



OFFICE OF THE FEDERAL DEFENDER

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Federal Defender Newsletter

June 2018

CJA PANEL TRAINING

Monthly panel training is on summer break.

Implicit Racial Bias and Decision Making in the Criminal Justice System

July 18th in the Sacramento Federal Defender Office, 801 I St. from 5-6 p.m. (MCLE satisfies the bias requirement.)

Song Richardson, Dean, University of California at Irvine School of Law, will present on implicit racial bias impact at every decision point in the criminal justice system. Dean Richardson will discuss what cognitive and social psychology can teach us about unconscious bias throughout a criminal case's progress. Her talk will address how these biases are formed, how they affect behaviors and perceptions, and how to safeguard against their influence.

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

Children of Incarcerated Parents: Challenges and Promise



*A LOOK AT THE
CHALLENGES, HOPE,
AND RESILIENCY OF
FAMILIES WITH AN
INCARCERATED
LOVED ONE*

Please join us for an eye opening and engaging presentation where we will hear from people making a difference in our community. Our speakers are eager to share their experiences and stories of hope and resilience through the eyes of children and families affected by incarceration. We will discuss resources and programs, and the positive reinforcements essential in creating resilience in the lives of children facing these challenges.

Wednesday, June 27, 2018, 1-3pm
Robert T. Matsui United States Courthouse
Justice Anthony M. Kennedy Library and
Learning Center
501 I Street, 1st Floor, Sacramento, CA

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.

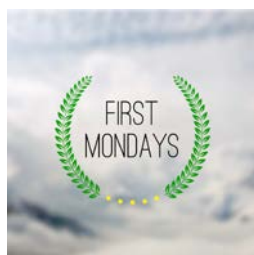
The Federal Defender Training Division also provides a **telephone hotline** with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

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.

PODCAST RECOMMENDATION

First Mondays hosted by Ian Samuel and Dan Epps, former Supreme Court law clerks, give inside information and opinions about the inner workings of SCOTUS or backgrounds and explanations certain opinions.



SUPREME COURT

Byrd v. United States: The Court unanimously held that the driver of rental car can challenge a search of the vehicle even if he is not listed as an authorized driver on rental agreement. The Court reasoned that the Fourth Amendment entitles that driver to essentially the same protections as the person who rented the car, even though the defendant in Byrd had the permission of the original renter, but was not himself listed on the rental car agreement.

Collins v. Virginia: The Court held the automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein. A cop entered the front yard of a home, removed a tarp to examine a motorcycle he believed to be stolen. He ran the plates, took a photo, and then returned the tarp. He waited for Collins to return home and then arrested him. The state courts had denied a suppression motion. The Supremes reversed 6-1.

Lagos v. United States: The Court addressed a provision of the Mandatory Victims Restitution Act of 1996 that requires certain convicted defendants to “reimburse the victim for . . . expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense,” 18 U. S. C. §3663A(b)(4). The Court held the words “investigation” and “proceedings” are limited to government investigations and criminal proceedings and do not include private investigations and civil or bankruptcy proceedings.

Hughes v. United States: Kennedy, writing for Ginsburg, Breyer, Sotomayor, Kagan and Gorsuch, announced that sentences imposed pursuant to binding 11(c)(1)(C)

agreements are generally eligible under § 3582(c)(2) for reductions under amended offense guidelines. The Court held that 11(c)(1)(C)-guided sentences satisfy the statutory requirement that a sentence be “based on” the sentencing guidelines because the guidelines range will almost invariably be part of the judge’s decision-making framework either in accepting the agreement or in imposing the sentence, or both.

NINTH CIRCUIT

US v. Johnson, No. 15-30222 (5-14-18)(per curiam): The case concerns the arrest of the defendant on an outstanding warrant. His car was boxed in by police vehicles, and eventually impounded. Money, cellphones, pipes, and a stun gun were seized. At the suppression hearing, the officers admitted that they seized the items in a search for evidence and not in conducting an inventory search. In US v. Orozco, 858 F.3d 1204 (9th Cir 2017), the Ninth Circuit held that for administrative searches, like inventory, if there is objective evidence that the search was in bad faith, a court can look at the subjective intent of the officers. Such was the instance here. The evidence had to be suppressed.

US v. Edling, No. 16-10457 (6-8-18)(Watford w/Thomas and Rawlinson). The Ninth Circuit vacates and remands a Guidelines sentence for being a felon in possession under § 2K2.1. The district court found three prior offenses of “crimes of violence.” On appeal, the Ninth Circuit determined that: (1) assault with a deadly weapon under Nevada assault statute was a crime of violence given the element of use or threatened use of violence; however, neither (2) robbery nor (3) coercion were crimes of violence. The former —robbery — was not a categorical

match as it involved violence against property as well as person. It swept too broadly. Coercion was not a crime of violence because state courts have defined “force” in other statutes as not necessarily requiring violence or causing bodily pain or harm. The sentence was vacated and the matter remanded for resentencing.

