THE DEFENSE NEVER RESTS

Volume 6.3 **Published by the Federal Public Defender's Office for the Eastern District of Louisiana** **July, 2004**

Blakely v. Washington

The Supreme Court surprised lawyers on both sides of the criminal bar with its June 24th decision in **Blakely v. Washington**, 124 S. Ct. 2531, which applied **Apprendi** to Washington State's sentencing guidelines. Four years ago, the Court held in **Apprendi v. New Jersey** that any fact increasing the statutory maximum punishment must be found by a jury beyond a reasonable doubt. In **Blakely**, the Court clarified that "the statutory maximum for **Apprendi** purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." In other words, **Blakely** held that *both* the punishment set forth in the statute creating the crime *and* the typical sentencing guideline range under Washington guidelines establish statutory maxima.

Blakely threw federal prosecutions into a tailspin as the broad language of the opinion seemed to reach the U.S. Sentencing Guidelines, notwithstanding the majority's disclaimer. To reduce the turmoil, the Fifth Circuit expedited decision in a case raising a **Blakely** issue and held that **Blakely** does not apply to the federal guidelines. **United States v. Pineiro**, No. 03-30437. The Fifth Circuit noted that Washington State enacted its guidelines as statutes, unlike the federal guidelines. But more importantly, the Court recounted several Supreme Court decisions that equated the federal statutory maximum as the top of the penalty range set out in the United States Code section defining the offense, and viewed the guidelines as merely a tool to channel a sentencing court's historic discretion.

As the Fifth Circuit acknowledged, its decision is transient. Sixth, Seventh, Eighth and Ninth Circuit panels have held that **Blakely** *does* apply to the federal guidelines (although the Sixth Circuit voted to reconsider its decision en banc). **United States v. Montgomery**, No. 03-5256 (6th Cir. July 14, 2004); **United States v. Booker**, No. 03-4225 (7th Cir. July 9, 2004); **United States v. Mooney**, No. 02-3388 (8th Cir. July 23, 2004); **United States v. Ameline**, No. 02-30326 (9th Cir. July 21, 2004). The Supreme Court granted cert in **Booker** and in **United States v. Fanfan**, No. 03-47-P-H (June 28, 2004), where a district court in Maine applied **Blakely** at sentencing. Oral argument will be held on October 4.

Until the Supreme Court decides the issue, defense lawyers should preserve their clients' **Blakely** rights. Consider limiting the facts admitted in a guilty plea to the essential elements of the offense, unless you get concessions from the government for admitting more, and objecting to enhancements and upward departures based on uncharged facts neither found by a jury nor admitted by your client. Some FPD offices say the reasonable doubt standard of proof is not waivable.

You might also want to preserve objections to enhancements based on criminal history. Although **Almendarez-Torres v. United States** excludes prior convictions from the type of facts to which **Apprendi** applies, the Supreme Court recently called the continued viability of **Almendarez-Torres** a "difficult constitutional question." **Dretke v. Haley**, 124 S. Ct.1847, 1853 (2004).

On the same day that it decided **Blakely**, the Supreme Court also held that **Ring v. Arizona** did not apply retroactively to cases that became final before the decision. **Schriro v. Summerlin**, No. 03-526 (June 24, 2004). Justice Scalia, the Court's biggest **Apprendi** enthusiast, wrote both **Blakely** and **Schriro.** **Ring** applied **Apprendi** to the Arizona death penalty scheme, holding that the facts making a defendant eligible for death must be charged in the indictment and found by a jury beyond a reasonable doubt. It's a safe bet that if **Ring** is not retroactive, **Apprendi** is not either.

In This Issue

Blakely v. Washington Training Video Available

We have copies of the Blakely v. Washington FJC training video. The program discusses the decision and its ramifications in guilty pleas, trials and sentencings. If you are interested in borrowing our video, copies are available.

