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Federal Defender Newsletter

April 2011

CJA PANEL TRAINING

The Sacramento CJA Panel Training will be a video presentation on "How to Handle Firearms Cases: Basic Firearms Information for Lawyers" by AFDs Richard Ely and Rafael Andrade. It will take place on Wednesday, April 20, 2011 at 5:30 p.m. at 801 I St., 4th floor.

The Fresno CJA Panel Training will be a video presentation on "Litigation Tactics and Defending a Mortgage Fraud Case" by AFD Kevin Tate. It will take place on Tuesday, April 19, at 5:30 p.m. at the Downtown Club, 2120 Kern St.

PROBATION POST-CONVICTION RISK ASSESSMENT (PCRA) INSTRUMENT

U.S. Probation offices nationwide are implementing a new risk assessment program for supervisees. Sr. USPO Terry Sherbondy has graciously offered to train us on this new instruments on Friday, April 29 at noon, in the conference room of the Federal Defender's Office, 801 I St., Sacramento, 3d Floor. Panel members are welcome to attend this brown bag lunch, which will also briefly cover the new guideline amendments. MCLE credit is available.

ADDITIONAL TRAINING

We are continuing to work out the logistics for a weekend seminar on courtroom presentations. We're hoping for a weekend in May.

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 (Fresno) melody_walcott@fd.org or Rachelle Barbour (Sacramento) at rachelle_barbour@fd.org.

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive this 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.

BUDGET STATUS

If Congress fails to pass a budget or extend the continuing resolution, many federal agencies will cease receiving funds as of April 9. The federal courts have funding to continue to operate for 10 days in the event such a shutdown occurs. After that time period, the shutdown will affect federal employees associated with the various federal court functions. What effects such a continued shutdown will have on court operations is not clear. If the shutdown occurs and is not resolved within 10 days, the Federal Defender office will be notified of any changes in the usual course of business, and we will relay that information to everyone on the e-mail list.

REENTRY COURT

As discussed at the last Eastern District Conference, the Eastern District does not have a reentry court (sometimes referred to as a drug court) for defendants on supervised release or probation. Several members of the court "family" – judges, probation, the U.S. Attorney's office, and the Federal Defender's office – have been actively investigating successful courts in other districts. Chief AFD Linda Harter is our representative to this planning group. The hope is to get this court up and running later this fiscal year or early next fiscal year. If you have any experiences or thoughts concerning such a court, please pass them on to Linda.

CLIENT CLOTHES CLOSET

If you need clothing for a client going to trial or for a client released from the jail, or are interested in donating clothing to the client clothes closet, please contact Dawn at 498-5700.

NOTABLE CASES

Supreme Court

In Skinner v. Switzer, No. 09-9000, the United States Supreme Court held that a convicted state prisoner seeking DNA testing of evidence may assert that claim in a civil

rights action under 42 U.S.C. §1983.

In Wall v. Kholi, No. 09-868, the United States Supreme Court ruled that a state prisoner's motion to reduce his sentence under state law qualified as an application for collateral review that tolled the federal habeas corpus statute of limitations.

Ninth Circuit

U.S. vs. Bonilla, No. 09-10307

(3-11-11)(Reinhardt, with Berzon and Pollak, Sr. D.J., E.D. Pa). In Padilla, the Supreme Court made clear that the defendant must be advised of the immigration consequences for a guilty plea. Here, the defendant, a legal resident who had been in the country thirty years, faced a count of possessing an unregistered firearm and being a felon in possession. He had mental issues, and so his wife (a U.S. citizen) frequently spoke for him. He asked his lawyer what the immigration consequences were, and she said probably deportation. After he pled straight up, he learned that he was facing certain deportation for aggravated felonies. He then moved to withdraw his guilty plea. the district court denied the plea, stating that he knew there would be some consequences. On appeal, the Ninth Circuit reversed and remanded. The court stressed that the standard for moving to withdraw was a "fair and just" reason, which was to be liberally construed. "A criminal defendant who faces almost certain deportation is entitled to know more than that it is possible that a guilty plea could lead to removal; he is entitled to know that it is a virtual certainty."

Here, the defendant and his wife inquired about the consequences before the plea, and were not told of the dire consequences; it was only afterwards that the full extent of the consequences of the guilty plea came through. Moreover, the defendant plead straight up, and so did not receive any great benefit in accepting a plea. The fact that the trial court felt that the defendant would have pled guilty anyway is insufficient. Padilla is

clear that the real consequences of the plea must be disclosed. Although the lawyer failed to get him the information, believing he was a citizen, the lawyer did come through afterwards and admitted a mistake.

U.S. vs. Kohring, No. 08-30170

(3-11-11)(Thomas with Tashima, partial concurrence and partial dissent by B. Fletcher). The defendant here was a former state representative charged and convicted of public corruption as part of the undercover operation that also involved Senator Ted Stevens. Stevens had his charges dismissed because of the government's withholding of Brady and Giglio evidence. While this case was on appeal, and the Stevens mess came out, the government disclosed information, and suggested that the case be remanded for the Brady violation. The Ninth Circuit remanded for the district court to see if there was a Brady violation, and whether it was prejudicial. The district court found in fact that Brady was withheld, but considered it immaterial because it didn't go to the actual bribery. On appeal, the Ninth Circuit reversed and remanded for a new trial. The court noted that the Brady information went to the character of the chief cooperating witness (Allen), his motives, bias, ability to remember, truthfulness, and there was also evidence that exculpated the defendant. The Ninth Circuit wrote a treatise on how this evidence could (and should) be used. B. Fletcher concurred, and only dissented because she thought the withholding was flagrant and intentional, and she would dismiss with prejudice.