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# Federal Defender Newsletter

## June 2016

### **QUIN DENVIR – former Federal Defender and legal giant, passed away June 3, 2016**

The Federal Defender's Office mourns the loss of former Federal Defender Quin Denvir.

Sidney Thomas, Chief Judge of the Ninth Circuit Court of Appeals, sent out the following eloquent obituary regarding Quin:

As many of you may have already heard, renowned criminal defense lawyer Quin Denver, the former Federal Public Defender for the Eastern District of California, died a few days ago. Quin had been diagnosed four years ago with an incurable lung disease. He died on Friday, June 3, at a Sacramento hospital. He was 76.

Quin was one of the best oral advocates I have encountered in my years on the bench. In my dealings with him, he was always the consummate professional, and he was a great friend of the Circuit. He was first appointed by our Court to lead

the Office of the Federal Public Defender for the Eastern District of California in 1996. He was reappointed in 2000 and again in 2004. After stepping down as the federal defender in 2005, he returned to private practice in Davis, California, and also served as of counsel to Rothschild Wishek & Sands LLP in Sacramento and Lightfoot Steingard & Sadowsky LLP in Los Angeles.

Quin argued 3 cases before the U.S. Supreme Court and made 25 appearances before our Court. As the federal defender, he was a member of the defense team representing "Unabomber" Theodore Kaczynski, who avoided a likely death sentence by pleading guilty in 1998 to all federal charges related to 17-year string of bombings. Other noteworthy clients were Reza Eslaminia, a defendant in the notorious "Billionaire Boys Club" case; Cary Stayner, convicted of beheading a naturalist in Yosemite National Park; and former California state schools chief, Bill Honig, on appeal of his felony conviction for conflict-of-interest. My first encounter with Quin was his oral argument in the en banc Thompson death penalty case, in which he did a remarkable job of oral advocacy.

Quin was one of most admired and respected federal defenders in the nation. In 1989, the California Attorneys for Criminal Justice presented him with its Annual Award for Significant Contributions to the Criminal Justice System. In 1998, he received the State Bar of California's Presidents Award and a Special Recognition Award from the California Public Defender's Association.

Longtime colleague and friend Judy Clarke, described Quin as "a smart, thoughtful and compassionate lawyer – he was the best of the best."

"But he was also so much more than that – whether it was leaving a silk stocking law firm to provide legal services to the poor in El Centro, California, or writing a deeply personal letter to Governor Brown in the last few weeks of his life seeking clemency for those on California's death row, Quin spent his life trying to make our world a better place," she said.

Prior to his federal service, Quin engaged in private practice in Sacramento, from 1988 to 1996. He was a partner at Denvir & Correio, 1987 to 1988, and Marron, Reid and Sheehy, 1984 to 1987. Earlier in his career, he served as the California State Public Defender, from 1978 to 1983, and as a deputy state public defender from 1977 to 1978. He was also chief counsel for the California State Department of Health, from 1975 to 1977, and a deputy public defender for Monterey County, from 1974 to 1975.

A Chicago native, Quin earned his A.B. from the University of Notre Dame,

graduating cum laude in 1962. After serving as a lieutenant in the Navy from 1962 to 1966, he resumed his education, receiving an M.A. from The American University in Washington, D.C. in 1966, and his J.D. with honors from the University of Chicago Law School in 1969. While in law school, he served on the law review for three years and received the Order of the Coif.

Survivors include his wife, Ann, with whom he would have celebrated his 50<sup>th</sup> wedding anniversary this Saturday; a daughter and son-in-law, Karen and Anthony Hakl; a son, Paul Denvir; and six grandsons.

The funeral will be Tuesday, June 14, at 10 a.m. at St. James Catholic Church, 1275 B Street, Davis. In lieu of flowers, the family suggests contributions in memory of Quin Denvir to the California Attorneys for Criminal Justice or the CACJ Political Action Committee. Donations can be sent to:

CACJ Foundation or CACJ PAC  
California Attorneys for Criminal Justice  
1555 River Park Drive, Ste. 105  
Sacramento, CA 95815

Or online at  
<https://www.cacj.org/Donations.aspx>

In honor of Quin, three members of the Capital Habeas Unit – Brittany Kasik, David Harshaw, and Tivon Schardl -- participated in a sprint triathlon relay on June 5, 2016, using the team name “The Denvirs.” They won their division in 1:46.02!



## **CJA PANEL TRAINING**

Panel training is on summer break until September!

