SUMMER 2017

Arresting developments

A Biannual Federal Criminal Defense Newsletter

In This Issue

Message from the Defender

Dear Colleagues

The number of cases prosecuted in our district over the course of the past three years has declined. As most of you are aware, this has reduced the number of assignments available for CJA panel attorneys. This trend is likely to change in the near future. There has been a lot of talk in recent months surrounding the proposed policy changes within the new administration and the direction the Department of Justice is heading in prosecuting federal criminal cases. Attorney General Sessions is taking a "tough on crime" approach. The recent directives focus on immigration enforcement and drug and firearm offenses. These offenses have historically made up the greatest percentage of offenses prosecuted federally.

Attorney General Sessions issued a memorandum on April 11, 2017 to all federal prosecutors directing them to prioritize immigration offenses. The memo states that each District shall consider prosecution of reentry, bringing in or harboring certain aliens, improper entry by aliens, aggravated identity theft, and assaulting or impeding officers. Our office and CJA panel attorneys, particularly in Plattsburgh, have

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handled a substantial number of cases involving reentry and improper entry of illegal immigrants. Many of the clients we represented in the past have been migrant farm workers or illegal border crossers with no criminal history. This "Renewed Commitment to Criminal Immigration Enforcement" could result in a surge in the number of cases prosecuted if law enforcement officials begin to target sanctuary cities, like Syracuse and Ithaca.

This new enforcement policy could have significant consequences for many undocumented citizens. For example, the new directive encourages prosecutors to charge undocumented immigrants with aggravated identity theft, which carries a mandatory two-year prison sentence. Many migrant workers have doctored social security numbers, exposing them to these more serious charges.

Sharon Ames, Co-Director for the recently created Region 2 Regional Immigration Assistance Center (RIAC2), lectured at our spring CLE in Syracuse. Ms. Ames provided some valuable insight on how to advise and represent our undocumented clients or those clients facing potential deportation if convicted of certain offenses. The RIAC2 is an available resource and can provide you with legal and technical advice. The materials Ms. Ames provided are posted on the FPDNYN website for your convenience.

There is also a lot of talk swirling around about a revival of the "war on drugs." Attorney General Sessions has not yet announced his plan or issued any directives to prosecutors, but there may very well be a reversal of the Obama administration's criminal justice initiatives and the pursuit of mandatory minimums. He did announce prosecutors should charge the "most serious readily provable offense," but also stated in a speech at a Sergeants Benevolent Association of New York City award presentation, "I have given our prosecutors discretion to avoid sentences that would result in an injustice." It is not clear whether we will go "back to the future," where the harshest penalties are reserved for high-level violent drug offenders or whether the government will increase prosecutions of the lower-level non-violent drug offenders who potentially face harsh mandatory minimum sentences.

Despite the change in policy with the new administration, there is still a glimmer of hope for bipartisan sentencing reform. Senators Mike Lee, Dick Durbin, and Chuck Grassley support the criminal justice reform bill and are still trying to push it through Congress. As for any proposed guideline amendments, Judge Prior, the Acting Chair of the Sentencing Commission, announced there were only two commissioners for three critical months of the amendment cycle, so there are no amendments to the guidelines manual this year.

If you have questions or require assistance please don't hesitate to reach out. Our office staff is available to assist you whenever you have a need.

- Lisa Peebles

Presentment Delay Leads to Suppression

Randi Juda Bianco

In *United States v. Charles Bell*, 5:16-CR-338, Judge David N. Hurd wrote a decision suppressing both the physical evidence and statements of a person charged with Felon in Possession of a Firearm (18 USC § 922(g)(1)) and Possession of a Firearm with an Obliterated Serial Number (18 USC § 922(k)). What makes this decision unique is that one of the

issues involved members of law enforcement using the delay of the initial appearance to extract an alleged confession in violation of Rule 5(a)(1)(A) of the Federal Rules of Criminal Procedure and the *McNabb-Mallory* line of cases.

