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Federal Defender Newsletter

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CJA PANEL TRAINING

CJA Panel training sessions in Fresno and Sacramento will resume in September. The next panel training date in Sacramento is September 16, 2009 at 5:30 p.m. Have a nice summer!

TOPICS FOR FUTURE TRAINING SESSIONS

If you know of a good speaker for the Federal Defender's panel training program, or if you would like the office to address a particular legal topic or practice area, please e-mail your suggestions to Melody Walcott at the Fresno office at melody_walcott@fd.org or Rachelle Barbour at the Sacramento office at rachelle_barbour@fd.org.

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive the newsletter. If your address, phone number or email address has changed, or if you are having problems with the email version of the newsletter or attachments, please call Kurt Heiser at (916) 498-5700. Also, if you

are receiving a hard copy of the newsletter but would prefer to receive the newsletter via email, contact Karen Sanders at the same number.

ANNOUNCEMENTS

On Friday, July 10, 2009, the Office of the Federal Defender was honored to host a seminar conducted by noted forensic expert Kenneth Moses. Mr. Moses has over forty years of experience in forensic evidence. Amongst his notable accomplishments in the field was the establishment of the Crime Scene Investigations Unit of the San Francisco Police Crime Laboratory in 1983 and his integral efforts in the installation of automated fingerprint systems throughout the United States. Currently, he is in private practice and serves as the Director of Forensic Identification Services in San Francisco.

Mr. Moses shared his years of experience with a power-point presentation regarding current legal challenges to fingerprint evidence. He spoke at some length about the Brandon Mayfield case, in which fingerprint evidence was instrumental in the arrest of Mr. Mayfield and in his exoneration.

Mr. Moses also discussed developing identification technologies, including IAFIS. Finally, he provided the participants with reference resources including the National Research Council of the National Academies's report on "Strengthening Forensic Science in the United States: A Path Forward", as well as his power-point presentation and a number of helpful articles, which are linked to on the CJA website.

Should you have any additional questions, Mr. Moses is available at 415-664-2600.

NOTABLE CASES

Friedman v. Boucher, 568 F.3d 1119 (9th Cir. June 23, 2009). The court (Thomas, with Roth concurring) held that the forcible DNA testing of a pretrial detainee, who had previously been convicted of sex offenses, violated the Fourth Amendment. In so holding, the court affirmed that a buccal swap to obtain DNA constituted a search under the Fourth Amendment, and that law enforcement purposes, such as obtaining DNA to help solve crimes, is not a "special need" that provides an exception to the warrant requirement. The court likewise held that pretrial detainees "retain greater privacy interests, for the purposes of Fourth Amendment analysis, than do persons who are incarcerated pursuant to a valid conviction." The court concluded that, "the warrantless, suspicionless, forcible extraction of a DNA sample from a private citizen violates the Fourth Amendment."

Ali v. Hickman, No. 07-16731 (7-7-09). In a state habeas raising a Batson claim, the 9th (Berzon joined by Tashima and Timlin) held that the prosecutor had indeed violated Batson by striking the two African-American prospective jurors. The prosecutor's reasons were highly

implausible and were clearly pretextual. Moreover, the state appellate courts were unreasonable in excusing such reasoning. The state courts at that time did not engage in comparative juror analysis, but in doing so now, it is clear that the prosecutor had race on his mind.

US v. Nobari et al, No. 06-10465 (7-24-09). In this drug conspiracy case, the Ninth Circuit (Clifton joined by Gould and Bybee) found that the prosecution improperly argued racial stereotypes and ethnic generalizations, appealed to prejudice, and in argument asked the jury to send a message and not let the government down. This was a meth conspiracy and the prosecution raised multiple times the roles that certain ethnic or racial groups play in drug conspiracies ("middle Easterners" and "Mexicans"). The prosecutor argued in closing about a ten year old boy leaving a fast food restaurant where the deal took place and how the drugs would affect him, and also about not letting "the City of Turlock" down. These arguments were improper.