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Federal Defender Newsletter

December 2018

CJA PANEL TRAINING

PANEL TRAINING IS ON BREAK FOR THE WINTER HOLIDAYS!!

Please save the date and join us in 2019
on January 16th in Sacramento and
January 15th in Fresno.

The Neurobiology of Substance use
Disorders and Implications for the Criminal
Justice System

Wednesday, December 12, 2018 1-3pm

Kennedy Library and Learning Center,
Sacramento Federal Courthouse

Speakers:

- Hon. Lawrence Brown, Sacramento County Superior Court / Adult Drug Court Program, and
- Lisa Frederiksen, founder of Breaking the Cycles, which provides education, prevention and intervention services rooted in 21st century brain and substance misuse-related science for a range of addiction-related concerns.

Please RSVP at

<https://www.eventbrite.com/e/the-neurobiology-of-substance-use-disorders-aces-and-toxic-stress-implications-for-the-criminal-tickets-53204281438>

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
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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.

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.

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, to immigration. 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. Governor Brown recently commuted one of the inmate co-hosts Earlonne Woods' sentence. <https://www.atthelectern.com/mass-commutation-of-death-sentences-unlikely-but-governor-brown-is-likely-to-continue-giving-some-lwop-murderers-a-shot-at-parole/> He was released at Thanksgiving and plans to continue with Ear Hustle.
- *Conversations with People Who Hate Me:* Host Dylan Marron deliberately interviews people who he disagrees with 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.

NINTH CIRCUIT

US v. Chilaca, No. 17-10296 (11-26-18)(Rosenthal w/Hawkins & Hurwitz). The Ninth Circuit reversed in part convictions for possessing child pornography, in violation of 18 U.S.C. § 2252(a)(4)(B). The panel held that, under §2254(a)(4)(B), which makes it a crime to knowingly possess "1 or more" matters containing any visual depiction of child pornography, simultaneous possession of different matters containing offending images at a single time and place constitutes a single violation. Counts charging possession of child-pornography images on separate media found at the same time and in the same place were multiplicitous and constituted double jeopardy. The error was not harmless, but because the record clearly shows that evidence presented at

trial would have been the same regardless of the number of counts charged, no new trial is warranted. The panel remanded with instructions to vacate three of the multiplicitous counts of convictions and to resentence the defendant on the remaining count.

US v. F. Tydingco, No. 17-10023 (11-27-18) & US v. L. Tydingco, No. 17-10024 (11-27-18)(Graber w/Thomas & Lasnik). The defendants were convicted of “harboring” an alien and “aiding and abetting” the harboring in violation of 8 USC 1324(a)(1)(A)(iii). The defendants, residents of Saipan, brought a 10 year old Chinese boy over from China to attend school. He did so for two years; but this violated the 45 day “parole” rule for visitors. The Ninth Circuit held that the instruction defining “harbor” was erroneous as it did not require the jury to find that the defendants intended to violate the law. This error was not harmless. The Ninth Circuit harmonizes two precedents in tension: Acosta, 531 F.2d 428 (9th Cir. 1976)(harboring to prevent detention) and You, 382 F.3d 958 (9th Cir. 2004)(intending to violate the law). The key is intent. The Ninth Circuit also found that the instruction defining “reckless disregard” was likewise erroneous. It did not require the jury to find subjective intent; that is, it instructed the jury to find that a defendant drew an inference that the alien was actually an alien and was in the United States unlawfully. The jury instruction errors require a remand for a new trial.