Mr. Bell was originally charged in state court with the possession of the same firearm, but the gun was suppressed after a hearing in state court. Several months after the state charges were dismissed, the federal government obtained an indictment charging Mr. Bell with new federal charges based on the alleged possession of same firearm. Mr. Bell was arrested by New York State Parole officers on the federal warrant at approximately 10:30 p.m. At the time of Mr. Bell's arrest, he questioned law enforcement as to why he was being rearrested on the same charges that had already been dismissed in state court. There was some question about whether Mr. Bell had given law enforcement the name of his state court lawyer, but the case was not decided on this ground. After Mr. Bell's arrest on the federal warrant by New York State Parole, a federal agent booked him into the justice center. The agents involved in securing the warrant were notified of Mr. Bell's arrest that night and an arrangement was made to interview Mr. Bell before the initial appearance.

At 9:00 a.m. the next morning, United States Deputy Marshals transported Mr. Bell to the Federal Courthouse. The Court Clerk arranged for an initial appearance at 12:30 p.m. In setting a time for the initial appearance, the Clerk sent an email to the Marshal's Office inquiring whether Mr. Bell had his own attorney and if not, she would have someone from the Federal Defender's Office appear at the initial appearance at 12:30. Significantly, the clerk's email copied in two United States Deputy Marshals, four members of the FPD, and the AUSA assigned to prosecute. The Marshal's Office made no other calls to determine if a "backup magistrate" could handle the initial appearance before 12:30 and they did not respond to the clerk's question as to whether Mr. Bell already had counsel.

Prior to the scheduled initial appearance, Mr. Bell was moved to an interview room where the agents conducted a recorded interview of him. In the recording, the agents spoke to Mr. Bell for 15 minutes before *Mirandizing* him and advised him of the futility of the situation, the successful conviction rate by the federal government, and that "fancy attorneys won't make a difference" in this case. Mr. Bell was *Mirandized* and then allegedly confessed in writing.

In suppressing the statement, Judge Hurd found that the "the agents took advantage of the magistrate judge's scheduling delay to attempt to procure a confession." The Court further held that "the evidence in this case strongly suggests that the Government viewed this as its last chance for an easy 'win' before Bell could receive the benefit of advice from an attorney." Additionally, the Court was troubled by the circumstances surrounding Mr. Bell's *Miranda* waiver, stating "it was improper for [the agent] to state that an attorney would be unable to help Bell, and it was unacceptable to suggest that the 'eventual' appointment of an attorney to represent him was nothing more than some sort of pro forma legal requirement."

One important lesson to take from this decision is that if you are notified that you are going to be appointed to represent a client by the Court, and that there will be a delay between the notification and the initial appearance, you may want to take immediate steps to ensure that the client is informed that you will be representing him. You may want to advise your client not to speak with law enforcement, or anyone else, and invoke the right to counsel *prior to* the initial appearance.

Nothing to Gain:
United States v. Johnson and the Problem of Irrational Pleas

Melissa A. Tuohey

> "A remarkable feature of Johnson's guilty plea, which seems to have gone unnoticed or unmentioned at his plea hearing, is that Johnson evidently stood to gain nothing from it."
>
> *United States v. Johnson,* 850 F.3d 515, 523 (2d Cir. March 10, 2017).

Calvin Johnson was indicted on one count of participation in a drug-trafficking conspiracy and one count of possession of a firearm by a felon. Because he had two previous felony drug convictions and the government filed an information under 21 U.S.C. § 851, the only possible sentence was a mandatory life sentence. Nonetheless, the defendant pleaded guilty. At his change of plea hearing, the court directed the prosecutor to advise the defendant and the court "what the maximum or any minimum penalties would be." In the course of several pages of transcript, the prosecutor correctly stated once or twice that there was a mandatory minimum sentence of life. However, the prosecutor also discussed—at length—supervised release, a "possible maximum sentence" of ten years, and Guideline ranges of 262 to 327 months, 151 to 188 months, 108 to 135 months, and 188 to 235 months. The court discussed its ability to impose non-Guidelines sentences. Without clarifying that the mandatory minimum sentence was life or inquiring whether the sentence made sense to the defendant, the judge asked the defendant if he still wanted to plead guilty. The defendant replied that he did. The court accepted his plea.

