

# THE DEFENDER

Newsletter for CJA Panel Attorneys

Vol. 5 No. 2

April / May 1999

## Northern Migration Issue

### Last Mobile Printing

I have been the Federal Defender for Southern Alabama since I opened this office in January, 1995. Recently, I was chosen by the Second Circuit to be the first Federal Public Defender for the districts of Northern New York and Vermont. I am taking *The Defender* with me. It will be published from my new office in Albany, New York.

Internet subscribers will only have a brief interruption of service. *Reversible Errors* will still be collected and compiled in an end-of-year issue. This year's edition will have five years' worth of cases. Anyone currently receiving this publication by mail should send me an Internet address.

I will briefly explain my

change of geography. I was born and raised on a small island on the eastern seaboard, commonly known as Manhattan. I attended NYC public schools. I graduated from college in Maine. I moved to Houston and went to law school there. In Houston, I was a criminal defense lawyer for eight years before becoming an Assistant Federal Defender in Beaumont, Texas. After almost two years, I left to take my current job.

My parents now live in Maine. I am moving my Houston-born wife and children to the cold north so my parents will see their grandchildren more than once or twice a year.

I will miss Mobile. Everyone has been very nice to me here. It is a pleasant place to live and work.

I must have acclimated well. After 4 ½ years, Judge Brevard Hand, upon learning I was originally from the north, exclaimed, "You're a Yankee?!"

attention. I will send you an application and job description. Closing date for completed applications is May 14, 1999.

### NNY / VT Jobs

Until I am sworn in as FPD for Northern New York and Vermont (mid July), I cannot officially advertise for positions. However, I am accepting resumes from prospective candidates. I may not be able to interview or respond until August.

I will be opening three offices: Syracuse and Albany in Northern New York, and Burlington in Vermont. I need three AFPDs in Syracuse, two in Albany, and two in Burlington. I also need an administrative officer, legal secretaries, investigators, and research and writing specialists. Mail resumes to this address through the end of June. A permanent Albany address will be posted later.

### CONTENTS

Last Mobile Printing . . . . .	1
Executive Director Position . . . . .	1
NNY / VT Jobs . . . . .	1
CJA Pay . . . . .	1
Reversible Errors . . . . .	1

### Executive Director Position

An advertisement was posted in the April 19, 1999 issue of *The National Law Journal*. Those interested in the Executive Director's job should write or fax a request to my

### CJA Pay

There is strong support within the criminal justice community to improve CJA hourly rates. Judges, defense lawyers and prosecutors have all passed resolutions supporting an increase in CJA rates.

In this district, CJA lawyers make \$65 for courtroom work and \$45 for out of court work. There is proposed legislation to increase both rates to \$75 per hour. Please do what you can to educate others about the need for this funding.

## Reversible Errors

United States v. Brierton, 165 F.3d 1133 (7th Cir. 1999) (Restitution can only be based on loss from charged offense).

United States v. Vezina, 165 F.3d 176 (2nd Cir. 1999) (Insufficient evidence of criminal contempt of a TRO).

United States v. McDonald, 165 F.3d 1032 (6th Cir. 1999) (Felon who stole firearm was not using it in connection with another felony).

United States v. Clavijo, 165 F.3d 1341 (11th Cir. 1999) (Unforeseen possession of firearm by coconspirator does not bar safety valve relief).

United States v. Mercer, 165 F.3d 1331 (11th Cir. 1999) (Insufficient evidence of a drug conspiracy).

United States v. Jean-Baptiste, 166 F.3d 102 (2nd Cir. 1999) (Admission of prior bad act was plain error absent evidence it actually occurred).

United States v. Iasiello, 166 F.3d 212 (3rd Cir. 1999) (Indigent defendant has right to appointed counsel at hearing of §2255 motion).

United States v. Merric, 166 F.3d 406 (1st Cir. 1999) (Court could not delegate scheduling of installment payments to probation officer's

discretion).

United States v. Proctor, 166 F.3d 396 (1st Cir. 1999) (Ambiguous request for counsel tainted previous waiver).

United States v. Dorsey, 166 F.3d 558 (3rd Cir. 1999) (A court has authority to reduce a sentence in order to make it effectively concurrent to a previously imposed state sentence).

United States v. Richardson, 166 F.3d 1360 (11th Cir. 1999) (Prior conviction under Armed Career Criminal Act must occur before felon in possession violation).

United States v. Edwards, 166 F.3d 1362 (11th Cir. 1999) (Insufficient evidence of drug possession).

United States v. Hilton, 167 F.3d 61 (1st Cir. 1999) (Whether defendant believed pornographic actors were over 18 years old is a jury question).

United States v. Izydore, 167 F.3d 213 (5th Cir. 1999) (No evidence that phone calls crossed state lines for wire fraud interstate nexus).

United States v. Scrivener, 167 F.3d 525 (9th Cir. 1999) (Forcing defendant to choose between admitting possession or forfeiting weapon violated right against self incrimination).

United States v. Gilliam, 167 F.3d 628 (D.C. 1999) (Failed to prove prior conviction in felon in possession).

United States v. Jacobs, 167 F.3d 792 (3rd Cir. 1999) (Court did not adequately explain upward departure for psychological injury).

United States v. Zvi, 168 F.3d 49 (2nd Cir. 1999) (Charging domestic and

international money laundering based on the same transactions was multiplicitous).

United States v. Mueller, 168 F.3d 186 (5th Cir. 1999) (Failure to disclose addendum to presentence report).

United States v. Allen, 168 F.3d 293 (6th Cir. 1999) (Affidavit lacked probable cause and good faith did not save warrant).

United States v. Granados, 168 F.3d 342 (8th Cir. 1999) (Counsel was ineffective for unfamiliarity with guidelines and failure to challenge breach of plea agreement).

United States v. Harfst, 168 F.3d 398 (10th Cir. 1999) (Failure to argue for downward role adjustment can be ineffective assistance of counsel).

United States v. Scheer, 168 F.3d 445 (11th Cir. 1999) (Government failed to disclose it had intimidated key prosecution witness).

United States v. Ellis, 168 F.3d 558 (1st Cir. 1999) (Defendant who went to trial was still potentially eligible for acceptance of responsibility).

United States v. Prawl, 168 F.3d 622 (2nd Cir. 1999) (Court refused to instruct jury not to consider codefendants guilty plea).

United States v. Lawlor, 168 F.3d 633 (2nd Cir. 1999) (Government breached plea agreement that stipulated to a specific offense level).

United States v. Golding, 168 F.3d 700 (4th Cir. 1999) (Prosecutor threatened defense witness with prosecution if she testified).

United States v. Wilson,

168 F.3d 916 (6th Cir. 1999)  
(Burglary of a building is not a career offender predicate unless it involves physical force, or its threat or attempt).

United States v. Velez,  
168 F.3d 1137 (9th Cir. 1999)  
(Quantity of immigration-related false statements did not justify upward departure).

United States v. Jones,  
168 F.3d 1217 (10th Cir. 1999)  
(If the court allows an oral objection at sentencing then a finding on that objection must be made).

Alexander Bunin  
Executive Director  
Southern District of Alabama  
Federal Defenders Organization  
2 South Water Street, 2nd Floor  
Mobile, AL 36602  
(334) 433-0910 / 433-0686 FAX  
abunin500@aol.com  
or  
pubdef@mobileinterlink.net  
(until 6/30/99).