

for The Defense

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James J. Haas, Maricopa County Public Defender

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*Delivering America's
Promise of Justice for All*

for The Defense

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Contents

A.R.S. § 13-502(B): The Insanity Defense.....	1
Office Presents Annual Awards at Holiday Celebration	6
Writers' Corner: Officialese	7
Getting Too Social? Tweeting and Texting in the Courtroom	8
Practice Pointer: Early Release Credits	19
Jury and Bench Trial Results.....	21

A.R.S. § 13-502(B)

The Insanity Defense and Your Client's Constitutional Rights: Arizona, We Have a Problem

By Anna Unterberger, Defender Attorney

INTRODUCTION

Under A.R.S. § 13-502(B), if a plea of insanity is made, and if the court does not commit the defendant for mental health treatment, then the court *shall* appoint an “independent expert” who is familiar with Arizona’s insanity statutes, who is a specialist in mental diseases and defects, and who is knowledgeable concerning insanity, to observe and evaluate the defendant. This expert then shall submit a written report of the evaluation to the court, the defendant’s attorney and the prosecutor. If the court finds that the defendant is indigent, then the court shall order the county to reimburse the expert for the costs.

This statute, which *forces* the court to order that a defendant submit to a *compelled* examination, raises a number of constitutional violations. These violations are discussed in some detail below.

FORCING THE COURT TO ORDER AN INSANITY EVALUATION AND REPORT REGARDING YOUR CLIENT VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE ARIZONA CONSTITUTION

Article 6, § 5(5) of the Arizona Constitution gives the Arizona Supreme Court the power to make rules relative to all procedural matters in any court. *State v. Blazak*, 105 Ariz. 216, 217, 462 P.2d 84, 85 (1969). It includes jurisdiction over all changes to rules of judicial procedure in state courts. *Pompa v. Superior Court*, 187 Ariz. 531, 533, 931 P.2d 431, 433 (App. 1997), *citing Arizona Podiatry Ass’n v. Director Of Ins.*, 101 Ariz. 544, 549, 422 P.2d 108, 113 (1966); *State v. Jackson*, 184 Ariz. 296, 298, 908 P.2d 1081, 1083 (App. 1985). A rule of procedure, “pertains to and prescribes the practice, method, procedure or legal machinery by which the substantive law is enforced or made effective.” *State v. Birmingham*, 96 Ariz. 109, 110-11, 392 P.2d 775, 776 (1964). The legislature may enact supplementary provisions to court devised procedural rules, so long as the provisions do not contradict existing court rules. *See State ex rel. Collins v. Seidel*, 142 Ariz. 587, 591, 691 P.2d 678, 682 (1984). When a statute conflicts with a rule of procedure, the rule controls as to procedural matters. *Pompa*, 187 Ariz. at 534, 931 P.2d at 434, *citing State ex rel. Conway v. Superior Court*, 60 Ariz.

69, 81, 131 P.2d 983, 988 (1942). In other words, a statute is not allowed to effectively abrogate a rule of procedure. *Seisinger v. Seibel*, 220 Ariz. 85, 89, 203 P.3d 483, 487 (2009).

“[A]ny party may request in writing ... an examination ... to investigate the defendant’s mental condition at the time of the offense. ... On the motion of or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. §§ 13-502 to be conducted by the mental health expert.” Rule 11.2(a), Arizona Rules of Criminal Procedure (“ARCP”). Thus, and if what the parties are looking at is an insanity defense under § 13-502, the court *may* order a screening examination, or the defendant may consent to one. The court, however, is not *required* to have a mental health expert examine a defendant who will be defending under § 13-502.

What we have here is a procedural issue. Thus, the rules enacted by the Arizona Supreme Court control over the statutory language promulgated by the legislature. And the Arizona Supreme Court has stated that an examination regarding an insanity plea is a *permissive* order by the court; the court may not be *required* to order an examination. The impropriety of the situation is magnified when the defendant has not moved for such an examination, does not consent to such examination, and a thorough report regarding the insanity issue has already been prepared by the defense expert and disclosed to the State. Thus, a court-ordered examination and report is unnecessary and wasteful, and forcing the court to order that examination and report violates the separation of powers clause of the Arizona Constitution. If the State wants to retain an expert to examine the defendant, then the State may do so. The court should not become the State’s puppet in that regard.

FORCING THE COURT TO ORDER AN INSANITY EVALUATION AND REPORT VIOLATES YOUR CLIENT’S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE FEDERAL AND ARIZONA CONSTITUTIONS

“The touchstone of due process under both the Arizona and federal constitutions is fundamental fairness.” *State v. Melendez*, 172 Ariz. 68, 71, 834 P.2d 154, 157 (1992). Due process prevents the government from engaging in arbitrary, wrongful actions. *Zinerman v. Burch*, 494 U.S. 113, 125 (1990); *accord Martin v. Reinstein*, 195 Ariz. 293, 314, 987 P.2d 779, 800 (App. 1999). Substantive due process precludes conduct that interferes with rights, “implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). Procedural due process protects a person from the unjustified deprivation of liberty. *Carey v. Piphus*, 435 U.S. 247, 259 (1978); *see also* U.S. Const., Amends. V & XIV, § 1; Ariz. Const., Art. 2, § 4.

An accused is entitled to a trial by jury, and that trial must be fair. *See* U.S. Const., Amends. VI & XIV; Ariz. Const., Art. 2, § 23. Necessarily included in the right to a fair trial is the right to have court proceedings presided over by a judge who is completely impartial and free of bias or prejudice. *State v. Hill*, 174 Ariz. 313, 322, 848 P.2d 1375, 1384 (1993). “A judge should avoid even the appearance of partiality.” *State v. Brown*, 124 Ariz. 97, 100, 602 P.2d 478, 481 (1979). And, “[e]ven where there is not actual bias, justice must appear fair.” *State v. Salazar*, 182 Ariz. 604, 608, 898 P.2d 982, 986 (App. 1995), *quoting McElhanon v. Hing*, 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986).

Regarding your client’s rights to due process and a fair trial, you might first ask, from what funding source will this “court-ordered examination” be paid? According to § 13-502(B), “the county” pays for the examination when the defendant is indigent. Does “the county” mean the Maricopa County Attorney’s Office? Does it mean that the court must pay for this examination from funding that is designated for court operations? It *shouldn’t* mean that the Maricopa County Public Defender’s Office has to pay for this examination, considering that the defense neither wants nor needs the examination. This is especially true when the defense has already retained a board certified psychiatrist or psychologist, who has determined that the client was insane at the time of the charged offense(s). A subsequent examination and report under A.R.S. § 13-502(B) is a waste of scarce monetary resources, and the defense shouldn’t have to pay for that examination and report.

And if “the county” ends up being MCAO, then why go through this process in the first place? MCAO may simply move the court for an order that the defendant submit to an examination by MCAO’s expert and disclose who that expert is. Is the “bottom line” of this statute an attempt by the legislature to circumvent the prosecution having to pay for an expert to examine the defendant, with the hope that the court will pick up the tab, and that the “court ordered” examination will provide the prosecution with a “freebie expert witness”?

And how may the court remain neutral and impartial during the case, if it orders that the defendant be examined to “assist” the court, and that examination and resulting report then provides fodder for the prosecution to use it in a partisan way at trial? If the court needs to review a report to “assist” it regarding the issue of insanity, then it may review the report produced by the defense. Ordering another report for the court to read is, again, a waste of scarce monetary resources, as well as a waste of time.

FORCING THE COURT TO ORDER AN INSANITY EVALUATION AND REPORT VIOLATES THE EQUAL PROTECTION CLAUSES OF THE FEDERAL AND ARIZONA CONSTITUTIONS

“No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., Amend. XIV, § 1. “No law shall be enacted granting to any citizen [or] class of citizens . . . privileges or immunities which, upon the same terms, shall not equally belong to all citizens[.]” Ariz. Const., Art. 2, § 13.

There are 3 levels of review regarding equal protection challenges. The most stringent, strict scrutiny, applies when liberty interests are at stake, because liberty is a fundamental right. The proponents of the law, “bear the burden of showing that it furthers a compelling state interest, that it is narrowly drawn to serve that interest, and that the state’s interests outweigh Petitioner’s fundamental liberty interests. The presumption of constitutionality of laws vanishes.” *Martin v. Reinstein*, 195 Ariz. at 309, 987 P.2d at 795 (internal citations omitted). If a fundamental right is involved, it is irrelevant whether the person who is subject to the statute belongs to a “suspect class.” *Kenyon v. Hammer*, 142 Ariz. 69, 79, 688 P.2d 961, 970 (1984).

