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Federal Defender Newsletter
March 2010

CJA PANEL TRAINING

Rob Beegle, of Delta Phase Inc., will be presenting "Forensic Analysis of Cellular Phone Data" at the Sacramento CJA Panel Training on Wednesday, March 17, 2010 at 5:30 p.m. It will take place at 801 I St., 4th Floor.

AFD David Porter will be presenting the Supreme Court Update at the Fresno CJA Panel Training. It will take place on Tuesday, March 16, 2010 at 5:30 p.m. at the Downtown Club, 2120 Kern Street, Fresno.

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 at the Fresno office at melody_walcott@fd.org or Rachelle Barbour at the Sacramento office at rachelle_barbour@fd.org.

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive the 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.

ANNOUNCEMENT

Capitol Awards Banquet

On Friday, March 26, 2010, please join Death Penalty Focus and the Friends Committee on Legislation of California in honoring Paralegal Christine Thomas of the Federal Defender's Office for her dedicated commitment to criminal justice reform and the abolition of the death penalty. Information is available at www.deathpenalty.org/sactodinner. The event will feature Death Penalty Focus President Mike Farrell.

CLIENT CLOTHES CLOSET

If you need clothing for a client going to trial or for a client released from the jail, please contact Dawn at 498-5700 to use the client clothes closet. If you are interested in donating clothing, we could use more women's clothing and men's dress socks.

NOTABLE CASES

United States Supreme Court

Johnson v. United States, No. 08-6925 (3-1-10). The Supreme Court (Scalia, J., for a seven member majority), overturned an ACCA conviction that was based in part on a prior Florida battery conviction. Because the Florida offense of "battery by offensive touching" does not require the use of physical force, it does not qualify as an ACCA prior. The Supreme Court makes it clear that federal courts are bound by the interpretation that state courts give to the statutory elements of the offense. Further, "physical force" for purposes of ACCA requires "violent force – that is, force capable of causing physical pain or injury to another."

Ninth Circuit

U.S. v. Napulo, No. 08-10190 (2-1-10). The Ninth Circuit vacated one special condition of supervised release, and vacated and remanded a second condition to the district court for determination if it promotes deterrence, rehabilitation, or public safety. The first condition forbade the defendant from associating with anyone who has a misdemeanor conviction. The second concerned having any contact whatsoever with her life partner. The Ninth Circuit (Reinhardt joined by Thomas and Paez) puzzled at the first condition, as many people can be law abiding and yet still have misdemeanor convictions for a variety of small offenses. There didn't seem a tie to the goals of supervised release. The second condition concerning the life partner needed more fact-finding. Although the partner may have been a bad influence in the past, there were also good attributes put forward. Given the time that had elapsed since the original conviction, more of a factual record was required.

U.S. v. Norwood, No. 08-30050 (2-17-10)(M. Smith, joined by Reavley and Tallman). On remand from the Supreme Court for reconsideration in light of Melendez-Diaz (confrontation clause opinion), the Ninth Circuit holds that the defendant's right of confrontation was violated at trial when the government introduced an affidavit from the state department of economic security, which certified that no wages from defendant had been reported during the past three years. This was to show that money found on defendant at arrest was from drug dealing. The error was held to be harmless in the context of this case.

U.S. v. Edwards, No. 08-30055 (2-16-10) (Pregerson joined by M. Smith; dissent by Bea). The defendant reached a bankruptcy settlement, and then was convicted of bankruptcy fraud. The district court sentenced him to probation, despite a prior fraud in Arizona, lots of loss, and a guideline range of between 27 and 33 months. The district court went through the section 3553 factors, discussed each, and thought that the guidelines over-represented loss because of "intent" rather than actual. The Ninth Circuit affirmed the sentence, holding that the sentence was reasonable because the district court had exercised its discretion, explained its reasoning, and grounded it on the relevant facts.

Robinson v. Schriro, No. 05-99007 (2-22-10)

(B. Fletcher joined by Berzon; dissent by Rawlinson). The Ninth Circuit reversed the district court's denial of petitioner's claims regarding the capital aggravator of cruel, heinous or depraved, and of IAC. The court concluded that the aggravator of "cruel, heinous, and depraved" was arbitrarily found here because no evidence was presented that the petitioner was in the house when the murders took place; nor that he had ordered the murders; nor that he even could have foreseen the murders. The IAC was for the penalty phase, where counsel failed to investigate petitioner's background, childhood, mental and emotional abuse, his low IQ, his mental condition, nonviolent nature, and his potential for rehabilitation.

Doody v. Shriro, No. 06-17161 (2-25-10) (en banc) (Rawlinson, J.) Doody was arrested for nine murders inside an Arizona Buddhist temple. The team of detectives investigating the case had already interrogated four other men, gotten confessions, and charged those men with murder. Those confessions were found to be false and the charges were dismissed against the four original arrestees. The same team arrested Doody, a 17-year-old, and questioned him overnight for over twelve hours, using tag-team interrogation and sitting him in a hard, straight-backed chair. They gave him long and garbled warnings that the government contended complied with Miranda. Doody was convicted of first degree murder, his appeal was denied, and a three-judge panel of the Ninth Circuit denied his claims.

The en banc Ninth Circuit held that the advisement, which "completely obfuscated the core precepts of Miranda" was inadequate. It also held that Doody's confession was involuntary. This case is an exhaustive primer on voluntariness law and on Miranda advisements.