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# Federal Defender Newsletter

## March 2015

### CJA PANEL TRAINING

**Sacramento** panel training will take place on **Wednesday, March 18, 2015 at 5:00 p.m.** AFD David Porter will be presenting the *2015 Supreme Court Review*. The training will take place at the jury meeting room on the 4<sup>th</sup> floor of the Federal Courthouse, 501 I St.

**Fresno** panel training will take place on **Tuesday, March 17, 2015 at 5:00 p.m.** (earlier time) in the Jury Assembly Room at the Federal Courthouse in Fresno. District Judges Anthony W. Ishii and Lawrence J. O'Neill will participate in a panel discussion on *Sentencing in Federal Court*.

### AFD DAVID PORTER TO BE FEDERAL DEFENDER REPRESENTATIVE AT THE SENTENCING COMMISSION

Congratulations to AFD David Porter, who will begin his one year (FY2016 budget passage providing) temporary, full-time detail at the Sentencing Commission on July 20, 2015. This position will give David the opportunity to learn first-hand how the Commission fulfills each of its various statutory responsibilities, while assisting the Commission's ongoing efforts to develop and refine federal sentencing practices. We will miss David in the office, but will lend him to the Sentencing Commission to pursue this important work!

### Good News for CJA Panel Members

The 20th Annual National Conference of CJA Panel Attorney District Representatives was held from February 28 to March 1, 2015. Scott Cameron attended as the representative for the Eastern District of California. At the Conference, a representative of the Defender Services Office reported on the financial situation for the CJA panel for 2015. According to the representative, there is "no possible chance" of the suspension of CJA panel payments in fiscal year 2015. Moreover, there is "very little chance" of a rate rollback in fiscal year 2015. A rate increase for CJA panel attorneys has been proposed for fiscal year 2016; however, that situation is more "dicey" according to the representative.

Also, district representatives from the Ninth Circuit passed a resolution, to be presented to the Ninth Circuit CJA Oversight Committee, regarding rates for experts (including investigators) performing work on non-capital CJA panel cases. The resolution will be reviewed by the Oversight Committee, and if approved, will then be decided on by the Judicial Council. For additional information, please contact Scott Cameron at 916-769-8842.

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Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice. While you're there, take the survey on the home page and have input in the redesign of the site! Please note that 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.

## TOPICS FOR FUTURE TRAINING SESSIONS

Do you know a good speaker for the Federal Defender's panel training program, or would you like 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).

## 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 February, 22 stipulated motions were granted resulting in a total time reduction of approximately 30 years (356 months).

While the value of early release is inestimable for defendants, their families, and their friends, the early releases in February result in a taxpayer cost savings of approximately \$878,748 million. So far 103 defendants have received a reduction in their sentences under Amendment 782.

## **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** the trainings for you to print out and bring to training for note taking. Any lawyer not on the panel, but wishing training materials should contact Lexi Negin, [lexi.negin@fd.org](mailto:lexi.negin@fd.org).

## ♪ NOTABLE CASE ♪

### **SUPREME COURT**

Yates v. United States, No. 13-7451 (2-25-15).

In a 5-4 decision -- with Justice Ginsburg writing a plurality opinion (joined by Roberts, Breyer and Sotomayor) and Justice Alito writing an opinion concurring in the judgment -- the Court held that a fish is not a "tangible object" under 18 U.S.C. § 1519. In this case of statutory interpretation, Latin maxims duel at center stage, and the rule of lenity appears at the final curtain to win the case for Mr. Yates.

In an opinion written by Justice Kagan, the dissenting justices begin their analysis with the proposition that "[a] fish is, of course, a discrete thing, that possesses physical form," citing as authority "One Fish Two Fish Red Fish Blue Fish," by Dr. Seuss. In reaching a broad interpretation of the disputed language, Justice Kagan still decries the "over-criminalization and excessive punishment in the U.S. Code." In the dissent's interpretation, section 1519 is "a bad law – to broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion." She notes further that section 1519 "is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code." Notwithstanding this pathology, she would still grant the statute a broader interpretation that would include fish as "tangible objects."