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Federal Defender Newsletter

December 2014

CJA PANEL TRAINING

Sacramento panel training will be on break until Wednesday, January 21, 2015, when CJA Panel Attorney Scott Cameron will present on 17(c) subpoenas. Please see below for a special training on jury selection that will provide MCLE credits for elimination of bias.

Fresno panel training will be on break until Tuesday, January 20, 2015.



ANNUAL CJA/FEDERAL DEFENDER HOLIDAY PARTY

Please join us Friday, December 5th between 4 and 7 p.m. for our holiday tradition at 801 I Street. As always staff, significant others, and kids are invited!

TOPICS FOR FUTURE TRAINING SESSIONS

Do you know a good speaker for the Federal Defender's panel training program, or would you like the office to address a particular legal topic or practice area? Email suggestions to:
Fresno – Peggy Sasso, Peggy_Sasso@fd.org,
Andras Farkas, Andras_Farkas@fd.org, or
Karen Mosher, karen_mosher@fd.org
Sacramento: Lexi Negin, lexi_negin@fd.org.

SACRAMENTO JURY TRAINING ~ DR. SUNWOLF

Dr. SunWolf will be visiting Sacramento for 3 training sessions on Wednesday, December 17, 2014. The training will be in our 4th Floor Conference Room, 801 I Street. The schedule is:

Noon - 1:00 pm: "The Decluttered Juror Questionnaire"

1:15 - 2:45 pm: "Issues with Jurors Before and During Voir Dire"

3:00 - 4:30 pm: "Juror Misconduct"

Dr. SunWolf wants this to be highly interactive, hands on, with much discussion. Bring your own cases and jury selection concerns.

Please RSVP to Kurt Heiser for one, two or all sessions. Dr. SunWolf is hoping for no more than 10 people a session. Plan to come only if you can and will familiarize yourself with her 2 books: *Practical Jury Dynamics* and *God-Thinking: Every Juror's Moral Brain, Religious Beliefs, and Their Effects on a Trial Verdict*. Dr. SunWolf is a professor of communications at Santa Clara University and visiting professor at Santa Clara School of Law. This is not a mandatory training for the CJA panel. MCLE credit for elimination of bias are available.

WELCOME TO OUR NEW AFDs!

FRESNO

Erin Snider and Megan Hopkins are our two newest Fresno attorneys.

Erin Snider is from Boise, Idaho. She got her undergraduate degree from Portland State University, a BS in Communications Science and a minor in Biology. After graduation, she went to Chicago and worked as a legal secretary for Kelley, Drye & Warren for a year, then went to University of Iowa for law school. She clerked for Judge Reade in Cedar Rapids, as her criminal law clerk. Erin then returned to Portland to clerk for Magistrate Judge Paul Papak. Since her arrival in Fresno, she has handled the Bakersfield and Fresno courts and spends her free time studying for the California Bar.

Megan Hopkins was raised in San Diego and started speaking Spanish when she was a child. She attended San Diego Mesa College for two years, and then moved to Spain for short while, working for a Basque Liberation Newspaper and improving her dialectology. She then returned to the U.S. and majored in Political Science and Spanish at UC Berkeley, then taught Spanish in at a college in France. Upon her return, she worked as a receptionist, then talked her way up to being an organizational trainer for INNOVA Systems, a contractor with the DOD. Megan then went to USC Law School and graduated in 2013. She was the President of LAAB (Legal Aid Alternative Breaks) which started after Hurricane Katrina as a way for law students to give back during school breaks. While in New Orleans, she saw that courts were not using certified interpreters, and got together with other legal aid organizations to organize the Language Access Coalition. After law school, Megan became an Equal Justice Works AmeriCorps Legal Fellow for the Public Law Center in Orange County before becoming an Assistant Federal Defender in Fresno. She is enjoying the Yosemite assignment immensely.

SACRAMENTO

Our Traditional Unit welcomed AFDs Noa Oren and Hannah Labaree, with a new AFD starting in January, Sean Riordan.

Noa Oren joins us after being a Research and Writing Attorney representing clients in appeals and habeas petitions in the District of Alaska Federal Public Defender Office for several years. Her federal work followed several more years of trial

practice in the Alaska Public Defender Office, basically riding the circuit for court throughout Alaska. Though Noa has never lived in Sacramento before, she attended nearby U.C. Berkeley Law School, Boalt Hall. There the school honored her with their Judge D. Lowell and Barbara Jensen Public Service Fellowship, S.K. Yee Fellowship, and the O.C. at Boalt Sandy Cohen Fellowship. During her time there, Noa interned with the San Francisco Public Defender and clerked for the Alameda County Public Defender and the District of Columbia Public Defender Service. This all follows a Master's Degree in Public Policy from Georgetown University and her Bachelor of Arts from U.C. Berkeley, graduating Phi Beta Kappa.

