



CACJ Appellate Practice Seminar

Join us in beautiful San Francisco on September 20, 2014

At the San Francisco Bar Association for CACJ's Appellate Practice Seminar

301 Battery Street San Francisco, CA



TOPICS INCLUDE:

The year in Review, Novel Issues for the Non-Fiction Brief Writers, Setting up Your Case for Federal Court: Recent Developments in Habeas Law, Batson/Wheeler, Probation Conditions & Review of Homicide Law

SPEAKERS INCLUDE:

Al Menaster, Chuck Sevilla, George Schraer, Timothy J. Foley, Mark Drozdowski, Nisha Shah, Elisabeth Semel, Janice Bellucci, Scott Sugarman & Brad O'Connell

The Appellate Practice Seminar qualifies for 7.25 Hours of MCLE

CACJ records all seminar attendance and related MCLE as required by the California State Bar; this information can be accessed by CACJ Members on the CACJ website or by contacting the CACJ Office.



1555 River Park Drive, Suite 105
Sacramento, CA 95815
Phone: (916) 643-1800
Fax: (916) 643-1836

Visit cacj.org/events/CLE-seminars to register.
Call CACJ at (916) 643-1800
or email slangford@cacj.org for more information



Appellate Practice Seminar Schedule

7:30– 8:30am	Registration <i>Coffee & Muffins to be provided</i>
8:30- 9:30am	The Year in Review <i>Al Menaster</i>
9:30- 10:45am	Novel Issues for the Non-Fiction Brief Writer <i>George Schraer & Charles Sevilla</i>
10:45- 11:00am	Break
11:00– Noon	Setting Up Your Case for Federal Court: Recent Developments in Habeas Law <i>Timothy J. Foley</i>
Noon- 1:00pm	Lunch
1:00- 2:00pm	Proper Exhaustion of Issues <i>Mark Drozdowski & Nisha Shah</i>
2:00– 3:00pm	Batson/ Wheeler <i>Elisabeth Semel</i>
3:00– 3:15pm	Break
3:15– 4:15pm	Probation Conditions <i>Janice Bellucci & Scott Sugarman</i>
4:15– 5:15pm	Review of Homicide Law <i>Bradley O’Connell</i>



Appellate Practice Seminar Presentation Summaries

The Year in Review, *Al Menaster*

Al Menaster, the head deputy for appellate and training for the LA County Public Defender's Office, will present a review of the past years' worth of caselaw, discussing how to avoid or minimize bad cases, how to effectively use good cases, and developing trends and cases in the pipeline.

Novel Issues for the Non-Fiction Brief Writer, *George Schraer & Charles Sevilla*

Our bewildered speakers will spend their hour discussing "thinking outside the box on appeal," that is, bringing to the appellate courts novel as well as conventional arguments that push client claims to the edge of the law. Because of the sensitive nature of this discussion, no one will be admitted after the first sixty minutes, and attendees must check firearms at the door.

Setting up Your Case for Federal Court: Recent Developments in Habeas Law, *Timothy J. Foley*

The session will discuss recent developments in habeas law, including (1) the continuing chilling effect of Pinholster and Richter on success as shown in the recent USSC opinion White v. Woodall, (2) the rise of the IAC claim relating to plea negotiation, and (3) the importance of IAC post-conviction arguments in perfecting the presentation of other claims.

Proper Exhaustion of Issues, *Mark Drozdowski & Nisha Shah*

This session discusses the clearly established federal law requirement of 28 U.S.C. section 2254(d)(1) and strategies for trying to ensure it does not result in the denial of federal habeas relief. The session also discusses strategies for developing and alleging violations of clearly established federal law in state court, thereby helping set the case up for federal review if the state court denies relief.

Batson/ Wheeler, *Elisabeth Semel*

In the past year, a majority of the California Supreme Court has continued its two decades-long streak of rejecting Batson claims in every case save one. However, Justice Goodwin Liu has emerged as a critic of the majority's "habits of unwarranted deference, speculative inference and overreliance on gap-filling presumptions" as well as its disregard for comparative juror analysis. In other states, such as Washington and Mississippi, the supreme courts have acknowledged Batson's failure to significantly reduce, much less, eradicate race-based jury selection practices. The federal circuits are split on some of the issues Justice Liu has surfaced. How might appellate and habeas lawyers leverage these developments in litigating Batson claims?

