

ADVOCATE

NEWSLETTER FOR THE DEFENSE
Spring 2010



THE DEFENDER'S MESSAGE

Are you taking advantage of the assistance our office provides to panel attorneys? We in the Federal Public Defender's Office are involved, on a daily basis, with federal criminal law, whether it be the Federal Sentencing Guidelines, policies of the U.S. Attorney's Office, or recent opinions from the U.S. Supreme Court and the Fourth Circuit Court of Appeals. As full-time federal criminal law practitioners, we are in a good position to assist you panel attorneys, whether it be answering questions about specific issues in your case or just generally sharing our institutional knowledge.

Our attorneys are only a phone call or email away. You should not hesitate to call us if you have questions about representing your indigent client. We probably have experience with your client's situation and can help you.

It would be foolish not to take advantage of our Spring and Fall CLE seminars. Our next seminar is on Friday, May 21, 2010 at the McKimmon Center in Raleigh. I hope you all will be there, and I look forward to seeing you.

In addition to providing our office's knowledge and continuing education, in 2005, our office established a "members only" listserv group for your use at Yahoo.com. The listserv makes it easy to post comments to members and receive feedback from them. However, Donna Stiles has told me that this listserv is rarely used, which surprises me. If you have a question about one of your federal criminal cases, you can quickly post a question via email to any of the attorneys who are listserv members and hopefully receive multiple answers within a short time period. I strongly encourage those of you that are members, and those of you that are not yet members, to use this form of communication. If you have any questions or problems with

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accessing the listserv, Donna Stiles is available to assist you.

Below is a copy of the Memorandum our office sent to all CJA Panel Attorneys on January 20, 2005 regarding our office's listserv. I hope you seasoned panel attorneys, as well as our newer panel attorneys, will take advantage of this helpful means of communication.

M E M O R A N D U M	
TO:	All CJA Panel Attorneys
FROM:	THOMAS P. McNAMARA Federal Public Defender
DATE:	January 20, 2005
RE:	Listserv for CJA Panel Attorneys

We are pleased to announce that our office has set up a "members only" listserv group for your use at Yahoo.com. If you are interested in joining, please go to: http://groups.yahoo.com/group/EDNC_CJAPanel	
If you already have a Yahoo e-mail account you may click the "Join This Group" button and send your request. If you don't already have a Yahoo account, you'll have to open one. It is easy, free, and you can have your e-mail directed to another e-mail address. The Yahoo Group Home page has lots of helpful information.	
This group is for members of the CJA panel for the Eastern District of North Carolina. It will be used to notify members of CJA news and events. It will also serve as a forum for discussion between the members. This group was set up so that replies to questions, discussions, etc. may be made directly to the original post. However, you may send a message to the entire group by including the group e-mail address: EDNC_CJAPanel@yahoogroups.com .	
If you have questions, please contact Elizabeth Luck at (919) 857-9061 or Donna Stiles at (919) 857-9085.	

As a further resource, note that our newsletter is published several times a year. Our Editors, Vidalia Patterson and Laura Wasco, work hard to bring you a series of informative articles, legal updates, and news, which we believe you will find helpful in your work as panel attorneys. I urge you to read this newsletter, use the listserv, and give us any suggestions you have as to future articles, or thoughts about speakers or topics for our future CLE seminars.

I am sincere in saying that we want to help you in any way we can.

Thomas P. McNamara
Federal Public Defender



PANEL ATTORNEY INFORMATION

Previously Distributed Materials

Numerous materials have been distributed through our panel administrator, Donna Stiles, since October 2009. These include: Search and Seizure; DOJ Discovery Guidance; Litigation Support Page; USDC ENC Mandatory Sealed Filing Info; PACER Usage for CJA Cases; Information about Excel Worksheets for Vouchers and New CJA Rates. If you did not receive some of these materials, please contact Donna Stiles at donna_stiles@fd.org.



Seminar BOLO

Be on the lookout for our Spring Federal Criminal Practice Seminar, which will be held May 21, 2010 at the McKimmon Center in Raleigh, North Carolina. The deadline for registration to attend the Spring seminar has passed, and our capacity limit has been reached. If you are interested in attending, please contact our Panel Administrator, Donna Stiles at donna_stiles@fd.org about being placed on our waiting list.