Hired to initially help AFD David Porter wrangle the many drugs-minus-2-levels and clemency-related cases, **Hannah Labaree** worked as the Record Mitigation Specialist in the Yolo County Public Defender Office. This is Hannah's repeat performance with our Office, as she was a summer legal intern after her first year at U.C. Davis Law School. At other times during her law school career, Hannah interned with the Equal Justice Initiative in Montgomery, Alabama, working directly with clients on state-level appeals and habeas claims, and engaged in a full-time externship with the Honorable Judge Edward M. Chen in the Northern District of California. At U.C. Davis Law School, Hannah was honored with the Martin Luther King Jr. Service Award; the University of California Human Rights Fellowship; an Academic Excellence Scholarship; Witkin Awards for Academic Excellence in Property, Critical Race Theory, and Economic Justice and a Witkin Award in Business Associations from Golden Gate University.

Next month, **Sean Riordan** joins our Sacramento Office. Sean's past six years were spent with the American Civil Liberties Union (ACLU) of San Diego and Imperial Counties, based in San Diego. Focusing primarily on immigration issues, Sean advised ACLU's Washington Legislative Office and other advocacy organizations on issues related to comprehensive immigration reform, particularly border enforcement issues, was co-counsel in a First Amendment challenge to retaliation against military defense investigator, successfully argued to Ninth Circuit that agent is not entitled to qualified immunity, and co-counsel in ongoing class action successfully establishing the right to appointed legal representation for mentally incompetent immigration detainees. Receiving his J.D. from U.C.L.A. Law School, where he won several moot

court awards, Sean has been interviewed by Reuters, CBS 8 and KPBS in San Diego.

CHU SUPERVISOR JOSEPH SCHLESINGER TO RETIRE

This fall, the California Appellate Project (CAP) – San Francisco announced Joe Schlesinger was hired by them to take over their Executive Director position, vacant because of its founder Michael Millman's sad death earlier this year. To assume the directorship, Joe will be retiring from the Federal Defender Office next February.

Joe switched after a U.C.L.A. Bachelor of Arts - Music degree to attend Boalt Law School at U.C. Berkeley. Upon graduation, Joe worked 8 years as a staff attorney at the U.S. Court of Appeals for the Ninth Circuit, including work with future-Justice Anthony Kennedy. Finally, in 1987, Joe found his path with heart –Tom Hillier hired Joe to work in the Federal Public Defender Office, Western District of Washington. There, Joe gained federal trial and appellate experience.

In 1990, Michael Millman hired Joe for CAP where, under Michael's fine tutelage, Joe focused primarily on the federal aspect of client representation, capital habeas representations. Joe quickly gained a reputation as the first person to call for advice, to brainstorm a case. Some called him "brilliant."

Eight years later, Quin Denvir, as Federal Defender for California's Eastern District, courted Joe to head the Office's two year old CHU. Quin has said it's the best hire he made as Defender (not to minimize his other fine hires), and time has borne out this opinion – our CHU is one of the best respected in the country.

Joe's presence on the Ninth Circuit's Capital Case Committee has been invaluable for clients and their counsel. His teaching at seminars across the country has helped improve representation and save lives. He is adept at personnel matters and invaluable helped our Office as Interim Federal Defender when sequestration first hit last year.

When the Honorable Magistrate Judge Allison Claire was sworn on to the bench, Joe spoke of her time in our Office. She now gets even with him by saying, "Joe's formidable skills as a lawyer are matched only by his commitment to his clients. Joe took our fledgling CHU and developed it into one of the most highly respected capital defense agencies in the country, largely by hiring talented people and empowering them. His comprehensive understanding of the issues facing men and women on death row -- and the needs for and of counsel -- make him the perfect person to lead CAP."

Joe leaves our Office with a bang, not a whimper. In his usual self-effacing manner, he credited his co-counsel Jim Thomson and former CHU AFD Tim Foley in co-representing his client, death row inmate Larry Webster from victory in Judge Karlton's grant of penalty phase relief (Judge Karlton's final day on the bench) through recent successful negotiations with Sacramento County District Attorney to drop seeking the death penalty and stipulate to Larry's sentence of life without parole.

We'll miss you, Joe. Good luck!

DRUGS- MINUS-2 LEVELS UPDATE

Starting November 1, the Court was permitted to start granting modifications of sentence based upon the Sentencing Guidelines' retroactive application of the across-the-board Base Offense Level 2-level reduction in drug cases. In its first months, 20 stipulated motions were filed resulting in a total time reduction of 38 years (454 months). While the value of early release is inestimable for the defendants, their families, and their friends, these early releases also result in a taxpayer cost savings of approximately \$1.1 million.

Twenty down, 580 more defendants to go.

ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office distributes panel training materials through its website: www.cae-fpd.org. We will try to post training materials **before** the trainings for you to printout and bring to training for note taking. Any lawyer not on the panel, but wishing training materials should contact Lexi Negin, lexi_negin@fd.org.

Check out www.fd.org for unlimited information to help your federal practice.

♪ NOTABLE CASES ♪

US v. Raya-Vaca, No. 13-50129 (11-10-14)(Murguia with Reinhardt and Fisher). In expedited immigration removal proceedings, an agent has to inform the defendant of the charge and give him an opportunity to be heard. Neither was done to the Ninth Circuit's satisfaction in this matter. The defendant swore he was never informed of the expedited process, and what that meant, and that he was never allowed to respond. The prejudice is that the defendant could have plausibly been given an opportunity to withdraw his admission application (a reach, but plausible). The Ninth Circuit reversed the denial of the defendant's motion to dismiss this illegal reentry prosecution and vacated the conviction.

US v. Brown, No. 12-10227 (11-7-14)(Hurwitz with Bea and Ikuta). In an appeal from a Ponzi scheme and bankruptcy fraud, the Ninth Circuit holds that adjustments for numbers of victims and for a high number of victims rendered insolvent were error. The government must prove the necessary facts – an estimate is not sufficient. Congratulations to CJA Panel Attorney John Balazs and AFD David Porter.

Taylor v. Cate, No. 11-55247 (11-19-14)(Schroeder, with Tunheim, D.J.). The Ninth Circuit reverses a denial of habeas and remands with instructions to grant the relief of a new trial. Petitioner was convicted under felony murder as a shooter of a clerk and sentenced to LWOP. Subsequently, the state determined he was not the shooter; and he was then resentenced to life with parole as an aider and abettor. The Ninth Circuit held that the petitioner could not be found guilty and sentenced on conduct not found by the jury. There was a Sixth Amendment violation.

US v. Brooks, No. 13-10146 (11-24-14)(Friedland, with Schroeder and Owens). In a marijuana drug trafficking trial, the Ninth Circuit found confrontation clause violations in the admission of hearsay statements made by a postal supervisor to a postal inspector assigned to the drug investigation. The statements, as a result of investigatory questioning, linked the defendant to picking up packages containing marijuana at post offices and delivering the packages to an apartment. This was prejudicial as to one count.

FORMER FEDERAL DEFENDER EMPLOYEES LOOKING FOR EMPLOYMENT

Yvonne Jurado, yvonneee@live.com,
(916)230-0483: Paralegal, Secretarial,
Legal Assistant, CJA voucher preparation
and filing

Karen Sanders, kvs.legaltech@gmail.com,
(916)454-2957 (h), (916)216-3106 (cell)
Karen has over 20 years of experience as
the computer systems administrator at
FDO. She'll be providing legal technical
and litigation support services. Hourly
reasonable rates are available.

Lupita Llanes, lupitallanes@gmail.com, (559)
360-4754: Secretarial and Office
Management. Bilingual Spanish/English

LETTER FROM THE DEFENDER

I'm a great fan of inspirational quotes – hokey but true. So, in this final newsletter of the year, I'd like to share some of my favorites.

I advise my colleagues: *Hope for the best and plan for the worst.* I hope that motion will be granted, the verdict will be “not guilty,” the departure will be given, but I'll make the record for the appeal in case they're not.

In remembering why we fight, I quote Cynthia Roseberry, former Executive Director for the Federal Defenders of the Middle District of Georgia, Inc., former DePaul Law Professor, and current Clemency Director for NACDL:

We, as criminal defense lawyers, are forced to deal with some of the lowest people on earth, people who have no sense of right and wrong, people who will lie in court to get what they want, people who do not care who gets hurt in the process. It is our job—our sworn duty—as criminal defense lawyers, to protect our clients from those people.

First First Lady Martha Washington said, “The greater part of our happiness or misery depends on our dispositions and not our circumstances.”

M.C. Escher, the prince of looking at up as down, observed, “Only those who attempt the absurd will achieve the impossible.” “It's kind of fun to do the impossible,” said Walt Disney.

The author of my favorite books, Tom Robbins, follows *crazy wisdom*. He notes,

Crazy Wisdom is a philosophical world view that recommends swimming against the tide, cheerfully seizing the short end of the stick, embracing insecurity, honoring paradox, courting the unexpected, celebrating the unfamiliar, shunning each and every orthodoxy, volunteering for those tasks nobody else wants or dares to do, and perhaps above all else, breaking taboos in order to destroy their power. It's the wisdom of those who turn tables on despair by lampooning it, and who neither seek authority nor submit to it.

And finally, those sublime philosophers, John Lennon and Paul McCartney, advise, “And, in the end, the love you take is equal to the love you make.” Have a happy, safe holiday and New Year.

~ Heather E. Williams
Federal Defender, Eastern District of California