

# for The Defense



The Training Newsletter of the Maricopa County Public Defender's Office  
Dean Trebesch, Maricopa County Public Defender

## A MAN'S HOUSE IS HIS CASTLE – AND HE IS THE CASTLE GUARD

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### By James R. Rummage Defender Attorney – Appeals

It is commonly recognized that the old adage, "A man's house is his castle," applies with respect to attempts by police to search someone's home or to arrest an occupant.<sup>1</sup> Motions to suppress evidence seized in the search of a defendant's home are regularly filed based on that concept. Less commonly recognized is the fact that in his or her "castle," the resident<sup>2</sup> may act as the "castle guard." The defense of "Justification; use of force in crime prevention" set out in A.R.S. § 13-411 provides the resident a far more powerful defense than any other form of justification. Despite the enhanced benefits provided by this form of justification defense, it is far too often overlooked

by trial counsel. Even when it is invoked, counsel often fails to take full advantage of the special provisions of this defense.

The justification defense set out in A.R.S. § 13-411 is available to a defendant who, under appropriate circumstances, has used physical or deadly physical force to prevent the commission of any of about a dozen crimes that are enumerated in the statute. At first glance, the defense provided in § 13-411 appears to be available to anyone as a legal defense for their actions taken anywhere. In *State v. Thomason*,<sup>3</sup> however, the Arizona Court of Appeals examined the legislative history of the statute, and stated, "We find that § 13-411 is applicable only to persons protecting the home, its contents, or the residents within."<sup>4</sup> The Ari-

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## A FEW STEPS BEYOND BRUTON

### By Jim Wilson Defender Attorney – Group D

Admissibility of Codefendants' Redacted Confessions at Joint Trials and Admissibility of Codefendants' Confessions at Severed Trials

#### Non-Testifying Codefendants

In *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) the United States Supreme Court held that in spite of the

trial judge's limiting instruction to the jury, the admission of the codefendant's confession in a joint trial violated the defendant's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment.

Since *Bruton*, three major Supreme Court cases have refined its holding. In *Richardson v. Marsh*, 481 U.S. 200, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987) the Court considered the admissibility at a joint trial of the redacted confession of the codefendant where any refer-

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zona Supreme Court has adopted this interpretation.<sup>5</sup> Thus, the factual scenario that should trigger an analysis of the applicability of § 13-411 is where the alleged crime occurs with a nexus to the defendant's residence. The Court of Appeals recently held that an occupied motel or hotel room is the equivalent of a "home" for purposes of this defense.<sup>6</sup>

### Favorable Aspects of § 13-411

The defense provided in § 13-411 provides special benefits that should be utilized whenever the defense is applicable. The first benefit is a presumption that the person acting to prevent an enumerated crime — bearing some relationship to their residence — is presumed to be acting reasonably. The statute provides, "A person is presumed to be acting reasonably for the purposes of this section if he is acting to prevent the commission of any of the offenses listed in subsection A of this section."<sup>7</sup> Any time this defense is invoked, it is incumbent upon counsel to request an instruction informing the jury of this presumption. Failure to request such an instruction is undeniably ineffective assistance of counsel, since there can be no tactical reason for failing to request it.

Equally as important as the presumption of reasonableness is the fact that, under § 13-411, the person invoking the defense need only be acting reasonably to prevent one of the enumerated crimes. As the Arizona Supreme Court observed in *State v. Korzep*,<sup>8</sup> *this defense does not require that there be an immediate threat to personal safety before deadly force may be used.* This is an essential part of the defense, although it is not spelled out in the body of the statute as clearly as the presumption of reasonableness. It is therefore especially important that counsel make note of this aspect of the defense, and be prepared to convince the trial judge to instruct the jury on this point.

*Korzep* further explains, "Section 13-411 is also more permissive because not all of the enumerated crimes are inherently life-threatening." As the Court of Appeals observed in a later opinion in the same case, "Under these legislative modifications, the public is empowered to employ force, including deadly force, to prevent not only life-threatening crimes like murder but also some non-life-threatening, non-coercive, non-imminent crimes."<sup>9</sup> Those crimes include burglary in the second degree and sexual conduct with a minor. The Court of Appeals even theorized that the statute would apparently provide protection to a parent who killed one of the parties to consensual teenage sex occurring in the house, because it would qualify as preventing the commission of the offense of sexual conduct with a minor.<sup>10</sup>

### Retreat

An additional factor codified in § 13-411 is that the person invoking the defense has no duty to retreat. This forecloses any debate on the question of the duty to retreat.<sup>11</sup> The defendant is entitled to an instruction on this point, and indeed, the RAJI instruction for this defense includes it. It is in keeping with the intent of the statute to instruct the jury on this point. It would hardly be appropriate to require a resident to retreat before acting to prevent the commission of an enumerated crime at his own residence.

