



THE LIBERTY LEGEND

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Tony Lacy

NATIONAL ASSOCIATION OF FEDERAL DEFENDERS

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THE PRESIDENT’S MESSAGE

NAFD NEWSLETTER

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Federal Defenders

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FREEDOM FIGHTERS ALL,

Habeas is really civil rights work, Defender Lisa Freeland remarked in conversation. I agreed. It had been some time since I thought of defense work from that perspective. I thought of *United States v. The Amistad Schooner*, 40 U.S. 518 (1841), one of the first such cases in this country. As we all know, neither the “Great Writ,” nor the “Bill of Rights,” are as intended. In that, there are many stories. We should step back from the immediate facts and challenges of individual cases to take stock. We know what our work can mean to individual clients and their families. Apart, however, from the outcome in individual cases, we also contribute to a larger and continuing struggle for liberty interests.

Like many of our civil liberties, the “Great Writ,” is merely a shadow of what it once was. It is now sharply encumbered and burdened by a maze of byzantine procedures. Nowhere is the restriction of liberty interests more apparent than in the development of federal criminal laws and the treatment of persons charged or convicted of criminal violations. The advent of mandatory minimums and the Federal Sentencing Guidelines resulted in the most sweeping curtailments of liberty interest in the last thirty years. They caused ever increasing penalties and

mass incarceration. The United States has less than five percent of the world’s population, but has almost one quarter of the world’s prisoners.¹ This mass incarceration of Americans, prompted a recent editorial dubbing America, a “Prison Nation.” Historically, this was not the case, these are recent developments. These events are symptomatic of the poor “health” of our democracy. In this struggle, every criminal case is a potential front in the development of arguments and laws affecting liberty interests. Every Defender/Defense Lawyer is, therefore, in the trenches of this struggle for liberty interests.

In an article, *Race Testing and the Miner’s Canary*², Professor Lani Guinier, postulated that the experiences of persons who are left out, individuals on the margins of society, (people of color, the poor, or the disabled) have much to teach us about the health of society as a whole. Those people on
..... *continued on page 2*

¹ *Inmate Count in U.S. Dwarfs Other Nations* The New York Times April 23, 2008.

² *Rethinking Schools Online* Volume 16 No. 4 Summer 2002.
http://www.rethinkingschools.org/archive/16_04/Mine164.shtml Last accessed on May 18, 2008.

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the margins are our clients. We are Defenders to the poor, to the Native and African Americans, to the despised, the murderers, the drug dealers, the undocumented aliens, the 911 and Guantanamo defendants, to the mentally infirm, the intellectually disabled, and most recently, the child pornographer, society's new pariah. Our representation on behalf of our clients contributes, in part, to the continuing development, arguments and laws affecting liberty interests. I say in part because we cannot ignore the substantial role civil activists and politics plays in the process. We cannot ignore the side rooms and rules committees from which spring policies and laws designed to cripple the liberty interests of our clients. As Defenders, we have a front seat to this unfolding drama, to learn from the experiences of people on the margins. To the extent, we truly learn from those experiences, we are obliged to voice that experience, to speak loudly and often, to relate their experience to the larger society. From the client's perspective, the retelling of that experience is often critical to their defense and mitigation.

As the struggle for liberty interests developed, parts of that struggle unfolded within the criminal venue. Death penalty litigation, direct and collateral, has long been at the epicenter of this struggle. The death penalty has been applied almost exclusively to people on the margins of American society. Essential to the arguments in those cases and to society as whole, was the exposure of race conscious systems of "justice" which impermissibly and systematically denied a fair trial, equal protection and due process of law. "The death penalty is a direct descendant of lynching and other forms of racial violence and racial oppression in America."³ As in Guiniere's model, that reality says more about flaws in our society than it does African Americans. Much like the torture chambers in Abu Grhraub speaks more to our moral corruption rather than those tortured. While there have been a substantial number of exonerations and increasing evidence of flawed death systems, it has

³ *Discrimination Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, Stephen Bright, 35 Santa Clara L. Review 433 (1995)

been one step forward and two steps backwards. Many crimes which previously could be punished by death only in the state courts are now punishable by death in the federal courts. So far, Defenders have largely prevailed in the battle for life.

Enacted in a climate of fear and misinformation, the mandatory minimums and the Federal Sentencing Guidelines resulted in an unprecedented mass incarceration of Americans with catastrophic short and long term effects for African Americans and their communities. One in every 31 U.S. adult was in prison, jail, or on probation or parole at the end of 2006.⁴ The United States now ranks first in the world's incarceration rates. It has 751 people in prison or jail for every 100,000 in population. The dollar cost to our society at large is almost 60 billion a year and rising.⁵ Four states now spend more on prisons than they do education.⁶ These are seeds planted without a thought given to the coming harvest. To provide some perspective, the original GI bill cost some thirty billion dollars, however, it resulted in the creation of the American middle class, and a return on that investment of 300 billion dollars, and counting. Not long ago, the rate of incarceration was an indicator of the oppressive nature of nations. If that holds true, the numbers suggest dark clouds ahead.

The mass incarceration of Americans converts prisons into incubators of crime. I recall watching with concern the increasing number of families

⁴ Bureau of Justice Statistics:
<http://www.ojp.usdoj.gov/bjs/pub/press/p06ppus06pr.htm> Last accessed on May 18, 2008.

⁵ *Life Sentence*, By Christopher Shea, The Boston Globe, September 23, 2007.
http://www.boston.com/news/globe/ideas/articles/2007/09/23/life_sentence/ - Last accessed May 18, 2008

⁶ *One Nation Behind Bars* Detroit Free Press, March 6, 2008.
<http://www.capps-mi.org/material%20to%20put%20up/One%20nation,%20behind%20bars%20Free.htm> -Last accessed on May 18, 2008.

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visiting jails. Some children no longer fear jail, it is now a part of their life. To them it is simply another stage in life. As we all know, many of these children will be at higher risk to repeat the same mistakes. Some social scientist now maintain that “[p]rison culture has become a norm in some urban neighborhoods, with more than 600,000 people a year returning home from prison and jails. They come back poorly educated, lacking job skills, and socially and legally disabled by felony records.” (*One Nation Behind Bars, Id.*)

The effects of imprisonment ripple out from prisoners, breaking up families and further impoverishing neighborhoods, creating the conditions for more crime down the road. Prisons have grown into potent “engines of inequality,” - the penal system actively widens the gap between the poor - especially poor black men - and everyone else. “This is a historic transformation of the character of American society,” says Glenn Loury, a Brown University economist. (*Life Sentence, supra.*)

Looking through the prism of those troubling numbers, the defense victories from *Apprendi*, through *Booker*, *Kimbrough*, and the crack reduction amendment seem both highly significant, and yet hardly enough to stem the tide. This suggests a need

for continued urgency. We are but one part of this struggle, but fighting against odds is what we do. We can now tell the stories from the margins without hindrance. Those achievements were paved by battles waged in individual cases before them. The crack amendment is the result of years of failed appeals for change. The result of a persistent cadre of nameless Defenders, Paralegals and other supporters lobbying and advocating to the Sentencing Commission for years. In similar fashion, Tom McNamara recently related a long but successful effort to block a DOJ rule change to, among other things, override *Gonzalez v. Crosby*. More lawyers are needed to close DOJ’s advantage in this area, to serve on these committees, and to actively advance defense oriented initiatives. After *Booker*, the defender community wisely formed committees to consider short and long term sentencing issues. The office of sentencing counsel now provides real time responses to emerging sentencing issues and initiatives. We need a similar coordinated effort on these various committees.

“Be not be weary in well doing for in due season, you shall reap if you faint not.” Despite the potential pitfalls, these are exciting times. We must, from time to time, step back from our individual cases, to see the big picture and to recognize that we are Freedom Fighters all.

