

# THE DEFENSE *NEVER* RESTS

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## Katrina Year In Review

After Katrina, we've become acclimated to disorientation around here. Coming from a town where the compass has always been irrelevant, we've spent quite a bit of time wondering where we are, where we've been and how we got there. Yogi Berra was right: "If you don't know where you're going, when you get there, you'll be lost."

The Federal Court is back in New Orleans now and our office has been in the Boggs building since November 1st but only after a good deal of shuffling around and shuttling about. We spent three happy weeks in a weight room in Gretna. Some of us worked out of the FPD offices in Lafayette and Houston. Lonely souls even manned a chair in Houma for a short while.

Our incarcerated clients were evacuated to distant points and frequently moved thereafter. No master list was available. We spent hours going from Point A to Point B looking for clients who turned out to be in Point Q, if not off the alphabet altogether. We'd head off to court in Baton Rouge only to learn mid-route that we should be driving to Houma. The U.S. Attorney set up an office in Baton Rouge, but the assistant you needed to contact might very well have been in Houma or Houston, or Fort Worth.

It's all heading home now. As of the first week of December, the Magistrate Judges are sitting in New Orleans and not in Baton Rouge. The District Judges will all be back with the New Year. (Judge Porteous will divide his time between Houma and New Orleans but all conferences and hearings will be held in New Orleans.) Even the Fifth Circuit is returning. As of January 9, the Court of Appeals will be back in full operation on Camp Street. The U.S. Attorney's office will be back in New Orleans by the first week of January.

That adventure is over but a greater one is beginning. We know where we are, where our clients are and where the court is sitting. But the devastation of New Orleans will affect the operation of the criminal justice system for generations. The treatment of incarcerated people in the days following the storm will forever color our perception of the justice system's ability to respond humanely to our clients' needs in a natural disaster. Soon, we will be confronting new issues arising from efforts to cobble together constitutional procedures affecting our clients' rights to representative juries and compulsory process of witnesses. As far as offices and courtrooms are concerned, we are back where we started. In terms of our responsibilities as advocates protecting the rights and the futures of economically and socially disadvantaged human beings, we have been blown someplace we have never been before.

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Federal Emergency Computer Assistance

If your computer hardware is now  
computer software, FECA (CSA,  
Lamont Lewis) can help.



Puzzled by strange faces in the federal courthouse? A different judge behind the bench? Want to run outside and read the sign again? Feeling a bit like George Bailey in "It's a Wonderful Life" but with no Clarence to explain things to you?

Don't go jump off a bridge or anything. You're in the right place. It's just that as of the first of January, there is going to be an expanded cast of characters in the Hale Boggs Courthouse as it becomes, at least temporarily, more of a multipurpose facility.

Because of the delay in reopening the Orleans Parish Criminal District Courthouse, that court is homeless. The judges of that court will use courtrooms in the federal courthouse on a rotating basis. Four days a week, sections of Criminal District Court will use two of the federal court's courtrooms. Different sections will meet in morning and afternoon sessions. Four sections of court will be able to have half-day sessions every day but Wednesday, the federal court's traditional motion day. Each of the twelve sections will be able to meet every third day. The magistrate court will continue to sit daily at the House of Detention.

Judges from Orleans Parish Civil District Court have been hearing cases in the federal courthouse. The Civil District Court expects to be back at work in its own home the first of the year.



## Secure CJA Panel Website Attention All CJA Panel Members

If you haven't been to the Public Defender secure CJA Panel section of our website, then you are missing out on some very valuable materials that are being provided for you. All panel members are given access to this area by going to [www.federaldefender.net](http://www.federaldefender.net), selecting the "CJA PANEL" button and logging on to the secure side of our website. Your logon credentials are:

**Username: 1st initial of your 1st name + full last name**  
**Password: last 4 digits of social security number**  
**Example: Username (jdoe) Password (1234)**

Documents available include CJA forms, sample motions, a brief bank and our very own forum section. The forum area is great for networking with your peers, catching up on the latest happenings in the court and sharing information with others via an interactive format. To become a member of the Federal Public Defender Forum, follow the link on the secure CJA section of the website and sign-up for instant access.

As you explore this section, you will find helpful tools available to you as a panel member. Should you have any questions or comments, please contact Lamont P. Lewis at 504-589-7930.



## LA Special Master

After Hurricane Katrina disrupted communication between clients, attorneys, and the courts, the FBA, in conjunction with the Middle and Western Districts of Louisiana, funded a Communication Center for a four-month period for the purpose of providing assistance to lawyers who were displaced due to

Hurricane Katrina. Gary Zwain ([garyzwain@laspecial.com](mailto:garyzwain@laspecial.com)) was appointed as Special Master. The Center was located at 810 S. Buchanan, Lafayette, Louisiana; 1-866-456-8297 and 337-235-2444. Areas in which the Center provided assistance included:

- E-mail addresses for electronic communications with various courts;
- Free PACER assistance in obtaining records filed with the courts

which were damaged/destroyed;

- Free reconstruction of damaged/destroyed case files for counsel in cases appointed by the court pursuant to 18 U.S.C. 3006A;
- List of all notices/orders filed in cases pending before the Western District; and
- Current information regarding courts, judges, etc.

## PACER, CM/ECF Registration

P a c e r  
Registration is

a two-step process. The first part will be setting up a PACER account that will allow access to PACER, and the second part will be to register with CM/ECF for e-mail notifications. (The later step may have already been done by your office.)

You may register on-line at <http://pacer.psc.uscourts.gov> or by calling the PACER Service Center at (800) 676-6856 or (210) 301-6440. When you go on-line to register, you will need to put **CJA (in caps) before your name** in the Contact Person section. Also under the section for **Firm Name, use the same information that was put in under the section for Contact Person**. Example, CJA Lamont Lewis would be used for the Contact Person section and the Firm Name section. Fill out the rest of the information requested by the on-line form and click the Submit button at the bottom of the screen to finish.

If you have any questions with CM/ECF, visit <http://pacer.psc.uscourts.gov> and click on the "Frequently Asked Questions" button for the answers to everything concerning PACER.

Effective December 16, 2005, filing by **FAX** is no longer accepted. You can go to <http://www.laed.uscourts.gov/> and see all of district court's current policy changes and updates.

I hope this helps you. Please feel free to call Lamont P. Lewis @ 504-589-7930 if you have any questions.



## Sheila Myers receives 2005 CJA Award

Last Friday, December 16, 2005, Virginia Schlueter presented Sheila Myers with the CJA Award at LACDL's annual Albert Tate Awards Banquet. The event was held in Baton Rouge at the Lyceum Dean Ballroom. Each year the CJA Award is presented to the most deserving CJA attorney.

