

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE

**2008**

# Appellate Practice Seminar

**SATURDAY, OCTOBER 25, 2008**

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

SEMINAR CO-CHAIRS

Susan Ten Kwan and Jeffrey E. Thoma

SEMINAR COORDINATORS

Katharine (Kit) Elliott and Jonathan Soglin

*Appellate Practice Seminar Approved for 6.5 hours of MCLE Credits*

## 2008 APPELLATE PRACTICE SEMINAR SCHEDULE

### SATURDAY, OCTOBER 25, 2008

**\*\*SFSU – Downtown Campus – Westfield San Francisco Centre • 835 Market Street, Rooms 626 & 627\*\***

<b>7:30 – 8:30 am</b>	<b>Registration Coffee/Tea/Continental Breakfast</b>
<b>8:30 – 9:15 am</b>	<b>Federal Case Update</b> <i>J. Bradley O'Connell</i>
<b>9:15 – 10:00 am</b>	<b>State Case Update</b> <i>Jonathan Soglin</i>
<b>10:00 – 11:00 am</b>	<b>Dirty Tricks: <i>Brady, Gigilio</i> and Due Process</b> <i>Gail Weinheimer</i>
<b>11:00 – 11:15 am</b>	<b>Break</b>
<b>11:15 – 12:15 pm</b>	<b>Oral Argument – An Interactive Presentation</b> <i>Cliff Gardner</i>
<b>12:15 – 1:15 pm</b>	<b>LUNCH</b> On Your Own — Or — On Site Box Lunch
<b>1:15 – 2:15 pm</b>	<b>Brief Writing from the Court's Perspective</b> <i>Renée Torres</i>
<b>2:15 – 3:15 pm</b>	<b>Understanding and Investigating Mental Health Issues</b> <i>Larry Ainbinder</i>
<b>3:15 – 3:30 pm</b>	<b>BREAK</b>
<b>3:30 – 4:30 pm</b>	<b>Panel: Ethical Considerations When Life Gets in the Way</b> <i>Cynthia Thomas, Janice Lagerlof and Kate Novoa</i>

6.5 MCLE HOURS

## SPEAKERS

### **Larry Ainbinder** **Understanding and Investigating Mental Health Issues**

For 25 years LARRY AINBINDER has engaged in indigent criminal defense, almost exclusively at the trial level, first at Federal Defenders of San Diego and then for 17 years at the San Diego County Public Defender's Office. Much of his work has involved homicide and capital murder defense on behalf of mentally, emotionally, and neurologically disordered individuals, resulting in a deep interest in mental health related issues. He has spoken at a number of CACJ and CPDA sponsored seminars, and for five years was the head of training at the San Diego office. Mr. Ainbinder is currently a full-time student working his way down the long path towards a Ph.D. in psychology which he hopes will allow him to work as a mitigation specialist in the not-too-distant future.

### **Cliff Gardner** **Oral Argument – An Interactive Presentation**



CLIFF GARDNER is in private practice in San Francisco, where he has specialized in capital and non-capital post-conviction representation since 1981. He has represented death row inmates in California, Arizona, Idaho and Montana, and has argued more than a dozen cases before the California Supreme Court and several cases before the United States Supreme Court. Cliff writes, teaches and lectures on numerous defense topics. He co-authored both the Substance Abuse and Prevention Act of 2000 — Proposition 36 — which passed in November 2000 with 61% of the popular vote and the Non-Violent Offender Rehabilitation Act of 2008 (NORA), on the ballot this fall as Proposition 5. In addition he wrote Santa Cruz City Ordinance, No. 2005–28, An Ordinance of the City of Santa Cruz Creating a Compassionate Use Program to Ensure that the Seriously Ill Citizens of Santa Cruz Have Access to Medical Marijuana, adopted in November 2005.

### **Janice Lagerlof** **Panel: Ethical Considerations When Life Gets in the Way**



JANICE LAGERLOF graduated from USF law school in 1976. After working at a small criminal defense firm and working in the nonprofit world, directing a battered women's shelter in San Francisco and studying medical ethics with the New York based Hastings Center, she began doing indigent appeals. She has devoted her practice to them since 1989.

She argued *People v. Cabill* (1993) 5 Cal.4th 478 (coerced confessions) and *People v. Gardeley* (1996) 14 Cal.4th 605 (criminal street gang statute) in the California Supreme Court.

### **Kathleen (Kate) Woods Novoa** **Panel: Ethical Considerations When Life Gets in the Way**



KATHLEEN (KATE) WOODS NOVOA began her criminal defense career in 1981 with the Orange County Public Defenders Office, which has some of the best training in the state. By the time she left for the wilds of Big Sur, she had handled court and jury trials for all levels of misdemeanors, juvenile cases, LPS, civil commitments, mental health cases and felonies, except death penalty cases. In 1985, she left for the Monterey County Public Defenders Office so she could move to Big Sur. She left that office the last day of 1988. Between 1989 and 1998, she did not practice law, but taught high school, and worked as the Interim Superintendent at the smallest school district in the state — she needed to learn humility. At the end of 1998, she again took up the practice of law and became an indigent criminal appellate attorney with the Sixth District. Currently she is on the panels of all districts, except the Second. Recently, she endured the nightmare that was the Basin Complex Fire which has raged for over 40 days in Big Sur, causing evacuations, road closures, and mail disruption. The experience of trying to keep her practice afloat and from prejudicing any of her clients during this catastrophe is what brings her to this panel for this seminar where she offers practical suggestions, and real-life experiences.