Miranda decisions: Supreme Court invalidates two-step interrogation protocol, but declines to suppress physical fruit of *Miranda* violation

Although **Blakely** grabbed the headlines, the Supreme Court also issued important Fifth Amendment decisions at the end of the term. In **Missouri v. Seibert**, No. 02-1371, the Court required the exclusion of an incriminating statement resulting from a two-step interrogation protocol: first, police question the suspect without **Miranda** warnings, and then, if he confesses, they administer the warnings and ask him to repeat the damning statements. Distinguishing **Oregon v. Elstad**, a 1985 decision, the Court said that the protocol was a deliberate attempt to undermine **Miranda**. Moreover, assessed objectively, it likely would have that effect. A suspect who is not warned until he confesses will think it is too late to assert his right to remain silent because the police will use the prior unwarned statement against him. In an opinion by Justice Souter, a four-judge plurality focused on the effect of the protocol. Concurring, Justice Kennedy said he would focus on the bad faith of the police.

The Court was even more splintered in **United States v. Patane**, No. 02-1183. The police arrested Patane at his home for violating a restraining order. They began the **Miranda** warnings, but Patane interrupted, asserting he knew his rights. Knowing he had a gun, the police asked him about it. He said it was in his bedroom. In the ensuing prosecution for possession of a firearm by a felon, the government conceded that Patane's statement was inadmissible because the officers made no effort to complete the **Miranda** warnings. But the district court also suppressed the gun and the Tenth Circuit affirmed because the gun was the fruit of an unwarned statement. A divided Supreme Court reversed.

Writing for a three-judge plurality, Justice Thomas started with the proposition that the Fifth Amendment is a rule about the exclusion of evidence at trial. Statements that are the result of compelled self-incrimination are not admissible. The flip side of this view of the privilege against self-incrimination is that it does not govern police misconduct. The police do not violate the Fifth Amendment by failing to give **Miranda** warnings; a Fifth Amendment violation does not occur unless and until the resultant statement is admitted at trial. **Dickerson v. United States** is not to the contrary; there, the Court had held only that **Miranda** was a constitutional decision that Congress could not abrogate. After **Dickerson**, a majority of the justices subscribed to Thomas's position in a civil rights lawsuit, **Chavez v. Martinez**, decided in 2003.

Thus, when the police failed to complete the **Miranda** warnings after Patane interrupted them, they did not commit a constitutional infraction. Moreover, Patane's ensuing statement was obviously voluntary. Hence, unlike an illegal search, there was "nothing to deter" and no reason to apply the "fruit of the poisonous tree" doctrine.

Justices Kennedy and O'Connor concurred on the theory that admission of non-testimonial physical evidence such as the gun does not run the risk of admitting coerced incriminating statements, but they did not agree that failure to give **Miranda** warnings was "nothing to deter." Dissenting, Justices Souter, Stevens and Ginsburg said that failure to exclude the physical fruit of a **Miranda** violation creates an incentive to violate **Miranda**.

Consecutive/Concurrent Sentences

Guidelines Section 5G1.3 was amended (effective Nov. 1, 2003) to give district courts more discretion to impose concurrent sentences for new offenses committed while the defendant was on either federal or state probation, parole, or supervised release. Under this amendment, the new sentence can be imposed concurrently, partially concurrently, or consecutively to the undischarged term of imprisonment. Application Note 3(C) to Section 5G1.3 now indicates that the Commission only "recommends" that the sentence for the new offense be run consecutive to the sentence imposed for the revocation. The Commission noted in its reasons for Guidelines Amendment 660 that "this resolves a circuit conflict concerning whether the imposition of such a sentence is required to be consecutive. The amendment follows the holdings of the Second, Third, and Tenth Circuits stating that the imposition of sentence for the instant offense is **not** required to be consecutive to the sentence imposed upon revocation of probation, parole, or supervised release." The Fifth Circuit had ruled in **United States v. Alexander**, 100 F.3d 24, 27 (5th Cir. 1996), that the old version of 5G1.3 required a mandatory consecutive sentence. This was not the position chosen by the Sentencing Commission and **Alexander** was likely legislatively overruled by this new amendment to Section 5G1.3.