*All best,
Carlos A. Williams, President*

NATIONAL ASSOCIATION OF FEDERAL DEFENDERS DUES AND MEMBERSHIP FORM

Name: _____ District: _____ Position: _____
Address: _____
E-Mail: _____ Telephone: _____ Fax: _____
Renewal: _____ New: _____ I would be interested in working on a committee: _____

Mail completed form and check in the amount of \$52.00 to:

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ON YOUR WAY TO NEW ORLEANS?

Laissez Les Bon Temps Rouler!

The Federal Public Defender’s Office for the Eastern District of Louisiana is hosting the NATIONAL DEFENDER CONFERENCE May 28th - 30th and they are having a crawfish/shrimp boil the evening of May 28th for all who want to attend. Join in the fun of an old fashioned back(court)yard Cajun Crawfish and Shrimp Boil with all the trimmings: spicy sausage, corn on the cob, potatoes, beer, soft drinks, water and live music.

They have about 220 signed up and really need a more accurate head count (people not crustaceans) so that they don’t have a whole lot of those little critters crawling around

after it’s over. They need everyone who is planning on attending to at least send them an e-mail confirming by Friday (May 23rd) and either mail in their check for \$30.00 or bring it with them and pay at the “door” It’s really important to sign up ahead of time. Contact Heather Crain either by e-mail, HEATHER_CRAIN@fd.org, or by phone, 504-589-7930.



**THE NATIONAL ASSOCIATION OF FEDERAL DEFENDERS
2007 AWARD RECIPIENTS**

In a system of truly remarkable defenders, we are proud to recognize the following persons, whose dedication, commitment and quality of representation

exemplify the highest standards of our calling. The awards were presented at their respective training seminars in 2007.

OUTSTANDING ASSISTANT FEDERAL DEFENDERS



MICHAEL DWYER

Michael Dwyer, Assistant Federal Public Defender for the Eastern District of Missouri, began working in the Defender Office in 1987. He is a 1980 graduate of Washington University where he was Topics Editor of the Washington University Law Quarterly. He had a note published, *The Murder Scene Search Exception in the Aftermath of Mincey v. Arizona*. From 1981 to 1986, he was Supervising Attorney of the University of Wisconsin's Legal Assistance to Institutionalized Persons' Program based out of the University of Wisconsin Law School in Madison, Wisconsin. He also lectured at the law school in criminal law and procedure. He served as a staff attorney for the Eighth Circuit Court of Appeals from 1986 to 1987 when he began his tenure with the Federal Public Defender's Office. From October of 1991 to May of 1992, he was chosen to serve as the national Federal Public Defender's liaison with the Sentencing Commission. In October of 1995, he left the office and transferred to the Federal Defender's Office of Nebraska where he served for David Stickman until May of 1997. He returned to the Eastern District of Missouri as an Assistant Federal Defender in August of 1998 and has served in that office since that time. All told, Mr. Dwyer has over nineteen years of experience as an Assistant Federal Public Defender; over twenty-five years of experience working in the area of public interest law.

the case of *Claiborne v. United States*, which was argued February 20th, 2006. Of course, the Supreme Court vacated the Eighth Circuit's opinion as moot after Mr. Claiborne died on May 30, 2007. The thoroughness of Mr. Dwyer's research and preparation was evident in the brief filed in the Supreme Court and his oral argument. It was, however, to be anticipated, based on Mr. Dwyer's entire tenure in the Defender Office. Mr. Dwyer has approached each and every case given to him with the same dedication and zeal. He has handled the most complex fraud cases including the representation of one of the principals in the Germania Savings and Loan case which was prosecuted both in the Southern District of Illinois and in the Eastern District of Missouri. This case was among the most complex the office had ever been assigned and Mr. Dwyer was a natural choice for the defense of the case. With fact investigation, legal research, trial preparation and, if necessary, sentencing advocacy, Mr. Dwyer's approach is always intense and thorough. He has also distinguished himself as an outstanding appellate advocate letting no stone unturned.

In addition to his work in the office, Mr. Dwyer plays a very active role in his family life with Trish and his two teenage sons. He is a dedicated father who unfailingly makes time to be present at any appointments or events involving his children. Mr. Dwyer served as a basketball coach for the school and served for six years as a volunteer on their Board of Trustees. These commitments to family and

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community service have their price. Michael works regularly on weekends, making jail visits, reviewing discovery and writing and polishing his excellent legal memoranda and briefs.

Michael's Achilles heel as a Federal Defender, if it can be considered one, is that he cares so deeply about his clients. Having immersed himself in their

lives, he finds bullying prosecutors and arithmetic judges an anathema. Michael assumes his role as his clients' champion so naturally that he is truly offended by any treatment of them that he views as less than just. Thankfully after a good half hour or so of venting, he is able to resume the cause for another client.

SHEREEN CHARLICK

Shereen Charlick of the Southern District of California, San Diego Office, has been described as an incredibly talented and very aggressive attorney who has dedicated her life to defending the indigent accused, as well as training the next generation of attorneys to do the same. Shereen has been an Assistant Federal Public Defender since 1994. For the last 12 years, Shereen has split her time between the San Diego and Miami offices. In 2005, Shereen returned to the San Diego office as Chief Trial Attorney. Shereen has worked day and night in her new post to help make the San Diego office one of the best in the country. Not only does Shereen have a full trial and appellate caseload, she also is involved in training newer defense attorneys, both in San Diego and around the country.

As a trial attorney, Shereen tries as many as five or six felony cases per year. Despite the high volume of work Shereen handles, the quality of her work does not suffer. For instance, in one case, her client was a single mother of three children who faced a ten-year mandatory minimum sentence if convicted. Despite the ten-year hammer the government was wielding, Shereen was calm, cool and quick on her feet when the case went to trial. In addition to

vigorously defending her client, Shereen was also focused on helping a newer attorney, who second chaired the case, learn trial skills that would ultimately benefit that attorney's future clients. Shereen's hard work paid off, as the client was acquitted on all counts. Since that acquittal, Shereen has obtained three or four additional acquittals.

Not only is Shereen an outstanding trial attorney, she has also been described as one of the most brilliant appellate writers around. A quick search on Westlaw will reveal that Shereen is responsible for much of the good case law enjoyed by offices in both the Ninth and Eleventh Circuits. In fact, Shereen is responsible for even more favorable opinions, as she assists newer attorneys with writing their appellate briefs. Shereen is currently heading the San Diego office's effort to defend the unlawfully detained in Guantanamo Bay. Perhaps most importantly, Shereen trains and inspires the next generation of Federal Defenders to do exceptional work. Shereen is an excellent resource for those who work in her office. Her door is always open, often until 11:30 in the evening. Even for attorneys who no longer work in her office, Shereen makes it clear that she is only a phone call away.

KIM TOLLISON

Kim Tollison, an Assistant since the day the doors opened at the **Federal Defender Services of Eastern Tennessee, Inc.** fifteen years ago, was chosen by an Assistant United States Attorney to give a eulogy at the AUSA's funeral, because "he can find

something good to say about anybody." He's been designated the "District Workhorse" by a senior judge. And, he's been able to argue that the audio tape in a suppression hearing said "my pet iguana" instead of "my marijuana" without cracking a smile

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and without being struck by lightning.