### **J. Bradley O'Connell** **Federal Case Update**



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, habeas corpus practice, and sexual predator commitments. His recent victories include *People v. Randle* (2005) 35 Cal.4th 987, in which the California Supreme Court extended the *Flannel* imperfect self-defense doctrine to imperfect defense of others. He is currently litigating a U.S. Supreme Court case on the status of the "*Stromberg rule*" requiring reversal where a court cannot determine whether a general verdict rests  
*continued.....*

## SPEAKERS CONTINUED

on an unauthorized theory or on a valid alternative ground, *Chronos v. Pulido*, 07-544. Brad has also taught “Post-Conviction Remedies” as an adjunct professor at UC-Hastings School of Law.

### **Jonathan Soglin** **State Case Update**



**JONATHAN D. SOGLIN** has been in practice for more than 15 years as a criminal appellate attorney representing criminal defendants in state and federal direct appeal and habeas proceedings. In addition to numerous oral arguments in the Ninth Circuit and the California Courts of Appeal, he has argued two cases in the California Supreme Court and one in the Supreme Court of the United States. Jonathan Soglin has been a staff attorney at the First District Appellate Project (FDAP) in San Francisco since 1998. At FDAP, he has expanded his practice to include representation of indigent parents in child dependency appeals. He is the content editor of the FDAP Web site, and has lectured on research techniques, as well as substantive and procedural aspects of criminal and dependency law. His published articles include *Blakely, Booker, & Black: Beyond the Bright Line*, 18 Federal Sentencing Reporter 46 (2005) (co-authored with J. Bradley O’Connell) and *Flexibility in Plea Agreements: United States v. Hyde*, CJA Defense Journal, Fall 1996, Vol. 4, No. 3. After graduating from the University of California, Berkeley, School of Law (Boalt Hall) in 1988, Jonathan Soglin clerked for a federal magistrate in the Northern District of California and served 2-1/2 years as a staff attorney at the U.S. Court of Appeals for the Ninth Circuit. He teaches Post-Conviction Remedies at Hastings College of the Law.

### **Cynthia Thomas** **Panel: Ethical Considerations When Life Gets in the Way**



**CYNTHIA THOMAS** is a graduate of Pomona College in Claremont California, B.S. in Sociology and King Hall, University of California at Davis, 1980, J.D.; she began criminal appellate work in 1980 at the Office of the State Public Defender doing major felony appeals, as well as capital appeals. She left OSPD in 1987, and moved to the newly formed

appellate project, Central California Appellate Project, assisting panel attorneys who worked out of the Third and Fifth District Courts of Appeal, beginning as a staff attorney and promoting to Assistant Director in 1992. Cynthia moved to the appellate project in San Francisco, First District Appellate Project, as Executive Director, in 1994. In 1997, she began a solo practice, exclusively handling criminal appeals throughout the state, and continues in private practice today. Cynthia is a member and past President of CACJ, and member and board member of the California Appellate Defense Counsel.

### **Renée Torres** **Brief Writing from the Court’s Perspective**



After graduating from Yale College and Boalt Hall School of Law, **RENÉE TORRES** clerked for the late Chief Justice Rose Elizabeth Bird. In 1980 she left the Chief to become a public defender in Alameda County. After 5 years as PD and a brief stint as a civil litigator with a small law firm in Oakland specializing in the First Amendment rights of cable television companies, in 1986 Renée joined the First District Appellate Project as one its founding staff attorneys. In 2000, she took a 6 month leave of absence to work for then-Presidenting Justice Christopher Cottle at the Sixth District Court of Appeal. Since November 2003, she has been working as a research attorney for Justice Richard McAdams at the Sixth District.

### **Gail Weinheimer** **Dirty Tricks: Brady, Gigilio and Due Process**



**GAIL WEINHEIMER** has been involved in death penalty post-conviction litigation and training for over 25 years, both as a private practitioner and at the California Appellate Project, where she was Legal Director from 1990 to 1995. She currently works at the Office of the State Public Defender in San Francisco.

# 2008 APPELLATE SEMINAR REGISTRATION FORM

STEP 1

**Preregistration Deadline: Friday, October 17, 2008 at 5:00 p.m.**

Preregistration not accepted after October 17, 2008

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 Dr. Suite 224A  
Sacramento, CA 95815  
Phone: (916) 643-1800 • Fax: (916) 643-1869

NAME »	DATE ADMITTED TO BAR »		
FIRM »	BAR NUMBER »		
ADDRESS »			
CITY »	STATE »	ZIP »	EMAIL »
PHONE (AREA CODE) »	FAX (AREA CODE) »		

STEP 2

**REGISTRATION FEES:** *Registration includes continental breakfast and syllabus.*

To preregister for these seminars, CACJ must receive your preregistration form and payment by Friday, October 17, 2008, at 5:00 p.m. Postmark after that date will not be accepted. Late registration includes a \$20 fee.

