

for The Defense



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ARIZONA'S KNOCK & ANNOUNCE RULE VS. THE SEARCH WARRANT REQUIREMENT: TWO DIFFERENT TYPES OF EXIGENCY

By Scott Silva
Deputy Public Defender - Group C

Almost all criminal defense lawyers are familiar with the rule of law requiring the state to have a search warrant before entering a suspect's residence, absent exigent circumstances. It is a well-established principle that a warrantless entry into a person's residence is unlawful unless specific exceptions to the warrant requirement are met. *Mazen v. Seidel*, 185

Ariz. 195, 197, 940 P.2d 923, 925 (1997). Many lawyers are also familiar with the "knock and announce" rule that requires police officers to knock and announce their presence at a suspect's residence before entering the residence, absent exigent circumstances. The Fourth Amendment of the United States Constitution incorporates the common-law requirement that police knock on a dwelling's door and announce their identity and purpose before attempting forcible entry. *Wilson v. Arkansas*, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1997).

What many criminal defense lawyers do not know, however, is that, in Arizona, the exigent circumstances that allow the state to ignore the search warrant requirement are not the same as the exigent circumstances that allow the state to ignore the knock and announce rule. In fact, exigent circumstances may excuse the police from having a search warrant before entering a residence but may not allow the police to enter the residence without first knocking and announcing their presence. The differences in the exigency requirements can be particularly important in criminal cases where police officers enter a residence without a warrant and also fail to knock and announce their presence. Often, police officers incorrectly assume that because they did not need a search warrant, they also did not need to abide by Arizona's knock and announce rule. If the knock and announce rule is inexcusably violated, the trial judge must suppress all of the evidence obtained as a result of the violation. *State v. Cohen*, 191 Ariz. 471 (Ariz.App. 1998)

Three Rules of Law

There are three rules of law that a defense attorney must be aware of in order to determine if the knock and announce rule was illegally ignored. First, the only recognized exceptions to the Arizona knock and announce rule are the possibility of violence and the probability of destruction of evidence. Second, the 'possibility of violence' exception for the knock and announce rule requires that officers reasonably believe a weapon will be used against them if they proceed with the

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ordinary announcement, and this belief must be based on specific facts. Third, the 'destruction of evidence' exception for the knock and announce rule requires "substantial" evidence that evidence 'will' be destroyed--not merely 'could' be destroyed--if the officer's presence is announced.

To understand these rules of law, it is necessary to understand the case law surrounding the knock and announce rule and its exceptions. Three questions must be addressed:

- 1) What is the knock and announce rule?
- 2) What are the exceptions to the knock and announce rule?
- 3) How do those exceptions differ from the exceptions to the search warrant requirement?

What is the Knock and Announce Rule?

The "knock and announce" rule was originally a common-law rule that required the police, when executing a search warrant, to knock on the door of a residence and announce their presence before they could attempt a forcible entry. In 1997, in the case of *Wilson v. Arkansas*, 514 U.S. 927, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1997), the United States Supreme Court held that the Fourth Amendment of the United States Constitution incorporates the common-law requirement that police knock on a dwelling's door and announce their identity and purpose before attempting forcible entry. *Id.* Thus, the knock and announce rule became part of the Fourth

"The purpose for the Arizona knock and announce rule is to protect both occupants and law enforcement officers from violent confrontations, protect individual's right to privacy, and prevent the destruction of property from forced entry."

Amendment's 'reasonableness' inquiry as applied to all of the states. The Court left it to the lower courts to determine the specific circumstances under which an unannounced entry is reasonable. *Id.*

Arizona has its own version of the knock and announce rule. The Arizona Revised Statutes (ARS 13-3891 and ARS 13-3916) require police officers to knock and announce their presence before entering a home to make a felony arrest. *State v. Cohen*,

191 Ariz. 471 (Ariz.App. 1998). Police officers may break¹ into the home only after being refused admittance,² or after waiting a reasonable amount of time³ after announcing their presence. *Id.* The Arizona knock and announce rule applies both to situations where officers are entering a home to make a felony arrest as well as to situations where officers are executing a search warrant. *State v. Piller*, 129 Ariz. 93 (Ariz.App. 1981); *State v. Silva*, 137 Ariz. 339 (Ariz.App. 1983). The purpose for the Arizona knock and announce rule is to protect both occupants and law enforcement officers from violent confrontations, protect an individual's right to privacy, and prevent the destruction of property from forced entry. *Piller*, 129 Ariz. at 95.

What are the Exceptions to the Knock and Announce Rule?

There are some situations where police may enter a home without first announcing their presence. According to the United States Supreme Court, a "no-knock" entry is justified when the police have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime. *Richards v. Wisconsin*, 117 S.Ct. 1416, 1418 (1997). This standard strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries. *Id.* In Arizona, there are two exigent circumstances that may excuse the knock and announce rule. They are the possibility of violence and the probability of the destruction of evidence.

Possibility of Violence

The 'possibility of violence' exception was discussed by the Arizona Court of Appeals in *State v. Piller*, 129 Ariz. 93, 95 (Ariz.App. 1981). However, the court did not excuse the knock and announce rule in that case because the facts did not meet the court's standard for

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exigency. *Id.* In *Pillar*, the Court of Appeals held that the mere presence of a weapon does not negate the knock and announce requirement. Something more than mere knowledge of a handgun purchase and possibility of handgun presence is required. *Id.* The court stated:

Police knowledge of the existence of a firearm excuses compliance with announcement requirements only where the officers reasonably believe the weapon will be used against them if they proceed with the ordinary announcement, and this belief must be based on specific facts and not on broad, unsupported presumptions. *Id.* at 96.

There were no specific facts to support exigent circumstances in *Pillar* and there are currently no Arizona cases that have excused the knock and announce rule based on the 'possibility of violence' exception. However, the holding in *Pillar* is clear: if the police can point to specific facts that support a reasonable belief that a weapon may be used against the officers during an ordinary announcement, the knock and announce rule is excused. *Id.*

Destruction of Evidence

The only exigent circumstance that has been successfully applied by Arizona courts to date is the 'probability of the destruction of evidence' exception. *See State v. LaPonsie*, 136 Ariz. 73, 75 (Ariz.App. 1982); *State v. Silva*, 137 Ariz. 339, 340-41 (Ariz.App. 1983) (officers entered home after having probable cause to arrest for possession of cocaine. Officer saw suspect through window with bag of white powder, yelled at him to stop, said he was a police officer, asked if he could enter the house--and after refusal--entered the home and arrested him. Officers acted under hot pursuit and destruction of evidence exception). The destruction of evidence exception requires "substantial evidence" that would cause officers to believe that evidence will be destroyed if their presence is announced.⁴ *State v. Cohen*, 191 Ariz. 471 (Ariz.App. 1998). The Court of Appeals, in *Cohen*, stated:

Arizona case law is consistent with [the U.S. Supreme Court]...except that our supreme court requires more than 'reasonable suspicion' to justify a 'no-knock' entry...There must be substantial evidence which would cause the officers to believe that such evidence would be destroyed if their presence were announced. *Id.* at 472.

"Substantial evidence" means more than just the fact that evidence *could* be destroyed. There must be facts that the evidence *will* be destroyed. *State v. Mendoza*, 104 Ariz. 395 (1969) (officers enter house with a search warrant for narcotics without knocking and announcing their presence. No facts indicated that evidence would be destroyed so officers should have announced their presence). The Arizona Supreme Court explained this distinction in *Mendoza*:

It must be more than the presumption that the evidence would be destroyed because it could be easily done. There must be substantial evidence which would cause the officers to believe that such evidence would be destroyed...otherwise it might well lead to improper invasion of privacy of a home, and also endanger the lives of officers. *Id.* at 399-400.

Knock & Announce Exigency vs. Search Warrant Exigency

These exceptions to the knock and announce rule may seem similar to the exceptions to the search warrant requirement.

