## NATIONAL DEFENDER SERVICES TRAININGS (register at [www.fd.org](http://www.fd.org))

Non-Capital Mitigation Skills Workshop  
St. Louis, Missouri  
October 13 - October 15, 2016

## IMPORTANT SUPREME COURT CASE

If you have a fraud case going to trial, please preserve the following issue pending in the Supreme Court in Shaw v. US:

Whether, in the bank fraud statute, 18 U.S.C. § 1344(1)'s "scheme to defraud a financial institution" requires proof of a specific intent not only to deceive, but also to cheat, a bank, as nine circuits have held.

This is an important issue in the Ninth Circuit, where the current model jury defines the intent to defraud as the "intent to deceive **or** cheat," allowing for a conviction for either mental state.

## NOTABLE NINTH CIRCUIT CASES

The Ninth Circuit has granted *en banc* review sua sponte in US v. Martinez-Lopez, No. 14-50014, to consider whether California statutes prohibiting possession for sale of various controlled substances are overbroad and thus cannot be considered prior controlled substance offenses under the federal sentencing guidelines. If you have a client whose guideline range is being increased for a prior California controlled substance offense, consider raising and preserving this issue prior to plea and/or sentencing.

US v. Carey, No. 14-50222 (9-7-16)(Gould w/Fletcher; dissent by Kozinski). The Court vacated the denial of a suppression motion and remanded to the district court to determine when the agents, on a wiretap, realized the conversation was about a different conspiracy not contained

in the wiretap authorization. The unrelated conversations stretched over seven days, involving indicted and unindicted co-conspirators.

US v. Soto-Zuniga, No. 14-50529 (9-16-16) (Gould w/Kozinski & Gould). In an important decision, the Ninth Circuit vacated a conviction and remanded for additional discovery from the government to support defense arguments. The defendant was stopped at the San Clemente immigration checkpoint. The officer supposedly suspected the defendant, a LPR, was smoking marijuana, and a subsequent search found meth in a backpack. The defendant challenged the constitutionality of the checkpoint search, asking for statistics of drug arrests versus immigration. He also asked for disclosure of a government investigation into the use of juveniles by smugglers. The court denied the request. The defendant argued that he had picked up juveniles who left the backpack in the vehicle. The Ninth Circuit found the defendant had made sufficient showing of a need for statistics to challenge the constitutionality of the checkpoint stop. The defendant was also entitled to the investigation to support his theory that someone else was responsible.

## LETTER FROM THE DEFENDER

September 20, 2016 at the Kennedy Learning Center at the District Court in Sacramento witnessed an amazing event: what we hope is the 1<sup>st</sup> Annual *Pathways to Progress Empowerment Fair (P2P)*.

Geared to providing support to those in federal supervision with either Probation or Pretrial, *P2P* was a collaboration between the Federal Defender (Crystal Richardson and Leigh Opferman), Probation (Becky Fidelman and Sara Gnewikow), and Pretrial (Tai Gaskins). They successfully

recruited representatives of local, state and federal agencies, local educational institutions, local financial institutions, employers, counseling agencies, and non-profits:

- CalVet
- CARES Community Clinic
- Foundations Recovery Network
- Goodwill
- Highland Charter School Community
- House of Hope
- Job Corps
- La Familia Counseling Center
- Legal Services of Northern California
- Loaves and Fishes
- ManAlive Sacramento
- Northern California Construction Training
- Project Sentinel
- Sacramento City College
- Sacramento Crisis Nursery
- Sacramento Food Bank
- Sacramento Public Library
- SAFE Credit Union
- SETA
- Social Security Administration
- TransAmerica Financial Services
- TurnAround Coffee Shop
- UC-Davis Extension Services
- VOA Veteran Services

We offered supervisees workshops on:

- ❖ How to answer the “Felony” question;
- ❖ Financial Literacy and Credit; and
- ❖ Housing Rights & HUD Housing.

Refreshments were available and a play area was set up for those who brought children – sometimes the challenges our clients face relate to family care and concerns.

What I learned? CalVets knows every possible resource for veterans in California – they have an incredibly comprehensive list of agencies, businesses, support

groups willing and interested in helping veterans to heal, to find work, to realize they're not alone in their challenges.

Sacramento Crisis Nursery provides emergency child care, including overnight care when a parent has a medical or other emergency.

TurnAround Coffee offers volunteer opportunities for our clients who have community service to complete. They are located on 7<sup>th</sup> Avenue downtown, just north of H Street, offering delicious coffee, pastries, and sandwiches. Reasonable prices and supporting a great service. <https://www.facebook.com/turnaroundcoffeehouse>

The women representing Northern California Construction Training set a wonderful example for the opportunity at a career in the construction trade, a trade long blind to whether an employee has a criminal record.

ManAlive Sacramento is a support service of men who may be challenged lashing out angrily or violently in their relationships.

We also invited the managers of Sacramento's newly opened ARC (Anti-Recidivism Coalition) Office. The organization founded by *The Hangover's* and other popular movies' producer Scott Rudnick offers housing, education, counseling, and peer support for those just released from prison, as long as they need and want help and support. While they've focused on those with state conviction, hopefully their experience that day opens their doors to our clients also.

We encouraged participants to take a *PathPort* and get it signed by at least 5 information tables to turn in and qualify for a raffle offering donated gift cards, food,

and gifts. Their comments included suggestions for future support and resource areas, such as tattoo removal, more businesses offering jobs, how to apply for grants.

We hope more defense counsel will attend future events – we can better serve our clients the more resources our clients have available.

About 20-35 supervisees attended and stayed the better part of the afternoon, soaking up information and hopefully left knowing their challenges in creating their futures doesn't have to happen alone – there is a community – **our** community there to help them succeed.