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Federal Defender Newsletter

December 2008

CJA PANEL TRAINING

There is no panel training in either Sacramento or Fresno in December. Sacramento panel training will resume on January 21, 2009. Fresno panel training will resume on January 27, 2009. Happy holidays!!

FEDERAL DEFENDER/ CJA PANEL SACRAMENTO HOLIDAY PARTY

The annual Federal Defender/CJA Panel Sacramento Holiday Party will be held on December 5, 2008 from 3:00 to 7:00 p.m. at 801 I Street, 3rd floor. All members of the panel and the court are invited to attend.

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 NINTH CIRCUIT CRIMINAL CASES

United States v. Williams, No. 06-50599 (11-6-08). The lone hold-out juror sent a note to the court in a trial on conspiracy to commit robbery and other nefarious activities. The juror identified herself as the lone holdout and stated that all the other jurors had decided to convict and were pressuring her to do the same, despite her decision to acquit. The 9th circuit (Bybee with Canby and Kleinfeld) held that the district court erred in giving an Allen charge. It held that the district court erred in giving an instruction about going back, listening to one another, hearing views, and playing nice, because the court knew there was a hold out, and specifically who. This focus meant that the court could be perceived as pressuring that juror. The 9th emphasized when a juror clearly disclosed that she disagrees with the rest of the jury and cannot return a different verdict, the court cannot instruct the jury to continue. The 9th vacated and remanded.

United States v. Nevils, No. 06-50485 (11-20-08).

Where a defendant was found asleep, with one gun in his lap, and another leaning against his leg, and with drugs on a nearby coffee table, the Ninth Circuit (Paez, with Nelson concurring, Bybee dissenting) found that there was insufficient evidence to find that he had knowing possession of the weapons. The police had no tie between

the contraband, or cell phone, and the defendant; he was a supposed visitor to the apartment, admittedly in a high crime area, and there was no evidence presented as to his knowledge of the weapon (as opposed to constructive or actual possession). The evidence of someone leaving weapons was every bit as viable as the possession. The 9th stresses the lack of any connection. It distinguishes those cases where guns in cars and homes could be tied to the defendant's knowledge.

Doody v. Schriro, No. 06-1716 (11-20-08).

This is a habeas petition arising from the murder of several Buddhist monks in their monastery outside Phoenix years ago. False confessions had been wrung out of several suspects, before the police turned to the petitioner here, a 17-year old Thai American. The 9th (Berzon joined by B. Fletcher and Rawlison) holds that the petitioner's confession was involuntary. The petitioner was young, the Miranda warnings were soft-pedaled, and presented as being unimportant, and the questioning was relentless and demanding for six hours and especially in the last 45 minutes, despite the petitioner's silence. The 9th Circuit discussed the distinction between Miranda protections and voluntariness. The 9th focused on the factors involved, including youth, inexperience with the criminal justice system, pressure, tone, and relentlessness.