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Federal Defender Newsletter

October 2009

CJA PANEL TRAINING

CJA Panel training will be on Wednesday, October 21, 2009 at 5:30 p.m. AFDs Tim Zindel and Lauren Cusick will be presenting on "Defending Marijuana Grow Cases." Panel training will be held on the 4th floor at 801 I Street in Sacramento.

In Fresno, the panel training will be on Tuesday, October 20, 2009, from 5:30 to 6:30 p.m. at the Downtown Club, 2120 Kern Street in Fresno. Topic will be announced.

TOPICS FOR FUTURE TRAINING SESSIONS

If you know of a good speaker for the Federal Defender's panel training program, or if you would like the office to address a particular legal topic or practice area, 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

Eastern District Conference

The Eastern District Conference is on November 6-8, at the Portola Hotel in Monterey, California. The topics include "Evaluating Forensic Evidence: Advice from the National Academy of Science" and "Common Ground: Why We Can Stop Gang and Drug Crime." The deadline to register is October 16, 2009. If you desire to attend or have any questions, please contact Marie Heltzel at (916) 930-4615.

Habeas Seminar

On October 2, 2009, the Federal Defender's Office sponsored a one-day seminar on non-capital habeas corpus. The program included the following topics:

1. Overview of Federal Non-Capital Habeas Litigation (U.S. Magistrate Judge Gregory Hollows)
2. Equitable and Statutory Tolling (AFD Carolyn Wiggin and Nevada AFD Lori Teicher)
3. Lifer Litigation (AFD Monica Knox and AFD Ann McClintock)
4. Hot Topics in Habeas (AFD David Porter)
5. Confrontation Clause Developments (Stanford Law Professor Jeffrey Fisher)
6. Combating the Procedural Default Defense (CHU AFD Hillary Sheard)
7. Non-Capital Habeas Discovery (FD Dan Broderick)
8. Evidentiary Hearings (CHU AFD Allison Claire)

On behalf of all attendees we want to extend our thanks to Magistrate Judge Hollows and Jeffrey Fisher for excellent presentations that were very well received.

Holiday Party

Yes, we know Halloween decorations aren't even up yet, but it is never too early to plan for the annual Holiday Party. The date is now set for Friday, December 11, 2009. As always, everyone is welcome -- attorneys, staff, family members. (Yes, we'll have a kids' room again.) Please save this date. More information to follow as we near December.

NOTABLE CASES

Smith v. Lockyer, No. 07-16875 (9-8-09). The Ninth Circuit (Schroeder joined by Berzon) affirms the granting of a habeas petition. The petitioner faced charges of burglary, robbery, and a sex offense. The jury was deadlocked on the sex offense. The holdout believed the DNA may have been compromised. Apparently the state judge was shocked with this, and leaned on the holdout juror. The court gave an Allen instruction, and then a modified Allen instruction. The judge found out the numerical split, culled certain testimony and directed the jury to look at it. The state courts found no coercive error but the district court, and the Ninth Circuit did. In the Ninth Circuit's analysis, the trial court went from judicial impartiality to advocacy in its pressure and use of evidence. As such, the state court acted unreasonably.

Congratulations to AFD David Porter for the victory!

United States v. Juvenile, No. 07-30290 (9-10-09). The Ninth Circuit (Reinhardt joined by Tashima and McKeown) holds that retroactive application of SORNA (federal sex offender registration act) to juveniles violates the Ex Post Facto clause and therefore is unconstitutional. The Ninth Circuit examined the historical underpinnings of juvenile determinations, purposes of juvenile delinquency findings, the lack of findings or comments in the AG's regulations making SORNA applicability to juveniles, the silence of Congress, and the pain and hardship that would be inflicted on former juvenile delinquents who had gone on with their lives.

Hamilton v. Ayers, No. 06-9908 (9-18-09). The Ninth Circuit grants sentencing relief in this pre-AEDPA petition. The petitioner was accused of killing his wife for the insurance

money. His trial lawyer had little experience (none capital) and mitigation and sentencing preparation appeared to be an afterthought. The Ninth Circuit (Wardlaw, joined by W. Fletcher and Paez) found ineffective assistance of counsel in the penalty phase, stressing the lack of investigation, preparation, and actual performance.

Jones v. Ryan, No. 07-99000 (10-2-09). The Ninth Circuit (Thomas joined by B. Fletcher and Hawkins) finds ineffective assistance of counsel in the sentencing phase of this capital prosecution for two murders. The defense lawyer failed to (1) secure appointment of a defense mental health expert; (2) seek neurological and neuropsychological testing; and (3) present additional mitigation witnesses and evidence. The mitigation related to petitioner's horrific childhood abuse, extensive head injuries and trauma; ongoing drug abuse; cognitive difficulties; and a host of mental and emotional disorders.

Libberton v. Ryan, No. 07-99024 (10-2-09). The Ninth Circuit (W. Fletcher joined by Clifton and M. Smith) finds ineffective assistance of counsel in the sentencing phase of this capital murder. The murder was committed by three co-defendants. There was extensive evidence, not used by counsel, that the petitioner was a mere follower, and that one other codefendant was the leader, and the other codefendant had a violent background, and was threatening to the petitioner. Petitioner also suffered from an abusive childhood, was placed in CPS for years as a result, and was brutalized by his father. There was also evidence as to his mental and emotional state that could have been presented.