However, a closer examination reveals that there are many more exceptions to the search warrant requirement and that the search warrant exceptions differ significantly from the knock and announce exceptions. Recognized exceptions to the warrant requirement for a search of a home, absent consent, are 1) the possibility of violence, 2) the probability of destruction of evidence, 3) response to an emergency, and 4) hot pursuit. *State v. Ault*, 150 Ariz. 459, 463 (1986). *See Vale v. Louisiana*, 399 U.S. 30, 35 (1970). Each of these exceptions must be examined to determine how they differ from the knock and announce exceptions.

Possibility of Violence

The 'possibility of violence' exception for search warrants allows officers to enter a home without a warrant in order to protect citizens or officers from possible violent confrontation involving the use of weapons. *State v. Warren*, 121 Ariz. 306 (Ariz.App. 1978). In *Warren*, the Court of Appeals held that officers could enter a home without a search warrant in order to secure the residence since they reasonable believed the people in the residence had guns and it would be dark before a warrant could be obtained. Based on the fear of gunfire, the court stated:

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When [the police] made a decision to 'take the load car' before dark they had reason to believe that because of the guns on the premises, their seizure might 'gravely endanger their lives or the lives of others.' The situation amounted to the kind of exigent circumstances that justified entry without a warrant. *Id.* at 310

(It is important to note, however, that the officers in *Warren* still announced their presence prior to entry into the home. *Id.* at 308).

The holding in *Warren* creates an exception for search warrants but not for the knock and announce rule. While the officers in that case needed to act before it was dark, there was no reason for them to enter the residence without first announcing their presence. The 'possibility of violence' exception for the knock and announce rule goes beyond the mere presence of a weapon. As was previously discussed, in order for officers to conduct a no-knock entry, they still must be able to point to specific facts that lead them to believe that the weapons will be used against them if they announce their presence. *State v. Piller*, 129 Ariz. 93, 95 (Ariz.App. 1981). Thus, while the search warrant was excused in *Warren* based on a 'possibility of violence' exception, the knock and announce rule was probably still required unless the officers had specific information that lead them to believe that announcing their presence would have put their safety at risk.

Destruction of Evidence

The 'destruction of evidence' exception for search warrants allows officers to enter a home without a warrant if the police have reason to believe that evidence is in danger of imminent destruction. *State v. Hendrix*, 165 Ariz. 580, 582 (Ariz.App. 1990) (police enter hotel room one hour after time two women attempted to call the room. No new evidence appeared after call and no suspicious activity surrounded the room. The destruction of evidence exception did not apply). The facts must be such to lead a reasonable officer to conclude that the evidence would be destroyed before a warrant could be issued. *Id.*; *State v. Martin*, 139 Ariz. 466, 475 (1984) (no destruction of evidence exception because no reason to think that suspect in house knew of imminent police search or was involved in the illegal activity); *State v. Decker*, 119 Ariz. 195, 198 (1978) (the odor of marijuana from a hotel room gave officer's an exigency to enter the room without a warrant given that the evidence would be completely destroyed before a warrant was obtained).

This exception seems similar to the 'destruction of evidence' exception for the knock and announce rule which requires substantial evidence that the evidence will be destroyed before the police can announce their presence. However, it differs in two respects. First, in the case of the search warrant exception, the courts have not required "substantial" evidence that evidence will be destroyed prior to the issuance of a search warrant. There must simply be facts that lead a reasonable officer to conclude that evidence will be destroyed before a warrant can be obtained. *Hendrix*, 165 Ariz. at 582. Second, the exceptions differ in that the time it takes the police to obtain a search warrant far exceeds the time it takes the police to announce their presence. The police can announce their presence and wait for a refusal in a matter of seconds. Thus, there is

probably only a narrow set of circumstances that would require officers to enter a home without announcing their presence in order to protect evidence. In most cases, the police can safely announce their presence prior to entering a home even though it may be too risky for them to wait for a search warrant.

"The exceptions differ in that the time it takes the police to obtain a search warrant far exceeds the time it takes the police to announce their presence."

Response to Emergency

The 'response to an emergency' exception to search warrants allows officers to enter a home without a warrant in order to protect possible victims or prevent a suspect's escape. *State v. White*, 160 Ariz. 24, 33 (1989) (when suspect saw officer at front door he attempted to flee and was apprehended at a nearby parking lot. Entry into home absent a warrant was permissible); *State v. Ault*, 150 Ariz. 459, 463 (1986) (entry without a warrant impermissible given that suspect had agreed to accompany officers to station, he was not under arrest, and deputies could have secured the area); *State v. Greene*, 162 Ariz. 431, 432-33 (1989) (police were allowed to enter home in response to a domestic violence call because the crime was in progress and victims needed to be protected); *State v. Gissendaner*, 177 Ariz. 81, 83 (Ariz.App. 1993) (no emergency situation in a domestic violence call when incident was over before the call, the parties were not in close proximity to one another, and not a serious felony matter to warrant fear of flight).

Clearly, the purpose of this exception is to allow the police to protect citizens or prevent a suspect's escape before a warrant is obtained. Since it may take hours to obtain a search warrant, the police cannot reasonably be expected to wait while a victim is injured or killed or a suspect is able to flee the dwelling. However, no such exception applies to the knock and announce rule. Unlike search warrants, it only takes a second for the police to

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announce their presence. There is little risk of injury to a victim or a suspect's flight in that short period of time. While there may be situations where immediate entry is warranted (as opposed to a five to six second delay), there is no reason for the police to completely ignore the knock and announce requirement in such a case. As a result, Arizona courts have not excused the knock and announce rule based on a 'response to emergency' exception.

Hot Pursuit

The 'hot pursuit' exception for search warrants allows officers to enter a home without a warrant if the police are in pursuit of a suspect that has been told he or she is under arrest and has fled into a home. *State v. Love*, 123 Ariz. 157, 159 (1979). There is no exception to the knock and announce rule based on hot pursuit because the knock and announce rule has already been satisfied in such a case. A fleeing suspect is already aware of police presence and has refused police admittance by running from the police and into a dwelling. *Id.* Thus, no exception to the knock and announce rule is necessary.

"In comparing the search warrant exceptions to the knock and announce rule exceptions, it becomes clear that, in most cases, police officers will still be required to follow the knock and announce rule even when they are permitted to enter a home without a search warrant."

Conclusion

In comparing the search warrant exceptions to the knock and announce rule exceptions, it becomes clear that, in most cases, police officers will still be required to follow the knock and announce rule even when they are permitted to enter a home without a search warrant. Despite the exigent circumstances that the police may have in regard to the search warrant, they may only conduct a no-knock entry if one of two criteria are met.

- 1) They may conduct a no-knock entry if they reasonably believe that a weapon will be used against them if they proceed with an ordinary announcement, and this belief must be based on specific facts.
- 2) The police may conduct a no-knock entry if they have substantial evidence that evidence in the home 'will' be destroyed--not merely 'could' be destroyed--if they proceed with an announcement.

Since many police officers incorrectly assume that the same exigent circumstances apply to both search warrants and the knock and announce rule, these rules of law may provide valuable ammunition in the defense of clients. If

the knock and announce rule has been violated by the police, a defense attorney should immediately file a motion to suppress all evidence obtained as a result of the violation--they are entitled to a suppression as a matter of law. ■

1. "Breaking" into a room for purposes of the knock and announce rule involves any announced intrusion, whether it occurs through locked doors, partially open doors or wide open doors. *State v. LaPonsie*, 136 Ariz. 73, 75 (Ariz.App. 1982) (knock and announce rule violated given entry through open door, failure to wait a reasonable time, and lack of destruction of evidence exception).
2. It is a denial of permission to enter for knock and announce purposes if the officers show their badges to a person holding a door open, state the purpose for an arrest, and the suspect then runs into the house. *State v. Love*, 123 Ariz. 157, 159 (1979) (officers attempted to arrest suspect for possession for sale of marijuana, showed their badges, drew guns, and yelled 'Freeze!' Suspect ran into house and officer's broke down door--knock and announce rule satisfied).
3. A "reasonable" amount of time requires more than a five to six second wait after the officer's announce their presence. *State v. Piller*, 129 Ariz. 93, 95 (Ariz.App. 1981).
4. Arizona courts require "substantial evidence," whereas United States courts require only "reasonable suspicion." See *Richards v. Wisconsin*, 520 U.S. 385 (1997).

All IN A DAY'S WORK!

