



for *The Defense*

▶ ◀ James J. Haas, Maricopa County Public Defender ▶ ◀

Drug Sales Demand *Corpus Delicti* Deliverance

INSIDE THIS ISSUE:

Articles:

Drug Sales Demand <i>Corpus Delicti</i> Deliverance	1
The S-Word and Juries	1
Proposition 200 and Drug Court	10

Regular Columns:

Arizona Advance Reports	12
Bulletin Board	5
Calendar of Jury and Bench Trials	14

By Zachary Cain
Defender Attorney Group D

When I first considered *corpus delicti* in the context of sales cases, I was certain Arizona case law disposed of the issue long ago. It seemed the issue must have presented itself repeatedly for practicing criminal defense lawyers. But after some quick inquiries with peers and research online, it was clear that the issue was still unsettled. Plainly put, the question of whether mere possession of drugs constitutes *corpus delicti* for the crimes of "possession of drugs for sale" or "transportation of drugs for sale" is still unanswered. Put another way, does the mere possession of a dime rock of crack

cocaine constitute independent corroborative evidence that the possessor intended to sell the rock?

This issue arises in very practical settings. A client is arrested pursuant to a valid warrant. Incident to the arrest, the officer finds the client possessing a very small quantity of crack as well as a crack pipe. The crack is not packaged in any way. The client has only a dollar in change in his pocket. Neither the arresting officer nor any other bystanders witness the client engage in any gestures or actions that would indicate an exchange or drug sale. The client was however riding a bicycle. Alas, once arrested, the client bares his

(Continued on page 2)

The S-Word and Juries

By Christopher Johns
Defender Attorney
Appellate Division

In the movie *Twelve Angry Men* one conscientious juror, portrayed by acting great Henry Fonda, is resolute in preventing a rushed, perhaps racist verdict, by eleven other jurors. Whether the iconic lone juror is fact or fantasy, trial lawyers know that a single juror can make a

difference in a trial's outcome.

Flashback to 1995, and the implementation of multiple jury reforms adopted by the Arizona Supreme Court contained in *Jurors: The Power of 12* (Part I, released November 1994). According to the Supreme Court's press release, the "changes stemm[ed] from an ongoing national debate over whether the nation's centuries-old jury system need[ed]

(Continued on page 6)

for The Defense

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soul to the officer thinking he will cough up some information on a local dealer in exchange for his freedom. The client tells the officer he delivers the crack for a named dealer, whom the officer knows. When the client appears for his preliminary hearing, he is shocked to see that the State failed to charge him with possession of narcotic drugs, a class 4 felony and Prop 200 offense. Instead, the State charges him with possession of narcotic drugs for sale and transportation of narcotic drugs for sale, both class 2 felonies. The State operated under the assumption that the defendant's "confession" would be enough to prove the "intent to sell."

The *Corpus Delicti* Doctrine

In Arizona, the "*corpus delicti*" doctrine requires that the State produce independent evidence that a crime has been committed before the accused's statements may be used against him to prove the crime occurred. See *State v. Hernandez*, 83 Ariz. 279, 281, 320 P.2d 467 (1958). In *Hernandez*, the Arizona Supreme Court stated that the correct rule to establish *corpus delicti* requires (1) some proof of a certain result, and (2) some proof that someone is criminally responsible therefor. *Id.* In other words, the "accused may not be convicted on his own uncorroborated confession." *State v. Gerlaugh*, 134 Ariz. 164, 170, 654 P.2d 800, 806 (1982). Rather, the State must have *independent evidence* which gives rise to a "reasonable inference" that a crime has occurred and the defendant may be responsible. See *State v. Janise*, 116 Ariz. 557, 559, 570 P.2d 499 (1977) (emphasis added). The Arizona Supreme Court states the purpose of the *corpus delicti* rule is to "prevent errors in convictions based on untrue confessions alone." *State v. Gerlaugh*, 134 Ariz. at 170, 654 P.2d at 806.

In the hypothetical posed above, no indicia of sale existed. Nothing about the number of rocks or size of the rocks indicated sale. The rocks were not packaged in any way. Nothing about the amount of money found on the client indicated sale. The client did not have a cell phone, pager or ledger. In addition, the arresting officers did not see the client interact with any other people in a manner that would indicate a possible drug sale or exchange. Logic dictates that there is no evidence of drug sale here.

Unfortunately, Arizona case law fails to specifically address this factual situation. No Arizona case defines

what constitutes *corpus delicti* in possession for sale or transport for sale cases. When Arizona case law is silent on an issue, the courts often look to 9th Circuit neighbors to see how they have ruled. The Washington State Court of Appeals addressed this particular *corpus delicti* issue.

In *Washington v. Cobelli*, 788 P.2d 1081 (1989), the Court held that the mere possession of marijuana does not raise the inference of the intent to deliver. Cobelli was convicted of possession of marijuana with intent to deliver. In *Cobelli*, the police officers observed the defendant engage in a series of brief conversations with small clusters of people. They saw the defendant make contact, talk briefly, and then walk away. The officers could see nothing more than conversation. No exchanges or other suspicious gestures were observed. The officers also testified that they were drawn to the defendant because they knew it to be a high drug area. Upon arrest and search of the defendant, the officers found several baggies containing a total of 1.4 grams of marijuana. The defendant then admitted selling two baggies of marijuana for ten dollars each. See *Cobelli* at 1082. The Washington Court noted that the record lacked the type of circumstantial evidence often found to raise the inference of the intent to deliver such as the observation of an exchange or possession of significant amounts of drugs or money. They held that these facts were insufficient to constitute the *corpus delicti* and noted that the circumstances observed by the officers were no more indicative of intent to deliver than they were of mere possession. The reasoning in *Cobelli* is consistent with Arizona *corpus* jurisprudence and should be followed by Arizona courts.

Indicia of "Sale"

Even though Arizona case law fails to address the *corpus delicti* issue in "drug sale" cases, Arizona case law does identify certain factors or "indicia" that are sufficient to sustain convictions of possession of drugs for sale. In particular, the Court looks to the possession of large quantities of drugs as well as packaging which is consistent with sale. See *State v. Tarango*, 182 Ariz. 246, 895 P.2d 1009 (Ariz. App. 1994) (holding that a large quantity of narcotic drugs, the presence of packaging materials, and the fact the defendant sold to undercover police officers on two prior occasions was sufficient evidence to sustain conviction of possession of narcotic drugs for sale), *State v. Olson*, 134 Ariz.