The Second Circuit was astonished that Calvin Johnson would come to federal court and voluntarily, knowingly, and intelligently surrender to a statutory mandatory life sentence pursuant to a "naked guilty plea." *Id.,* at 523-24. So was Mr. Johnson, which caused him to move to vacate his guilty plea once he learned he would spend the rest of his life in prison for conspiring to possess and distribute controlled substances. The Second Circuit did not view Mr. Johnson's after-the-fact protestations as buyer's remorse, but instead found them to be sincere given the valuable rights he relinquished in exchange for a mandatory life sentence. *Id.* To be sure, had Johnson exercised his right to trial, it may not have turned out much better than a guilty plea, "but it is no worse, and it offers at very least a bargaining chip." *Id.,* at 524.

The Second Circuit also sided with Mr. Johnson because during his guilty plea hearing, the prosecutor gave a "long and technical explanation" of the federal sentencing guidelines and suggested numerous sentencing possibilities, most of which were below a life sentence, when in reality, Mr. Johnson was facing one, and only one, strict consequence—life imprisonment. The confusion was compounded by the district court's own discussion of the sentencing guidelines and the discretionary nature of those guidelines. *Id.,* at 522. As the Second Circuit noted, a judge or lawyer, trained in federal sentencing law, would certainly be able to understand the true consequences of Mr. Johnson's guilty plea, but for Mr. Johnson, the prosecutor's recitation could only lead Mr. Johnson to falsely believe he would be released from prison before the end of his life. *Id.,* at 523. As such, the plea appeared on its face irrational, so the Court vacated the plea. *Id.,* at 524.

Years prior to *Johnson,* the Supreme Court addressed a defense attorney's failure to inform

a defendant of the collateral consequences of a guilty plea. *See Padilla v. Kentucky,* 559 U.S. 356 (2010). Defense counsel's performance was deemed deficient under the Sixth Amendment, as defined by *Strickland v. Washington,* 466 U.S. 668 (1984), because counsel failed to advise Padilla of additional consequences that could result from his guilty plea. *Id.,* at 368-69. Specifically, defense counsel failed to inform Padilla that his guilty plea to a criminal offense would subject him to automatic deportation under an immigration statute. *Id.* Although the defense attorney was not an "immigration attorney" with knowledge of immigration law, the immigration statute was accessible and the statute was "truly clear" that deportation was a certain consequence of the guilty plea. *Id.*

So what happens if you are representing a client only in state court and you know the client may face future federal charges for the same conduct once the state case concludes? For example, what if you are able to obtain an advantageous plea bargain in state court, with a reduced sentence, but your client's admission of guilt leads to harsher consequences, possibly a life sentence, in federal court once you close your file? If so, have you fully informed the client of these consequences?

Padilla tells us that counsel cannot "remain silent on matters of great importance" because silence "would be fundamentally at odds with the critical obligation of counsel to advise the client of 'the advantages and disadvantages of a plea agreement.'" *Padilla,* 559 U.S. at 370. *Johnson* tells us that when a client is facing a life sentence, the guilty plea hearing must be unambiguous as to that specific consequence, otherwise the plea will be deemed irrational on its face. *Johnson,* 850 F.3d at 518, 524. Therefore, if a client pleads guilty in state court, for example, and is correctly advised that his or her penalty will be 20 years for the state offense, the client must also be advised, if circumstances dictate, that a guilty plea could cause even greater consequences in federal court.

Practice tip: If you find yourself in this situation, please be aware of the consequences that can flow from the different state proceedings, including debriefings, plea negotiations, plea colloquies, trials, and sentencings. When in doubt, please feel free to call our office.

Second Circuit Update

Courtenay McKeon

Below is a summary of the Second Circuit's published decisions in favor of the defense decided since the Fall 2016 Newsletter through May of 2017.

PROFFER AGREEMENTS

United States v. Rosemond, 841 F.3d 556 (2d Cir. 2016) (Chin, Cabranes, Kearse, JJ.) (appeal from SDNY): In what is surely one of the only cases in history to discuss the mediation skills of Sean "Puff Daddy/Puffy/P.Diddy/Diddy" Combs, disputes between two rival record labels in New York City led to murder-for-hire. The defendant, who was the head of one of the companies, stated during a proffer session with the government that he knew that a member of the rival company would die as a result of the actions of the defendant and his associates. During two ensuing trials, the district court ruled that any defense argument that the defendant intended merely that the rival be *shot* rather than *killed* would open the door to the statement made during the proffer session. After a lengthy discussion of the nature of proffer sessions and agreements, which will be useful to any attorney participating in a proffer session, the Second Circuit held that the district court erred and remanded for a new trial.