By Norma Muñoz
Initial Services Specialist

The day begins with a trip to the floors where mail boxes are located. Work done the previous day is dropped off, and more requests for the current day are picked up. It is after this daily event that members of Initial Services congregate and decide who is going to do what. There's a daily trip to Madison Jail in the morning and this is usually completed without hesitation or argument. Who handles the jail visit is optional, as long as the job gets done.

There are five members in Initial Services (I.S.). Every member in this team assumes responsibility for the work that must be done. In addition to initial client interviews, Initial Services staff members deliver and receive messages for attorneys, gather clothes sizes for trial, obtain signatures for medical releases, receive third-party information so the attorney can file a release motion, act as a notary for affidavits, set up video viewing, audio tape review and reading of police reports at the jails. They answer questions from clients regarding procedures and they follow up with answers from the attorneys. Many

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times we are grabbed by a desperate attorney at a jail when the court interpreter (through no fault of their own) is unavailable to interpret a quick conversation. The attorney is grateful that staff are always at the jails. Being bilingual is a major asset and skill of the I.S. team. Several Spanish interviews are conducted daily where questions are addressed and answered by the very knowledgeable I.S. team, regarding, of course, procedures only (no legal advice offered). Recently, through the hard work and dedication of this team, Judge Martin was swayed to suspend prison time for a client because I.S. translated over fifty letters, making it possible for Judge Martin to understand the client's background and extenuating circumstances. The staff who attended the sentencing felt an intense feeling of accomplishment. The direct involvement in a case where their help made a difference was truly a rewarding experience.

I.S. has also been credited with saving the lives of pets. All it takes is a phone call to the humane society, or a friend, to give water and food to the pet until the owner gets released. Our staff offers kind words to people who have no one else to care about them, and many times receives nice letters from these inmates after they are out of jail or prison. I.S. constantly looks out for the protection of the clients; informing the D.O. about threats they receive in their cells or reminding an inmate of his "right to remain silent". Sometimes we arrange for photographs to be taken of our clients. This is important in cases where a client has been injured and the injury is relevant to his defense. The attorney may not see the client for days, and by that time injuries may have disappeared.

This job can be frustrating and trying, however, it is not always that way. Our crew knows how to maintain a sense of humor and is not often flustered. For instance, one member had an interesting experience with a client who claimed to have twenty-two different personalities. The client demonstrated this to the interviewer by calling out one of the other personalities inside her. Although the interviewer was a little startled and surprised, she went ahead and interviewed that person also. After all, it is not the job of the I.S. staff to judge defendants, but to give all of them fair and equal time. Our clients sometimes behave strangely, claiming to be Jesus Christ or Satan, or they talk about experiences that are pretty weird and scary. The staff simply writes this down as part of the information for the attorney. That person is treated with respect and dignity, no matter how strange or bizarre the statements might seem. There is never a dull moment in the lives of Initial Services staff.

The team not only tries to make the best of everyday stresses by adding humor, they also take their job very seriously. Many times we act as a conduit to the attorney, alerting them to act promptly regarding jail abuse or medical treatment. In some cases, the family is notified to appear in court on the defendant's behalf to request a release under special circumstances, which can result in a release at the preliminary hearing. Because of the I.S. staff's quick thinking, fingerprint experts have been present at a preliminary hearing to prove that the wrong person was arrested. Pictures taken by the I.S. staff right after an arrest can make a difference in resisting arrest and assault on a police officer cases, by proving that the defendant was himself the real victim.

Staff members are often whisked out of the jails when there is a security override. The override means all inmates must be locked in their cells and no movement of inmates can take place. This happens when there is a riot or an escape attempt. The staff has built a good rapport with the detention officers, obeying the rules and regulations of the jails, and always being respectful and professional.

Although the detention officers get a lost look when they see I.S. staff enter, they usually are nice and know that the I.S. people obey rules and will cooperate in getting through the ordeal of having to see about 15-25 people in one day at one jail as quickly and efficiently as possible.

"Because of the I.S. staff's quick thinking, fingerprint experts have been present at a preliminary hearing to prove that the wrong person was arrested."

Part of the responsibility of the staff is to direct and help train interns who come through this office. The interns are always welcomed and treated like part of the team. After shadowing staff members for at least 30 days, the interns start sharing responsibilities and duties, eventually doing interviews. This is great training and "hands on" experience that the interns could never get anywhere else. They learn about legal procedures beginning with the arrest, followed by IA court, then the interview and information gathering, all the way on to the sentencing date. After their tenure, they are always sorry to leave and thank IS staff so much for all the learning and experience they acquired as interns. But the most important thing they learn, is the dedication of the Public Defenders Office to the representation of the underprivileged, the poor, the sick and the helpless clients who come through this office.

The day ends after all paperwork is completed, and phone calls are made or returned to family, friends, and interested parties of the clients. I.S. staff send e-mails to attorneys with messages or questions from clients. The staff then sits around for the last few minutes of the day,

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sharing their experiences, and laughing together, and thinking "what will tomorrow bring?" Whatever tomorrow brings, Initial Services will be there to take care of it. After all, *it's all in a day's work!* ■

RULE 11 - 101

By Brent E. Graham
Deputy Public Defender - Group D

Does it seem as though your client isn't tracking your conversation? Is she speaking tangential inanities? Shouting out vast conspiracy theories to the judge in court? Perhaps your client has a mental illness. It's time for a Rule 11 competency evaluation.

A person may not be tried, convicted, sentenced or punished for a public offense while, as a result of a mental illness or defect, the person is unable to understand the proceedings against him or her or to assist in his or her own defense. Ariz. R. of Crim. P., Rule 11.1. Accord, A.R.S. § 13-4502(A), 13-4501(2).

With more mentally ill people being streamlined into society, we see more such persons prosecuted criminally. With the crush of cases in the courts and the pressure to dispose of them more quickly, the mentally ill are often pushed through the criminal justice system without much consideration. That may cause your mentally ill client to be placed on an unworkable probation grant and eventually be revoked and sent to prison.

A recent newspaper article¹ reports that a Justice Department study found there are about 283,800 inmates with mental illness, about 16 percent of the jail population. The study detailed how mentally ill inmates tend to follow a revolving door from homelessness to incarceration and then back to the streets with little treatment, many of them arrested for crimes that grow out of their mental illnesses.

Dealing with the mentally ill client is often extremely frustrating. Care must be taken to assure that this client is dealt with fairly and not just herded through the system. It is important that the mentally ill client be identified early in the criminal process and protected under the competency rules and statutes.

Making the Call

Although most of us are not trained in the art of psychology, we are still the ones who must make the initial determination that a client may not be competent to proceed and, thus, should have a competency examination. The following screen is useful in making the initial determination. It is summed up by the acronym JOIMAT.²

Judgement - How well can the client articulate why she is in the situation she is in? What kind of judgement can she exercise about her options?

Organicity and Orientation - Is the client having problems with sensory and motor functions? Is he oriented to time, place, person and situation?

Intelligence and Insight - The client's level and use of vocabulary. Her appropriate use of humor. Does she have insight as to what has brought her to her predicament? Can she evaluate her options?

Memory, Mood and Motivation - Does the client know her name? Can she remember simple things? If not, you can check again five minutes later. Can the client remember three objects you name such as tree, chair and orange? Can she recall them in five minutes? What is her mood? Elevated? Depressed? Mood is how a person is feeling at any given point in time. Is the client motivated? Does she desire to cooperate and give information?

Attention, Appearance and Affect - What is the client's general hygiene? Can he track your conversation? Can he understand compound questions? Affect is a person's longstanding temperamental style and emotional function. Affect is like climate whereas mood is like weather.

Thinking Quality and Reality Testing - What is the quality of the client's thinking? Does he have a hard time keeping the subject on track or does the conversation devolve into tangents. Is the client incoherent? Does he recognize reality? Is he having hallucinations or delusions?

Rule 11 Prescreen

Once you have determined that your client may not be competent, it is time to file your motion to examine the defendant to determine competency. Although still called Rule 11, competency examinations are now controlled largely by statute. See, A.R.S. § 13-4501, et.

