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Federal Defender Newsletter

August/September 2019

CJA PANEL TRAINING

Sacramento, please save the following dates for Panel Training: September 18, October 16, and November 20, 2019, all from 5-6 pm, Sacramento Federal Courthouse jury lounge.

September 18 -- ACLU Senior Staff Attorney Sean Riordan will be presenting on SB 1421, the police misconduct transparency law.

Fresno, please save these dates for Panel Training, all at 5:30 pm, Fresno Federal Courthouse jury lounge.

September 17 – Gail Shifman, Esq.; Litigating Title III Wiretap Challenges.

October 15 – Sharon Samek, Attorney Advisor in the Legal & Policy Division of the Defender Services Office: Obtaining funding for expert services and other resources to defend clients in appointed criminal cases.

November 19 – AFDs Ann McClintock & Peggy Sasso; Supreme Court & Ninth Circuit Review.

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.

Federal Criminal Practice Paid Training Opportunity

The Federal Defender's Office has launched a pilot program to provide compensated federal criminal practice training – the **CJA Developmental Panel Program**.

The CJA Developmental Panel is a 2-phase recruitment, mentoring program aimed at increasing CJA Panel diversity in California's Eastern District. The program will provide diverse attorneys ("Developmental Attorney") who do not yet have the requisite experience for CJA Panel membership, an opportunity to learn federal criminal defense practice from the CJA Panel and Federal Defender's Office. *Phase 1* is a rigorous federal criminal defense education program. Developmental attorneys will "graduate" from Phase 1 to Phase 2 after successfully completing all Phase 1 requirements. In *Phase 2*, developmental attorneys are assigned a "lead attorney" mentor and appointed as associate counsel to provide supervised, non-duplicative court-appointed client representation.

Submit applications no later than **September 30, 2019;** they will be reviewed on a rolling basis. Call Kurt Heiser at (916) 498-5700 for a detailed application and program description.

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

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 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.
- *70 Million*: documents how locals are addressing the role of jails in the broader criminal justice system.

SUPREME COURT

Certiorari was granted in Shular v. United States (No. 18-10234). The Court will decide whether determining whether an offense is a "serious drug offense" under the Armed Career Criminal Act requires the same categorical approach used to determine whether an offense is a "violent felony" under the Act. Shular qualified as an armed career criminal based on six prior Florida convictions for controlled substance offenses, none of which required a finding that Shular had "knowledge of the illicit nature of the substance," i.e., that he was dealing with a "controlled substance." Because the Florida crimes lack the mens rea element required for the generic offense, under the categorical approach, none of Shular's Florida convictions would qualify as a "serious drug offense." The Eleventh Circuit affirmed Shular's ACCA conviction based on its view that the definition of a "serious drug offense" does not include a mens rea element regarding the illicit nature of the controlled substance; the ACCA requires merely that a prior offense "'involve[]' … certain activities related to controlled substances."

NINTH CIRCUIT

US v. Myers, No. 17-30159 (7-22-19)(Ikuta w/Christen & Choe-Groves).
The defendant was prosecuted for different crimes arising from the same set of facts. He faced state charges for assault and federal charges for being a felon in possession. The state prosecution went first. The federal prosecutors delayed the federal charges while the state proceedings were pending. Twenty-two months later, the state charges concluded with a plea, and the federal charges began. The defendant had already requested that the federal charges proceed sooner. The federal court denied the request, and then dismissed the speedy trial motion. On appeal from a conditional plea, the 9th looked at the Barker four factors test: length of delay (a year is presumptive); reason for delay; defense assertion of right; and prejudice. Here, the issue is whether the pendency of state proceedings is a valid reason for the government to delay prosecution. There is a circuit split. The Ninth Circuit held, "[W]e hold that where a delay arises due to concurrent state and federal proceedings, a court must consider the nature and circumstances of the delay in order to determine whether (and how much) it weighs against the government." The court remanded the case for reconsideration of the Speedy Trial motion.