SENTENCING

United States v. Algahaim, 842 F.3d 796 (2d Cir. 2016) (Newman, Cabranes, Winter, JJ.) (appeal from NDNY): Two defendants were charged

with and found guilty of misusing Supplemental Nutrition Assistance Program benefits. The Second Circuit appears to have published this opinion solely to express dissatisfaction with Sentencing Guideline 2B1.1, which applies in fraud cases. The offense of which the defendants were convicted, the court noted, had a base offense level of only six. But after applying the enhancement called for by the loss table, the level increased to sixteen for one defendant and eighteen for the other. The Commission's approach, the court said, was one that it "was entitled to take, but its unusualness is a circumstance that a sentencing court is entitled to consider . . . . Where the Commission has assigned a rather low base offense level to a crime and then increased it significantly by a loss enhancement, that combination of circumstances entitles a sentencing judge to consider a non-Guidelines sentence." The court declined to "rule that the sentences were imposed in error. We conclude only that a remand is appropriate to permit the sentencing judge to consider whether the significant effect of the loss enhancement, in relation to the low base offense level, should result in a non-Guidelines sentence."

United States v. Huggins, 844 F.3d 118 (2d Cir. 2016) (Restani, Cabranes, Winter, JJ.) (appeal from SDNY): The Second Circuit addressed two Sentencing Guidelines enhancements applicable in wire-fraud cases: (1) the two-level enhancement under Guideline § 2B1.1(b)(16)(A) for deriving proceeds "from one or more financial institutions as a result of the offense;" and (2) the two-level enhancement under Guideline § 3B1.3 for abusing "a position of public or private trust." Regarding the first, the court held that the enhancement applies only where the financial institution is the victim of the crime, not where the defendant merely withdraws money from his own account at the bank (into which he has deposited the gains from his fraud). Regarding the second, the court held that simply convincing people to invest in a fraudulent scheme is insufficient to place one in a "position of private trust." Rather, a fiduciary or quasi-fiduciary relationship is required.

United States v. Jenkins, 854 F.3d 181 (2d Cir. 2017) (Parker, Jacobs, JJ.) (concurrence and dissent by Kearse, J.) (appeal from NDNY): After a jury trial, the defendant was found guilty of one count of possession of child pornography and one count of transportation of child pornography for bringing his personal collection of child pornography across the U.S.-Canada border for personal viewing on a family vacation. The defendant was a first-time offender who did not produce or distribute child pornography and did not contact or attempt to contact a minor. The defendant, however, tended to behave in "intemperate, out-of-control" ways in the courtroom. The statutory maximum imprisonment for the conviction charges was 240 months. The district court sentenced the defendant to 225 months, followed by 25 years of supervised release under stringent conditions. The district court explicitly based its sentence on the defendant's "total lack of respect for the law." The Second Circuit vacated and remanded for resentencing. The Second Circuit held that (1) despite being within the Guidelines, the sentence was "shockingly high" and therefore substantively unreasonable; (2) the size of the defendant's collection of child pornography, his refusal to accept responsibility, his attempts to blame others, and his disrespect for the law could not reasonably justify regarding the defendant as the worst of the worst; (3) an unwarranted sentencing disparity resulting from sentencing the defendant to 128 months above the longest sentence in the relevant category and 173 months above the mean among possessors with four all-but-inherent enhancements; and (4) the conditions of supervised release, including broad restrictions on the defendant's movements, his ability to obtain gainful employment, and his use of credit cards were excessively severe. Judge Kearse concurred regarding the conditions of supervised release but dissented

as to the length of the sentence.