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"With the crush of cases in the courts and the pressure to dispose of them more quickly, the mentally ill are often pushed through the criminal justice system without much consideration."

seq. Pursuant to A.R.S. § 13-4503, any time after the charging of a criminal offense, any party or the court on its own may request a competency evaluation be performed on a defendant. The court may have an expert prescreen the defendant to assist in determining whether reasonable grounds exist to order a full Rule 11 examination. In fact, in Maricopa County, almost all defendants are referred for a prescreen to determine if a full competency evaluation is warranted.

The prescreen will be conducted by Correctional Health Services at the jail. You will be contacted by Forensic Services who will ask you to provide information about your client to assist in the prescreen. The more information you can provide, the more it will benefit your client. You should include your motion, police reports, any psychiatric history, medical history, medications, previous evaluations, prior hospitalizations and previous civil commitments, if any. Provide all information you can discover to demonstrate your client's mental illness.

A doctor at the jail will then visit the client and make a report to the court. If the doctor finds that no reasonable grounds exist to question your client's competence, the case goes forward. If you continue to doubt your client's ability to assist you, repeat step one. If the doctor finds reasonable grounds exist to question competence, the court will order a full Rule 11 examination.

If your client is out of custody, she cannot be taken into custody solely because the issue of competence has been raised and an examination ordered. The court can incarcerate your client if it finds that confinement is necessary for the evaluation process. A.R.S. § 13-4507. Your client's eligibility for release cannot be delayed by the competency proceedings.

Rule 11 Examination

Previously, under Rule 11.3, each side would list three doctors and the court appointed one from each list. This is no longer the procedure. Now, pursuant to A.R.S. § 13-4505, the court appoints the two experts. The parties may stipulate to the appointment of only one expert and any party may retain its own expert at its own expense. The experts then examine the defendant and submit reports to the court. A.R.S. § 13-4509.

Traditionally, the defense gets to redact portions of the report that tend to incriminate the defendant. Note that A.R.S. § 13-4508 applies the privilege against

self-incrimination to competency proceedings. No statement made by the defendant is admissible to determine guilt or innocence based on the current charges. Beware, however, that nothing prevents the use at a sentencing proceeding or use of statements concerning other crimes that are not part of the current predicament. Thus, you should continue to redact incriminating statements.

The court must hold a hearing within 30 days after the report is submitted to determine the defendant's competency to stand trial. A.R.S. § 13-4510. In practice, the court will set a return date for your client by which time the reports are submitted. Then the parties can submit the matter by stipulation to the reports. This is the most common disposition of competency cases.

If both doctors find the defendant competent and you feel that is correct, then you can stipulate to the reports. Upon a finding that your client is competent, she will be returned to the originating court where the case will proceed. It is important to remember, however, that if your client is competent by virtue of psychotropic medication, the report must address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competence. A.R.S. § 13-4509(C). If it does not address this issue, request a supplemental report.

If one doctor finds your client competent and the second finds her incompetent, then a third doctor will be appointed as a tiebreaker. Based on the third doctor's findings, you will have to decide whether to stipulate to the report or have a competency hearing.

If both doctors find the defendant incompetent to proceed, you may stipulate to the reports. The report will also indicate if the client is restorable to competency. It is rare these days to find a client who is incompetent and not restorable. If the court finds that the defendant is incompetent with no substantial probability to regain competency within 21 months of the original finding, the charges are dismissed without prejudice, the client can be civilly committed or have a guardian appointed. A.R.S. § 13-4517.

If the defendant is competent but restorable, he will most likely be sent to the Arizona State Hospital for participation in competency restoration treatment although the treatment order may order outpatient restoration treatment. A.R.S. § 13-4512. Obviously, you should try to get outpatient treatment for your client.

"If your client is out of custody, she cannot be taken into custody solely because the issue of competence has been raised and an examination ordered."

At the State Hospital your client will be "taught" her constitutional rights and the various roles of the parties. One client told me they are taught using the acronym JEWS. Judge, Evidence, Witness, Silence. I'm not vouching for the accuracy, but my client could certainly recite his rights and knew who the parties were.

This is where the defense attorney needs to be especially careful. There is a crucial distinction between the rote recitation of one's rights and a true understanding of the proceedings and the ability to assist counsel. As the United States Supreme Court stated in *Dusky v. United States*, 363 U.S. 402, 80 S.Ct. 788 (1960)(per curiam):

[I]t is not enough for the district judge to find that 'the defendant [is] oriented to time and place and [has] some recollection of events' but that the 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding' and whether he has a rational as well as factual understanding of the proceedings against him.

Id. U.S. at 402.

An excellent recitation of the true nature of competence is found in *State v. Bennett*, 345 So. 2d 1129 (1977)³ where the court stated:

The decision as to a defendant's competency to stand trial should not turn solely upon whether he suffers from a mental disease or defect, but must be made with specific reference to the nature of the charge, the complexity of the case and the gravity of the decisions with which he is faced. See, Note, 6 *Loyola Univ. L.J.* at 684; Note, 4 *Columb. Hum. Rights L.Rev.* at 245; see, also, *United States v. Mathers*, 176 U.S. App. D.C. 242, 539 F.2d 721 (1976). Appropriate considerations in determining whether the accused is fully aware of the nature of the proceedings include: whether he understands the nature of the charge and can appreciate its seriousness; whether he understands what defenses are available; whether he can distinguish a guilty plea from a not

guilty plea and understand the consequences of each; whether he has an awareness of his legal rights; and whether he understands the range of possible verdicts and the consequences of conviction. Facts to consider in determining an accused's ability to assist in his defense include: whether he is able to recall and relate facts pertaining to his actions and whereabouts at certain times; whether he is able to assist counsel in location and examining relevant witnesses; whether he is able to maintain a consistent defense; whether he is able to listen to the testimony of witnesses and inform his lawyer of any

"This is where the defense attorney needs to be especially careful. There is a crucial distinction between the rote recitation of one's rights and a true understanding of the proceedings and the ability to assist counsel."

distortions or misstatements; whether he has the ability to make simple decisions in response to well-explained alternatives; whether, if necessary to defense strategy, he is capable of

testifying in his own defense; and to what extent, if any his mental condition is apt to deteriorate under the stress of trial. See, *State v. Augustine*, supra; *Robey*, *Criteria for Competency to Stand Trial: A Checklist for Psychiatrists*, 122 *Am. J. of Psychiatry*, at 616; Note, 6 *Loyola Univ. L.J.* at 684-685; Note, 4 *Columb. Hum. Rights L. Rev.* at 245.

If you feel that the initial finding of competence is incorrect or upon return from ASH with a "new" understanding of her rights you feel your client is still not competent, meet with the client and go through the JOIMAT screening with her. Discuss the part of the case where you previously encountered problems. Consider meeting with the client with the state hospital doctor present. Talk to the doctor. Is there additional information the doctor doesn't have? Describe the problems you are having.

Be mindful of the fact that your client, if truly restored, can relapse into a state of incompetence. In such a situation, you will need to repeat the Rule 11 process. If the doctor will not amend his report, it is time for the competency hearing.

The Competency Hearing

Within thirty days after the report is submitted, the court shall hold a hearing to determine a defendant's competency to stand trial. The parties may introduce other evidence regarding the defendant's mental condition or may submit the matter by written stipulation on the expert's report. A.R.S. §13-4510(A).

Obviously, if you've come this far, you have decided not to stipulate to the reports. It's time to put on some evidence. In *State v. Bishop*, 150 Ariz. 404, 724 P.2d 23 (1986), the court provided a complete discussion of the nature of the competence inquiry and the competency hearing.

The court stated that the differences between competence to stand trial and the defense of insanity makes a hearing in competency to stand trial, "qualitatively different from and suspends momentarily the ordinary nature of a criminal case." *Id.* Ariz. at 407.

The opinion goes on to state several interesting things concerning the hearing. For instance, because the hearing has an essentially non-adversarial objective, there are no established positions. *Id.* Ariz. at 407-408. Counsel has the obligation, flowing from his duty to protect his client's rights, to see that the issue is decided correctly. "[C]ounsel is not free to chart an adversary course at the hearing based on his view of the client's best interests." *Id.* Ariz. at 408.