114, 654 P.2d 48 (Ariz. App. 1982) (finding that the presence of 13.7 pounds of marijuana and the manner in which it was packaged was sufficient evidence to sustain conviction of possession of marijuana for sale), *State v. Harrison*, 111 Ariz. 508, 533 P.2d 1143 (1975) (holding the possession of five hundred pounds of marijuana as well as the nature of the packaging was sufficient to find intent to sell). Other indicia of sale include large sums of cash, scales, written ledgers, beepers and cell phones.

The State's Argument

In our hypothetical, the State will argue that "mere possession" of the drugs is evidence that "a crime" under Title 13 has been committed. More specifically, the State believes it should not have the burden of proving *corpus* for each element of an offense. The State will cite *State v. Daugherty*, 173 Ariz. 548, 845 P.2d 474 (Ariz. App. 1992) for the proposition that they need not establish each element of the crime once the *corpus delicti* is defined. Their reliance on *Daugherty* is misplaced because *Daugherty* addresses a very unique set of circumstances. In *Daugherty*, the Arizona Court of Appeals addresses the situation where the defendant's statements themselves constitute the crime. In other words, *Daugherty* is unique because the statements in and of themselves are enough to support a conviction. Such offenses have no tangible *corpus* (i.e. pandering, solicitation crimes and conspiracy crimes). Specifically, in *Daugherty*, the defendant was charged with pandering, which made it criminal for a person to knowingly encourage another person to lead a life of prostitution. In such a case, the statements are the whole crime. The Arizona Court of Appeals held that where the statements themselves are the *corpus delicti* of the defined crime, the State need not produce evidence of the crime independent of the proven statement.

Possession of drugs for sale and transportation for sale are both offenses where statements alone do not constitute the crime. Both offenses have tangible *corpus delicti* as illustrated by the various indicia of sale discussed above. Accordingly, the unique circumstances of *Daugherty* do not apply and the State's reliance on *Daugherty* would be misplaced.

The Opinion that Does Not Hurt

The State will also cite *State v. Villa*, 179 Ariz. 486, 880 P.2d 706 (Ariz.App. 1994) to further support its argument that it need not prove *corpus delicti* for every element of a crime. In *State v. Villa*, the Court of Appeals states that in an A.R.S. §28-1383(A)(1) aggravated driving under the influence (DUI) charge, the underlying offense is the DUI. The court goes on to say that the State need not prove *corpus delicti* for the suspended license element because it is not the underlying offense. The State analogizes this case to drug sale cases by saying the suspended license element is merely a punishment enhancer as is the "intent to sell" element in a drug possession case. Such an analogy is misplaced.

At first blush, *Villa* appears to bolster the State's position that mere possession of drugs constitutes *corpus* in possession for sale and transport for sale cases. However, *Villa* is distinguishable from drug sale cases, especially if you follow the "underlying act" rationale employed by the court. In either misdemeanor DUI or aggravated (felony) DUI, the offense is still DUI. The underlying act of the accused is the same. The accused drank alcohol to the point of impairment, then proceeded to drive. In either case, the problem is the accused's *personal* consumption of alcohol and the subsequent danger imposed on the community when that person drives a motor vehicle. Drug sale cases differ markedly from the case in *Villa*. The "possession" is not the underlying offense in "possession for sale" and "transport for sale" offenses.

Arizona law identifies the offense of possession and use of narcotic drugs. See A.R.S. 13-3408 (A)(1). This offense deals specifically with the act of possessing narcotic drugs for *personal use*. The underlying offense is the personal use of narcotic drugs. In contrast, Arizona law recognizes the offense of possession of narcotic drugs for sale. See A.R.S. 13-3408 (A)(2). Here, the distinction is that the underlying act is the *selling* of drugs, not the personal use of drugs. Here, the seller receives something of value in exchange for the drugs. As a society, we are not concerned with the mere existence of the drugs, but rather we are concerned with the specific uses of the drugs – in particular, (1) personal use or (2) selling/dealing (and profiting) so others can personally use. The State incorrectly believes that because the offense is called "Possession of Narcotic Drugs for Sale", that the underlying offense is the same as "Possession of Narcotic Drugs." This is

just a word game. The underlying offenses are different. One offense targets personal use. The other offense targets the *business* of selling and furnishing drugs to enable others to personally use.

The Constitutional Argument

Though the case law I have cited does not specifically "Constitutionalize" the *corpus delicti* doctrine, Due Process under the Arizona and U.S. Constitutions seem to mandate such a doctrine. Due process under the Fifth and Fourteenth Amendments of the United States Constitution and Article II Section 4 of the Arizona Constitution dictates that the State provide corroborative evidence independent of the defendant's unreliable confession. Due process should require that the State provide the Court with specific, articulable, and corroborative evidence of the specific offense with which the defendant is charged. The charges of possession of drugs for sale and transportation of drugs for sale are both separate offenses from mere possession of narcotic drugs. Accordingly, they are treated as more serious offenses. Due Process under the U.S. Constitution and the Arizona Constitution should require the State to prove *corpus delicti* for the specific offenses for which the accused is charged.

Conclusion

Corpus delicti requires independent corroborative evidence that raises a reasonable inference that a crime has occurred. Nothing about mere possession of drugs raises such an inference in the absence of other indicia of "sale." Arizona case law readily identifies such indicia - i.e. quantity, weight, packaging, large sums of currency, witnessed exchanges, ledgers, etc. A person can possess an illegal substance without a "sale" occurring.

In the absence of an express rule of what constitutes *corpus delicti* in drug sale and transport for sale cases, we should continue to argue that "mere possession" fails to constitute independent corroborative evidence of "sale." *State v. Cobelli* lends direct support for this proposition. In opposition to *Cobelli*, the State may continue to cite to *State v. Villa*. However, this case can be distinguished, especially if you follow its own "underlying act" rationale.

At least one trial court has endorsed the argument that "mere possession" does not constitute *corpus* in a "possession for sale" case. As a result, the judge suppressed the defendant's (unreliable) statements. I think it is a strong argument and should continue to be pursued.

As far as I can tell, the *corpus delicti* doctrine continues to breathe life into our criminal justice system. This piece simply summarizes the issues I have encountered while exploring this avenue. If others have explored this particular *corpus delicti* issue, I welcome your advice, experience and comments as I continue to work through this issue. Special thanks to Dan Lowrance, Jim Knapp and Ken Huls, all of whom have assisted me in understanding this issue.