This year's recipient, Sheila Myers, has epitomized the highest standard of advocacy for more than a quarter century of practicing law. Her practice of law as a criminal defense attorney has been marked by her willingness to take on the most difficult cases and most challenging clients, including a physician charged with bank robbery and a warehouseman charged with arson of a massive commercial facility. She is always willing to accept appointments to represent defendants in any kind of case, regardless of the severity of the charges, including capital cases.

In the early days of her career, Sheila was an assistant district attorney. As a senior trial assistant, she was known for her willingness to share her experience and expertise with young lawyers and was often called upon to give presentations relating to her special skills with demonstrative evidence. She

continued to train student lawyers in her role as an instructor in the clinical program at Tulane Law School.

Sheila takes difficult cases, entering the record after receiving little or no pay in true pro bono spirit. She vigorously pursues all motions and defenses. A perfect example of Sheila's devotion to the Criminal Justice Act was her immediate effort to contact the FPD's office following Katrina to advise that she had weathered the storm well and was in a position to assist AFPD's or clients with or without pay.

Because of her long devotion to the very best in advocacy and her selfless dedication to providing legal representation in even the most difficult of cases, Sheila Myers earned this award for excellence in her representation of clients as a CJA panel attorney.



## Other Panel Members Honored

Other distinguished members of the CJA panel received awards on Friday evening. Neal Walker presented the Sam Dalton Capital Defense Award to Nick Trenticosta for his excellence in capital representation.



LACDL Director, Laurie White, honored Phyllis Mann with this year's Justice Albert Tate, Jr. Award for her extraordinary efforts, post Katrina, to locate clients.



## State Parole/Probation

If you have a client in federal custody who is on state parole, it may be a good idea to contact the state parole officer to begin and complete parole revocation proceedings with the parole board before pleading guilty to the federal charge or before trial. By doing so, you will not affect the guidelines calculations as this is **PAROLE** and **not** probation. The major potential benefit is that the state may start the revocation jail time upon revocation and it would, therefore, run concurrently with any future federal time. Waiting until after a federal conviction automatically results in the revocation of state parole, and, according to LA. R.S. 15:574.10, the parole term would likely run consecutive to the new term of imprisonment. There is no guarantee that the state will start the time or run it concurrently, but early (pre-conviction) parole revocation is the best shot.

If your client has been charged with a federal crime after being sentenced to a term of **PROBATION** in state court, and your client is in federal custody, it might be better to have your client delay any appearances in state court on the revocation of his probation. You have to keep your client out of state custody if at all possible. It is far easier to have a state court judge agree to your client serving time in federal custody, than for a federal judge to agree to anything.

If your client is convicted in federal court, the probation officer determines the criminal history category in preparing the PSI. The probated state court sentence will result in one criminal history point. Being on probation when the federal crime was committed will result in two more points. If the state revokes probation and imposes a sentence of thirteen months or more before federal sentencing, another two points could be added, for a total of way too many points. One probated sentence could be parlayed into five criminal history points.

It might be better to delay any revocation action on state probation until after your client is sentenced in federal court. That way, the state court judge might be amenable to running the state sentence concurrent to already imposed federal sentence. Remember, there is always about a six-week delay between sentencing and the trip to the federal institution. During this time, it would be relatively uncomplicated to get your client back to state court for revocation proceedings.

## FIFTH CIRCUIT CASE DEVELOPMENTS

### APPEAL

United States v. Castillo, No. 03-20944 (5<sup>th</sup> Cir. Nov. 3, 2005): The Fifth Circuit excused the government's failure to object because objection would have been futile. During sentencing, the prosecutor stated that the defendant was HIV+ but the information was supposed to be sealed. The district court, which granted a downward departure partly because of the prosecutor's statement, was so angry at the prosecutor that an objection would have been futile.

### BANK ROBBERY

United States v. Burton, No. 04-60692 (5<sup>th</sup> Cir. Sept. 20, 2005): The robbery of money that the defendant forced the victim to remove from her account does not support a bank robbery conviction because the money was not in the care, custody or control of the bank at the time the victim transferred it to the defendant.

### GUILTY PLEAS

United States v. Reasor, No. 03-50478 (5<sup>th</sup> Cir. July 21, 2005): Fifth Circuit reversed a guilty plea to possession of forged securities for lack of a factual basis to support the interstate commerce element of the offense. The securities belonged to a church and the factual basis did not specify how the church was an organization that operates in or whose activities affect interstate commerce. On appeal, the government argued for the first time that the forged securities were those of a bank, but the court refused to consider the argument because it would have worked a constructive amendment of the indictment.

### INEFFECTIVE ASSISTANCE OF COUNSEL

United States v. Herrera, No. 04-50633 (5<sup>th</sup> Cir. June 10, 2005): The Fifth Circuit ordered a new hearing on Herrera's post-conviction claim of ineffective assistance of counsel. Herrera claimed his lawyer incorrectly advised him to reject the government's plea offer of a 48-month maximum sentence because the maximum Guideline sentence he faced was 51 months. In fact, Herrera faced a sentencing range of 78 to 97 months. "One of the most important duties of an attorney representing a criminal defendant is advising the defendant about whether he should plead guilty. . . . Apprising a defendant about his exposure under the sentencing guidelines is necessarily part of this process." Without such information, the defendant cannot make an intelligent choice whether to accept a plea offer. The 27-month error in defense counsel's advice constitutes prejudice. AT a hearing, the court should take evidence on whether the lawyer in fact gave Herrera bad advice.

Miller v. Dretke, No. 04-40419 (5<sup>th</sup> Cir. July 28, 2005): Trial counsel was ineffective for failing to investigate his client's mental disabilities in connection with the penalty phase of a non-capital state trial, and the deficiency prejudiced the defendant. Before the penalty phase started, the lawyer knew the defendant suffered mental and emotional injuries from a car accident. Indeed, he called the defendant and her ex-husband to so testify. But he did not ask the defendant for the names of her doctors until preparing a motion for a new trial. His explanation was that he thought the defendant would accept a plea bargain for deferred adjudication. This is not strategy. Had the lawyer contacted the doctors, he would have found their testimony would have been helpful. The prosecutor was able to discredit the testimony of the defendant and her ex-husband as self-serving. But had the doctors testified, the jury might have perceived the defendant as a sick person.

### JUROR MISCONDUCT

Brooks v. Dretke, No. 04-70023 (5<sup>th</sup> Cir. July 20, 2005): The Fifth Circuit granted relief from a death sentence in a § 2254 proceeding due to implied juror bias. One of the jurors was arrested on his way into the courthouse for carrying a firearm in his briefcase. While sitting through the penalty phase, he did not know whether the DA would prosecute and send him to jail. This was the same DA who was prosecuting the capital case. The juror's future was even more in the hands of the DA than it would have been had he been a DA employee. The juror's assurances of impartiality during post-incident questioning by the judge did not cure the problem.