Marinelarena v. Barr, No. 14-72003 (7-18-19)(en banc). The Ninth Circuit overrules Young v. Holder, and holds that, where a person's prior state-law conviction has an ambiguous record regarding whether the prior is a qualifying or disqualifying predicate offense, the Government must prove that the prior qualifies. Prior to this, the burden was on the immigration petitioner to prove that the ambiguous prior did not qualify. This is an excellent case to keep in mind for your Taylor/Shephard analyses on prior convictions.

Page v. King, No. 17-16364 (8-2-19)(Feinerman w/Paez & Berzon). The Ninth Circuit vacated a habeas corpus dismissal based on Younger abstention. The petitioner is facing state recommitment under the California Sexually Violent Predator. He has been awaiting trial for 13 years. In his federal habeas, he argued that (1) the delay was an extraordinary circumstance; and (2) that he was facing irreparable harm being held on an outdated and even invalid scientifically probable cause determination. The

Younger abstention is vacated on the irreparable harm issue.

US v. Corrals-Vazquez, No. 18-50206 (7-24-19)(Bybee w/Wardlaw; concurrence by Bybee; dissent by Fernandez). In reversing a 1325(a)(2) conviction — eluding examination or inspection by immigration officials —the Ninth Circuit holds that the government must prove that the eluding occurred at an open port of entry. Otherwise, the conduct is illegal entry under 1325(a)(1). The majority examines the statutory text, looks at other conduct (i.e. (a)(1)), cracks open the dictionary (eluding), and reaches the conclusion that (a)(2) can only occur at a port of entry.

Avena v. Chappell, No. 14-99004 (8-9-19)(Thomas w/Graber & M. Smith). The Ninth Circuit reverses the denial of a capital penalty ineffective assistance of counsel claim. The court found that the complete failure of counsel to present any mitigation was ineffective. Investigation could have presented character evidence, evidence of childhood abuse, habitual PCP use, and the need for self-defense in a prison setting. None of this was done. There was prejudice. The evidence was exactly the type that could have persuaded a juror to show mercy.

US v. Fabian-Baltazar, No. 15-16115 (7-30-19)(Per curiam w/Rawlinson, Bea, & Hurwitz). If a client tells the lawyer to file a notice of appeal, it is ineffective assistance of counsel if the lawyer fails to do so, even if there is an appellate waiver in the plea. The Supreme Court held this in Garza v. Idaho, 139 S. Ct. 738 (2019). Here, the petitioner filed a 2255 alleging ineffective assistance for his lawyer's failure to file the notice of appeal. Upon remand from the Supreme Court in light of Garza, the Ninth Circuit vacates the denial and remands to determine if the petitioner had in fact instructed his lawyer to file. This opinion raises the issue of whether it would be ineffective assistance if the lawyer fails to consult with the client to ascertain his intent, and seems to indicate, again following Garza, that it would be. On remand here, the court needs to determine whether an instruction was given; and if not, whether the lawyer failed to consult.

Congrats to Fresno AFD Peggy Sasso!

Riley v. Filson, No. 17-15335 (8-9-19)(McKeown w/M. Smith & Hurwitz). The Ninth Circuit held that the district court did not abuse its discretion in denying the State's 60(b)(6) motion seeking relief from a grant of habeas relief. This case is about state law interpretation, especially relating to first-degree murder and the elements. In 1991, the Ninth Circuit interpreted Nevada state law regarding to first-degree murder in Riley I, 786 F.3d 719 (9th Cir. 2015). The court found three separate elements. The State now argues that the state supreme court changed its interpretation post-Riley and thus undermines that case. The Ninth Circuit disagrees. While the definitions for a period – 1992 to 2000 – were merged, the "window" of this merger occurred after the petitioner's conviction was final.

US v. Sainz, No. 17-10310 (8-12-19)(Piersol w/Tashima & M. Smith). In an issue of first impression, the Ninth Circuit holds that a district court cannot sua sponte raise a defendant's waiver of the right to seek relief under 3582(c)(2) and then deny relief on that ground. Here, the defendant was being sentenced on a drug charge. He had cooperated. At sentencing, the court and the defendant discussed a lowering of the guideline range that was proposed, but was not yet in effect. The

defendant was then sentenced. In his plea, he had expressly waived the right to file a 3582(c)(2) motion. Subsequently, though, he filed such a motion. The district court (a new judge) then sua sponte raised waiver and denied the motion. The Ninth Circuit deemed this an abuse of discretion because the government failed to raise defendant's waiver in the district court, and therefore the government waived that argument. The court risked becoming an advocate by raising the issue itself. The dismissal was reversed and the case remanded.