Under A.R.S. § 13-502(B), your client is being treated differently from other criminal defendants, simply because you have given notice that you may defend his or her case by presenting evidence of insanity. Strict scrutiny applies here because your client’s liberty interests hang in the balance. Thus, the State bears the burden of showing that a forced examination under A.R.S. § 13-502(B) furthers a compelling state interest, that the language of the statute forcing such an examination is narrowly drawn to serve that interest, and that the State’s interests outweigh your client’s fundamental liberty interests. And there is no presumption that the statutory language at issue is constitutional.

Forcing the court to appoint a doctor to evaluate your client at “county expense” does not further any state interest. Instead, it does just the opposite by wasting time and taxpayer monies. The bottom line is that if the State wants an expert to examine your client, it may retain an expert and file a motion with the court for an examination.

FORCING THE COURT TO ORDER AN INSANITY EVALUATION AND REPORT MAY VIOLATE THE ARIZONA CONSTITUTION BY RESULTING IN A COMMENT ON THE EVIDENCE BY THE COURT AT TRIAL

Article 6, Section 27, of the Arizona Constitution states in relevant part that: “Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.” When a court gives an opinion about what the evidence shows and prejudices the opposing party, reversal is proper:

To constitute a comment on the evidence, the court must express an opinion as to what the evidence shows or what it does not show.

Inferences to be derived from the evidence are within the sole province of the jury. However, a case will not be reversed unless the comment prejudiced the party who opposed it, and the test for determining prejudice is whether there is a reasonable probability a different verdict might have been reached if the error had not occurred.

Jones v. Munn, 140 Ariz. 216, 221, 681 P.2d 368, 373 (1984) (citations omitted).

“In ruling on the admissibility of evidence, the trial court’s remarks are not erroneous provided they are not unfair and prejudicial to the accused.” However, “the remarks of the judge during the trial in the presence of the jury indicating his opinion as to the credibility or lack of credibility of a witness constitutes error.” *State v. Garcia*, 138 Ariz. 211, 216-17, 673 P.2d 955, 960-61 (App. 1983).

If the court is forced to order a report, especially one that it does not want or need, how is that report to be referred to at trial? If the report says that your client was not insane at the time of the charged offense, then the State will want to call that doctor as its own witness, but refer to that doctor as the “court appointed expert.” The State may then attempt to cross examine the experts called by the Defense regarding whether they were retained by the defense or “appointed by the court.” If the court allows such cross examination, then this gives the jurors the impression that this court favors the witness who is testifying for the State. This results in the court bolstering the credibility of that witness. This again puts the court in the position of acting in a partisan manner, rather than remaining neutral and impartial. And that amounts to a comment on the evidence by the court, in violation of Article 6, Section 27, of the Arizona Constitution.

IF THE COURT DOES ORDER AN INSANITY EXAMINATION AND REPORT, THEN YOUR CLIENT’S RIGHTS AGAINST SELF-INCRIMINATION UNDER THE FEDERAL AND ARIZONA CONSTITUTIONS MUST BE PROTECTED

There are also Fifth Amendment concerns with the court ordering an examination of, and report regarding, your client. See U.S. Const., Amends. V & XIV. Even when it is appropriate for the court to order the defendant to participate in a mental health evaluation, “[t]he trial judge, however, must assure that an order subjecting a defendant to a mental health examination protects the defendant’s privilege against self-incrimination. The judge must fashion an order that ensures that no statement made by the defendant during the course of the examination, no testimony by the mental health expert based upon the defendant’s statements may be used by the prosecution or admitted into evidence against the defendant except on those issues on which the defendant introduces expert testimony[.] ... We leave to the trial judge the decision, in the first instance, as to which conditions must be imposed to ensure that no statements made by a defendant will be used improperly during either the guilt or the penalty phase of the trial.” *Phillips v. Araneta*, 208 Ariz. 280, 284, 93 P.3d 480, 484 (2004).

In addition to self-incrimination concerns under the Federal Constitution, there are related, but distinct, concerns under the Arizona Constitution. “If we march lock-step with federal precedent, we lose any opportunity to contribute to the growth of state constitutional law and deny to the nation the benefit of the Arizona experiment in progressive democracy.” Feldman & Abney, *The Double Security of Federalism: Protecting Individual Liberty Under the Arizona Constitution*, 20 Ariz. St. L.J. 115, 118 (1988). “Whatever the particular observation or explanation which may be in vogue at the moment, the reality of the rapid development of state constitutional law in the criminal law area cannot be disputed. In some earlier cases, the state courts were hesitant to strike out on their own under the state constitutions; even when they did they tended to ‘rely heavily on general federal doctrines.’ More recently, however, state judges have been highly critical of federal doctrine as unduly limiting individual rights and protections in the criminal justice field.” Marcus, *State Constitutional Protection for Defendants in Criminal Prosecutions*, 20 Ariz. St. L.J. 151, 159 (1988) (footnotes omitted).

Some provisions of Arizona's Declaration of Rights, contained in Article 2 of the Arizona Constitution, contain language that is significantly different from its Federal counterpart. The Fifth Amendment to the United States Constitution states that, "[n]o person . . . shall be compelled in any criminal case *to be a witness* against himself." But Arizona's analogous provision, Article 2, Section 10, states that, "[n]o person shall be compelled in any criminal case *to give evidence* against himself." Evidence protected under Article 2, Section 10, of the Arizona Constitution includes evidence, "which may only *tend* to incriminate by furnishing one link in the chain of evidence required to convict." *Flagler v. Derickson*, 134 Ariz. 229, 231, 655 P.2d 349, 351 (1982) (reviewing a case involving the defendant's statements).

"The difference between the Arizona and federal clause may be quite significant. Evidence and testimony are not synonymous. Testimony is a subset of evidence, involving a witness's relation of facts, opinions and observations. Evidence is the broader term, encompassing any species of proof, including records, documents, physical objects and, of course testimony. A prohibition against self-incrimination by 'evidence' is, therefore, facially far broader than a prohibition against self-incrimination by mere testimony as a witness." Feldman & Abney, *supra*, at 124, *citing* BOUVIER'S LAW DICTIONARY AND CONCISE ENCYCLOPEDIA (8th ed. 1914), at 1091, 3264.

Here, A.R.S. § 13-502(B) does not just force the court to order an examination of, and report about, your client. The statute essentially requires that potential evidence be generated as well. And the report will necessarily contain statements made by your client. Thus, if such a report is ordered, then the court must make sure that any disclosure of that report protects your client's rights against self-incrimination under the Federal and Arizona Constitutions.

IS THE ARIZONA SUPREME COURT INTERESTED IN THE CONSTITUTIONALITY OF THIS STATUTE? MAYBE.

These issues arose in a capital case and were presented at the trial level in late 2009. The trial court ruled on the separation of powers issue only, and it found that there was no constitutional violation. However, the trial court also ordered that the report by the 13-502(B) expert would be produced only to the court and the defense, which would then allow the defense to make any necessary redactions and submit the redacted version to the State. The defense would then file a memorandum generally describing why the redactions were made, and the State could litigate the redaction issues. While creation of the report was pending, I filed a special action in the Arizona Court of Appeals in early 2010, which denied jurisdiction.

I then filed a Petition For Review in the Arizona Supreme Court, and by then the report had been produced to the court and the defense, and I had filed the redactions memorandum. The Arizona Supreme Court ordered the State to file a response to the Petition For Review, and while that response was being prepared, the State agreed to a life sentence plea for the defendant. The defendant entered the plea and was sentenced, I withdrew the Petition For Review, the State did not have to file a response, and the issues remain one of first impression in Arizona.

I note that there are many Petitions For Review filed with the Arizona Supreme Court where the Court does *not* order a Response. And while the ordering of a Response does not mean that jurisdiction would have been accepted, it does show at least some interest on behalf of either a Justice or a staff attorney at the Court regarding the separation of powers issue.

CONCLUSION

Forcing the court to order an examination and report regarding your client under A.R.S. § 13-502(B) results in violations of rights under the Federal and Arizona Constitutions and conflicts with the Arizona Rules of Criminal Procedure regarding a procedural issue. If the court orders compliance with A.R.S. § 13-502(B), you may want to challenge that order, especially if your expert has already prepared a report in support of your client's insanity defense.

Office Presents Annual Awards at Holiday Celebration



By Jim Haas, Public Defender

At the office holiday party on December 1, 2010, the office honored five employees for their 25 years of service to the office and presented its two annual awards, the Bingle Dizon Commitment to Excellence and Joseph P. Shaw Awards.

Recognized for reaching their 25-year anniversary with the office were Appeals Legal Secretary **Teresa Sneathen**, Appeals Attorney **Spence Heffel**, Trial Group 1 Attorney **Randy Reece**, and Capital Attorney **Garrett Simpson**.

The Dizon Award was created in 2001 to honor a longtime and beloved secretary with our office known for her extraordinary commitment to excellent work and her dedication to our office. The recipient of this award is selected by a committee composed of attorneys and support staff representing all parts of our office.

The 2010 Dizon Award was presented to Initial Services Assistant **Sophia Rosales**, in recognition of her dedication to our office, empathy for our clients and unwavering, contagious positive attitude in the workplace.