## NEW TRIAL

Eberhart v. United States, No. 04-9949 (U.S. Oct. 31, 2005): Fed. R. Crim. P. 33 deadlines for filing a motion for a new trial are not jurisdictional so the government will forfeit a timeliness objection if it is not asserted in the trial court.

## REVOCAION OF SUPERVISED RELEASE

United State v. Arbizu, No. 04-40644 (5<sup>th</sup> Cir. Nov. 28, 2005): Failure to give a defendant written notice of the terms of supervised release does not preclude revocation for violation of one of those terms if the defendant had actual notice.

United States v. Hinson, No. 04-10995 (Oct. 21, 2005): Apprendi does not require a jury to find the facts underlying revocation of supervised release.

## SENTENCING

United States v. Gonzalez-Chavez, No. 04-40173 (5<sup>th</sup> Cir. Nov. 30, 2005): On plain error review, the Fifth Circuit reversed a U.S.S.G. § 2L1.2(b) enhancement for a prior conviction of a crime of violence. The prior conviction was for the Texas offense of aggravated battery. The statute enumerated three ways in which the crime could be committed, only one of which involved the use of force. The record did not identify the applicable prong of the statute by suitable evidence: the charging document, a written plea agreement, the transcript of the plea colloquy or an explicit factual finding by the trial judge to which the defendant assented. The PSI's characterization of the prior offense did not suffice under the Supreme Court's 2005 decision in Shepard v. United States.

United States v. Garza-Lopez, No. 03-41750 (5<sup>th</sup> Cir. May 19, 2005): Under Shepard, the district court may not rely on the PSI's factual description of a prior conviction in deciding whether the prior conviction is a "drug trafficking crime" for purposes of the 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i). The statutory definition of the California offense of transportation or sale of a controlled substance was broader than the definition of "drug trafficking offense" under § 2L1.2, and the charging instrument was not before the court. Therefore, the district court erred in imposing the enhancement. The error was not harmless and should be corrected under plain error review because the enhanced range did not overlap with the correct range, so the error resulted in a greater sentence.

United States v. Inman, No. 04-10136 (5<sup>th</sup> Cir. June 7, 2005): A defendant convicted of using an unauthorized access device can be required to pay restitution only for losses that occurred within the temporal scope of the indictment. Where the offense of conviction is a scheme, the MVRA authorizes restitution for actions pursuant to that scheme. But still, restitution for the underlying scheme is limited to the temporal scope of the indictment.

United States v. Olis, No. 04-20322 (5<sup>th</sup> Cir. Oct. 31, 2005): The court reversed Dynergy officers 292-month sentence for stock fraud by "cooking the books." The loss attributable to the defendant for sentencing purposes is that part of the change in stock price before and after the public announcement that was attributable to the defendant's conduct. The effect of other factors must be removed from the calculation. Also of note, Booker error was preserved because Olis objected that the amount of loss was not proven by clear and convincing evidence, citing McMillian for the proposition that preponderance of evidence might not be enough for sentencing facts that have a big impact.

United States v. Castillo, No. 03-20944 (5<sup>th</sup> Cir. Nov. 3, 2005): Being HIV+ is not sufficient grounds for a downward departure under U.S.S.G. § 5H1.4.

United States v. Dunn, No. 04-51116 (5<sup>th</sup> Cir. Nov. 21, 2005): Before her federal conviction, the defendant had been charged in two separate informations with shoplifting from two different stores on the same day at the same mall. She was arrested for both offenses at the same time, and sentenced on the same day to the same concurrent sentences. The two prior sentences were related for purposes of her criminal history score because they were not separated by an intervening arrest and occurred on the same occasion.

Moreland v. Federal Bureau of Prisons, No. 05-20347 (5<sup>th</sup> Cir. Nov. 10, 2005): BOP correctly calculates good time credits by awarding them at the end of each 365-period served. Credits awarded are deducted from end of the sentence. The Fifth Circuit rejects the petitioner's argument that each year served should be reduced by good-time credits as they are accrued, so that the second year, for example, begins on day 311 (365 days minus 54 days for good time credit).

## CRIMINAL CASES IN U.S. SUPREME COURT - 2005 TERM

Prepared by Frances H. Pratt, Research and Writing Attorney  
Office of the Federal Public Defender, Alexandria, Virginia

### **BRADSHAW V. RICHEY**

Habeas corpus, federal interpretation  
of state law

Docket No.	05-101
Case Below:	395 F.3d 660 (6th Cir. 2005)
Cert. Granted:	126 S. Ct. 602 (Nov. 28, 2005)
Argument Date:	None
Decision:	126 S. Ct. 602 (Nov. 28, 2005)

Questions Presented:

1. Whether a federal court hearing a habeas corpus challenge to a state criminal conviction can substitute its own interpretation of state law in the place of the state's highest court on the issue of whether state law allows the use of transferred intent to satisfy the intent element of the criminal offense?

2. Whether in a federal habeas challenge to a state conviction, AEDPA prevents the federal court from undertaking its own *de novo* review of an ineffective assistance of trial counsel claim, and from granting a writ based on facts that were not presented to the state courts?

Holding (*per curiam*):

Granting certiorari, vacating judgment, and remanding case where the Sixth Circuit erred in holding that the doctrine of transferred intent was inapplicable to aggravated felony murder where that holding was directly contradicted by the state supreme court's interpretation of the applicable statutory provision; also finding several errors in the Sixth Circuit's handling of petitioner's ineffective assistance of counsel claim.

### **BROWN V. SANDERS**

Capital punishment, habeas corpus,  
structure of sentencing statute

Docket No.	04-980
Case Below:	373 F.3d 1054 (9th Cir. 2004)
Cert. Granted:	125 S. Ct. 1700 (Mar. 28, 2005)
Argument Date:	Oct. 11, 2005
Decision:	

Questions Presented:

Under California's capital statutory scheme, in the guilt phase of trial, the sentencer determines whether "special circumstances" exist to make a defendant eligible for the death penalty. In a separate penalty phase, the jury considers and weighs a single list of eleven "open-ended" factors including, as one factor, "the circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true." The factors are not labeled as aggravating or mitigating, but direct the jury's attention to relevant subject matter for the determination of sentence. The jury is required to impose the death penalty only if it is convinced that death is appropriate under all the factors even if aggravation outweighs mitigation.

1. Is the California death penalty statute a "weighing statute" for which the state court is required to determine that the presence of an invalid special circumstance was harmless beyond a reasonable doubt as to the jury's determination of penalty?