New FPD Computer Systems Administrator

We are pleased to introduce Lamont Lewis as our new Computer Systems Administrator. Lamont is qualified as an A+ Certified Computer Technician and a CNA Certified NetWare Administrator 5.1. His previous experience includes Data Processing Manager for Imperial Trading Company, Computer Technician for Tulane University College and Network Administrator for Hailey McNamara Law Firm. Lamont will be redesigning our web-site, making it both user friendly and secure. If you have computer questions or technical problems with government formatted evidentiary CD's, do not hesitate to contact him via e-mail. Lamont's e-mail address is Lamont_Lewis@fd.org.

New CJA Plan

The original CJA plan was over 30 years old. Dated November 5, 1973, it was in need of amendment and was recently updated. The process included a complete review by Virginia Schlueter and CJA Panel Representative Herb Larson. The Revised Plan of 2004 was submitted to the CJA Judicial Committee chaired by Judge Carl Barbier and composed of Judges Lance Africk, Jay Zainey and Magistrate Judge Louis Moore. That Committee oversees Probation, Pretrial, the FPD's Office and the CJA Panel. With the unanimous recommendation of the Committee, it was presented to the Eastern District of Louisiana judges at the regular en banc meeting and approved. Chief Judge Berrigan signed it on April 8, 2004 and sent it to Chief Judge King, who passed it on to the Judicial Council of the Fifth Circuit, where it was approved on July 9, 2004. A copy can now be found on our website www.federaldefender.net.

On a related note, we are delighted to announce that one of our Eastern District Court Judges, Carl J. Barbier, has been named to the United States Judicial Conference Defender Services Committee. He will serve as the committee's liaison to the 5th Circuit. Since his appointment to the Committee, Judge Barbier attended the National Conference of Criminal Justice Act Panel Attorney Representatives held here earlier this year. As stated, he assisted in updating our antiquated CJA Plan, and approving additional members. He actively seeks input from panel members to address CJA issues. Feel free to forward questions, issues and concerns to him or to your CJA Representative Herb Larson.

New CJA Panel Members

Michael Ciaccio

Michael Ciaccio has practiced predominately criminal law in the greater New Orleans area since 1998. Prior to that he served as an Assistant District Attorney in both Orleans and Jefferson Parishes. Mr. Ciaccio has extensive experience, having tried over 60 felony trials to verdict, including six capital cases.

G. Ben Cohen

G. Ben Cohen is currently a capital appellate public defender at the Capital Appeals Project. Mr. Cohen is certified by the Louisiana Indigent Defense Assistance Board as Appellate Lead Counsel and as second chair in capital trials. In addition, he has taught at CLE seminars on appellate and capital issues.

David Levitt

David Levitt served as an Assistant Federal Public Defender fro the Southern District of New York for over thirteen years and most recently was an associate with Deutsch, Kerrigan & Stiles, L.L. P. He is now in the private practice of law. Mr. Levitt has extensive experience in federal criminal law and has presented lectures addressing the Federal Sentencing Guidelines. He also served as Special Counsel to the United States Sentencing Commission in Washington, D.C.

Marcia Widder

Marcia Widder is a staff attorney with the Capital Appeals Project. Ms. Widder was a law clerk to Honorable James L. Dennis at the Louisiana Supreme Court and the U.S. Court of Appeals for the Fifth Circuit. She has been lead counsel in a number of federal capital direct appeals. She was Senior Articles Editor of the Tulane Law Review.

Supreme Court Highlights

*Five justices question scope of **Belton** car searches.*

Thornton v. United States, No. 03-5165 (May 24, 2004): The Supreme Court upheld the **Belton** search of a car even though the driver got out of the car before the police accosted him. Five of the justices indicated discomfort with **Belton**'s scope, noting that a search is not necessary for officer safety when the arrestee is handcuffed and inside the police car. But the majority declined to draw the line at whether the suspect was inside the car or outside the car when he was stopped. Justice Scalia, joined by Justice Ginsburg, suggested a test that would limit car searches following the arrest of occupants to situations when it was reasonable to believe the car would contain evidence of a crime.

Court upholds Nevada statute criminalizing failure to provide identity.