Kim has earned the respect of all of his co-workers, the judges, the clerks in the courthouse, the jailers, his clients, and everyone else with whom he has contact. He has earned this respect by being a zealous, creative lawyer who goes above and beyond the requirements of his job, whether it is buying clothes for a client going to trial, or driving two hours to see a client so the client will not miss work. His generous willingness to help with trials and other hearings and his love of brainstorming cases led to Kim's promotion to Senior Litigator. As Senior Litigator, he has helped to figure out ways to save clients jail time, crafted suppression motions, and assisted in trials so that the clients of other defenders could also benefit from his skills. He has taught dozens of new panel lawyers about the guidelines in orientation seminars, and he never says "no" when asked to lead a discussion of the newest Supreme Court case for panel lawyers. He is the person to whom colleagues all go just to "bounce off ideas." He always seems to have a better idea, and he doesn't make his colleagues feel foolish for asking for assistance. Likewise, he is never hesitant to go to others for advice on a difficult case and he shows great respect for other people's ideas and thoughts. Best of all, he does this all with a great sense of fun

and humor, when appropriate, and keeps his co-workers on an even keel when they start to get bogged down in their daily endeavors.

Kim is also highly respected by members of the criminal defense bar. He spends a good part of every day answering questions from lawyers outside the office. He is very generous with his time when instructors at the University of Tennessee College of Law ask him to speak to their classes or judge their moot court competitions. Kim has had unprecedented successes in and out of the courtroom. Within the stretch of one week, he talked an AUSA into dismissing two major drug and gun indictments; he convinced the United States Attorney to change his mind and agree to pretrial diversion; and he got two people out on bond who were the poster children for detention. As a trial lawyer, he not only possesses great knowledge, but the ability to win over a jury. In the longest case ever tried in the office, he got dismissals of all of the bribery charges after the government's proof, and acquittals on all remaining counts of the indictment, including charges of conspiracy and the taking of gratuities. It has been said that if any of his colleagues in the Eastern District of Tennessee are ever charged with a federal offense, they will get rid of all of their assets so that they can be represented by Kim Tollison.

OUTSTANDING RESEARCH AND WRITING SPECIALIST BRAD BOGAN

Brad Bogan, Western District of Texas, San Antonio, started to work for the Del Rio office straight out of law school in September of 2002. Del Rio is a town of about 30,000, lying on the Mexican border 150 miles from any major city. While Del Rio is a fine place to live, few outside of Del Rio know that, and consequently recruiting for the branch there is challenging. Brad's willingness to go to work there is a testament to his total dedication to our mission. He was clearly talented beyond his years of experience. He took to the job of Research and Writing Specialist instantly and was soon turning out top quality briefs. The Western District of Texas is

blessed with some of the best research and writing attorneys and Brad fits right in with this group. As a border office, Del Rio gets more than its fair share of illegal re-entry cases. Accordingly, the practice has been especially impacted by the recent developments in the law regarding the categorical, or Taylor, approach to defining crimes of violence. Brad has mastered this very difficult area of the law and has been responsible for some very low sentences in cases which would have turned out quite differently without his assistance. Brad has improved the practice of law in Del Rio.

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In 2007, Brad was transferred to the San Antonio headquarters to work closely with the appellate section. He starts work every day promptly at 8:30 and works through the day without interruption until the close of business. His services are very much in demand in the office. Yet he never complains and never appears to be overloaded, notwithstanding the fact that some of his work requests come in at the last minute and require him to work late at night or on holidays and weekends. And his commitment to criminal defense does not end with the office. He also finds time to contribute to the Fifth Circuit web log. This “blog” provides case updates and legal analysis to federal defenders and CJA panel attorneys who practice in the Fifth Circuit. Several months ago, there was a circuit-wide call for volunteers to contribute articles and commentary to the blog, and Brad, in a fashion that has come to define his work ethic, was one of those who heeded the call. A small group was constituted and given posting privileges by Paul Rashkind who set up the blogs. In practice, the author of all but a few of the posts to the blog has been Brad Bogan. Consequently, it is not unfair to refer to him as the “principle author” of the Fifth Circuit Blog.

He has distinguished himself as an incredibly knowledgeable legal sniper who inspires confidence by his thorough and conscientious research and writing. It is as easy as telling Brad, “Find me a way to win.” And he does so. Brad is the equivalent of a walking and talking legal encyclopedia. He has transformed the offices 2L1.2 crime of violence jurisprudence by suggesting constant stretches that are in keeping with current Fifth Circuit precedent. This is not an insignificant contribution given the border locale and massive immigration numbers. But, his ability to quickly research and fire off a plan of attack is also admirable. For example, Brad was asked to familiarize himself with HIPAA and to find a strategy to issue a subpoena pursuant to it. When Brad encountered closed doors he suggested alternative ways to achieve the goals. This is an example of the thoroughness of his work and the consciousness of his practice. He does not simply answer the question. He offers alternate plans of attack, knowing what the attorney’s true intention is. He is irreplaceable and the model of what good support should be.

OUTSTANDING PARALEGAL SYLVIE LEVINE

Sylvie Levine, Southern District of New York, has provided valuable assistance to indigent persons charged with federal crimes during her work at the Federal Defenders of New York. She has worked for their acquittal and to have the charges against them dismissed. She has helped them to obtain food, clothing, medical care, housing, psychiatric treatment, and substance abuse treatment. She has made sure they arrived in court as scheduled, even when that meant she had to travel for hours to pick up a client at a shelter that had no telephone. And, at every turn, she has ensured that the thirteen lawyers with whom she works never stop caring and never give up. She does so through her sophisticated, quiet, unflagging, irony-filled concern. She does so by arriving at work early and staying late at night, by

always being the first to ask, “What can I do to help?” In her early 20’s, she is more mature in her thinking, more nuanced in her understanding of the justice system, more self aware, than most people can ever hope to be. She gives to every case, and every client, an empathy and keenness of strategic understanding that most public defenders cannot match, let alone paralegals.

Her work over the last year in defense of a client facing the death penalty is particularly noteworthy. While the client was acquitted of the capital murder charges, suffice it to say that Sylvie, Anna Finkel, and David Patton saved this man’s life. When everyone else was overwhelmed by the cooperator coming into court and saying the client

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was covered in blood on the night of the murder, worn down by the judge's repeated adverse rulings, despite the favorable law, and defeated by the client's inability to provide an explanation for where he had been that night, Sylvie never gave up. She analyzed thousands of pages of telephone records late into the night so that David could convincingly cross-examine the main Government cooperator and shake his story, and ensuring that every fact and detail David needed to cross-examine and present to the jury was at his fingertips. She learned an entirely new computer program two days before closing arguments so that David could show the jury in the most compelling fashion why the Government's theory did not hold together. What was truly astounding throughout the months of preparation and the weeks of trial was that Sylvie made strategic judgments about the presentation and selection of evidence that some of the lawyers had missed; she saw the importance of facts that the four lawyers working full-time on the case and the other lawyers pitching in had missed.

Mitigation, though presented by lawyers, really turns on the investigation and presentation of a person's life, and it was Sylvie and Anna who put together a picture of a troubled, mentally limited man who always flourished in a structured environment and who had never had a chance given his chaotic and violent upbringing. It is rare that anyone makes such a contribution to another person's life, rarer still that this contribution saves that person's life. And in the midst of all this, while she worked 15, 16, 17 hour days in the courtroom and analyzing evidence for the death penalty case, Sylvie also continued to manage, in her position as Head Paralegal in the office, the day-to-day work of the other three paralegals on the other hundreds of cases.

It is the work of people like Sylvie that makes our clients feel seen, feel respected, feel understood, that makes our clients put aside their instinctive wish that they had money to pay for a lawyer and realize their good fortune.