~ From Jeanne Hyler ~

I would like to acknowledge with grateful appreciation your kind expression of sympathy. Everyone has my thanks for keeping me and my family in your thoughts and prayers during the difficult time following the loss of my son, Zachary. You also have my sincere thanks for your very generous contributions.

BULLETIN BOARD

New Attorneys

Jason M. Leach joined the Office as a Defender Attorney, effective April 16, 2001. Mr. Leach is a 1998 graduate of Franklin Pierce Law School in Concord, New Hampshire.

Justin D. Blair has accepted a Defender Attorney position with the Office of the Public Defender, effective June 11, 2001. Mr. Blair is a May 2000 graduate of Ohio Northern University School of Law.

Frances J. Robinson, will join the Office as a Defender Attorney, effective June 11, 2001. Ms. Robinson received her Juris Doctor in May of 1995 from the University of Arizona College of Law.

Attorney Moves/Changes

Evan Romberg has been promoted to Defender Attorney for the Office of the Public Defender. Mr. Romberg has been the Law Clerk for Trial Group E.

Timothy Agan resigned his position as Defender Attorney with the Office, effective April 27, 2001, and will be transferring to the Office of the Legal Advocate. Mr. Agan began his Public Defender career in 1990. He was appointed Lead Attorney for Trial Group B in July of 1998.

Michael A. Rossi resigned his Defender Attorney position with the Office, effective April 27, 2001, and will be entering private practice. Mr. Rossi has been with this law office since August 1998.

Janis Pelletier resigned her Defender Attorney position with the Office, effective April 27, 2001, to enter private practice. Ms. Pelletier began her Public Defender career as a Law Clerk in 1999 and was promoted to Defender Attorney that same year.

New Support Staff

Rodolfo Reyes joined the Office as a Client Services

Assistant in Initial Services, effective April 2, 2001.

Maria B. Vigil joined the Office as a Client Services Assistant in Initial Services, effective April 2, 2001.

Lee Burnett is a new Legal Secretary Floater for the Office of the Public Defender, effective April 9, 2001.

Roberta Rodriguez will return to the Office of the Public Defender as a part-time Legal Secretary Floater, effective April 9, 2001.

Mary J. Dunham began her position as a Records Processor with the Office of the Public Defender, effective April 16, 2001.

Leanne Valentine joined the Office as the new Legal Assistant assigned to Group B, effective April 17, 2001.

Anne Baugh joined the Office as the new Legal Assistant assigned to Group D, effective April 17, 2001.

Maryln J. "Joy" Cobb has accepted a position as a Legal Secretary for the Office of the Public Defender, effective April 23, 2001. Joy will be assigned to Trial Group A.

Support Staff Moves/Changes

Rebecca Schulte has resigned her position as Legal Secretary for Trial Group D, effective April 19, 2001.

Heather Addis has resigned her position as a Legal Secretary for Trial Group D effective April 20, 2001

Ramona Olguin has resigned her position as Legal Secretary for Trial Group A, effective April 27, 2001.

Michelle M. Molina has resigned her position as Legal Assistant for Trial Group A, effective May 11, 2001.

Karen E. Cruz has resigned her Trial Group C Client Services Coordinator position with the Office, effective April 27, 2001.

The S-Word and Juries

Continued from page 1

updating in order to continue to play an effective role in civil and criminal trials.” See Supreme Court of Arizona, No. R-94-0031, (filed Oct. 24, 1995). While *The Power of 12* recommended over 55 changes to the jury system, only a few were subject to extended dialogue—juror questions and ongoing jury deliberations during trial before the case is submitted to the jury were the focus of heated debate.

One of the less controversial recommendations, however, the S-word—substitution—deserved more attention. As a result of *The Power of 12*, the criminal rules were amended to explicitly provide that, if an already deliberating juror became unable to serve, an alternate could be substituted to join the jury, as long as deliberations begin “anew.” In other words, your client’s jury, under the new rules, could be “reconstituted” if a deliberating juror was excused because of “inability or disqualification” to serve. The amendment seems innocuous and practical enough on its face, however, for the unwary and unprepared trial counsel, juror substitution presents an unfamiliar challenge.

Juror substitution’s potential to deprive the accused of a fair trial has been underestimated. On the other hand, properly handled, a substituted juror may be the best result for the client. From an administrative perspective, substitution is pragmatic because it is designed to conserve limited judicial resources. But to make it more than a crapshoot for the client, counsel must employ strategy and protect the record for appeal. The core issue is what minimum procedural safeguards should be used when a juror is substituted to prevent prejudice to the accused.

Rule 18.5(h) creates a procedure for the trial court to reconstitute the jury. Defense counsel must play a role in ensuring the process is fair and that the trial court adequately instructs the jury on beginning deliberations anew.

As one of its goals, the 1995 jury reforms were calculated to reduce mistrials. Nationally, some

commentators argue that mistrials are on the rise. In reaction, some jurisdictions have considered non-unanimous juries. A less drastic alternative is to give the initially selected jury the maximum opportunity to reach a verdict by recalling an alternate. To accomplish this, the trial court instructs alternate jurors, once a jury is set to deliberate, to continue to follow the admonition until the jury reaches a verdict, even though the individual alternate is temporarily released to go home or to work. As Rule 18.5(h) puts it, “upon being . . . excused, [the alternate] shall be instructed to continue to observe the admonition until informed that a verdict has been returned. . . .” If a deliberating juror becomes sick, fails to appear, or for some other reason can no longer deliberate, the trial court may choose from the “alternates in the order previously designated . . . to join deliberations.” Further, Rule 18.5(h) provides that “[I]f an alternate joins the deliberations, the jury shall be instructed to “begin deliberations anew.”

It has been established, in a significant number of jurisdictions, that the substitution of an alternate juror for an original juror is constitutionally permissible after deliberations have begun when there is good cause, and the jury has been adequately instructed to begin deliberations anew. See 75B Am.Jur.2d, Trial § 1699. Part of the logical underpinnings for substitution hinge on the principle that there is no right to the original jurors—or a particular jury. A few states, for example, New York, impose an additional requirement, usually of state constitutional or statutory origin, that the client must consent in writing to any substitution. That requirement does not exist in Arizona. While client approval (usually in the form of whether the accused is even present for the substitution) is an issue, the larger question is one of procedure.