Sophia began working with our office in 2001. Her coworkers say there has not been a day in which Sophia did not come in with a smile and a "good morning". She is always positive, ready, willing and able to get the job done. She is very caring and treats everyone with respect. She never says no to anything that is asked of her and she does her work with a smile. She is a motivated individual who always puts the needs of others first. She is thoughtful, kind and very compassionate.



The Shaw Award was created in 1995 to honor a remarkable attorney who spent 20 years in our office, starting at the age of 65. Joe was known for his integrity, professionalism, generosity, and dedication to our office. The Shaw Award is given each year to an attorney, selected by the same committee that chooses the Dizon Award, who best demonstrates Joe Shaw's many qualities.

The 2010 Shaw Award was presented to Trial Group 4 Supervisor **Jerry Schreck**.

Jerry is an experienced, dedicated attorney who works tirelessly for our clients and also for his lawyers. Although he is a supervisor, he continues to work extremely hard both as an advocate for his clients and also in mentoring less experienced lawyers. Before he was a supervisor, he developed special expertise in defending clients charged with sex crimes and fought for his clients' rights in cases that were less popular with the defense community.



In addition to his work as a supervisor and trial attorney, Jerry has gone to the legislature to assist in trying to modify certain statutes for sex crimes, and was integral in the establishment of the annual review process for youthful sex offenders under ARS §13-923. When the statute became effective, we had to determine how many people were on probation who qualified, make files for them, request review hearings for all of them, and figure out who would take these cases. Jerry became the default attorney for all of these cases. He fights harder than anyone for these kids, and has been extremely successful in getting youthful offenders off probation, registration, GPS and community notification. He also does a large number of trainings on sex offender issues.

Our office is one of the best public defense offices in the country, largely because of the incredible talent and dedication of these individuals, and many others. Congratulations to all who were honored.

Writers' Corner

Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including *A Dictionary of Modern Legal Usage*, *The Winning Brief*, *A Dictionary of Modern American Usage*, and *Legal Writing in Plain English*. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at www.us.oup.com/us/apps/totd/usage. Garner's *Modern American Usage* can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.



Officialese.

Officialese is the language of officialdom, characterized by bureaucratic turgidity and insubstantial fustian; inflated language that could be readily translated into simpler terms. E.g.: "To promote the successful completion of our customary mid-diurnal paradigm regarding the procurement of necessary nutritional supplementation and the advancement of the contemporaneous, spontaneous, and coterminous interdialoguing of affiliated human-services assets, the present contingent should initiate both direct and lateral movements as appropriate to minimize and at the end of the day eliminate the physical separation between the target population and the aliment-preparation and -dispensation facilities." As translated: "Let's talk over lunch."

Officialese is governed by four essential rules. First, use as many words as possible. Second, if a longer word (e.g., "utilize") and a shorter word (e.g., "use") are both available, choose the longer. Third, use circumlocutions whenever possible. Fourth, use cumbersome connectives when possible ("as to," "with regard to," "in connection with," "in the event of," etc.).

Among the linguistically unsophisticated, puffed-up language seems more impressive. Thus, police officers never "get out of their cars"; instead, they "exit their vehicles." They never "smell" anything; rather, they "detect it by inhalation." They "proceed" to a "residence" and "observe" the suspect "partaking of food." They never "arrest a person"; rather, they "apprehend an individual." Rather than "sending" papers to each other, officials "transmit" them (by hand-delivery, not by fax). And among lawyers, rather than "suing," one "institutes legal proceedings against" or "brings an action against."

For sound guidance on how to avoid officialese, see Ernest Gowers, *The Complete Plain Words* (2d ed. 1973); J.R. Masterson & W.B. Phillips, *Federal Prose: How to Write in and/or for Washington* (1948).

Quotation of the Day: "Your best bet in writing is always to write a draft through to the end; no matter how terrible it is, no matter how disorganized, finish it. Then you can revise." Richard Marius, *A Writer's Companion* 11 (1985).

GETTING TOO SOCIAL?

Tweeting and Texting in the Courtroom

By Trace Robbers, Director of Communications, The National Judicial College

As tweeting and texting in the courtroom continue to disrupt the judicial process in courtrooms across the country, judges are finding it necessary to inform jurors of the dangers of doing so. In an “instant information age”, judicial systems nationwide are trying to work it out.

The Judicial Conference, the policy-making body of the federal courts, is belatedly entering the Internet age by proposing that judges clearly inform jurors they must not electronically discuss cases they are hearing. It’s standard procedure to inform jurors to remain mum until deliberations and not to conduct any re-

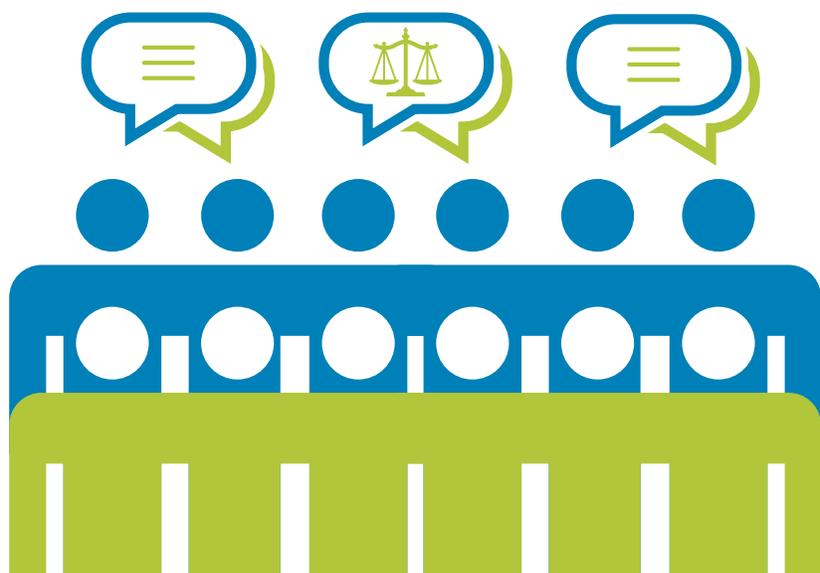
search about the case. But recent gadget use by jurors has forced the hand of the Conference.

The Conference released the model jury instructions (download PDF at www.judges.org/cip.html) to the federal judiciary in late January. The rules specify:

“You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any Internet chat room, or by way of any other social networking websites, including Facebook, MySpace, LinkedIn and YouTube.”

U.S. District Judge Julie Robinson of Kansas, the chair of the Judicial Conference Committee on Court Administration and Case Management, told the nation’s judges in a Jan. 28, 2010 memo that the new jury instructions “address the increasing incidence of juror use of such devices as cellular telephones or computers to conduct research on the Internet or communicate with others about cases.”

Robinson told fellow judges that “more explicit mention in jury instructions of the various methods and modes of electronic communication and research would help jurors better understand and adhere to the scope of the prohibition against the use of these devices.”



There are no nationwide instructions for the state courts, because each state adopts its own set of jury instructions. For instance, the joint committee of the Florida Supreme Court Committees for Standard Jury Instructions in Civil and Criminal Cases is recommending that jurors be read jury instructions multiple times and “they should be told that they cannot perform outside research using the Internet or use electronic devices to communicate about the case.”

In mid-March, a juror in a federal drug trial in Florida admitted to the judge that he had been doing research on the case on the Internet, directly violating the judge’s instructions. But when the judge questioned the rest of the jury, he got an even bigger shock. Eight other jurors had been doing the same thing. The federal judge, William J. Zloch, had no choice but to declare a mistrial, a waste of eight weeks of work by federal prosecutors and defense lawyers.

“We were stunned,” said defense lawyer, Peter Raben, who was told by the jury that he had been on the verge of winning the case. “It’s the first time modern technology struck us in that fashion, and it hit us right over the head.”

It might be called a “Google mistrial.” The use of BlackBerrys and iPhones by jurors gathering and sending out information about cases is wreaking havoc on trials around the country, upending deliberations and infuriating judges. The Florida Supreme Court will soon be examining recommendations from a Florida Bar committee that addresses the issue of jurors using electronic devices while in court to research a given case or to post information on their Twitter or Facebook accounts.

The issue has become more and more prevalent for courthouses around the country that have had problems arise when judges have learned that jurors are using the Internet to communicate about the trial, or to do background research. Jurors are not supposed to seek information about a case outside of the courtroom. They’re not supposed to talk about the case with their friends or family or let them know their opinions on it. But people used to being attached to a cell phone or Blackberry can easily access information about a case at the click of a button.

...continued



SOCIAL MEDIA CRASHES THE COURTROOM

Talk of the Nation, Neal Conan, Host

With guest, Hon. Gary B. Randall, District Court of Douglas County Nebraska, Chair, National Conference of State Trial Judges, and attorney Michael Downey, Hinshaw & Culbertson LLP, St. Louis, Missouri

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NEAL CONAN, host:

This is TALK OF THE NATION. I'm Neal Conan in Washington.