OUTSTANDING INVESTIGATORS

DOUG COLE

Doug Cole, Northern District of California, has been described as the investigator of the year if not the decade. It has been said that he will fly down to Venezuela with you, and within 24 hours put you face to face with a fugitive murderer witness whom the United States Government has been unable to find. And they still can't find after six years. He will find a vital witness, known to your client only as "the singer" for his prowess in the karaoke bars. An Asian guy, probably living in San Francisco. Try finding that guy. Doug did. A witness will call Doug up from Hong Kong, to say the Postal Inspectors are there and want to interview her, and she wants Doug and the attorneys present by telephone during the interview. They begin at about 1 a.m. California time and go to about four a.m. In the end some bourbon has been consumed in California. In Hong Kong, the witness remains steadfastly defense and the Postal Inspector

and the AUSA who have traveled half way around the world are furious. This is all because witnesses tend to consider Doug their friend and confidant. At a deposition, where your witness has shown up still drunk from the night before, Doug will befriend the video camera operator and get him to frame the image, so the disheveled t-shirt is out of the picture, and she actually looks respectable. He does this and the two AUSAs and three Postal Inspectors notice nothing. The deposition video comes out beautiful. For six years he will stay at least a year ahead of the government in finding and talking to witnesses. He will get into it with lawyers. It is always fueled by his passion to do right by the client. Half the time we lawyers deserve it, and he is setting us on a truer course. The rest of the time it is a pain in the rear. But this is an award for investigator of the year, not for sainthood.

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His work, which included field research and interviews in countries on three different continents (US, Hong Kong and Romania), was instrumental in two major victories in the David Lin capital murder prosecution. First, his extensive and tireless investigation was what finally convinced the government to concede that their original theory of the prosecution (that David built the bomb that killed the victim) was wrong and then unilaterally withdraw the death penalty allegation without demanding anything in exchange. Second, his thorough record reviews and witness locating was what gave the defense team the raw materials to get an acquittal at trial on all counts. Moreover, Doug was a star witness at the trial regarding phone records. Finally, Doug was essential to the team building and morale on the case. He was the only team member that was on the case for the entire six year period from appointment to acquittal. The case lasted six years. It went through three AFPDs, two Research and Writing Specialists, two Learned Counsel, two paralegals. Doug was there for the duration, and the case, and the eventual total victory in the outcome, truly belonged to him.

Throughout those six years Doug also worked on other cases. The truth is he carried a full caseload of cases in addition to the David Lin death penalty case. All the while there were official rumors that Doug was 100% on the David Lin case, or 50% on the David Lin case. Such rumors were only true because

Doug was working at 150-200%. During that time every AFPD in the San Jose office enjoyed major victories because Doug had worked “100%” on a different case. A meth lab case, an entrapment case, an alien smuggling case, a multiple bank robbery case, a terrorist threat on the FBI case, each of these were major victories for the office, and each a victory only because of the investigation that Doug did.

Doug’s contributions to the San Jose office transcend his investigative duties. From doughnuts in the early morning to rides home after a long evening’s work he brings out the best in everyone. One of two support staff is in her position because Doug encouraged her to believe that she could simultaneously carry her second child, obtain an undergraduate degree and work full time. Such are her skills and his persuasive powers that she has accomplished all three. He is the ultimate net worker, from T-Bones in Texas to transport in Taipei, Doug knows someone who knows someone who has just happens to have what you need. He can be a caustic devil’s pitchfork when he thinks that a client is not receiving the attention Doug believes he or she deserves. We are all the better for his rabid protection of the rights of our clients and his devotion to the Federal Defender. He is in many ways the center of the office, a mentor, a team player, a tireless advocate for our clients, and a friend.

RONALD DAVIS

Ronald Davis, Eastern District of Missouri, joined the office in 1991. Prior to joining the office he was Deputy Executive Director of a residential center for children’s behavioral development, Program Supervisor and Vice President for Community Programs for Youth and Family Services Center, Superintendent of the Illinois Youth Center at Pierre Marquette and a parole supervisor. At the time he joined the office, Ronald assumed responsibility as the investigator on three death penalty habeas cases in the office. These were state convictions on which the office was appointed to represent individuals on their 2254’s. Ronald’s work on each of these cases was

outstanding. Eventually, two out of the three clients avoided the death penalty, in large measure due to his outstanding investigative work.

Prior to his working with the office, Ronald did not have any experience in capital litigation. He demonstrated enthusiasm to not only work on the cases, but learn new skills in order to handle the cases correctly. He had to learn mitigation investigation including how to do a mitigation interview. He did not shy away from the task at all. He attended training opportunities, including Life In The Balance, the Federal Defender Strategy Session and Mitigation

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Workshop to learn that area of investigation. His hard work paid off in a capital case involving a car jacking/murder where the goal was to get a life offer. At that time the authorization process moved quite quickly. While Ronald worked hard to develop mitigation, the more important work he did was develop a very good rapport with the client. The client's family was virtually in denial about the charge and about the possibility for the death penalty as a result of the case. Ronald not only built bridges between the defense team and the family, but he developed a strong relationship with the client.

On March 22, 2007, the death authorization meeting was to take place at the Attorney General's Office in Washington, D.C. At that time, the defense team was hoping that besides asking for a decision to not seek the death penalty, they could at least come out with an offer of life for the client. One of the problems they had at that time was that the client had not authorized them to make such an offer. They left town not knowing what the client's wishes were. The night before, Ronald called the hotel and, after spending most of the day with the client, he notified them that the client would consider an offer if they were able to get it from the DOJ. This was the right thing to do for this client. Because of Ronald's work, they not only presented the case for non-authorization, they also requested that the decision by the committee be left open so they could explore the possibility of a settlement. The decision was crucial in saving the client's life. They were concerned that once the death machine was put in motion they would be unable to undo it. Ronald did a good job of educating the client on that possibility. After more work by the team they were able to resolve the case for a non-death sentence.

The next capital case they worked on involved a large amount of documents. The client had been in various state facilities from a very early age which included foster homes, juvenile facilities and group homes. The government put a lot of resources into gathering documents and they ended up with 30,000 pages of documents that related to the client's life and upbringing. Ronald was put in charge of reviewing the appropriate documents and finding the witnesses

that those documents generated. He was extremely helpful in many ways.

He was able to find people. This is one of Ronald's strong suits. He takes it as a challenge to find people who have moved since they were mentioned in an old report or are trying to elude the office. Through his work they were able to find many people who were significant in the client's life. He would have them review the notes and records at the time. As most people doing this work realize, the records do not always tell the whole story. Ronald was able to get additional information that helped supplant the records in a way that was many times favorable to the office. As any good investigator would, he tracked down potential government witnesses and, after confronting them with FBI 302's or other law enforcement generated records, he found that some witnesses believed they were misquoted. That was significant because some of the witnesses were government witnesses from the beginning, but after discussions with Ronald and looking at 302's, they were more than willing to point out how the FBI had shaded their comments in a way that made it worse for the client.

He does not limit his investigation to just ideas or requests that are given by the attorneys. He will follow leads his investigations develop and he will talk to the attorneys about other avenues that have not occurred to the attorneys. It certainly makes the attorneys work easier to have one so actively involved in not only doing the work requested, but coming up with more ideas to help the people we represent.

In addition, it is important to note that Ronald does all of this with good humor and grace. He never complains about requests, no matter how last minute they are. He never seems to get frustrated even when the investigation turns up dead ends. It is always about the client with Ronald. Ronald is a man of incredible integrity. He is an elder in his church and works tirelessly on that organization's youth programs, spending a couple of weekends a month actively involved in the youth programs and transporting teenagers to programs both in the St.

Louis area and those located significant distances away in other states. Ronald was raised in East St. Louis, Illinois. He and his wife, who are adoptive

parents, serve on the Illinois Statewide Advisory Committee on Adoptions.

AMICUS COMMITTEE REPORT

By Fran Pratt, Co-Chair of Amicus Committee, Assistant Federal Defender Eastern District of Virginia, Alexandria

In the past year, the NAFD filed or joined in amicus briefs on the merits in four cases in the Supreme Court.