Additionally, please save the date for our Fall Federal Criminal Practice Seminar, which will be held October 7 and 8, 2010 at the Blockade Runner Resort in Wrightsville Beach, North Carolina. Please visit our website at <http://nce.fd.org> for registration information.

For more information about our annual seminars, please visit our website at <http://nce.fd.org> or contact Donna Stiles at donna_stiles@fd.org.

The dissent would prefer that we simply parrot the findings made during the state court proceedings and call it a day. However, if 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-by.
- *Doody v. Schriro*, 596 F.3d 620 (9th Cir. Feb. 25, 2010) (en banc), Judge Rawlinson, writing for the majority.

PRACTICE TIPS



A Fly on the Wall: Comstock at the Supreme Court

On January 4, 2010, the Supreme Court heard argument in *United States v. Comstock, et al.*, a case involving our clients' challenge to Congress' authority to enact 18 U.S.C. § 4248, a law authorizing the indefinite civil commitment of individuals deemed to be "sexually dangerous persons." This article will not discuss the legal details of the case; the briefs are widely available online and the Court will issue its opinion later this Summer. Instead, I want to provide you with a fly-on-the-wall perspective of having a case before the Supreme Court.

First, our office had a dedicated, hard-working team engage the case from the district level all the way through Supreme Court oral argument. Working with the case from the beginning provided us with an advantage over the government, which handed-off the case from the local U.S. Attorney's office, through the Department of Justice civil appellate division, and ultimately to the Solicitor General's Office. Having developed our arguments from the ground-up and refined them throughout the process, we internalized the strengths, weaknesses, and nuances of both our arguments and the government's responses. As the case developed, our team could speak in a legal shorthand that allowed us to focus our energies--not on getting up to speed--but on tactical decisions and shoring up weaknesses in the argument. While some cases may benefit from handing them off to appellate specialists, our case benefitted from our intense familiarity with the facts and relevant law.

Of course, one thing that I quickly realized was that familiarity with the facts and relevant law comprises only a part of Supreme Court litigation from the defenders' perspective. The process involves logistical concerns that can become overwhelming if one does not properly handle them. Thankfully, the head of our office, Tom McNamara, allowed us to create a large team--Jane Pearce, Lauren Brennan, Alan DuBois, Joseph Ross, Graham Hollett, Susan

Umstead, and me--to handle the case. This allowed us to develop our legal arguments while also managing the logistical concerns involved. In addition, some resources from inside the defender community, particularly the folks at the Middle District of North Carolina (who had argued a Supreme Court case recently) and at the Defenders' Supreme Court Resource & Assistance Panel, provided invaluable assistance.

We also received many offers for help from folks outside of the defender community--D.C. based firms and law school Supreme Court clinics. Because of the high profile nature of the case, we actually had many more offers of help than we could realistically use. Having considered our options, we went with the law firm of Covington & Burling, and we were very happy with the choice. Covington helped to draft the brief, helped us with oral argument preparation, and handled all of the details of docketing the case, such as physically printing and filing the briefs. In addition, Covington was always respectful of our ownership of the final brief and work product.

The process of writing the briefs differed from other writing that I have done in our office. While all writing benefits from substantial revision, we found that these briefs, in particular, involved more re-writing than writing. Our final brief looked almost nothing like our first drafts. Because we had worked on this case from the district court level, we understood how to work with each other. More importantly, we also understood not to take editing suggestions personally and to focus on the final work product. Writing a brief at this level involves an almost word-by-word analysis of every sentence, as well as some significant debates over overall structure and approach. I would advise anyone in this position to allot more time for revision than you think that you need. We heeded that advice ourselves and were very glad for all of the time that we had.

We traveled to D.C. a few days before the argument in order to participate in a couple of

moot courts, one at Georgetown, and one at Covington & Burling. These moots, as well as earlier moots at the Duke and Northwestern law schools helped hone our arguments as well as instill confidence. It also helped to have time to attend oral argument the day before our case, which enabled us to see how the Court worked and to meet with the marshals beforehand to discuss the proper procedure for our argument. The Supreme Court itself, because of its small docket, is very helpful and accommodating to counsel before the Court. Whenever we had a question, we were able to speak directly to someone in the clerk's office or the marshal's office who could answer it for us in a friendly and efficient manner. We also found the Solicitor General's Office very professional and easy to work with.