US v. Green, No. 17-30227 (8-21-19)(Berzon w/Tashima & Fletcher). The Ninth Circuit vacated the sentence and remanded in a rare allocution/acceptance of responsibility case. The court held that it was plain error for the district court to conclude that it must decide acceptance before hearing from the defendant at allocution. This error was both procedural and substantive. The contested matter here was relevant conduct for guns in a safe (the defendant was a prohibited possessor). He received an adjustment for the number of guns. He admitted possession of the gun on him when stopped. His argument was that the government could not prove the other guns in the safe were his. The government introduced evidence to support the adjustment. The district court then implied that Mr. Green might lose acceptance by contesting the adjustment. Defense counsel said that the defendant intended to allocate and express contrition. Too late, stated the court, because procedurally he had to make the finding before allocution. The Ninth Circuit found this both procedurally and substantively plain error. The court is not compelled to decide acceptance before hearing allocution.

US v. Cano, No. 17-50151 (8-16-19)(Bybee w/Graber & Harpool). This is a significant cell phone/border search case. The defendant was arrested for carrying cocaine through San Ysidro's POE. Following the arrest, a Customs Agent seized his cell phone and searched it: first manually and then using software that accesses all texts, logs, media, and application data. The defendant's motion to suppress was denied. The Ninth Circuit reversed the denial of the motion and vacated the conviction. It held that searches may be conducted by border officials without reasonable suspicion, but that *forensic* cell phone searches require reasonable suspicion. The 9th clarifies US v. Cotterman, 709 F.3d 952 (9th Cir. 2013)(en banc) by holding that "reasonable suspicion" means that officials must reasonably suspect that the cell phone contains digital contraband. The Ninth Circuit stresses that cell phone searches at the border, whether manual or forensic, must be limited in scope to a search for digital contraband.

US v. Hanson, No. 18-30037 (8-28-19)(Tallman w/Ikuta & N. Smith). The defendant was convicted of receipt of child pornography while on Supervised Release for a previous child pornography conviction. The court committed plain error in sentencing him for the violation using the 2017 guidelines instead of the 2007 guidelines. This violated ex post facto (2 yrs instead of 5 years). The sentence was vacated and remanded.

US v. Lillard, No. 16-30194 (8-28-19)(Fletcher w/Hawkins; Bennett dissenting). This is a MVRA issue regarding the definition of "period of incarceration." The Ninth Circuit holds that pretrial detention is not a "period of incarceration" for purposes of applying an inmate's receipt of "substantial resources"

to be applied to restitution. This holding results from examining the language and statutory context of the provision 18 USC 3664(n) and the application of the rule of lenity. The amount here is $6,671.81. The matter is not moot because the defendant pled and received a 196 month sentence.

US v. McAdory, No. 18-30112 (8-28-19)(Hawkins w/Fletcher & Bennett). "When is a felony not a felony for the purposes of 18 USC 922?" It isn't a felony when, under a mandatory sentencing scheme, the defendant is exposed to a sentence that does not exceed one year. This was the holding in US v. Valencia-Mendoza, 912 F.3d 1215 (9th Cir. 2019), and it applies here. Valencia-Mendoza defines "punishable by" as the sentence to which the defendant is actually exposed under Washington's mandatory sentencing scheme. It is not the statutory maximum. In this case, the defendant's priors were all under a year, and those sentences were mandated. The conviction is vacated, and the court is ordered to dismiss the felon-in-possession indictment.

From the Defender

GIGLIO DISCLOSURE

Manuel Real died late June 2019. If you pronounced his last name *RAY-al*, á la Spanish, you would be wrong and he would've let you know it's *REEL*. A California Central District United States District Judge since November 3, 1966, after President Johnson's nomination, he would also let you know that where you stood to address the court is no podium, but is a lectern, and he'd be correct.