Unfortunately, Rule 18.5 fails to provide any comment on the mechanics of juror substitution. All that exists to guide the trial court is the bare bones rule. Other than “begin deliberations anew,” how, when, and to what extent the court determines that the admonition has been followed by the alternate juror or jurors, and what constitutes sufficient instruction to “begin deliberations anew,” is an *ad lib* affair. And, as always, with a procedure open to discretionary interpretation, the results can sometimes read, at least in the transcripts on appeal, like the raw material for a George Carlin routine, instead of a proceeding befitting a court of law.

What exactly is a “reconstituted” jury? Can a jury really be reconstituted like orange juice?

Although formalized juror substitution became part of the process in 1995, the issue was not addressed on appeal until approximately three years later in *State v. Guytan*, 192 Ariz. 514, 968 P.2d 587 (App. Div. 1 1998)(*Review denied*, Dec. 7, 1998). *Guytan* was not an ideal case to establish a bright line rule because of grisly facts, but, as the Court of Appeals wrote, “no [previous] Arizona opinion addressed the methodology of substituting a juror after deliberations had begun.” The *Guytan* court articulated that the fundamental issue raised in a juror substitution is the efficacy of cautionary instructions to safeguard against prejudice. What exactly the court envisioned as adequate or sufficiently deficient, however, was cloudy. No precise test, standard, or presumption was prescribed.

Imagine, for example, the substitute juror who is sent in to replace one of the jurors who, for one reason or another, can no longer deliberate in *Twelve Angry Men*. When an alternate juror is substituted into a group of jurors who have already started the deliberative process, some jurors will already have formed opinions regarding your client’s guilt or innocence. The substituted juror may not have a fair opportunity to express her views and to try to persuade others. The new juror will also be unaware of the dynamics that may have already formed among the other jurors.

Even more problematic is that the substituted juror will not have heard what was said by the juror who is replaced. It is also possible that the juror who calls in sick, for example, feigned illness to get out of the pressure of making a decision in heated deliberations. In other words, it should be unambiguously plain that the deliberations of an unchanging group of twelve are not equivalent to the deliberations of a group of eleven who are later joined, in the middle of their deliberations, by a “new” twelfth person. Then too, what did the alternate do between the time she was released and called back to duty? Did she read the newspaper or discuss the case?

Although a juror was substituted in *Guytan*, under what can only be described as bizarre circumstances, the Court of Appeals affirmed *Guytan*’s first-degree murder conviction. On the second day of deliberations, one of the twelve jurors simply did not appear. The trial court

called one of two alternate jurors at home and asked her to come back to court to rejoin the jury. Defense counsel did not ask to *voir dire* the juror and waived the client’s presence for the proceedings. The client, in fact, may never have known that a juror had been substituted. The trial court actually informed the remaining jurors *ex parte* about the substitution and then relayed what it had done back to counsel.

On appeal, the Court held, while chiding the lawyers for waiving the client’s presence and the Court for conversing with the jury *ex parte*, that the trial court gave enough information to the jury to constitute the functional equivalent of the instruction required by the rule.

Since *Guytan*, no published opinion has been decided directly addressing the issue. But see *State v. Martinez*, 2000 WL 730608 (App. Div. 1 2000)(the court did not hold deliberations had ended, hence substitution per Rule 18.5(h) was permissible). A recent memorandum decision, however, epitomizes the sticky issues inherent in juror substitution and the paucity of appellate analysis on the issue.

In *State v. Michael Rocha* (not for publication), the client was charged with aggravated assault. On the second day of deliberations, a juror went to the law library to copy some of the jury instructions he heard the court recite the day before. On learning of the juror’s actions, and after a short hearing, the trial court replaced the juror with an alternate who was reached by phone at home.

The judge then instructed the jury that the alternate would join them and simply told the eleven remaining jurors that the she would become a member of the jury “and what I’d ask you to do is to resume deliberations with [the alternate] as the juror and start as if you were starting from square one and include [the alternate] in your deliberations.” The actual “reconstituted” jury was never addressed by the court. Although precisely when the substituted juror arrived and rejoined the jury was unknown, about two hours later, defense asked the court to determine whether the substituted juror had followed the admonition. The trial court refused.

The Court of Appeals affirmed. It explained that while it is “good practice,” the law does not require the court

to see if the alternate observed the admonition. Plus, the Court observed that counsel's late request, in essence, constituted waiver. Further, the court held that the trial court's use of the term "square one," challenged as insufficient on appeal, was clear enough to explain to jurors the legal nuances of how to proceed.

One juror has the potential to be a savior or deadly poison. No one knows, unless the question is posed, whether the juror talked with relatives, read a newspaper account of the proceedings, or spread her whole experience over a cyberspace chat room soliciting opinions on the client's guilt or innocence.

Although Division One disagrees, an instruction like "start from square one," seems painfully inadequate. The client's rights have not been protected. Given the pressure exerted upon jurors to reach a verdict during deliberations, especially lengthy ones, the decision ignores the hostility and rancor that can accompany reaching a verdict. Is it realistic to expect that the court's short explanation was adequate to allow the substitute juror to hold her own in charged deliberations?

Moreover, a logical argument can also be made, despite the trend to permit substitution, that even when a jury is properly instructed by the trial court, it is uncertain, and unsupported by empirical research, that the jury can **truly** go back to "square one," discussing the case as though no prior deliberations ever occurred. *See ABA, Criminal Justice Trial by Jury Standards*, § 15...-2.9 commentary at 176 (3d ed. 1996); *see also, The Propriety Under State Statute or Court Rule of Substituting State Trial Jurors with Alternate After Case has been Submitted to the Jury*, 88 A.L.R. 4th 711.

Rocha's case was close. It relied solely on a shaky, suggestive, and an unchallenged one-on-one identification. A timely request on either jury issue may have entitled the client to a new trial on appeal.

Your client is entitled to an unbiased jury that renders a verdict only on the basis of evidence presented in court, not extraneous material such as an alternate who has not followed the admonition may inject into deliberations.

Other jurisdictions have addressed the issue. Probably the most useful opinion was decided by the Colorado Supreme Court in *People v. Burnett*, 775 P.2d 583

(Colo. 1989). It holds that substituting a juror, after deliberations start, creates a rebuttable presumption of prejudice to the accused. That presumption is only overcome if the trial court takes extraordinary precautions to diminish prejudice. The precautions may include ensuring the substituted juror has not been tainted (did they follow the admonition?), asking the remaining jurors whether they can disregard their previous deliberations, and clearly explaining that the reconstituted jury must begin deliberations anew.