Hiibel v. Sixth Judicial Dist. Court, No. 03-5554 (June 21, 2004): The Supreme Court rejected a Fourth Amendment challenge of a Nevada statute criminalizing failure to provide one's name to a police officer who has reasonable suspicion of criminal activity. Identity is related to the purpose, rationale and purpose of a **Terry** stop but does not alter the nature of the stop by changing its duration or location. The Court twice noted that the statute did not require the suspect to provide proof of identity such as a driver's license. The Court also rejected a Fifth Amendment challenge on the facts; even if disclosing one's name is testimonial, *in this case* disclosure presented no reasonable danger of incrimination. The Court reserved the Fifth Amendment issue in cases where furnishing one's identity provided a link in the evidentiary chain needed to convict.

Police violate Sixth Amendment right to counsel by post-indictment interrogation.

Fellers v. United States, No. 02-6230 (Jan. 26, 2004): The police went to Fellers' home to arrest him after a grand jury returned an indictment for a drug conspiracy. The officers said they wanted to discuss his drug involvement. Fellers made inculpatory statements. Then the officers took him to jail, where they advised him for the first time of his **Miranda** rights. Fellers waived his rights and repeated his earlier statements. The Supreme Court held that the first statement violated the Sixth Amendment right to counsel under **Messiah**, and remanded to the Sixth Circuit to address whether the subsequent jailhouse statements should be suppressed under a "fruit of the poisonous tree" theory, despite Fellers' knowing and voluntary waiver of his **Miranda** rights.

Fifth Circuit Highlights

Batson

Put racial make-up of jury pool on the record.

Medellin v. Dretke, No. 03-20687 (May 20, 2004): The Fifth Circuit rejected Medellin's claim that appellate counsel was ineffective for failing to argue that the trial court erred in rejecting trial counsel's *Batson* objections. Although trial counsel put on the record that the state used six of its 13 peremptories to strike African-American jurors, he did not present evidence of the racial make-up of the jury pool. Without this information, the number of strikes used to excuse minority jurors was irrelevant.

Confessions

Conviction based on uncorroborated confession reversed.

United States v. Reynolds, No. 03-10331 (Apr. 14, 2004): Invoking the rule that a defendant generally cannot be convicted solely on his uncorroborated confession, the Fifth Circuit reversed Reynolds' convictions for carrying a gun during four bank robberies. The rule had special force here, where Reynolds' statements were made to the police after his arrest and did not directly admit that he carried the gun during the robberies; rather, he merely said he "always had that gun with him."

Death Penalty

Failure to allege aggravator excused as harmless error.

United States v. Robinson, No. 02-10717 (Apr. 14, 2004): The failure to charge an aggravating factor in the indictment is subject to harmless error review. Here, the error was harmless because the notice of intent to seek the death penalty satisfied the indictment's notice function and the evidence was so strong that no rational grand jury could have failed to find an aggravator. The Court declined to adopt a blanket rule that imposition of the death penalty by a petit jury automatically makes an **Apprendi** error in the indictment harmless, noting that a petit jury is death-qualified but a grand

jury is not. The Court also rejected several challenges to the constitutionality of the Federal Death Penalty Act.

Conviction set aside due to ineffective assistance of counsel.

Soffar v. Dretke, No. 98-20385 (Apr. 21, 2004): Max Soffar was convicted of killing three people during a robbery and sentenced to death. The main evidence was his confessions to the police. But the statements contradicted the surviving victim's description of the crime. A Fifth Circuit panel held that the confessions were taken in violation of Soffar's Fifth Amendment rights but the en banc Court reversed. The case went back to the panel for consideration of Soffar's remaining habeas claims. The panel held that trial counsel was ineffective for failing to interview the surviving victim, who was the only eyewitness but was not called as a prosecution witness at trial. The State argued that counsel had made a strategic decision because calling the victim risked an in-court identification. But the panel said that "an actual failure to investigate cannot be excused by a hypothetical decision not to use its unknown results." The panel also faulted trial counsel for not hiring a ballistics expert when the ballistics evidence was inconsistent with the prosecution's theory of the case. With Soffar's confessions as the principal evidence of guilt, the panel found counsel's error prejudicial and ordered the conviction set aside.

