



THE LIBERTY LEGEND

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Letter from the President

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I imagine that the rest of you feel as I do: If I hear about the “New Millennium” one more time, I think I’ll just bury myself until it passes. On the other hand, I guess it is a time for reflection. Let’s think about what happened in the Old Millennium. To begin with, one thousand years ago, criminal justice “American style” did not exist. Then of course, Columbus and others “discovered” Native Americans. What followed was the Declaration of Independence, the Constitution, Supreme Court, the Circuits, Congress, etc.

The face of federal clients has changed from outlaws who robbed banks and trains, to prohibition violators, to crack dealers and addicts, sellers or possessors of firearms, white collar criminals and computer pornographers. And RICO answered every federal prosecutor’s dream. We went from punishment as the major purpose behind the justice system to a brief moment of wisdom when we believed that rehabilitation was a more noble and beneficial purpose than retribution and punishment, and of course, we are now back to punishment.

And there is the death penalty; the way to teach people not to kill. Methods of execution range from hanging, electrocution, gas chamber and firing squad to the now “more humane” method, lethal injection. In Delaware the state hung an individual just two years ago and this year the Supremes upheld use of the gas chamber.

We went from the death penalty being declared unconstitutional to now being declared constitutional, to Congress deciding that most murder defendants could be prosecuted in Federal Court and receive the death penalty. And how do you think the racial ratios are working out now?

For those of use who visit our clients in over-crowded jails and prisons (pending possible placement in a federal facilities), we see prisoners laying side by side in gymnasiums reminiscent of those who traveled to “America the free” in slave ships.

The pendulum swings both ways, but it has seemed to be swinging against personal rights and freedoms for a significant time now. As we close this Millennium, we continue to recognize the need for a tireless and vigorous defense of our client’s rights. Inside this Newsletter are various landmark or otherwise highly significant cases fought and won by federal defender offices around the country. These victories on behalf of our clients are an inspiration to carry us through the “New Millennium.”

Penny Marshall, President

Nathaniel Jones v. United States:

Watershed or Aberration?

by Timothy Crooks

On March 24, 1999, the Supreme Court decided (*Nathaniel Jones v. United States*, ___ U.S. ___, 119 S.Ct. 1215 (1999)), and sent shock waves through the federal criminal defense world. The potential ramifications of *Jones* (and the potential benefits to our clients) are staggering. However, to understand *Jones*, one must first look to a decision from the previous Term: *Almendarez-Torres v. United States*, ___ U.S. ___, 118 S.Ct. 1219 (1998).

Almendarez-Torres: The Stage is Set

In *Almendarez-Torres*, the Court held, in a narrow 5-4 decision, that the “felony” and “aggravated felony” provisions of the statute proscribing illegal reentry after deportation (8 U.S.C. § 1326(b)(1) and (2)) were sentencing factors, not elements, and that such treatment did not violate the Constitution. In so holding, however, the Court relied heavily on the tradition of treating recidivism as a sentencing factor. The Court’s heavy reliance on the unique nature of recidivism findings in sentencing made it unclear whether *Almendarez-Torres* could be viewed as precedent for *other* types of sentence-increasing facts which did not have to do with recidivism or prior convictions. And, significantly, four dissenting Justices in *Almendarez-Torres*, in an opinion authored by Justice Scalia, expressed their view that, even as to recidivism/prior convictions, it was a grave constitutional question

whether the Constitution required that these be treated as elements where they increased the statutory maximum sentence.

Jones: Element vs. Sentencing Factor Redux

Any questions about the reach of *Almendarez-Torres* would not have to wait long for an answer. Less than a week after *Almendarez-Torres* was handed down, the Court granted certiorari in *Jones*. At issue in *Jones* was whether the “serious bodily injury” and “death resulting” provisions of the federal carjacking statute (18 U.S.C. § 2119(1)-(3)) — which ratcheted up the statutory penalty ranges — were elements or merely sentencing factors.