Review of Homicide Law, *Bradley O'Connell*

Recent homicide developments – including limitation of the "natural and probable consequences theory" of first-degree murder (Chiu), clarification of the "heat of passion" manslaughter standard (Belton), and recognition of the constitutional magnitude of erroneous refusal of manslaughter instructions (Thomas).

Probation Conditions, *Janice Bellucci & Scott Sugarman*

For most defendants, punishment is not limited to a jail or prison sentence. Their lives after release are commonly restricted by numerous probation or parole conditions that limit where they can live, who they can see, what they can do, how they can use computers and/or internet, etc. Violating those conditions sets up their next "offense." While a sentencing judge's power is broad, that power is not unlimited. Trial and appellate counsel must be alert to when they should object and when they should appeal - Janice Bellucci and Scott Sugarman will outline challenges to such conditions for sex offenders, gang members and your everyday felon.



Appellate Practice Seminar Presentation Speakers

Janice Bellucci

Janice M. Bellucci has been an attorney for more than 30 years. She currently serves as President of California Reform Sex Offender Laws, a statewide non-profit dedicated to protecting the Constitution by restoring the civil rights of sex offenders. In that capacity, she has successfully challenged sex offender ordinances adopted by more than 20 cities and/or counties. Previously, Janice served as an attorney for the U.S. House of Representatives in Washington, D.C., the U.S. Air Force in the Pentagon and NASA in both Washington, D.C. and Greenbelt, Maryland.

Mark Drozdowski

Mark Drozdowski is the chief of the Capital Habeas Unit of the office of the Federal Public Defender in Los Angeles (the "Los Angeles CHU"). The Los Angeles CHU represents capital and noncapital inmates in habeas corpus actions in federal and state court. The Los Angeles CHU currently represents clients in about 82 federal capital habeas cases and nearly 60 federal noncapital habeas cases. Mark has conducted evidentiary hearings in federal and state court on the issues of ineffective assistance of counsel, prosecutorial misconduct, juror bias, actual innocence, and the competence of a death row inmate to waive his appeals and be executed. He has filed briefs and argued habeas corpus appeals in the United States Supreme Court and the Ninth Circuit Court of Appeals. Before joining the Los Angeles CHU, Mark was an associate at the Los Angeles office of Arnold & Porter. He graduated from the UCLA School of Law in 1993.

Timothy J. Foley

Timothy J. Foley is a criminal defense lawyer in private practice in Sacramento. From 2004 to 2012 he was an Assistant Federal Defender with the Capital Habeas Unit of the Federal Defender for the Eastern District of California. Previous to his appointment as an AFD, Mr. Foley was in private practice in San Francisco, specializing in criminal defense with a particular emphasis in capital cases. He has represented capitally-charged individuals at all levels, in state and federal courts, in a number of different states, from trial through appeal through habeas corpus proceedings through clemency. A cum laude graduate of Harvard Law School, Mr. Foley is active in teaching, both as a law school instructor and as a speaker at conferences and training sessions. He has taught at U.C. Berkeley (Boalt Hall) Law School, U.C. Davis (King Hall) Law School, Hastings School of Law, and the University Of San Francisco School Of Law. He frequently gives presentations at conferences throughout the country and is a faculty member of the "Death Penalty College" presented every August at Santa Clara University. His numerous articles on death penalty, habeas corpus, and criminal defense topics have appeared in the California Criminal Defense Practice Reporter, The Champion, CACJ Forum, Loyola Law Review, and other publications.