COA denied on defaulted Vienna Convention claim.

Medellin v. Dretke, No. 03-20687 (May 20, 2004): The Fifth Circuit refused to grant COA for Medellin's claim that he was not notified of his right to contact the Mexican consul in violation of the Vienna Convention. The claim was procedurally defaulted under Supreme Court precedent, which bound the Fifth Circuit despite a ruling by International Court of Justice (ICJ) that ordinary procedural default rules to not apply. The Court also adhered to its precedent that the Vienna Convention does not create individually enforceable rights, despite the ICJ's contrary position.

Fourth Amendment

Reasonable suspicion suffices for home search of Louisiana resident on supervised release.

United States v. Keith, No. 03-30723 (June 22, 2004): The Fifth Circuit approved a warrantless non-consensual search based on reasonable suspicion of the home of a Louisiana resident on state supervised release. The defendant tried to distinguish the controlling Supreme Court cases on the ground that such searches were a written condition of probation in **Griffin v. Wisconsin** and permitted by state regulation in **Knights v. United States**. The Fifth Circuit rejected the distinction. Louisiana courts had approved warrantless non-consensual searches of probationers' homes based on reasonable suspicion, so Louisiana probationers, like the defendants in **Griffin** and **Knights**, have diminished expectations of privacy. Furthermore, neither **Knights** nor **Griffin** require a written condition of probation or an explicit regulation permitting such searches.

Grand Jury

9.4 % disparity not enough to show discrimination in picking grand jury foreperson

Mosley v. Dretke, No. 03-40475 (May 17, 2004): Texas courts erred in analyzing Mosley 's claim of discrimination in the selection of a grand jury foreperson under the due process rather than equal protection clause. Applying the correct test, the Fifth Circuit found the 9.4% disparity between the percentage of African-Americans in the adult voting age population and the percentage of African-Americans serving as grand jury foreperson was insufficient to show underrepresentation.

Ineffective Assistance of Counsel

Lawyer performed deficiently by grossly underestimating guideline exposure.

United States v. Grammas, No. 03-50310 (May 21, 2004): The Fifth Circuit found substandard performance by defense counsel who grossly underestimated his client's exposure under the sentencing guidelines. The lawyer failed to discover that the prior conviction making his client's possession of a gun illegal was a crime of violence that increased his base offense level. The Court remanded for a hearing on prejudice, that is, whether the defendant would have pled guilty rather than going to trial had he known his true sentencing exposure, and if so, whether a guilty plea would have resulted in less jail time.

Mail Fraud

Mail fraud conviction reversed because mailings not connected to the fraud.

United States v. Strong, No. 03-10559 (May 18, 2004): Fredric Strong bought cars at auctions using buyers' drafts that he never intended to honor, and resold the cars to innocent purchasers with new titles that he got from the Transportation Department using forged documents. After issuing titles, the Transportation Department mailed the applications to Austin for storage, per routine. The Fifth Circuit held that the mailings were not sufficiently related to the success of the scheme to sustain a mail fraud conviction. There

was no evidence that the mailings lulled customers into a false sense of security; to the contrary, the mailings were more likely to alert an investigator to the fraud than to delay its detection.

Revocation of Supervised Release

Term of imprisonment plus home incarceration may not exceed statutory max.

United States v. Ferguson, No. 03-20365 (May 7, 2004): On revocation of supervised release, the term of imprisonment plus the term of home incarceration may not exceed the statutory maximum sentence. The Fifth Circuit also invalidated special conditions of supervised release barring the defendant from using tobacco or any over-the-counter medication without a prescription. The conditions were not reasonably related to the defendant's conviction for possessing a machine gun.

Sentencing

Federal sentence must run concurrently with state when same underlying conduct.