On March 24, 1999, the Court gave us its answer. In another 5-4 opinion, the Court held that § 2119(1)-(3) “establish[es] three separate offenses by the specification of distinct elements, each of which must be charged by indictment, proven beyond a reasonable doubt, and submitted to a jury for its verdict.” *Jones v. United States*, ___ U.S. ___, 119 S.Ct. 1215, 1228 (1999). The four *Almendarez-Torres* dissenters (Justices Stevens, Scalia, Souter and Ginsburg) joined by Justice Thomas, first found that § 2119 could possibly be read either as establishing separate carjacking offenses (with “serious bodily injury” and “death resulting” as elements of aggravated offenses), or as one carjacking offense

(with “serious bodily injury” and “death resulting” as sentencing enhancements of the basic offense).

Even more signifi-

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cantly, the Court concluded that to accept the second reading would create a grave constitutional question as to whether, “under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.” *Jones*, 119 S.Ct. at 1224 n. 6; *see also id.*, at 1222-28. The significance of this holding is that, even post-*Almendarez-Torres*, a majority of the Court still believes that, except for prior conviction/recidivism determinations, there is still a serious constitutional question whether facts which increase the statutory maximum sentence must be treated as elements with the concomitant requirements of grand jury indictment, jury trial and proof beyond a reasonable doubt.

Indeed, two members of the *Jones* majority — Justices Stevens and Scalia — filed concurring opinions in which they made clear that they believed this constitutional question should be answered in the affirmative. In a dissenting opinion authored by Justice Kennedy, the four dissenting Members of the Court — the Chief Justice and Justices O’Connor, Kennedy and Bryer — made it equally clear that they believe this question should be answered in the negative.

Thus, the fate of the ultimate constitutional question hinges on the three other members of the *Jones* majority -- Justices Souter, Ginsburg, and Thomas. Of these, it is likely that Justices Souter and Ginsburg would agree with Justices Stevens and

Scalia.¹ The most uncertain vote is that of Justice Thomas. Regardless of how the Court may ultimately resolve the constitutional question, however, there is -- at least until such time as the Supreme Court addresses the subject again -- still a strong argument to be made for the treatment of sentence-increasing facts (other than prior convictions) as elements of separate offenses, rather than mere sentencing enhancements.

Impact of *Jones* on Everyday Practice

\$ The fact is that the federal criminal code is chock-full of statutes in which the proof of certain facts increases the statutory maximum sentence available -- in some instances, even making the crime a potentially capital one. *See, e.g.*, 18 U.S.C. ' 1201(a) (kidnapping punishable by imprisonment for any term of years or for life; but Aif death results,@ is punishable by death or life imprisonment). Perhaps the most notorious example is 21 U.S.C. ' 841, in which the statutory penalty ranges for the bulk of federal drug trafficking crimes are increased based on both the type and quantity of controlled substance at issue. Although the courts have generally held that these statutory sentence-increasing facts are “sentence-enhancements” rather than “elements” of a separate offense, these holdings have been thrown into serious question by *Jones*.²

In a nutshell, what *Jones* teaches us is two-fold: It is not only an *open* question, but also a grave and doubtful one, whether Aunder the Due Process Clause of the Fifth Amendment and the notice and

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¹ While they have not spoken directly on the subject, Justices Souter and Ginsburg have given some indication of how they might decide the ultimate constitutional question. Both of these Justices joined Justice Scalia’s dissent in *Monge v. California*, ___ U.S. ___, 118 S.Ct. 2246 (1998), in which Justice Scalia expressed his view that the Constitution requires that recidivism findings that increase the statutory maximum sentence must be treated as elements rather than sentencing enhancements. *See Monge*, 118 S.Ct. at 2256-57 (Scalia, J., dissenting).

² Unfortunately, *Jones* apparently does not apply to facts which increase the range of punishment available under the Federal Sentencing Guidelines. In a decision rendered during the 1997 Term, the Court held that there was no problem in allowing the judge to make findings as to the types of controlled substances at issue in a particular conspiracy for purposes of computing the applicable Guidelines range. *See Edwards v. United States*, ___ U.S. ___, 118 S.Ct. 1475, 1477 (1998). The Court, however, declined to decide whether the judge was empowered to make findings affecting the *statutory* range of penalties,

Indefinite Detention by INS Ruled Unconstitutional by Unanimous *En Banc* District Court

By Jennifer E. Wellman,
Staff Attorney, FPD, Seattle

Refusing to equate persons who have entered our borders, and resided in this country lawfully, with those persons denied entry at the border, the five district court judges in the Western District of Washington ruled on July 9, 1999 that the Immigration and Naturalization Services' indefinite detention of persons ordered deported from the United States to countries which refuse to accept them violates the Due Process Clause of the Fifth Amendment. *Phan v. INS*, --F.Supp.2d--, (C 99-234Z, C 99-177 C, C 99-185 R, C 99-341WD, and C 99-151L), 1999 WL 521980 (W.D.Wash. July 9, 1999). In so doing, the district court did not announce a new rule of constitutional law. Rather, it refused to recognize an entirely unprecedented request for an exception to the well-established principle that all persons within

the territorial jurisdiction of the United States enjoy the protections of the United States Constitution.

