

for The Defense

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Use of Police Operations Orders

Using Their Procedures During Cross Examination

By Robert Doyle, Defender Attorney

At trial, cross-examining a police officer is always difficult. The police are practiced and experienced witnesses. They generally know how to testify effectively in front of a jury. One proven technique for cross-examining officers is to use their own written policies and procedures.

Every police department and law enforcement agency operates on a quasi-military basis with a chain of command and written directives. Each has its own written policy and procedure manuals. These manuals are usually available for your review. While some of the smaller police departments in the greater Phoenix area have only limited manuals, other police departments have very extensive written policies. For example, the Phoenix Police Operations Orders completely fill a large three-ring binder, divided into seven topics each with several sub-topics. The sub-topic index of the Phoenix Police Department Operations Orders is an insert in this issue.

While every case is different, it is frequently the case that you will find that the officers have strayed from the written policies of their own department. The only officers who seem

to really know the Operations Orders are those who plan to take an exam for promotion.

The use of Operations Orders as cross-examination material can be best illustrated by a hypothetical example. Assume for a moment that your client has been arrested while leaving a suspected drug house. He allegedly consents to a search, is patted down at the scene and a concealed knife is found. He is taken in for booking, and narcotics are found in his possession. At the jail, he denies possessing the drugs. The narcotics, found in a vial, have been impounded but not fingerprinted.

In cross-examining an officer with Operations Orders, it is recommended that you first establish what the officer did in his investigation. Once the officer has testified as to what he did, the first question is: "What are Operations Orders?" Asking a Phoenix Police Officer "what are Operations Orders" on cross-examination is usually met with stunned silence. When you repeat the question, they will tell you that the Operations Orders are the procedures to be followed in the



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delivery of police services to the community.¹ Every officer is required to have a full set of the Operations Orders. Each uniformed officer is required to carry a set of the Operations Orders in his/her vehicle.²

Let’s assume that the officer is first asked whether he tested the vial taken from your client for fingerprints. Officers will frequently testify that they did not see need to test the vial for fingerprints, so in the exercise of their discretion they did not have it tested for prints. The Phoenix Police Operations Order on latent fingerprints states, “Since fingerprints are extremely valuable as physical evidence, officers will make every effort to obtain them at crime scenes. The DR will indicate when prints are not obtained after processing the scene. If no search was made, the reason will be noted.”³ It would not take a great deal of imagination to construct an effective cross-examination based upon these mandatory policy statements.

Assume also that the officer testifies that, when he approached your client, he asked for and received consent to search. He did not obtain consent in writing, did not tape record the conversation, and the other officer present did not hear the conversation. Your client wants to testify that he never consented to a search. When preparing the cross-examination of the

officer, consider the following: “Reliance upon the supposed consent of a defendant is risky because it cannot be anticipated how the facts surrounding this alleged consent as testified to by the officer and the defendant, will appear to the court.”⁴ “While it is permissible to conduct searches under such circumstances, it is unwise as a matter of general practice to rely upon the arrested person giving consent at the time of arrest if it is possible to obtain a search warrant in advance of the arrest.”⁵

Let’s further assume that the officer testifies that he searched your client at the scene and did not find any drugs. The officer later found the drugs while booking the defendant into the jail. Let’s also assume that the officer claims the search at the scene before transporting your client was only a pat down for weapons. Phoenix Operations Orders require that prisoners be thoroughly searched before they are transported: “Persons arrested for any reason will be searched carefully for narcotics, drugs, weapons, and other items before being transported, placed in a holding room, or booked into jail. All property, including smoking materials, will be removed from prisoners prior to placing them in a police vehicle.”⁶ “A search must be thorough and should not be discontinued when one weapon as the subject may have more than one. The same is true for narcotics or other contraband.”⁷

These are just three examples of how Operations Orders can lead to useful and effective cross-examination questions for police officers in areas where it is often very difficult to construct any cross-examination at all. When preparing for trial, it would be worth taking a few minutes to consult an Operations Orders volume to determine if the officer actually followed the proper procedures for your case. Within each Public Defender Trial Group, Trial Counsel have a complete set of Phoenix Police Department Operations Orders available for review. It is recommended that the volume stay with Group Trial Counsel, as it becomes very difficult to keep track of this rather large volume once it "sprouts legs" and starts moving around the office.

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Liars, Prevaricators, and Frauds

A Discerning Look at Deceit

By Donna Elm, Federal Public Defender's Office

Part 4: Lying as a Result of Impaired Memory

The palest ink is better than the best memory.

– Chinese proverb

A. Nature of Memory

Human memory evolved to help us find food and function in social groups, not to testify accurately. Furthermore, people with flawless memories can be abnormal: idiots savants, capable of remarkable recall of banal details, utterly incapable of using that talent to translate into job or life skills.¹

One of the common myths about memory is that it is like a video camera, recording whatever we see and preserving it inviolate for playback. Research has proven that memory instead goes through a continuous process of being reconstructed unconsciously, with new experiences modifying old memories.² In one study, groups were shown a series of slides depicting a burglary; then they were treated to a narrated review of the crime where half were fed misinformation (the tool was a hammer rather than a screwdriver). When their memories were tested, a significantly higher number of the misled subjects had adopted the erroneous information, honestly believing that they had seen a hammer in the slide show. They were just as confident in their recollections as those who reported the burglary accurately.³

This is, incidentally, why interviewing police should not suggest facts. Several other police interviewing techniques may similarly distort witnesses' memories. For instance, confidence in memory of an event is only very minimally correlated with how accurate it actually is.⁴ The

confidence a witness feels about his memory will increase dramatically, however, when given information corroborating his shaky recollection; thus, when interviewers offer true (or *false!*) suggestions of facts, they may solidify an incorrect memory.⁵ Additionally, imagination inflates memory; when a person is asked to try to remember an event that she only vaguely noticed, she imagines (re-creates a mental image of) it. However, research shows that by trying to imagine it, she will naturally enrich the memory with details she expected would have been there, easily confusing imagined with real details; hence witnesses who did not notice particulars during an event are especially susceptible to memory imagination distortion.⁶

Furthermore, contrary to the notion that a horrible experience will be “burned into the victim’s mind,” the more traumatic an event was, the more likely its memory will be severely distorted or even completely fabricated. For example, half the children who were buried underground during a terrifying school bus hijacking made dramatic errors recalling it several years afterward.⁷ A similar study of children’s memories of a school sniper attack produced substantial distortions; more surprisingly, some children who had been absent from school that day also reported remembering being there and described the attack!⁸

Moreover, a person with gaps in his memory often tries to fill them in, resulting in a process called “confabulation.” A confabulating person subconsciously inserts things that he thinks must have occurred (or perhaps heard had occurred) into blank spots in his memory.⁹ Nevertheless, he fully believes that he saw those things he fabricated, and that his present “memory” is correct.¹⁰

B. Factors Producing Confabulation

We literally “make up stories” about our lives, the world, and reality, and often it is the story that creates the memory, rather than vice versa.