As we did in *Claiborne v. United States*, the NAFD joined forces last summer with all the Federal and Community Defenders to support the petitioner in *Gall v. United States*, No. 06-7949, decision at 128 S. Ct. 586 (2007). Amy Baron-Evans, National Sentencing Resource Counsel, spearheaded the effort. She was joined by her able Resource Counsel assistants, Sara Noonon (D. Mass.) and Jennifer Coffin (M.D. Tenn.). Editing support was provided by Paul Rashkind (S.D. Fla.), Dan Kaplan (D. Ariz.), David Lewis (E. & S.D.N.Y.), Tim Crooks (S.D. Tex.), and Kristin Gartman Rogers (S.D. Ala.). The brief was so persuasive that Justice Stevens, writing for the majority, quoted it! According to the Court,

Practical considerations also underlie this legal principle [that the abuse-of-discretion standard of review should apply to all sentencing appeals]. “The sentencing judge is in a superior position to find facts and judge their import under §3553(a) in the individual case. The judge sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record.” Brief for Federal Public and Community Defenders et al. as *Amici Curiae* 16.

128 S. Ct. at 597.

The NAFD again joined with the Federal Public and Community Defenders to support the petitioner in the case paired with *Gall, Kimbrough v. United States*, No. 06-6330, decision at 128 S. Ct. 558 (2007), concerning the U.S. Sentencing Commission’s adoption of the statutory 100:1 powder-crack cocaine ratio. (Derrick Kimbrough was represented by the Federal Public Defender for the Eastern District of Virginia.) The brief was co-authored by Mark Osler, law professor at Baylor University, and by Michael O’Hear, law professor at Marquette University. Henry Bemporad (W.D. Tex.), David McColgin (E.D. Pa.), and Brett Sweitzer (E.D. Pa.) provided able editing support.

In the fall, the NAFD joined the National Association of Criminal Defense Lawyers in supporting Brent Newton and the Federal Defender office in Houston in their representation of Homero Gonzalez in *Gonzales v. United States*, No. 06-11612. Henry Bemporad and David McColgin again provided editorial assistance. The decision in *Gonzales* held that a defendant need not personally waive his right to have a district court judge conduct his trial; counsel may waive the right for him. ___ S. Ct. ___, 2008 WL 2001954 (May 12, 2008).

Finally, in *Begay v. United States*, No. 11543, decision at 128 S. Ct. 1581 (2008), the NAFD supported Margaret Katze and Chuck McCormack, of the New Mexico Federal Defender Office, in their argument that felony DUI is not a violent felony under the Armed Career Criminal Act. The amicus brief was a joint effort of Bill Maynard (W.D. Tex.), Amy Baron-Evans, and attorneys at Sidley Austin, which

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provides assistance to federal defenders and CJA panel attorneys in cases before the Supreme Court. Additional editing support was provided by Carolyn Fuentes (W.D. Tex.) and myself.

If you know of a case that might benefit from NAFD amicus support, please contact an Amicus Committee co-chair (listed below) as early in the process as possible so that we can look at the issue,

send the issue to the full committee for input and a vote, and if it is decided that the NAFD should participate, to find a writer or another organization with which to join, etc. As well, if you are interested in being involved in the work of the Amicus Committee, please contact any of the three co-chairs: Henry Bemporad in San Antonio, Texas, Paul Rashkind in Miami, Florida, or me, Fran Pratt, in Alexandria, Virginia.

KUDOSKORNER



Congratulations are in order for **AFD Peter Madden, Southern District of Alabama**, for an outstanding post-Booker sentencing victory. His client was charged in a meth-

amphetamine lab case and the probation office calculated the minimum guideline range at over 10 years. Peter convinced the government to stipulate that the 3-level enhancement for substantial risk of harm to human life did not apply and to agree that the probation office's quantity calculations were incorrect. After the guidelines were brought down to 46-57 months, Peter argued that even though the government didn't

use any of the information his client provided (and thus didn't move for a 5K1.1 substantial assistance reduction), the client had in fact provided substantial assistance and was entitled to a 50% reduction to put him in the same place he would have been in had the government actually done something with his information. Further, the client exhibited remarkable post-offense rehabilitation, of which the Court took notice. The Court found the advisory range of 46-57 months unreasonable and varied downward. When it was all said and done, Peter walked his client away with a sentence of 24 months. Congratulations for a job well done!

Also in the state whose motto is *Audemus jura nostra defendere* (We Dare Defend Our Rights) a pat on the back goes to **AFD Latisha Colvin, Southern District of Alabama**, for doing just that in a prosecution under the Sex Offender Registration and Notification Act (SORNA). Latisha's client was charged under the interstate travel provision. Latisha challenged the indictment by filing a motion to dismiss and a motion for a judgment of

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acquittal on the ground that her client's travel predated the enactment of SORNA. Since the underlying sex crime was a state, not federal offense, making interstate travel a jurisdictional element of the offense, Latisha argued that this prosecution violated the Ex Post Facto Clause. The Court agreed and granted the motion for acquittal from the bench.

As we put The Liberty Legend together, we just got word that congratulations are also due to **AFD Chris Knight, Southern District of Alabama**, for his Rule 29 judgment of acquittal in an Alabama SORNA prosecution based on an ex post facto challenge.

Way out west in the Grand Canyon State - **District of Arizona, AFD Jason Hannan**, with help from several others in the Arizona office, achieved justice for a wrongly accused client. The client was accused of smuggling liquid methamphetamine in a gas tank. The Customs inspectors claimed their dog alerted on the vehicle at the port of entry and they observed a crystalline substance in a gas tank. A



probe was inserted into the case tank and a field test resulted positive for methamphetamine. The client says: "I'm innocent!" Jason retained liquid methamphetamine and polygraph experts, and files a quick demand for preservation of all evidence and official testing of the gasoline. The DEA report comes back with no meth or controlled substances found in gas!! An Agent, apologetic on the phone, reports that a field test for opiates had been used. He says that the test had since been proven to result in false positive results in gas and the field test at issue has since been discontinued. Of course that left unanswered questions like: why would a dog alert if there were no drugs?; why are agents using a field test for opiates and then charging people with smuggling liquid methamphetamine? Morals of the story: ALWAYS ask for forensic lab reports before pleading clients or making other major strategic decisions. Never blindly trust a police dog.



Back east in the Empire State, **AFD Gene Primomo, Northern District of New York**, won an acquittal in a felony immigration case. The case involved the little used statute of "High Speed Flight" from an officer at an immigration check point, 18 USC 758. The government's case was based on several Canadian and US border officers who testified about the high speed chase through the border. Gene presented a NYS Dept. of Transportation official as an expert witness to establish the 55 mph state

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speed limit and how poorly the border was marked for approaching motorists. Secondly, Gene presented a retired high school math teacher, who, utilizing the government surveillance video and algebraic equations, established the client's average speed was below the legal speed limit. Despite the jury being instructed that driving too fast for conditions is "speeding" in NY, even if under the legal speed limit, the jury acquitted. A job well done Gene!

In the Sooner state, **AFD Julia Summers, Western District of Oklahoma**, won the battle of experts in the first federal "sexually dangerous person" civil commitment case which was heard in Oklahoma. Under the new Adam Walsh Act provision at 18 USC 4248, the government sought to indefinitely imprison a 53-year-old man who had been convicted of exhibitionism and 2 child molestations in 1981 and 1984. Since then he had been released five times on parole and revoked for technical violations, with no sexual re-offending, and now has a supportive wife and stepdaughter who corroborated his lack of sexual re-offense. The defense expert administered an objective measure which revealed no current deviant sexual interest, and he sharply challenged the government's reliance on actuarial assessments which attempt to predict the risk of sexual recidivism. Julia humbly credits a perceptive district judge who was compelled to conclude that the government did not prove by clear and convincing evidence that the client currently suffers from a disorder causing him to be a sexually dangerous person. The client got to go home.