2. Was an affirmative answer to the previous question dictated by precedent pursuant to *Teague v. Lane*, 489 U.S. 288 (1989), at the time the conviction in this case was final? (N.B.: cert. was not granted as to this issue)

3. If an affirmative answer to the first question was dictated by precedent, was it necessary for the state supreme court to specifically use the phrases "harmless error" or "reasonable doubt" in determining that there was no "reasonable possibility" that the invalid special circumstance affected the jury's sentence selection?

**BUSTILLO V. JOHNSON**

International law, advice re.  
right to consular assistance

Docket No. 05-51  
Case Below: Unreported (Va. Ma. 7, 2005)  
Cert. Granted: 126 S. Ct. 621 (Nov. 7, 2005)  
Argument Date: Winter/Spring 2006 (consolidated for  
argument with *Sanchez-Llamas v. Oregon*,  
*infra*)

Decision:

## Question Presented:

Whether, contrary to the International Court of Justice's interpretation of the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, 100-101, state courts may refuse to consider violations of Article 36 of that treaty because of a procedural bar or because the treaty does not create individually enforceable rights.

**CLARK V. ARIZONA**

Defense, preclusion of  
presentation

Docket No. 05-5966  
Case Below: Unpublished (Ariz. Ct. App. 2005)  
Cert. Granted: 2005 WL 3272155 (Dec. 5, 2005)  
Argument Date: Spring 2006  
Decision:

## Questions Presented:

1. Whether Arizona's insanity law, as set forth in A.R.S. § 13-502 (1996) and applied in this case, violated Petitioner's right to due process under the United States Constitution, Fourteenth Amendment?

2. Whether Arizona's blanket exclusion of evidence and refusal to consider mental disease or defect to rebut the state's evidence on the element of *mens rea* violated Petitioner's right to due process under the United States Constitution, Fourteenth Amendment?

**DAVIS V. WASHINGTON**

Sixth Amendment, confrontation,  
hearsay

Docket No. 05-5224  
Case Below: 111 P.3d 844 (Wash. 2005)  
Cert. Granted: 126 S. Ct. 547 (Oct. 31, 2005)  
Argument Date: Winter / Spring 2006 (to be argued in tandem  
with *Hammon v. Indiana*, *infra*)

Decision:

## Question Presented:

Whether an alleged victim's statements to a 911 operator naming her assailant – admitted as "excited utterances" under a jurisdiction's hearsay law – constitute "testimonial" statements subject to the Confrontation Clause restrictions enunciated in *Crawford v. Washington*, 541 U.S. 36 (2004).

**DAY V. CROSBY**

Habeas corpus, statute of  
limitations

Docket No. 04-1324  
Case Below: 391 F.3d 1192 (11th Cir. 2004)  
Cert. Granted: 126 S. Ct. 34 (Sept. 27, 2005)  
Argument Date: Feb. 27, 2006  
Decision:

## Questions Presented:

28 U.S.C. § 2244(d) establishes a one-year limitations period for federal habeas corpus petitions filed by state prisoners. When Patrick Day filed his federal habeas petition, the magistrate judge examined it as required by Habeas Rule 4 and ordered the State to respond. In its answer, the State did not raise a limitations defense. Instead, it expressly conceded that Day's petition was timely. Nevertheless, almost a year after the petition was filed and seven months after the parties finished briefing the merits of Day's claims, the magistrate judge recommended *sua sponte* that the petition be dismissed as untimely. The district court adopted that recommendation and the Eleventh Circuit affirmed. Acknowledging a conflict with decisions of the Sixth and Ninth Circuits, the Eleventh Circuit held that the State's failure to plead limitations was not a waiver and that Rule 4 – contrary to its plain text – authorizes a court to dismiss a habeas petition *sua sponte* after an answer has been filed.

This case presents the following important questions on which the courts of appeals are divided:

1. Does the State waive a limitations defense to a habeas corpus petition when it fails to plead or otherwise raise that defense and expressly concedes that the petition was timely?

2. Does Habeas Rule 4 permit a district court to dismiss a habeas petition *sua sponte* after the State has filed an answer based on a ground not raised in the answer?

**DYE V. HOFBAUER**

Habeas corpus, presentation of claims

Docket No.	04-8384
Case Below:	111 Fed. Appx. 363 (6th Cir. 2004)
Cert. Granted:	126 S. Ct. 5 (Oct. 11, 2005)
Argument Date:	None
Decision:	126 S. Ct. 5 (Oct. 11, 2005)

Question Presented:

Cert. petition not yet available on Westlaw.

Holding (per curiam):

Granting certiorari, vacating judgment, and remanding case where the court of appeals both erred in concluding that petitioner had not framed his claim of prosecutorial misconduct on federal grounds in the state court, and erred in concluding that petitioner presented the same claim in his federal habeas petition in too vague and general a form.

**EBERHARDT V. UNITED STATES**

Federal Rules of Criminal Procedure, timeliness of motions

Docket No.	04-9949
Case Below:	388 F.3d 1043 (7th Cir. 2004)
Cert. Granted:	126 S. Ct. 403 (Oct. 31, 2005)
Argument Date:	None
Decision:	126 S. Ct. 403 (Oct. 31, 2005)

Question Presented:

Cert. petition not yet available on Westlaw.

Holding (per curiam):

The seven-day time limit set forth in Federal Rule of Criminal Procedure 33 is “an inflexible claim-processing rule” that does not deprive a district court of subject-matter jurisdiction to consider a motion for a new trial if that motion is filed late. If the government raises the untimeliness of the motion in the district court, then the court must dismiss the motion. If, however, the government does not raise the untimeliness of the motion in the district court, the district court may consider the merits of the motion. Further, by not raising the timeliness issue in the district court, the government forfeits that claim on appeal, and the court of appeals may also consider the merits.

**EVANS V. CHAVIS**

Habeas corpus, AEDPA statute of limitations, tolling

Docket No.	04-721
Case Below:	382 F.3d 921 (9th Cir. 2004)
Cert. Granted:	125 S. Ct. 1969 (May 2, 2005) ( <i>sub nom.</i> <i>Lamarque v. Chavis</i> )
Argument Date:	Nov. 9, 2005
Decision:	

Question Presented:

Did the Ninth Circuit contravene this Court’s decision in *Carey v. Saffold* when it held that a prisoner who delayed more than three years before filing a habeas petition with the California Supreme Court did not “unreasonably” delay in filing the petition – and therefore was entitled to tolling during that entire period – because the California Supreme Court summarily denied the petition without comment or citation, which the Ninth Circuit construes as a denial “on the merits”?