– R.M. Dawes

1. Brain Damage Factors

There are a number of memory-based reasons why our clients or witnesses may report something falsely, believing earnestly that their account is true. Prenatal brain damage can injure memory centers at critical times when they are being created, leading to failures in recollection and consequently confabulation. For instance, fetal alcohol syndrome often impairs memory, but because the sufferer is born with this condition, she may never realize she confabulates – it is just how she thinks about her experiences.¹¹ Retarded individuals are also prone to confabulation, perhaps because they do little critical thinking (which distinguishes reality from fantasy). In one case, an expert testified that a sex abuse victim with an IQ of 50 “is able to be steered or coached or coerced, ... is very impaired in recalling events and could have a confabulated memory, ... contaminated by other things such as dreams, or they may be influenced by other people.”¹²

Brain damage after birth can similarly lead to impairment and confabulation. In one instance, a victim had suffered severe brain injuries, leaving him functioning at a third grade level; “he would not be able to accurately recall historical information without confabulating.”¹³ In another case, the defendant sustained a concussion during his altercation with the victim; in his pre-sentence interview, he reported spending four years in the Marine Corps, rising to lieutenant, and serving as a marksman instructor. However records established that he had been in the Corps for only two months in boot camp before being discharged. A psychologist explained at sentencing that he defendant had not lied in his pre-sentence interview: “That sort of statement, which can be checked for accuracy almost instantaneously, ...

is an example of confabulation. Individuals who have been injured, not understanding precisely what transpired beforehand, try to make sense of it, and use various schemes that they already have, which may be unrelated entirely to what is going on.”¹⁴

2. Age Factors

Age plays a role in memory failure and confabulation. A young person may submit to suggestion, defer to authority figures, fail to critically distinguish the source of her ideas, and rely on imagination more than a mature individual.¹⁵ Indeed the malleability of young memory is so well-accepted that courts often allow expert testimony about heightened effects of suggestion and coercive questioning on children.¹⁶ Moreover, statements by children (especially those with limited vocabulary) may be misconstrued due to their unsophisticated verbal capacity. A language-impaired youngster “will start talking and say any old thing hoping that he’s hitting the mark.”¹⁷ Similarly, these children tend “to answer ‘yes’ to questions they do not understand.”¹⁸

When I was younger, I could remember anything, whether it had happened or not; but my faculties are decaying now, and soon it shall be so I cannot remember any but the things that never happened.

– Mark Twain

On the other end of the age spectrum is memory failure occasioned by advanced age. Aside from normal forgetfulness, some of the elderly suffer from dementia, brain disease, or Alzheimer’s, leading to memory deficits and confabulation.¹⁹ Mark Twain’s observation is accurate: “Aging and Alzheimer’s disease are a double-edged sword. You are less likely to remember things that really did happen to you but you’re more likely to remember things that never happened to you.”²⁰

Paradoxically, the benevolent desire to protect the old and young may be the very thing that leads to fabricated allegations. After a 77-year-old grandmother (in an early stage of

Alzheimer's) gave grossly inconsistent accounts of being raped by a young neighbor, the prosecutor and detective helped her produce a set of notes to read into the record as "testimony" and suggested what her statement should be. Nevertheless, the appellate court also sheltered her, declining to find overreaching. Ignoring the reasonable possibility of false allegations, the court rationalized that "because of the somewhat unusual circumstances presented by an elderly witness with a failing memory," extra steps were necessary to prepare her to testify.²¹

3. Substance Abuse Factors

Alcohol abuse to the point of blackout obviously impairs memory, necessitating filling in the blanks.²² When a person's intoxication reaches the point of hallucination, he "begins to confabulate to compensate for his loss of memory for recent events;" the truth of what he says must be strongly suspect.²³ A person in blackout when interviewed by police may confabulate his confession but cannot remember that story after sobering.²⁴

Drug abuse can similarly impair memory. The defense may introduce expert testimony to that effect when a state's witness is a heavy drug user.²⁵ For example, prolonged marijuana smoking can cause perception and memory loss, leading the abuser to confabulate.²⁶ In addition, where chronic PCP-smokers were prosecution witnesses, the defense introduced expert testimony that extensive PCP use led to memory impairment; even a regular PCP user (who was straight during the crime) could be expected to have a "less than perfectly accurate" perception of that incident.²⁷ Further, cocaine and heroin obliterate small details in memory, affecting identifications and accurate recall of events.²⁸

4. Therapeutic Memory-Enhancing Factors

Therapeutically enhanced memories, such as occurs under hypnosis or "truth serum," present a host of legal and practical problems for courts.

The AMA defines hypnosis as "A temporary condition of altered attention which may be induced ... in which a variety of phenomena may appear spontaneously or in response to stimuli ... includ[ing] alterations in consciousness and memory, [and] increased susceptibility to suggestion."²⁹ It is used because it does increase the quantity of memory, though at the cost of its accuracy. In one experiment, for instance, hypnotized participants recalled twice as many details as non-hypnotized ones, but made three times as many errors! The experimenters therefore concluded that hypnosis should be discouraged when the truthfulness of the memory is paramount.³⁰

In addition to the problem of veracity, courts are concerned that: (1) persons under hypnosis are highly susceptible to suggestion; (2) they rarely admit *not* knowing an answer, so confabulate instead; and (3) after hypnosis, their memory is "hardened" or "cemented," so they become highly convinced that their hypnotized recall is accurate.³¹ This final factor jeopardizes a defendant's Sixth Amendment right to confrontation.³² These (and other) concerns led the AMA Council on Scientific Affairs to conclude that "recollections under hypnosis are too shaky for the witness stand."³³

Consequently, courts developed rules for hypnotically recalled testimony. An early position was barring hypnotized witnesses *per se* from trial. The Ninth Circuit applied that rule once,³⁴ but eventually settled on the opposite approach (a hypnotized witness can testify about any matters discussed under hypnosis, and the fact of hypnosis is just for impeachment).³⁵ However most courts now, including Arizona's, apply a compromise rule that allows a witness to testify only to matters that had *not* been subjected to hypnosis.³⁶ Arizona took this approach because hypnotized recall is inherently unreliable, and post-hypnotic "cementing" defeats effective cross-examination.³⁷ Consequently, a witness may testify to whatever he recalled before hypnotism, though when his hypnotized recall is independently corroborated, it can be admitted.³⁸

What happens when rules barring hypnotized testimony run afoul of defendants' trial rights? In *Rock v. Arkansas*, the defendant had been hypnotized while preparing for trial, so was precluded from testifying. The Supreme Court upheld the constitutional issue, concluding that the right of the accused to testify trumps reliability concerns over hypnotism. The Court also suggested that the same analysis might apply to an "arbitrary" rule barring the accused from presenting witnesses in his defense.³⁹ In an era of victims' rights, a court may also decide that their constitutional entitlement to speak (at certain junctures in a case) could not be limited by rules prohibiting hypnotized memories.⁴⁰

Memory enhanced by drugs is treated the same as recollection enhanced by hypnotism. In jurisdictions where hypnotized recollection is inadmissible, drug-induced recollection is inadmissible too. Hence when a witness's memory was amplified by sodium amytal, the Ninth Circuit decided admissibility by applying its test for hypnotized testimony.⁴¹ Sodium pentathol ("truth serum") has the same potential to distort memory. After a rape victim implicated the defendant at trial, and the defense impeached her with her recantation, the state rehabilitated her with expert opinion that, under the influence of this "truth" drug, she had stuck with the original accusation. The Court noted that sodium pentathol is not a scientifically reliable means of ascertaining the truth: although it helps people talk more freely, they may simply more freely lie.⁴²

5. Belief Factors

Memories are beliefs about what happened, and beliefs are constructed from, and reinforced by, memories.