New Jersey has specifically crafted an instruction for "Alternate Juror Empanelled After Deliberations Have Begun," that is the type of instruction trial counsel should request. It provides that:

Alternate Juror Empanelled After Deliberations Have Begun

As you know, Juror #__ has been excused from the jury. An alternate juror has been appointed to take his/her place. As of this moment, as a new jury, you are to start your deliberations over again. The parties have a right to a verdict reached by # __ jurors who have had full opportunity to participate in deliberations from start to finish. The alternate juror is now entering the jury room with no knowledge of any deliberations that may have already have taken place. The remaining jurors must disregard whatever may have occurred and anything which may have been said in the jury room since you entered that room after listening to my charge. You are to give no weight to any opinion which Juror # (dismissed juror) may have previously expressed in the jury room before he/she was excused. Together, as a new jury, you shall consider the evidence all over again as you conduct full and complete deliberations, until you have reached your verdict.

See State v. Corsaro, 107 N.J. 339 (1987) and *State v. Czachor*, 82 N.J. 392 (1980).

The following are additional considerations for trial counsel:

- If the trial court contacts a juror for substitution, make a record on when and how the court selected the alternate juror, if there was more than one, and what was said.
- Immediately request to *voir dire* the alternate juror or to have the court examine the juror to be

substituted as to whether she followed the admonition.

- Ask the court to *voir dire* the jury to make sure that they can set aside their prior deliberations. Some jurors may honestly be unable to do so.
- Make sure your client is there for all of the juror substitution proceedings. Do not waive her presence, and object if the court proceeds without your client. Your client's right to be present is protected by both the Sixth Amendment to the federal constitution and by Art. II, § 24 of the Arizona Constitution. Moreover, Rule 19.2 Ariz. R. Crim. P, provides that your client "has the right to be present at every stage of the trial, including the impaneling of the jury, *the giving of additional instructions pursuant to Rule 22*, and the return of the verdict." (Italics added). When jurors are told to begin deliberations anew, the trial court is instructing them.
- Consider the impact of already settled juror questions during deliberations. One of the previous questions may have created reasonable doubt in your substitute juror's mind. The other jurors know what questions were asked, but your alternate may not. Ask the trial court to address the issue with a remedial instruction or additional argument.
- Request the New Jersey instruction or craft something similar to it. Make the court rule on your instruction. If the court refuses to give your instruction, argue that the trial court has insufficiently offset the prejudice to your client of a mid-deliberation juror substitution.

Be aware there are some other alternatives to consider. For example, A.R.S. § 21-102(E) provides that the parties in a criminal case "before a verdict is returned [may] consent to try the case with or receive a verdict concurred in by a lesser number of jurors" than required. This alternative requires consent by both parties, as well as the trial court.

In another emotionally moving scene in *Twelve Angry Men* calculated to extol the strengths of the jury system, jurors almost come to fisticuffs. One juror, a Latino,

clearly intended to depict a recently naturalized citizen, tells the other jurors that "We have a responsibility. This I have always thought a remarkable thing about democracy that we are—we are what is the word, 'notified, by mail to come down to the place to decide on the guilt or innocence of a man we have never heard of before'." He goes on to say that, "We have nothing to gain or lose by our verdict. This is one of the reasons we are strong. We should not make it a personal thing."

But remember, it is personal for our clients. Only you stand between your client and the jury. We may depict justice symbolically as blind, but our clients do not want us to turn a blind eye to possible injustice.



EXcerpts...

from letters received by the Public Defender

March 30, 2001 – I want to commend and congratulate you for having such a superb attorney, **Marci Kratter**, on your staff.

Besides her superb legal skills, what struck me the most was her honesty and compassion. In all cases she was very accessible....during our conversations, it was easy to tell she was on top of all the issues surrounding [the] case and was doing everything in her power to obtain the most favorable outcome...

You have an incredible gem of an attorney working for you and you should be proud to have her on your staff.

PROPOSITION 200 AND DRUG COURT

A PERSPECTIVE FROM THE ADULT PROBATION DEPARTMENT'S PROGRAMS DIVISION

By Kyle Mickel Drug Court Program Manager

Maricopa County's Adult Drug Court continues to offer valuable treatment opportunities for substance abusing defendants in Superior Court. For nearly a decade the non-adversarial teamwork approach to supervising Drug Court participants has brought many benefits for Defense Attorneys and their clients. Drug Court's non-traditional therapeutic approach has proven to be one of the most effective models to stem the addictive behaviors that suck drug and alcohol abusers into the criminal justice system. Now, Drug Court Team Members are beginning to see additional benefits resulting from sweeping changes, brought about by the passage of Proposition 200.

When Arizona's voters said "yes" to the *Drug Medicalization and Control Act of 1996*, those of us working in Drug Court had no idea how profound the impact would be to our program. At the time, we were very accustomed to "business as usual." That meant conforming to the established Drug Court framework and practices established by Judge Susan Bolton and other Maricopa County pioneers who developed the fifth such Drug Court in the Nation in 1992. There was (and still is) much pride associated with our Drug Court, which was reaffirmed by several outside reports of technical assistance touting our success. However, when Arizona Supreme Court Justices affirmed the Proposition 200 legislation by unanimous opinion, it became time for great change.

Up until the passage of Proposition 200, all Maricopa County Adult Drug Court participants received a condition of probation involving 60 days deferred jail. Drug Court Judges have always used that jail time as the "hammer" to enhance treatment compliance. A day, weekend, or week in jail had shown effective therapeutic results for some unmotivated participants. Realizing that treatment, not incarceration, must now accompany first-time drug convictions, we had to make

a decision: Should we stick to our existing program participation criteria and accept only non-Proposition 200 clients? Or should we develop and implement significant modifications to allow continued Drug Court participation by these people?

In a meeting held January 3, 2000 and attended by Superior Court Judges; DCA, DPD and AOC Managers; and Drug Court Team members, support was voiced for the development and implementation of a second Drug Court "track" to supervise and treat only those non-jail Proposition 200 clients. Instead of potential jail sentences serving as motivation for program compliance, Track Two Drug Court would offer participants an expanded menu of sanctions and rewards. Another central component of Track Two Drug Court would incorporate family involvement into program participation. To accomplish this goal, APD's Track Two Drug Court Probation Officers added fieldwork to their responsibilities. Their field duties are not designed to "catch anyone in the act;" but rather to focus on ways of promoting family health and harmony. Family members are being consulted to help identify effective sanctions, and to carry them out in the best interest of the family. A family intervention specialist/case manager has been added to the Drug Court team to conduct initial assessments designed to foster investment from family members or other persons comprising the defendant's support network (friends, relatives, clergy, mentors, etc.). This holistic approach to healing the family's harm arising from drug abuse may hold promise to achieve program success instead of imposing incarceration, especially when accompanied by rewards for compliance.