Meanwhile, down the hall, **AFD Teresa Brown, Western District of Oklahoma**, won a jury acquittal in a SORNA prosecution. Teresa argued the client did not knowingly fail to register because he did not know he was required to register. Interestingly, the case had been tried the month before and the client was found guilty. The client got another chance after the Court granted a new trial based on comments made by the prosecutor during closing arguments. Congratulations Teresa.

A tip of the ole' hat to **AFD Tony Lacy, Western District of Oklahoma**, who, after a 6-6 hung jury, came back on the retrial and won an acquittal in less than an hour. The case involved conversion of tribal funds by a former tribal housing commissioner. The "good faith" defense prevailed as Tony took the tribal leaders to task over their political

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infighting and was relentless in his assault on the investigation's shortcomings, repeatedly asking witnesses "Would you like me to do the math for you or will you take my word for it?"



In the Keystone state, **AFD Penn Hackney, Western District of Pennsylvania**, won three (yes 3) jury acquittals in felon-in-possession cases in 2007. Each was based on thorough investigation which exploited the local police habit of writing their reports to justify the stop, search, and seizure, which left the opportunity for investigation and cross-examination to show reasonable doubt on the issue of possession.

AFD Karen Gerlach, Western District of Pennsylvania, won two sentencing remands in the fall from the Third Circuit in cases involving an unreasonable sentence and an overly-restrictive condition of supervised release. In *United States v. Ausburn*, 502 F3d 313, the sentencing court failed to address trial counsel's unwarranted disparity claim when it imposed a sentence of twice that recommended by the guidelines, and in *United States v. Kosteniuk*, 2007 WL 2980801 (unpublished), the sentencing court failed to justify a total ban on sexually explicit materials during supervised release. Way to go Karen

Likewise, **RWS Kimberly Brunson, Western District of Pennsylvania**, won a reversal granting a suppression motion litigated in the district court by **AFD Marketa Sims**. In *U.S. v. Lafferty*, 503 F.3d 293, the Third Circuit held (1) the joint interrogation of defendant and alleged accomplice, after defendant had invoked her right to remain silent in earlier interview, violated defendant's Fifth Amendment rights; (2) defendant did not implicitly waive right to remain silent; and (3) admission of incriminating statements made by alleged accomplice during joint interrogation violated defendant's Fifth Amendment rights.



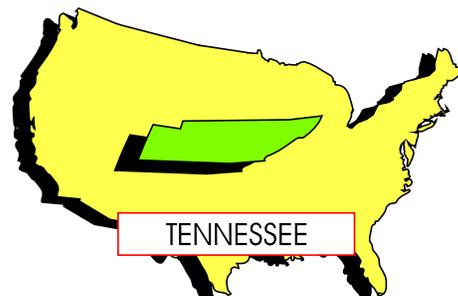
And a round of applause goes to **AFD Renee Pietropaolo, Western District of Pennsylvania**, for a pair of appellate victories - one new and one old. The new case determined that juvenile adjudications that are "'adjudicated delinquent, petition discontinued", do not qualify as "sentences" within the meaning of U.S.S.G. § 4A1.2(a). The older case involved the type and length of supervised release terms.

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In La Isla del Encanto, **AFD Yasmin Irizarry, District of Puerto Rico**, achieved several successes. Yasmin proved in a bench trial that the client was not guilty. The client was charged with possession with the intent to distribute and import 6K heroin, inside the gasoline tank of his vehicle in the ferry between the Dominican Republic and Puerto Rico. The defense theory was the "blind mule defense." To confirm the facts, the client was polygraphed and the AUSA and government agents were invited to go with federal defender staff to the Dominican Republic, to verify the client's version. In another impressive resolution, Yasmin convinced the prosecutors to dismiss a case prior to the Court's ruling on suppression. The client was charged with possession with intent to distribute cocaine, possession of weapon with obliterated serial number, felon in possession of weapon and possession of weapon in relation to drug trafficking crime. During Yasmin's investigation, it was revealed that the officer who swore out the complaint and had testified before the grand jury really hadn't conducted any surveillance and had fabricated facts. Early return subpoenas served on the agent and his supervisor produced documents, which were clearly an attempt to cover up for the situation. The leave records reflected that the agent had not been working the day of the alleged surveillance and the car he supposedly used was in another officer's custody and control. Yasmin filed a Franks motion and during the hearing the agents were confronted and aggressively impeached. That's great lawyering.

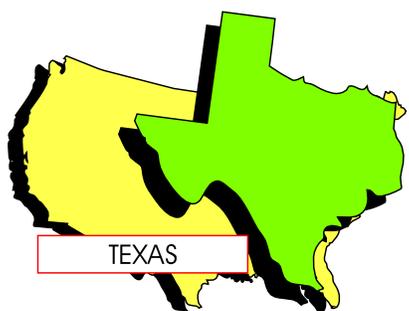
On that same island, **AFD Hector Ramos Vega, District of Puerto Rico**, convinced the prosecution to do the right thing in a felon in possession of a firearm case. According to the government agents, while in a routine surveillance they met the client, who upon detecting their presence shot at them. Hector and the FPD Investigator assigned to the case, obtained several witnesses who saw the event differently, and additional investigation revealed the castings and slugs found on site were all from the agents' weapons. Since no gun was found or retrieved from the client and the pistol allegedly possessed and fired by him did not produce any castings or shells, the prosecution opted to dismiss charges.

In the Volunteer state, congratulations to **AFD Mariah Wooten** and **AFD Caryll Alpert, Middle District of Tennessee, Nashville**, along with **Investigator Michelle Hendrix** and **Paralegal Tiffany Conner**, for an amazing outcome in a medicare fraud case. In the eighth day of trial, constantly reeling from defense discovery of Brady abuses and serious backtracking by every government witness in the face of cross examination based on discrepancies found by the defense investigation, the



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government offered pre-trial diversion to a foreign born doctor accused of multiple felony counts of fraud in miscoding of billing statements and billing for hundreds of tests allegedly not performed and hundreds more performed unnecessarily. In the months leading up to trial, every time Mariah and Caryll and their team felt they had a grip on the government's case, new and massive amounts of discovery were dumped on them, including three boxes of stuff "that might have some arguably exculpatory material" included on the Friday before trial. Nevertheless, operating on 2-3 hours of sleep at night, guts and caffeine, Mariah and Caryll kicked butt and took names for eight days until the government sounded retreat.



The Lone Star state had many impressive victories. Thanks to **RWS Bruce Weathers, Western District of Texas - El Paso**, the indictment against this client was dismissed! His client had been charged with conspiracy to transport aliens and bringing in aliens for financial gain. The motion to dismiss Bruce wrote was based on the fact that the government deported an alien that had given an exculpatory statement in favor of his client. Now, the two co-defendant sisters-in-law, who claimed his client was the leader of this alien smuggling operation, are facing the same charges and his client was and his client is as free as a bird.

Through **Investigator Juan "Johnny" Guerrero's, Western District of Texas - El Paso** extraordinary efforts, his client, was sworn in as a U.S. citizen! Although he had to prove only the mother's residency in the United States of one year, it became clear early on that it was going to be nearly impossible. Johnny had no documentation and, other than the mother, no other witnesses. The client's family disliked the client so much, they wouldn't help and in fact, tried to prevent other family members from speaking to the defense team. The last thing they wanted was to see Johnny's client become a U.S. citizen. This didn't stop Johnny from tracking down every potential witness in El Paso and Juarez. Finally, after a year of setbacks, Johnny's tireless efforts, and a notice of intent to deny by INS, a witness came forward. Fortunately, the examiner allowed Johnny to supplement the N-600 several times and it was finally agreed that his client was in fact a USC. Throughout the past year, **ACSA Lupe Maldonado - Western District of Texas - El Paso** assisted Johnny in his investigation. She made countless phone calls, met with family members, investigated on-line, attended the interview at INS, and wrote a preliminary draft of the final affidavit that cinched this N-600. Congratulation to Johnny, Lupe and our new U.S. citizen. But Johnny doesn't stop there. In another 1326 case Johnny got the INS to

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grant his N600 petition just days before the trial was to begin. Johnny did a magnificent investigation for the case. At his initial interviews with the family, they could not recall anyone who would have knowledge from back in the 1940's. Johnny went out digging for info, patiently questioning the whole family, and then he found witnesses in Carlsbad, NM. **Investigator Oni Esparza - Western District of Texas - El Paso** got his feet wet on an N600 case by starting the investigation and learning from one of the masters (Johnny).

