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# **Federal Defender Newsletter**

## **December 2012**

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### **CJA PANEL TRAINING**

Panel training is on Winter Break! Join us in January 2013 for the next panel training sessions.

### **DEFENDER DAN BRODERICK'S RETIREMENT PARTY AND ANNUAL FDO/CJA HOLIDAY PARTY**

Our boss is retiring and going out in style at the annual FDO/CJA Holiday Party. Please join us for the holiday party at 801 I Street, 3<sup>rd</sup> Floor, on Friday, December 7, 2012 from 3:00 to 7:00 p.m. Be sure to come to the library between 5:30 and 6:00 for a retirement presentation and to wish Dan a fond farewell.

### **NEW EASTERN DISTRICT CJA PANEL REPRESENTATIVE**

For the past few years, Sacramento CJA attorney Krista Hart has served as the CJA Panel Representative for the Eastern District of California. The practice in our district has been to rotate this position between the Fresno and Sacramento offices every 2 to 3 years. The new Eastern District CJA Panel Representative will now be Fresno attorney Carl Faller.

Carl was with the Fresno U.S. Attorney's office for 20 years, where he served as the Chief Assistant for 13 years. He left the office in 2007 when he opened a criminal defense practice and joined the CJA panel that same year. Carl is a member of the Fresno County Bar Association (member of the Board of Directors and current First Vice President), Tulare County Bar Association (former member of the Board of Directors), and the San Joaquin Valley Chapter of the Federal Bar Association (founding member, former member of the Board of Directors and President, 2004, 2007).

Carl will be attending the annual Federal Defender/CJA Panel Attorney conference in Baltimore in February, 2013. He will be working with Samya Burney to formulate CJA panel training programs in Fresno. Carl will also be attending the December 7th Federal Defender/CJA Holiday Party in Sacramento, so that he can meet people up here who do not know him. Many Sacramento CJA attorneys have one or more cases pending in the Fresno division, and Carl is a terrific resource person for information and advice.

We thank Krista for her service and

assistance and welcome Carl to his new position.

## **ONLINE MATERIALS FOR CJA PANEL TRAINING**

The Federal Defender's Office will be distributing panel training materials through our website - [www.cae-fpd.org](http://www.cae-fpd.org). If a lawyer is not on the panel, but would like the materials, he or she should contact [Lexi.Negin@fd.org](mailto:Lexi.Negin@fd.org).

## **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 Debra Lancaster at 498-5700. If you are interested in donating clothing or money to cover the cost of cleaning client clothing, please contact Debra.

## **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 Samya Burney (Fresno) at [samya\\_burney@fd.org](mailto:samya_burney@fd.org) or Lexi Negin (Sacramento) at [lexi\\_negin@fd.org](mailto:lexi_negin@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.

## **NOTABLE CASES**

United States v. Munguia, No. 10-50253 (11-27-12)(Fletcher, with Reinhardt and Breyer D.J.) The Ninth Circuit reverses convictions for conspiracy to possess and possession of pseudoephedrine, a drug used to manufacture meth. The reversal was for an erroneous jury instruction on knowledge. The jury was instructed to consider whether the defendant knew or had reasonable cause to believe the pseudoephedrine would be used to make meth from the point-of-view of an objective reasonable person. This was error: the point-of-view should be that of the defendant. It was not harmless because the testimony centered on whether the defendant knew why she was buying pseudoephedrine, or whether, as an abused girlfriend with limited education and language skills, she didn't know what the pseudo was for.

United States v. Wahchumwah, No. 11-30101 (11-27-12)(M. Smith, with Kozinski and Tashima). The Ninth Circuit holds that two sets of counts are multiplicitous and orders the district court to vacate the conviction on one of the two pairs. The multiplicitous convictions arose from selling Golden Eagle parts (tail feathers) in violation of the Eagle Protection Act and the Lacey Act (counts 2 and 3) and from offering to sell and then selling Eagle plumes under the Eagle Protection Act. Blockberger requires that the statutes each have additional elements that distinguish them from each other. These did not and thus conviction on both sets of counts was error.

United States v. I.E.V., Juvenile Male, No. 11-10337 (11-28-12)(N. Smith with Christen, dissent by Kozinski). One hundred miles from the border, a vehicle was stopped by a Border Patrol checkpoint. A police dog alerted to the car, and the vehicle was sent to secondary inspection. The juvenile defendant was a passenger in the vehicle

driven by his brother. Upon exiting, the dog failed to alert to the defendant or the driver. A search of the vehicle came up empty. The juvenile was not threatening nor likely to flee. The officer did frisk the juvenile and found a brick of marijuana taped to his back. At the hearing, the officer said he thought the juvenile acted nervous, but the district court did not credit that observation because it was not in the report. The officer also testified that he was trained to expect find guns where there were drugs. The district court permitted the search because of the proximity of the border, the canine alert, the officer training, and the nervousness of the brother -- not the juvenile. The Ninth Circuit reverses the denial of suppression. Terry v. Ohio permits a frisk, but it has to be based on specific and articulable facts. These were not. The defendant was nonthreatening. There was no fear of flight. A search had come up empty. It appeared that the frisk was to further the investigation, which is not the rationale of Terry. Moreover, the frisk exceeded the constitutional limits, as it went beyond the outer clothes. The officer felt a bundle, asked what it was, and then immediately pulled up the juvenile's shirt. There was no testimony as to whether the officer was concerned about safety.