Judge Real valued an independent judiciary – we all know that could go either way. This stubborn independence, which the 9th Circuit judicial council called his "obduracy in implementing many directives from the appellate court," drew 9th Circuit appellate court and judicial council attention, frequently reversing him for his pesky insistence in not giving reasons for his rulings.[i] And the U.S. House Judiciary Committee contemplated impeaching Judge Real in 2006 over his intervening in a bankruptcy matter (and he was never a bankruptcy judge) for a female criminal defendant on supervision in one of his assigned cases.[ii]

I first learned of Judge Real while in Tucson where he was a frequent visiting judge helping with their overwhelming docket. He took advantage of his visiting judge opportunities early in his federal judicial career; in 1968, he was the trial judge for John Giglio (pronounced *GEE-lee-oh*) charged in New York's Eastern District with Count 4/18 U.S.C. § 371's conspiracy to and Counts 1 and 2 of 18 U.S.C. § 2314's transportation of forged money orders (judgment of acquittal for Count 3).[iii] He sentenced Giglio to 5 years concurrent prison terms for Counts 1 and 4, and a consecutive 5 years suspended for Count 2.

Not Sure if that Call was for You or for Me.

On March 1, 1971, New York lawyer James LaRossa was mid-trial in federal court in Los Angeles, defending a client charged with stock fraud. He went to the lectern to cross a witness, focused on his questions, but also concerned he might step outside the square box taped on the floor around the lectern that this quirky district judge insisted lawyers remain within. Some questions into his cross-examination, Judge Real called LaRossa to sidebar – just LaRossa. Judge Real explained LaRossa had a call from the U.S. Supreme Court and he could take in Judge Real's chambers.

The Supreme Court Clerk told LaRossa the Court "took cert" in his *Giglio* case and they would be notifying formally him in writing with additional instructions.

Somewhat in shock – it would be LaRossa first and last Supreme Court oral argument – he went back into the courtroom trying to refocus his mind to the west coast trial he was in, and not the east coast trial of 3 years earlier.

Judge Real asked him, "What was that about?"

LaRossa replied, "Judge, I'm not sure if that call was for me or for you."

James M. LaRossa

Few could have foreseen Flatbush Brooklyn native Jimmy LaRossa would someday become a major defense lawyer for "the most feared mafia chiefs, assassins, counterfeiters, Orthodox Jewish money launderers, defrocked politicians of every stripe, … Arab bankers" and gang members around.[iv]

LaRossa began practicing law in his 20s before ever going to law school. During the Korean War as a Marine Corps officer, he offered to represent soldiers accused of violating the Uniform Code of Military Justice. In 1962, after graduating Fordham Law School, LaRossa worked as an Assistant U.S. Attorney in Brooklyn, becoming Attorney General Robert F. Kennedy's connection to that office. But always one to fight for the underdog, LaRossa left that office in 1965 to become a defense lawyer.

Deal or No Deal

LaRossa was not John Giglio's trial lawyer in 1968. He picked up the case on appeal for this "low level Organization crime figure," as the Assistant U.S. Attorney described Giglio to LaRossa.[v]

Per LaRossa in a 2004 phone call we had, the trial transcript showed Judge Real "got the conviction" as much as the Assistant U.S. Attorney (AUSA) in the day-and-a-half trial.

In August 1968, jurors in that Brooklyn courtroom heard mostly Robert Taliento, a now-21 year old bank teller from Manufacturers Hanover Trust Company, describe how he worked with Giglio to cash "stolen Traveller's Express Money Orders." Per Taliento, he gave Giglio the signature card for one of the bank's customers which Giglio copied to endorse the money orders.[vi]

> On June 27, 1966, Taliento cashed $2300 in money orders given to him, by (Giglio); that night (Taliento gave the money to (Giglio) and received $500. The next day Taliento gave (Giglio $2100 from money orders he had cashed for (Giglio) and again received $500. On July 5, 1966, (Giglio) came to the bank himself and cashed money orders with Taliento worth $3000. That same day, the FBI spoke to Taliento and obtained his cooperation in apprehending (Giglio). Taliento called (Giglio) and arranged to meet him at 11 p.m. After they met and began walking up the street, the FBI arrested (Giglio), who had $550 in large bills on his person."[vii]