Congratulations to **AFD Judy Madewell - Western District of Texas - San Antonio** and **AFD Margarito Rodriguez - Western District of Texas - El Paso** on a big win in which the Fifth Circuit held that Colorado's Second-Degree Kidnapping statute does not constitute a crime of violence under USSG 2L1.2. This was the third time the Federal Defenders Office had received a published opinion from the Fifth Circuit on kidnapping crimes as crimes of violence's - having lost the first two. Thanks to Margarito's forward-looking preservation of the issue in the district court, and Judy's meticulous preparation and strong written and oral advocacy in the court of appeals, the third time was the charm. An assist goes to the whole appellate section, who really helped Judy hone her argument in a moot court right before she headed down to New Orleans. Congratulations to all on this hard-fought and well-deserved victory!!

A pat on the back is in order for **AFD Jack Carter, Western District of Texas - San Antonio**, who won an acquittal for a bank employee charged with cashing a \$75,000 forged check for a friend of a friend, in exchange for a promise of 10 grand. The jury acquitted despite the client's admissions to bank investigators and the Secret Service agent, despite his statement that he had done the same thing in the past, and despite his accomplice's testimony against him. The winning defense was knowledge. Jack got the snitch to admit that, although he had told the client that the check might be "funny," he never told him that the check might be forged, and that the client had in fact checked to make sure the check was covered by sufficient funds. The prosecutor tried to get the snitch to say more, but (after a very long pause), "funny" was all he could get out of him.

Congratulations to **AFD Donna Coltharp, AFD Kurt May and Chief Investigator David Davila - Western District of Texas - San Antonio**, and the many others who worked together to secure a new trial in a very high-profile case. The convictions and 292-month sentence vacated for their client, a former San Antonio police officer charged with sexually assaulting a transgender person. The new trial was granted both for Brady violations and newly discovered evidence. The District Judge wrote in his order granting

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the new trial that the defense accomplished more in this case in two months than the FBI was able to accomplish in two years!



From Old Dominion, **FPD Michael Nachmanoff, Eastern District of Virginia**, argued *United States v. Kimbrough* before the Supreme Court, and everyone reading this knows by now the significant decision which the Supreme Court issued. He was ably assisted by many people, most notably **Fran Pratt**, an appellate attorney (and all around extraordinary resource) in the Alexandria, Virginia office of the FPD. Congratulations to Michael, Fran, and many others who helped them refine the briefs and prepare for oral argument.

Senior Litigation Specialist Gerald (Jerry) Zerkin, Eastern District of Virginia, persuaded the United States Court of Appeals for the Fourth Circuit to reverse a murder conviction and life sentence, based on a prior plea agreement which prohibited further prosecution of crimes that required proof of the same drug conspiracy for which the agreement gave him immunity. The Court agreed the defendant's prosecution under the theories advanced in the capital murder indictment was therefore barred. The postscript is just as notable, however: faced with the defendant's imminent release, the Government decided not to seek reconsideration of the decision, but indicted the client for the murder and related crimes under different theories not barred by the agreement. Zerkin and fellow **AFD Paul Gill - Eastern District of Virginia**, represented the client during the first trial as well as on appeal, and are preparing to defend him on the new indictment. Jerry, it should be noted, should probably have been buying lottery tickets regularly over the last two years. During that time, he not only made this winning argument, he was instrumental in obtaining a life sentence for Zacarias Massaoui, a government dismissal of capital charges in the Western District of Virginia, and a reversal in the Fourth Circuit of a capital sentence.

If you read *The Liberty Legend* regularly, you may have wondered why your much deserved Kudo was conspicuously missing. The editors solicit Kudos before every edition. If we are not told of successes and achievements, we have no way of sharing them with the Association. Brag on yourself or someone else. What are you waiting for? The editors are accepting Kudos 24/7 at Lori.Ulrich@fd.org and Tony.Lacy@fd.org.



THE 2007 TERENCE F. MACCARTHY
LIFETIME ACHIEVEMENT AWARD RECIPIENTS

LUCIEN CAMPBELL:
A Note of Appreciation and Thanks to a Great Lawyer

*By the Honorable Edward C. Prado,
Circuit Judge, United States Court of Appeals for the Fifth Circuit⁷*

After 32 years of service, Lucien Campbell is retiring as the Federal Public Defender for the Western District of Texas. The City of San Antonio, the Western District of Texas, and the nation owe Lucien a debt of gratitude for his outstanding contributions to our courts.

Lucien developed an interest in practicing law at an early age. Lucien’s father, Lucien Bland Campbell, served as a Warrant Officer in the Medical Services Corps, 36th Division, United States Army. He went overseas shortly after Lucien’s birth on November 17, 1942. Lavern Fisher Campbell, Lucien’s mother, moved the family close to her parents in Paris, Texas. Her father, Owen Benton Fisher, practiced law there. “Lucien practically grew up in his law office,” his mother said, and she believes his commitment to the law began in those early years. Lucien obtained his law degree from the University of Texas in Austin in 1967.

Lucien founded the Defender’s office in San Antonio in 1975, after first serving in the Judge Advocate General’s Corps in Korea and then as an

Assistant District Attorney in Bexar County for five years. Lucien served as a felony prosecutor in the 144th and 175th District Courts. When he opened the San Antonio Defender’s Office, there were very few federal defender organizations in the country. Lucien had only three other lawyers on his staff—one being me—and two lawyers in an office in El Paso. Lucien’s office has grown steadily since that time. The office now has 46 attorney positions, with additional branch offices in Del Rio, Austin, and Alpine. The office handles more than 6,000 cases a year.

Lucien managed ably through the years of growth and tremendous change the federal system has undergone over three decades. As he leaves the office, he is known—both locally and nationally—for his professionalism, integrity, and zealous commitment to defending the indigent.

According to Chief Judge Edith Jones of the United States Court of Appeals for the Fifth Circuit, “As the federal criminal docket has grown, and the law and sentencing guidelines have become

⁷ Many thanks to the Honorable Edward C. Prado for permitting a reprint of this article. Judge Prado has served as Circuit Judge of the United States Court of Appeals for the Fifth Circuit since May 2003. Prior to joining the Fifth Circuit, he served as a District Judge for the Western District of Texas for 19 years. Judge Prado served as the U.S. Attorney for the Western District of Texas from 1981 to 1984. He worked for Lucien Campbell as Assistant Federal Public Defender for the Western District of Texas from 1976 to 1980. Judge Prado authored this article, which was originally published in the May–June 2007 edition of *San Antonio Lawyer*, a publication of the San Antonio Bar Association. This reprint of the article includes additional information obtained after its original publication.

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immensely more complicated, the federal system depends more and more on the expertise of the Federal Public Defender Offices. Lucien Campbell has served us through all the changes with dignity, competence and good sense. His career embodies the epitome of the Federal Public Defender's Service."

United States District Judge Fred Biery—who first met Lucien when he faced him in a felony prosecution in state court—noted that "Lucien built his reputation for integrity over many years and has always been known as someone who sought justice and would not take shortcuts. He was, and always has been, a get-it-done-the-right-way lawyer."