Millions of us show up in courthouses across the country every day to perform our civic duty as jurors and when we walk into the courtroom, our cell phones, Blackberrys and iPhones come with us. No big deal, you might say. But plenty of jurors and attorneys and friends of the accused and, of course, reporters have a hard time breaking now deeply our ingrained habits. We snap pictures of the judge, find out how Wikipedia defines fraud, and tweet the latest developments. One juror in Arkansas landed in hot water this spring for tweeting during a trial. One of them: I just gave away \$12 million of someone else's money. Many judges now routinely warn jurors to resist the urge to Google their cases. And a Fort Lauderdale attorney was fined this spring for his unflattering blog post about a judge. Well, if you're a lawyer or a judge, how do you see social media transforming the courtroom? Jurors, have you been tempted to Google or blog about your case?

CONAN: Judge, when did you first see problems with social media in your courtroom?

Judge RANDALL: Most of it's happened in the last year. In picking juries recently, we've determined that jurors have had access and been posting information on Facebook. If it's a high media or high profile trial, they've been getting responses from their friends saying, maybe you're going to be on so and so's case. And it's been causing us to become very aware of what we need to do to try to guarantee a fair trial.

CONAN: Well, a simple solution, a lot of people would say, is why don't you ban computers and cell phones from the courtroom?

THE EFFICIENT COURTROOM

Judge RANDALL: Well, certainly we need to – to advise jurors of the prohibitions with regard to using them. And many courts are banning them. But there's a bigger problem, Neal. The bigger problem is that in this country we have a huge problem of getting people to even participate in jury service. People frequently say it's just way too inconvenient and go for getting a warrant issued for their arrest. We need to acknowledge that this is a way of thought for many generations that are – that are now jurors, the Generation X-ers, the generation Y-ers. And if they aren't allowed to have access to personal media, they're going to lose - they're going to lose so much in terms of their convenience, their ability to operate all day long, their ability to – to have a life outside of that courtroom, because being a juror is a temporary thing. Do we need to approach it in another way?

Judge RANDALL: There's no question about that. But what we have to do is to make sure that we educate the jurors well enough through our orientation processes, through *voir dire*. The lawyers have a part in this too, explaining to people that, you know, if you do have Twitter accounts, if you do use Facebook, if you do have a Blackberry, there's – there's a right way and a wrong way to use this, because it's all about the fair trial, it's about guaranteeing the rights of the defendant. It's about making sure that the jurors do follow the rules, and I think if they're properly educated, we can rely on them to – to go ahead and abide by the oath that they're taking.

CONAN: Judge Randall, cases of jurors Googling the defendant - in deliberations. That's got to be a nightmare.

Judge RANDALL: It's a total nightmare. It's exactly the problem that we're all talking about. I mean what happened is that jury then considered information that the judge probably excluded from the trial. You can guess that the plaintiff's attorneys from that case probably wanted to bring that in and they had motions in limine before the case started because what the defendant had done outside of the parameters of that lawsuit isn't relevant to the circumstances of the jury making a decision in this case.

CONAN: And the juror...

Judge RANDALL: So that really was a travesty of justice.

CONAN: Joining us now by phone is Michael Downey, an attorney specializing in legal ethics at Hinshaw & Culbertson in St. Louis, where he trains law firms and attorneys to avoid social and media pitfalls. He's with us on the line from Warrensburg, Missouri. Nice to have you on the program today.

Mr. MICHAEL DOWNEY (Partner, Hinshaw & Culbertson): Thank you.

CONAN: And there have been examples, as we mentioned in the introduction, of attorneys insulting judges online, blogging about witnesses. Some of these examples almost defy common sense. Aren't lawyers worried about the repercussions and don't they understand the judge or somebody else is probably going to go online and find this out?

Mr. DOWNEY: Yes, in fact, that is something that is coming up more and more. In fact, there actually is a Web site that is effectively encouraging litigants and judges to post such comments called *therobingroom.com*, and I've had numerous occasions to go on here, and you will find people that purport to be lawyers involved in cases who will comment on specific cases and give the case numbers and indicate how they believe the judge handled something improperly.



“The Court must recognize we live in a Google Society; Jurors are shocked when you tell them they can’t use their personal technology or social media; It’s the Courts obligation to educate jurors so they understand the issue is fairness, once we have done that we have very few problems.”

Hon. Gary B. Randall

*District Court of Douglas County Nebraska
Chair, National Conference of State Trial Judges*

“Many individuals called for jury service, especially younger jurors, have grown up with the Internet,” reads the petition by the joint committee. “These potential jurors may consider constant communication through cell phones, Blackberrys, and other devices to be a normal part of everyday life.” Many state courts have already moved to enact rules requiring judges to explicitly explain to jurors that they cannot look up information online about the case and that they cannot post their thoughts on social media sites. As people become more tech-savvy, the use of electronic devices will only increase and court systems will need to address this trend sooner, rather than later. 

IS SOCIAL MEDIA TURNING THE JURY BOX INTO PANDORA'S BOX?

By Guest Columnist John G. Browning, Esq.



In our digital age, it's become increasingly commonplace to see people pounding away at their Blackberrys, iPhones, and other web-enabled wireless devices everywhere – including the courthouse when summoned for jury duty. And while most of these prospective jurors are probably sending innocent, mundane messages about running late or having a spouse pick up the kids from soccer practice, who really knows what the others may be doing with the wealth of information just a few clicks away?

As it turns out, curious jurors engaging in such digital digging is a problem with which courts all around the country are grappling. With the phenomenal growth in popularity of social networking sites like MySpace (over 66 million users), Facebook (which has surpassed 500 million users worldwide), and Twitter (over 105 million users), jurors are more likely than ever to leave the privacy of the jury room for cyberspace. Consider these recent examples:

- In November 2008, a juror on a child abduction/sexual assault trial in Lancastershire, England, was torn about how to vote. So she posted details of the case online for her Facebook “friends” and announced that she would be holding a poll. After the court was tipped off, the woman was dismissed from the jury.

- In November 2007, the Supreme Court of Appeals of West Virginia reversed the conviction of Danny Cecil for felony sexual abuse of two teenage girls. Two members of the jury had looked up the MySpace profile of one of the alleged victims, and shared its contents with other jurors. Even though it found that the online sleuthing had not necessarily revealed anything relevant, the court held that “the mere fact that members of a jury in a serious felony case conducted any extrajudicial investigation on their own is gross juror misconduct which simply cannot be permitted.” As the court further noted, “Any challenge to the lack of the impartiality of a jury assaults the very heart of due process.”

...continued

THE EFFICIENT COURTROOM

CONAN: Judge Randall, are you familiar with this?

Judge RANDALL: I am familiar with the website, and I'm familiar with the process. I think that the, you know, this has been articulated, you know, very correctly. The lawyers are really jeopardizing their license, and they could be impacting their clients in a real negative way and certainly violating the confidentiality issues there. That's a particularly big concern, you know, when you hold a license to practice law, you also, just like a juror, take an oath to do certain things in certain ways, and this is a big problem.

CONAN: I wonder, Michael Downey, do some defense attorneys – we've talked about the rules of evidence, and obviously there are strict procedural procedures to what's allowed into – what jurors are allowed to hear and what they're not, but in some instances, are defense attorneys tempted to, you know, boy, I sure hope they Google the case?

Mr. DOWNEY: There's actually an interesting related issue that there has been some activity of lawyers and law firms trying to gain access to people's social networking sites including by claiming they're someone else to try to find out what sort of information is posted there. For example, in a personal injury trial, if you know the plaintiff has a network to try to gain access to see if they show pictures of them doing something they claim they're no longer capable of doing.

CONAN: So that's an investigative tool and not necessarily totally on the up and up.

Mr. DOWNEY: No. In fact, actually, there's an ethics opinion now that states that is not permissible. And there would be proper ways to get the same information, although the other side would, of course, know that, for example, if you subpoenaed them, they'd know that the subpoena was coming.

CONAN: And so, they would then know that you know and that sort of thing, as opposed to finding out sub-rosa.

Mr. DOWNEY: Exactly.

CONAN: Uh-huh. Transparency. Again, transparency, both sides need to abide by that. But sometimes, well, sometimes it all doesn't work.

CONAN: Michael Downey is the past chair of the ABA's Ethics and Technology Committee, teaches legal ethics at Washington University Law School in St. Louis, Judge Gary Randall of the District Court of Douglas County in Nebraska, chair of the National Council of State Trial Judges.

CONAN: Thank you very much for your time today. And you're listening to TALK OF THE NATION, which is coming to you from NPR News.