**GEORGIA V. RANDOLPH**

Fourth Amendment, warrantless search, consent, joint occupants,

Docket No.	04-1067
Case Below:	604 S.E.2d 835 (Ga. 2004)
Cert. Granted:	125 S. Ct. 1840 (April 18, 2005)
Argument Date:	Nov. 8, 2005
Decision:	

Question Presented:

Should this Court grant certiorari to resolve the conflict among federal and state courts on whether an occupant may give law enforcement valid consent to search the common areas of the premises shared with another, even though the other occupant is present and objects to the search?

**GONZALES V. O CENTRO  
ESPIRITA BENEFICIENTE  
UNIAO DO VEGETAL**Controlled Substances Act,  
Religious Freedom Restoration ActDocket No. 04-1084  
Case Below: 389 F.3d 973 (10th Cir. 2004)  
Cert. Granted: 125 S. Ct. 1846 (April 18, 2005)  
Argument Date: Nov. 1, 2005  
Decision:

## Question Presented:

Whether the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb *et seq.*, requires the government to permit the importation, distribution, possession, and use of a Schedule I hallucinogenic controlled substance, where Congress has found that the substance has a high potential for abuse, it is unsafe for use even under medical supervision, and its importation and distribution would violate an international treaty.

**GONZALES V. OREGON**Controlled Substances Act,  
physician-assisted suicideDocket No. 04-623  
Case Below: 368 F.3d 1118 (9th Cir. 2004)  
Cert. Granted: 125 S. Ct. 1299 (Feb. 2, 2005)  
Argument Date: Oct. 5, 2005  
Decision:

## Question Presented:

Whether the Attorney General has permissibly construed the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, and its implementing regulations to prohibit the distribution of federally controlled substances for the purpose of facilitating an individual's suicide, regardless of a state law purporting to authorize such distribution.

**HAMMON V. INDIANA**Sixth Amendment, confrontation,  
hearsayDocket No. 05-5705  
Case Below: 829 N.E.2d 444 (Ind. 2005)  
Cert. Granted: 126 S. Ct. 552 (Oct. 31, 2005)  
Argument Date: Winter / Spring 2006 (to be argued in tandem  
with *Davis v. Washington, supra*)  
Decision:

## Question Presented:

Whether an oral accusation made to an investigating officer at the scene of an alleged crime is a testimonial statement within the meaning of *Crawford v. Washington*, 541 U.S. 36 (2004).

**HARTMAN V. MOORE**Fourth Amendment, First Amendment  
*Bivens*, retaliatory prosecutionDocket No. 04-1495  
Case Below: 388 F.3d 871 (D.C. Cir. 2004)  
Cert. Granted: 125 S. Ct. 2977 (June 27, 2005)  
Argument Date: Jan. 10, 2006  
Decision:

## Question Presented:

Whether law enforcement agents may be liable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for retaliatory prosecution in violation of the First Amendment when the prosecution was supported by probable cause.

**HOLMES V. SOUTH CAROLINA**Fifth Amendment, Sixth Amendment,  
Fourteenth AmendmentDocket No. 04-1327  
Case Below: 605 S.E.2d 19 (S.C. 2004)  
Cert. Granted: 126 S. Ct. 34 (Sept. 27, 2005)  
Argument Date: Feb. 22, 2006  
Decision:

## Question Presented:

Whether South Carolina's rule governing the admissibility of [a criminal defendant's evidence of] third-party guilt evidence violates a criminal defendant's constitutional right to present a complete defense grounded in the Due Process, Confrontation, and Compulsory Process Clauses?

**HOUSE V. BELL**

Habeas corpus, evidence of actual innocence

Docket No. 04-8990  
 Case Below: 386 F.3d 668 (6th Cir. 2004)  
 Cert. Granted: 125 S. Ct. 2991 (June 28, 2005)  
 Argument Date: Jan. 11, 2006  
 Decision:

Questions Presented:

1. Did the majority below err in applying this Court's decision in *Schlup v. Delo* [513 U.S. 298 (1995)] to hold that Petitioner's compelling new evidence, though presenting at the very least a colorable claim of actual innocence, was as a matter of law insufficient to excuse his failure to present that evidence before the state courts – merely because he had failed to negate each and every item of circumstantial evidence that had been offered against him at the original trial?

2. What constitutes a “truly persuasive showing of actual innocence” pursuant to *Herrera v. Collins* [506 U.S. 390 (1993)] sufficient to warrant freestanding habeas relief?

**HUDSON V. MICHIGAN**

Fourth Amendment, inevitable discovery

Docket No. 04-1360  
 Case Below: 2004 WL 1366947 (Mich. App. 2005)  
 Cert. Granted: 125 S. Ct. 2964 (June 27, 2005)  
 Argument Date: Jan. 9, 2006  
 Decision:

Question Presented:

Does the inevitable discovery doctrine create a *per se* exception to the exclusionary rule for evidence seized after a Fourth Amendment “knock and announce” violation, as the Seventh Circuit and the Michigan Supreme Court have held, or is evidence subject to suppression after such violations, as the Sixth and Eighth Circuits, the Arkansas Supreme Court, and the Maryland Court of Appeals have held?

**KANE V. GARCIA ESPITIA**

Sixth Amendment, *pro se* library access  
 Habeas, cognizable rights

Docket No. 04-1538  
 Case Below: 113 Fed. Appx. 802 (9th Cir. 2004)  
 Cert. Granted: 126 S. Ct. 407 (Oct. 31, 2005)  
 Argument Date: None  
 Decision: 126 S. Ct. 407 (Oct. 31, 2005)

Question Presented:

Under 28 U.S.C. § 2254(d), a federal court may grant habeas corpus relief only if the state court judgment was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” The question presented is:

Whether the Ninth Circuit exceeded its authority under 28 U.S.C. § 2254(d) when it granted habeas relief solely on the basis of its own circuit precedent that an incarcerated defendant who chooses to represent himself has a Sixth Amendment right of access to legal materials to assist him in preparing a defense, even though five other circuits have held that no such right exists and this Court has never addressed the issue.

Holding (*per curiam*):

Granting certiorari, vacating judgment, and remanding case where the court of appeals erred in concluding that the respondent's nearly complete lack of access to prison library violated his Sixth Amendment to represent himself. Because the federal appellate courts have split on whether *Faretta v. California*, 422 U.S. 806 (1975), implies a right of a *pro se* defendant to have access to a law library, there is no clearly-established federal law (i.e., Supreme Court decision) as to which the state court decision was either contrary or clearly unreasonable.

**KANSAS V. MARSH**

Capital punishment, Eighth Amendment  
 weight of evidence

Docket No. 04-1170  
 Case Below: 102 P.3d 445 (Kan. 2004)  
 Cert. Granted: 125 S. Ct. 2517 (May 31, 2005)  
 Argument Date: Dec. 7, 2005  
 Decision:

Questions Presented:

Does it violate the Constitution for a state capital sentencing statute to provide for the imposition of the death penalty when the sentencing jury determines that the mitigating and aggravating evidence is in equipoise?

