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Federal Defender Newsletter

January 2009

ADDITIONS TO CJA PANEL

The panel selection committee in Sacramento has submitted the following candidates to the district court for inclusion to the CJA panel. Congratulations to Preeti Bajwa, Charles Bauer, Toni Carbone, David Fischer, Alan Whisenhand, Michael Hansen, Kyle Knapp, and Tim Pori.

CJA PANEL TRAINING

Sacramento panel training is on January 21, 2009 at 5:30 p.m. at 801 I Street, in the 4th Floor conference room. The topic will be: "When is a Transportation Not a Trafficking?: Taylor Analysis of Prior Convictions." Fresno panel training is on January 27, 2009 at 5:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. The topic is Ethics, presented by panel attorney Carol Moses and AFD Doug Beevers.

FRESNO JOB OPENING

The Fresno Federal Defender's Office has an opening for an experienced investigator. This position will remain open until filled.

2009 LITTLE RED RULES BOOK

The Federal Defenders of the Eastern District of Washington and Idaho are taking orders now for their always helpful Little Red Rules Book. The cost is \$6.00. Please send your order and check to: Federal Defenders of EWA and ID
10 North Post Street, #700
Spokane, WA 99201

The books should be ready to ship in early February.

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

Sechrest v. Ignacio, No. 04-99004 (12-5-08). The defendant was sentenced to death for two murders. During voir dire, the prosecutor made two false statements about the possibility of release even with an LWOP sentence. The Ninth Circuit (Pregerson, with Fletcher, W., and Berzon) held that this was flagrant prosecutorial misconduct that violated due process. The court remanded

the case for resentencing. The decision says that such prosecutorial statements constituted improper testimony that was extrinsic, false, and buttressed by the prosecutor's position. All of this misled the jury into imposing the death penalty.

Gonzalez v. Duncan, No. 06-56523 (12-30-08).

The Ninth Circuit (Bybee, Kleinfeld, and Canby) took up the habeas case of a California prisoner who received a twenty-eight-years-to-life three strikes sentence for failing to update his sex offender registration within five days of his birthday. (He did update it a few months late.) The court analyzed prior law on the issue and determined that the sentence constituted cruel and unusual punishment.

US v. Collins, No. 06-50339 (1-7-09).

This was a drug trafficking trial in which the government struck the only remaining African-American prospective juror. The defendant asked for a justification, arguing that a prima facie Batson showing was made. The district court said "no" because the defense had also struck an African-American, and there was no pattern of bias as the prosecutor only struck the one remaining African-American. The 9th Circuit (Gibson with a concurrence by Graber) reversed and remanded for an evidentiary hearing. The court reasoned that patterns and statistics were meaningless when there is only a sample of one. Adding to the difficulty is the fact that the court conducted the voir dire (another argument for attorney participation in voir dire). However, looking at other jurors similarly situated, and the totality of circumstances, the court felt that the defendant had met his burden, and so the government had to set forth its reasons at a hearing. Graber, concurring, states that the better practice is for the prosecutor to state his reasons for striking jurors at the time of a Batson challenge.