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# Federal Defender Newsletter

## March 2009

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### **CJA PANEL TRAINING**

Sacramento panel training is on March 18, 2009 at 5:30 p.m. at 801 I Street, in the 4<sup>th</sup> Floor conference room. Attorney Rachelle Barbour and US Probation Officers Terry Sherbondy and John Poglinco will present "Post-Conviction Alternatives to Incarceration." Fresno panel training is on March 17, 2009 at 5:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. The topic will be announced.

### **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](mailto:melody_walcott@fd.org) or Rachelle Barbour at the Sacramento office at [rachelle\\_barbour@fd.org](mailto: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.

the generic definition.

See Becky Darwazeh at the Sacramento Office or Nancy McGee at the Fresno office to pick up or drop off clothes.

## **NOTABLE CRIMINAL CASES**

US v. Autery, No. 07-30424 (2-13-09). This is an important sentencing "standard of review" case. The 9<sup>th</sup> Circuit (M. Smith joined by Thompson, and Tashima concurring on the review standard) holds that abuse of discretion is the proper standard of review where a party challenges a sentence's substantive reasonableness on appeal but did not object to the sentence's reasonableness before the district court. This case involved possession of child pornography. The guidelines were between 41-51 months, but the district court imposed a sentence of five years probation. The district court carefully went through the section 3553 factors, and explained at length why such a sentence was appropriate and how it comported with the sentencing factors. Noting a circuit split, the 9th Circuit goes with the majority, and specifically cites the reasoning in US v. Castro-Juarez, 425 F.3d 430, 434 (7th Cir. 2005). The abuse of discretion standard for reasonableness, with or without an objection, is adopted. The 9th (M. Smith and Thompson) goes on to find that this sentence wasn't an abuse of discretion.

US v. Esparza-Herrera, No. 07-30490 (2-25-09). The 9th, per curiam, affirms the district court's ruling that the Arizona statute for aggravated assault, 13-1204(A)(11) is not categorically a "crime of violence" under Sentencing Guideline section 2L1.2 because it did not correspond to the generic definition. Under the categorical approach, aggravated assault in Arizona could apply to crimes committed with recklessness or extreme indifference, and so it fell outside