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Check out [www.fd.org](http://www.fd.org) for unlimited information to help your federal practice.

You can also sign up on the website to automatically receive emails when fd.org is updated.

## **PLEASE DONATE TO CLIENT CLOTHES CLOSET**

The Federal Defender’s Office maintains a clothes closet that provides court clothing to your clients. We are in dire need of court-appropriate clothing for women. Please consider donating any old suits, or other appropriate professional clothing to the client clothes closet.

## **DAVID PORTER TO SPEND ANOTHER YEAR IN D.C.**

Assistant Federal Defender David Porter, since July 2015, has been the Federal Defender’s representative at the U.S. Sentencing Commission, trying to keep them from implementing amendments which might further hurt our clients.

Enjoying his old stompin’ grounds, David applied for and will now be appointed to Defender Service’s Policy and Legal Division through July 2017. David will be working on CJA and FDO trainings, responding to email and telephone inquiries by CJA and FDO lawyers and staff, contribute to the Training Division’s website, and be part of the Supreme Court Advocacy Program.

We’ll miss you, David, but thanks for the work you’re doing.

## **ONLINE MATERIALS FOR CJA PANEL TRAINING**

The Federal Defender’s Office distributes panel training materials through its website: [www.cae-fpd.org](http://www.cae-fpd.org). We will try to post training materials before trainings to print out and bring to training for note taking. Not on the panel, but wishing training materials? Contact Lexi Negin, [lexi.negin@fd.org](mailto:lexi.negin@fd.org)

## **PODCAST TRAINING**

The Federal Defender’s Office for the Southern District of West Virginia has started a training podcast, “In Plain Cite.” The podcast is available at <http://wvs.fd.org>. The podcast may be downloaded using iTunes.

The Federal Defender Training Division also provides a telephone hotline with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

## **CJA REPRESENTATIVES**

Scott Cameron, (916) 769-8842 or [snc@snc-attorney.com](mailto:snc@snc-attorney.com), is our District CJA Panel Attorneys' Representative handling questions and issues unique to our Panel lawyers. David Torres of Bakersfield, (661) 326-0857 or [dtorres@lawtorres.com](mailto:dtorres@lawtorres.com), is the Backup CJA Representative.

## **TOPICS FOR FUTURE TRAINING SESSIONS**

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno – Peggy Sasso, [Peggy\\_Sasso@fd.org](mailto:Peggy_Sasso@fd.org),  
Or Karen Mosher, [karen\\_mosher@fd.org](mailto:karen_mosher@fd.org).

Sacramento: Lexi Negin, [lexi\\_negin@fd.org](mailto:lexi_negin@fd.org) or  
Ben Galloway, [ben\\_d\\_galloway@fd.org](mailto:ben_d_galloway@fd.org).

## **NATIONAL DEFENDER SERVICES TRAININGS**

THE ANDREA TAYLOR SENTENCING  
ADVOCACY WORKSHOP  
HARTFORD, CONNECTICUT  
June 23 - June 25, 2016

MULTI-TRACK FEDERAL CRIMINAL DEFENSE  
SEMINAR  
NEW ORLEANS, LOUISIANA  
August 11 - August 13, 2016

LAW & TECHNOLOGY SERIES: TECHNIQUES IN  
ELECTRONIC CASE MANAGEMENT WORKSHOP  
NEW ORLEANS, LOUISIANA  
September 22 - September 24, 2016

## **DRUGS-2 UPDATE**

Starting November 1, 2014, the Sentencing Guidelines permitted courts to start granting sentence modifications based upon the Guidelines' retroactive application of an across-the-board Base Offense Level 2-level reduction in drug cases.

In May 2016, 4 amended judgments were filed resulting in a total time reduction of approximately 10 years. While the value of early release is inestimable for defendants, their families, and their friends, May's early releases result in a taxpayer cost savings of approximately \$302,680.

So far, 375 defendants convicted in this district have received reductions in their sentences under Amendment 782.

## **INTERESTING INFORMATION ON-LINE**

**TED Talks - Adam Foss:** A Prosecutor's Vision for a Better Justice System,  
[http://www.ted.com/talks/adam\\_foss\\_a\\_prosecutor\\_s\\_vision\\_for\\_a\\_better\\_justice\\_system](http://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system)

## **NOTABLE NINTH CIRCUIT CASES**

*US v. LaCoste*, No. 15-30001 (5-12-16) (Watford, Berzon and Walter, Sr. D.J.).  
Two overly broad supervised release conditions are vacated: use of the Internet and prohibiting residence in certain counties. The defendant pled to conspiracy to commit securities fraud. At sentencing, the court forbade his use of the internet upon release because of alleged "rants" against some victims. The court also ordered that the defendant couldn't live in certain counties so he would not go back to his "old ways" and to allow the community to "heal."