The system of rewards offered to Track Two Drug Court participants are also intended to build family strength. Drug Court team members envision these rewards as vehicles to offer pro-social activities among Drug Court participants and their children and families. These incentives accompany compliance to program requirements as defendants progress through the phases

of Drug Court. Track Two Judge Colleen McNally and Commissioner Susan Hennesy are handing out zoo tickets, science museum tickets, movie passes and gift certificates for ice cream sundaes.

To fund the additional staff and other resources necessary to make Track Two work, the Adult Probation Department was successful in procuring a \$300,000 enhancement grant from the U.S. Department of Justice's Drug Courts Programs Office. These grant monies are also earmarked to support the formal research and evaluation to tell whether or not Track Two works. Dr. John Hepburn, an internationally recognized researcher in the corrections industry, is developing "matches" from demographically similar Drug Court participants from Track One and Track Two. For the next two years, he will be charting their successes and failures to compare outcomes. Criminal justice outcomes (recidivism) and social outcomes (drug-free status, education, employment, etc.) will be included in the study.

The creation of this new Drug Court treatment track offers an exciting opportunity to gauge the effectiveness of new practices within a proven model of offender supervision. However, many challenges are posed. Possibly the greatest challenge rests with defendants knowing they cannot serve any jail in Track Two. If the threat of jail no longer exists as a motivator for compliance, will rampant noncompliance result? Is the threat of felony designation sufficient to foster program compliance? Will well-intentioned efforts to offer drug offenders another alternative to jail prove unsuccessful?

Whatever the results of our research study show in two years, Maricopa County's Drug Court experiment into Track Two is a very worthwhile endeavor. Just ask anyone in the Drug Court business in California. That State's voters recently passed Proposition 36, which mirrors Proposition 200 in its no-jail approach to Drug Courts. Many other States are also considering similar legislation as voters tire of the exorbitant costs associated with jailing drug users. The eyes of correction workers in these States are increasingly focusing on Arizona for advice on working their new legislation into their Drug Courts. And, as far as we know, Maricopa County is the only precedent for them to follow. The numerous phone calls and visits we have received from California's probation departments, legal

offices and media since the passage of Proposition 200 leads us to believe we're really onto something here. Stay tuned.



EXcerpts...

from letters received by the Public Defender

April 2, 2001 – [Bob Stein] went beyond — that extra step we so seldom see in our uncaring world of today. His thoughtfulness...was very kind.

He was handling a difficult client. He was thorough in his detail...he listened closely...and did not miss any opportunity to find ways to aid his client. In other words, we could not have had better representation...

[He] was found guilty...[but], it took the jury almost two days to reach a decision, and frankly, I believe it took that long due to the very fine work of Bob Stein.

You...are fortunate to have him...and it restores my faith in the legal system to know that [individuals] of [Bob's] caliber are representing people who have needs and cannot provide for themselves.

ARIZONA ADVANCE REPORTS

Terry Adams

By Defender Attorney – Appeals



State v. Decenzo, 340 Ariz. Adv. Rep. 3 (CA 2, 2/6/01)

The defendant was found guilty of a class 5 felony. The court found that two of his three admitted prior convictions were historical priors under A.R.S. § 13-604(V)(1). The defendant claimed in a PCR that he had only one historical prior. He had one prior in 1996 and two in 1988. The 1996 prior was counted as historical because it was within 5 years under subsection (c). The court also counted it as a second historical prior under subsection (d), which includes any conviction, that is a third prior felony conviction. The defendant claimed that it could not be counted twice. The court of appeals agreed stating that the court must count forward from the oldest prior to the newest and the 1996 prior would become a third prior felony, however the court could not use it as an additional historical prior to enhance sentence under (d) because it had already used it to enhance under (c).

State v. Derello, 340 Ariz. Adv. Rep. 16 (CA 1, 1/30/01)

The defendant's sentence was enhanced with two historical prior convictions. There are two issues on appeal: what constitutes "on the same occasion" under A.R.S. §13-604(M), and does time spent in custody only apply to the offense that is being used as a prior. The trial court found that there were two prior historical felonies for unlawful flight and prohibited possessor. The underlying facts were the defendant fled from police after a robbery and possessed a weapon as a felon. The appellate court determined that there was a continued and uninterrupted chain of events connecting the two crimes and they were therefore committed on the same occasion and could only count as one historical felony. However, the defendant had a

class three felony committed in 1978 and spent only one year in custody on that offense but spent 17 years in custody on unrelated offenses. The court in excluding time in custody to determine if the offense was committed within ten years found that 13-604(U)(1)(b) is unambiguous and any time spent on any offense is excluded in the computation. Therefore the sentence was proper.

State v. Pereyra, 340 Ariz. Adv. Rep. 5 (CA 1, 2/26/01)

The defendant was convicted for possession of narcotic drugs in a drug free school zone. A.R.S. § 13-3408 requires a mandatory prison sentence for that offense. The court of appeals found that A.R.S. §13-901.01 (Prop 200) trumps that statute and requires that the defendant not be incarcerated. The defendant's prison sentence was set aside.

State v. Wiley, 340 Ariz. Adv. Rep. 4 (CA 2, 2/6/01)

After being convicted of a felony the defendant appeared *pro per* for sentencing and, in chambers, asked for a continuance. The court denied the request and ordered the defendant to appear in the courtroom. However he left and failed to appear and was arrested some time later out of county. He was charged with failure to appear in the first degree, a class six felony. He challenged his resulting conviction by way of PCR alleging that that offense pertains only to a duty imposed by statute not court order. Wrong. The court found that the duty can originate by statute, rule, court order or any combination thereof. Sentence affirmed.

Leon G., In re, 341 Ariz. Adv. Rep. 26 (CA 1, 2/15/01)

Prior to the defendant's release from prison on several sex related charges, The State petitioned the court to order his detention as a sexually violent person, pursuant to Arizona's sexual predator act. (A.R.S. § 36-3701 et seq.) A jury found him to be a sexually violent person and the court ordered his civil commitment. On appeal the court found the sexual predator act unconstitutional because the act only requires a finding of dangerousness and does not require a finding of volitional mental impairment rendering the person dangerous beyond his control.

