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Federal Defender Newsletter

July 2009

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.

Panel training will resume in September.

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

Supervisory Assistant Federal Defender Mary French will be leaving the office in early July in order to begin her new career as an Administrative Law Judge with the Social Security Administration. Mary has been with the Federal Defender offices in Maryland and the Eastern District of California for over twenty years. During that time, she's represented thousands of individual clients, many of whom have expressed their sincere gratitude for the terrific work she did in their cases. Everyone wishes her the best in her new career. The office will be hosting a goodbye lunch on Thursday, July 9 at noon in the main conference room.

Mary's position in Sacramento will be filled by Assistant Federal Defender Doug Beevers, who will be transferring up from the Fresno division. Before joining our office in December, 2007, Doug worked as an Assistant Federal Defender in the Virgin Islands for three years and in Central Illinois for three years.

The Federal Defender office is currently advertising for an Assistant Federal Defender in the Fresno division. The application period ends July 31, 2009, at which time the position can be filled immediately. Anyone interested in additional information about this position can contact either Margaret Camacho in our Fresno office or Lupe Hernandez in Sacramento.

Habeas Seminar: You are invited to attend a one-day seminar on federal non-capital habeas corpus litigation presented by the Federal Defender's Office for the Eastern District of California on Friday, October 2, 2009 in Sacramento. Topics to be covered include "hot topics" in federal habeas, evidentiary hearings, combating procedural defenses, and litigating parole denials through habeas corpus. Our lunchtime speaker will be leading Supreme Court litigator and criminal procedure expert Jeffrey Fisher of Stanford Law School. The full agenda will be posted soon at <http://www.cae-fpd.org/> - CJA PANEL -- Announcements

Speaker: Forensic expert Ken Moses will be speaking on Friday, July 10th at 11:30 a.m. - 1:00 p.m. at the Office of the Federal Defender, 801 I Street, 4th Floor Conference Room. His power point presentation will include a discussion of aspects of the recent report by the National Academy of Science on Forensic Sciences. In light of the recent decision by the United States Supreme Court in Melendez-Diaz v. Massachusetts (see below), this seminar could not be more timely. You are invited to bring your lunch to this event. Please email to Lissa_Gardner@fd.org to confirm that you will be attending.

CLIENT CLOTHING & FOOTWEAR

The clothes closet is available to all AFDs and panel attorneys. It contains court clothing that clients can wear for 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

UNITED STATES SUPREME COURT

Yeager v. United States, No. 08-67 (6-18-09). The Court held that a jury's acquittal of an Enron executive of securities and wire fraud charges may have erected a double jeopardy bar to his retrial on factually related insider-trading and money-laundering charges on which the jury deadlocked.

Melendez-Diaz v. Massachusetts, No. 07-591 (6-22-09). The Court upheld the defendants' right to confrontation against the state's wish to use an affidavit to prove drug type and quantity. At petitioner's state-court drug trial, the prosecution introduced certificates of state laboratory analysts stating that material seized by police and connected to petitioner was cocaine of a certain quantity. As required by

Massachusetts law, the certificates were sworn to before a notary public and were submitted as prima facie evidence of what they asserted. Petitioner objected, asserting that Crawford v. Washington, 541 U. S. 36, required the analysts to testify in person. The Supreme Court held that the admission of the certificates violated petitioner's Sixth Amendment right to confront the witnesses against him.

Safford Unified School District v. Redding, No. 08-479 (6-25-09). The Arizona school search of a 13-year-old girl was held to violate her Fourth Amendment rights. The Court held that the search of the girl's underwear for prescription-strength ibuprofen was a strip search and unreasonable under the Fourth Amendment.

NINTH CIRCUIT CASES

Holley v. Yarborough, No. 08-15104 (6-16-09). The Ninth Circuit issued habeas relief to a petitioner, vacating convictions for lewd acts with children. The court (Smith joined by Kleinfeld and T. Nelson) held that petitioner's sixth amendment rights to confrontation were violated when the court prevented cross examination about an 11-year-old child's prior statements regarding sex and about how others had made sexual advances toward her. The court also questioned the admission of evidence that the petitioner had guns in the house, and the admission of several sexually explicit magazines. The facts of this case raised real questions of guilt, and the prosecutor's closing focused on the credibility of the child witness.

US vs. Tran, No. 07-30270 (6-24-09). In an opinion by Pregerson joined by Canby, the Ninth Circuit looked at the evidence of a marijuana conspiracy and possession

with intent to distribute. The defendant was a passenger in a car transporting marijuana. At trial, the driver of the car testified that the defendant had come along for a ride. The government went ballistic and impeached the driver with the proffer interview and the plea agreement's factual basis where he said that he and defendant had picked up and driven marijuana. The Ninth Circuit found insufficient evidence of participation in the conspiracy and reversed the convictions. It held that D's presence as a passenger and his knowledge of marijuana and marijuana distribution was insufficient as a matter of law to establish his guilt on the conspiracy charge. The government had shown that the defendant was a passenger, but that was all.

US v. Calderon-Espinosa, No. 08-50092 (6-24-09). The Ninth Circuit (Pregerson joined by D. Nelson and Singleton) remanded a 1326 defendant for resentencing. The district court erred in awarding criminal history points for the state conviction for "loitering for drug activities." The Guidelines in 4A1.2(c)(2) state that loitering and offenses known by these title shall not be counted.