And, to answer the question that we now get most often, we have no idea when the case will be decided. The Court will call us at 10:00 AM on the day that the opinion will be announced. We will have no other advanced notice beyond that.

Finally, as you know from your district court and Fourth Circuit experience, the deliberate pace of federal criminal proceedings often exasperates clients. When a criminal case goes to the Supreme Court, one needs to pay extra attention to keeping ones clients aware of the marathon-not-a-sprint nature of the proceedings. As always, frank, frequent, and honest communication with the client best serves the client's interest. Before we filed the first motion to dismiss in the district court, we told our clients that a Supreme Court appeal was a possibility and that the proceedings could be measured in years and months, not months and weeks. It turns out that we won our motion to dismiss at the District Court and Fourth Circuit levels. In each instance, however, the courts stayed the release of our clients pending further appeal. Ironically, then, our victories created additional stress for our clients. As we continued to win, the clients became (rightly) more and more exasperated at their continued detention. Jane Pearce and Graham Hollett helped ameliorate this problem through maintaining a constant face-to-face visiting schedule with the clients to allow them to express their concerns, while allowing us to continue to explain the legal proceedings to them. Even as the litigation became more and more time-consuming, we made sure to find time to visit with

the clients. It would have been easy for us to say that, going to the Supreme Court, we lacked time to visit with the clients. But, we never did that, and that was for the best. Whether one is in traffic court or the Supreme Court, client communication should always remain central to one's representation.

Many thanks to Research and Writing Attorney, Eric Brignac for contributing these helpful tips. Additional thanks to the Comstock team comprised of AFPDs, Jane Pearce, Alan DuBois, and Joseph Ross, Research and Writing Attorneys, Eric Brignac, Lauren Brennan, and Susan Umstead, and Paralegal Graham Hollett.



Crack Law Update: The Fair Sentencing Act of 2010

On March 17, 2010, the United States Senate passed the Fair Sentencing Act of 2010 by unanimous consent, and with it, took an important step toward amending federal drug sentencing, with particular focus on the crack-to-powder disparity. S. 1789, 111th Cong. (2010). The legislation targets the Controlled Substances and Controlled Substances Import and Export Acts (CSA and CSIEA), as well as the Federal Sentencing Guidelines. Following its swift passage in the Senate, the bill was referred to the House of Representatives on March 18, 2010. Currently, it is before both the House Committees on the Judiciary and Energy and Commerce. If passed by the House, the bill would make several important changes.

First, the bill seeks to reduce cocaine sentencing disparities by increasing the amount of crack-cocaine necessary to trigger mandatory minimums under both the CSA and CSIEA. Specifically, 28 grams would be the threshold for a 5-year mandatory minimum, with 280 grams required for a 10-year mandatory minimum. Under the current law, 5 and 50 grams are required for these respective mandatory sentences. See 21 U.S.C. § 841(b)(1)(A)(iii) and (B)(iii); 21 U.S.C. § 960(b)(1)(c) and (2)(c). Thus, the heightened weight requirements would reduce the much-maligned 100-to-1 crack to powder ratio

to 18-to-1.¹ Importantly, however, unlike previous crack-cocaine amendments, **the current bill is *not* retroactive.** That is, its increased drug weight requirements will not apply to defendants already sentenced.

In keeping with the increased drug weight requirement, the bill does away with a mandatory minimum for simple cocaine possession, previously authorized by 21 U.S.C. § 844(a). However, not all of the amendments are beneficial to defendants. Specifically, monetary fines for trafficking under 21 U.S.C. § 841(b) and importation and exportation under 21 U.S.C. § 960(b) are increased. For example, individual traffickers subject to the 10-year mandatory minimum were previously subject to a \$4,000,000 fine. Under the new law, the same offender faces a fine of \$10,000,000—a 40 percent jump. 21 U.S.C. § 841(b).

The bill also directs the United States Sentencing Commission to make several changes to the Sentencing Guidelines within 90 days of the bill's enactment. First, the bill authorizes a 2-level increase "if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense."

Second, a 2-level bump is provided if two conditions are satisfied. For the first condition, the defendant must have:

1. bribed or attempted to bribe a law enforcement official,
2. maintained an establishment to manufacture or distribute the substance, or
3. been an organizer, leader, manager or supervisor subject to an aggravating role enhancement under the Guidelines.