– Marcia Johnson⁴³

Psychologists have long recognized "the age-old relationship between core belief and false memories:" we tend to remember what is consistent with our belief system. The notorious case of Paul Ingram (chief sheriff's deputy and conservative Christian charged with multiple counts of rape and satanic rituals), aptly

illustrates this correlation. Allegations first emerged when his daughters attended a revival where participants had "visions" (including of abuse); the leader prayed over one daughter, divining that she had been sexually abused by her father for years. Based on their religious beliefs, they presumed it was true. Encouraged by those beliefs to cleanse themselves, and by investigating police to incriminate this "perp," the girls escalated allegations, including infanticide, cannibalism, and bestiality.

Their father also had a deep-seated religious faith, and had an abiding certainty in the honesty of his children. Moreover, the police were his friends and colleagues whom he trusted, and he believed they would not pursue charges unless those were real. He was additionally aware of repression, that a person may not remember experiences that were at odds with his perception of himself. Therefore, although he did not remember the parade of escalating accusations, after four hours of psychologically coercive interrogation, he started confessing them. Over the next weeks as he tried to remember the events, his imagination began confabulating details which inflated his "memory," a process leading to a rich fabrication of heinous acts as well as a certainty that he must have done them. To test Ingram, a psychologist concocted new claims, telling him that his daughters had "remembered" them as well. True to his beliefs, he tried to remember these; in no time, he spun out details and dialog, ending in a 3-page (utterly false, but completely believed) confession!⁴⁴

Ingram is an extreme example, but studies continue to show that belief in, for example, the honesty or investigative abilities of police, can lead witnesses to adopt (and then incorporate into their own memory) facts that interrogators suggested.⁴⁵

6. Defense Mechanism Factors

Sometimes people remember or forget what they "need to," in order to maintain psychological equilibrium. There are a host of defense mechanisms protecting us from things

too horrible to face by forgetting them; this “psychogenic amnesia” is not a true amnesia (because an event is perceived but subsequently rendered inaccessible).⁴⁶ Nonetheless, the effect of this memory loss is the same: memory voids left by repression are immediately filled with confabulation to further protect the individual from realizing there even is a problem that she is not facing.

Repression can be so extensive that the individual “dissociates,” that is, he continues to interact with his world but has no conscious memory of doing so. Dissociation is not uncommon in extreme violence cases such as child abuse, rape, and terrorism; protracted trauma can in fact lead to fragmenting his consciousness into a “split personality.” Mild, brief dissociation occurs frequently (even in stable people) when they see a traumatic event. For example, seasoned media reporters witnessing an execution experienced dissociative periods in the weeks following it.⁴⁷ In another case, a defendant suffered from routine dissociation, interfering with his ability to recall events; to compensate, he confabulated what had occurred.⁴⁸ Amazingly, temporary dissociation seems to happen to both the victims and perpetrators of violent offenses!⁴⁹

C. Legal Issues regarding Confabulation

1. Attacking Statements arising from Memory Impairment

Ten thousand different things come from your memory or imagination – and you know which is which, which is true, which is false.

– Amy Tan

When a confession may be confabulated, the defense has tried to suppress it as involuntary or unreliable. In *Javier*, for example, the retarded juvenile defendant moved to suppress his confession because he confabulated, saying whatever came into his mind. An agreeable person, Javier tended to accept whatever interrogating police proposed. The defense

challenged his knowing waiver of rights with expert testimony that he would likely acknowledge understanding his *Miranda* rights, even though he could not comprehend them; the defense also claimed that police used deceit, aggression, promise of benefits, and threats of prosecution. The court carefully examined the facts of the recorded interrogations (including that Javier rejected promises of leniency and did not merely agree with leading questions) before deciding there was no undue coercion nor *Miranda* waiver violation.⁵⁰

However in *Hoppe*, police interrogated Hoppe three times while he was hospitalized, without verifying his mental status with physicians. The recorded confessions revealed compliant answering of leading questions as well as some bizarre ideas, and doctors further established that he had been psychotic and hallucinating at that time. The judge’s finding of involuntariness and suppression of the confession was upheld on appeal; although *some* police impropriety must occur for suppression, it does not have to be outrageous conduct, and the vulnerable state of the person they were interrogating is a factor to be taken into account.⁵¹

Voluntary intoxication is disfavored throughout the criminal justice system, so confessions confabulated due to intoxication are seldom suppressed. Courts reason that “no constitutional provision protects a drunken defendant from confessing,”⁵² and, “if we accept confessions of the stupid, there is no good reason not to accept those of the drunk.”⁵³ However, the level of intoxication might require a lower quantum of police coercive behavior to render a confession involuntary, and if it made the defendant hallucinate, his statements are so unreliable that they could be suppressed.⁵⁴

Although courts hesitate to suppress confessions, they are far more inclined to allow an expert to explain to the jury memory loss and confabulation regarding the (un-suppressed) confession.⁵⁵ In one case, a defendant who suffered from a head injury made false, grandiose claims during the interrogation; the defense wanted to introduce an expert to explain

this as confabulation and thus suggest that other incriminating parts of the confession were similarly false. The court only allowed general testimony about the effect of head injuries on confabulation, and did not permit any opinion tied to the facts of that case. This may have been a serious intrusion on the defendant's right to present a defense, except that the defense in that case was justification (with the prerequisite that the defendant concede he did the crime), so his confession was not that material.⁵⁶ In another case, the defendant was allowed specific expert testimony of memory problems and confabulation about the facts of his case, but was denied expert testimony that persons with minimal English capabilities tend to answer "yes" to questions they may not understand; the court found that he in fact had rejected many things suggested by the interrogating officer.⁵⁷

Courts also usually permit general testimony about factors that would cause memory impairment and consequent confabulation as pertains to state's witnesses' recollections.⁵⁸ Hence where gang members who used PCP heavily testified for the state, the defense was allowed to present testimony of the effect abusing that drug could have on their memory and accuracy of present recall.⁵⁹

