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Federal Defender Newsletter
March 2018

CJA PANEL TRAINING

Sacramento CJA Panel Training will be on Wednesday, March 21, 2018 at 5:00 p.m. at the jury room in the Fourth Floor of the U.S. District Court, 501 I Street. AFDs Mia Crager and Sean Riordan will be presenting on "The Evolving Categorical Approach: Challenging Enhancements under § 924(c), ACCA, and the Guidelines."

Fresno CJA Panel Training will be on Tuesday, March 20, 2018 at 5:30 p.m. in the Jury Room of the federal courthouse. Presenter Gail Ivens, an appellate attorney, formerly with the Federal Defenders in Los Angeles will speak on "Identifying and Preserving Issues for Appeal."

SAVE THE DATE; Pathways to Progress Employment, Education, and Empowerment Fair
Wednesday, April 25th, 2018, 12:30-3:30pm
We invite and encourage attorneys to invite their clients, and to also attend themselves for networking and gathering resources. We will also be collecting small hygiene items and helpful books to provide to attendees, and to contribute to our Reentry Court "library."

Mental Health Presentation at the Federal Courthouse

Wednesday, March 21, from 1pm-3pm in the Justice Anthony Kennedy Library and Learning Center on the first floor of the Sacramento Federal Courthouse,

Marji Miller, Mental Health Therapist with Genesis Mental Health Services at Loaves and Fishes, and Alan Coulter, Community Service Guide with the Downtown Sacramento Partnership, will speak to the court family on mental illness, diagnoses, and symptom. The presentation will also address "do's and don'ts" when responding to, encountering, and communicating with people who have symptoms of mental illness.

Look for an Evite to be sent this week regarding this presentation.

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
Noa Oren, noa_oren@fd.org

CJA Representatives

David Torres of Bakersfield, (661) 326-0857, dtorres@lawtorres.com, is our District's CJA Representative. The Backup CJA Representative is Kresta Daly, (916) 440.8600, kdaly@barth-daly.com.

GENERAL ORDER № 589 (3/5/2018)

IN RE: INTERIM CJA VOUCHER REQUESTS ARE REQUIRED WHENEVER MORE THAN $1,000 OF BILLABLE SERVICES HAVE ACCRUED IN A QUARTER

As of the date of this order, Criminal Justice Act (CJA) defense counsel are required to submit interim reimbursement vouchers quarterly in all cases where $1,000 or more of billable services has accrued. Thus, by no later than April 1, 2018, and continuing quarterly thereafter (July 1, October 1, and January 2), CJA defense counsel shall submit an interim reimbursement voucher in every case counsel is assigned where more than $1,000 of billable services have accrued in the immediately preceding three-month period.

Further, all vouchers requests, whether or not subject to the interim submission requirement outlined above, must be submitted for payment within nine (9) months of completion of the services for which reimbursement is sought. Untimely reimbursement voucher requests will not be considered.

PODCAST RECOMMENDATION

The Moth: True Stories Told Live. Also available as on-line video views. https://themoth.org/ This marvelous website have people telling personal stories on stage, acting as a wonderful reminder of the power of story. By painting pictures, addressing feelings and emotions, these are the ways we can best represent our clients and have their voices and experiences heard.

CJA Online & On Call

Check out 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 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.

SUPREME COURT OPINIONS

The Supreme Court held in Class v. United States (No. 16-424)(2-21-18) that a guilty plea does not inherently waive a constitutional challenge to the statute of conviction. Justice Breyer wrote for the majority of six (joined by Ginsburg, Sotomayor, Kagan, Roberts, Gorsuch), and Justice Alito wrote the dissent (joined by Kennedy and Thomas).

Class was indicted by a federal grand jury in the District of Columbia for possessing firearms in his locked jeep in a parking lot on the grounds of the U.S. Capitol, in violation of 40 USC § 5104(e)(1). He moved to dismiss the indictment, claiming

that "the statute violates the Second Amendment and the Due Process Clause because it fails to give fair notice of which areas fall within the Capitol Grounds where firearms are banned."

The district court rejected both challenges. Class pled guilty pursuant to a written plea agreement, in which he expressly waived certain claims including “most collateral attacks on the conviction,” but the agreement “said nothing about the right to raise on direct appeal a claim that the statute of conviction was unconstitutional.” When Class raised his challenges on direct appeal, the D.C. Circuit held that he had inherently waived them by pleading guilty.

The Supreme Court held that a guilty plea by itself does not bar a defendant from challenging the constitutionality of the statute of conviction. This holding "flows directly” from the Court’s prior decisions. The Court relied primarily on Blackledge v. Perry, 417 U.S. 21 (1974), a habeas case in which the Court held that Perry’s guilty plea did not bar his vindictive prosecution claim, and Menna v. New York, 423 U.S. 61 (1975) (per curiam), a direct appeal in which the Court held that Menna did not waive his double jeopardy claim by pleading guilty. In these cases, as in Class, the constitutional claims are consistent with an “admission that [the defendant] did what the indictment alleged"; they challenge the government’s “power to criminalize Class’ (admitted) conduct.”