	Prepaid	Late Registration
CACJ Attorney Member .....	\$145	\$165
Attorney Non-Member .....	\$185	\$205
CACJ Investigator/Other .....	\$115	\$135
Investigator/Other Non-Member .....	\$145	\$155
CACJ Law Student .....	\$45	\$65
Student Non-Member .....	\$65	\$85

**REGISTER ONLINE AT  
WWW.CACJ.ORG**

*A variety of dining options are available onsite at the Westfield San Francisco Centre, for more info go to [www.westfield.com/sanfrancisco](http://www.westfield.com/sanfrancisco)*

STEP 3

**MEMBERSHIP FEES:** *Join now and pay the member rate for seminar tuition.*

*Dues are normally paid July 1st of each year.*

Life Member ** .....	\$5000	Out-of-State Attorney .....	\$100
Patron *† .....	\$600	Attorney in practice 1–5 years and Associate Member .....	\$70
Sustaining Member .....	\$300	Attorney in practice less than 1 year .....	\$50
Attorney in private practice over 5 years .....	\$175	Friend of CACJ (not engaged in legal profession) .....	\$40
Public Defender in practice over 5 years and Law Professor ..	\$120	Law Student .....	\$40
Attorney over 5 years and in Patron's or Life Member's firm ...	\$120	Gift Membership .....	\$50

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

**PAYMENT:**

Registration Fee .....	\$ _____
Late Fee (add \$20 if after October 17, 2008) .....	\$ _____
Membership Fee (if signing up today) .....	\$ _____
Seminar Box Lunch (on-site – add \$10.00) .....	\$ _____
Please select one: <input type="radio"/> Turkey <input type="radio"/> Roast Beef <input type="radio"/> Vegetarian	
<b>TOTAL</b> .....	<b>\$ _____</b>

Check enclosed (payable to CACJ)

Charge my (circle one):     Visa     MC

CREDIT CARD NUMBER »	EXP. DATE »
SIGNATURE »	

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

**Group Discounts:** Groups of five or more from the same organization who pre-register AS A GROUP by Friday, **October 17th, 2008 at 5:00 pm** are eligible for a 15% discount. The discounted tuition is \$123.25 for members and \$157.25 for non-members. Pre-registration forms must be received together. This offer does not apply to student registrants.

**Cancellations:** Refunds, less a \$30 processing fee will be sent only for those cancellations received by 5:00 pm Friday, October 17, 2008. No refunds will be issued for cancellations received after that date.

\* Life Members and Patrons may attend two of CACJ's one-day seminars each year free of charge.

† Call CACJ for payment options

**California Attorneys for Criminal Justice**

1540 River Park Drive, Suite 224A  
Sacramento, CA 95815

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*Seminar Information Enclosed*

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

2008 ANNUAL FALL  
SEMINAR & 35<sup>TH</sup>  
ANNIVERSARY  
CELEBRATION  
Friday, December 12th,  
Garry Roundtable and  
Saturday, December 13th, 2008  
St Francis Hotel, San Francisco

CAPITAL CASE  
DEFENSE SEMINAR  
Friday, February 13th –  
Monday, February 16th, 2009  
Monterey, CA

2009 CACJ & NACDL'S  
2<sup>ND</sup> ANNUAL FORENSIC  
SCIENCE & TECHNOLOGY  
SEMINAR  
Friday, April 3rd and  
Saturday, April 4th, 2009  
Las Vegas, Nevada

**MCLE AND SPECIALIZATION CREDITS** — CACJ certifies that this activity has been approved for MCLE credit by the State Bar of California in the amount of 6.5 hours of which 1 hour applies to Legal Ethics. This activity has also been 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 apply to Appellate Practice; 1.0 hours apply to Substantive Criminal Law and Procedure and 1.5 hours apply to Other Substantive Law.

**ACCOMMODATIONS** — Guest rooms have been reserved at the **Phoenix Hotel**, in the Civic Center, **601 Eddy Street** at a rate of **\$159.00/night** for October 24th and 25th, 2008 for single/double occupancy; lodging is for a double room, and includes free parking for one car and continental breakfast. For reservations call **415/673-9616** and reference the group name CACJ, **cut off date for discounted rate is September 25th, 2008**. Space is limited so please make your reservations early. The Phoenix Hotel is centrally located within walking distance to the Westfield San Francisco Centre or a two block walk to the Civic Center BART/MUNI Metro station which is one stop away from the Powell Street BART/MUNI Metro Station located below the Westfield San Francisco Centre. For information about the Phoenix Hotel go to: [www.thephoenixhotel.com](http://www.thephoenixhotel.com).

**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>

■ **REGISTER ONLINE: GO TO [WWW.CACJ.ORG](http://WWW.CACJ.ORG)** ■