2. Incompetence due to Memory Impairment

*"Do you swear to tell the truth, the whole truth, and nothing but the truth?" "No, I don't. I can tell you what I saw and heard, but the more I study, **the more sure I am that nobody knows the whole truth.**"*

– Carl Sandburg

Memory impairment generally does not render a defendant incompetent. As a matter of policy, the criminal justice system does not want to relieve an offender of responsibility for his acts by a glib "I don't remember." "The concern of courts ... is the very real danger that amnesia can be feigned easily and that discovery and proof of feigning and malingering is difficult."⁶⁰ Nonetheless, there can be genuine constitutional

implications for the amnesic accused: a person with memory loss may not be able to assist in his defense, and his right to testify and allocute could be thwarted. Courts have resolved this conflict on a case-by-case basis,⁶¹ but generally do not let memory lapse derail trial.⁶² Thus although one defendant's "psychoneurotic hysterical state" led to "memory blanks which he attempts to fill with confabulation," he was still competent to proceed.⁶³

The defense often seeks to exclude a victim as incompetent due to memory loss, theorizing that because her testimony is unreliable, she may not be able to adhere to the oath. That is, of course, precisely the reason for excluding hypnotized testimony. Nonetheless, judges developed a double standard: confabulation from hypnosis is barred, but confabulation from anything else is generally not. One would think that a justice system so centered on ferreting out the "truth" would not tolerate false (confabulated) testimony, whatever its source, but courts seem impervious to such logic.

For instance, where the victim functioned at a 3rd grade level due to brain injury (able to differentiate right from wrong, but not accurately recall historical information), the defense moved to preclude his testimony. Pointing out that he confabulates what he could not remember, the defense argued that he "would believe" whatever he is saying. The appellate court concluded he was nonetheless competent because he "gave clear, concise answers ... and displayed no memory lapses or difficulties," nor did he confuse this offense with another molestation allegation; as a result, it affirmed the conviction.⁶⁴ But the trial and appeals courts both misunderstood the issue: a confabulating person will not show any memory lapses since he fills those in with likely scenarios; furthermore, with a complete (albeit erroneous) story to draw from, he could easily craft clear and concise answers. So, the fact that a witness seems to function well on stand does not mean he is not suffering from effects of memory impairment.

Another alarming double standard is that if the defense seeks to have the victim declared incompetent, it is virtually always denied, but if the prosecution wants it (to replace it with a prior recorded statement), it is routinely granted. In the case of the 77-year-old rape victim suffering from Alzheimer's, the prosecution successfully moved to have her declared "unavailable" (when her dementia had progressed to the point where she was incompetent), seeking to substitute her preliminary hearing testimony. In spite of expert testimony that there was demented confabulation even at the time of the offense and preliminary hearing, and substantial inconsistencies in her statements to police (establishing unreliability), the transcript was read into evidence at trial. The jury convicted, the defendant received a life sentence, and the conviction was affirmed on appeal.⁶⁵

In another case, the witness's earlier testimony was introduced in a capital trial after she was "unavailable" due to mental incompetence. Over a dozen interrogation sessions, she had denied any knowledge at first, gradually "remembering" more incriminating details until she produced a florid description on stand at a preliminary hearing. To compound the problem, the defense request to have the witness psychologically evaluated was turned down, as was their expert testimony about suggestive questioning molding her memory. At least this was reversed on appeal, since it was a gross violation of the right to present a defense and confront evidence against the defendant.⁶⁶

Because age may play a role in memory accuracy, the defense has sometimes moved to preclude a very young or old victim. Studies of child witnesses have proven that they are likely to adopt and believe information repeated to them during leading questioning. In one experiment, children were asked whether they had ever gotten their finger caught in a mousetrap and had to go to the hospital to take it off? Over time, they were periodically asked to try to remember this incident. Afterwards, over half the children did, sometimes with astonishing richness of detail – even though that

this had never occurred.⁶⁷ Nevertheless, judges are loathe to exclude child victims, preferring to let them testify but also admit expert testimony about how improper questioning shapes a child's memory.⁶⁸

At times, the defense has asked to evaluate state's witnesses to determine competency and confabulation. Although "due process and fundamental fairness may, *depending on the circumstances*, entitle the defendant to have the alleged victim examined,"⁶⁹ judges often go to great jurisprudential lengths to protect vulnerable victims if there is any way the defense can not be prejudiced.⁷⁰ Thus when a victim had been diagnosed as dissociative (leading to confabulating events) earlier, the defense was not allowed to re-evaluate him, because it could use his psychiatric records alone to prove he confabulates.⁷¹

3. Insanity due to Memory Impairment

Courts do not generally permit a defendant with memory impairment to claim that as insanity. As a policy issue, judges are concerned that any plea of memory loss could absolve persons of horrible deeds accomplished with full appreciation of their acts, even if forgotten later.⁷² Persons who are intact when committing a crime are reasonably treated differently from those who were not intact when committing it.

Neither Arizona nor federal law expressly precludes an insanity defense based upon memory loss,⁷³ but because this psychiatric impairment occurs *after* the event, not necessarily *during* it, insanity during a relevant time frame is rare. However when there are other indications of insanity in conjunction with memory deficits, pleading insanity is allowed. For instance, a woman who had undergone radical brain surgery suffered from temporal lobe seizures, mild paranoia, and memory loss. After killing a girl, she confabulated that the victim was a gang member who was after her daughter. A neurologist testified that during those seizures, people "don't know what they are doing and cannot control it." There was

no question that she could present evidence of confabulation to the jury to explain why the confession was false, but the court also allowed it as an insanity defense⁷⁴ – no doubt due to her “not knowing what she was doing,” which is definitional of insanity.

Note that Arizona and Ninth Circuit bar insanity defenses based on intoxication.⁷⁵ However, when the defendant was in a drunken blackout but *also* suffered from chronic cocaine abuse and organic brain damage, he was allowed to pursue insanity based on all three issues.⁷⁶ Again, he clearly could admit psychiatric evidence to explain the bizarre and obviously erroneous confabulations he told police (while blacked out), but the additional mental defects made that evidence appropriate for insanity as well. Another defendant suffered from frontal and temporal lobes injuries, impairing his judgment and “understanding the big picture,” but due to alcohol blackout, he also had complete amnesia about the murder. The jury was allowed to hear about all these mental issues for an insanity defense, but it was also instructed on voluntary intoxication not being a defense.⁷⁷

Some jurisdictions, including Arizona, also exclude being a psychopath (formerly, sociopath) from an insanity defense.⁷⁸ However, federal courts do not treat it as an absolute prohibition. Consequently when a federal defendant was “somewhat disturbed” and suffered from psychopathic hysteria (causing him to not remember taking a car under false pretenses), he could pursue insanity.⁷⁹

4. Jury Instructions in light of Impaired Memory Research

We underline the obvious in declaring that amnesia is nothing more than a failure of memory, that every individual’s memory process is marked by some distortion, and as a result, no one’s memory is in fact complete; every one is amnesic to some degree.

