

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

2010

Appellate Practice Seminar

SATURDAY, OCTOBER 30, 2010

**San Francisco State University
Downtown Campus at the
Westfield San Francisco Centre
835 Market Street – 6th Floor**

SEMINAR COMMITTEE CHAIR

Jeffrey Thoma

SEMINAR COORDINATORS

Robert Boyce and Jonathan Soglin

Appellate Practice Seminar Approved for 6.5 hours of MCLE Credits

2010 APPELLATE PRACTICE SEMINAR SCHEDULE AND TOPICS

SATURDAY, OCTOBER 30, 2010

****SFSU–Downtown Campus • 835 Market Street • San Francisco****

7:30 – 8:30 am

REGISTRATION
Coffee & Muffins

8:30 – 9:30 am

Recent Case Law Developments
AL MENASTER

9:30 – 10:30 am

Overcoming the Darkest, Hidden & Most Mysterious Challenges of Waiver
CHUCK SEVILLA & GEORGE SCHRAER

10:30 – 10:45 am

BREAK

10:45 – 11:30 am

Effective Petitions for Review in the California Supreme Court
BEN VANCE

11:30 – 12:15 pm

Homicide Law in the New Millennium
BRAD O'CONNELL

12:15 – 1:45 pm

LUNCH ON YOUR OWN

1:45 – 2:45 pm

Restitution & Other Sentencing Issues
CYNTHIA SORMAN

2:45 – 3:00 pm

BREAK

3:00 – 4:00 pm

BREAKOUT SESSIONS
Habeas Challenges to Lifer Parole Hearings
KEITH WATTLEY

Immigration Issues on Appeal
NORTON TOOBY

4:00 – 5:00 pm

Habeas Corpus Recent Developments
CLIFF GARDNER & TIM FOLEY

6.5 MCLE HOURS

SPEAKERS

James Bradley O'Connell



J. Bradley O'Connell is the Assistant Director of the First District Appellate Project, which he joined in 1986, as one of its original staff attorneys. Brad has litigated appeals and writ proceedings on a wide range of issues, with emphasis on homicide issues, jury instructions, sentencing enhancements, and habeas corpus practice. He has argued before both the U.S. and California Supreme Courts. His leading cases have included *People v. Randle* (2005) 35 Cal.4th 987 (where the California Supreme Court extended the Flannel imperfect self-defense doctrine to imperfect defense of others), *Hedgpeth v. Pulido* (2008) 129 S.Ct. 530 (on the standards for federal habeas review of erroneous theories of liability), and *People v. Duvall* (1994) 9 Cal.4th 464 (on state habeas standards for post-OSC pleadings and evidentiary hearings). Brad has also previously taught "Post-Conviction Remedies" as an adjunct professor at UC-Hastings School of Law.

Timothy Foley

Timothy Foley is an Assistant Federal Defender with the Capital Habeas Unit located in Sacramento. For more than twenty-five years, he has represented capital defendants at all stages of litigation, from trial through clemency, in state and federal courts. He has taught at Boalt Hall School of Law, University of California at Davis School of Law, University of San Francisco School of Law, and Hastings School of Law. His articles on capital defense and habeas corpus law have appeared in numerous publications, including *The Champion*, the *California Criminal Defense Practice Reporter*, *CACJ FORUM*, and the *Loyola Law Review*.

Cliff Gardner



Cliff Gardner has had a post-conviction practice for more than 25 years, specializing in criminal appellate and habeas corpus representation in state and federal court. He has argued cases at all levels of the state and federal court system, including 15 cases in the California Supreme Court and three cases in the United States Supreme Court. He has successfully represented death row clients in Idaho, Montana, and California, and lectured and written about appellate and habeas representation generally as well as the Antiterrorism and Effective Death Penalty Act passed by Congress in 1996. In 2000, he co-authored a statewide initiative — the "Substance Abuse and Crime Prevention Act of 2000" (more commonly known as Proposition 36) — which was enacted by 61% of the electorate on November 7, 2000. In 2005, he wrote Santa Cruz City Ordinance No. 2005-28 creating a compassionate use program to ensure that critically ill citizens of Santa Cruz County had access to medical marijuana.