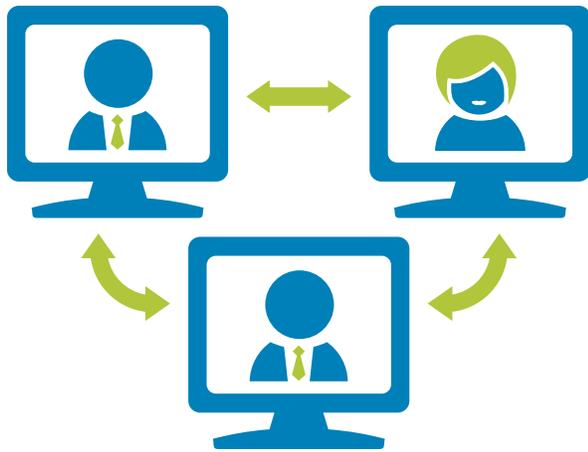


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• In the May 2009 case of *Zarzine Wardlaw v. State of Maryland*, Maryland's Special Court of Appeals looked at the circumstances behind the conviction of a man charged with rape, child sexual abuse, and incest involving his 17-year old daughter. During the trial, a therapeutic behavioral specialist had testified about working with the victim on behavioral issues such as anger management and had opined that the girl suffered from several psychological disorders, including ODD (oppositional defiant disorder). A juror took it upon herself to research ODD online, discovered that lying was a trait associated with the illness, and apparently shared this knowledge with the other jurors. Another member of the jury sent a note informing the judge about this development. After reading the note to counsel for both sides, the judge denied a defense motion for a mistrial and simply reminded the entire jury of his instructions not to research or investigate the case on their own "whether it's on the Internet or in any other way." The appellate court found that the juror's Internet research and reporting of her findings to the rest of the jury "constituted egregious misconduct" that could well have been "an undue influence on the rest of the jurors." As a result, the appellate court reversed the conviction and granted a mistrial.

Controlling the flow of information into the jury room isn't the only problem. Equally troubling is the flow of information leaving the jury box. Building materials company Stoam Holdings and its owner, Russell Wright, sought a new trial after an Arkansas jury entered a \$12.6 million verdict against them on Feb. 26, 2009. Wright was accused by two investors, Mark Deihl and William Nystrom, of defrauding them. Shortly after the verdict, Wright's attorney found out that a juror, Jonathan Powell had posted eight messages, or "tweets," about the case on the social networking site Twitter. Although several of the Twitter messages were sent during *voir dire*, the ones that attracted the most attention were those actually sent shortly before the verdict was announced.

In one such "tweet," Powell wrote "Ooh and don't buy Stoam. Its bad mojo and they'll probably cease to exist, now that their wallet is 12m lighter." In another, Powell said "I just gave away TWELVE MILLION DOLLARS of somebody else's money." One of the lawyers for Stoam and Wright maintained that the messages demonstrated not only that this juror was not



impartial and had conducted outside research about the issues in the case, but also that Powell “was predisposed toward giving a verdict that would impress his audience.” The court disagreed, and denied the defense’s effort to set aside the verdict.

In some instances, the problems begin before the trial even starts. In September 2009, the South Dakota Supreme Court ruled that a judge was justified in ordering a new trial in a product liability wrongful death case where a prospective juror, Shawn Flynn, had done Internet research before he even made it onto the jury. In *Shawn Russo, et al. v. Takata Corporation and TK Holdings*, the plaintiffs claimed that seat belts manufactured by Takata were defective and had unlatched during a rollover accident. When Flynn received his jury duty summons, he did a Google search for Takata and TK Holdings, examining web pages for the company that previously was unknown to him. He later shared information about the lack of any prior lawsuits with fellow jurors during deliberations and discussed his Google searches. After the jury returned a verdict in favor of Takata, the plaintiffs sought a new trial, arguing that Flynn’s searches had affected the jurors’ decisions about whether the seat belt was defective and whether Takata had notice of any defects. The trial judge vacated the verdict, and the Supreme Court upheld his decision.

In an era in which Americans spend 17% of their online time on social networking or blogging sites, and where researching a patent claim or a medical disorder can be accomplished with a few keystrokes, what can judges do to adapt to the evolving legal landscape and combat the dangers of the online juror? One possible

approach, advocated by a growing number of jurists, is to go beyond the current boilerplate instructions and specifically include references to the Internet and social media as part of the standard admonitions to jurors not to read about or do any outside research on the case they happen to be hearing. Faced with a situation in which technology has far outpaced the court rules, a number of states have actually changed their rules to address the problem of the online juror.

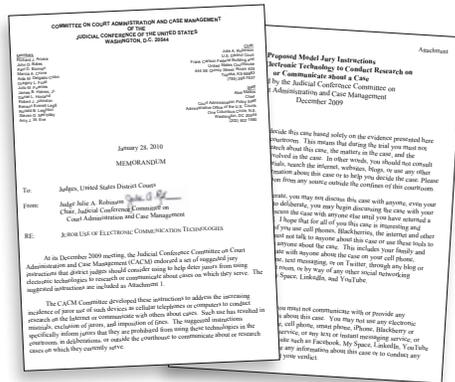
Michigan judges are now required for the first time to instruct jurors not to use any handheld device, such as iPhones or Blackberrys, while in the jury box or during deliberations. All electronic communications by jurors during trial – “tweets” on Twitter, text messages, Googling, etc. – are banned. Similar measures have been proposed by San Francisco Superior Court and elsewhere.

Punishing Googling jurors is one way of getting the message across. After Paul Christiansen of Danbury, Massachusetts caused a mistrial in a March 2009 sexual assault case by researching the defendant’s prior conviction online and disclosing the results to fellow jurors, he was fined \$1,200. Jury consultant and psychologist Dr. Robert Gordon of Dallas’ Wilmington Institute suggests that the answer lies in educating prospective jurors. “Jurors go online because they can; the anonymity of the Internet makes it possible, and more alluring. You have to explain [why Internet research is harmful], you have to actually talk to them,” he says.

For the rights to due process and to confront adverse witnesses and evidence to be protected, jurors can’t be allowed to consider Internet “evidence” that hasn’t been subjected to scrutiny by both sides, or to be influenced by the postings of Facebook “friends” or Twitter “followers.” Innovations like social media or the Blackberry may be a tremendous boon in our daily lives, but they can turn the jury box into Pandora’s box. 

*John Browning is a partner in the Dallas office of Thompson Coe Cousins & Irons, LLP, where he handles civil litigation in state and federal courts in areas ranging from commercial cases to personal injury, employment, and professional liability matters. He is a noted legal writer, award-winning legal journalist, and recipient of the 2007 Burton Award for Distinguished Achievement in Legal Writing. His book *The Lawyer’s Guide to Social Networking* will be released in 2010. Mr. Browning can be contacted at jbrowning@thompsoncoe.com.*

THE EFFICIENT COURTROOM



SAMPLE JURY INSTRUCTIONS ON THE USE OF THE INTERNET AND SOCIAL MEDIA

Provided by Hon. Herbert B. Dixon, Jr.,
Superior Court of Washington, D.C.

These sample jury instructions can be downloaded at
www.judges.org/news/cip.html

Until you have been discharged from service in this case:

- You may not perform any investigation, research or experiment of any kind on your own, either individually or as a group about this case;
- Do not consult any dictionaries for the meaning of words or any encyclopedias for general information on the subjects of this trial;
- Do not look up anything on the Internet concerning this case or any of the people involved, including the defendant, the witnesses, the lawyers, and the judge;
- Do not go to the scene where any of the events that are the subject of this trial are alleged to have taken place or use Internet maps or Google Earth or any other program or device to search for or view any place discussed during the case; and

Until you are discharged:

- You must not have any discussions about this case or make any entry on Facebook, MySpace, LinkedIn or other Internet social media site, and that includes all other forms of oral, written and electronic communications, including Twitter, e-mail, blogging and texting.

Please understand that I am giving these directions as a part of my responsibility to ensure fairness to all parties in this case. That fairness would be compromised and your actions could jeopardize the results of this trial if you violate these instructions.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
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Chief
Court Administration Policy Staff
Administrative Office of the U.S. Courts
One Columbus Circle, N.E.
Washington, DC 20544
(202) 502-1560

January 28, 2010

MEMORANDUM

To: Judges, United States District Courts

From: Judge Julie A. Robinson 
Chair, Judicial Conference Committee on
Court Administration and Case Management

RE: JUROR USE OF ELECTRONIC COMMUNICATION TECHNOLOGIES

At its December 2009 meeting, the Judicial Conference Committee on Court Administration and Case Management (CACM) endorsed a set of suggested jury instructions that district judges should consider using to help deter jurors from using electronic technologies to research or communicate about cases on which they serve. The suggested instructions are included as Attachment 1.

The CACM Committee developed these instructions to address the increasing incidence of juror use of such devices as cellular telephones or computers to conduct research on the Internet or communicate with others about cases. Such use has resulted in mistrials, exclusion of jurors, and imposition of fines. The suggested instructions specifically inform jurors that they are prohibited from using these technologies in the courtroom, in deliberations, or outside the courthouse to communicate about or research cases on which they currently serve.