### Scope of Application

Although case law has restricted the application of this defense to "persons protecting the home, its contents, or the residents within," that restriction is not as limiting as might first appear. In *State v. Taylor*,<sup>12</sup> the Supreme Court reversed the defendant's conviction, because the trial court had refused to instruct on the crime prevention defense. The Court held:

All that is required for § 13-411 to apply is that a reasonable relationship exist between the criminal acts being prevented and the home, its contents, or its residents. Thus, we hold that the justification defense found in § 13-411 may apply when a resident who is outside the home uses force against another to prevent the commission of an enumerated crime.

In *Taylor*, the defendant and the alleged victim had an ongoing dispute, during which the alleged victim had made more than one threat against the defendant and his family. In the final episode of the dispute, the argument started in the defendant's apartment, and moved outside. Punches were thrown. The fighting stopped, and the victim said he would be back for the defendant. The victim went to his truck, where the defendant believed he had a gun. The defendant retrieved a gun from his apartment, and came out to find the alleged victim moving toward the apartment. The defendant fired five shots, hitting the alleged victim three times. The alleged victim turned and ran when the shots were fired, and two of the three shots hit him in the back. The defendant admitted he could not tell whether the alleged victim had a gun. The Supreme Court stated, "We agree with defendant that he should not have to wait until an intruder physically enters the home before taking defensive action."<sup>13</sup>

This concept was extended even further in *Herrell v. Sargeant*.<sup>14</sup> In that case, the defendant saw a car near the end of his driveway, and saw his wife running down the driveway, pointing at the car, and yelling their daughter's name. Because of a variety of circumstances, the defendant believed it was possible his daughter was being forcibly taken from the family home, perhaps to be raped. He pursued the vehicle in

his own vehicle, tried to get the driver to pull over, and finally forced it to stop. He approached the other vehicle armed with a pellet gun, which he pointed at the driver, demanding to know his daughter's whereabouts. The other driver did not respond, but simply backed up and drove away. When the defendant continued the pursuit and saw the other vehicle pull into his neighbor's driveway, he realized he had made a mistake, as the occupants were his neighbor's relatives, and not gang members. The Supreme Court held that the defendant's explanation as to what he believed was going on at the time of the alleged assault was "clearly exculpatory" evidence that should have been presented to the grand jury.<sup>15</sup> The Supreme Court also held that the grand jury should have been instructed regarding the crime prevention justification defense set out in A.R.S. § 13-411.<sup>16</sup> Thus, even when the alleged crime occurs some distance away from the home, the crime prevention defense may be available, so long as the incident is sufficiently related to the home, the residents, or its contents.

Finally, this defense is not restricted to those who might attack the home from without. In *Korzep, supra*, the Supreme Court held that the justification defense found in § 13-411 applies, "when one resident of a household uses force against another resident of the same household to prevent the commission of an enumerated crime."<sup>17</sup>

### Conclusion

Any time a defendant is charged with an offense that is somehow directly related to the defendant's home, it is incumbent upon counsel to investigate the possible applicability of the crime prevention justification defense set out in A.R.S. § 13-411. Counsel should not be hesitant to request an instruction on this defense just because the crime charged occurred outside the home, or even some distance away. And counsel should be certain to request instructions that inform the jury of all the aspects of this defense: the nature of the defense, the presumption of reasonableness, the fact that no immediate threat to the defendant's personal safety need be shown, and the fact that there is no duty to retreat. When the defendant is in the position of having arguably defended his home, that is something with which jurors can sympathize. It is essential under those circumstances that the jury be properly informed of the applicable law.



### Appendix

### § 13-411. Justification; use of force in crime prevention

A. A person is justified in threatening or using both physical force and deadly physical force against another if and to the extent the person reasonably believes that physical force or deadly physical force is immediately necessary to prevent the other's commission of arson of an occupied structure under § 13-1704, burglary in the second or first degree under § 13-1507 or 13-1508, kidnapping under § 13-1304, manslaughter under § 13-1103, second or first degree murder under § 13-1104 or 13-1105, sexual conduct with a minor under § 13-1405, sexual assault under § 13-1406, child molestation under § 13-1410, armed robbery under § 13-1904, or aggravated assault under § 13-1204, subsection A, paragraphs 1 and

B. There is no duty to retreat before threatening or using deadly physical force justified by subsection A of this section.