Giglio's lawyer asked Taliento:

> [Counsel.]: Did anybody tell you at not try the case in the District Court, any time that if you implicated somebody else in this case that you yourself would not be prosecuted?
>
> [Taliento.] Nobody told me I wouldn't be prosecuted.
>
> Q. They told you you might not be prosecuted?
>
> A. I believe I still could be prosecuted.
>
> . . . . .
>
> Q. Were you ever arrested in this case or charged with anything in connection with these money orders that you testified to?
>
> A. Not at that particular time.
>
> Q. To this date, have you been charged with any crime?
>
> A. Not that I know of, unless they are still going to prosecute.'

The FBI Case Agent Axton, on the case from its start, also testified about their meeting with Taliento and arranging for Giglio's eventual arrest. In closing argument, AUSA Carl Golden said, "[Taliento] received no promises he would not be indicted" in exchange for his testimony before the grand jury and at trial.

But this was not true. And FBI Agent Axton, present throughout the trial, knew it.

For LaRossa, "cooperators were snitches and cooperation akin to treason."[viii] And, after the Second Circuit Appellate Court affirmed Giglio's conviction without a written opinion, LaRossa found out Assistant U.S. Attorney Anthony Di Paola, working with Taliento to testify before the grand jury, gave Taliento immunity from prosecution. AUSA Di Paola's 1969 affidavit submitted for Giglio's new trial motion read:

> It was agreed that if ROBERT EDWARD TALIEN'TO would testify before the Grand Jury as a witness for the Government, . . . he would not be . . . indicted. . . . It was further agreed and understood that he, ROBERT EDWARD TALIENTO, would sign a Waiver of Immunity from prosecution before the Grand Jury, and that if he eventually testified as a witness for the Government at the trial of the defendant, JOHN GIGLIO, he would not be prosecuted.

FBI Agent Axton was present for meetings with AUSA Di Paola, Taliento and Taliento's lawyer to prepare Taliento's grand jury testimony and immunity bargain. He never spoke up during trial when Taliento testified otherwise.

The U.S. Attorney switched AUSAs for trial. AUSA Golden claimed he met with AUSA DiPaola and specifically discussed that AUSA DiPaola had not granted Taliento immunity, "but that he had not indicted him because Robert Taliento was very young at the time of the alleged occurrence and obviously had been overreached by the defendant Giglio."

The District Court denied Giglio's new trial motion, while never resolving the AUSAs' conflicting affidavits, instead "that even if a promise had been made by DiPaola it was not authorized and its disclosure to the jury would not have affected its verdict." The Second Circuit affirmed, again without any written opinion.

Before the Supremes

At LaRossa's only Supreme Court argument ever in October 1971, he boldly stated Taliento committed "absolute perjury" and the AUSA "in that courtroom had no right to misunderstand and . . . he should have had absolute knowledge that the witness Taliento was testifying before that jury with an absolute grant of immunity given to him by an Assistant United States Attorney."

LaRossa made a limited summary argument: he did not argue the Government had a duty on its own to disclose the immunity agreement, but that, on the witness' cross-examination, if the witness denied the prosecution's immunity, "the government must come forward" and correct that statement.

The Supreme Court went further in its 7-0 decision (Justices Rehnquist and Powell were sworn in on January 7, 1972, replacing the recently deceased Justices Harlan and Black, respectively, so had not been part of oral argument):

> In the circumstances shown by this record, neither DiPaola's authority nor his failure to inform his superiors or his associates is controlling. Moreover, whether the nondisclosure was a result of negligence or design, **it is the responsibility of the prosecutor**. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. . . . To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it.[ix]

Because Taliento's testimony was vital to the Government's case, "evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it."[x]

After the Decision

As LaRossa answered Justice Stewart in oral argument, this forgery case was Giglio's first time "involved with the law," despite the AUSA's first assertion to LaRossa. Giglio

served part of his sentence already when, upon the Supreme Court's cert grant, the lower court granted bail. Per LaRossa, Giglio died few years later of natural causes.

