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Federal Defender Newsletter
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CJA PANEL TRAINING

Sacramento panel training is on April 15, 2009 at 5:30 p.m. at 801 I Street, in the 4th Floor conference room. This session is being coordinated by AFD Mary French and presenters will include Sabrina Pantaleoni, paralegal in private practice, and Julie Denny and Leigh Opferman, paralegals at the Federal Defender's Office in Sacramento. This panel training session will cover the nuts and bolts of handling electronic discovery, including tiff files and PDF files which may or may not have searchable text.

Fresno panel training is on April 14, 2009 at 5:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. David Porter will be presenting the Supreme Court Update.

TOPICS FOR FUTURE TRAINING SESSIONS

If you know of a good speaker for the Federal Defender's panel training program, if you would like the office to address a particular legal topic or practice area, or if you would like to be a speaker, 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.

CLIENT CLOTHING & FOOTWEAR

The clothes closet is available to all AFDs and panel attorneys. It contains suits, shoes, socks, and shirts that clients can wear for court appearances. We also have some clothes that can be given away when necessary. Donations are greatly appreciated.

If you take borrowed clothes to the jail or U.S. Marshal's Office for your clients, please put either your name/phone number

or our name/phone number on the garment bag so that the facility will contact us for pickup of the items. Please note that you do not have to pay for the cleaning of any items used. The district court has graciously arranged for funds to pay the cleaning costs.

See Becky Darwazeh at the Sacramento Office or Nancy McGee at the Fresno office to pick up or drop off clothes.

NOTABLE CRIMINAL CASES

US v. McFall, No. 07-10034 (3-9-09). The Ninth Circuit reversed five convictions in a local public corruption case. The defendant was a lobbyist and local elected official who allegedly played fast and loose with influence and contracts. The reversed convictions were for insufficient evidence on attempted extortion and conspiracy to extort because, under a Hobbs Act prosecution, putting barriers for a competitor was not the same as extorting a benefit and obtaining a benefit. The trial court also erred in its jury instruction as to "official right" by failing to include an aiding or abetting or conspiracy charge when the allegation was for acting in concert with another. Finally, the court erred in excluding in exculpatory grand jury testimony of one witness.

Congratulations to Victor Haltom for the win!

US v. Brobst, No. 07-30284 (3-9-09). The Ninth Circuit remanded for resentencing because the convictions for receipt and possession of child pornography constituted double jeopardy.

US v. Driggers, No. 07-30190 (3-18-09). The defendant appealed his conviction for murder for hire, 18 USC 1958, and the Ninth Circuit considered the issue of the jury instruction. The defendant had asked the hiree gun to come to Idaho to murder his ex-wife. The hiree crossed state lines. The jury instruction however did not say that the defendant had to have the intent for the murder when the travel took place. The Ninth Circuit (Kozinski joined by B. Fletcher) found error, because the jury could have found that the interstate travel had occurred at any time, or that it occurred without intent.

US v. Christensen, No. 06-30402 (3-23-09). The defendant, a prohibited possessor, was sentenced under ACCA. On appeal, he argues that one of his priors, for a statutory rape under a Washington code, was not a violent felony. The Ninth Circuit agreed, following the categorical approach outlined in Begay v. US, 128 S.Ct. 1581 (2008) and Taylor. The statutory rape prior may not be a violent felony because the act may not involve aggressive or violent behavior as the sexual intercourse here may have been consensual with a minor over 14. The Ninth Circuit vacated and remanded for consideration of a modified categorical approach.

US v. Smith, No. 05-50375 (3-24-09)(en banc). In an en banc decision, the Ninth Circuit found error in the trial court's jury instruction on assault with a dangerous weapon in violation of 18 USC 113(a)(3). The instruction's error was that it stated that defendant used a prison knife rather than having the jury find that the defendant used a dangerous weapon. (Model Instruction 8.5 has since been changed).

US v. Ferguson, No. 07-50096 (3-27-09). The defendant, facing multiple counts of child pornography, decided to defend himself. He had been found competent, but his bizarre behavior and decisions, and his complete silence during trial, raised questions as to whether he should be allowed to represent himself. Subsequent to the conviction, the Supremes in Indiana v. Edwards, 128 S.Ct. 2379 (2008) held that a different standard of mental competency

applies when considering a defendant's request for self-representation as opposed to whether he should be tried at all. The Ninth Circuit remanded, in light of Edwards, the self representation finding. US v. Marguet-Pillado, No. 08-50130 (3-27-09). This is an illegal reentry case that went to trial. The 9th Circuit holds that the admission of the defendant's immigration application (from his "A" file) under the public records exception to hearsay was error. The relevant information, his stepfather's declaration that the defendant was born in Mexico and was a citizen of Mexico, fell outside the exception for public records. The government made no other argument for another hearsay exception. The error was prejudicial as it was the evidence for alienage. The conviction is vacated and remanded.

US v. Paul, No. 08-30125 (4-2-09). The defendant had embezzled some federal funds: it was her first offense, she returned the funds, she apologized profusely before charges were filed, and she explained that she had taken the funds because she felt, wrongly, that it was compensation for work she had done for the school district. The court nonetheless gave her a 16 month sentence. The judge explained that it was for abuse of trust. The Ninth Circuit originally found that the sentence was unreasonable, and vacated and remanded, explaining that the court had to more closely look at the mitigating factors. The court, upon resentencing, still focused on the abuse of trust, and gave a 15 month sentence. The Ninth Circuit (per curiam with Reinhardt and M. Smith) found the sentence again to be unreasonable. The Court noted that the reasonableness of a sentence is an inquiry, and that the appellate courts can say, in specific cases, that the sentence is too much. Moreover, the court did not appear to give sufficient, if any, weight to the recognized mitigation specifically found by the Ninth Circuit. The case was also reassigned to a different judge because of the appearance of justice.

In Harbison v. Bell, No. 07-8521, the Supreme Court held that the statute that provides for the appointment of federal counsel for federal and state post-conviction litigants, 18 U.S.C. § 3599, authorizes federal counsel to represent clients in state clemency proceedings. Along the way, the court decided that a state prisoner does not have to obtain a certificate of appealability in order to appeal a district court's denial of a request for federally appointed counsel or a motion to enlarge appointed counsel's authority.