– Supreme Court of Arizona, in *McClendon*⁸⁰

This quote is too remarkable to overlook. Our Supreme Court, in a published opinion of law, “declared” as “obvious” how normal it is for memory to be distorted! We should ask for this “*McClendon* instruction” to disabuse juries of precepts that memory is wholly reliable. Standard witness credibility instructions would not supplant it either, because they focus on perceptions more than what happens to those perceptions later.

On the other hand, memory issues are addressed in eyewitness identification instructions. Recommended jury instructions, however, have not kept up with scientific research. The RAJI eyewitness identification instruction (based on *Biggers*), includes considering “the level of certainty demonstrated by the witness at the confrontation.”⁸¹ It is noteworthy that the Ninth Circuit model eyewitness identification instruction *omitted* the “confidence” quotient from its lexicon of factors.⁸² Memory studies have repeatedly proven that a witness’s confidence in her memory does *not* correlate with its accuracy:⁸³ a confabulator exhibits every bit as much confidence in her unconsciously fabricated “memory” as those with perfect memory. This holds true despite whether the confabulation occurs from organic brain damage from birth or later in life.⁸⁴ Similarly, people whose intact memories are distorted by suggestive questioning, exhibit complete confidence in their erroneous recall.⁸⁵ Moreover, our Supreme Court precludes memory enhanced by hypnosis due in part to the undue confidence level that result.⁸⁶

Because confabulation is so prevalent, and confidence in it otherwise does not correlate with accuracy, the *Biggers* instruction that jurors should consider a eyewitness’s confidence in his identification is contrary to the research. It is likely to lead to juries crediting “confident” eyewitness identification when instead they should not suspend their suspicion of it. It is high time that confidence in the identification be deleted from the *Biggers* instruction.⁸⁷

In some jurisdictions (though not Arizona nor the Ninth Circuit), juries are instructed that they

are to presume witnesses tell the truth.⁸⁸ That presumption is contrary to human nature. It has been highly criticized,⁸⁹ and its use has been on the decline nationally.

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10. *United States v. Currens*, 290 F.2d 751, 754 n.2 (3rd Cir. 1961).
11. *United States v. Charles*, 1995 WL 230349 at *2 (9th Cir. 1995) (unpublished).
12. *State v. Davis*, 1999 WL 147951 at *2 (Tenn. Crim.App. 1999)(unpublished).
13. *West v. State*, 2002 WL 820810 at *1 (Tex. App. 2002)(unpublished); see also *Commonwealth v. Wilson*, 2004 WL 2660746 at *3 (Pa. 2004)(unpublished, due to two fractured skull injuries, witness would have difficulty recalling events and so would confabulate).
14. *State v. Saunders*, 267 Conn. 363, 380, 838 A.2d 186, 198 (2004).
15. *In re Javier H.*, 2004 WL 2225177 at *17 (Cal. App. 2004)(unpublished).
16. E.g., *State v. Sargent*, 144 N.H. 103, 738 A.2d 351 (1999).
17. E.g., *Javier* at *16.
18. *State v. Kaddah*, 250 Conn. 563, 574, 736 A.2d 902, 907 (1999).
19. E.g., *State v. Hoppe*, 261 Wis.2d 294, 304-06, 661 N.W.2d 407, 411-12 (2003)(dementia rendered Hoppe very vulnerable and susceptible to suggestion); *People v. Ellis*, 2003 WL 21224241 at *6 (Cal.App. 003)(unpublished, defendant claimed prejudice from pre-indictment delay due to a defense witness growing so demented in the interim that she could no longer be competent to testify for the defense).
20. H. Roediger, quoted in *Am.Psych.Ass'n Monitor* 38 (Oct. 2000).
21. *People v. McLaughlin*, 2003 WL 22022024 (Cal. App. 2003) (unpublished).
22. E.g., *People v. Ford*, 2005 WL 126487 at *2 (Cal. App. 2005) (unpublished); *Nichols v. Commonwealth*, 142 S.W.3d 683 (Ky. 2004); *Commonwealth v. Lynch*, 439 Mass. 532, 535-36, 789 N.E.2d 1052, 1056 (2003); *Madding v. Commonwealth*, 2003 WL 22415625 at *3-4 (Ky. 2003) (unpublished); *State v. Kleypas*, 272 Kan. 894, 916-21, 40 P.3d 139, 175-78 (2001).
23. *Madding* at *4.
24. *Ford* at *2.
25. *Capano*, 781 A.2d at 598.
26. *Commonwealth v. Perry*, 432 Mass. 214, 236-37, 733 N.E.2d 83, 102-03 (2000).
27. *People v. Quinn*, 2002 WL 2027315 at *10 (Cal. App. 2002) (unpublished).
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31. C. Wright, V. Gold, 27 *Fed.Pract.&Proced. Evid.* § 6011 at nn. 33-36, 60 (1990); B. Diamond, "Inherent Problems in the Use of Pretrial Hypnosis on a Prospective Witness," 68 *Cal.L.Rev.* 313, 333-40 (1980).
32. See *Contreras v. State*, 718 P.2d 129, 138-39 (Alaska 1986); and see *Watson v. State*, 278 Ga. 763, 772, 604 S.E.2d 804, 813 (2004) ("The events as recalled under hypnosis 'set up' in the witness' mind due to the suspension of critical judgment and the witness' belief that hypnotism will produce the 'correct' memory. Cementing creates a confident witness and renders cross-examination difficult at best.").
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- Angeles Times §I, at 2, col. 6 (Feb. 10, 1985).
34. *United States v. Awkard*, 597 F.2d 667 (9th Cir. 1979).
 35. See *United States v Adams*, 581 F.2d 193 (9th Cir. 1978).
 36. See *Roark*, 90 S.W.3d at 32 (referring to Arizona's State ex rel. *Collins v. Superior Court* ("Silva"), 132 Ariz. 180, 644 P.2d 1266 (1982)).
 37. "Silva," 132 Ariz. at 183, 644 P.2d at 1269.
 38. *Id.*, 132 Ariz. 187, 644 P.2d at 1273.
 39. *Rock v. Arkansas*, 483 U.S. 44, 55 (1987).
 40. E.g., *Roark*, 90 S.W.3d at 33.
 41. *United States v. Solomon*, 753 F.2d 1522, 1525 (9th Cir. 1985).
 42. *Lindsey v. United States*, 16 Alaska 268, 237 F.2d 893 (9th Cir. 1956).
 43. M. Johnson, C. Raye, "Cognitive and Brain Mechanisms of False Memories and Beliefs, in *Memory, Brain, and Belief* 35 (2000).
 44. *Davis & Follette*, "Foibles of Witness Memory" at 1256-29.
 45. This "contamination" occurs when the witness has a strong belief that the other person giving him information is reliable and knows what happened – as many witnesses believe police are. E.g., *Luus & Wells*.
 46. *Davis & Follette*, "Foibles of Witness Memory" at 1462-63.
 47. A. Fienkel, C. Koopman, D. Spiegel, "Dissociative Symptoms in Media Eyewitnesses of an Execution," 151 *Am.J.Psychiatry* 1335-39 (1994).
 48. *St. Clair v. Commonwealth*, 140 S.W.3d 510, 542 (Ky. 2004).
 49. *Davis & Follette*, "Foibles of Witness Memory" at 1463.
 50. *Javier*.
 51. *Hoppe*.
 52. *Madding*, 2003 WL 22415625 at *3.
 53. *Britt v. Commonwealth*, 512 S.W.2d 496, 500 (Ky. 1966).
 54. *Madding*, 2003 WL 22415625 at * 3-4.
 55. E.g., *Ford*, 2005 WL 236487 at *2; *Kaddah*, 250 Conn. at 571-72, 736 A.2d at 907; *Lynch*, 439 Mass. at 535-36, 789 N.E.2d at 1056; *Perry*, 432 Mass. at 236-37, 733 N.E.2d at 120-03.
 56. *Saunders*.
 57. *Kaddah*, 250 Conn. at 571-72, 736 A.2d at 907.
 58. *Capano*, 781 A.2d at 598.
 59. *Quinn*, 2002 WL 2027315 at *10.
 60. *State v. McClendon*, 103 Ariz. 105, 108, 437 P.2d 421, 424 (1968).
 61. *Id.*, 103 Ariz. at 107, 437 P.2d at 423.
 62. E.g., *State v. Ferguson*, 26 Ariz.App. 285, 287-88, 547 P.2d 1085, 1087-88 (1976).
 63. *Currens*, 290 F.2d at 754.
 64. *West*.
 65. *McLaughlin*.
 66. *Alcala v. Woodford*, 334 F.3d 862 (9th Cir. 2003).
 67. S. Ceci, M. Bruck, *Jeopardy in the Courtroom* (1995).
 68. E.g., *Sargent*, 144 N.H. at 104-06, 738 A.2d at 353-54; *State v. Schossow*, 145 Ariz. 552, 703 P.2d 496 (App. 1984).
 69. *Mack v. Commonwealth*, 860 S.W.2d 275, 277 (Ky. 1993).
 70. E.g., *Gilpin v. McCormick*, 921 F.2d 928 (9th Cir. 1990); *United States v. Marsh*, 26 F.3d 1496 (9th Cir. 1994); *State v. Superior Court (Maricopa County)*, 142 Ariz. 273, 689 P.2d 532 (1984).
 71. *St. Clair*, 140 S.W.3d at 543.
 72. *McClendon*, 103 Ariz. at 109, 437 P.2d at 425.
 73. See A.R.S. § 13-502 (A); 18 U.S.C. § 17.
 74. *State v. Appacrombie*, 766 So.2d 771 (La.App. 2000).
 75. A.R.S. § 13-502 (A) (insanity cannot be alleged from "disorders that result from acute voluntary intoxication"). Although 18 U.S.C. § 17, the federal Insanity Reform Act, did not expressly forbid using intoxication as a basis for insanity, the Ninth Circuit has imposed that exception in its historical interpretation of the statute. See *United States v. Knott*, 894 F.2d 1119 (9th Cir. 1990).
 76. *Kleypas*, 22 Kan. at 921, 40 P.3d at 178.
 77. *Ford*.
 78. A.R.S. 13-502 (A) (insanity cannot be based upon "character defects"), and see *State v. Everett*, 110 Aiz. 429, 520 P.2d 301 (1974) (being a sociopath is not admissible under the M'Naghten Rule).
 79. *Currens*.
 80. *McClendon*, 103 Ariz. at 107, 437 P.2d at 423.
 81. *Neil v. Biggers*, 409 U.S. 188, 199 (1972).
 82. See Ninth Circuit Model Jury Instruction 4.14.
 83. *Davis & Follette*, "Foibles of Witness Memory" at 1503.
 84. *Charles*, 1995 WL 230349 at *2 (at birth); *Davis & Follette*, "Foibles of Witness Memory" at 1538.
 85. *Loftus & Hoffman*, "Misinformation and Memory;" *Luus & Wells*, "Malleability of Eyewitness Confidence."
 86. See *Wright & Gold* nn. 33-36, 60 (1990); *Diamond*, "Inherent Problems," at 333-40; and see *Contreras*, 718 P.2d at 138-39; *Watson*, 278 Ga. at 772, 604 S.E.2d at 813.
 87. It is surprising that the Supreme Court did not consider this step in *State v. Chapple*, 135 Ariz. 281, 294, 660 P.2d 1208, 1221 (1983). The