C. A person is presumed to be acting reasonably for the purposes of this section if he is acting to prevent the commission of any of the offenses listed in subsection A of this section.

RAJI 4.11

#### *Justification for Using Force in Crime Prevention*

A person is justified in threatening or using both physical force and deadly physical force to prevent the commission of the crime(s) of arson of an occupied structure, burglary in the first or second degree, kidnapping, manslaughter, first or second degree murder, sexual conduct with a minor, sexual assault, child molestation, armed robbery, or aggravated assault.

There is no duty to retreat before threatening or using such force.

#### **The RAJI instruction should be supplemented with the following:**

A person is presumed to be acting reasonably for purposes of this defense of justification if the person is acting to prevent one of the crimes listed above.

In order for a person to be justified in using either physical force or deadly physical force in crime prevention, it is not necessary that there be an immediate threat to the personal safety of the person using such force.

#### Endnotes

1 *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63

L.Ed.2d 639 (1980); *Miller v. United States*, 357 U.S. 301, 78 S.Ct. 1190, 2 L.Ed.2d 1332 (1958); *State v. Ault*, 150 Ariz. 459, 724 P.2d 545 (1986); *State v. Mendoza*, 104 Ariz. 395, 454 P.2d 140 (1969).

- 2 The term “resident” as used in this article encompasses renters and mere residents, even if temporary, as well those who actually own the residence.
- 3 162 Ariz. 363, 783 P.2d 809 (App. 1989).
- 4 162 Ariz. at 365, 783 P.2d at 811.
- 5 *State v. Taylor*, 169 Ariz. 121, 123, 817 P.2d 488, 490 (1991); *State v. Korzep*, 165 Ariz. 490, 492, 799 P.2d 831, 833 (1990).
- 6 *State v. Hussain*, 189 Ariz. 336, 339, 942 P.2d 1168, 1171 (1997).
- 7 A.R.S. § 13-411(C).
- 8 165 Ariz. 490, 492, 799 P.2d 831, 833 (1990).
- 9 *Korzep v. Superior Court*, 172 Ariz. 534, 537, 838 P.2d 1295, 1298 (App. 1991).
- 10 *Id.*, n. 1.
- 11 A.R.S. § 13-411(B); *Korzep*, 165 Ariz. at 492, 799 P.2d at 833.
- 12 169 Ariz. 121, 123, 817 P.2d 488, 490 (App. 1991).
- 13 169 Ariz. at 123, 817 P.2d at 490.
- 14 189 Ariz. 627, 944 P.2d 1241 (1997).
- 15 189 Ariz. at 631, 944 P.2d at 1245.
- 16 *Id.*
- 17 165 Ariz. at 494, 799 P.2d at 835.

***State v. Arner*, 307 Ariz. Adv. Rep. 4  
(CA 1, 10/28/99)**

Defendant was charged with child molestation. Prior to trial, a hearing was held to determine if a prior child molestation would be admissible to show an emotional propensity to commit aberrant sexual acts. At the hearing, a psychologist testified that the prior molestation showed emotional propensity. The trial judge allowed the prior incident to be admitted at trial. However, no expert testified at trial as to the relevance of this evidence. On appeal, Arner argued the emotional propensity evidence was inadmissible at trial unless an expert testified at trial as to its relevance. Arner cited to *State v. Treadaway*. The Court of Appeals held the evidence was properly admitted at trial. The Court of Appeals also noted that since Arner’s trial, Arizona Evidence Rule 404(c) became effective. Under this rule, “expert testimony is no longer required to establish relevancy in all cases of dissimilar or remote acts.”

***State v. Taylor*, 307 Ariz. Adv. Rep. 3  
(CA 1, 11/4/99)**

Defendant entered a guilty plea pursuant to a plea agreement. The trial judge deferred acceptance of the plea until sentencing. Defendant failed to show for sentencing. Over objection of defense counsel, the judge then accepted the plea agreement. The Court of Appeals upheld the trial court’s ruling.