More importantly, the opinion states that defense counsel alone is often the most knowledgeable witness and asks who is in a better position to testify to the ultimate issue. *Id.* However, the attorney must walk that fine line to assist the court in obtaining the facts without violating the attorney-client relationship. *Id.* Ariz. at 409-411.

Further, the court reaffirmed that the experts merely assist the judge's determination, but the judge is not bound by their opinions. *Id.* Ariz. at 409. The opinion notes that the judge is also a de facto witness and may consider his own observations of the defendant. *Id.*

Bishop provides an excellent model for working outside the box. It is an area where the attorney can be most creative in providing information to the court to convince the court that reciting the ABCs of one's rights does not make one competent. Use the client's psychological history, criminal history, family, friends,

neighbors, and your own experiences to give the court a complete history of your client that demonstrates she is not competent.

Imagine a hearing where you are not limited to questions and answers from each side, but instead are given broad latitude to provide information to the court to assist in the correct determination of your client's competence.

Conclusion

The better record you provide will identify the client as someone who should be treated differently in the criminal justice system. Even if your client is determined to be competent, you can use his limitations to seek a better resolution of the case, explore the insanity defense, obtain the least restrictive probation, including medication and mental health terms, so that your client can actually perform the probation.

With care and commitment you can assist your mentally ill clients through the system, get them the services they need and, once in awhile, obtain the dismissal by demonstrating that your client is not mentally competent to be prosecuted. The ultimate goal is to insure that your client is not simply one of the mentally ill being shoved in and out of the revolving prison door. ■

"Bishop provides an excellent model for working outside the box. It is an area where the attorney can be most creative in providing information to the court to convince the court that reciting the ABCs of one's rights does not make one competent."

1. Fox Butterfield, Prisons Brim With Mentally Ill, Study Finds, N.Y. Times, July 12, 1999.
2. Thanks to Dr. Bob Evans.
3. Thanks to Roland Steinle.

CO-OCCURRING MENTAL ILLNESS AND SUBSTANCE USE IN OFFENDERS

By Patrick Linderman
Client Services Coordinator - Group C

Often we encounter a case in which our client has mentioned that they have been "medicating" a mental illness with illegal drugs or alcohol. Sometimes the client's statements may not be too far from the truth. Recently, I attended a cross training workshop sponsored by The National GAINS Center (Gathering information, Assessing what works, Interpreting the facts, Networking with key stakeholders, and Stimulating change). This center responds to the

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concerns of people with co-occurring disorders in the justice system. The organization indicated that the U.S. has nearly 1.6 million individuals currently incarcerated and 4 million who are on probation or parole. Their estimates indicate that more than *half* of the people in the criminal justice system have a diagnosable, serious mental illness or substance abuse disorder. The terms "dually-diagnosed," or "co-occurring mental illness and drug dependence" describe individuals who have a DSM-IV Axis I major mental disorder that co-exists with a substance abuse or dependence disorder.

According to 1995 Drug Use Forecasting data, urinalysis at the booking stage reveals that more than *half* of all arrestees test positive for illicit drug use and nearly a *third* meet the criteria for a diagnosis of alcohol or drug dependence. *Seven percent* of jail detainees have acute and serious mental illnesses upon booking. In addition, more than *fifty percent* have other mental health diagnoses, including dysthymia(8%), anxiety disorders(11%), and anti-social personality disorders(45%). If an individual has one of these disorders they are at a much higher risk to develop one of the other disorders. Numbers vary according to studies, but a conservative estimate would suggest that 5%-13% of the individuals in correctional settings have a co-occurring mental health and substance use disorder at any given time.¹

According to the Arizona Alliance for the Mentally Ill, "The combination of mental illness and substance abuse is so common that many clinicians who work with the mentally ill now *expect* to find it." Can you count how many cases you currently hold that could be included in these statistics? Recent studies from the GAINS Center show that as much as 11% of the people who are incarcerated are dually diagnosed. Their research has also determined that as much as 84% of those individuals had a mental illness before a drug or alcohol abuse disorder, and that the average age of onset was 14 years old.²

Alcohol abuse/dependence is more than 6 times more prevalent in prisons than the general population. Drug abuse/dependence is more than 7 times more prevalent in prisons than in the general population. Many major mental illnesses are 5 times more prevalent in prisons than in the general population.³

The public defenders' ability to appropriately represent these clients greatly increases when we can fully inform the courts about our clients' problems, strengths,

and weaknesses. We can more effectively describe the underlying factors that may have contributed to why our client committed the offense. The more we know about them, the more we can inform the courts about possible alternative sentencing plans. The first step in this process is to recognize that our client may be mentally ill. This is not always an easy task when our client is also known as a drug abuser or alcoholic, because many of the behaviors related to those abuses mimic or mask the signs and symptoms of mental illnesses.

The skill of recognizing that your client may be mentally ill, is often overlooked. Why is this skill important? It is important primarily for two reasons: First, if the client is mentally ill, this information may be

"The public defenders' ability to appropriately represent these clients greatly increases when we can fully inform the courts about our clients' problems, strengths, and weaknesses."

used to mitigate a case. It could significantly reduce his or her culpability for the crime they have committed; second, alternative plans can be created to address the client's therapeutic needs. This opens an option for the judge, who may have felt that incarceration was the only choice. The judge

and prosecutor are not going to interview our client. The presentence investigation writer often does not interview our client, rather they send a representative to gather information who reports back to them. So, while we are fortunate to sometimes have access to medical records describing our clients illnesses, other times we are the *only* individuals who may be aware that a client is mentally ill and it should be our obligation to address this concern.

I know that there are many attorneys who are very conscientious about signs and symptoms of mental health problems. However, for those attorneys who are new or who have difficulty recognizing important mental health issues, I hope that this article can provide you with some basic knowledge to allow you to more effectively represent your clients and/or assist you in determining when mental health professionals should be involved. It must be noted that this information is not to be used to diagnose our clients but rather to assist you in recognizing that a client is mentally ill underneath the signs and symptoms of drug abuse. It should also help you to more effectively gather information from your client.

A very important issue to remember is that drugs often mimic mental illnesses. This is why it is so difficult to recognize that an individual may have a mental disorder. Conversely, drug dependence should also be the first clue that someone may be mentally ill.

The first time it is suggested to your client that he/she may be mentally ill, they often become apprehensive and anxious. There is a stigma attached.

(cont. on pg. 12) ☞

Your client may not verbalize what is actually bothering them. Building rapport, respect, and compassion can assist in reducing this barrier. Eventually, you can carefully initiate a deeper level of interviewing. When the client is at ease, he/she will feel more comfortable to express more information about themselves.

There are several characteristics of individuals who are particularly vulnerable to co-occurring disorders.^{4&5} If your client meets many of the following risk factors, you should investigate further or have another professional evaluate your client:

- Males.
- Youthful offenders.
- Low education level.
- History of unstable housing or homelessness.
- History of legal difficulties and/or incarcerations.
- Suicidality.
- History of emergency room or acute care visits.
- High rates of relapse to substance abuse.
- Peers/associates who are drug users or who have antisocial features.
- Poor relationships with family members.
- Family history of substance use and/or mental health disorders.
- Disruptive behavior.

Additionally, the presence of co-occurring disorders is associated with compromised psychosocial functioning and a range of negative treatment outcomes. Key characteristics of co-occurring disorders that often affect involvement in treatment include the following:

- Jail inmates with co-occurring disorders have more pronounced difficulties in employment, family, and social relationships, have more serious medical problems, and have lower levels of relapse prevention skills and knowledge of substance abuse treatment principles, in comparison to other inmates with substance use disorders.
- Jail inmates with co-occurring disorders are nearly twice as likely than other inmates to be terminated from substance abuse treatment programs, and are more likely than other inmates to leave these programs prematurely.
- More rapid progression from initial drug use to drug dependence.
- More frequent hospitalization.
- Poor prognosis for completion of treatment.
- Noncompliance with medication and treatment interventions.
- Higher rates of depression and suicide.

