

Daniel J. Broderick
Federal Defender

Linda C. Harter
Chief Assistant Defender

Marc C. Ament
Fresno Branch Chief

**OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA
801 I STREET, THIRD FLOOR
SACRAMENTO, CALIFORNIA 95814
(916) 498-5700 Fax: (916) 498-5710**



Federal Defender Newsletter

May 2009

CJA PANEL TRAINING

Sacramento panel training is on May 20, 2009 at 5:30 p.m. at 801 I Street, in the 4th Floor conference room. Denise Dempsey, director of the Stress Reduction Clinic at the Davis Holistic Health Center, will speak on Mindfulness-Based Stress Reduction for Lawyers. Please wear comfortable clothing to this session.

Fresno panel training is on May 19, 2009 at 5:30 p.m. at the Downtown Club, 2120 Kern St., Fresno. The speaker is Dennis Wong, Assistant Regional Counsel, BOP.

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.

ANNOUNCEMENTS

Peggy Sasso started as our newest Assistant Federal Defender in Fresno on April 27. Peggy graduated summa cum laude from UC San Diego, then obtained a Masters of Fine Arts from Yale, in theater management. After a few years of managing theaters in Connecticut and Dallas, she entered UCLA Law School. She was the Articles Editor of the UCLA Law Review and Order of the Coif. Peggy clerked with Judge Richard Clifton on the Ninth Circuit, then worked at Paul, Weiss in the white collar crime unit. Peggy has authored criminal law publications: Implementing the Death Penalty: The

Moral Implications of Recent Advances in Neuropsychology; and Criminal Responsibility in the Age of "Mind-Reading."

The Federal Defender's Office Summer Training Program will take place June 1 through June 5, in the 3rd Floor Conference Room at 801 I Street. The training, which is open to all interested criminal defense attorneys, will cover topics such as: Rule 17 Subpoenas, Sentencing Memos and Advocacy, Pretrial Motions, Detention Hearings, Appeals, and Habeas Corpus. There will also be sessions on specific types of cases, including firearms offenses, marijuana cultivation, child pornography, and illegal reentry. For a complete training schedule, contact Lauren Cusick, at 498-5700 or Lauren_Cusick@fd.org.

United States v. Valverde: In February Judge Karlton found the federal Sex Offender Registration and Notification Act (SORNA) unconstitutional. The case is currently pending in the Ninth Circuit on an expedited briefing schedule.

DNA Testing of Arrested and Charged Defendants: Litigation challenging the DNA testing provisions in 42 U.S.C. § 14132 is currently pending in Sacramento before Magistrate Judge Hollows. The Ninth Circuit has yet to rule on the constitutionality of forcing DNA samples from presumed-innocent arrestees.

If you have any questions regarding SORNA or challenging DNA testing of arrestees, please contact Rachelle Barbour at 498-5700, Rachelle_Barbour@fd.org.

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 CRIMINAL CASES

Supreme Court:

Arizona v. Gant, No. 07-542 (4/21/09): The Supreme Court held, in a 5-4 decision authored by Justice Stevens, that the Constitution does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle. The defendant was arrested for driving on a suspended license. Police handcuffed him and locked him in a patrol car before they searched his car and found cocaine in a jacket pocket. The search was illegal. Police may search the vehicle incident to arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. Where an arrestee cannot gain access to the vehicle at the time of arrest,

the police may only search the vehicle incident to arrest when it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. When the recent occupant is arrested for a traffic violation there will be no reasonable basis to believe the vehicle contains relevant evidence. The Court noted that it will be the rare case where an officer is unable to fully effectuate an arrest so that a real possibility of access by the arrestee remains.

Flores-Figueroa v. United States, No. 08-108 (5/4/09): In a decision authored by Justice Breyer, the Supreme Court held that the federal aggravated identity theft statute, 18 U.S.C. § 1028A(a)(1) requires that the defendant know that the means of identification he used belonged to another person. The statute prohibits the knowing use, without lawful authority, of a means of identification of another person. "Knowingly" applies to all the subsequently listed elements of the crime. Rejecting the government's statutory history argument and practical concerns, the Court reminded the government that "concerns about practical enforceability are insufficient to outweigh the clarity of the [statutory] text."

Ninth Circuit:

Townsend v. Knowles, No. 07-15712 (4-21-09): The petitioner followed the Ninth Circuit rules in his post-conviction challenge to his state second degree murder conviction. While working his way up the state system, a different rule came out from the Supremes. Petitioner would have been out of luck under the Supreme Court case, but the Ninth Circuit said that he had relied upon their precedent and so should get equitable tolling. Congratulations to panel attorney John Balazs on getting this case heard in the

Ninth Circuit.

U.S. v. Godinez-Ortiz, No. 08-50337 (4-29-09). The Ninth Circuit (Trott, Kleinfeld, Fisher) allowed an interlocutory appeal of an order for a dangerousness evaluation under 18 U.S.C. § 4246, finding that it evades review, and the issue presented will be resolved.

U.S. v. Felix, No. 07-50173 (4-13-09). The Ninth Circuit held that an appeal was not waived even though the plea agreement had waiver language because the district court had twice told defendant he could appeal, and the government did not object.