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Federal Defender Newsletter

July 2019

CJA PANEL TRAINING

CJA Panel training is on summer break!
We look forward to seeing you in
September!

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.

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
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Little Red Rules Book® 2019 Edition is now available for purchase at the same price as last year:

Credit Card Online Ordering:

Here is the link for online ordering:
<https://fdewi.directfrompublisher.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. Sign into fd.org. <https://www.fd.org/training-division-podcasts>

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- *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 started from inside San Quentin Prison, and continued since Gov. Brown commuted the remainder of its co-creator inmate Earlonne Woods' sentence.
- *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.

- *70 Million:* How locals are addressing jails and their roles in their communities.

SUPREME COURT

Rehaif v. US (No. 17-9560). The Supreme Court held, in felon-in-possession cases under §§ 922(g) and 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm **and** he knew he belonged to the relevant category of persons barred from possessing a firearm (here Rehaif entered on a nonimmigrant student visa and was not in compliance with that visa). The Court rejected the Government's argument that this is a question of law, not fact, and ignorance of the law is no excuse. This adds a new element to be proven beyond a reasonable doubt.

Please look at your felon-in-possession cases for this issue. Indictments must charge this element; plea agreements must reflect it; and jury instructions must include it.

US v. Davis (No. 18-431). The Supreme Court (5-4) struck down 18 U.S.C. § 924(c)(3)(B) as unconstitutionally vague because of its "crime of violence" definition (an offense that "by its nature, involves a substantial risk that physical force . . . may be used in the course of committing the offense.") This is the same language struck down in *Sessions v. Dimaya* last year. It affirms the categorical approach to looking at priors.

Banister v. Davis. On June 24, 2019, SCOTUS granted cert on a *pro se* petition (reply filed by counsel), in *Banister v. Davis*, No. 18-6943, limited to the question of "whether and under what circumstances a timely Rule 59(e) motion should be recharacterized as a second or successive

habeas petition under *Gonzalez v. Crosby*, 545 U.S. 524 (2005).”

US v. Haymond (No. 17-1672). In a 5-4 case, the Supreme Court ruled 18 U.S.C. § 3583(e)(3) violates the right to trial by jury. That provision provides for a mandatory minimum 5 year term of incarceration for a Supervised Release new crime violation for child pornography possession when the defendant is on supervision for a prior child pornography possession case.

Shular v. U.S., No. 18-6662. The Supreme Court granted the defense’s certiorari petition to address whether the determination of a “serious drug offense” under the Armed Career Criminal Act requires the same categorical approach used in the determination of a “violent felony” under the act.

NINTH CIRCUIT

Gouveia v. Espinda, No. 17-16892 (6-12-19)(Berzon w/Wardlaw & Rawlinson). The Ninth Circuit affirms habeas relief arising from granting a mistrial without manifest necessity.

Samayoa v. Davis, No. 18-56047 (7-3-19)(Fletcher w/Hurwitz; dissent by Watford). The petitioner, on California’s death row, sought appointment of the Arizona FPD as co-counsel to assist his state-appointed counsel in clemency proceedings. The district court denied the appointment. On appeal, the Ninth Circuit reversed. The Supreme Court in *Harbison v. Bell*, 566 US 180 (2009) held that 18 U.S.C. § 3599 provides for federal appointment of counsel for death-row petitioners seeking federal relief. The subsection (e) extends the appointment to further proceedings, such as clemency.

DEFENDER LETTER

Maybe I’ve been out of it (representing clients thru sentences of incarceration) for a while, but for my several clients sentenced to imprisonment recently, once they arrived at their designated facility (interesting word for a “prison”), they’ve requested of me copies of their plea agreements, PSRs, and dockets.

Of course, we all know why: other inmates want to know who to beat up and ostracize for being a child sex offender (instant offense or any time ever) or a snitch * ahem * cooperator. So as we lawyers rest easy after sentencing, feeling we’ve protected clients from all possible harms the system can inflict on them, if imprisoned, they enter another level of hell – a sociological system we can only imagine, full of unwritten rules and hypervigilance.

It does us no good to send any client their PSR – BOP will remove them from the mail the moment they arrive, precisely because they know inmates insist on seeing them to see who to persecute. Other inmates may also use the personal information – family members’ names & ages, mental or medical history – to further prey on our imprisoned clients. More than once I’ve heard of clients housed with or in the same area as child sex offenders who have had child relative photos stolen by some of these inmates, or where the inmates have taunted clients with threats of what they’ll do, once released, to the client’s child relative.

Do you send plea agreements? Judgments? Dockets? Generally, I will. But if the docket shows we sealed a document close to sentencing (*Sentencing Memorandum* or our *Motion to Correct the PSR*), I will also send the *Motion to Seal* for minors’ names, addresses, medical or mental conditions to show no cooperation.

Have I “doctored” plea agreements, Judgments, the docket ever? You bet. Drug distributions are a fave of mine if the client has a sex offense. And Adobe Pro can make editing easier.

Because our work in protecting our clients doesn’t end at sentencing or appeal.