- Individuals with co-occurring disorders do not fit well into existing treatment programs. Once involved in treatment, these individuals do not respond as well as others with single diagnoses, and are more likely to attend outpatient treatment irregularly and to terminate prematurely from treatment.
- Co-occurring disorders are also associated with other negative psychosocial outcomes, including poor social functioning; lower satisfaction with relationships; homelessness; violence; and incarceration.⁶

If after collecting information that leads you to believe that your client may be dually-diagnosed, the appropriate step is to involve additional professionals. As mentioned previously, drug dependence, withdrawals, and abuse can mimic many signs and symptoms of mental illnesses. Being careful with your insight is a positive attribute.

“While many of us are not trained to detect signs and symptoms of co-occurring disorders, we are in a unique position to recognize these possibilities.”

If these characteristics describe many of your clients and additional assistance has not been requested by you, take time to interview your client at a deeper level. Many times a second or third interview will

lower barriers and provide you with new information that can confirm or dismiss your concerns. Granted, many of our clients are just as they appear, drug abusers, but if you come away with one statistic from this article, remember this one: “Studies show that fully 50% of persons with mental illness also have a substance abuse problem. And more than half the persons with a substance abuse diagnosis also have a diagnosable mental illness”.⁷ How many drug abusers are on your caseload? Chances are, many of those individuals additionally have a mental illness, mild or acute.

While many of us are not trained to detect signs and symptoms of co-occurring disorders, we are in a unique position to recognize these possibilities. Once alerted to the possibility of a dually-diagnosed individual, it should be our obligation to refer that individual to a professional who can make a better determination by utilizing specific screening tools and assessment instruments. If you are unsure whether a psychiatrist or psychologist should be obtained, consult the resources already available to you, namely, Client Services Coordinators, the Mental Health Unit, previous files, past attorneys or probation officers familiar with your client, and past treatment facilities that may have medical records. Even jail personnel may be aware of your client’s illness and may have observed specific behaviors.

Final Thoughts

Mentally ill clients can be very time consuming. By utilizing a doctor, Client Services Coordinator, or other professionals, the attorney can free up time to focus once again on the legal representation of the client, allowing the other professionals to assess the client and assist in making recommendations to the court.

Remember these following points:

- 1) If your client is a drug abuser or alcoholic, there is a higher probability that they may also have a mental illness;
- 2) There is a stigma often associated with mental illness. Take precautions to build rapport, respect, and compassion. This will add to your ability to gather information and interview at a deeper level;
- 3) There are several characteristics of individuals who are particularly vulnerable to co-occurring disorders. Keep an awareness to these warning signs;
- 4) Specifically, psychosocial functioning and negative treatment outcomes are compromised. Many additional characteristics are associated with these two areas; and
- 5) When you believe a client may be mentally ill in addition to a substance abuse problem, obtain assistance from professionals who can make a definitive determination.

Courts must be fully informed about your client to make the best decision. It is not your responsibility to evaluate and diagnose your client, however, some times you are the only person in a position to notice signs and symptoms of a mental illness. Finally, the more knowledge you have about the dual-diagnosed, the better prepared you are to notice these signs, understand characteristics, and utilize other professionals to assess them and make appropriate recommendations to the court. ■

“By utilizing a doctor, Client Services Coordinator, or other professionals, the attorney can free up time to focus once again on the legal representation of the client, allowing the other professionals to assess the client and assist in making recommendations to the court.”

1 National Institute of Justice. 1996. “1995 Drug Use Forecasting Annual Report on Adult and Juvenile Arrestees.” Research Report. Washington, DC: U.S. Department of Justice.

2 The National GAINS Center for People with Co-Occurring Disorders in the Justice System Policy Research, Inc.

3 Robins, L.N. & Reiger, D.A. (eds.) 1991. *Psychiatric Disorders in America: The Epidemiological Catchment Area Study*. New York: Free Press.

4 Drake, R.E., Rosenberg, S.D., & Mueser, K.T. (1996). Assessing substance use disorder in persons with severe mental illness. In R.E. Drake & K.T. Mueser (Eds.), *Dual Diagnosis of Major Mental Illness and Substance Abuse, Vol. 2: Recent Research and Clinical Implications*

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6 Peters, R.H., & Bartoi, M.G. (1997). Screening and assessment of co-occurring disorders in the justice system. Department of Mental Health Law and Policy; Louis de la Parte Florida Mental Health Institute; University of South Florida.

7 The National Institute of Mental Health, Office of Scientific Information.

ARIZONA ADVANCE REPORTS

By Terry Adams
Deputy Public Defender - Appeals

Hill v. Hall, 296 Ariz. Adv. Rep. 40 (CA 1, 5/27/99)

After pleading not guilty to several felonies, the defendant requested and received an automatic change of judge under Rule 10.2. He later entered into a plea agreement before the new judge. Because of a problem with sentencing he moved to withdraw from the plea which was granted. He then moved for a change of judge under rule 17.4(g). This was denied. On a special action the court upheld the trial court stating that the exercise of a peremptory right to a change of judge precludes a later peremptory under 17.4 (g).

Ryan v. Arrellano, 296 Ariz. Adv. Rep. 43 (CA 1, 6/3/99)

The defendant was tried for aggravated assault, kidnapping, and felony murder predicated on kidnapping. The jury found him guilty of aggravated assault and unlawful imprisonment (a lesser of kidnapping), and hung on murder. The trial court ruled that the state could retry

him on the murder. He then he filed this special action. First the court determined that a conviction of a lesser-included offense operates as an acquittal of the greater charge under *St. v. LeBlanc* as it did under *St. v. Wussler*. Next, the court determined that collateral estoppel barred retrial on the felony murder count.

State v. DeCamp, 296 Ariz. Adv. Rep. 27 (CA 1, 6/3/99)

Acting on a tip of illegal activity, the police arrived at the defendant's residence. After he refused their request to search the house, his mother consented to a search of the residence with the exception of the defendant's room. They, however, made a "protective sweep" of the residence including his room. While in the

kitchen one officer observed, through the open door of the defendant's room, a bong. Although the protective sweep was unlawful, the bong in plain view provided a sufficient independent source to support obtaining a search warrant, and therefore the resulting search was lawful.

State v. Panveno, 296 Ariz. Adv. Rep. 25 (CA 1, 5/27/99)

The defendant was convicted of aggravated D.U.I. with a BAC of 0.10 or more within two hours of driving. During trial he presented expert evidence that he may have been under 0.10 at the time of driving. On appeal he argued that since he presented some credible evidence that his BAC was below 0.10 at the time of driving, the state, under the affirmative defense statute, was required to prove beyond a reasonable doubt that it was above. The court agreed with his argument but concluded that the state had done so, with evidence that included a blood test that was 0.155 nearly two hours after he was stopped.

State v. Wagner, 296 Ariz. Adv. Rep. 22 (SC 5/26/99)

The defendant was convicted of first degree murder and sentenced to natural life without parole. This opinion examines the sentencing statute and determines that it is not void for vagueness, and does not violate due process or equal protection. Also, a defendant does not have a right to sentencing guidelines in a non-capital case.

State v. Omeara, 297 Ariz. Adv. Rep. 3 (CA 2, 4/27/99)

An undercover cop observed the defendant and several other individuals in a parking lot. He watched them leave in two separate vehicles. He followed them and later saw them switch vehicles. He continued to follow the defendant and had a patrol officer stop him for a minor traffic violation. The defendant refused a consent search, the officer detected a strong odor of fabric softener emanating from the trunk, and called for a canine officer who arrived 50 minutes later. The dog alerted and a telephonic warrant was obtained and 349 lbs. of marijuana was found. The defendant's motion was denied and affirmed on appeal. The court found that the observations coupled with the odor was sufficient to warrant the detention and the delay was not unreasonable. This appears to be in conflict with Division One's opinion in *State v. Magner*, 191 Ariz. 392. You be the judge.

State v. Brown, 297 Ariz. Adv. Rep. 5 (SC ,6/9/99)

The legislature's attempt to establish time limits on filing petitions for post conviction relief was held as unconstitutional. It was held as an infringement on the Supreme Court's exclusive power to create procedural rules.

Jones v. Kieger, 297 Ariz. Adv. Rep. 26 (CA 1, 6/10/99)

The trial court declared a mistrial because of a response to a question by a state's witness, over the

defendant's objection. This case discusses situations in which a retrial would or would not be barred by double jeopardy. Here the court determined that it would. The only time a mistrial under these circumstances is appropriate is if there is "manifest necessity" to do so.

