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Federal Defender Newsletter

November 2008

CJA PANEL TRAINING

For the Sacramento panel, on November 19, 2008 at 5:30 p.m., Charles Scott, MD, Chief, Division of Psychiatry and the Law, UC Davis, will present with Humberto Temporini, MD, Assistant Clinical Professor and Division of Psychiatry and the Law faculty member, on "Competency to Stand Trial and Forced Medication." Sacramento panel training is held at 801 I Street, 4th floor, in the conference room. For the Fresno panel, on November 18, 2008 at 5:30 p.m., the Federal Defender's Office, will be presenting a training on bail issues, at the Downtown Club, 2120 Kern St., Fresno.

EASTERN DISTRICT CONFERENCE

The annual Eastern District Conference will be held November 14-16 at the Napa Valley Marriot Hotel and Spa.

FEDERAL DEFENDER HOLIDAY PARTY

The annual Federal Defender Holiday Party will be held on December 5, 2008. All members of the panel and the court are invited to attend.

US ATTORNEY STEPPING DOWN

U.S. Attorney McGregor Scott announced he will be leaving the U.S. Attorney's office in January, 2009, to start a white collar crime practice at Orrick Herrington Sutcliffe LLP in Sacramento.

MEMORIAL SERVICE FOR INVESTIGATOR JED DEPOY

Jed Depoy, formerly an investigator for the Federal Defender's Office, passed away on Monday, November 3, 2008. A memorial service will be held on Friday, November 7, 4:00 to 7:00 p.m. at the Embassy Suites Hotel, 100 Capitol Mall in the Central Pacific/Tower Bridge Room. Please RSVP to Mark Reichel at mark@reichellaw.com or (916) 498 9258. Food and drinks will be served.

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 be 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.

NINTH CIRCUIT OPINIONS

Slovik v. Yates, No. 06-55867 (10-6-08). The 9th (Bybee, joined by Canby and Kleinfeld) granted the habeas petition where the trial court refused to allow a full cross-examination of a critical witness. This case deals with the Confrontation Clause and limitations on cross-examination. The petitioner was confronting the witness and exposing him as a liar. Given the conflicting evidence, and the issue of credibility, the error could not be harmless.

US v. Armstead, No. 06-30550 (10-15-08). The defendant was convicted on numerous counts of bank fraud involving a scheme of false identifications and bogus accounts. The court even sent in a special verdict as to whether he was a "leader or organizer." At sentencing, the court found witnesses credible as to loss. However, when it came to a number of victims, the trial court stated that there were more than 50. The 9th (Tashima joined by Reinhardt and McKeown) reversed. The victims who suffered loss that could be calculated included 13 banks and 9 named individuals. Others suffered time loss by having to get new identifications and checking accounts, but there was no pecuniary loss. Others suffered short-lived losses but were promptly reimbursed. Only those who suffered pecuniary loss that lasted an amount of time could be counted as victims. The 9th also held that the sentence had to be

adjusted for the state sentence on the same conduct, especially since the state conduct was counted in the loss calculation under 5G1.3(b)

US v. McTiernan, No. 07-50430 (10-21-08).

The 9th (Miner joined by Reinhardt and Berzon) vacated the district court's refusal to allow the defendant to withdraw his guilty plea. It remanded for a full evidentiary hearing. The standard to withdraw from a guilty plea is a "fair and just" reason and is to be liberally construed. The purported reason here, odds of success of suppression, might be such a reason if the defendant was not informed prior to plea.

US v. Schales, No. 07-10288 (10-20-08).

The defendant was convicted of receiving material depicting sexual exploitation of minors under 18 USC 2252(a)(2) and possessing material involving sexual exploitation of minors under 18 USC 2252(a)(4)(B). Possession is a lesser included offense of receipt. The court rejected the government's position that downloading and printing the material transformed it and made it a different offense. The court held that the Double Jeopardy clause prohibited convictions on both counts.

Estrada-Espinoza v. Mukasey, No. 05-75850 (10-20-08)

The 9th (en banc and unanimous) hold that four California statutory rape statutes do not qualify as "sexual abuse of a minor" for the purposes of an immigration case. This case has huge ramifications for illegal reentry cases, and its reasoning can easily be used in other cases involving categorical analysis. Further, the court states that if a prior conviction lacks an element of the federal qualifying definition, then the modified categorical analysis does not apply, and there is no need to look at the documents of conviction.