Court even reviewed Dr. Elizabeth Loftus's expert testimony establishing that "there is no relationship between the confidence which a witness has in his or her identification and the actual accuracy of that identification."

88. E.g., Or.Rev.Stat. § 44.370 ("witness presumed to speak truth") and *Cupp v. Naughten*, 414 U.S. 141 (1973) (unsuccessful attempt to constitutionally challenge that statute).

89. T. Singer, "To Tell the Truth, Memory Isn't that Good," 63 *Mont.L.Rev.* 337 (summer 2002).



Continued from Police Operations Orders p. 2

(Endnotes)

¹ See introduction to Operations Orders paragraph 1

² Operations Order C-4 (1) (E) (3) (g)

³ Operations Order C-5 (12)

⁴ Operations Order B-5 (4) (B)

⁵ Operations Order B-5 (4) (E)

⁶ Operations Orders C-7 (1) (A)

⁷ Operations Orders C-7 (1) (A) (1)

Writer's Corner

Draconian; Draconic

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.

"Draconian" (the usual form) is derived from the name "Draco," a Greek legislator of the 7th century B.C. who drafted a code of severe laws that included the death penalty for anyone caught stealing a cabbage. As the *Century Dictionary* put it, "he prescribed the penalty of death for nearly all crimes -- for lesser crimes because they merited it, and for greater crimes because he knew of no penalty more severe." Today, "Draconian" (usually capitalized) refers to any harsh rule or punishment, not necessarily just legislation.

Sometimes the word is the victim of slipshod extension, when applied to any rule or policy that is viewed as harsh, even when it isn't cruel at all -- e.g.: "Phil Seelig, president of the Correction Officers Benevolent Association, said his organization would appeal the decision to the State Court of Appeals on the ground that random drug testing was unnecessarily draconian [read 'harsh' or 'burdensome'] and violated constitutional protection against unlawful searches." "Court Upholds Drug Testing of Correction Officers," *N.Y. Times*, 13 Oct. 1989, at 10.

In one of its senses, "Draconic" is a needless variant of "Draconian" -- e.g.: "Knowing, as he must, of the unforgiving and draconic [read 'Draconian'] rules of Islamic law, he still sold this material for publication." "Did Clinton Commit Faux Pas in Meeting with Rushdie?" *San Diego Union-Trib.*, 2 Dec. 1993, at B13. But in another sense, "draconic" means "of, relating to, or like a dragon" {the child protagonist is rescued by a friendly dragon and raised with its own draconic brood}.