State v. White, 297 Ariz. Adv. Rep. (SC, 6/10/99)

This is a review of a death sentence where the court affirmed in a three to two opinion. The opinion discusses pecuniary gain, possibility of rehabilitation and aberrant behavior. The well reasoned dissent points out that the sentencing judge should have considered the fact that the co-defendant received life, and that the original prosecutor recommended life as mitigating circumstances.

State v. Cutright, 297 Ariz. Adv. Rep. 42 (CA 1, 6/17/99)

After a heated argument with his wife and in-laws, the defendant left the residence and fired a gun through the door where the three victims were standing. He was convicted of two counts of aggravated assault and one count of discharging a firearm at a residential structure. On appeal he argued that a flight instruction should not have been given and that an instruction on disorderly conduct should have. The court determined that even though there was no evidence of his fleeing to avoid arrest, his manner of driving when a police officer was following him was sufficient to support an inference of guilt. This consisted of swerving to throw the gun out of the window which was an attempt to "buy time". Also, the court decided that disorderly conduct is no longer necessarily a lesser of aggravated assault because in light of a recent case that says you can't disturb the peace of someone who is not at peace, and you can assault someone who is not at peace, you can commit assault without committing disorderly conduct. This is in spite of the Supreme Court's opinion in *State v. Angle* which holds the opposite. I assume the Supreme Court will review this opinion. ■

BULLETIN BOARD

Attorney Moves/Changes

Kevin Burns, after two terms with this office totaling fourteen years, left on July 12 to open his own law office with Dee Nickerson. Kevin's strong record of service and personality will be missed throughout the office.

Mary Kay Grenier left Group E to open her own practice. She had been with the office since 1995. Her last day with the office is July 30.

Jody Hallam resigned from the office effective July 16. She and her husband are awaiting the birth of their first child. She was an attorney with Group C.

Amy Mabi left Group C on July 23 and will be moving back to Flagstaff, where she will practice law.

Dee Nickerson, who joined this office in 1985, has ventured out into private practice with Kevin Burns. Dee's fourteen years of dedicated service has been greatly appreciated and we wish him well.

New Support Staff

Donna Accetta, Legal Secretary, joined Group C on July 19. She holds an A.A.S. in Paralegal Studies from Phoenix College.

Jason Goldstein begins work as a Law Clerk for Group C on August 2. He attended the University of San Diego School of Law and the University of Arizona where he earned a B.A. in Sociology. He has clerked for various public and private law offices while in law school.

Vincent Salvato, Investigator for Group D, joined the office on July 12. Vince retired from the Mesa Police Department 3 years ago, and served in its narcotics and internal affairs units.

Maria Sanchez joined Group B as a Secretary on July 26. She comes to the office from Initial Appearance Court where she worked as a Court Information Processor. She also has previous experience working as a legal assistant for private law firms.

Sara Smith, Administration Trainee, began on June 28.

Christina Turner has been hired as a part-time Receptionist for Group C, effective July 19.

Support Staff Moves/Changes

Jackie Conley, Legal Secretary for Group C, left the office on July 2 to spend time at home with her children and continue her education.

Teresa Diaz left the office on July 23. She was a Legal Secretary for Group A/E.

Lucia Herrera will assume the position of Lead Secretary Supervisor as a special work assignment. She has served as a legal secretary in the trial division, as well as Appeals, where she is currently Lead Secretary.

Dylan Jose, Office Aide for Appeals, left the office on June 25.

Marcus Keegan, Group B Client Services Coordinator, left the office on July 29. He will be attending Emory University Law School in Atlanta.

Lisa Kula, Training Administrator, will be leaving the office on August 6. She will be working as an Education Coordinator for Maricopa Integrated Health Services.

Tina Parker, Administrative Assistant in Group B, left the office on June 17.

Stacy Peterson, Legal Secretary for Group C, will return to teaching and the opportunity to pursue her Master's degree. Her last day with the office was July 22.

Shannon Rath, Legal Secretary for Appeals, left the office on July 9 to spend more time at home with her new child. ■

“Identifying trial by jury as ‘the great bulwark’ of English liberties, Blackstone contended that other liberties would remain secure only ‘so long as this palladium remains sacred and inviolate, not only from all open attacks, (which none will be so hardy as to make) but also from all secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial, by justices of the peace, commissioners of the revenue, and courts of conscience. And however convenient these may appear at first, (as doubtless all arbitrary powers well executed, are the most convenient), yet let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters.”

Jones v. U.S., 1999 WL 401 258

June 1999 Jury and Bench Trials

Group A

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/1-6/21	Corey & Passon Yarbrough	Dunevant	Jorgensen	CR 97-14978 Murder 1°	Guilty	Jury
6/2-6/2	Hernandez	Cole	Bernstein	CR 99-01000 Agg. Asslt/F3 on prob. w/ 2 priors	Dismissed after jury selection	Jury
6/14-6/17	Farrell Yarbrough	Akers	Frick	CR 98-17175 Armed Robbery/F2D Kidnapping/F2D; Theft/F3	Not Guilty	Jury
6/15-6/15	Lehner	P. Reinstein	Bustamonte	CR 99-01678 Agg. Robbery/F3	Dismissed with prejudice day of trial	Bench
6/16-6/18	Hernandez	Hotham	Godbehere	CR 98-18062 Agg. Robbery/F3 with 1 prior	Not Guilty Agg Robbery Guilty of lesser-included Simple Robbery w/ 1 prior	Jury
6/16-6/24	Howe	Comm. Ellis	Walsh	CR 98-13096 PODD/ F4 Poss. Equip/Chem to Mnfr Drugs/ F4 Use of Bldg Mnfr Dang Drug/ F2	Not Guilty of PODD Hung jury on Poss Equip/Chm Mnfr Drug and Use of Bldg Mnfr Dang Drug	Jury
6/17-6/17	Pettycrew	Crum	Beresky	CR 99-00122M Minor Consumption	Guilty	Bench
6/21-6/23	Parsons Jones	O'Toole	Frick	CR 99-02232 Armed Robbery/ F2D Agg. Assault/ F3D Misconduct w/Weapons/ F4 with 2 priors	Hung jury on Armed Robbery; Guilty of Agg. Assault and Misconduct w/Weapons	Jury
6/22-6/22	Leal & Ramirez Robinson	Baca	Duax	CR 98-12327 Att. Murder/ F2D 2 cts. Att. Sexual Assault/ F3D Burglary/ F2D Agg. Assault/ F3D	All charges dismissed without prejudice on day of trial	Jury
6/23-6/25	Valverde	P. Reinstein	Baker	CR 99-01508 Agg. Assault/ F2D Dischg of FrearmNonResStruc/ F3D	Not Guilty of Agg. Assault Guilty of DischgofFirearm	Jury
6/24-6/29	Ellig Brazinskas Robinson	Galati	Robinson	CR 99-02939 2 cts. Agg. Assault/ F2D Forgery /F4	Not Guilty of Agg. Asslt. Guilty of 2 cts. of lesser- included Disorderly Conduct/F6D Guilty of Forgery/F4	Jury
6/25-6/25	Pettycrew	Goodman	Beresky	TR 98-04160 Driving on Sus.Lic./ M1	Guilty	Bench
6/28-6/29	Parsons & Flores	Hall	Clarke	CR 96-12997 Agg. Assault/F3D	Not Guilty	Jury
6/29-6/29	Pettycrew	Crumb	Ireland	CR 99-00040 IJP/ M1	Guilty	Bench