United States v. Natal, 849 F.3d 530 (2d Cir. 2017) (per curiam) (Katzmann, Stein, Winter, JJ.) (appeal from D. Conn): The defendant was convicted of three counts of being an accessory after the fact to an arson. There were three counts because three people died in the fire. At sentencing, over the accessory's objection, the district court declined to "group" the counts under Guideline §3D1.2 and instead applied the multiple count analysis in Guideline § 3D1.4. This resulted in a Guideline sentence of 168-210 months rather than 121-151 months. The district court sentenced the accessory to 174 months' imprisonment. The Second Circuit remanded to the district court for resentencing, holding that the accessory counts must be grouped. Grouping is appropriate, the court explained, because accessory liability is different from the liability of the principal actor. It is different because an accessory's victim is "the administration of justice" rather than the individuals harmed by the principal.

United States v. Powers, 842 F.3d 177 (2d Cir. 2016) (per curiam) (Cabranes, Parker, Pooler, JJ.) (concurring opinion by Pooler, J.) (appeal from NDNY): In this case, the Second Circuit addressed the appropriate remedy when the district court commits a "conviction error." Earlier precedent was ambiguous as to whether the appropriate remedy was to remand for the district court simply to enter an amended judgment or whether a new sentencing hearing was required. In this short opinion, the Second Circuit held that a new sentencing hearing is required. The "conviction error" occurred when the district court accepted the defendant's guilty plea to producing an image of "child pornography" that was not, in fact, child pornography because it depicted only the chest of a prepubescent child rather than the child's genital region. Judge Pooler's concurrence stated: "While we express no view on the substantive reasonableness of [the] sentence, I write separately in order to call the district court's attention to the need to, as always, give appropriate weight to all of the Section 3553(a) factors on *de novo* resentencing. *See United States v. Dorvee*, 616 F.3d 174, 183–84 (2d Cir. 2010) (suggesting the district court gave too much weight to the 'need to protect the public' factor in sentencing an individual for distribution of child pornography where the court noted that an individual who repeatedly had sex with a child would have faced a far more lenient sentence)."

Supreme Court Update

James P. Egan

Below is a summary of the some of the more important Supreme Court criminal cases decided during the October 2016 Term as well as those pending argument during the October 2017 term. This does not include capital and habeas cases.

DECIDED CASES

Evidence

In *Turner v. United States*, 137 S.Ct. 1885 (June 22, 2017), the Supreme Court held that *Brady* evidence, consisting, inter alia, of the identities of two alternative suspects as well as impeachment material of a purported eyewitness to the murder, withheld from the seven defendants did not require a new trial because the evidence was not deemed material. The Court held that the materiality examination requires it to "examine the trial record, 'evaluat[e]' the withheld evidence 'in the context of the entire record,' and determine[e] in light of that examination whether 'there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different."

Justice Kagan, joined by Justice Ginsburg, dissented. According to Justice Kagan, "[w]ith the undisclosed evidence, the whole tenor of the trial would have changed. Rather than relying on a 'not me, maybe them' defense . . . all the defendants would have relentlessly impeached the Government's (thoroughly impeachable) witnesses and offered the jurors a way to view the crime in a different light. In my view, that could well have flipped one or more jurors—which is all *Brady* requires."

Sentencing

In *Beckles v. United States*, 137 S.Ct. 886 (Mar. 6, 2017), perhaps the most consequential decision of the term, the Court held that any vagueness in the career offender residual clause has no constitutional bearing on individuals sentenced under the advisory guidelines. According to the Court, "the advisory Guidelines do not fix the permissible range of sentences, . . . they merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range. Accordingly, the Guidelines are not subject to a vagueness challenge under the Due Process Clause." *Beckles* effectively denied habeas relief to potentially thousands of inmates whose sentences were impacted by the residual clause of the advisory career offender guidelines. However, *Beckles* did not decide whether defendants sentenced under the mandatory guidelines are eligible for relief, and its reasoning strongly suggests that mandatory sentences are subject to vagueness concerns. Moreover, defendants sentenced under the pre-2016 advisory guidelines may still argue that a district court's application of the hopelessly vague residual clause results in procedural unreasonableness. *See United States v. Lee*, 821 F.3d 1124, 1136 (9th Cir. 2016) (Ikuta, J., dissenting) ("If *Johnson* so undermines the residual clause that it cannot be accurately interpreted, a district court would commit a procedural error and abuse its discretion if it used the Guidelines residual clause to calculate the Guidelines range.").