Albert J. Menaster



Albert Menaster has served as a Deputy Public Defender in Los Angeles County since 1973. He writes books, articles and lectures frequently on a wide range of defense topics, including computer technology for defense attorneys, juvenile court practice, Three Strikes, Proposition 36, Courtroom Evidence and Motion Practice. He also writes the Technology Column, book reviews and other substantive legal articles for CACJ's *FORUM* magazine; and he regularly provides updates on current legal topics for CACJ's Flash. In May of last year he was named the Los Angeles County Bar Associations' "Defender of the Year."

Chuck M. Sevilla



CACJ past President Chuck Sevilla will speak with co-presented George Schraer overcoming the frequent challenges of waiver/forfeiture on appeal. A detailed syllabus will be provided covering the topic. Chuck is a former Chief Deputy State Public Defender, Chief Trial Attorney for Federal Defenders of San Diego, and has been in private practice in San Diego since 1983. His publications include two novels (*Wilkes: His Life & Crimes*, *Wilkes on Trial*) and many articles on a variety of topics including the cruel conditions in state prisons, the exclusionary rule, police perjury, ineffective assistance of counsel claims. Chuck has been listed in all editions of the Best Lawyers in America and has argued in both state and federal appellate courts including the United States Supreme Court.

George Schraer

George Schraer received a BA degree in History from U.C. Berkeley in 1968 and his JD degree from UCLA in 1971. His first appointed appeal, *People v. Mayberry* (1975) 15 Cal.3d 143, resulted in a unanimous favorable decision establishing the defense of mistake of fact as to consent. He was counsel of record in more than 600 criminal appeals, including 13 in the California Supreme Court, and has been the author or co-author of ten amicus briefs in the California Supreme Court and three in the United States Supreme Court. George was counsel of record in more than 50 published Court of Appeal cases, like most criminal appellate attorneys, he works like a galley slave, wears t-shirts and levis while working in a home office, and lives a simple life on a subsistence basis.

Cynthia M. Sorman

Ms. Sorman is a Staff Attorney and Claims Administrator at the Central California Appellate Program in Sacramento, which is a nonprofit organization serving the Third and Fifth District Courts of Appeal, which administers indigent cases and is dedicated to improving the quality of appellate representation in criminal, juvenile, dependency and mental health cases. As part of her duties at CCAP, Ms. Sorman supervises assisted attorneys in appointed criminal appeals.

continued....

SPEAKERS CONTINUED

She also worked as a staff attorney for many years at Appellate Defenders, Inc. in San Diego, where she mentored new staff and appellate panel attorneys regarding criminal appeals. Cynthia has spent the majority of her legal career representing indigent criminal appellants, including in the California Supreme Court.

Norton Tooby



Norton Tooby is in private practice in Oakland; he specializes in criminal defense of immigrants, immigration consequences of criminal convictions, and post-conviction relief for immigrants. He received his B.A. from Harvard, in 1967, and his J.D. from Stanford Law School, in 1970, and served as President, *Stanford Law Review*, 1969–1970. He has written practice manuals such as *Tooby's Guide to Criminal Immigration Law* (2008) (free download available online); *California Post-Conviction Relief for Immigrants* (2004); *Tooby's Crimes of Moral Turpitude* (2008); *Aggravated Felonies* (2006), and *Criminal Defense of Immigrants* (4th ed. 2007), which was cited as an "authoritative treatise" in the recent Supreme Court decision *Padilla v. Kentucky*, 130 S.Ct. 1473 (March 31, 2010). He also organizes annual CLE seminars in California and nationwide, and maintains www.NortonTooby.com, a criminal immigration research site.

Ben Vance



After graduating from the University of San Francisco School of Law in 1996, Ben Vance joined the Santa Cruz public defender contract firm Biggam, Christensen & Minsloff. While there, he represented clients in misdemeanor and felony

trials, along with writs and appeals. He later became head of the office's research and writing unit. Following a brief period of time working on complex federal appeals, Vance joined the Criminal Central Staff of the California Supreme Court in 2001. At the court, he handles emergency stay requests in criminal cases statewide, along with various habeas corpus petitions and other criminal matters.