***State v. Bonillas*, 308 Ariz. Adv. Rep. 3  
(CA 2, 11/9/99)**

Bonillas was stopped for a traffic offense. The officer decided to arrest Bonillas when he failed to produce his driver’s license. The officer patted Bonillas down and found drugs. The Court of Appeals found the officer had a right to arrest Bonillas. Therefore, the search was held to be legal.

***Wigglesworth v. Mauldin*, 308 Ariz. Adv. Rep. 8  
(CA 1, 11/18/99)**

The Arizona Board of Executive Clemency determined Wigglesworth’s prison sentence was excessive and recommended the sentence be reduced. The governor declined to follow the recommendation. Wigglesworth sued to force the governor to reduce his sentence. The Court of Appeals held commutation was completely at the discretion of the governor and there were no equal protection or due process violations.

***In re LOUISE C.*, 307 Ariz. Adv. Rep. 11 (CA 1, 10/28/99)**

Juvenile refused to obey a high school principal’s order. The

**ARIZONA ADVANCE REPORTS**

By Stephen Collins  
Defender Attorney – Appeals



juvenile shouted at the principal, “fuck you, I don’t have to do what you tell me.” The judge found this language amounted to disorderly conduct and adjudicated the juvenile as delinquent. The Court of Appeals held the juvenile’s actions did not constitute disorderly conduct because the language was not likely to provoke immediate physical retaliation.

## ***BULLETIN BOARD***

### **Attorney Moves/Changes**

**Katie Carty**, a trial attorney in Group C, left the office on January 14, 2000. Katie joined the Public Defender Office on June 21, 1993. She became the Trial Group C Mitigation expert and served as backup coverage for PV and Justice courts

**James F. Lachemann**, a Trial attorney in Group C, left the office on January 4, 2000. Jim joined the office on March 8, 1993 as a trial attorney. Jim handled many complex cases for Trial Group C, and mentored the younger attorneys in the group.

**Shellie Smith**, the Juvenile Division Supervisor at SEF Supervisor, left the office on December 3, 1999. Shellie joined the office on October 30, 1989 and was appointed the SEF Supervisor on May 19, 1997.

**Robert Ventrella**, the Juvenile Division Supervisor at Durango, left the office on January 19, 2000 to join the Child Support Enforcement Division of the Attorney General's Office. Bob joined the Public Defender's Office on August 17, 1992 and in September 1998 he was appointed to the supervisory position at Durango.

### **Support Staff Moves/Changes**

**Audrey L. Braun**, resigned effective January 7, 2000. Audrey was the Dependency Unit secretary.

**Bobby J. Bush, Jr.**, resigned effective January 28, 2000. Bobby was a legal secretary in the Appeals Division.

**Cynthia Calvery**, is the new Office Aide for the Appeals Division effective January 24, 2000.

**James Connelly**, resigned effective December 30, 1999. James was a Client Services Assistant in Initial Services.

**Sylvia Charley**, resigned January 7, 2000. Sylvia was the Office Aide in the Appeals Division.

**Matt Elm** resigned effective January 10, 2000. Matt was the Office Aide in the Appeals Division.

**Frances Garrison** resigned effective January 28, 2000. Fran was a Litigation Assistant in Trial Group A.

**Jason Goldstein** was promoted to Defender Attorney and has been assigned to Trial Group E, effective December 13, 1999. Jason was the Group E Law Clerk.

**Gracie Hansen** was promoted to Legal Secretary for the EDC Unit, effective January 24, 2000. Gracie was a Records Processor in the Records Division.

**Barbara Jordan** is the new Administrative Assistant for the Appeals Division, effective January 24, 2000.

**Cindy Rodriguez** is the new Client Services Assistant in Initial Services, effective January 3, 2000.

**Lynda Turner** resigned effective January 28, 2000. Lynda was a Litigation Assistant for Trial Group C.

**Vanessa Villa** is the new Records Processor in the Records Division, effective January 31, 2000.

## A Few Steps Beyond Bruton

Continued from page 1

ence to *even the existence of* the defendant was eliminated. In *Marsh* the Court held that “the Confrontation Clause is not violated by the admission of a nontestifying codefendant’s confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant’s name, but any reference to his or her existence.” *Id.*, at 211, 107 S.Ct. at 1709. The Court distinguished the codefendant’s confession in *Bruton* as a confession that was “incriminating on its face,” and which had “expressly implicat[ed] Bruton. 481 U.S., at 208, 107 S.Ct., at 1707. By contrast, the codefendant’s confession in *Marsh* amounted to “evidence requiring linkage” in that it became incriminating in respect to Marsh “only when linked with evidence introduced later at trial.” *Ibid.* The Court went on to say that, “We express no opinion on the admissibility of a confession in which the defendant’s name has been replaced with a symbol or neutral pronoun.” *Id.*, at 211, n. 5, 107 S.Ct. at 1709, n. 5.