Al Menaster

Albert Menaster has served as a Deputy Public Defender in Los Angeles County since 1973, and was named CPDA's "Defender of the Year" in 1987, and was chosen Defense Attorney of the year by the LA County Bar Association in 2007. Al writes books, articles and lectures frequently on a wide range of defense topics, including computer technology for defense attorneys, juvenile court practice, Proposition 115, Three Strikes, Proposition 36, Courtroom Evidence and Motion Practice. Al has argued before the United States Supreme Court and repeatedly before the California Supreme Court. He has written and spoken at many programs for CACJ and CPDA over the years, and has authored *amicus* briefs with a remarkable success rate. Al is a managing editor of CACJ's *Forum* magazine, for which he writes a tech. column and book reviews, as well as substantive legal articles.



Appellate Practice Seminar Presentation Speakers

J. 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. (Prior to joining FDAP, he had been a "financial district" litigation associate (antitrust, securities, etc.)) 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) 555 U.S. 57 (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 authored articles on state habeas practice, prosecutorial misconduct, and *Blakely-Cunningham* issues, as well as numerous seminar materials for FDAP, CACJ, and other organizations. He also previously taught "Post-Conviction Remedies" as an adjunct professor at UC-Hastings School of Law.

George Schraer

George Schraer is more than just another pretty face. He also has very nice ankles and received a BA degree in History from U.C. Berkeley, a JD degree from UCLA, and an MA degree in Humanities from San Francisco State, where his oral exam included presentations on Herodotus's Histories, The Manor by Isaac Bashevis Singer, and Van Gogh's Starry Night. Please do not ask him to explain the common threads running through these works, as he does not have the intellectual capacity to do this. 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. His appellate career has been on a downward spiral since then. He has been counsel of record in more than 600 criminal appeals, including 14 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. He has been counsel of record in more than 50 published Court of Appeal cases, some good, most not so good. There is nothing about him that reincarnation won't cure.

Elisabeth Semel

Elisabeth Semel joined the faculty at UC Berkeley School of Law in 2001 as the Director of the Death Penalty Clinic. In that capacity, Semel represents clients facing capital punishment in California and states such as Alabama and Texas. The Clinic has filed *amicus curiae* briefs in the U.S. Supreme Court in several death penalty cases, including *Miller-El v. Cockrell*, *Miller-El v. Dretke*, and *Snyder v. Louisiana* (all dealing with race discrimination in jury selection) and *Baze v. Rees* (dealing with lethal injection).

After graduating from UC Davis School of Law in 1975, Elisabeth Semel became a deputy public defender in Solano County. In 1979, she became a staff attorney at Defenders, Inc. in San Diego. In 1980, she entered private practice in San Diego, and, in 1983, formed the firm of Semel & Feldman. Semel has defended criminal cases in the state and federal courts with an emphasis on representation at the trial level, including homicides and capital cases. In 1997, Semel left private practice to serve as the director of the American Bar Association Death Penalty Representation Project in Washington, D.C. Professor Semel's publications include "Reflections on Justice Stevens's Concurring Opinion in *Baze v. Rees*: A Fifth Gregg Justice Renounces Capital Punishment," 43 *UC Davis L. Rev* 783 (2010), as well as articles about criminal defense practice, such as "The Lone Star State is Not Alone in Denying Due Process to Those Who Face Execution" (1999);

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Appellate Practice Seminar Presentation Speakers

Elisabeth Semel—Continued

"Racial Injustice: Work to be Done Outside the Courtroom" (1998); "Talk to the Media About Your Client? Think Again" (with C. Sevilla, 1997) (all published in *The Champion*); "Breathing Life into Batson" (2003); "The Good, the Bad and the Evil: News from the Hill" (1997); and "Victims' Rights: New Amendment to the Federal Constitution?" (1996), all published in the *California Criminal Defense Practice Reporter*. Beginning in 2003, her annual annotated summaries of cases dealing with *Batson v. Kentucky* (race or gender discrimination in jury selection) have been posted electronically and included in various criminal defense publications. Professor Semel frequently provides commentary in the mainstream media on issues relating to the rights of individuals accused of crime, particularly those facing the death penalty.

Professor Semel has served on the Board of Directors of the National Association of Criminal Defense Lawyers, is a past president of the California Attorneys for Criminal Justice, and serves on the Board of Directors of the Texas Defender Service. She has testified before committees of the United States Congress and the California legislature and has lectured at legal education seminars throughout the country on a variety of subjects related to the defense of criminal cases, including capital representation.