Keith Wattlely



Keith Wattlely earned a Bachelor's Degree in Psychology from Indiana University, after which he obtained a law degree from Santa Clara University, in the Bay Area. He began advocating for the rights of prisoners and parolees as a law student intern at the Prison Law Office, in 1998, and has been advocating for the rights of prisoners and parolees for approximately twelve years. As an attorney, Keith has represented thousands of prisoners in cases involving mental health care; gang validation; religious freedom; standards for licensing California's prison infirmaries; access to medical care; excessive use of force by correctional officers; parole proceedings for prisoners serving life terms; visiting and parole revocation proceedings.

Keith founded UnCommon Law in 2006 to focus on helping prisoners challenge unlawful prison conditions, including the parole consideration process for lifers. Along with the other attorneys in his office, he represents prisoners in parole hearings throughout the state. He also represents prisoners and parolees in administrative hearings and in both state and federal courts.



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2010 APPELLATE SEMINAR REGISTRATION FORM

REGISTER ONLINE AT WWW.CACJ.ORG

STEP 1

Preregistration Deadline: Friday, October 22, 2010 at 5:00 p.m.
Preregistration not accepted after October 22, 2010 at 5:00 p.m.
Payment must be included with form
Late registration is subject to a \$20 late fee

RETURN FORM TO:
California Attorneys for Criminal Justice
 1540 River Park Drive, Suite 224A
 Sacramento, CA 95815
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NAME »	DATE ADMITTED TO BAR »		
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STEP 2

REGISTRATION FEES: *Registration includes syllabus CD. To preorder a hard copy syllabus see Step 5.*
To preregister for these seminars, CACJ must receive your preregistration form and payment by Friday, October 22, 2010, at 5:00 p.m. Postmarks after that date will not be accepted. Late registration includes a \$20 fee.

	Prepaid	Late Register		Prepaid	Late Register
CACJ Attorney Member (5+ yrs of Practice)	\$145 ⁰⁰	\$165 ⁰⁰	Investigator/Other Non-Member	\$145 ⁰⁰	\$155 ⁰⁰
CACJ Attorney Member (0-5 yrs of Practice)	\$43 ⁵⁰	\$49 ⁵⁰	CACJ Law Student	\$6 ⁷⁵	\$9 ⁷⁵
Attorney Non-Member	\$185 ⁰⁰	\$205 ⁰⁰	Student Non-Member	\$65 ⁰⁰	\$85 ⁰⁰
CACJ Investigator/Other	\$115 ⁰⁰	\$135 ⁰⁰			

STEP 3

MEMBERSHIP DUES: *New Membership Rates for Law Students and Attorneys in First 5 Years of Practice Includes 1 Free CACJ Seminar. *** Join Today and Pay the Member Rate for Seminar Tuition.*

Life Member*†	\$5000	Out-of-State Attorney	\$100
Patron*†	\$600	Associate Member	\$70
Sustaining Member	\$300	Friend of CACJ (not engaged in legal profession)	\$40
Attorney in practice over 5 years	\$175	Law Student**	\$10
Public Defender in practice over 5 years and Law Professor..	\$120	Attorney in Practice up to 2 Years**	\$35
Attorney over 5 years and in Patron's or Life Member's firm...	\$120	Attorney in Practice 2+ to 5 Years**	\$70

* Life Members and Patrons may attend two one-day seminars each year at no charge. † Call CACJ for payment options
 ** Law Students and Attorneys in practice 0-5 years receive 1 free CACJ Seminar.

By adding a \$50 donation to the above dues, you will support the California Attorneys for Criminal Justice Political Action Committee, which supports our position on issues and candidates for state elective offices who are committed to the protection of individual rights and the improvement of the criminal justice system. Dues and PAC contributions are not deductible as charitable contributions for Federal Income Tax purposes.

STEP 4

CONFIDENTIALITY PLEDGE : This pledge MUST be read and signed before CACJ is able to process your registration!