LaRossa gained repute as a "mob" attorney and the time was ripe as Congress passed legislation in the early 1970s specifically directed at the Mafia family influences. In the late 1970s, he tried one of the first major RICO trials in New York, *U.S. v. Scotto*. He won a directed verdict for Paul Castellano in a loan sharking trial, representing Castellano thereafter, before and after he became head of the Goodfellows organization. While representing Castellano in another criminal trial in 1985, the two met after court when LaRossa decided to not join Castellano and his friend for dinner that night and, instead, work on the trial. As Castellano got out of his Lincoln in front of Sparks Restaurant, hitman shot him in the head 6 times, killing him instantly.

Salvatore "Sammy the Bull" Gravano later admitted, flipping on John Gotti, that he and Gotti organized the hit. Once prosecutors charged Gotti, they stopped him from hiring LaRossa to represent him by claiming LaRossa was "a government witness at trial . . . an important witness to significant facts" about Gotti's motive to kill Castellano. The Government dropped LaRossa from its witness list the week before it closed in Gotti's trial.[xi]

Law Professor Lawrence Goldman said LaRossa was also one of the best cross-examiners he'd seen. LaRossa represented Joe "The German" Watts in a 1987 murder case (Watts was close to Gotti and may have been involved in Castellano's assassination). The Government's cooperating witness, Dominic "Fat Dom" Borghese, claimed indigence, saying he qualified for court-appointed counsel. Anticipating cross-examination, LaRossa subpoenaed that snitch's safe deposit box and they opened it in court during cross. It contained thousands of dollars cash and jewelry. The jury acquitted Watts.

As the Mafia families started to lose their influence, the Government shifted their RICO focus to gangs. There, LaRossa found continued work, including representing Island Def Jam Music Group (records) in a civil suit.[xii] LaRossa died October 15, 2014 at 83.

* * * * *

The History Channel, many years ago, had a series called *Mouthpiece – Voice of the Accused,* featuring several mob lawyers, including LaRossa. I like these LaRossa quotes from his episode:

> Sometimes the cross has nothing to do with the events that the person is testifying about. When a person lies under oath as to a material fact, the jury has the right to say, "I don't believe a word he says," and discard his testimony completely.

> The day that a defense lawyer gets up and walks into a courtroom and says, "I'm dead. I'm just going through the motions," the case is over. So, you certainly have to cling to the expectation and hope that you're proving this and be a good enough advocate to argue it, no matter what the evidence is against you.

~ Heather Williams

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[i] John Roemer, *Irascible Legend*, SAN FRANCISCO DAILY JOURNAL, p.2 (7/1/2019).

[ii] *Id.*

[iii] *Giglio v. United States*, United States' Brief in Opposition to Giglio's Petition for Writ of Certiorari, 1970 WL 116893 (11/23/1970).

[iv] James LaRossa, *Last of the Gladiators: A Son's Memoir*, Bancroft Press, soon to be released 2019.

[v] Heather Williams call with James M. LaRossa (4/9/2004).

[vi] *Giglio v. United States*, 405 U.S. 150, 151 (1972).

[vii] United States' Opposition to Cert brief, p.2 (transcript references omitted).

[viii] Law Professor Lawrence S. Goldman, *Death of a Gladiator: James LaRossa Dies,* White Collar Crime Prof Blog (10/29/2014), https://lawprofessors.typepad.com/whitecollarcrime_blog/2014/10/james-jimmy-larossa-one-of-new-york-citys-top-criminal-defense-lawyers-died-recently-larossa-according-to-the-new-york.html .

[ix] *Giglio*, 405 U.S. at 154. (citations omitted and emphasis added).

[x] *Id.* at 154-155.

[xi] Jerry Capesi, *Gotta Gove the Don His Due of Gripe*, The New York Daily News (3/24/1992).

[xii] John Lombardi, *The Goodfather*, New York Metro News (8/17/1998); Dorit Kalev, *TVT Records Winds $132 Million Against Def Jam, Lyor Cohen* www.allhiphop.com (5/7/2003).