In addition to the question presented by the petition, the parties have been directed to brief and argue the following questions:

1. Does this Court have jurisdiction to review the judgment of the Kansas Supreme Court under 28 U.S.C. § 1257, as construed by *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975)?
2. Was the Kansas Supreme Court's judgment adequately supported by a ground independent of federal law?

**MARYLAND V. BLAKE**

Fifth Amendment, interrogation,  
invocation of right to counsel

Docket No. 04-373  
Case Below: 849 A.2d 410 (Md. App. 2004)  
Cert. Granted: 125 S. Ct. 1823 (April 18, 2005)  
Argument Date: Nov. 1, 2005  
Decision: 126 S. Ct. 602 (Nov. 14, 2005)

Question Presented:

When a police officer improperly communicates with a suspect after invocation of the suspect's right to counsel, does *Edwards* [*v. Arizona*, 451 U.S. 477 (1981),] permit consideration of curative measures by the police, or other intervening circumstances, to conclude that a suspect later initiated communication with the police? Holding (*per curiam*) (copied in its entirety):

The writ of certiorari is dismissed as improvidently granted.

**OREGON V. GUZEK**

Capital punishment, Eighth Amendment,  
residual doubt

Docket No. 04-928  
Case Below: 86 P.3d 1106 (Or. 2004)  
Cert. Granted: 125 S. Ct. 1929 (April 25, 2005)  
Argument Date: Dec. 7, 2005  
Decision:

Question Presented:

Does a capital defendant have a right under the Eighth and Fourteenth Amendments to the United States Constitution to offer evidence and argument in support of a residual-doubt claim – that is, that the jury in a penalty-phase proceeding should consider doubt about the defendant's guilt in deciding whether to impose the death penalty?

**RICE V. COLLINS**

Habeas corpus, presumption of  
correctness of state court findings

Docket No. 04-52  
Case Below: 348 F.3d 1082 (9th Cir. 2003)  
Cert. Granted: 125 S. Ct. 2989 (June 28, 2005)  
Argument Date: Dec. 5, 2005  
Decision:

Question Presented:

Does 28 U.S.C. § 2254 allow a federal habeas corpus court to reject the presumption of correctness for state fact finding, and condemn a state-court adjudication as an unreasonable determination of the facts, where a rational fact finder could have determined the facts as did the state court?

**SAMSON V. CALIFORNIA**

Fourth Amendment, suspicionless  
search of parolee's person

Docket No. 04-9728  
Case Below: 2004 WL 2307111 (Cal. Ct. App. 2004)  
Cert. Granted: 126 S. Ct. 34 (Sept. 27, 2005)  
Argument Date: Feb. 22, 2006  
Decision:

Question Presented:

Does the Fourth Amendment prohibit police from conducting a warrantless search of a person who is subject to a parole search condition, where there is no suspicion of criminal wrongdoing and the sole reason for the search is that the person is on parole?

**SANCHEZ-LLAMAS V. OREGON**

International law, advice re.  
right to consular assistance

Docket No. 04-10566  
Case Below: 108 P.3d 573 (Or. 2005)  
Cert. Granted: 126 S. Ct. 620 (Nov. 7, 2005)  
Argument Date: Winter/Spring 2006 (consolidated for  
argument with *Bustillo v. Johnson*, *supra*)

## Decision:

## Questions Presented:

1. Does the Vienna Convention convey individual rights of consular notification and access to a foreign detainee enforceable in the Courts of the United States?

2. Does the state's failure to notify a foreign detainee of his rights under the Vienna Convention result in the suppression of his statements to police?

**SCHIRO V. SMITH**

Habeas corpus, presentation of claim, Sixth Amendment

Docket No. 04-1475  
 Case Below: unpublished orders (9th Cir. 2004)  
 Cert. Granted: 126 S. Ct. 7 (Oct. 17, 2005)  
 Argument Date: None  
 Decision: 126 S. Ct. 7 (Oct. 17, 2005)

## Questions Presented:

1. In considering an appeal from the denial of a federal habeas proceeding, did the Ninth Circuit exceed its authority by remanding this case to state court based on a claim that has never been raised in state court or in the district court below and for which no certificate of appealability has been issued?

2. Did the Ninth Circuit erroneously extend the Sixth Amendment's jury trial guarantee to a determination of whether a capital murder defendant is mentally retarded under *Atkins v. Virginia*, 536 U.S. 304 (2002)?

Holding (per curiam):

Granting certiorari, vacating judgment, and remanding case because the Ninth Circuit preemptively ordered Arizona to conduct a jury trial to resolve the respondent's mental retardation claim before the state had the opportunity to apply the procedures it had determined to be appropriate in light of *Atkins*.

**UNITED STATES V. GRUBBS**

Fourth Amendment, anticipatory warrants

Docket No. 04-1414  
 Case Below: 377 F.3d 1072, as amended, 389 F.3d search 1306 (9th Cir. 2004)  
 Cert. Granted: 126 S. Ct. 34 (Sept. 27, 2005)  
 Argument Date: Jan. 18, 2006  
 Decision:

## Question Presented:

Whether the Fourth Amendment requires suppression of evidence when officers conduct a search under an anticipatory warrant *after* the warrant's triggering condition is satisfied, but the triggering condition is not set forth either in the warrant itself or in an affidavit that is both incorporated into the warrant and shown to the person whose property is being searched.

**WASHINGTON V. RECUENCO**

Sixth Amendment, *Apprendi*, appellate review, harmless v. structural error

Docket No. 05-83  
 Case Below: 110 P.3d 188 (Wash. 2005)  
 Cert. Granted: 126 S. Ct. 478 (Oct. 17, 2005)  
 Argument Date: Winter / Spring 2006  
 Decision:

## Question Presented:

A single element missing or misdefined in jury instructions can be harmless error if, beyond a reasonable doubt, the error did not contribute to the verdict. *Neder v. United States*, 527 U.S. 1 (1999). In contrast, errors that affect the entire framework within which a trial proceeds, rather than errors in the trial process itself, are "structural" and will always invalidate a conviction. *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

It is undisputed in this assault case that the only weapon used was a firearm, but the verdict form for the enhancement failed to distinguish a "firearm" finding from a more generic "deadly weapon" finding – the "firearm" finding carries a greater sentence.

The question presented here is whether error as to the definition of a sentencing enhancement should be subject to harmless error analysis where it is shown beyond a reasonable doubt that the error did not contribute to the verdict on the enhancement.