PD Celebrates 40 Years of Dedication

Trial Group D Sweeps Annual Awards at Holiday Party

By Jim Haas, Public Defender

On December 8, 2005, the Maricopa County Public Defender's Office celebrated its 40th anniversary at its holiday party at Jackson's On Third in Phoenix. Some 300 people attended, including a large number of alumni and friends of the office who joined our present staff to recognize our office's deep and rich history of protecting the rights of indigent individuals. Among the alumni who reunited were several of the attorneys who comprised the original staff of the office when it opened in 1965, numerous judges and prominent private attorneys, and one renowned former Arizona Attorney General.

The celebration was highlighted by countless reunions of old friends who had not seen each other in many years. Despite a boisterous environment that was not terribly conducive to public speaking, Capital Attorney Garrett Simpson and Group A Attorney Dennis Farrell put on a presentation relating some of the humorous moments of the office's past, including an ill-advised reenactment of a striptease that Dennis performed at a holiday party long ago.

The office's annual awards were also presented at the party. The first award was presented to Appeals Attorney Steve Collins in recognition of his 25 years of continuous service to the office. But this was no mere longevity award - Steve's accomplishments are considerable. He was a skilled and respected trial attorney before joining our Appeals Division. He handled many serious and complex cases, including *State v. Correll*, a triple homicide death penalty case that Steve tried at a time when there was no capital support staff - no second chair lawyer, no mitigation specialist, no paralegal, no specialized investigator - just Steve alone against the might of the state. Steve has handled numerous capital appeals, including *State v. Fulminante*, in which he persuaded the United States Supreme

Court to reverse his client's conviction, based upon a finding that admission of his client's confessions to a jailhouse snitch and his wife was prejudicial error. Steve also authored the winning brief in *State v. Renforth*, which changed the definition of "clear and convincing" evidence in Arizona, and had a major impact on the way insanity cases were then tried.

Although he has served a quarter of century with us, Steve's commitment to the representation of the indigent goes back further still. He began his career as a VISTA lawyer in Duluth, Minnesota, in 1974, and then worked there for Legal Aid for several years before coming to our office. Basically, Steve has devoted his entire professional life to the representation of those who might otherwise have had no lawyer at all.

The second award was a special one requested by the office's Award Committee, which consists of attorneys and staff members from throughout the office. The Committee wanted to recognize the efforts of the people who are working tirelessly to develop our new Indigent Representation Information System (IRIS). IRIS is a daunting project that is transforming our out-dated records system into a state-of-the-art case management system that will provide powerful tools to help all of us do our jobs more effectively and efficiently. The IRIS project team has put an enormous amount of time and effort into developing the system, and was able to launch Phase I of the project in a remarkably short time.

Like all projects of its scope, IRIS has seen its share of setbacks and glitches, and the project team has had to work through many difficulties and endure some cynicism. But the team has the vision to see the enormous potential of the system, and its members are determined to see it reach that potential.

The following IRIS team members received awards in recognition of their vision and determination in taking IRIS from a dream to a reality:

Technical Team: Ross Sines, Aaron Moore and Chris Chang

Project Test Team: Tom Gaskill and Susie Graham

Core Team: Stephanie McMillen, Keely Farrow, Paul Prato, Sherry Pape, Frances Dairman Poepe, and Amy Thomas

Project Team Leaders: Chuck Brokschmidt, Rose Adams and Diane Terribile

The next award to be presented was the Benita “Bingle” Dizon Award, which recognizes the support staff member who best exemplifies Bingle’s commitment to excellent work and dedication to our office. The 2005 Dizon Award was presented to Trial Group D Investigator Sid Bradley. Sid has been with our office for ten years, and is known in Group D and throughout the office for his work ethic and professionalism. He combines a “leave no stone unturned” attitude with a professional demeanor that engenders great trust and confidence in the lawyers and staff with whom he works. Asked for one phrase that sums up the experience of lawyers that have worked with Sid on case investigations, Group D Supervisor Jerry Schreck said, “Ask Sid Bradley for an inch, he’ll give you a mile.”

In addition to his dedication and reliability, Sid is beloved in Group D for being a true gentleman. His hard work makes lawyers look good and his calm and respectful way of discussing case information makes them feel good.

The final award to be presented was the Joe Shaw Award, which recognizes the attorney who best demonstrates Joe’s professionalism and commitment to our office and our clients. The 2005 Shaw Award was presented to Trial Group D’s Bobbi Falduto. Bobbi has been with our office for almost six years, and has

earned a reputation throughout the system as a tenacious and skilled trial attorney. She works with an infectious enthusiasm that is inspiring to those who work with her. Bobbi is the first to volunteer when needed for court coverage or assistance with cases. She is sought out as a mentor, and is always willing to take the time needed to help other attorneys, even when it means she has to work extra hours to do her own work.

One attorney noted that she feels that she has become a better attorney just by watching Bobbi work. Bobbi is known for discussing her cases with incredible passion, insight and dedication, all at such a rapid speed that she leaves the listener’s head spinning. Those in Group D call this phenomenon “Bobbilocity.”

The 2005 awards presentation provided a reminder of the wealth of talent and dedication that our office enjoys. Congratulations to all of the award winners, and thanks for your continuing commitment to our office and our clients!



Jury and Bench Trial Results

November 2005

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group A						
10/25 - 11/1	Brokl / J. Kirchler Sain	Akers	Rhude	CR05-117308-001DT PODD F/S, F2 PODP, F6 2 cts. MIW, F4 MIW, M1	Guilty - PODD F/S, PODP, and 1 ct. MIW, F4; 1 ct. MIW, F4, was dismissed and a Directed Verdict on MIW, M1	Jury
11/7 - 11/8	Howe / Iacob	O'Toole	Arnold / Fuller	CR05-117927-001DT Resisting Arrest, F6	Not Guilty	Jury
11/7 - 11/14	Farney Hales <i>Armstrong</i>	Porter	Lawson	CR05-110615-001DT Taking Identity of Another, F4 Unlawful Possession of an Access Device, F5 Theft (More than \$250), F6	Guilty	Jury
11/10 - 11/15	Howe Sain	Blakey	Lucca	CR05-116308-001DT POM F/S, F2 PODP, F6	Directed Verdict on both counts.	Jury
11/14 - 11/16	Fischer	Burke	Dahl	CR05-116901-001DT PODD F/S over threshold, F2 PODP, F6	Guilty	Jury
11/28 - 11/29	Bressler Hales	Steinle	Garrow	CR05-007256-001DT PODD, F4 Prop 200 first strike	Guilty	Jury
Group B						
10/26 - 11/1	Shelley	Schneider	Sparks	CR05-103728-001DT Agg. Assault, F6	Not Guilty	Jury
11/9 - 11/15	Dominguez Robinson <i>McDonald</i>	Holt	Okano	CR05-102153-001DT 4 Cts. Sexual Abuse, F4	Not Guilty	Jury
11/16 - 11/18	Miller	Schneider	Hyder	CR04-015711-001DT TOMT, F3	Not Guilty	Jury
11/21 - 11/30	MacLeod	Hicks	Scherle	CR05-104167-001DT Agg. Assault Dang., F3 Criminal Damage, F6	Not Guilty	Jury

