



OFFICE OF THE FEDERAL DEFENDER

Eastern District of California

801 I Street, 3rd Floor
Sacramento, CA 95814-2510
(916) 498.5700

Toll Free: (855) 328.8339
FAX (916) 498.5710

Capital Habeas Unit (CHU) (916) 498.6666
Toll Free: (855) 829.5071 Fax (916) 498.6656

2300 Tulare Street, Suite 330
Fresno, CA 93721-2228
(559) 487.5561

Toll Free: (855) 656.4360
FAX (559) 487.5950

HEATHER E. WILLIAMS
Federal Defender

BENJAMIN D. GALLOWAY
Chief Assistant Defender

KELLY S. CULSHAW
CHU Chief

CHARLES J. LEE
Fresno Branch Chief

RACHELLE BARBOUR, Editor
Assistant Federal Defender

Federal Defender Newsletter

April 2019

CJA PANEL TRAINING

Fresno: April 16th at 12:30 PM in the 4th floor conference room at the Federal Defender's Office, Jon M. Sands, Federal Public Defender - District of Arizona, will be speaking on *Defending Conspiracy Cases*.

Sacramento: April 17th at 12:00 p.m. in the 4th floor conference room at the Federal Defender's Office, Jon M. Sands, Federal Public Defender - District of Arizona, will be speaking on *Defending Conspiracy Cases*.

Bonus Sacramento MCLE: Friday, May 3, 2019 from 12:00 to 1:00 p.m. at the Federal Defender's Office, 801 I Street: Professor Irene Joe will speak on *Representing the Difficult or Mentally Ill Client*. Ethics MCLE credit available.

Please Save the Date:

Wednesday, May 8, 2019: 1-3:30pm – Pathways to Progress Empowerment Fair at the Kennedy Center.

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

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 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.

VETERANS AND THE CRIMINAL JUSTICE SYSTEM: IDENTIFYING BARRIERS AND CREATING SOLUTIONS

Wednesday, April 24, 2019 ~ 1pm-3pm
Sacramento Federal Courthouse
501 I Street – First Floor
Justice Anthony Kennedy Library and Learning Center

According to the National Institute of Corrections, "Veterans are coming home and struggling with not only the physical wounds of war, but also the "invisible" wounds of war: post-traumatic stress disorder and traumatic brain injury. They are also experiencing high rates of anxiety and depression. These veterans are not typically criminals prior to their military service. However, as a result of their experience in the military — particularly those who were deployed to a combat zone — some of them have difficulty adjusting to civilian life when they return home...Unfortunately, some of these men and women become involved in the criminal justice system."

Please join us as we discuss the realities our Veterans face in our criminal justice system. We will look at the "why", the needs, and the many barriers our justice-involved Veterans face. We will also discuss unique, evolving solutions for

Veterans in our Federal and county/state judicial systems. Meet community providers and advocates who are making an impact, community partnerships in support, and hear inspiring stories of hope.

Our Guest Speakers:

Honorable Carolyn K. Delaney
United States Magistrate Judge
Veterans Court – California Eastern District

Travis Nelson AMFT, APCC
Spark Center for Self-Development
Operation Iraqi Freedom Veteran
Veterans Advocate and Treatment Provider

REGISTRATION: Please register using <https://www.eventbrite.com/e/veterans-and-the-criminal-justice-system-identifying-barriers-and-creating-solutions-tickets-59977733014>

CONTACT:

Crystal Richardson, Social Worker -
Federal Defender's Office,
crystal_richardson@fd.org

LaRaine Koen, Social Work Intern -
Federal Defender's Office,
laraine_koen@fd.org

** We will also be joined by other
Community Agencies providing advocacy
and resources for Veterans **

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.

INTERESTING PODCASTS

- *The 3rd Chair's D.E.S.K., Dialogue, Education, Strategy, and Knowledge:* Defender Services Office Training Division (DSOTD) podcast designed to provide valuable information and inspiration for federal criminal defense practitioners. Topics will include substantive federal criminal law subjects, from sentencing to mental health, to trial skills. Sign into fd.org. <https://www.fd.org/training-division-podcasts>

ACCESS TO FD.ORG is limited to Federal/Community Defender Offices staff and Panel attorneys. If you already applied and were approved for www.fd.org log-in credentials, simply click the link above and enter your username and password. If you have questions about access to www.fd.org, please email fdorg_help@ao.uscourts.gov.