Charles Sevilla

Charles Sevilla, CACJ past President. Chuck Sevilla will speak with co-presenter George Schraer on "Novel Issues for the Non-Fiction Brief Writers." A detailed syllabus will be provided covering numerous issues from which Chuck and George will discuss the opportunities and challenges of presenting novel approaches to effective briefing of issues. 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*). His newest book, *Law and Disorder* (2014 WW Norton), is out Aug. 4th and is a compilation of the best of Forum's Great Moments in Courtroom History. Other fictional work includes briefing before the appellate courts of California, the Ninth Circuit and the U.S. Supreme Court.

Nisha Shah

Nisha Shah is an attorney at the Habeas Corpus Resource Center, where she has represented indigent men and women sentenced to death in state and federal courts in California since 2006. Prior to working at HCRC, Nisha clerked for Judge Joel E. August in Maui, Hawai'i. She received her JD from Boalt Hall (UC Berkeley) School of Law in 2005.

Scott Sugarman

Mr. Sugarman is the 2014 president of California Attorneys for Criminal Justice, and has been a member of the CACJ Board of Governors for many years. He has practiced law for more than 35 years, including serving as a Supervising Research Attorney for California Chief Justice Rose Elizabeth Bird and an Assistant Public Defender in Alameda County. For the past 25 years, he has been a partner in Sugarman & Cannon, with offices in San Francisco and Oakland, where he practices criminal defense in the California and federal courts, both in the trial courts and on appeal.



Appellate Practice Seminar Additional Information

MCLE AND SPECIALIZATION CREDITS

CACJ certifies this activity is approved for MCLE credit by the State Bar of California in the amount of **7.25** 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 **7.25** hours of which **3.25** hours applies to Appellate Law Legal Specialization and **4.0** hours applies to Criminal Law Legal Specialization.

ACCOMMODATIONS, PARKING, & SHUTTLE

A limited number of guest rooms have been reserved at the Orchard Hotel in San Francisco- from Friday, September 19th to Saturday, September 20th, for \$239.00 per night. For reservations, please call (415) 343-0135. To get the group rate, please reference California Attorneys for Criminal Justice.

Call before September 2, 2014 to reserve your room under our small room block and to take advantage of the low room rate.

GROUP DISCOUNT

Groups of five (5) or more from the same office or organization who pre-register AS A GROUP by **September 12, 2014**, are eligible for a 15% discount. Pre- registration forms must be received together. Group Discounts are not available online nor are they available for Onsite Registration. **NLD 's do not qualify for any additional group discounts as they are heavily discounted already.**

CANCELLATIONS


Refunds, less a \$30 processing fee, will be sent only for those cancellations received by 9:00 a.m. Monday, September 15th, 2014. **NO REFUNDS WILL BE SENT FOR CANCELLATIONS RECEIVED AFTER September 15th, 2014.** It is possible, however, to substitute one person on another's registration, excluding Patron and Life Member registrations. Substitutions are also permitted for group registrations.

FREE CACJ TUITION

NEW Law Students and **NEW** Attorneys First 5 Years in Practice, can attend one CACJ Seminar (Appellate Practice, DUI Rules of the Road, DUI Power Seminar and Annual Fall Criminal Defense Seminar). Free Seminar Tuition Includes: One Seminar Syllabus CD and MCLE certificate. Does not include food/beverage at event, to purchase a lunch for \$25.00, please be sure to indicate it on step 2 of the Registration Form. * Cannot Register For Free Tuition Online. Please complete the registration form and fax or mail to the CACJ office. If you have questions please call the CACJ Office at (916) 643-1800 or email slangford@cacj.org.