When asked about Lucien, Richard Durbin, Chief of the Criminal Division for the U.S. Attorney's Office in San Antonio, stated, "Although Lucien appears on the other side of the docket, he has been an outstanding colleague. He has always been most professional, polite, and effective for his clients. As a prosecutor, I always prefer working with a highly capable professional and well-prepared defender. Lucien Campbell has been exceptional. I will miss him."

Lucien is admired nationwide. On August 10, the American Bar Association recognized his dedication to defense of the indigent by conferring on him the 2007 Dorsey Award for an Outstanding Public Defender or Legal Aid Lawyer. "Lucien is one of the most competent, conscientious and hard-working lawyers I've had the pleasure of working with," said Terry MacCarthy, head of the prestigious community defender office in Chicago, Illinois.

Lucien's national prominence is noted and respected by local practitioners. "Lucien may be the single most important individual in establishing the federal defender system in our country," said Gerald Goldstein, prominent San Antonio criminal defense lawyer and former president of the National Association of Criminal Defense Lawyers. "He stood out in the best tradition of our profession, and it lent a certain credibility to defenders, not just in the Western District, but throughout the nation."

Lucien's national reputation is well-earned. Under his guidance, the Defender's Office argued three cases in the United States Supreme Court—the cases involved the federal restitution statute, the Commerce Clause, and the Fourth Amendment. His office won them all. Lucien argued the Office's first case, *Hughey v. United States*, 495 U.S. 411 (1990), winning a unanimous decision in favor of his client.

"Because he has been so successful at managing the office, people forget what a great courtroom lawyer Lucien was, both in the trial court and on appeal," said Deputy Defender Henry Bemporad, who will succeed Lucien as head of the Office when Lucien's term ends in August. "When he walked into court, no one in the room was better prepared, or knew more about the case."

In addition to managing a large office and handling important cases, Lucien served on many national committees, including the Advisory Committee on Criminal Rules and the Criminal Law Committee of the Judicial Conference of the United States. In his committee work, "Lucien came to understand the criminal rules as few do, knowing why a word was or was not added and what that means 'in the real world' as the rules are applied in practice to real parties, with rights and responsibilities," noted United States Magistrate Judge (and Federal Bar Association President) Pamela Mathy. "Through his work on the Committees, Lucien truly has had a national impact."

Praise has been backed up by frequent recognition of Lucien's talents and accomplishments. At a dinner celebrating the Office's 30-year anniversary, Lucien was lauded by his current and former employees, and by defenders from around the nation. At a ceremony honoring Lucien last December, Ted Lidz, the Assistant Director for Defender Services of the Administrative Office of the United States Courts, thanked him for his "tireless and intelligent" work on a variety of national committees and projects. "He [has] consistently exhibited a profound level of concern and advocacy" for the indigent defendant, Lidz continued. "His energy,

zealous advocacy, and commitment reflect his dedication to the principles of equal access to justice and effective assistance of counsel.”

“Lucien has exemplified the highest level of dedication and professionalism,” says Chuck Arberg of the Federal Judicial Center. “He’s always been universally admired and respected by his colleagues around the country.”

The local legal community has also recognized Lucien’s contributions, making him a Life Fellow of the Texas Bar Foundation and a Master of the Bench of the San Antonio Chapter of the American Inns of Court, and nominating him for this year’s Joe Frazier Brown Award.

The San Antonio Chapter of the Federal Bar Association and St. Mary’s University School of Law have recently made it possible for admirers to honor Lucien’s contributions to the local and national bars, by announcing the creation of the “Lucien B. Campbell Award in Criminal Law,” an annual award for scholastic achievement in criminal law.

Our community and our country have benefitted greatly from Lucien’s outstanding service, and I have benefitted greatly from having him as my colleague, my mentor, and my friend. It has been a privilege to work with such an outstanding lawyer. Lucien, good luck in all your future endeavors!

MAUREEN KEARNEY ROWLEY: Remarkable Leadership in Philadelphia

Maureen Kearney Rowley, **Chief Federal Defender for the Eastern District of Pennsylvania**, was the co-recipient of the Terence F. MacCarthy Lifetime Achievement Award which recognizes the Defender who has made an outstanding contribution to the program during his or her years of service. It’s appropriate that Maureen is the recipient as she too is a Community Defender.

Over the past 19 years, under her leadership, the Office has become one of the largest and most respected federal defender offices in the country. Maureen was the first female head of any of the federal Eastern District courthouse agencies when she became Chief Federal Defender in 1989, and she remains so today.

A lifelong Philadelphia resident, Maureen majored in English Literature at LaSalle University and then began work settling insurance claims. She began law school in Temple’s evening division and worked for the insurance company during the day. Maureen took to the law immediately. She decided

after her first year to quit her job, take out whatever loans were necessary, and immerse herself in the law school environment. During her third year, she became certified to represent clients in court for three separate organizations. Her clients included tenants in landlord-tenant disputes, defendants in state criminal cases, and victims of domestic violence. By the time Maureen graduated in 1980, she had found her passion for public interest law, always representing the underdog and tirelessly trying to level the playing field.

Her first job out of law school was as the sole staff attorney for Women Against Abuse. As the single legal voice for the voiceless, she traveled to courts all over the city representing her myriad clients. Later she was hired as a staff attorney by the Defender Association of Philadelphia. At that time, the Association had a small federal division that represented criminal defendants in the federal courts. Maureen was drawn to the opportunity in this division of representing clients from the beginning of their case all the way through the appellate process. She

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was selected for a temporary appointment that later became a permanent position. The rest, as they say, is history.

In 1989, she was tapped to become the Chief Federal Defender. Still in her thirties, she was considered by some to be a young up-start. She soon established herself as anything but. When she took charge, the federal division consisted of eight lawyers, no paralegals, no computers and not even a mail clerk. The lawyers themselves would take turns dropping off the office mail at judges chambers when they went to court in the afternoon. Under Maureen's leadership, the office was computerized and has grown to over 40 attorneys and over 100 employees, including paralegals, support staff, and summer interns. In 1990, Maureen saw the need to have the playing field leveled yet again, this time in the appellate arena. The U.S. Attorneys Office was amassing expertise on appellate issues and Maureen saw that defenders needed to build that same expertise. She created an appellate unit, which has grown from one attorney to five. In 1996, Maureen saw and then took the same action in the capital habeas arena. Additionally, the Federal Defender's trial unit also stands ready to be appointed in direct death cases. The office handled the first such case in the Eastern District of Pennsylvania, in which the defendant eventually received a life sentence.

In addition to matters of direct representations, Maureen has served on the Federal Defender Advisory Group and continues to serve on other national

committees, such as the Death Penalty Working Group and Federal Defender Funding Oversight Committee. Since Maureen's organization is one of the best established and most highly regarded federal defenders, she sees participation in national advisory committees and mentoring less experienced offices and attorneys as an important part of the Federal Defender Office's mission.

Maureen is an adjunct law professor at Temple and at the University of Pennsylvania, where she was selected as the Thomas A. O'Boyle Lecturer-in-Law. She is also a faculty member for the National Institute of Trial Advocacy. Recently, she was awarded the Barrack '68 Alumni Achievement Award at the Temple Law Alumni Association's 90th anniversary celebration. The Alumni Association selected a graduate from each decade to honor; Maureen represented the 1980s. While the 80s may be forgettable in terms of hair, it will always be remembered for the institutional protections Maureen helped to put in place for indigent defendants in the Eastern district of PA and throughout her efforts. nationally.

Maureen has been lauded with words such as steady, thoughtful, compassionate, strong, and firm - quite remarkably, has never been referred to as the word that rhymes with witch! Maureen is the Defender other Defenders turn to to find their way through in times of legal and office crisis. She is the epitome of Terry MacCarthy ... in a dress.

Laissez Les Bon
Temps Rouler!