The INS takes the position that it has the authority to detain persons ordered deported indefinitely or for the rest of that persons life, without any offense to the Constitution. However, in May of last year, a United States Magistrate Judge in the Eastern District of California found that, where it is evident that an individual's deportation cannot be accomplished, his or her continued detention no longer serves the legitimate governmental interest that was its only justification, i.e., the government's interest in effectuating its valid deportation order, and therefore, such detention violates the person's rights to

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jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt,[@] *Jones*, 119 U.S. at 1224 n.6; thus,

Whenever a court is unsure whether Congress intended for a sentence-increasing fact (other than prior conviction) to be treated as an element or merely as a sentencing enhancement, the doctrine of constitutional doubt will require that it be treated as an element so as to avoid unnecessary resolution of the constitutional question.

Because Congress has rarely been specific that it intended for sentence-increasing facts to be only sentencing enhancements rather than elements, you can make a plausible argument in almost every case that the constitutional doubt doctrine requires

treatment as an element. And, even in the few cases where Congress has been relatively clear about its intent to treat sentence-increasing facts as sentencing enhancements, you have the still-open constitutional argument, namely: that the Constitution requires that facts which increase the statutory maximum sentence (other than prior conviction) be treated as elements.

Conclusion

The full implications of *Jones* have yet to be realized. In the meantime, *Jones* will provide a fertile -- and potentially fruitful -- ground for litigation on behalf of our clients.

because in that case the sentences actually imposed were within the lowest possible statutory penalty range. *See id.* at 1477-78.

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due process of law. *Truong Thanh Tam v. INS*, 14 F.Supp.2d 1184 (E.D.Ca. Aug. 11, 1999) (adopting Magistrate Judge's findings and recommendations).

Thereafter, in or around January of this year, our office learned that there were approximately two hundred INS detainees (like Mr. Tam) being held by the INS indefinitely in county jails and detention facilities throughout this district; several of whom had already begun filing *pro se* petitions in light of the Tam decision. Following the lead of the Federal Defender's Office in Sacramento, our office notified the district court of our interest in being appointed to represent those *pro se* petitioners challenging the constitutionality of their detention by the INS. Shortly thereafter, the district court began appointing our office to these cases and we currently represent over 90 persons.

In the interest of resolving the issues presented expeditiously and fairly, on April 22, 1999, the five district court judges in this district agreed to consider as a panel the issues common to all petitioners, i.e., the district court's jurisdiction to entertain the habeas corpus petitions by INS detainees, the necessity of exhaustion of administrative remedies, whether the indefinite detention of the petitioners violates substantive due process of law, and whether the administrative process employed by the INS as justification for these persons indefinite detention comports with procedural due process of law. The district court identified five cases as representative of the many petitioners, and stayed all remaining cases pending the outcome of its decision of the common issues in the lead cases. The lead petitioners represented those persons ordered deported to Vietnam, Laos, Cambodia, and those who are stateless, who have been incarcerated by the INS for periods ranging from six months to five years. Following extensive briefing by both sides, Amici Briefs by the ACLU, and oral argument before the entire district court, in a unanimous decision, the district court judges held it has the jurisdiction to consider the constitutionality of the petitioner's detention by the INS, and that exhaustion of administrative remedies is not required. Turning to

the merits of the petitioner's claims of unlawful detention, the district court first rejected the INS's argument that deportable aliens are not protected by the Due Process clause. The INS contended that the petitioners had, by virtue of their deportation, assimilated to the status of excludable aliens who do not enjoy any substantive right to be free from immigration detention, citing to *Shaughnessy v. United States ex. rel. Mezei*, 345 U.S. 206 (1953); *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1450 (9th Cir. 1995). This assertion utterly ignored the distinction made by the courts, particularly in this circuit, between the rights afforded those persons considered by law as being detained at the border, and those who gain admission to this country and subsequently develop ties to the community. As stated by the district court,

No authority supports the government's position that aliens somehow assimilate to excludable status once they have been ordered deported, thereby relinquishing their constitutional rights. Petitioners are persons entitled to the protection of the Fifth Amendment, despite having been ordered deported.

