

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

November 2012

CJA PANEL TRAINING

Panel training in Sacramento will be held on Wednesday, November 14th at 5:00 p.m. in the jury lounge of the federal courthouse, 501 I St. **Please note that this is a week earlier than usual to avoid having training the night before Thanksgiving.** AFD Matthew Scoble will be presenting on “Frye/Lafler/Miles – The Ethical Duty to Advise Correctly on Plea Offers.” The presentation will qualify for MCLE credit in ethics.

Panel training in Fresno will be held on **Saturday, November 10, from 10:00 a.m. to 1:15 p.m. in the Jury Assembly Room at the District Court**, 2500 Tulare Street, Fresno. The speaker will be Kimberly Papillon, esq., consultant to the California Administrative Office of the Courts and to the Access and Fairness Committee of the Judicial Council of California. She will be speaking on “The Unseen Hand of Bias in the Court System” and will focus on juror bias. Lunch will be provided; RSVP required by Nov. 7 to Connie Garcia, at connie_garcia@fd.org or at 487-5561. The training is open to all attorneys. The training provides 3 hours of MCLE credit for elimination of bias in the legal profession.

SAFD DENNIS WAKS' RETIREMENT PARTY IS FRIDAY, NOVEMBER 9TH!

Dennis Waks will be retiring after 24 years with the Office of the Federal Defender in Sacramento. Please join us on Friday, November 9th at 5:30 p.m. for a fun-filled party at the California Auto Museum as we enjoy vintage cars, good company, delicious Mexican food catered by Cilantro's, and Vic's Ice Cream. Wine, beer, and soda bar *included*. Cost is \$35.00 per person made out by check payable to “DWRC.” Please RSVP to Dennis Waks Retirement Committee at the Federal Defender's Office ASAP at dwrc25@hotmail.com.

SAVE THE DATE FOR FEDERAL 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 save December 7, 2012 to wish Dan a fond farewell.

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

US v. Budziak, No. 11-10223 (10-5-12)(Tashima, with Clifton and Murguia). Although the Ninth Circuit holds that file

sharing can support a distribution conviction, it remands the defendant's case to the district court to determine if the government refusal to provide discovery on the software it used to hack into the filesharing program and supposedly download illegal pornography prejudiced the defendant.

US v. Alleyne, No. 11-9335 (certiorari granted 10-5-12). The United States Supreme Court has granted certiorari in this case to reexamine whether facts that increase a mandatory minimum must be tried to a jury beyond a reasonable doubt. In Harris, the Supreme Court narrowly determined that they did not. This case provides the Court an opportunity to reconsider that issue. Consider preserving this issue by objecting to the use of untried facts that increase your client's mandatory minimum.

US v. Wolf Child, No. 11-30241 (10-23-12)(Reinhardt with Schroeder and M. Smith). The district court imposed conditions of supervised release on a defendant convicted of attempted sexual abuse on a teenage minor while she was passed out at a party on an Indian Reservation. It prohibited him from having any contact with his own minor daughters and prohibited him from dating anyone who had children under the age of 18. The prohibitions were flat, complete, without exception, with no evidence presented as to why and no findings by the court. Defendant objected. The judge replied: "I understand. You may take that issue to the circuit if you wish to do so, counsel." He did. The Ninth Circuit vacated and remanded. The Ninth Circuit found that certain of the conditions violated fundamental familial associations without a basis in the record or an individualized review. The Ninth Circuit held that such conditions relating to his daughters and fiancée were substantively unreasonable and could not be reimposed on remand. The Ninth Circuit expressed concerns about other restrictions and held that the court, on remand, needed to exercise its discretion to

determine if such conditions as to association were necessary and if so, to more narrowly tailor them, based on findings

Stankewitz v. Wong, No. 10-99001 (10-29-12)(Fisher, with Bybee; dissent by O'Scannlain). Eight years ago, the Ninth Circuit remanded this case to the district court because it presented a colorable claim of ineffective assistance of counsel in sentencing mitigation. It ordered an evidentiary hearing to allow the state an opportunity to rebut the allegations. The state chose not to mount an evidentiary hearing, but to proceed on an expanded record. The district court found that the state had failed to rebut the allegations and ordered relief. The Ninth Circuit affirms. The court reviewed the record and found that counsel was ineffective in investigating and presenting extensive substantial mitigation on childhood abuse, addiction, and mental health.

Congratulations to our own Capital Habeas AFD Harry Simon for a very hard fought win!