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Federal Defender Newsletter

November 2018

CJA PANEL TRAINING

(please note schedule changes)

Sacramento

Wednesday, November 14, 5-6 pm

CJA Panel Attorney Pete Kmeto will present "Sentence Mitigation—Start Now" Jury Assembly Room, Sacramento Federal Courthouse

Fresno

**Wednesday, November 14,
Noon to 1 p.m.**

A conversation (brown bag lunch) with Judges O'Neill and Drozd.

Ninth Floor Conference Room, Fresno Federal Courthouse

Drug Abuse and Addiction in the Criminal Justice System

Wednesday, December 12, 2018 1-3pm

Kennedy Library and Learning Center,
Sacramento Federal Courthouse

Hon. Lawrence Brown
Sacramento County Superior Court / Adult
Drug Court Program

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.

Free Training Provided by NACDL and Berkeley Center on Law and Technology

NACDL partners with the Berkeley Center on Law and Technology to sponsor a two-day seminar

It's Complicated: Combatting the
Surveillance State in Criminal Proceedings
in Berkeley, CA, on November 29-30. The seminar covers everything from device searches and body cams, to facial recognition, AI, and the third-party doctrine after *Carpenter*. Register and find the full program agenda at <https://members.nacdl.org/event-details?id=fc180ed2-001f-4bbe-a4fe-d69cbb5461f7>.

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.

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.

WELCOME, SACRAMENTO AFD **TINA SINHA**

Welcome to new Sacramento AFD Tina Sinha! Tina comes to us after several years as Staff Attorney and Program Manager of the National Security & Civil Rights program – Asian Law Caucus in San Francisco, interrupted in the middle by a year as a Kern County Deputy Public Defender. In 2013, the South Asian Bar Association of Northern California named Tina its *2013 Public Interest Attorney of the Year*. We are thrilled to have Tina with us.

INTERESTING PODCASTS

- *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/>
- *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.

Life Sentence Reduced in Drugs-Minus-Two Resentencing

AFD Lexi Negin recently fought for a Drug-Minus-2 sentence reduction from Life to 405 months for a client, who was sentenced in 2000 to a life sentence. The client qualified for a 2-level reduction under Amendment 782. His post-sentence conduct – he has had no disciplinary infractions since his imprisonment in 1998 and has served as a mentor to other inmates – combined with the underlying policy goals of Amend. 782 to convince the Court to grant the reduction.

NINTH CIRCUIT

US v. Sellers, No. 16-50061 (10-15-18) (Nguyen w/Simon, Graber dissenting). The panel majority held that in stash house reverse-sting cases, claims of selective enforcement are governed by a less rigorous standard than that applied to claims of selective prosecution under US v. Armstrong, 517 US 456 (1996). The Ninth Circuit emphasized the difference between selective prosecution and selective enforcement and stressed that the police do not enjoy the enforcement presumption of prosecutors. “Contrary to Armstrong’s requirement for selective prosecution claims, a defendant need not proffer evidence that similarly-situated individuals of a different race were not investigated or arrested to receive discovery on his selective enforcement claim in a stash house reverse-sting operation case. While a defendant must have something more than mere speculation to be entitled to discovery, what that something looks like will vary from case to case.” The Ninth Circuit joins the Third and Seventh Circuits in this distinction. The order denying discovery was vacated and the case was remanded for the limited purpose of such discovery under the articulated standard.

US v. Moreno Ornelas, No. 15-10510 (10-25-18)(Friedland with Thomas, partial concurrence and partial dissent; Zilly dissent). This appeal arises from an apprehension in the Arizona desert. A US Forest Service Officer encountered the defendant and a fight ensued, with shots fired. Each claimed that he was in a fight for his life. The officer said the defendant stole his weapon and assaulted him; the defendant said he was the victim of an assault and acted in self-defense. The jury hung on an assault with attempt to murder charge, but convicted on various others counts. The Ninth Circuit reversed several counts for jury instruction errors on the attempted robbery of the gun and truck. The reversals resulted from the failure to instruct the jury that the defendant must have formed specific intent when he tried to take the gun and truck. The error was obvious and affected the fairness and integrity of the proceedings.