GROUP B

Dates: Start/Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
5/31-6/3	Peterson	Sheldon	Daiza	CR 98-12338 3cts, SOND/ F2 2cts, Offer to Sell Drg/ F2 POND/ F4 Miscndt invol wpns/ F4	Guilty all counts	Jury
6/2-6/3	Gray Souther	Arellano	Spencer	CR 99-02300 Agg.Asslt/ F6	Guilty	Jury
6/2-6/3	Liles Munoz	Pro Tem Lowenthal	Luder	CR 98-16749 Promoting Prison Contrabnd/ F2	Not Guilty	Jury
6/7	Whelihan	Hall	Spencer	CR 98-15421 POM/ F6	Guilty	Jury
6/15	Peterson	Sheldon	Bustamante	CR 98-17311 POND /F4 PODP/ F6	Not Guilty PODP Guilty on 1ct. POND	Jury
6/29	Noble Souther	Gottsfeld	Rahi-Loo	CR 98-14512 PODD/ F4 PODP/ F4	Guilty all counts	Jury

Group C

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
5/27- 6/1	Zazueta & Gavin	Aceto	Rosemary Rosales	CR 99-90704 1 Ct. Agg Assault/ F4	Not Guilty	Jury
6/7- 6/8	Sheperd	Keppel	Bennick	CR 98-96000 1 Ct. Theft/ F3 1 Ct. POM/ F6	Guilty	Jury
6/15	Burkhart	Barker	Flader	CR 99-90584 1 Ct. PODD/ F6	Guilty	Jury
6/18- 6/22	Corbitt	Kamin	Sampanes	CR 98-94140 1 Ct. G/T Vehicle/ F3	Not Guilty	Jury
6/21- 6/30	Shell Thomas	Ishikawa	Goldstein	CR 98-94595 1 Ct. Vulnerable Adult Abuse/ F4	Not Guilty	Jury
6/22	Silva	Comm. Wotruba	Vick	CR 99-34690 2 Cts. Agg DUI/ F4	Mistrial	Jury
6/28- 6/29	Shoemaker	Jarrett	Arnwine	CR 99-90785 1 Ct. Agg Assault on Police Officer/ F6	Hung Jury 7 - Guilty 1 - Not Guilty	Jury
6/28-7/1	Levenson Beatty Turner	Aceto	Aubuchon	CR 98-95409 2 Cts. Sexual Conduct w/minor/ F2	Not Guilty	Jury
6/29-6/30	DuBiel	Jarrett	Brenneman	CR 98-93004 1 Ct. PODD/ F4 1 Ct. PODP/ F6	Guilty	Jury

Group D

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/2-6/8	Merchant	Katz	Gialketsis	CR 98-13859 1 Ct. Burglary 2°/ F3	Guilty	Jury
6/7-6/8	Crews	Dougherty	Clarke	CR 98-01864 1 Ct. Agg. Assault/ F2D	Guilty	Jury
6/14-6/14	Ferragut O'Farrell	Gerst	Demars	CR 99-01782 1 Ct. Disorderly Conduct/F6	Dismissed W/O Prejudice	Jury
6/14-6/15	Crews	Reinstein	Cotter	CR 98-17688; 99-00644 Burglary/ F3; PODD/ F4; PODP/ F6	Guilty	Jury
6/14-6/23	Elm & Mehrens Fusselman Ames	Gerst	Adams	CR 99-03129 1 Ct. Poss/Sale Meth/ F3 1 Ct. Mscndct Inv. Wpns/ F4 1 Ct. Poss. Drg. Para./ F6	Guilty	Jury
6/15	Huls	D'Angelo	Hammond	CR 98-14262 1 Ct. Theft/ F2; 1 Ct. Traffic-Stolen Prop.w/priors/ F2	Dismissed	
6/18-6/18	Merchant	Arrellano	Hammond	CR 98-13529 1 Ct. Burglary 3°/ F4 (With 2 Priors)	Guilty	Jury
6/15-6/17	Silva Schroeder	Katz	W. Perry	CR 98-17457 1 Ct. Forgery/ F4 1 Ct. Forgery Device/ F6	Hung, (6-2 Not Guilty)	Jury
6/21-6/22	Stazzone	Jarrett	Lamm	CR99-00387 1 Ct. Poss. Meth/ F4; 1 Ct. Marij-Poss, Grow, Proc/ F6; 1 Ct. PODP/ F6	Guilty	Jury
6/24-6/30	Merchant O'Farrell	D'Angelo	Hammond	CR 99-02671 1 Ct. Poss. Meth/ F4 1 Ct. PODP/ F6	Not Guilty	Jury
6/25-6/25	Leyh	Katz	Ireland	CR 98-05132 1 Ct. Agg. DR-BA .10 or GTR/ F4; 1 Ct. Agg.DR-LQ/DRG/TX, Sub/ F4	Entered Guilty Verdict- Lesser Included offense DUI, Class 1 Misdemeanor	Bench
6/29-6/30	Cox & Varcoe Bradley	Hilliard	Smith	CR 99-00876 1 Ct. Agg. Dui/ F/4	Guilty	Jury

Group E

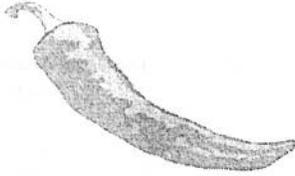
Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/1-6/2	Roskosz	Gottsfield	Lamm	CR 99-03403 POND F/S/ F2	Guilty	Jury
6/7-6/8	Crews	Dougherty	Clarke	CR 98-01864 Agg. Asslt./ F3	Guilty	Jury
6/7-6/8	Doerfler	Gottsfield	Murray	CR 98-17051 Theft/ F3	Guilty	Jury
6/14-6/15	Crews	Reinstein	Cotter	CR 98-17688 CR99-00644 Burglary/ F3 PODD/ F4 PODP/ F6	Guilty	Jury
6/15-6/17	Kent & Pelletier Yarbrough	O'Toole	Worth	CR 98-03853 2 Cts. POND F/S/ F2 POM/ F6	Not Guilty POND F/S (guilty of lessers - simple POND 2 cts.) Guilty POM	Jury
6/17-6/22	Slattery Clesceri Molina	Akers	Hernandez	CR 99-00820 Misc.Invl.Weap./ F4 w/2 priors	Guilty	Jury
6/22	Klapper Souther	Hutt	Bustamante	CR 99-02552 Theft of Means of Trnsp./ F3	Dismissed w/o prejudice (Same day trial was to begin)	

DUI Unit

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/2-6/3	Carrion	Jones	Morrison	CR 98-03023 1 Ct. Agg DUI/ F4 1 Ct. Resisting Arrest/ F6	Not Guilty of Resisting Arrest Guilty of Agg DUI	Jury
6/14-6/16	Carrion	Hall	Eckhardt	CR 97-07405 2 Cts. Agg DUI/ F4 1 Ct. Agg Assault on Officer/ F5 with priors alleged	Guilty	Jury
6/21-6/22	Force	Dougherty	Lemke	CR 98-14935 1 Ct. Agg DUI/ F4	Guilty	Jury

Office of the Legal Defender

Dates: Start - Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result [w/ hung jury, # of votes for Not Guilty/Guilty]	Bench or Jury Trial
6/1-6/3	Orent PangBurn	Bolton	Charnell	CR 97-12529 2 nd Degree Murder / F1	Not Guilty 2° Murder Guilty of Lesser-Included Manslaughter	Jury



CHILI-FOR-CHARITY



It's time to dust off the chili recipes and start putting teams together for Maricopa County's first "Chili-for-Charity" cookoff, set for Saturday, October 16, 1999, to benefit United Way.

There's plenty to do besides sample some of the best and strangest chili recipes from across Maricopa County. Events in conjunction with the cookoff will include something for young and old, ranging from children's activities including pony rides, petting zoo, train ride, caterpillar ride, moon walk, clown and face painting, to music, dancing, mariachis, classic car display, and craft booths.

Teams entering the chili cookoff can prepare chili, or salsa, and will be judged on taste and presentation, with a "People's Choice" trophy also being presented. In addition, there will be a trophy for the "Best Decorated" booth, and the "Best Salsa." Other contests include a jalapeno eating contest, and a pumpkin carving contest for the children.

People wishing to sample the offerings can purchase, for \$2.50, a "People's Choice" package. A package including a spoon, small cup and two voting forms. One for the "People's Choice" chili and one for the "Best Salsa." Only the cups sold at the People's Choice" booth can be used for sampling.

The deadline for teams to register is October 1. For more information, call the
Chili Hot Line @ 506-6633

or

visit the Chili-for-Charity web site @ www.pubdef.maricop.gov/chili.htm