Juror Use of Electronic Communication Technologies

2

The Committee believes that more explicit mention in jury instructions of the various methods and modes of electronic communication and research would help jurors better understand and adhere to the scope of the prohibition against the use of these devices.

If you have any questions or comments regarding these instructions, please contact Abel Mattos, Chief, Court Administration Policy Staff, at (202) 502-1560 or via email to [Abel Mattos/DCA/AO/USCOURTS](mailto:Abel.Mattos/DCA/AO/USCOURTS).

Attachment

Proposed Model Jury Instructions
The Use of Electronic Technology to Conduct Research on
or Communicate about a Case

Prepared by the Judicial Conference Committee on
Court Administration and Case Management
December 2009

Before Trial:

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in the case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

Until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you retire to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss the case with anyone else until you have returned a verdict and the case is at an end. I hope that for all of you this case is interesting and noteworthy. I know that many of you use cell phones, Blackberries, the internet and other tools of technology. You also must not talk to anyone about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any other social networking websites, including Facebook, My Space, LinkedIn, and YouTube.

At the Close of the Case:

During your deliberations, you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, My Space, LinkedIn, YouTube or Twitter, to communicate to anyone any information about this case or to conduct any research about this case until I accept your verdict.

The Maricopa County
Public Defender's Office
Presents

The 15th Annual
Trial College

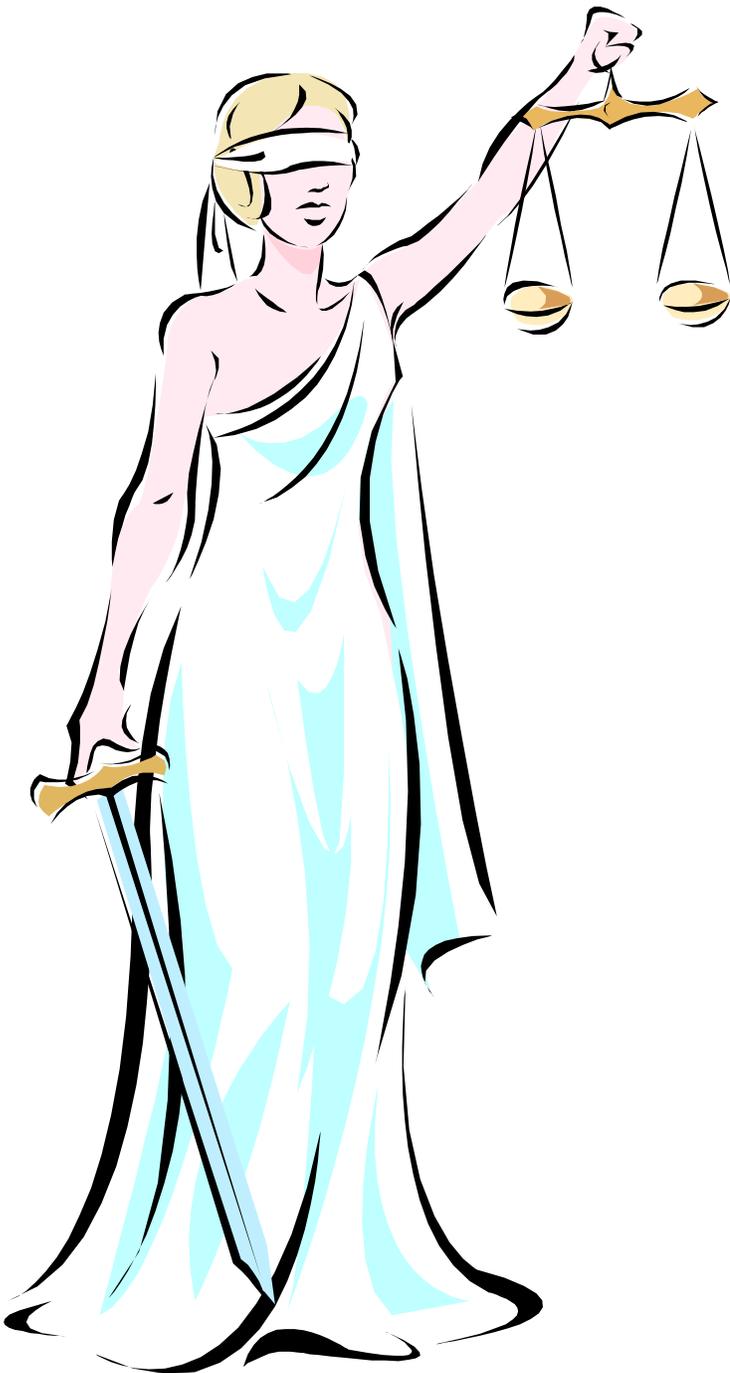
March 22, 23 & 24, 2011
Maricopa County Public Defender
Downtown Justice Center
Phoenix, AZ

Featuring:

Terry MacCarthy, nationally known speaker on Cross-Examination and Impeachment.

Josh Karton, nationally known speaker on the Art of Trial Advocacy with a focus on Jury Communications.

To register or for questions, please contact
Celeste Cogley by phone at 602-506-7711 X37569 or
email cogleyc@mail.maricopa.gov



Practice Pointer: Early Release Credits

By John Taradash, Defender Attorney

Earned early release is not a sure thing. Early release credits, which are earned at a rate of one day for every six days served on many sentences, can be forfeited if an inmate receives disciplinary violations or, in some circumstances, fails to pass a literacy test.

Accordingly, advise clients that they *may* be eligible for early release credits and placed on community supervision, but that the credits can be forfeited if they have disciplinary violations or literacy difficulty that are not encompassed by the exemptions set forth in A.R.S. § 31-229.

The following is a list of the specific requirements:

Forfeiture of Release Credits Non-Earning Class

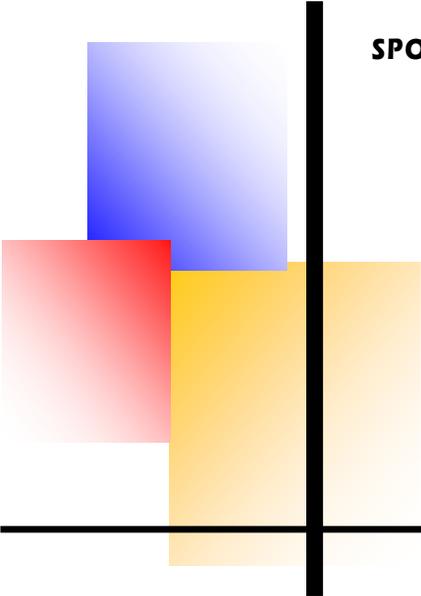
- A.R.S. § 41-1604.07 (C) – Offense Dates on or after 01/01/94.
- A.R.S. § 41-1604.09 (C) – Offense Dates prior to 01/01/94.
- Gives the Director the authority to forfeit up to all release credits earned for the prisoner's failure to adhere to the rules of the department or failure to demonstrate a continual willingness to volunteer for or successfully participate in a work, educational, treatment or training program.
- Forfeited release credits may be restored if eligibility is met.
 - Must wait 6 to 12 months, depending on the seriousness of the violation, before applying for restoration of credits.
 - Must remain discipline free for up to 12 months from the date of violation.
 - Must receive positive work and programming evaluations, if applicable.

Positive UA

- A.R.S. § 41-1604.07 (H). The prisoner shall forfeit five days of the prisoner's earned release credits for each time the prisoner tests positive for any prohibited drugs during the period of time the prisoner is incarcerated. This includes refusals to submit UA's.
- The five forfeited release credits are not eligible for restoration.

Functional Literacy

- A.R.S. § 31-229: effective July 18, 2001.
- Inmates must serve until their SED if they do not meet mandatory literacy.
- Exemptions:
 - Medical, developmental or learning disability.
 - Criminal Aliens.
 - Six months or less to serve.
 - Maximum Custody Inmates.



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SAVE THE DATE

Spring 2011

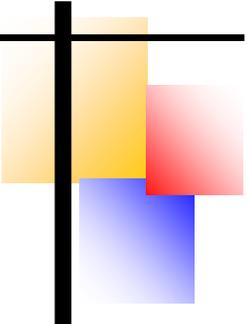
Professionalism Course

Friday, March 11, 2011

This course is designed for newly admitted attorneys and will satisfy the State Bar of Arizona requirement.

May qualify for up to 4 hours CLE Ethics.