United States v. Lynch, No. 02-41734 (July 14, 2004): When the police tried to arrest Lynch for a traffic stop, he fled. They caught him when his car ran off the road. By his side was a gun. The flight was prosecuted in state court; the gun went federal. At sentencing on the gun charge, the district court enhanced Lynch's offense level because of the flight. But since the flight was already taken into account by the state case, U.S.S.G. § 5C1.3(b) required that the federal sentence run concurrently. It mattered not that Lynch ultimately was sentenced as an armed career criminal because the applicable offense level under § 4B1.4 was influenced by the offense level for the offense of conviction.

Life sentence vacated because of inconsistent drug quantity evidence

United States v. Scroggins, No. 03-30481 (July 26, 2004): The Fifth Circuit vacated a life sentence for a drug defendant because of the district court's failure to scrutinize inconsistencies between a co-conspirator's trial testimony and a DEA agent's hearsay sentencing testimony about drug quantity. Furthermore, apparently relying on an erroneous PSI addendum, the district court thought the DEA agent had identified the drugs as crack when in actuality, his testimony failed to distinguish between crack and powder.

Bodily injury need not be foreseeable to enhance offense level for robbery.

United States v. Mitchell, No. 03-10644 (Apr. 9, 2004): Corey Mitchell was convicted of robbing a bank. During the robbery, a bank customer suffered a stroke. As a result, the court enhanced Mitchell's sentence under U.S.S.G. § 2B3.1. Mitchell argued that the stroke was not reasonably foreseeable, but the Fifth Circuit held that § 2B3.1 contained no such requirement.

Delivery of fake drugs qualifies as career offender predicate.

United States v. Crittenden, No. 02-41339 (June 1, 2004): A Texas conviction for delivery of a simulated controlled substance qualifies as a predicate controlled substance offense for purposes of a career offender enhancement under U.S.S.G. § 4B1.1.

Threat to arresting officer merits obstruction enhancement.

United States . Chavarria, No. 03-20622 (July 12, 2004): A threat of violence to an arresting officer constitutes obstruction of justice if the threat is made with the specific intent of obstructing or impeding justice in the case for which the arrest made. While the defendant called his threat an outburst resulting from pain, the district court was free to decide otherwise. Judge Dennis dissented, finding no record support for a finding of specific intent.

Aggravated stalking is not a crime of violence.

United States v. Insaulgarat, No. 02-40917 (July 19, 2004): A prior conviction for aggravated stalking is not a crime of violence under U.S.S.G. § 4B1.2. Use of force is not an element of the offense, as stalking is defined as following or harassment, which in turn means conduct causing substantial emotional distress. Nor did the conduct show a risk of physical injury, even though the bill of information alleged an extant domestic violence injunction. The allegation was that an injunction had been issued, not that the defendant actually had engaged in the underlying conduct. Furthermore, the indictment failed to specify what it meant by harassment so the court had to assume the least severe conduct.

Simple Possession, Diversion, and Expungement (18 USC 3607)

If you are lucky enough to negotiate a misdemeanor plea to simple possession of a controlled substance other than crack under Title 21, USC, Section 844, you may be able to take advantage of a little used provision to get a form of judicially mandated diversion. Title 18, USC, Section 3607 allows the sentencing court to place the defendant on a one-year period of probation ***without entering a judgment of conviction***. If the probationer successfully completes the one-year term, "the court shall, without entering a judgment of conviction, ***dismiss*** the proceedings against him and discharge him from probation." If your client is under 21 years of age at the time of the offense, then 3607(c) allows for the complete expungement of the arrest and the charge from all official records!!

Attorneys Volunteering Legal and Notary Services to the Homeless

Jerry, who is mentally ill and one of the hundreds of homeless Vietnam veterans in the New Orleans area, lost his identification. Without identification, Jerry would have to spend the night "on the streets," because he would not be able to stay at a homeless shelter. Without identification, he would remain virtually penniless because he could not get a job, could not receive his social security or veterans benefits, and would even be subject to arrest.

Fortunately for Jerry, before he lost his identification, a volunteer attorney at one of the local homeless centers made a certified copy of his identification and filed it at the center. Instead of trying to locate substantiating documentation to obtain a replacement identification, Jerry picked up the certified copy of his identification and brought it to the Office of Motor Vehicles, where he obtained a replacement ID.