The Ninth Circuit concluded that such provisions were overbroad, even under a "plain error" standard of review. The offense did not make specific use of the internet (as, for example, in computer child pornography cases); nor had the defendant used the internet improperly in the past. Given the omnipresence of the internet, a person has to make use of it to reintegrate. The community prohibition was also too broad. The court did not state the specific reasons as to preclude

him except that some victims lived in the counties, and that was where the fraud took place.

Carrillo-Carrillo v. Coursey, No. 14-35897 (5-24-16) (Watford with Fisher and Berzon). The Ninth Circuit reversed the dismissal of the IAC petition for being procedurally barred. It was not barred. The petitioner had presented his claims, in a pro se portion of his Balfour brief (Oregon's version of Anders), by attaching his petition and incorporating it by reference. The petitioner may not have numbered the claims exactly as required, but some leeway is granted, and the Oregon Supreme Court has held such attachment can constitute presentation of the claim.

Here, the petitioner alleged IAC. He claimed he was pressured into taking a plea to 15 years when new charges had been filed, trial was looming, and he received bad advice from counsel, who conducted no investigation. The petitioner had presented his petition in state court, lost after an evidentiary hearing, and then had a Balfour brief on appeal. The Ninth Circuit reversed the dismissal for procedural default and remanded the matter to the district court for review on the merits.

Rodriguez v. Copenhaver, No. 14-16399 (5-25-16) (Silverman with Graber; partial dissent by Tashima). The BOP denied nunc pro tunc discretionary credit of the time spent serving a state sentence pursuant to 18 USC 3621(b). In denying the credit, the BOP relied upon a letter from a judge who was not the federal sentencing judge, as designated by statute, and who had already been RECUSED in the case. The judges for the district had been recused because one of the judges had been the victim of one of

the offenses. The Ninth Circuit held that the courts had jurisdiction over the discretionary awarding of credit because the petitioner alleged violation of statutory authority and a violation of constitutional due process. The Ninth Circuit further held that the BOP had indeed violated the statute by considering the letter and had violated due process. The Ninth Circuit granted the petition and ordered the BOP to consider the request without the letter.

US v. Loveland, No. 13-30162 (6-3-16) (Kleinfeld with Kozinski and Murguia). A conspiracy needs an agreement. In this reversal of defendant's conviction and vacation of his life sentence, the Ninth Circuit found there was ample evidence of possession with intent to distribute meth, but no evidence of an agreement between the suppliers, nor the ultimate purchasers. It is not enough that the purchases are regular, or that everyone knows who is buying what; there has to be an agreement that everyone is in this together. Here, there was not. The only evidence was that co-defendants each purchased amounts.

Currie v. McDowell, No. 13-16187 (6-8-16) (Berzon with Fletcher; dissent by Bea). This is a reversal of a denial of a habeas petition because of Batson. The Ninth Circuit held that a prosecutor (again) used race to strike an African American juror. The neutral reasons or justifications fell flat: they were either unreasonable, wrong, or applied to everyone. Such reasons included having family members with drug issues, being arrested (but having been treated fairly), and not knowing exactly what the charges were.

US v. Murphy, No. 15-50023 (6-9-16) (Block, Sr. D.J., with Clifton and Ikuta). This appeal of tax and false claims convictions has an interesting "sovereign nation" issue. The Ninth Circuit vacated

the conviction for the count alleging presenting fictitious financial instruments. The defendant had written out a promissory note with a confusing legal justification and submitted it to the Treasury, saying that it should be used to offset any claims. In instructing the jury, the court failed to state an element: the financial instrument had to be issued "under the authority of the United States." This was plain error, given the element, and the fact that the instrument arguably was not issued by the United States. The count was remanded for a new trial or dismissal.

Goodrum v. Busby, No. 13-55010 (6-9-16)(Watford with M. Smith and Friedland). The Ninth Circuit reversed the dismissal of a habeas petition. The petition was not a "second or successor" petition and did not have to meet the requirements of 28 USC 2244(b). The petitioner had a petition pending, when he sought to amend by filing a second petition in the court of appeals (following the practice in the state). The Ninth Circuit has held that a filing of a second petition while one is pending is construed as an amendment of the pending one. The rule is extended to filings in the court of appeals. The petitioner identified what he is doing, and why, and attached the pending petition.