To register or for questions, please contact
Celeste Cogley (MCPD)
602-506-7711 X37569 or email
cogleyc@mail.maricopa.gov



Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Group 1					
9/9/2010	Mullins <i>Salvato</i>	Harrison	2010-109008-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
9/15/2010	Barnes <i>Salvato</i>	Contes	2010-113310-001 Burglary 2nd Degree, F3	1	Jury Trial-Not Guilty
9/17/2010	Rolstead <i>Rankin</i> <i>Leigh</i>	Barton	2010-112506-001 Narcotic Drug Violation, F4	1	Jury Trial-Guilty As Charged
10/6/2010	Smith <i>Sain</i> <i>Baker</i>	Davis	2010-114511-002 Marijuana-Possess For Sale, F2 Conspiracy, F2 Illegal Control of Enterprise, F3 Marij-Transport and/or Sell, F2	1 1 1 1	Jury Trial-Not Guilty
10/18/2010	Turner <i>Rankin</i>	Hannah	2009-161603-001 Forgery, F4 Dangerous Drug Violation, F3 Narcotic Drug Violation, F3	2 1 1	Jury Trial-Guilty As Charged
11/9/2010	Reece <i>Sain</i> <i>Leigh</i>	Stephens	2009-007794-001 Murder 2nd Degree, F1 Aband/Conceal Dead Body/Parts, F5	1 1	Jury Trial-Guilty As Charged
Group 2					
10/19/2010	Baker <i>Browne</i>	Roberts	2009-179223-001 Unlaw Flight From Law Enf Veh, F5	1	Jury Trial-Guilty As Charged
11/2/2010	Farney <i>Brazinskaskas</i>	Duncan	2010-005496-001 Voyeurism, F5	3	Jury Trial-Guilty As Charged
11/17/2010	Covil <i>Munoz</i> <i>Browne</i>	Garcia	2008-007701-001 Fraudulent Use of Credit Card, M1 Forgery, F4	1 1	Court Trial-Guilty As Charged

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Group 3					
9/15/2010	Abramson	Lynch	2010-111635-001 Aggravated Assault, F6	1	Court Trial-Guilty Lesser/Fewer
10/7/2010	Quesada Jarrell	Rea	2009-152743-002 Unlaw Flight From Law Enf Veh, F5	1	Jury Trial-Not Guilty
10/29/2010	Colon Jarrell Farley	Kreamer	2009-007406-001 Sexual Abuse, F3 Sexual Conduct With Minor, F2 Molestation of Child, F2	1 1 1	Jury Trial-Guilty Lesser/Fewer
11/5/2010	Corbitt	Lynch	2010-104232-001 Theft Crdt Crd Obt Fraud Means, F5 Resisting Arrest, F6 Aggravated Assault, F6	3 1 1	Jury Trial-Guilty Lesser/Fewer
11/9/2010	Salter Hales Jarrell	Lynch	2009-164344-001 Shoplifting, M1 Aggravated Assault, F3	1 1	Jury Trial-Guilty As Charged
11/17/2010	Gronski Bublik Jarrell Farley	Jantzen	2010-005137-001 Stalking, F5	1	Jury Trial-Not Guilty
11/22/2010	Corbitt	Duncan	2009-007843-003 Burglary Tools Possession, F6 Burglary 3rd Degree, F4	2 2	Jury Trial-Guilty As Charged
11/23/2010	Salter Hagler	Kreamer	2009-151637-001 Misconduct Involving Weapons, M1 Misconduct Involving Weapons, F4	1 1	Jury Trial-Not Guilty
11/30/2010	Corbitt	Pineda	2009-048845-001 Agg Taking ID-Person/Entity, F3	1	Jury Trial-Guilty As Charged

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Group 4					
9/3/2010	Crocker <i>Arvanitas Clesceri Falle Austin</i>	Whitten	2009-124835-001 Murder 2nd Degree, F1	1	Jury Trial-Guilty As Charged
9/10/2010	Gaziano <i>Meginnis Clesceri Baker Lopez</i>	Verdin	2008-171268-001 Aggravated Assault, F3 Murder 2nd Degree, F1	3 1	Jury Trial-Guilty As Charged
9/15/2010	Finsterwalder Schreck <i>Flannagan</i>	Blomo	2009-131861-001 Marijuana Violation, F6	1	Court Trial-Not Guilty
9/23/2010	Stanford <i>Hagler Curtis Austin</i>	Flores	2009-179549-001 Theft-Means of Transportation, F3	1	Jury Trial-Guilty As Charged
9/30/2010	Tivorsak <i>Curtis</i>	Harrison	2010-121765-001 Shoplifting, F4	1	Jury Trial-Guilty Lesser/Fewer
10/7/2010	Finsterwalder Schreck <i>Flannagan</i>	Verdin	2010-122653-001 Theft, F3 Burglary 3rd Degree, F4	1 1	Jury Trial-Not Guilty
10/20/2010	Stanford	Stephens	2004-039886-001 Forgery, F4	1	Jury Trial-Guilty As Charged
11/2/2010	Kalman <i>Flannagan</i>	Brodman	2010-112553-001 Burglary 3rd Degree, F4 Criminal Damage, M1	1 1	Jury Trial-Not Guilty
11/4/2010	Jolley <i>Meginnis Austin</i>	O'Connor	2010-102954-001 Agg Aslt-Officer, F6 Resisting Arrest, F6	1 1	Jury Trial-Guilty Lesser/Fewer

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
11/5/2010	Tivorsak	Spencer	2006-144873-002 Theft Crdt Crd Obt Fraud Means, F5	2	Jury Trial-Guilty Lesser/Fewer
11/9/2010	Stanford <i>Hagler</i> <i>Curtis</i>	Stephens	2010-104952-001 Aggravated Assault, F3 Aggravated Assault, F6	1 1	Jury Trial-Guilty As Charged
11/18/2010	Warner <i>Meginnis</i>	Thumma	1999-015758-001 Threat-Intimidate, M1 Disorderly Conduct, F6	2 1	Jury Trial-Guilty As Charged
11/23/2010	Kalman <i>Flannagan</i> <i>Urista</i> <i>Browne</i> <i>Austin</i>	Steinle	2009-144687-001 Murder 2nd Degree, F1	1	Jury Trial-Guilty As Charged
11/23/2010	Stanford <i>Hagler</i> <i>Curtis</i>	Lynch	2010-127858-001 Aggravated Assault, F6	1	Jury Trial-Guilty Lesser/Fewer
11/30/2010	Cooper <i>Hagler</i> <i>Curtis</i>	Martin	2010-100049-001 Resisting Arrest, F6	1	Jury Trial-Not Guilty
Group 5					
9/15/2010	Glass-Hess <i>Thompson</i>	Passamonte	2009-177277-001 Aggravated Assault, F5	1	Jury Trial-Not Guilty
9/17/2010	Dehner <i>O'Farrell</i>	Myers	2010-106973-001 Animal Cruelty/Work Animal, F6	1	Jury Trial-Guilty As Charged
9/22/2010	Akins <i>Thompson</i>	Harrison	2010-109079-001 Aggravated Assault, F3 Dschg Firearm at a Structure, F3	3 1	Jury Trial-Guilty As Charged
9/24/2010	Glass-Hess <i>Thompson</i>	Rummage	2009-176568-001 Threat-Intimidate, F6 Threat-Intimidate, M1	1 1	Court Trial-Not Guilty

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
10/19/2010	Smith <i>Johnson</i>	Thumma	2009-155388-001 Crim Tresp 1st Deg-Rsid/Yard, F6	1	Jury Trial-Guilty As Charged
10/28/2010	Alagha <i>Thompson</i> <i>Falle</i>	Davis	2009-007581-001 Theft-Means of Transportation, F3	1	Jury Trial-Not Guilty
10/29/2010	Smith <i>Thompson</i>	Rummage	2010-111981-001 Shoplifting, M1 Dangerous Drug Violation, F4	1 1	Jury Trial-Guilty As Charged
11/10/2010	Kirchler <i>O'Farrell</i>	Warner	2009-180081-001 Burglary 3rd Degree, F4	1	Jury Trial-Guilty As Charged
11/17/2010	Dehner <i>O'Farrell</i>	Thumma	2010-112779-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
11/22/2010	Alagha <i>Munoz</i> <i>Ralston</i>	Ryan	2009-130017-001 Threat-Intimidate, F3 Street Gang, F3	2 1	Jury Trial-Guilty Lesser/Fewer
11/22/2010	Alagha <i>Ralston</i>	Spencer	2010-005937-001 Interfer w/Judicial Proceeding, M1 Influencing a Witness, F5	1 1	Jury Trial-Guilty As Charged
Group 6					
10/20/2010	Chiang <i>Godinez</i>	Passamonte	2010-030498-001 Marijuana Violation, F6 Drug Paraphernalia Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
10/25/2010	Kirchler <i>Jarrell</i> <i>Curtis</i>	Blomo	2008-163734-001 Dschrq Firearm in City Limit, F6 Endangerment, F6 Dschrq Firearm at a Structure, F3	1 3 1	Jury Trial-Not Guilty
10/28/2010	Llewellyn <i>Souther</i> <i>Farrell</i>	Thumma	2010-105091-001 Burglary 2nd Degree, F3 Theft, F2	1 1	Jury Trial-Not Guilty