The Court acknowledged that in addition to claims that challenge factual guilt or “contradict admissions necessarily made upon entry of a voluntary plea of guilty," a guilty plea foregoes rights accompanying a fair trial, including the privilege against compulsory self-incrimination, the right to jury trial, the right to confront accusers, and claims of government misconduct “before the plea is entered,” but not rights that exist beyond the trial like the right against self-incrimination at sentencing in Mitchell v. United States.

The Court rejected the government’s and dissent’s argument that its holding is inconsistent with Rule 11(a)(2), governing conditional pleas. Rule 11(a)(2) is not the exclusive procedure for preserving a constitutional claim, and the advisory committee notes say the rule has no bearing on claims that may be raised under the Menna-Blackledge doctrine.

NINTH CIRCUIT OPINONS

US v. Campbell, No. 17-50140 (2-28-18)(Collins w/Wardlaw & Gould). This is another challenge on a violation of supervised release. Defendant argues that the violation is jurisdictionally invalid as the violations (1) were not alleged prior to the expiration of the term of supervision; and (2) were not factually related to any matter raised before the court during the term of supervision. The Ninth Circuit held that the district court is not empowered to reach back to conduct that pre-dates the expiration of the term of supervision that was not alleged prior to the expiration of that term. The Ninth Circuit recognizes that 18 USC 3583(i) extends the power of a Court to revoke, but does so only for a reasonable period necessary for the adjudication of matters arising before expiration, if a warrant or summons had been issued. Brand new allegations of past violations are barred.

US v. Evans, No. 16-10310 (2-28-18)(M. Smith w/Bates; dissent by Ikuta). This case involves the imposition of standard conditions of supervision. The Ninth Circuit remanded for removal of one condition and for the district court to clarify

others. The standard condition #4, which instructs a supervisee to "meet other family responsibilities," was impermissibly vague. Does this mean to wash dishes, go to a child's sports games, etc.? The panel notes the Commission has already omitted this condition and the court should do so here too. As for #5, which requires a supervisee to "work regularly," it can be vague. Is it full-time work, partial work, the same amount of work each week? The panel notes that the Commission means close to full-time, but there is ambiguity. The condition is remanded to clear that up.

Condition #13 requires third parties to be notified of risks "occasioned" by the defendant's criminal record or personal characteristics. The panel again is puzzled: who must be notified? Friends, employers, coworkers, people he is standing in line with at a business? There must be further clarity and specificity.

LETTER FROM THE DEFENDER

There are few things creepier, reminding us of the inhumanity and callousness our society is capable of, than reading the newly approved **execution protocols** California's Office of Administrative Law (OAL) submitted March 2, 2018. http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2018NCR/18-02/Adopted%20Regulations%20NCR%2018-02.pdf

California has settled on how it will kill people sentenced to death. On the menu are lethal injection (LI) or lethal gas (LG) - the doomed gets to choose. If the doomed doesn't decide within 10 days, it's by LI.

The regs created teams (as if it's a game). What does it take to be part of the killing team?

- the LI Team (basic requirements include being a full-time CDCR employee, reliable job performance, professional demeanor and work attendance; meets or exceeds standards in annual review);
- the Infusion Sub-Team (one member in the medical field);
- the Intravenous Sub-Team (made up entirely of medical personnel).

The regs provide job descriptions for each and CDCR, in its wisdom, will provide training through simulations, at least "once per month for a minimum of eight hours."

The chosen assassination cocktail is not specified – *(A) Lethal Injection Chemical selection shall be done on a case-by-case basis taking into account changing factors such as the availability of a supply of chemical. The San Quentin Warden shall make the selection in consultation with medical personnel and notify the CDCR Secretary of the selection. (B) CDCR may contract with medical personnel to assist with chemical selection. Medical personnel shall be a medical doctor, clinical toxicologist, pharmacologist, anesthesiologist, or other appropriate expert. (C) The San Quentin Warden shall determine which chemical shall be utilized to perform the execution and document the selection on the CDCR Form 1801-A (Rev. 01/18) Choice of Execution Method. CDCR considers the listed chemicals to be equally effective in carrying out the purpose of the regulations. The San Quentin Warden shall select one chemical from the following (or any name that they may be known or sold by . . ..*

These killing drugs are phenobarbital and thiopental are involved in the process. Phenobarbital is a useful drug in other circumstances, used in treating seizure and quelling anxiety. Thiopental (sodium pentothal – another barbiturate) is a relaxant used before administering general anesthesia.

Then, in the days leading up to the execution date, amongst the many other formalities of pretending getting ready to kill someone is normal,

- there is a vein evaluation for the best highway or highways to deliver the death chemicals;
- an "appointed Alienist [will] have access to interview and evaluate" the doomed. Contrary to it sounding liking ET will visit, an "alienist" is a CDCR psychiatrist who sees the doomed to make sure they're competent to be killed.

And mountains of paperwork.

The business of state-sponsored, voter approved death. Scarier than any Stephen King novel.

~ Heather Williams