## BAYOU GUANTANAMO

By R. Neal Walker

Louisiana Capital Assistance Center  
A Non-Profit Law Office

For several hundred Orleans Parish prisoners detained in dozens of maximum security prisons in north and central Louisiana, it seemed like due process took a holiday, and a long one at that, extending well through the Christmas season. Indeed, like the alleged enemy combatants at Guantanamo Bay, these prisoners are suffering protracted detention without charge, without access to courts, without counsel, hundreds of miles from their homes and where they were arrested.

Among the thousands of prisoners evacuated from the flooded Orleans Parish Prison complex after Hurricane Katrina made landfall were hundreds of prisoners arrested by the NOPD in July and August but not formally charged. Many of these prisoners were arrested on misdemeanors and low-grade non-violent felonies. Article 701 B (2) of the Louisiana Code of Criminal Procedure provides that the failure to institute prosecution within sixty days of the date a defendant is arrested on a felony "shall result in release of the defendant if . . . just cause for the failure is not shown." In November, a group of volunteer lawyers filed mass habeas corpus petitions in state district court on behalf of several hundred of these detainees. Following hearings in Baton Rouge, Judge Calvin Johnson, Chief Judge of the Orleans Parish Criminal District Court (appointed by the Louisiana Supreme Court to preside over the hearings) ordered the release of all detainees arrested for misdemeanors or non-violent felonies, finding that their continued detention without charge violated their due process rights and warranted habeas relief.

On November 22, 2005, the Louisiana Supreme court issued a brief *per curiam* opinion reversing Judge Johnson's orders releasing these prisoners and giving the State of Louisiana until January 6, 2006, to file formal charges. Two justices dissented and would have upheld the releases. The day after Thanksgiving a habeas corpus petition was filed on behalf of

thirty detainees in federal district court, arguing that they were being held "in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C § 2241(c)(3). Patrick, et al. v. Cooper, et al., Civil No.05-6090 R (E.D. La.).

While the petitioners were incarcerated in prisons located within the Middle and Central Districts of Louisiana, the action was properly filed in the Eastern District since the petitioners' cases are pending in the Criminal District Court for the Parish of Orleans. 28 U.S.C § 2241(d); Braden v. 30<sup>th</sup> Judicial Cir. Ct., 410 U.S. 484 (1973). The matter came on for hearing on December 8, and with Judge Vance's intervention, the matter was settled. The petitioners agreed to withdraw the petition in exchange for assurances that those whose cases would be screened by December 21, so that the petitioners whose cases are refused will be home by Christmas.

The petition argued that the continued confinement of the prisoners violated their rights against unreasonable seizures, to due process of law, to counsel, to a speedy trial, to be free from excessive bail and to other rights secured by the Fourth, Sixth and Eighth Amendments to the United States Constitution. As the petition noted, the Supreme Court has criticized protracted detentions without trial in two recent cases. In 2004 "the Supreme Court confirmed the fundamental right of a citizen to be free from involuntary, indefinite confinement by his government without due process. See Hamdi v. Rumsfeld, 159 L. Ed. 2d 578, 124 S. Ct. 2633, 2647 (2004); *id.* at 2661 (Scalia, J., dissenting); see also Rasul v. Bush, 159 L. Ed. 2d 548, 124 S. Ct. 2686, 2692 (2004)." Abu Ali v. Ashcroft, 350 F. Supp. 2d 28, 30 (D.C.D.C. 2004) (recognizing the "fundamental due process rights of a citizen of the United States to freedom from arbitrary detention . . . and to access to the courts through the Great Writ of habeas corpus to challenge the legality of that detention."). The petition argued that habeas relief was particularly suited to unlawful detention cases, noting that "[t]he writ of habeas corpus commands general recognition as the essential remedy to safeguard a citizen against imprisonment by State or Nation in violation of his constitutional rights." Abu Ali, 350 F.

Supp. 2d at 30 (quoting United States v. Morgan, 346 U.S. 502, 506 n. 3, 98 L. Ed. 248, 74 S. Ct. 247 (1954)).

In a response, the District Attorney argued that the petitioners were merely "inconvenienced" by their detentions and could not show that their defenses would be prejudiced by the delays. This betrayed a serious misunderstanding of the issue, for the petitioners complained less about the effect that their detentions would have on their cases (if indeed they were prosecuted) than on the fact that they were being detained without charge. In a traverse, the petitioners argued that they were being held in "continuous detention without charge." United States v. Contreras, 197 F.Supp. 1173, 1176 (N.D. Iowa 2002)(ordering indictment dismissed where defendant was arrested and detained for thirty-one days before charges were filed in violation of 18 U.S.C. § 3161(b)). "It is the restraint on individual liberty, not merely procedural stagnation following the filing of formal charges," that was the essence of the petitioner's complaints. Contreras, 197 F.Supp. at 1176; see also US v. Osunde, 638 F. Supp. 171, 174 (N.D. Ca. 1986)(rejecting government's argument in favor of protracted detention without charge as "reminiscent of the governmental powers wielded by merry old England in the eighteenth century which prompted our Founding Fathers to defenestrate the British yoke and establish a more enlightened order as embodied by the Constitution and its various amendments.").

Historically, the Orleans Parish District Attorney's office has had a very high refusal rate. See Jeff Palmer, Abolishing Plea Bargaining: An End to the Same Old Song and Dance, 26 Am. J. Crim. L. 505, 533-534 (Summer, 1999)(commenting on the Orleans Parish District Attorney's refusal procedures). Indeed, post-storm charging statistics show that the district attorney has declined to prosecute a full twenty-five percent of the cases brought by the NOPD. If these statistics hold, a number of the petitioners in Patrick v. Cooper will be home by Christmas, instead of being imprisoned well into January, as authorized by the Louisiana Supreme Court.

## Training Programs for Panel Attorneys

### LACDL - Law and All That Jazz

*New Orleans, LA - April 27-29, 2006*

*JW Marriott Hotel*

This event is being offered to all LACDL members at a discounted rate of \$200.00.

### FBA - The Big Not So Easy

*New Orleans, LA - May 12, 2006*

*W Hotel, Poydras Street*

This event is being offered to all CJA members who are FBA members at a discounted rate of \$92.00

### Federal Public Defender's Office Annual CLE

*New Orleans, LA - November 2-3, 2006*

*Plimssoll Club, World Trade Center of New Orleans*

### Winning Strategies Series

*Miami Beach, FL - February 9-11, 2006*

*San Diego, CA - June 8-10, 2006*

The Winning Strategies seminars will present a varied program offering topics of interest to both experienced and new panel attorneys in both small and large group settings. Areas presented will focus on the nuts and bolts of federal criminal practice including the sentencing guidelines, sentencing mitigation and the impact of cases such as *Booker* and *Crawford*. Fourth, Fifth and Sixth Amendment issues will be covered, along with sessions on preparing effective opening statements, closing arguments and cross examinations, defending methamphetamine and gang cases, and attacking wiretap evidence. In addition, the seminars will offer an introduction to the use of technology in the courtroom and an explanation of CJA guidelines and procedures. A draft agenda for the Miami Beach seminar will soon be available.