For the second condition, one of the following "super-aggravating factors" must be present:

1. the defendant used another person to purchase, sell, transport, or store the substance; impulse, fear, friendship, or affection were used to involve such person; and the other person had minimum knowledge of the offense and was to receive little compensation,
2. the defendant knowingly distributed to or involved in the trafficking a person under 18, over 64, a pregnant individual, a person "unusually vulnerable due to physical or mental condition," or a person "particularly

susceptible to crime,"

3. the defendant was involved in the importation of the substance into the United States,
4. the defendant engaged in witness intimidation, tampered with evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense, or
5. the defendant committed the offense "as part of a pattern of criminal conduct engaged in as a livelihood."

The bill, however, does provide some potential Guidelines relief for criminal defendants. For example, if the defendant qualifies for a minimal role adjustment, the base offense level is capped at 32. Further, a 2-level decrease is provided where the defendant:

1. had minimal knowledge of the illegal enterprise,
2. was to receive no monetary compensation, and
3. was motivated by an intimate or familial relationship or threats, and was otherwise unlikely to commit the offense.

Finally, the bill directs the Sentencing Commission to study and submit to Congress a report analyzing the bill's impact on federal sentencing within five years. The bill further charges the Comptroller General with reporting to Congress within one year on the effectiveness of drug courts, including data collection, the effect of such courts on recidivism and substance abuse rates, as well as recommendations for the future.

The above is a summary only. To access the full legislation, as well track its progress through the House, please visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:s.1789:>.

¹ *Washington Post*, Editorial (March 23, 2010) available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/22/AR2010032203469.html>.

Many thanks to Attorney, Kindl Shinn for contributing these helpful tips.

Freedom is not worth having if it does not include the freedom to make mistakes.

—Mahatma Gandhi



Victory Column: Telling the Client's Story

A man rushed into the Terry Sanford Federal Building, late for a meeting with his probation officer. As he presented identification and proceeded through security, a metal detector signaled. Anxious to make his appointment, the man quickly removed his belt and handed it to a Court Security Officer for inspection. The officer examined the belt, informed the man he could not have such an item in the building, and the man hurried on, leaving his belt behind.

Minutes later, while waiting upstairs for his probation officer, the same man was charged with knowingly possessing a dangerous weapon in a federal courthouse. Inside the belt that had once been around his waist, the Court Security Officer had found a single, sharpened edge- a small knife. Had the man intentionally entered the building with a dangerous weapon? Attorneys Joseph Ross and Andrea Stubbs were appointed to convince a jury otherwise.

According to Ms. Stubbs, this case exemplified the value of "substantiating a story with minor details." Her client was a relatable man, who initially had a hard time focusing on the stand. Mr. Ross and Ms. Stubbs responded by showing the jury a picture, taken from inside the man's residence. The picture was of a letter he had highlighted and taped to his refrigerator. It detailed the time, date, and place of his probation meeting.

As the man glanced at the picture, he became more at ease and was able to convey how he had, in his panic to arrive on time for his meeting, dressed without thought. The knife was multipurpose; it was both a knife and a device used to secure one end of the belt to the other. Although any person could have worn this item on purpose, the government had to prove that this client knowingly wore the belt into the federal building. However, testimony demonstrated that the client had not knowingly possessed a dangerous weapon that day; rather he had merely put on the first available belt in his closet.

It makes all the difference in the world whether one recognizes the central fact about the Fourth Amendment, namely, that it was a safeguard against recurrence of abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution, or one thinks of it as merely a requirement for a piece of paper.

– *United States v. Rabinowitz*, 339 U.S. 56, 69 (1950) (dissenting opinion).

Mr. Ross and Ms. Stubbs were not only able to secure a not guilty verdict for their client, but they were also able to demonstrate the dual purpose of pictures. They can help a jury visualize an incident, and they can also help a client tell his story.

Many thanks to Julie Grimley and Andrew Cann for contributing these helpful tips. Julie is an assistant paralegal in the FPD office. Andrew is an undergraduate student at Shaw University and worked as an extern at the FPD office during the Fall of 2009. Additional thanks to AFPDs, Joseph Ross and Andrea Stubbs, and Senior Paralegal, Paddi Rollins for contributing to this article. If you have a success story to share or know of someone who does, please email your submissions to vidalia_patterson@fd.org or laura_wasco@fd.org. Your submission should include a brief description of the victory and identify any tips or lessons learned.