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Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
11/4/2010	Kirchler <i>O'Farrell</i>	Harrison	2010-119386-001 Sexual Assault, F2 Kidnap, F2 Sexual Assault, F3, Attempt to Commit Assault-Intent/Reckless/Injure, M1	1 2 1 1	Jury Trial-Guilty Lesser/Fewer
11/8/2010	Dapkus	Anderson	2010-114787-001 Org Retail Theft Merchandise, F4	1	Jury Trial-Guilty Lesser/Fewer
11/15/2010	McCarthy <i>Souther</i>	Gottsfield	2010-123490-001 Agg Aslt-Officer, F6 Resist Arrest-Physical Force, F6	1 1	Court Trial-Guilty Lesser/Fewer
Capital					
9/2/2010	Brown Blieden <i>James</i> <i>Southern</i> <i>Alling</i>	Kemp	2008-144890-001 Murder 1st Degree, F1 Misconduct Involving Weapons, F4 Aggravated Assault, F3	2 1 1	Jury Trial-Guilty Lesser/Fewer
9/27/2010	Washington Nurmi <i>Page</i> <i>Berry</i> <i>Stodola</i>	Granville	2004-023628-001 Aggravated Assault, F3 Murder 1st Degree, F2, Attempt To Commit Sexual Assault, F2 Burglary 1st Degree, F2 Murder 1st Degree, F1	1 1 2 1 1	Jury Trial-Guilty Lesser/Fewer
Juveniles in Adult Court					
11/24/2010	Bradley	Jones	2009-173328-001 Narcotic Drug Violation, F2	1	Jury Trial-Guilty As Charged

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Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
RCC					
9/2/2010	Braaksma	Ore	2010-102208-001 Liq-Minor Drive After Drinking, M1 DUI-Liquor/Drugs/Vapors/Combo, M1	1 1	Jury Trial-Guilty As Charged
9/14/2010	Peterson Thompson	Warner	2009-137247-001 Unlaw Flight From Law Enf Veh, F5	1	Jury Trial-Guilty As Charged
9/22/2010	Braaksma	Frankel	2010-122190-001 DUI-Liquor/Drugs/Vapors/Combo, M1 DUI w/Bac of .08 or More, M1 Extreme DUI-Bac .15 -.20, M1	1 1 1	Jury Trial-Guilty As Charged
9/27/2010	Griffin Jarrell	Mcmurry	2010-116826-001 Extreme DUI-Bac .15 -.20, M1 Dui-Liquor/Drugs/Vapors/Combo, M1 DUI W/Bac of .08 or More, M1	1 1 1	Jury Trial-Not Guilty
9/27/2010	Vincent	Dodge	2010-128777-001 Drug Paraphernalia-Possess/Use, M1	1	Court Trial-Not Guilty
10/28/2010	Braaksma Jarrell	Ore	2010-133875-001 Criminal Damage-Deface, M1	1	Court Trial-Not Guilty- Directed Verdict
11/3/2010	Braaksma	Goodman	2010-113537-001 Dui-Liquor/Drugs/Vapors/Combo, M1 Extreme Dui-Bac .15 or More, M1 DUI W/Bac of .08 or More, M1	1 1 1	Jury Trial-Guilty As Charged
11/17/2010	Braaksma	Frankel	2010-118599-001 Extreme DUI-Bac .15 or More, M1 DUI w/Bac of .08 or More, M1 DUI-Liquor/Drugs/Vapors/Combo, M1	1 1 1	Jury Trial-Guilty As Charged

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Jury and Bench Trial Results

September 2010 – November 2010

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
Vehicular					
9/16/2010	Foundas <i>Cowart</i>	Rummage	2009-175823-001 Marijuana-Possess/Use, F6 Drug Paraphernalia Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
9/17/2010	Sloan <i>Renning</i> <i>Menendez</i>	Passamonte	2009-171141-001 Agg DUI-Lic Susp/Rev for DUI, F4 Unlaw Flight From Law Enf Veh, F5	2 1	Jury Trial-Guilty As Charged
10/22/2010	Brink	Hamblen	2010-100498-001 DUI-Liquor/Drugs/Vapors/Combo, M1 DUI w/Bac of .08 or More, M1	1 1	Jury Trial-Guilty As Charged
11/1/2010	Black	Flores	2009-172948-001 Unlaw Use of Means of Transp, F6	1	Jury Trial-Not Guilty- Directed Verdict
11/17/2010	Iniguez <i>Casanova</i>	Harris	2010-103348-001 Endangerment, F6 Hit and Run w/Death/Injury, F4 Agg Aslt-Serious Phy Injury, F3	4 1 1	Jury Trial-Guilty As Charged
11/23/2010	Tomlinson <i>Renning</i>	Warner	2009-174497-001 Misconduct Involving Weapons, F4	1	Jury Trial-Guilty As Charged



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Jury and Bench Trial Results

September 2010 – November 2010

Legal Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
9/10/2010	Sinclair <i>McReynolds</i> <i>Marino</i> <i>Baker</i>	Granville	2008-048110-001 Murder 2nd Degree, F1 Misconduct Involving Weapons, F4	1 1	Jury Trial-Guilty As Charged
10/27/2010	Bevilacqua McWhirter <i>Hill</i> <i>Horrall</i> <i>Carrillo</i> <i>Rubio Gaytan</i> <i>Brewer</i>	Stephens	2009-175902-001 Murder 1st Degree, F1	2	Jury Trial-Guilty As Charged
11/19/2010	Navazo <i>Otero</i> <i>Haimovitz</i> <i>Marino</i> <i>Prusak</i> <i>Brewer</i>	O'Connor	2008-006436-001 Murder 1st Degree, F1 Burglary 1st Degree, F2, Conspiracy to Commit	3 2	Jury Trial-Guilty As Charged
9/10/2010	Phillips	Hoffman	2010-005419-002 Murder 2nd Degree, F2, Attempt to Commit Aggravated Assault, F3 Drive By Shooting, F2 Street Gang, F3 Minor Carrying Firearm, F6 Theft-Means of Transportation, F3	1 2 1 1 1 1	Jury Trial-Guilty As Charged
9/13/2010	Beck <i>Hill</i>	Anderson	2009-141312-002 Aggravated Assault, F3 Aggravated Assault, F4	1 1	Jury Trial-Guilty As Charged
9/13/2010	Rothschild <i>Rangel</i>	Roberts	2009-150653-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
10/1/2010	Garner	McMurdie	2010-105000-002 Marijuana Violation, F2 Marijuana Violation, F3	1 1	Jury Trial-Guilty Lesser/Fewer

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Jury and Bench Trial Results

September 2010 – November 2010

Legal Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
10/20/2010	Tate	Verdin	2010-111132-002 Theft by Extortion, F2 Misconduct Involving Weapons, F4 Kidnap, F2 Smuggling Humans, F4	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
11/16/2010	Garner	Passamonte	2010-116272-001 Narcotic Drug Violation, F3, Attempt to Commit	1	Jury Trial-Guilty Lesser/Fewer

Legal Defender's Office – Dependency

Last Day of Trial	Attorney <i>Case Manager</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
9/1	Ripa	Bergin	JD19029 Severance Trial	Severance Granted	Bench
9/8	Ross	Hicks	JS11516 Severance Trial	Severance Dismissed	Bench
9/28	Gaunt	Coury	JD17787 Severance Trial	Severance Granted	Bench
11/30	Sanders	Blakey	JD16191 Severance Trial	Severance Dismissed	Bench

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Jury and Bench Trial Results

September 2010 – November 2010

Legal Advocate's Office – Trial Division

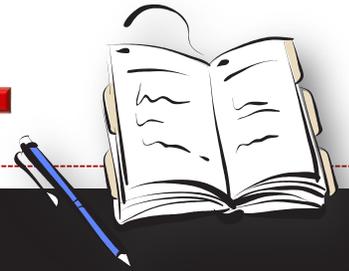
Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
9/14/2010	Whiteside Pena-Lynch	Pineda	2009-007687-001 Aggravated Assault, F2 Theft-Means Of Transportation, F3	1 1	Jury Trial-Guilty As Charged
11/3/2010	Koestner	Verdin	2008-149416-001 Armed Robbery, F2 Misconduct Involving Weapons, F4	2 2	Court Trial-Guilty As Charged

Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
10/21/2010	Konkol Nations	Norris	JD17539 - Severance	Severance Granted	Bench
11/19/2010	Russell Miller	Sinclair	JD18872/JS11530 - Termination	Termination Granted	Bench
11/22/2010	Todd Stocker	Akers	JD507753 - Severance	Mother's Parental Rights Terminated	Bench

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SAVE THE DATES...



9th Annual APDA Conference

June 22, 23 & 24, 2011



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for The Defense

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