### Sentencing Advocacy Workshop

*Miami Beach, FL - March 2-4, 2006*

The Sentencing Advocacy Workshop focuses on an often neglected, yet extremely important, area of practice. Since approximately 95% of federal criminal cases proceed to the sentencing phase and the recent developments in federal sentencing have resulted in a new sentencing landscape, participation in the Sentencing Advocacy Workshop should not be missed. The program presents a comprehensive approach to sentencing advocacy. Participants will learn a process for the development of a persuasive, fact-based sentencing theory and the advocacy skills necessary to advance that theory in writing and during sentencing hearings. Among other subjects, presentations and demonstrations will address changes in federal sentencing law, judging at sentencing, use of a mitigation specialist, storytelling, and persuasive writing. The workshop consists of plenary sessions and small group breakout sessions. In the small group breakout sessions, participants will use a case of their own to brainstorm facts, develop a theory and theme, tell a story, and persuasively write a portion of their downward departure motion or sentencing memo. A draft agenda will be available shortly.

### Sentencing Advocacy Workshop

*Boston, MA - April 20-22, 2006*

*Chicago, IL - July 27-29, 2006*

The Law and Technology Workshop focuses on the use of courtroom technology to advance the persuasiveness of witness examination and argument skills. Participants will enhance their cross-examination, direct-examination, and closing argument skills by the application of software such as Trial Director and Power Point. Since many federal courtrooms are now "wired" with the latest computer technology, and this technology has proven to be persuasive and effective, participation in the Law and Technology Workshop is particularly timely. Presentations and demonstrations will be supplemented by small group workshops. In the small group workshops, participants will apply the skills presented in the plenary sessions to the facts of a mock case provided to them. Each participant will practice cross-examination and closing argument using the Trial Director and Power Point technology. Enrollment for this program is limited to 64 panel attorneys certified to accept Criminal Justice Act appointments in federal court. Early registration is encouraged.

### Complex Litigation Seminar

*Atlanta, GA - September 7-9, 2006*

Addressing the important issues facing panel attorneys who handle the most difficult and time-consuming cases, the Complex Litigation Seminar will include presentations on handling voluminous discovery; joint defense agreements, defense in gang, CCE, and RICO cases and wiretaps. Sessions discussing funding complex cases and the use of technology to provide a more effective defense will also be presented, along with opportunities for more in-depth discussions in small group settings.

## REGISTRATION FROM

Enrollment in these Criminal Justice Act (CJA) seminars and workshops is limited to panel attorneys who accept court appointments to federal criminal cases. Tuition and program materials will be provided free of charge. **Attendees will bear all expenses for their travel, hotel accommodations, meals and other incidentals.** Registrations should be received at least 45 days prior to the date of the requested seminar/workshop. Registrants will be sent a confirmation letter with hotel and travel information. Registration for only one "Winning Strategies" seminar and Law and Technology workshop is allowed.

**(NOTE: PLEASE DO NOT MAKE AIRLINE RESERVATIONS BEFORE RECEIVING A SEMINAR/WORKSHOP CONFIRMATION LETTER)**

To register, complete the following form and mail or fax it to Office of Defender Services Training Branch, Administrative Office of the U.S. Courts, One Columbus Circle, N.E., Suite G-430, Washington, D.C. 20544 or fax to (202) 502-2911. For further information, call (800) 788-9908.

I wish to attend the following seminar(s)/workshop(s)(check box[es]):

### "WINNING STRATEGIES" REGIONAL SEMINARS:

- Miami Beach, FL - February 9-11, 2006       San Diego, CA - June 8-10, 2006

### COMPLEX LITIGATION SEMINAR:

- Atlanta, GA - September 7-9, 2006

### WORKSHOPS:

- SENTENCING ADVOCACY WORKSHOP - Miami Beach, FL - March 2-4, 2006

### LAW AND TECHNOLOGY WORKSHOPS

- Boston, MA - April 20-22, 2006  
 Chicago, IL - July 27-29, 2006

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Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

State Bar Number(s): \_\_\_\_\_

District(s) in which you practice: \_\_\_\_\_

Number of CJA cases in past 5 years: \_\_\_\_\_

**APPLICATION FOR CLE CREDIT WILL BE MADE BEFORE EACH PROGRAM**

# MESSAGE Board

- For the first time ever, we are happy to announce that effective January 1, 2006, there will be a 2.1% cost of living adjustment for panel attorneys. As a result, the hourly rate will increase to \$92 in non-capital cases and to \$163 in capital cases.
- For obvious reasons, the CLE program sponsored by the Federal Public Defender's Office in New Orleans did not occur in November and will not take place in January. The Louisiana Supreme Court has waived CLE requirements for Louisiana attorneys for the calendar year 2005. Our annual CLE program will take place on November 2-3, 2006.
- Please visit our website [http://www.federaldefender.net/info\\_form.html](http://www.federaldefender.net/info_form.html) to update our Contacts Database with your current contact information. Fill out the form and click on the "Submit" button to update our database. If on-line access is limited, please fill out the inserted Information Card and mail it to the Federal Public Defender's office.
- Effective September 1, 2005, the new mileage rates for use of privately owned vehicles while on official travel is as follows: automobiles \$.485 per mile; motorcycles \$.305 per mile. Unfortunately there is no mileage rate for boats.
- The latest version of the U.S. Sentencing Guidelines Manual can be downloaded (in its various parts) for free on the Sentencing Commission's web site, [www.ussc.gov](http://www.ussc.gov). You also can purchase the manual through West Group by calling (800) 328-9352. If you prefer the official version, you can order it through the Government Printing Office, [bookstore.gpo.gov](http://bookstore.gpo.gov), for \$55.
- If Katrina destroyed your little black book, remember that Ed Casey has a two-volume set of Big Black Books with CV's for many reputable and well-recognized experts. Please contact Ed Casey at the Federal Public Defender's office (504) 589-7930.
- Yes Virginia, there is a Santa Claus and he brought all the good boy and girl lawyers "Little Red Rule Books." Your copy can be picked up at Federal Public Defender's office.
- There is a crucial need for volunteers to appear in state court to litigate "Bayou Guantanamo" motions. See page 7. Please contact Neal Walker at [nealw@thejusticecenter.org](mailto:nealw@thejusticecenter.org) or (504) 558-9867. Volunteers are also needed to notarize documents for the homeless. If interested, call Judge Jay Zainey (504) 589-7590.

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## FEDERAL PUBLIC DEFENDER'S OFFICE

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