Website Recommendations

For attorneys representing clients with immigration issues please visit <http://www.ncids.org/>. Click on reference manuals and select "Immigration Consequences Manual."

Advice, information, and support for sex offenders can be found at: <http://oncefallen.com>.

As we followed our own Supreme Court case, *Comstock v. United States*, we discovered <http://www.scotusblog.com/> to both keep us updated and provide a nice summary of the arguments.

The new Litigation Support page on the ODS-TB website was recently launched at www.fd.org. It was designed to be a resource for Defender staff and CJA panel attorneys when facing cases with large volumes of discovery and/or electronic discovery. The page can be found at http://www.fd.org/odstb_LitigationSupport.htm (if

the link does not work, you can access it on the Litigation Support tab on the left side of the home page).

For statistics on federal prosecutions and other criminal justice matters which may come in handy at sentencing, try DOJ's Bureau of Justice Statistics: <http://bjs.ojp.usdoj.gov/index.cfm>.

LEGAL UPDATES



4th Circuit Update

For the latest Fourth Circuit update, summarizing decisions published between September 16, 2009 and March 31, 2010, please visit our website at <http://nce.fd.org/> and go to "Publications." For up-to-date summaries and commentary on Fourth Circuit cases and federal law, check <http://circuit4.blogspot.com>. To receive daily published Fourth Circuit opinions, register at <http://pacer.ca4.uscourts.gov/opinions/opinion.htm>. Please direct any email questions about the Fourth Circuit Update or the websites listed above to laura_wasco@fd.org.

Supreme Court Update

For the latest Supreme Court update, summarizing Supreme Court decisions published between September 29, 2009 and March 31, 2010, please visit our website at <http://nce.fd.org> and go to "Publications." For up-to-date summaries and commentary on Supreme Court criminal cases and federal law, check <http://ussc.blogspot.com>. Please direct any email questions about the Supreme Court Update or the websites listed above to laura_wasco@fd.org.



You don't become happy by pursuing happiness. You become happy by living a life that means something.
– Rabbi Harold Kushner

New Local Rules

The following summarizes some of the more significant changes to the Criminal Local Rules for the Eastern District of North Carolina, which became effective December 1, 2009. Please note that some of the changes to these rules include amendments that bring them into compliance with the new time computation amendments to the Federal Rules, set forth below.

The following rules have been amended in accordance with the new Federal Rules governing time computation: 16.1, 24.1, 24.2, 32.2, 44.1, 47.1, 50.5, 55.1, 57.1, 58.1.

The following are non-time-computation amendments and new Criminal Local Rules:

- Rule 5.1 now sets forth the standards of performance for magistrate judges.
- New Rule 5.2 includes the text of former Rule 5.1, governing the assignment of cases to magistrate judges.
- New Rule 5.3 discusses the authority of magistrate judges in accordance with 28 U.S.C. § 636, 28 U.S.C. §§ 2254 & 2255, 42 U.S.C. § 1983, and the Federal Rules of Criminal Procedure.
- Rule 5.4 is the former Rule 5.2 regarding the electronic designation of judges.
- Rule 10.1, Arraignment, has been rescinded.
- Rule 16.1, pertaining to discovery, now also applies to pro se defendants and allows the exchange of discovery by mail without a conference.
- Rule 24.2, regarding jurors, requires the clerk, upon request of a pro se party or counsel, to furnish a copy of a relevant trial roster.

- Rule 30.1 no longer requires counsel to file requests for jury instructions on or before the Thursday preceding the first day of court session during which trial has been set (now covered by Rule 24.1(a)) .
- Rule 32.2 clarifies that PSR objections should be filed 14 days after disclosure to the defendant.
- New Rule 46.1, "Prohibited Sureties," precludes counsel, administrative officers and employees of the court, the marshal and deputies or their assistants from acting as a surety in any matter.
- Rule 47.1, "Responses to Motions," requires the inclusion of a memorandum that may include affidavits and other supporting documents.
- Rule 47.2, "Supporting Memoranda," clarifies that, when citing a published decision, a parallel citation should be included for state court decisions.
- Rule 57.2, "Student Practice Rule," requires that a student be enrolled in a law school accredited by the American Bar Association.