UPCOMING TRAININGS THRU fd.org

2018
JUN
26

Tuesday, June 26, 2018 - 10:00

Webinar: Dimaya Part 2: Beyond the Residual Clause: Challenging Your Client’s “Crime Of Violence” Under Sessions v. Dimaya

Contact:

aodb_ODSTBWebtraining@ao.uscourts.gov

(link sends e-mail)

Start Time: 10:00 am

[Register Here](#) (link is external)

Event Description

On April 17, 2018, the Supreme Court issued its decision in Sessions v. Dimaya, 138 S. Ct. 1204 (2018), holding that the residual clause of 18 U.S.C. § 16’s definition of “crime of violence” is unconstitutionally vague. Having déjà vu? You’re not alone. In striking § 16’s residual clause, Dimaya relied on a “straightforward application” of its 2015 decision in Johnson v. United States, 135 S. Ct. 2551 (2015). In Johnson, the Supreme Court deemed a similar residual clause in the “violent felony” definition of the Armed Career Criminal Act to be void for vagueness.

So, how does Dimaya affect your clients? In this webinar, we will explore the impact of Dimaya on federal criminal statutes, and particularly its applicability to 18 U.S.C. § 924(c). We will identify the many reasons why Dimaya should apply to § 924(c) cases and

provide you with the responses needed to refute the government’s contrary position. You will also learn how to challenge your client’s predicate conviction under the remaining portion of the “crime of violence” definition – the force clause. Finally, the webinar will address how to overcome procedural obstacles, such as a defendant’s appellate waiver, on direct review.

This webinar is targeted to practitioners with a working knowledge of the categorical and modified categorical approaches, a familiarity with the Supreme Court’s related holding in Johnson v. United States, and a basic understanding of the “crime of violence” definitions in 18 U.S.C. § 16 and 18 U.S.C. § 924(c)(3).



Thursday, June 28, 2018 - 01:00

Webinar: Dimaya Part 2: Beyond the Residual Clause: Challenging Your Client’s “Crime Of Violence” Under Sessions v. Dimaya (LIVE REPEAT)

Contact:

aodb_ODSTBWebtraining@ao.uscourts.gov
(link sends e-mail)

Start Time: 1:00 pm

[Register Here](#) (link is external)

Event Description

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Thursday, June 28, 2018 - 07:30 to Saturday, June 30, 2018 - 05:30

Paralegal and Investigator Skills Workshop Philadelphia, PA

Contact: Rakita_Johnson@ao.uscourts.gov
(link sends e-mail)

[Register Here](#) (link is external)

[Draft Agenda](#)

Event Description

The Paralegal and Investigator Skills Workshop is a hands-on program providing intensive training in several skills (e.g., interviewing,

case management/organization, locating records and witnesses, analyzing documents) that are essential to the daily work of paralegals and investigators in federal defender offices or assigned to CJA panel cases. The program is designed to give participants the opportunity to learn by doing, using a combination of plenary sessions and interactive small group breakouts. In the small groups, participants practice the skills introduced in the plenary sessions, using the facts of a model case.

Because the workshop emphasizes essential skills, it is particularly valuable to new investigators and paralegals. Those with more experience will find it to be a useful refresher and an opportunity to share their knowledge with others. Please note that, due to the workshop format of this program, participants will be required to attend all sessions. To attend this workshop, participants must (1) be employees with paralegal and/or investigator duties in a federal defender office, or regularly perform such duties in conjunction with federal CJA panel attorney appointments and (2) have not attended this workshop in the past. Enrollment for this program is limited to 70 participants.

2018
JUL
12 - 14

Thursday, July 12, 2018 - 08:30 to Saturday, July 14, 2018 - 01:30

The Andrea Taylor Sentencing Advocacy Workshop

Kansas City, Missouri

Contact: Rakita_Johnson@ao.uscourts.gov (link sends e-mail)

[Register Here](#) (link is external)

[Draft Agenda](#)

Event Description

The Andrea Taylor Sentencing Advocacy Workshop focuses on a vital area of federal

practice that has evolved since the Supreme Court declared the federal sentencing guidelines were advisory and no longer mandatory. Since approximately 97% of federal criminal cases continue to the sentencing phase, participation in the Sentencing Advocacy Workshop should not be missed. The Sentencing Advocacy Workshop teaches a comprehensive approach to sentencing where participants are trained to develop persuasive, fact-based, sentencing theories, and are provided with the advocacy skills necessary to advance their theories both in writing and during sentencing hearings. Presentations and demonstrations at the workshop include client relations and interviewing for mitigation, fact busting, developing persuasive theories and themes, storytelling at sentencing, persuasive writing, and persuasive presentation. The workshop consists of plenary sessions and small group breakout sessions. In the small group sessions, participants will use pending cases of their own to bust the facts, develop theories and themes, practice storytelling, persuasively write part of their sentencing memorandums and discuss how best to conduct sentencing hearings.