- *The GEN WHY Lawyer: Discovering the Y of Law:* interviews with lawyers on how to build a meaningful life and fulfilling legal career.
- *First Mondays:* about the Supreme Court, co-hosted by former Court law clerks.
- *The Moth:* storytelling at its best.
- *Ear Hustle:* podcast from inside San Quentin Prison.
- *Conversations with People Who Hate Me:* Host Dylan Marron deliberately interviews people with whom he disagrees and who disagree with him and who he is.
- *Criminal:* no description really needed, is there?
- *Code Switch:* Helping with the delicate, minefield of today's race and identity issues.

SUPREME COURT

Kansas v. Glover, No. 18-556. The Supreme Court granted certiorari to address whether, for purposes of an investigative stop under the Fourth Amendment, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.

Mathena v. Malvo, 18-217. Certiorari granted to consider whether the U.S. Court of Appeals for the 4th Circuit erred in concluding — in direct conflict with Virginia's highest court and other courts — that a decision of the Supreme Court, Montgomery v. Louisiana, addressing whether a new constitutional rule announced in an earlier decision, Miller v. Alabama, applies retroactively on collateral review may properly be interpreted as modifying and substantively expanding the very rule whose retroactivity was in question.

Ramos v. Louisiana, 18-5924. Certiorari granted to consider whether the 14th Amendment fully incorporates the Sixth Amendment guarantee of a unanimous verdict.

Kahler v. Kansas, 18-6135. Certiorari granted to consider whether the Eighth and Fourteenth Amendments permit a state to abolish the insanity defense.

NINTH CIRCUIT

US v. Cooley, No. 17-30022 (3-21-19)(Berzon w/Thacker & Hurwitz). The Ninth Circuit affirms the district court's suppression of evidence (meth) arising from a tribal officer's encounter, on a public nontribal road, with a non-Indian defendant. The district court suppressed for lack of jurisdiction: a tribal officer does

not have authority to detain an individual on a public road unless it is obvious or apparent the individual is violating state or federal law. Indian jurisdiction is political (Antelope) and based on sovereignty. Here, the officer went beyond his jurisdiction. Since the officer did not inquire about status, and the defendant was a non-Indian, the detention was invalid. Under ICRA (Indian Civil Rights Act), exclusion of evidence is proper.

US v. Door, No. 17-30165 (3-12-19)(Christen w/Thomas & McKeown). This is a Guidelines sentencing issue in a prohibited firearm possessor case. Using the categorical approach, the Ninth Circuit remanded for resentencing because a Washington conviction for second-degree assault was not a “crime of violence.”

US v. Read, No. 17-10439 (3-14-19)(Hawkins with M. Smith & Hurwitz). In an issue of first impression, the Ninth Circuit holds that a defendant has a Sixth Amendment right to demand that counsel not present an insanity defense. The Ninth Circuit finds that McCoy v. Louisiana, 138 S. Ct. 1500 (2018) requires such an outcome. The error is structural. The conviction is vacated and remanded for a new trial.

US v. Jauregui, No. 16-50429 (3-22-19)(Berzon w/N. Smith; concurrence by Berzon; dissent by Castel). In a fact-specific opinion, the Ninth Circuit orders a resentencing in a conspiracy to import appeal. The resentencing was the result of the court sentencing the defendant for conspiracy to import meth, when the facts admitted at the sentencing were only for conspiracy to import marijuana. That conviction had a maximum of five years. At the colloquy, the defendant only admitted he entered into a conspiracy for importing marijuana; he withdrew; and then

he took the car over the border, when there was a reasonable foreseeability that it might contain meth. He admitted no facts of a meth importation conspiracy. Ninth Circuit precedent, US v. Banuelos, 322 F.3d 700 (9th Cir. 2003), requires admission of the object by the conspirators. A court under Apprendi cannot import facts of conspirators. The error was plain, and required a resentencing. The guilty plea remains.