Attorneys are advised to review and familiarize themselves with the full text of these provisions.

To access the Eastern District's Local Rules online, including a printable PDF version, please visit <http://www.nced.uscourts.gov/> and click on the Local Rules link to the left.



New Federal Rules

There were several changes to the Federal Rules of Criminal Procedure and Appellate Procedure that went into effect December 1, 2009. A summary of the changes are listed below, and the full text can be found in PDF format at <http://www.uscourts.gov/rules>.

It is a fair, evenhanded, noble adjustment of things, that while there is infection in disease and sorrow, there is nothing in the world so irresistibly contagious as laughter and good-humor.
– Charles Dickens

Among these changes was a comprehensive overhaul of the rules affecting time computation implemented to standardize how dates and deadlines are treated by Criminal, Appellate, Civil and Bankruptcy rules. In order to simplify time computation, the principle change is that all days are counted, including weekends and holidays. Further information on time-computation rule amendments and parallel changes to certain statutory time periods affecting court proceedings can be found in the excerpt reports of the Rules Committees, which are posted on the Rules Committee web site at <http://www.uscourts.gov/rules/supct0309.html> and <http://www.uscourts.gov/rules/HR1626.pdf>. Separate PowerPoint presentations, which you may find helpful, explaining the amended time computation rules and their operation in appellate, bankruptcy, and district court proceedings are posted at <http://www.uscourts.gov/rules/presentations.html>.

The following rules have been amended to standardize time computation:

- Appellate Rules 4, 5, 6, 10, 12, 15, 19, 25, 26, 27, 28.1, 30, 31, 39, and 41;
- Criminal Rules 5.1, 7, 12.1, 12.3, 29, 33, 34, 35, 41, 45, 47, 58, and 59; Rule 8 of the Rules Governing Section 2254 Cases in the United States District Courts; and Rule 8 of the Rules Governing Section 2255 Proceedings for the United States District Courts.

The following are non-time-computation amendments and new rules under the Federal Rules of Appellate and Criminal Procedure:

APPELLATE PROCEDURE

- Rule 4 (Appeal as of Right-When Taken) has been amended to clarify that an appellant is not required to amend a prior notice of appeal whenever the district court amends the judgment.
- Rule 22 has been amended to remove the requirement in a habeas corpus proceeding that the district judge either issue a

certificate of appealability or state why a certificate should not issue. This requirement is now addressed in Rule 11(a) of the Rules Governing Proceedings under 28 U.S.C. §§ 2254 or 2255.

- Rule 26 has been heavily amended to restructure the computing and extending of time. Amended or new subsections include, but are not limited to, the following: computing time, the differentiation of a period stated in days as opposed to hours, inaccessibility of the clerk's office, and the definitions of "next" and "last" day. Most significant is the inclusion of Saturdays, Sundays and legal holidays in time computation.
- New Appellate Rule 12.1 was enacted, in conjunction with New Civil Rule 62.1, to allow a party to request an "indicative ruling" in the district court on a motion that the district court lacks authority to grant because of a pending appeal. This rule facilitates remand to the district court of a ruling on the motion when the district court has indicated that the motion raises a substantial issue or that the district court would grant the motion if the court of appeals remanded for that purpose.

CRIMINAL PROCEDURE

- Rule 7 (Indictment and Information) has been amended to remove subsection (c)(2) related to forfeitures because it is more appropriately located in Criminal Rule 32.2.
- Rule 32 (Sentencing and Judgment) has been amended to require presentence reports to include whether the government seeks forfeiture under Rule 32.2 or any other provision of law.
- Rule 32.2 has been extensively amended to restructure criminal forfeiture proceedings including, but not limited to, the following: Notice to the Defendant, Forfeiture Phase of Trial, Preliminary Order, Seizing of

Property, Sentencing and Judgment, Jury Determination, Notice of the Forfeiture, and Interlocutory Sale.