Phan, 1999 WL 521980, at * 4 (footnote omitted).

The district court then dismissed INS's characterization of the petitioner's alleged interest. The issue here is much more basic [than that urged by the INS] -- it is simply the right to be at liberty. *Id.*, 1999 WL 521980, at * 4. This right is the core of the liberty protected by the Due Process Clause. After dismissing the INS's contention that the court's authority to review immigration matters is limited, given the government's plenary power over immigration and naturalization, the district court concluded that the liberty interest at stake is fundamental, deserving of due process protection and its infringement must pass heightened scrutiny. *Id.*, 1999 WL 521980, at * 5.

Applying this heightened standard, the dis-

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trict court wrote, “[t]he critical inquiry ... is whether [petitioner-s] detention is excessive in relation to” the INS-s purported interests in “(1) ensuring the removal of aliens ordered deported; (2) preventing flight prior to deportation; and (3) protecting the public from dangerous felons.” *Phan*, 1999 WL 521980, at * 5.¹

In making this determination, [the court] must necessarily balance the likelihood that the government will be able to effectuate deportation, against the dangerousness of a petitioner and the likelihood that he will abscond if released. In so doing, it becomes clear that as the probability that the government can actually deport an alien decreases, the government-s interest in detaining that alien becomes less compelling and the invasion into the alien-s liberty more severe. Dangerousness and flight risk are thus permissible considerations and may, in certain situations, warrant continued detention, but only if there is a realistic chance that an alien will be deported. Detention by the INS can be lawful only in aid of deportation. Thus, it is *excessive* to detain an alien indefinitely if deportation will never occur.

Phan, 1999 WL 521980, at * 6. The district court concluded that, although it is unnecessary to reach the issue of procedural due process where the court concludes the person-s detention violates substantive due process of law, the procedures employed by the INS -- on its face -- violate procedural due process of law.

Applying the above framework to the individual petitioners, each district court found that, despite efforts to repatriate the individuals, the INS had not presented any evidence that effectuating their deportation orders was foreseeable, and in the case of Dennis Batyuchenko, even possible. Accordingly, the much diminished interests of the government were far outweighed in each case, and the petitioners- ongoing detention violated due process of law.²

The government immediately sought a stay from the district court in Son Thai Huynh-s and Khamsaene Sivongxay-s case.³ The respective district courts denied the INS-s request for a stay and admonished them to release the petitioners if the Ninth Circuit did not enter a stay by a time certain. The next day, Saturday July 10, 1999, the Ninth Circuit denied the stay, and Mr. Huynh was released. Shortly thereafter, the INS released Mr. Sivongxay having decided to forego the opportunity to seek a stay from the Ninth in that particular case.

As of today-s date, Kim Ho Ma is the only

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¹ “The latter two goals are incidental to [the] primary objective” of “the INS: to decide which aliens may remain in the United States and which must leave, and to facilitate the safe and expeditious removal of aliens ordered deported.” *Phan*, 1999 WL 521980, at * 5. These goals “derive solely from their power to deport.” *Id.*

² The district court in Binh Phan-s case further held that the procedures employed by the INS, as applied to his case, violated procedural due process of law. In the case of Khamsaene Sivongxay, the district court agreed with the petitioner that his ongoing detention violated *former* 8 U.S.C. ' 1252(c) and (d), requiring the INS to deport the individual or release him within six months of a final order of deportation. Mr. Huynh-s citizenship claim is currently pending before the district court.

³ The government-s motion for stay of Mr. Phan-s case was denied as moot in light of his release by the INS.

