

Daniel J. Broderick
Federal Defender

Linda C. Harter
Chief Assistant Defender

Francine Zepeda
Fresno Branch Chief

OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA
801 I STREET, THIRD FLOOR
SACRAMENTO, CALIFORNIA 95814
(916) 498-5700 Fax: (916) 498-5710



Federal Defender Newsletter

January 2013

CJA PANEL TRAINING

Sacramento CJA Panel training will resume on Wednesday, January 16, 2013 at 5:00 p.m. in the jury lounge of the United States Courthouse, 501 I Street. The topics will be How to Litigate Violations of Supervised Release and an Overview of Probation's Reentry Program. Presenters will be AFD Tim Zindel and United States Probation Officer Becky Fidelman.

Fresno CJA Panel training will resume on Tuesday, January 15th at 5:30 p.m. The location, topic, and speaker will be announced.

In addition to the regular panel training programs, we are pleased to offer you one hour of California State Bar Substance Abuse CLE credit. The Other Bar, Inc., a California nonprofit supporting recovery in the legal community, will be presenting a one hour program that will satisfy the California Bar's CLE requirement for the topic of Detection/Prevention of Substance Abuse on Friday, January 4, 2013 at 12:30 p.m. The program will be held at the Federal Defender's Office at 801 I Street. You may bring your lunch if you like.

For your information: Group 1 (A-G) is

required to complete Minimum Continuing Legal Education credit by 1/31/13, so this will be an opportunity for anyone in Group 1 to complete this substance abuse requirement if it has not been met.

This program is open to any attorneys who would like to attend, so please feel free to forward this information.

HEATHER WILLIAMS SELECTED AS NEW FEDERAL DEFENDER FOR EASTERN DISTRICT OF CALIFORNIA

The Ninth Circuit has selected Heather E. Williams, the First Assistant for the Federal Defender Office in Arizona, as the new Federal Defender in our district. A native Tucsonan, Heather has been an Assistant Federal Public Defender in the District of Arizona since 1994. She graduated *summa cum laude* from Pittsburg (Kansas) State University in 1982 with a General Studies degree, emphasis in 'cello performance and French. After attending law school at the University of San Diego Law School, during which she had the good fortune to clerk for several criminal defense lawyers, she found general practice lawyering work with Michael Meaney in San Diego.

In 1988, Heather moved home to Tucson and was with the Pima County Public

Defender's office for 5½ years. She speaks at seminars across the United States, has taught cross-examination with Terry MacCarthy, teaches each summer at the National Criminal Defense College, and is assistant adjunct faculty at the University of Arizona Law School teaching Legal Ethics for the Criminal Lawyer. Technology in the lawyer's practice does not scare her, and she is a willing teacher to lessen others' techno phobias, but has also given talks on many other aspects of trial practice (Themes & Theories, Brainstorming Cases, Direct and Cross-Examinations, Openings and Closings), immigration, Daubert and Expert Testimony, discovery and disclosure, and ethics. Heather has also been researching the stories behind those parts of the criminal process with a case name attached, such as Miranda warnings, Brady materials, and Allen charges. Her article Behind the Headlines, Beyond Jail: Jencks Act Materials was an *Arizona Attorney Magazine* 2005 Writing Competition winner and was also published in *The Champion*.

http://www.myazbar.org/AZAttorney/PDF_Articles/0405WRITERSheather.pdf. In 2011, the National Association of Federal Defenders awarded her their Outstanding Assistant Federal Defender Award.

When Heather moves to Sacramento with her husband, John, she'll have family nearby. However, her four adult children are all in college elsewhere: University of Arizona (Terry and Jack), American University in Cairo, Egypt (Jasmine), and Northern Arizona University (Laura, graduating in May). In addition to working with a dedicated criminal defense community, she hopes to find time after her move for bicycling along the American River and playing 'cello.

In the interim, Joe Schlesinger, head of the FDO's Capital Habeas Unit, will be the acting Federal Defender.

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. Phillips, No. 11-30195 (12-26-12). (Rakoff, D.J., with Schroeder and Gould)
The defendant's mail fraud conviction was improper when the only use of the mails was the sending of a watch that defendant purchased with the proceeds of his fraudulent scheme. The success of the fraudulent scheme was not dependent on any way on the use of the mails. The fact that the defendant purchased a watch with fraudulently obtained profits was not a part of the scheme to defraud. Under a plain error standard, the Ninth Circuit reverses the mail fraud conviction.

United States v. Lee, No. 10-10403 (12-28-12)(Fisher, with Thomas and Ikuta).
The Ninth Circuit vacates a career offender sentence and remands. The defendant was convicted of a federal drug sales offense. One of the predicates for career offender treatment was a California transportation drug offense, California Health and Safety Code section 11352. The defendant had pled to the terms of the statute. The government conceded that the 11352 encompasses a broader range of conduct than the guidelines definition. It argued that under the modified categorical approach the prior qualified because the charges contained the broad terms of the statute in the conjunctive, and a minute order reflected that the defendant pled guilty to that count of the information. The Ninth Circuit rejected the government's argument. The Ninth Circuit had previously held in Young v. Holder, 697 F.3d 976 (9th Cir. 2012)(en banc) that when the statute contains clauses linked by "or," it means that the conviction could be for one or the other theories of the crime, including at least one that would not qualify as a drug trafficking offense. Without proof in the record that the conviction was for trafficking, the prior could not be used under career offender.