- Rule 41 (Search and Seizure) has been amended to include a provision under (e)(2) for the issuance of a warrant seeking electronically stored information, and the Inventory subsection was expanded to address electronic storage media.
- Rule 11 of the rules governing 28 U.S.C. § 2254 petitions and new habeas Rule 11 of the rules governing § 2255 motions, which expressly allow petitioners to seek a district court's reconsideration of the denial of a certificate of appealability, have been amended to state that a motion to reconsider the denial of a certificate of appealability does not extend the time to file a notice of appeal from the judgment denying relief. The new rules do not change or limit the tolling effect of timely motions for reconsideration of the judgment denying relief.
- Rule 12 is a new addition to the rules governing 28 U.S.C. § 2254 cases and concerns the applicability of the Federal Rules of Civil Procedure to this set of rules.

Many thanks to Kristen Neely for contributing this update on the new federal rules. Kristen is a second year law student at the Campbell University School of Law and was an extern in the FPD office during the Spring of 2010.



Destiny is a name often given in retrospect to choices that had dramatic consequences.
-J.K. Rowling

Guideline Amendments

New amendments to the Guidelines went into effect November 1, 2009. The latest amendments (and their corresponding U.S.S.G. sections) include:

- Undue Influence of a Minor (§§ 2A3.2 and 2G1.3).
- Ryan Haight Online Pharmacy Act - includes increase for all hydrocodone offenses (§ 2D1.1; Appendix A 21 U.S.C. § 841(g) & 21 U.S.C. § 841(h)).
- ID Theft (§ 2B1.1; § 2H3.1; § 3B1.3).
- Threat Offenses (§ 2A6.1; Appendix A, 18 U.S.C. § 1513).
- Alien Harboring Offenses (§ 2L1.1; Appendix A, 18 U.S.C. § 1350, 18 U.S.C. § 1351; 18 U.S.C. § 1592, 18 U.S.C. § 1593A).
- New Human Trafficking Offenses (§ 2H4.1).
- Counterfeiting involving Bleached Notes (§ 2B5.1; Appendix A, 18 U.S.C. § 474A, 18 U.S.C. § 476).
- Intermittent Confinement (§ 5F1.8, § 5B1.3, § 5D1.3).
- Child Pornography Guidelines Expansion (§ 2G2.1).
- "Morphed images" Offenses (§ 2G2.2).
- Submersible and Semi-Submersible Vessels (§ 2D1.1, § 2X7.2).

Attorneys are advised to review and familiarize themselves with the full text of these provisions as they provide policy statements that may be helpful during sentencing. For updates on the U.S. Sentencing Guidelines, visit the Sentencing Commission's website at <http://www.ussc.gov/guidelin.htm>.



LOCAL NEWS

Eastern District News

As of January 19, 2010, CM/ECF filers are required to electronically file sealed and ex parte documents in CM/ECF. Please read Section T of the Policy Manual located at www.nced.uscourts.gov/PDF_files/PolicyManual.pdf, regarding the policies and procedures for filing restricted documents. Attorneys are encouraged to review the Policy Manual before filing any restricted document in CM/ECF. Note that failure to comply with the policies and procedures may result in deficiency notices.

The FPD welcomes Judge Andre M. Davis, the newly seated judge for the Fourth Circuit Court of Appeals. Judge Davis served as a district court judge for the U.S. District of Maryland from 1995 until his confirmation in 2009. We extend a warm welcome on behalf of this office and the panel attorneys from this district.

FPD Office News

This year our office has expanded with several new staff members. We are pleased to welcome to the Raleigh office: Assistant Federal Public Defenders, Suzanne Little and Jennifer Dominguez, and Attorney, Kindl Shinn.

Congratulations go out to Laura and John Wasco on the birth of Mary Katelyn on October 25, 2009.

Panel News

We are pleased to welcome the following attorneys who are training to become panel attorneys: in Raleigh: Daniel Micah Blau; Christian Emerson Dysart; Michael K. McEnery; Joel Webster Sawyer; Inez de Ondarza Simmons; Raymond C. Tarlton; Rhonda Graham

Men at some time are masters of their fate.
-William Shakespeare, *Julius Caesar*, Act i, Scene 2

Young; in Durham: Thomas J. Carmon; Renorda Eulissa Herring; and in Scotland Neck: Jamal Montez Summey.

The following are new panel attorneys in Raleigh: Elisa Cyre; Samuel A. Forehand; James Ryan Hawes; Seth A. Neyhart.



Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

—Abraham Lincoln's Gettysburg Address given on November 19, 1863