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Alead@ petitioner who remains in INS custody. Mr. Ma is from Cambodia, and was ordered deported following a conviction and sentence for manslaughter. The district court sought further briefing on his deportability and all remaining cases involving persons ordered to Cambodia were stayed pending the court's decision. On September 29, 1999 the district court found, based on all the evidence presented, that deportation to Cambodia was not foreseeable and that Mr. Ma's continued detention was unconstitutional. The district court further noted that, as articulated by counsel, despite the seriousness of the offense, it was not as described by the INS and does not justify his indefinite detention. The government sought an immediate stay from the court. The INS argued, *inter alia*, that the recent decision in the Fifth Circuit, *Zadvydas v. Underdown*, 185 F.3d 279 (5th Cir. 1999) (finding detention not indefinite, and, based upon the presumption that administrative procedures comport with due process, due process not violated by ongoing detention), and the Third Circuit's decision in *Ngo v. INS*, --F.3d--, 1999 WL 744015 (3d Cir. Sept. 24, 1999) (finding procedures on their face comport with procedural due process therefore remanding to INS) compelled the conclusion that they were likely to win on appeal. Soundly rejecting this contention, the court refused to grant the stay but permitted the government seven days to secure a stay from the Ninth Circuit. The INS has not yet moved the Ninth Circuit for the stay. Hopefully, by the time this article is printed, the stay request will have been denied and Mr. Ma, like the others, will be home -- after more than two years in INS custody -- with his family.

In the meantime, we await INS's appeal to the Ninth Circuit, currently due November 7, 1999, and continue to respond to Status Reports filed by INS as ordered by the district court in its Joint Order in the remaining cases. The INS, without providing any evidence with respect to deportability, continues to challenge the findings of the district court in its Joint Order on the grounds that it has amended its administrative procedures (pursuant to which, *inter*

alia, the petitioner still has the burden to show release is appropriate and does not have a right to a hearing before an impartial adjudicator), and in light of the recent decisions from the Fifth and Third circuits cited above. Our office, therefore, continues to articulate why there is no factual or legal basis for this contention, and that, consistent with the framework established by the Joint Order, the remaining petitioners should be released immediately. As recently recognized by both the Honorable Magistrate Judge John L. Weinberg, and the Honorable District Court Judge Robert S. Lasnik, the procedures remain essentially the same as those found devoid of any minimal due process by the entire district court, and the Joint Order is the law of the case.

Today, more than 40 people have been released by the INS following the district court's Joint Order. However, our office receives requests for assistance every week, including requests from families or friends that have heard of the efforts of our office and other Federal Defender's Offices around the country whose son, daughter, nephew or friend has been moved to an INS facility far away from home or legal assistance. There are thousands of detainees currently detained by the INS throughout our country, many of whom remain in custody without assistance of counsel, and are therefore, voiceless. Fortunately our district has recognized the need for these individuals to have the benefit of representation of counsel, and, more importantly, through its innovative and novel approach to the many petitioners in this district, has, not only expeditiously administered justice, but has given these individuals hope that their plight will finally be heard when few others seemed to be listening.

KUDOS KORNER

12 ACQUITTALS IN 16 TRIALS!



The El Paso Attorneys have had a fantastic string of trial victories this summer. Out of 16 trials, they have won 12 acquittals! Another trial resulted in a hung jury. More than half of the acquittals were in mandatory-minimum drug cases, and one was a multiple-count ACCA case. Perhaps most impressive, is that the office obtained these victories while carrying an average yearly caseload of 180 felonies per attorney. Congratulations are due to Elizabeth Rogers, head of the El Paso office, and all her attorneys, investigators and staff!



Back Row (from left to right): Miguel Torres, Jim Langell, John Calhoun, Kurt Mayer, John Guerrero, Darren Ligon and Robert Castaneda

Front Row (from left to right): Chris Kelso, Maureen Scott, Margaret Katze, Marie Romero, Liz Rogers (seated), Valerie Herrera, Priscella Garcia and Ann Berton

KUDOS KORNER

Many many Kudos to **Heather Williams** and **Vicki Brambi**, AFPDs in the District of Arizona in Tucson. These hard-working and zealous attorneys won acquittals in a murder prosecution of a Border Agent. The defendant backpacked marijuana across the border with other "mules." They were stopped by Border Agents and one of the other mules shot and killed the agent. The government had sought the death penalty, but the D.O.J declined because the shooter fled to Mexico. The government sought to convict on conspiracy, felony murder and 924(j) counts. The jury found "not guilty" on all homicide and firearm counts.



Congrats on your major defense victory!