I hereby acknowledge that materials and information provided in this packet, at the seminar, and syllabus materials, are confidential information and may not be distributed or disclosed except to other defense practitioners. This information reflects thoughts, opinions, impressions and strategies with regard to previous and ongoing cases and, as such, is protected under the attorney-client privilege and work product doctrine. The materials provided at the seminar are licensed to participants for use in defense of criminal cases only, and any other use or distribution is a violation of copyright laws and the attorney's ethical obligation. By signing this pledge, I agree to abide by this understanding and to keep all information privileged. My signature also indicates that I am involved exclusively in the defense of persons accused in criminal cases.

Signature: _____ Date: _____

STEP 5

PAYMENT:

Registration Fee	\$ _____
Membership Dues (if signing up today)	\$ _____
Hard Copy Syllabus – \$18.00	\$ _____
TOTAL	\$ _____

There is a \$35 fee for check returned for insufficient funds or credit cards declined.

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FREE Seminar Tuition "Check here to use your Free Seminar"

***Free seminar limited to DUI, Appellate and Annual Fall Criminal Defense Seminars and the seminar CD only and does not include food/beverage at event.

California Attorneys for Criminal Justice

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RETURN SERVICE REQUESTED



**Don't Miss These
Upcoming CACJ
Seminars ...**

**ANNUAL FALL CRIMINAL
DEFENSE SEMINAR**

December 10th & 11th, 2010
Hotel Nikko
San Francisco

**CAPITAL CASE DEFENSE
SEMINAR**

February 18th-21st, 2011
Marriott & Portola Hotels
Monterey

**2011 CACJ & NACDL'S
4TH ANNUAL
FORENSIC SCIENCE &
TECHNOLOGY SEMINAR**

March 24th - 26th, 2011
Cosmopolitan Hotel
Las Vegas

MCLE AND SPECIALIZATION CREDITS: CACJ certifies this activity is approved for MCLE credit by the State Bar of California in the amount of 6.5 hours. This seminar is also approved for Certification and/or Recertification as a Criminal Law Specialist and Appellate Law Specialist by the California Board of Legal Specialization in the amount of 6.5 hours, of which 6.5 hours applies to Appellate Law Legal Specialization, and 2.75 hours applies to Substantive Criminal Law and Procedure, and 3.75 hours applies to Writs, Appeals and Ancillary Proceedings and 1.0 hours applies to Immigration and Nationality Law.

ACCOMMODATIONS: Guest rooms have been reserved at the **Powell Hotel, 28 Cyril Magnin Street, San Francisco, for October 29th–October 30th** at \$125/single/double occupancy/night; **Deadline is: September 29th, 2010.** For reservations call: (800)368-0700 or (415)398-3200. For additional hotel information go to: www.thepowellhotel.com

GROUP DISCOUNTS: Groups of Five or more from the same organization who pre-register AS A GROUP by **Friday, October 10th, 2010, at 5:00 pm** are eligible for a 15% discount. Discounted tuition for Attorney Members in their first 5 years of practice is \$37.00; Attorney Members in Practice over 5 years is \$125.25; and \$157.25 for Non-Member Attorneys. The group discount does not apply to student registrants — as their registration has already been dramatically reduced.

SFSU Downtown Campus is located at the Westfield San Francisco Centre; with many restaurants and shopping opportunities; for more information go to: <http://westfield.com/sanfrancisco/index.html>.

LOCAL TRANSPORTATION AND PARKING: The Powell Street BART/MUNI Metro Station is below the Westfield San Francisco Centre at Powell and Market Streets.

The SFSU website also has information about convenient parking and local transportation and a map of the area with nearby hotels and shopping.

Parking, Bart & Bus Info: <http://www.sfsu.edu/~downtown/rental/parking.htm>
Early Bird discounted parking at the Mason-O'Farrell Parking Garage, 325 Mason St.; \$15 before 10:00 a.m., depart by 7:00 p.m.

The Fifth & Mission/Yerba Buena Garage is \$3/hour for the first 7 hours and then \$25 for 7–12 hours, and is across the street from the Westfield Centre; it allows drivers to avoid crossing Market Street. <http://www.fifthandmission.com/prices.htm>

Map of Area & Nearby Hotels: <http://www.sfsu.edu/~downtown/rental/nearbyhotels.htm>