State v. Bomar, 341 Ariz. Adv. Rep. 38
(CA 1, 2/22/01)

The defendant was found guilty-except-insane of aggravated assault. He was committed to a secure mental health facility for the presumptive term of three and one half years. He requested but was denied credit for 741 days of pre-sentence incarceration. The appeals court determined that he was not entitled to the credit because A.R.S. § 13-709(B) requires credit when a person is sentenced to a term of imprisonment. Since commitment is not imprisonment, no credit. The court also found that there was no violation of due process or equal protection.

State v. Lucas, 341 Ariz. Adv. Rep. 12
(CA 1, 2/13/01)

During the jury selection process the prosecutor struck the only African American panel member. Defense counsel objected. In attempting to offer a neutral basis for the strike, the prosecutor explained that she removed him because he was a lawyer. She added however that he was removed because "[h]e's from the south...I have a problem with males from the south having prejudice against women working," particularly when they are pregnant, as the prosecutor apparently was at the time of trial. The court overruled the objection on the basis that the panel member was a lawyer

without mentioning the other basis for the strike. The appellate court found that the first reason was a permissible race and gender neutral reason. However it found that the second reason was an unacceptable anecdotal generalization without basis in fact. The court found that the non-neutral reason for striking the only African American--that he was a southern male--tainted the entire jury proceedings and required reversal.



EXcerpts...

from letters received by the Public Defender

April 13, 2001 – This letter is to commend the hard work of **Andrew Clemency**. [The] successful outcome was due to the effective and efficient legal counsel provided by Mr. Clemency.

Mr. Clemency went beyond the call of duty in [the] matter. He made himself available...to answer questions and gather critical information essential to [the] defense. His expertise, frequent communications, helpfulness and customer friendly attitude assisting my family in navigating through the challenging maze of the criminal justice system. Your agency should be proud to have a staff member of Mr. Clemency's caliber on the team.

Please convey my sincere appreciation to Mr. Clemency for a job well done.

MARCH 2001 JURY AND BENCH TRIALS

GROUP A

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
3/19-3/20	Valverde	McVey	Morton	CR00-16454 Agg. DUI, F4	Not Guilty	Jury
3/19-3/23	Corey Elzy	Dougherty	Duvendack	CR00-15196 Agg. Assault Dangerous, F3D	Guilty of Disorderly Conduct	Jury
3/20-3/21	Hall	Tolby	Vanpelt	TR00-02757 Extreme DUI, M1 DUI, M1	Guilty	Jury
3/21	Knowles	Davis	Fish Washington	CR00-15500 Resisting Arrest, F6	Not Guilty	Jury
3/19	Farrell Jones	Schneider	Newell	CR00-15095 2 cts. Sale of Dangerous Drugs with 2 priors, F2	Pled to Sale, F2 day of trial No more than presumptive and State didn't allege priors	Jury

GROUP B

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
3/1 – 3/6	Navazo Wells	Omelia	Simpson	CR00-14564 2 cts. Agg DUI, F4	Hung	Jury
3/6 – 3/7	Roth Casanova	Martin	Brnovich	CR00-15410 Unlawful Imprisonment, F6 Assault, MI	Guilty both counts	Bench
3/7 – 3/8	Gray	Kaufman	Mueller	CR00-17225 2 cts. Agg DUI, F4	Ct. 1 Guilty Ct. 2 Not Guilty	Jury
3/7	Kratter	Hutt	Lindquist	CR00-12998 Theft of Means of Transp., F3; Burglary Tools Poss., F6	Guilty on both counts	Jury
3/19 – 3/21	Peterson	Fields	Green	CR00-19056 Felony Flight, F5	Guilty	Jury
3/19 – 3/21	Lopez Muñoz Wells	Hilliard	Flanigan	CR00-18824 Theft of Means of Transp., F3; VIN Switching, F5	Guilty on both counts	Jury
3/7	Giancola Erb	Martin	Lindquist	CR00-16763 Escape 2 nd degree, F5	Dismissed day of trial	Jury
3/26	Roth Erb	Martin	Altman	CR00-09989 Agg. Assault Dang., F3	Dismissed day of trial	Jury
3/27 – 3/28	Primack	Hilliard	Gellman	CR00-17718 Burglary 3 rd degree, F3	Dismissed w/ prejudice 2 nd day of trial	Jury

MARCH 2001 JURY AND BENCH TRIALS

GROUP C

Dates: Start–Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
3/1	Kavanagh	Dobronsky	Zia	CR00-02237 Assault, M1N	Guilty	Bench
3/1	Antonson	Fenzel	Gonzalez	CR00-95921 2 cts. Agg. DUI, F4N	Ct. 1 – Not Guilty Ct. 2 – Guilty of Lesser of Driving on Susp. Lic, M1N	Jury
3/13 – 3/15	Shoemaker / Felmly	Jarrett	Bennink	CR00-96992 Agg. Assault, F4N	Guilty	Jury
3/15 – 3/20	Pettycrew	Fenzel	Sandish	CR00-96298 2 cts. Agg. DUI, F4N Unlawful Use of Means of Transportation, F5N	Not Guilty	Jury
3/19 – 3/21	Aslamy / Ramos	Jarrett	Weinberg	CR00-93178 Agg. Assault, F2D Endangerment, F6D	Guilty	Jury
3/19	Logsdon / Little	Ore	Thompson	TR00-04927 2 cts. DUI, M1N	Not Guilty	Jury
3/26 – 4/2	Stein	Willrich	Doane	CR00-92425 3 cts. Armed Robbery, F2D 3 cts. Kidnapping, F2D	Guilty	Jury
2/27	Ozer	Fenzel	Udall	CR00-95371 Forgery, F4N	Dismissed w/o prejudice the day of trial	Jury
3/21	Logsdon	Gaylord	Blair	CR00-96201 Marij Poss/Grow/Proc, F6N	Dismissed w/ prejudice day of trial	Jury
3/22	Leonard	Barker	Andrews	CR00-97054 Theft, F6N	Dismissed w/o prejudice day of trial	Jury

COMPLEX CRIMES UNIT

Dates: Start–Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
2/28 – 3/22	Rosales / Gavin Beatty McMullen	Barker	Shutts/ Stevens	CR00-90114 Murder 1, F1D Sexual Assault, F2D Kidnapping, F2D Burglary 2°, F3D	Guilty	Jury
3/21	Bevilacqua	P. Reinstein	Lynch	CR99-12668 Murder 1, F1 Armed Robbery, F2D	Pled day of trial to Murder 2; Robbery, F4 non-dangerous	Jury