Training Calendar

Date: October 8, 1999
Location: Kansas City, Missouri
Event: Defending a Federal Criminal Case
Sponsor: Ray Conrad, Federal Public Defender Western District of Missouri

This 7-hour program features various national educators and members of the Missouri federal judiciary. Carmen Hernandez with the Federal Defender Training Group from Washington, D.C., will be updating the attendees on *The Challenge of Koon*. Jeff Flax, National Computer Systems Analyst for the Federal Defender's Office, will be instructing on the ins and outs of *Internet Research*. Tim Crooks, assistant federal defender, Northern District of Texas, who was instrumental in the Supreme Court victory, *Jones v. United States*, will provide an in-depth analysis of *Jones* and its ramifications. The Honorable John T. Maughmer, Chief Magistrate Judge, Western District of Missouri, will give a court's perspective on *The Omnibus Hearing & Discovery in Federal Court*. The Honorable William A. Knox, Magistrate Judge, Western District of Missouri and the author of numerous legal treatises, will discuss *Jury Instructions* in federal criminal cases. The Honorable D. Brook Bartlett, Chief Judge, U.S. District Court, Western District of Missouri will provide his *Commentary on the Court*. Last, but not least, Sam Phillips, Staff Counsel, Office of the Chief Disciplinary Counsel, Missouri Bar Association will provide ethical advice and a reminder that there are "50 Ways to Lose Your License." Sam will be accompanied by local attorney and musician, John E. Price. This program is approved for 7 hours of Missouri and Kansas CLE including one hour of ethics credit and 3 hours of federal court credit.

Date: October 22, 1999
Location: Wilmington, Delaware
Event: Issues in Immigration Law
Sponsor: Delaware Legal Services, Widner University School of Law, Federal Defender's Office and the Association of Federal Defenders

This day-long seminar covers a wide range of immigration issues. In the morning, the seminar is started off with the *Nuts and Bolts of Immigration Law and Related Issues*, presented by various immigration defense practitioners and by William Horn, Special Agent, INS. Next there will be a presentation on *Criminal Deportation*, including such issues as the Illegal Immigrant Reform and Immigrant Responsibility Act, Motions, Bail and related topics. The afternoon starts off with a presentation on *Indefinite Detention and How to Represent Persons Charged with Illegal Entry after Deportation*. The program concludes with an in-depth presentation on the *Impact of Immigration Law on Battered Women & Other Family Related Issues*. This 7-hour program is chock-full of information and expertise. Over 12 speakers will be appearing on these issues and 9 coordinators are assisting. The cost of this program is \$20, including materials, checks payable to the Association of Federal Defenders.

ASSOCIATION OF FEDERAL DEFENDERS Dues Notice and Membership form

Renewal New Member

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I would be interested in working on the following committee(s):

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 AWARDS (Dennis Landin)
 LEGISLATIVE/TRAINING (Jon Sands)
 MEMBERSHIP/DIVERSITY (Kevin Murphy
 & Joyce Eubanks)
 SOCIAL (Geoffrey Hansen)

Mail completed form and check to:

Association of Federal Defenders
 c/o Nancy R. Graven
 1949 E. Sunshine Ste. 3-104
 Springfield, Missouri 65804

I enclose my dues of \$30.00.

COMMITTEE UPDATES

AWARDS

The awards committee seeks nominations for, and make decisions concerning, the Outstanding Assistant Defender and Outstanding Investigator/paralegal awards which are presented at the national training seminars. As Chair of this Committee, I appreciate receiving nominations at anytime during the year. Criteria for the award include: Ten years of service in a federal defender program, involvement with complex and novel issues, the respect of the office staff and the criminal defense community, and one's contribution to defense related issues or service to the poor outside of a regular work schedule. If you would like more information about the awards or if you are interested in serving on the committee, please contact me at (213)894-2905.

Dennis Landin, Los Angeles office

AMICUS

The Amicus Committee met during the first week of September and discussed plans for the upcoming year. Plans included coordinating with the NACDL amicus committee and the Federal Defender Training Group on this term's criminal cases in the Supreme Court, and expanding the committee to include representatives of every circuit. If FDA members have suggestions as to potential amicus committee members from their circuit, ask them to call or e-mail me in San Antonio.

Henry Bemporad, San Antonio office

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