CACJ Upcoming Events



2014 DUI RULES OF THE ROAD XVII

November 1st, 2014

Palm Springs Hilton

Palm Springs, CA



2014 ANNUAL FALL CRIMINAL DEFENSE SEMINAR & CHARLES R. GARRY LECTURE

December 12-13th, 2014

Hotel Nikko

San Francisco, CA



2015 CACJ/CPDA Capital Case Defense Seminar

February 13-16th, 2015

Monterey Conference Center

Monterey, CA

CACJ's Appellate Practice Seminar

San Francisco State Bar Conference Center

301 Battery Street, San Francisco, CA

Saturday September 20th , 2014

PRE REGISTER BEFORE SEPTEMBER 15, 2014!!

Step 1: Seminar Tuition & Membership

<input type="checkbox"/> CACJ Member—Attorney Member	\$145.00
<input type="checkbox"/> CACJ Member—Investigator/Expert	\$115.00
<input type="checkbox"/> CACJ Member—Attorney Practicing 0-5 yrs	\$ 60.00
<input type="checkbox"/> CACJ Member—Law Student	\$ 30.00
<input type="checkbox"/> CACJ Member—NLD using Free Seminar	FREE*
<input type="checkbox"/> Non-Member—Attorney	\$250.00
<input type="checkbox"/> Non-Member—Investigator/Expert	\$250.00
<input type="checkbox"/> Non-Member—Student	\$ 65.00

Become A CACJ MEMBER!!

<input type="checkbox"/> Attorney 5+ yrs	\$195.00
<input type="checkbox"/> Public Defender/ Appellate 5+ yrs	\$140.00
<input type="checkbox"/> Investigator/Other	\$90.00
<input type="checkbox"/> New Attorney 3-5 yrs. *	\$75.00
<input type="checkbox"/> New Attorney 0-2 yrs. *	\$50.00
<input type="checkbox"/> Law Student *	\$10.00

* **Free Seminar:** New Lawyers practicing 0-5 years and New Law Students are eligible to attend a free seminar in their first year as a new CACJ Member (**New Lawyers Division**). Please mark on the right that you will be using your free seminar for this event.

Step 2: Meals Meals are included in full tuition rates. Meals are not included with NLD waiver, or for already discounted Law Student tuition. Please add \$25 if you wish to have meals.

Step 3: Syllabus A digital Syllabus will be emailed to all registered attendees before the seminar as confirmation of registration. **A CD Syllabus will be provided on site to ONLY those who check the box to the right.** Purchase a Hard Copy Syllabus for onsite pick up by checking the box to the right.

Step 4: Group Discount Groups of five (5) or more from the same office or organization who pre-register AS A GROUP by **September 15, 2014**, are eligible for a 15% discount. **Pre- registration forms must be received together. Group Discounts are not available online nor are they available for Onsite Registration. NLD 's do not qualify for any additional group discounts as they are heavily discounted already.**

Step 1:

Registration: \$ _____

Membership : \$ _____

Use my NLD Free Seminar Waiver

Step 2: Meals (\$25)

\$ _____

Step 3: Syllabus

\$ _____

CD Printed \$25

Step 4: Group Discount

% _____

TOTAL: \$ _____

Attendee Information:

Name: _____

Bar Number: _____ Date Admitted: _____

Phone: _____ Fax: _____

Email address: _____

Mailing Address: _____

City, State, Zip: _____

Billing Address: _____

City, State, Zip: _____

Please mail this form to 1555 River Park Drive, Suite 105
Sacramento, CA 95815; fax to (916) 643-1836;
or email to slangford@cacj.org

Payment Information:

Check Enclosed Charge my: Visa MasterCard

Name on Card: _____

Account Number: _____

Exp Date: _____ Security Code: _____

Confidentiality Pledge & Payment Authorization:

I hereby acknowledge that materials and information provided at this seminar, and syllabus materials, are confidential information and may not be distributed or disclosed except to other defense practitioners. My signature also indicates that I am involved exclusively in the defense of persons accused in criminal cases.

Signature and Date

Late & Onsite Registration:

To Pre-register for this seminar CACJ must receive your preregistration form and payment by **Monday September 15, 2014** at 9am. Postmarks after that date will not be accepted. **Late registration begins after 9:01am on September 15, 2014 which includes a \$30.00 increase in Registration. Late registrations will only be taken online. Registration will also be available onsite.**