### LETTER FROM THE DEFENDER

The deaths within hours of each other invite comparisons between Muhammed Ali and Quin Denvir. Both fought incurable diseases with grace, not letting their diseases define them. "Fighter" more than aptly describes each, both within their professions and when promoting social justice and equality. And family and faith comforted and inspired them.

Chief Judge Thomas' tribute to Quin cannot be improved upon, so here we'll simply add to it with memories shared by those who worked with him in the Office and on his cases.

Tim Zindel described a felon in possession of a firearm case he worked with Quin shortly after starting with the FD-CAE. They had **the** witness ready to testify that the client never knew the gun alleged was under the couch cushion where he slept. Surely, once the prosecution realized the client was truly innocent, charges would be dismissed, right? The AUSA was fairly new to their office, so they set up a meeting with that AUSA and his supervisor, Bob Twiss. Once Quin explained about the exonerating witness and asked for dismissal, Bob didn't buy any of it. Quin's voice rose; Bob's voice rose. In no time, both Irishmen's shouts mirrored their disbelief at the other's position. No dismissal was had.

As an administrator, Quin's hiring interview techniques were – er – unorthodox. One FD-CAE described her interview occurring in Quin's backyard over a glass (or more) of wine. Paul Mann vividly recalls his interview where Quin leaned back in his chair at his desk, cowboy-booted feet propped up on the desk.

Dennis Waks, who first met Quin in the 1970s, says: in the office, Quin was like a Navy lieutenant; however, the guy outside the office was a juvenile delinquent. Quin hardly used a computer, preferring to write documents out by hand or dictate it. Like the benevolent school principal, he hired people like Dennis who could be strict when Quin couldn't or didn't want to be. If Quin started a conversation with "I gotta tell you . . .", the talk went downhill after that. Dennis also recounted their visits to our Fresno office as white-knuckled drives in Quin's old 5-speed car, screaming south, making in 2½ hours what for anyone else would be a 3 plus hour drive.

Not surprisingly, Quin eschewed the hobnobbing some engage in to reach or maintain positions such as Federal Defender. Quin didn't want to attend his first Ninth Circuit Judicial Conference, so sent Dennis in his place. Judge Coyle was then Chief Judge. At the Eastern District's breakout, Judge Coyle wasted no time before railing at Dennis about Federal Defenders. After the meeting, Judge Coyle incongruously hugged Dennis who

asked, "What gives?" Judge Coyle: "Oh, that was for Quin."

Quin's first attendance at the Eastern District Conference was when he was named Defender, so he asked Dennis for suggested dress at Friday night's dinner. Dennis explained it was "casual" because many would be attending right after work. Quin showed up in a bright green golf shirt, jeans and cowboy boots, decidedly less "business casual" than Dennis meant. "Thanks a lot, dude" was Quin's comment to Dennis.

Matt Bockman shared a special literary relationship with Quin, exchanging books with him. He says Quin was a wonderful writer who "would handwrite over and over," each version usually shorter than the previous. He remembers Quin saying, "It's so hard to write a brief. How amazing that a novelist can write a book."

Matt also recalls something of the following dialogue between Quin and Judy Clarke during the Unabomber case.

Quin: Let's file \_\_\_\_\_ ....

Judy: That's ridiculous! It will never get granted.

Quin: So what. I'm filing it.

Finally, we all know how vehemently anti-death penalty Quin was. He, Joe Schlesinger, and many others toiled till the bitter end for Tommy Thompson's life. Joe remembers the office they used in San Francisco the days leading to the planned for Thompson's planned execution date and time. The time came when all appeals, including to the Supreme Court, had been denied, when clemency had been denied, and nothing more could be done but wait. Two hours before Thompson's scheduled killing, Quin announced he was leaving the group and the San Francisco office to be with Ann, his wife, when Tommy died. Quin and Ann were at church together when Tommy was killed.

Quin not only set the example for the lawyer we aspire to be, but also to balance that

passion and zealousness with a devotion to family, friends, and life. 'Bye, Quin.

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June 13 marks the 50<sup>th</sup> anniversary of the *Miranda* decision. Next month's Defender Letter will tell Ernesto Miranda's story. Meanwhile, you still have the right to know all your constitutional rights when talking with law enforcement.

~ Heather E. Williams  
Federal Defender, California Eastern