In *Dean v. United States*, 137 S.Ct. 368 (Apr. 3, 2017), the Supreme Court held that a sentencing court may consider the mandatory consecutive sentence required by 18 U.S.C. § 924(c) in determining the sentence for the underlying predicate offense. In so holding, the Supreme Court abrogated the Second Circuit's contrary decision in *United States v. Chavez*, 549 F.3d 119, 133-35 (2d Cir. 2008).

In *Esquivel-Quintana v. Sessions*, 137 S.Ct. 1562 (May 30, 2017), the Court reaffirmed the categorical approach and held that for an offense to constitute "sexual abuse of a minor" under 8 U.S.C. § 1101(a)(43)(A), the minor has to be under the age of consent, which is 16 years old.

Appeals

In *Manrique v. United States*, 137 S.Ct. 1266 (Apr. 19, 2017), the Court held that when a defendant files a notice of appeal following a sentencing judgment and the district court subsequently orders restitution in a separate judgment or order, the defendant must file a second notice of appeal to challenge the restitution order.

PENDING CASES

Historical Cell Phone Data

In *Carpenter v. United States*, the Supreme Court will decide "[w]hether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 127 days is permitted by the Fourth Amendment."

Vagueness of 18 U.S.C. § 16(b)

In *Sessions v. Dimaya*, the Supreme Court is expected to rule on the residual clause of 18 U.S.C. § 16(b), which is linked to several criminal statutes, including, for example, unlawful possession of body armor, in violation of 18 U.S.C. § 931. It is hoped that the Court's decision will also resolve a circuit split concerning the issue of whether the residual clause of 18 U.S.C. § 924(c) is also void for vagueness.

Noticing the Notice of Appeal

James P. Egan

Until very recently, our Office had been using a version of Form A to file a Notice of Appeal. Criminal Notice of Appeal - Form A is available on the Second Circuit's website (http://www.ca2.uscourts.gov/clerk/case_filing/forms/pdf/Form%20A%20revised%203-11.pdf) and is reproduced in part below:

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

_____ District of _____

Caption:

_____ v.

_____

Docket No.: _____

_____
(District Court Judge)

Notice is hereby given that _____ appeals to the United States Court of Appeals for the Second Circuit from the judgment ____, other | _____
(specify)
entered in this action on _____.
(date)

This appeal concerns: Conviction only |____ Sentence only |____| Conviction & Sentence |____ Other |____

Defendant found guilty by plea | | trial | | N/A | .

Offense occurred after November 1, 1987? Yes |____ No |____ N/A |____

Date of sentence: _____ N/A |____|

Bail/Jail Disposition: Committed |____ Not committed | N/A |

In one of our Office's recent appellate cases challenging the defendant's conviction and sentence, the Second Circuit noticed that we inadvertently indicated on the Notice of Appeal that the appeal concerned only the defendant's sentence. Given that indication, the Circuit questioned whether it had jurisdiction to consider the defendant's challenge to the conviction. While the Court has not yet answered that question, our Office has begun using an modified version of Form 1, which does not contain the question about what the appeal concerns. No rule requires the use of any specific form, much less that a defendant or defense counsel notify the court that the appeal concerns anything beyond the judgment or order. So, if you use Form A, you may consider not answering the question about what the appeal concerns, or, if you are not yet sure, mark both conviction and sentence, unless, of course, the appeal concerns an order, *e.g.*, bail, modification or supervision, denial of sentencing reduction, *etc.* However, because no rule requires the use of Form A, and no other Circuit appears to require the use of a similar notice of appeal form, you may consider just using Form 1, available at http://www.ca2.uscourts.gov/clerk/case_filing/forms/pdf/frapf1.pdf). Whichever form you choose, make sure it complies with Rules 3 and 4 of the Federal Rules of Appellate Procedure. Also, make sure you file a second notice of appeal to challenge a subsequent restitution order, if applicable.

Pro Bono Service

The Board of Judges wants to thank and congratulate the members of the Bar for their outstanding efforts on behalf of litigants who require free legal assistance and for your professional and selfless service to the Court.

