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Federal Defender Newsletter

February 2013

CJA PANEL TRAINING

Sacramento CJA Panel training will be on Wednesday, February 20, 2013 at 5:00 p.m. in the jury lounge of the U.S. District Court, 501 I Street. AFD Matt Scoble will be presenting "Understanding and Working with Child Pornography Clients."

Fresno CJA Panel training will be on Tuesday, February 19th at 5:30 p.m. at the jury assembly room of the U.S. District Court in Fresno. AFD Tim Zindel will be presenting "Defending Marijuana Cases: Medical and Non-Medical."

INVESTITURE FOR MAGISTRATE JUDGE ALLISON CLAIRE

You are invited to the investiture for Magistrate Judge Allison Clair. The ceremony will take place on February 22, 2013 at 4:00 p.m. in the ceremonial courtroom of the Federal District Court in Sacramento, 501 I Street. A reception in the courthouse rotunda will follow immediately afterward. Please RSVP by February 8, 2013 to 916-930-4126.

ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office will be distributing panel training materials through our website - 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 or Lexi Negin (Sacramento) at 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. Xu, No. 09-10189 (1-3-13) (Goodwin, with Reinhardt & Murguia CJJ). The district court erred procedurally in using purely foreign criminal conduct as relevant conduct in determining a base offense level under the Sentencing Guidelines. The foreign conduct was used to determine loss amounts, and accordingly the Ninth Circuit reversed the sentence and remanded for resentencing.

United States v. Juan, No. 11-10539 (1-7-13)(M. Smith, with Gould CJ & Sack CJ 2nd Cir.). It has long been the rule that the government can't "substantially interfere" with the testimony of a defense witness by, for example, threatening perjury charges. For the first time, the Ninth Circuit holds that this due process rule also applies to government witnesses. The government cannot interfere with the effective presentation of a defense by threatening any witness: government or defense. This "substantially interfere" rule, from a Supreme Court case called Webb, has primarily been applied when government threats completely kept a witness off the stand. Here the Ninth Circuit reasonably concludes that the same should also apply if the coerced witness testifies, but changes his or her testimony to match the government's theory.

United States v. Zepeda, No. 10-10131 (1-18-13)(Paez with Fernandez; dissent by Watford). This is a Indian jurisdiction case. The government must prove that the defendant is an Indian for Major Crimes Act jurisdiction. In this case, the government and the defendant stipulated to the introduction of the Certificate of Enrollment of the defendant in an Indian tribe. However, the government introduced no evidence that the tribe is federally recognized. As such, a jury could not find that the defendant was descended from a federally recognized tribe. The Ninth Circuit also held this is a question of fact, not law, and the court could not take judicial notice to satisfy this element.

Hurles v. Ryan, No. 08-99032 (1-18-13)(Nelson with Pregerson; dissent by Ikuta). The Ninth Circuit remands on the issue of judicial bias in the state trial court. The state trial judge had denied a recusal motion and then filed a brief in the interlocutory appeal defending her position and commenting on the evidence. The state trial judge then went on to preside over the capital trial that imposed the death penalty. An evidentiary hearing is warranted to develop the record on this issue.

United States v. Doe, No. 11-10067 (1-31-13) (Smith, D.J. (Dist. R.I.) with Fernandez & Berzon, CJJ). The defense in this case was that the client was working for the FBI at the time that he was arrested by the Fresno police for drug offenses. The Ninth Circuit ruled that the district court committed a "clear error of judgment" and an "abuse of discretion" by denying two of the defense's discovery requests for information relevant to his cooperation. Because the trial judge never ordered the government to respond to the discovery requests, the Ninth Circuit vacated the conviction and remanded for an evidentiary hearing on the discovery request. Further, the Ninth Circuit held that the trial court committed "numerous procedural violations" at sentencing. The

Ninth Circuit held that these errors seriously affected the client's substantial rights and the fairness of the proceedings. Congratulations to Fresno AFD Marc Days (who handled the case in the trial court) and Sacramento AFD Carolyn Wiggins (who handled the case on appeal).