Lawyers and law firms throughout New Orleans, in conjunction with the New Orleans Bar Association, the Pro Bono Project, the St. Thomas More Catholic Lawyers Association, the Federal Bar Association, and the Martinet Society, have joined together to "give back to the community" and are providing pro bono legal consultation and follow-up representation to our brothers and sisters in the homeless community.

Over one hundred lawyers and over ten law firms have organized their efforts, have volunteered their time and talents, and are currently scheduled to provide services at the Immaculate Conception Community Center on Baronne Street, the St. Joseph's Community Center on Tulane Avenue, the New Orleans Mission, and the Brantley House Center in the 200 block of Magazine Street every Monday and Wednesday morning through November. The program started in May, and volunteer attorneys have already counselled over 200 people.

But more lawyers are needed. Each lawyer serves for one hour from 7:45 am. - 8:45 am., before the court day begins. Most of the clients' problems can be dealt with on the spot. There will be occasions, of course, when the attorney will provide follow-up pro bono legal representation for the client. There are also attorneys available to accept legal referrals on a pro bono basis on such subjects as Veterans benefits, Social Security law, as well as criminal defense issues and representation, if the need arises. The volunteer attorney also has resource materials if the client needs to be referred to a social service agency.

If you are interested in providing consultation or notary services at the homeless centers or serving as referral counsel in a particular area of the law, please either call or e-mail Judge Jay C. Zainey, and let him know of your interest. Judge Zainey's phone number is 589-7590 and his e-mail address is jay_zainey@laed.uscourts.gov.

Habitat for Humanity

The Bench and Bar Project will build a second Habitat home in partnership with a hard working, deserving low-income family. Support is sought in two equally important aspects: funding and volunteers. Approximately $55,000 is needed to provide the zero interest permanent financing to our partner family. Over half of the money needed has already been raised. The house will be built on Fridays and Saturdays over six weekends. Please consider joining other members of the bar, the Heavy Hitters, who have contributed $100. Visit www.habitat-nola.org/benchbar.htm. E-mail Ashley to get "on the list." ashley@habitat-nola.org 861-2077

Last Spring, approximately 40 federal and state court judges joined with numerous attorneys, court personnel and members of the legal community to build a house from ground up. A total of 30 to 35 workers will be needed each day. Even if you are not able to contribute, you are encouraged to sign up for one of the work details. It is a lot of fun and you get to stand back and admire your handiwork. Skilled labor is not a requirement.

Please contact Geneva Marney of New Orleans Area Habitat for Humanity at 504-861-2077or by e-mail at genevam@habitat-nola.org for more details.

Message Board

Chapter 19

Recently, Chapter 19 of the "Defending a Federal Criminal Case" was sent to you via e-mail for review. Chapter 19 focuses on the timely and proper preparation of CJA vouchers. If you did not receive a copy please contact Virginia Schlueter at Virginia_Schlueter@fd.org.

Governmental Fares

CJA Panel Attorneys traveling on government business or who have experts or witnesses who must travel are entitled to government fares for hotels and flights. Please contact Vicki Dye in the Clerk of Court's Office at 504-589-7650 to make the necessary arrangements and secure the necessary authorization.

Service of Subpoenas

As you know, the cost of service of subpoenas is not a reimbursable expense. The U.S. Marshals are responsible for service of all subpoenas at no cost in any CJA case and will do so if timely submitted. These requests for service can be filed under seal.

Copy Charges

CJA panel lawyers seeking to obtain copies from the clerk's office should simply go to the docket clerk for the section in which the case is docketed and request copies. The copies will be provided at no cost pursuant to the CJA appointment.

Changes in Contact Information

Please advise of any changes in your physical/mailing addresses, telephone/fax numbers, or e-mail addresses. Changes should be reported to Heather Crain or Barbara Daigle at 504-589-7930.

Office of the Federal Public Defender
Eastern District of Louisiana
500 Poydras Street, Suite 318
New Orleans, LA 70130