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Federal Defender Newsletter
June 2011

CJA PANEL TRAINING
Panel training will be on vacation for the summer and will resume in September. Have a great summer!

TRIAL PRESENTATION TRAINING PROGRAM
The hands-on trial presentation training will take place in Sacramento from July 6 through 8, and 12 through 15, and in Fresno from July 26 to 29. We have space for 50 CJA attorneys to participate in Sacramento, and 40 to participate in Fresno. The one-day training session will cover two topics: Trial Director and PowerPoint. Each session will consist of 13 participants. Participants should bring their own laptops. All sessions will take place at the Federal Defender offices. An email will go out to the panel shortly with open days and slots. Please respond to Dan Broderick with your ranked preferences to sign up for the training. We will try to fit everyone in and will schedule another session later in the fall if necessary.

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.

EN BANC REVIEW GRANTED IN MANDATORY DNA SAMPLING CASE
On June 2, the Ninth Circuit granted en banc rehearing in United States v. Pool, and stated that the "three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit." This case challenges the pretrial DNA testing of federal arrestees and criminal defendants. Defense counsel should continue to preserve the issue by objecting to release conditions that mandate DNA sampling.

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.

NOTABLE CASES

U.S. v. Tsosie, No. 10-10030 (5-10-11) (Berzon with Paez; concurrence and dissent by Bea) Under a plea agreement, the defendant pled guilty to abusive sexual contact arising on the Navajo Indian reservation and was sentenced to 18 months in prison (the guideline range was 97 to 121 months). He was also ordered to pay restitution in the amount of $31,994 to the victim's mother to cover costs incurred in making trips between her home and the victim's boarding school, 150 miles away. The defendant argued that such travel costs were not appropriate because they were not incurred by the victim under 18 USC § 2244(a)(1); and that the restitution was ordered in violation of procedural and evidentiary requirements of 18 USC § 3664. The Ninth Circuit held that such costs were allowed by restitution but that procedure and evidence for the restitution was lacking. There was also no waiver of the appeal. The Ninth Circuit first considered whether the appeal was waived, and held it was not because the defendant did not get notice of the amount of restitution when he agreed to plea. The Ninth Circuit vacated the amount and remanded because the district failed to set forth its reasons for the restitution amount and failed to have the amount adequately supported by evidence. The proferred evidence, a spreadsheet showing trips over several years, was not a sworn statement, there were inconsistencies and oddities, and some of the trips may not have been for treatment related to the abuse. The Ninth Circuit believes that procedural due process mandates a stronger evidentiary link.

U.S. v. Escamilla-Rojas, No. 10-10185 (5-12-11)(O'Scannlain with Trott and Campbell, D.J.) In the Tucson division of the District of Arizona, the court adopted an en masse procedure for taking the pleas of up to 70 defendants as part of "Operation Streamline." Operation Streamline is a prosecutorial initiative that criminal charges all undocumented aliens who are arrested in a border sector. In U.S. v. Roblero-Solis, 588 F.3d 692 (9th Cir. 2009), the Ninth Circuit, in a case from the same district, division and same AFPD, held that Fed R. Crim P. 11 (Rule 11) requires an individual and personal colloquy as to rights. The procedure changed as a result, with small groups of defendants being addressed and a personal exchange as to their understanding of the offense.

Here the magistrate gave a general advisement to the group (66 defendants), advising them of the offense, the elements, their rights and the consequences of the guilty plea. The magistrate then called defendants up in small groups and asked whether they understood the crime, the elements of the offense, their rights and the maximum penalty . After the defendant answered, sentencing followed. There was a two hour gap between the general advisement and the personal questioning. The 9th held that this was error. Rule 11 was not strictly followed. The mass advisement followed by a two hour delay before questioning the defendant alone was not sufficiently "personal" as required by Rule 11.

Doody v. Ryan, No. 06-17161 (5-4-11)(en banc)(Rawlisnson with Schroeder, B. Fletcher, Pregerson, Reinhardt, and Thomas; concurrence by Kozinski; dissent by Tallman with Rymer and Kleinfeld). On remand from the Supremes in light of its Miranda decision in Powell, the Ninth Circuit, sitting en banc, again holds that the confession to killing nine individuals, of whom six were Buddhist monks, violated petitioner's Miranda rights and was involuntary. The 9th carefully went through the facts, including the downplaying, deviations, and express misinformation in giving the Miranda warnings to a juvenile, with no criminal priors, and who was foreign.

Powell, considering the wording of the Miranda warnings, is not applicable when the police undermine and undercut the warnings in 12 transcript pages of downplaying the simple warnings. As for voluntariness, the Ninth Circuit also considered the length of the questioning, stretching over 13 hours, by a tag team of officers, who, in a related matter, used the same techniques to squeeze false confessions out of four men later released. The petitioner was comatose for long periods, and subjected to relentless questioning. Yes, the Arizona state courts had found the warnings valid and the confession voluntary, but the state court was unreasonable in its factual determinations and unreasonable in its application of the law. As the Ninth Circuit colorfully put it: "[I]f we succumb to the temptation to abdicate our responsibility on habeas review, we might as well get ourselves a big, fat rubber stamp, pucker up, and kiss the Great Writ good-bye."