MARCH 2001 JURY AND BENCH TRIALS

GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
2/20-3/01	Wallace / Willmott O'Farrell Rivera	Budoff	Adleman & Eaves	CR99-18065 Agg. Assault, F2D 2 Cts. Agg. Assault, F6	Guilty Agg. Assault, F2D 2 Cts. Agg Assault dismissed before trial	Jury
3/21	Billar	Schneider	Wolfram	CR00-16704 Agg. Dr/Lq/Drq/Tx Sub, F4; DR-LQ/DRG W/Minor, F6	Guilty	Jury
3/28	Clemency	Pillinger	Ronald	CR00-14570 Agg Assault, M1 Resist. Officers/Arrest, M1	Not Guilty	Bench
3/5	Radovanov/Berko Salvato	Wilkinson	Eaves	CR00-15042 Burg 3 rd Deg. w/tools, F6	Pled while in case transfer to Attempt. Theft, F5	Jury
3/13	Eskander	Wilkinson	Kozinets	CR00-19010 CR01-02705 Agg Asslt, F6 Resist Offcr/Arrest, F6	Pled day of trial	Jury
3/21	Radovanov Salvato	Budoff	Ronald	CR00-13678 Agg Asslt, F6 Resisting Arrest, F6 POM Sale, F6 PODP, F6	Pled day of trial to Agg asslt and POM F6 and F6 Prop 200	Jury
2/16	Geranis Salvato	Budoff	Ronald	CR00-17621 Mscndct Inv Wpns, F6	Dismissed w/o prejudice day of trial	Jury
3/19-3/19	Dwyer	Wilkinson	Naber	CR00-17261 Armed Robbery, F2 Theft by means, F5	Dismissed day of trial	Jury
3/27	Reid / Schreck Seaberry	Cole	Hipps	CR00-17985 Burg 3 rd Deg., F4 Assault, M3	Dismissed day of trial	Jury

OFFICE OF THE LEGAL ADVOCATE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
2/27-3/1	Mackey	Akers	Nuenbauer	CR99-16385 Agg DUI, 2 cts 1 prior	Not Guilty	Jury
3/8-3/12	Mackey	Hoag	Robinson	CR00-016615 DD poss for sale over threshold, M I W, poss of drug paraphernalia	Guilty	Jury
3/27-4/4	Mackey	Fenzel	Clayton	CR99-95675 2 nd degree Murder, Kidnapping Dangerous	Guilty 2 nd degree Murder, Not Guilty Kidnapping Dangerous	Jury
3/22-3/27	Everett	Galati	Beresky	CR2000-016470 Armed Robbery	Guilty	Jury

MARCH 2001 JURY AND BENCH TRIALS

GROUP E

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
3/14 – 3/15	Goldstein	Cates	Hanlon	CR00-06463 POND, F4 PODP, F4	Guilty	Jury
3/19 – 22	Roskosz	Heilman	P. Davidon	CR00-015680 PODD F/S, F2; Transp. of Dang. Drug. F/S, F2	Guilty	Jury
3/19	Goldstein Ames	Cates	Hanlon	CR00-16610 Agg. Asslt., F2 Unlaw. Flt., F5	Mistrial	Jury
3/21 – 3/22	Ackerley	Burke	Rodriguez	CR00-10373 Armed Robbery, F2	Guilty	Jury
3/27 – 3/30	Pajerski/Kent	Katz	Hanlon	CR00-12190 Agg Assault, F4	Not Guilty F4; Guilty Misd Asslt	Jury
3/22	Goldstein	Reinstein	Hanlon	CR00-16880 Agg. Asslt., F3	Pled day of trial	Jury
3/23	Dergo/Duffy Souther	Jarrett	Knudsen	CR00-15741 POND, F4 PODP F6	Pled day of trial; PODP F6 Open	Jury
3/28	Dergo Ames	Burke	Koplow	CR00-17945 Unlaw. Flt from Law Enf. Vehicle, F5	Pled day of trial; Endgmnt F6 Open	Jury

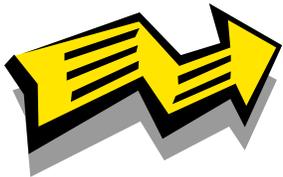
OFFICE OF THE LEGAL DEFENDER

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
2/5 - 2/9	Canby Reger	Hilliard	Vercauteren	CR00-009147 1° Murder, F1D	Guilty	Jury
2/12-3/29	Cleary Horrall/Reger	McClennen	Altman	CR00-008265 2° Murder, F2 Transfer of Narcotic Drugs, F2	Guilty	Jury
2/26-3/08	Parzych Apple	Gerst	Duarte	CR00-003831 1° Murder, F1D Attempted 1° Murder, F1D Drive By Shooting, F2D Assisting Criminal Syndicate, F3D Misconduct Involving Weapons, F4D	Guilty Counts 1-3 Mistrial Counts 4-5	Jury
3/5	Curry Apple	Heilman	Mayer	CR00-16690 Misconduct Involving Weapons, F4 PODD, F4 PODP, F6	Guilty Count 1 Directed Verdict of Acquittal Counts 2-3	Jury
3/26	Ivy	Fenzel	Andersen	CR00-95965 False Reporting to Police Officer	Hung Jury	Jury

GUIDELINES FOR SUBMISSION OF ARTICLE FOR

Articles should be submitted by the 5th of each month.

Page Setup Guidelines



- ◆ 1 Inch Margin – Left, Right, Top, Bottom
- ◆ CG Times 10 Point Font
- ◆ Single Space with Full Paragraph Justification
- ◆ Leave a blank line between each paragraph (as opposed to indenting the first line of a new paragraph)
- ◆ Quotes should be indented only .5 inches on the left and right
- ◆ Do not use section breaks, page breaks or dual column
- ◆ Do not be concerned with widow/orphan control as page breaks will change in newsletter format
- ◆ Include citations within text of article (as opposed to using endnotes/ footnote)
- ◆ Use italics when citing legal authority (as opposed to underlining)

These settings will differ from those that would normally be used in formatting a paper. Because articles need to be formatted for newsletter publishing, any formatting other than the specifications set forth above will need to be removed. Removing formatting can be a time intensive process so please follow these guidelines in submitting any articles. If you will use the article for publication or presentation elsewhere and want to format the article for that purpose, please save your article for submission to *for The Defense* as a separate document prior to applying any additional formatting. Thank you for your cooperation.

for The Defense

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