We have had an increase in trials of cases that required pro bono counsel which has made a significant impact in decreasing the backlog on the Court's docket.

The Court, with the support of the FCBA, has endeavored to say "thank you" and recognize the attorneys' service with award ceremonies. We hope you have the opportunity to participate and be recognized.

The Court is tremendously grateful for your ongoing service.

Public Outreach

In furtherance of the Second Circuit programs and continuing the fine traditions of the Northern District of New York, the Court continues to sponsor immigration and naturalization ceremonies both in our courtrooms and in various venues throughout the Northern District. We encourage your participation in these very meaningful and often moving ceremonies.

Education

The Court continues to host students of all educational levels in many different programs throughout the year. We strongly encourage members of the Bar to look for opportunities to participate in these worthwhile programs, many of which are sponsored and/or supported by the FCBA.

Practice Tips & Reminders

Two offerings on important topics, one from an active District Court Judge and one from a Magistrate Judge:

As to Mandatory Minimums

The Court would like to remind counsel to pay particular attention to the impact of any applicable statutory mandatory minimums. It is essential that defendants who are facing a mandatory minimum sentence understand the impact of the mandatory minimum. Defendants' understanding of the impact of a statutory mandatory minimum, and whether the Court will have the discretion to impose a sentence below the mandatory minimum, is essential to a knowing and voluntary guilty plea. To the extent that the Court is bound to impose a mandatory minimum sentence, sentencing advocacy should not ignore the mandatory minimum. We have seen instances in which counsel's failure to address a mandatory minimum at sentencing led the Second Circuit to question whether counsel understood the impact of the mandatory minimum. *See United States v. Johnson*, 850 F.3d 515, 518 (2d Cir. 2017). Failing to address a mandatory minimum at sentencing has also led to ineffective assistance of counsel litigation by defendants who have cited counsel's failure to address the mandatory minimum as evidence that counsel failed to inform them of the mandatory minimum. *See*, *United States v. Rodriguez*, 725 F.3d 271, 278 (2d Cir. 2013). Obviously, ensuring defendants understand the impact of any applicable mandatory minimum and addressing a mandatory minimum appropriately at sentencing will help to avoid this type of litigation.

As to CJA Counsel Assignments

It is helpful to the Court if telephone messages or email from the Court, especially involving the assignment of CJA counsel, are promptly returned even if you are unable to take the assignment or the time to respond has passed. The Court makes every effort to ensure that it has proper contact information for all CJA counsel.

As you know, the Court has little control over where pretrial detainees are housed. Therefore, if you accept assignment to represent a defendant in another part of the District, you may be required to travel to rural county jails to meet with your client.

Conclusion

On behalf of the Board of Judges, thank you for your service to the Court along with your professionalism and collegiality.

CLE Training Opportunities

Our Office is currently planning our Fall CLE seminar in Albany. A brochure with the schedule will be sent to CJA panel members soon.

Meanwhile, the Defender Service Office Training Division is holding a Multi-Track Federal Criminal Defense Seminar in Philadelphia, Pennsylvania from August 24-26, 2017.

The Multi-Track Federal Criminal Defense Seminar offers in-depth instruction in a variety of substantive areas of federal criminal defense practice. The program consists of related sessions, or tracks, which are grouped together allowing attorneys to select areas of practice which will best meet their training needs. There are tracks designed for attorneys at all levels of experience and the design of the program allows attorneys to attend sessions from different tracks. In addition to the tracks, the program includes additional substantive plenary lectures which cover more general areas of federal criminal practice. The five tracks (breakout sessions) are: (1) Immigration; (2) Motion Practice & Trial Skills; (3) Forensics; (4) Mitigation & Mental Health; and (5) Sentencing Strategies & Practices. Enrollment is limited to approximately 250 attendees and selection will be on a first come first serve basis.

Registration information and an agenda is available at https://www.fd.org/training-events.

Article Submissions & Letters to the Editor

James P. Egan, *Editor-in-Chief*

If you would like to have an article or letter featured in our next edition of Arresting Developments, please write us at: Office of the Federal Public Defender, 4 Clinton Square, 3rd Floor, Syracuse, NY 13202, or send an email to james_egan@fd.org.