Jury and Bench Trial Results

November 2005

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group C						
11/7	Nurmi <i>Lenz</i>	Arellano	Trudgian	CR05-110548-001SE Failure to Register, F4	Guilty	Jury
11/8 - 11/14	Nurmi Salvato <i>Lenz</i>	Udall	Baker	CR05-113323-001SE 2 cts. Molestation of Child, F2 2 cts. Sexual Conduct w/ minor, F2	1 ct. Molestation - Not Guilty; 1 ct. Molestation - Guilty; 2 cts. Sexual Conduct w/minor - Guilty	Jury
11/16 - 11/23	Barnes/Whitney Salvato <i>Lenz</i>	Udall	Baker	CR05-108070-001SE CR05-033024-001SE (cases consolidated for trial) 2 cts. Sexual Assault, F2 2 cts. Sexual Abuse, F5 2 cts. Kidnapping, F2 2 cts. Armed Robbery, F2 Resisting Arrest, F6	Guilty	Jury
Group D						
11/1	Lockard/Vincent	Steinle	Rothblum	CR05-101785-001DT Agg. Assault, F6	Guilty	Bench
11/7 - 11/8	Stone Fusselman <i>Erwin</i>	O'Connor	Dahl	CR05-105119-001DT Theft, F3 Forgery, F4	Guilty	Jury
11/7 - 11/9	Traher/Vincent O'Farrell <i>Curtis</i>	Steinle	Beaver	CR05-118886-001DT PODD for Sale, F2 POND for Sale, F2 PODP, F6	Guilty	Jury
11/8 - 11/9	Baird/Harris Fusselman	Roer	Baker	CR05-106799-001DT Unlawful Flight, F5	Guilty	Jury
11/10 - 11/14	Jackson/Vincent <i>Curtis</i>	Cunanan	Letilier	CR05-115289-001DT Criminal Trespass, F6 Assault, M1 Criminal Damage, M1	Mistrial	Jury
11/14 - 11/15	Leong/Z. Cain	Steinle	Rassas	CR05-107855-001DT 2cts. Forgery, F4	Guilty	Jury
11/21	Traher Seaberry	Mahoney	Peterson	CR05-104816-001DT Agg. Assault, M1 Resisting Arrest, M1	Guilty	Bench

Jury and Bench Trial Results

November 2005

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group E						
11/7 - 11/10	Evans / Widell Stinson	Gordon	Orto	CR05-117473-001DT Agg. Assault Police Officer, F6	Not Guilty	Jury
11/16 - 11/21	Widell / Evans Reilly	Granville	Orto	CR05-114270-001DT POND, F4	Guilty	Jury
11/1 - 11/7	Roskosz	French	Suzenski	CR03-013639-001DT Burglary 1, F2 Agg. Assault, F3	Guilty	Jury
10/31 - 11/02	Tavassoli / R. Kirchler Souther <i>Del Rio</i>	Stephens	Hyder	CR04-131771-001DT Child Molestation, F2-DCAC	Not Guilty	Jury
Group F						
11/3 - 11/4	Gaziano / Ditsworth	Stephens	Judge	CR04-042349-001SE Forgery, F4	Not Guilty	Jury
11/7 - 11/9	Shoemaker / Braaksma Thomas <i>Gavin</i>	Stephens	Alegre	CR04-042006-001SE Attempt Sexual Assault, F3 Burglary 2nd Degree, F3	Not Guilty	Jury
11/9 - 11/14	Ditsworth / Peterson	Nothwehr	Kelly	CR04-124170-001SE POM, F6	Guilty	Jury
11/14 - 11/17	Harberson / Shoemaker	Stephens	Rodriguez	CR05-031054-001SE 2 cts. Burglary 3rd Degree, F4 2 cts. Theft, F6	Guilty	Jury
Homicide						
9/27 - 11/4	Stazzone Bevilacqua Klosinski <i>Oliver</i>	Donahoe	Duffy	CR2003-008786 Murder 1, F1D	Guilty	Jury

Jury and Bench Trial Results November 2005

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Vehicular						
11/1 - 11/3	Souccar	Gottsfeld	Hale	CR05-06108-001DT 2 cts. Agg. DUI-Lic Susp, F4	Guilty	Jury
11/1 - 11/3	Bermudez	Nothwehr	Hale	CR05-00620-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
11/2 - 11/7	Bergman	Anderson	Minnaugh	CR04-124029-001DT Agg. DUI F4	Guilty	Jury
11/21 - 11/28	Conter	Campbell	Hale	CR05-114470-001DT 2 cts. Agg. DUI F4	Guilty	Jury

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	JD# and Charges(s)	Result	Bench or Jury Trial
11/7 - 11/10	Schaffer/Prusak	Burke	Hoffmeyer	CR2005-009780 Manslaughter, F-2 Child abuse, F3	Guilty	Jury
10/31 - 11/01	Jolly	Gama	Steuebner	CR2005-1214526 Theft - Means of Transportation Burglary - Tools possession	Guilty	Jury
11/28 - 11/30	Jolly	Gordon	McDermott	CR2003-006348 Theft	Not Guilty	Jury

Jury and Bench Trial Results

November 2005

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
11/17-11/25	Primack Stovall	Blakey	CR2004-132090-001-DT PDD/Sale F2 Poss of Drug Para F6	Guilty	Jury
11/9, 11/21- 11/22	Gray Brauer Sinsabaugh	Cole	CR2004-129940-001-DT Retrial Agg. Ass. F6; 3 priors	Guilty	Jury
10/17-11/29	Peterson / Agan Mullavey Thomas	Rayes	CR2001-015915 Capital Murder	Guilty/Sentenced to Death	Jury
10/26-11/2	Glow	Klein	CR2005-1042954-001-DT Forgery F4;	Not Guilty	Jury
11/2-11/17	Craig	Hauser	CR2005-005028-001-DT Dsch Firearm at Structure F2 Assist Crim Synd/Lead Gang F4 Agg. Asst (5 counts) F3 Endangerment F6 Threat/Intimidate F4 Marij. Viol. F6	Not Guilty Dsch Firearm at Structure F2; Agg. Assault (5 counts) F3; Guilty; Asst Crim Synd/Lead Gang F4; Endangerment F6; Threat- Intimidate F4; Marij. Viol. F6;	Jury
11/8-11/23	Tucker Brauer	Klein	CR2004-013146-001-DT Murder 2nd Deg. F1	Guilty on Lesser; Manslaughter F2 Dangerous	Jury

M

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