Enrollment for this program is limited to 65 participants – priority will be given to those people who have not attended this workshop in the past. Limited financial assistance may be available to non-federal defender registrants for travel expenses.

2018
JUL
15 - 20

Sunday, July 15, 2018 - 08:00 to Friday, July 20, 2018 - 23:00

Federal CJA Trial Skills Academy

Indianapolis, Indiana

Contact: Heidi_Capati@ao.uscourts.gov (link sends e-mail)

[Register Here](#) (link is external)

Draft Agenda

Event Description

The skills-based Academy has been a tremendous success. This program focuses on (1) the use of a trial advocacy process to facilitate the development of a persuasive, fact-based theory and supporting themes, and (2) the advocacy skills necessary to persuasively advance that theory and those themes throughout the trial. A very experienced and skilled faculty leads this program through a series of plenary sessions and workshops. Elements of effective litigation advocacy skills are presented in the plenaries. Participants then engage in hands-on practice of those skills and receive feedback in small group workshops.

Participation is limited to 66 attendees.

2018

AUG

2 - 4

Thursday, August 2, 2018 - 07:00 to Saturday,
August 4, 2018 - 23:45

**Law & Technology Series: Electronic
Courtroom Presentation**
Long Beach, CA

Contact:

Candice_Mothersille@ao.uscourts.gov (link
sends e-mail)

[Register Here](#) (link is external)

[Draft Agenda](#) | [Financial Assistance](#)

[Application](#)

Event Description

The Law & Technology Series: Electronic Courtroom Presentation Workshop (ECP) exposes CJA panel and federal public/community defender attorneys and professional staff to the legal, strategic, and technological considerations involved with electronically presenting information in the federal courtroom during trial and hearings. This two-and-a-half-day program uses a

combination of plenary presentations and small group, hands-on instruction. In the smaller breakout groups, attendees will practice direct and cross-examination, opening statements, and closing arguments, using Trial Director and PowerPoint software which are well suited for electronically presenting information in the courtroom.

To best participate at this program, all attendees are required to provide their own laptop computer and strongly encouraged to bring their own case materials (hearing/trial, small/large). In order to be considered for admission, all applicants are required to fill-out and submit a short skill set survey before their registration request is completed. NOTE: The litigation support software programs used in this workshop are designed to work on Windows operating systems (as opposed to Mac). If accepted, you must bring a laptop running Windows, or a Mac laptop running a virtualized copy of Windows.

2018

AUG

2 - 4

Thursday, August 2, 2018 - 15:15 to Saturday,
August 4, 2018 - 15:15

**Winning Strategies Regional: Defending
Immigration and Drug Cases on the Border**

San Antonio, TX

Contact: Rakita_Johnson@ao.uscourts.gov
(link sends e-mail)

[Register Here](#) (link is external)

[Draft Agenda](#)

Event Description

Winning Strategies Regional: Defending Immigration and Drug Cases on the Border brings together a dynamic group of attorneys, other legal professionals, and clinical law professors to speak on a wide variety of topics, all designed to keep CJA practitioners abreast of the most recent and important

developments in federal criminal defense of immigration and drug cases. This seminar builds upon the [2017 Strategies for Defending Noncitizens webinar series](#) which addressed a range of topics from immigration basics to illegal reentry motions and is available on www.fd.org. This seminar is designed for the more experienced practitioners, however, those defenders and CJA counsel who may have recently been appointed to their first immigration or drug case would greatly benefit from attendance at this seminar as well. This seminar is also open to immigration practitioners, who occasionally represent clients in federal criminal court. Subject areas to be addressed include presentations on visas for cooperating clients, derivative citizenship, drug chemistry for the defense, extradition, the intersection of racial profiling in the war on drugs and the immigration removal process, variances in drug cases and many more topics, in both plenary and concurrent sessions.

This seminar is open to all federal defender staff and CJA panel attorneys and staff nationwide.

2018
AUG
13 - 15

Monday, August 13, 2018 - 07:30 to
Wednesday, August 15, 2018 - 16:30

Persuasive Writing Workshop

Los Angeles, California

Contact: [Heidi Capati@ao.uscourts.gov](mailto:Heidi_Capati@ao.uscourts.gov) (link sends e-mail)

[Register Here](#) (link is external)

[Draft Agenda](#) | [Financial Assistance Application](#)