In *Gray v. Maryland*, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998) the Supreme Court addressed the question left open in *Marsh*. *Gray* involved a joint trial where the trial judge allowed the State to introduce a redacted version of the non-testifying codefendant’s confession which also implicated the defendant. The detective who read the codefendant’s confession to the jury said “deleted” or “deletion” every time the name of Gray or the third participant appeared. The State also introduced a written copy of the confession with the two names omitted, leaving in their place blanks separated by commas. The judge instructed the jury that the confession could only be used against the codefendant, and not against Gray. The Supreme Court, relying on *Bruton*, reversed Gray’s conviction. In the Court’s view the confession in *Gray* differed from that in *Marsh* because it referred directly to the existence of the nonconfessing defendant. The Court held that:

“Redactions that simply replace a name with an obvious blank space or word such as “deleted” or a symbol or other similarly obvious indications of alteration...leave statements that, considered as a class, so closely resemble Bruton’s unredacted statements that...the law must require the same result.” 118 S.Ct. at 1155.

### Severed Trials

*Bruton*, *Gray* and *Marsh* all relate to the admissibility of nontestifying codefendants’ statements at *joint* trials. In *Lilly v. Virginia*, 119 S.Ct. 1887, 67 USLW 3683 (1999) the Supreme

Court addressed the admissibility of a codefendant’s statement at a *severed* trial. The specific issue in *Lilly* was whether the accused’s Sixth Amendment right to confront and cross-examine the witnesses against him was violated by admitting into evidence, at his separate trial, an accomplice’s entire confession that contained some statements against the accomplice’s penal interest and others that inculpated the accused.

The starting point for the Court’s analysis in *Lilly* was to determine whether a codefendant’s statement against penal interest, where he also implicates the accused is a “firmly rooted” hearsay exception. The test for analyzing Confrontation Clause violations is set forth in *Ohio v. Roberts*, 448 U.S. 56, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980). In *Roberts*, the Supreme Court stated that the veracity of a hearsay statement is sufficiently dependable to allow its introduction without cross-examination of the declarant when (1) the evidence falls within a “firmly rooted” hearsay exception, or (2) it contains “particularized guarantees of trustworthiness” such that cross-examination would be expected to add little, if anything, to the statement’s reliability. “Firmly rooted” is defined as, “...if, in light of ‘longstanding judicial and legislative experience’... it ‘rests on such a solid foundation that admission of virtually any evidence within it comports with the substance of the constitutional protection.’” *Roberts*, 448 U.S., at 66, 100 S.Ct., at 2531. Or, in other words, a hearsay exception is “firmly rooted” and therefore satisfies the Confrontation Clause if it has “special guarantees of credibility

Not all statements against penal interest are the same. Some satisfy the *Roberts* test, others do not.

essentially equivalent to, or greater than, those produced by the Constitution’s preference for cross-examined trial testimony. *Lilly*, 119 S.Ct., at 1895.

### Statements Against Penal Interest

Not all statements against penal interest are the same. Some satisfy the *Roberts* test, others don’t. Statements against penal interest can be broken down into three categories: (1) Statements against the declarant’s penal interest which are introduced against him/her at trial, i.e., your client’s confession. *Held*: This is a “firmly rooted” exception and the statement is admissible; (2) As exculpatory evidence offered by a defendant who claims that the declarant committed, or was involved in the offense, i.e., the declarant who has not been charged with a crime makes a statement to the police which implicates himself and the defendant. The defendant might

want to elicit the declarant's statement at trial through the officer to point the finger at the declarant. *Held*: There is no Confrontation Clause issue because the declarant is not charged with any crime, so the statement is admissible; (3) Statements *introduced by the prosecution to establish the guilt of an alleged accomplice of the declarant*. *Lilly decision*: These statements are inadmissible hearsay. They do not satisfy the *Roberts* test for a "firmly rooted" hearsay exception.

Note the distinction between using admissions against penal interest at the declarant's trial (the first category) and using those same statements against the declarant *and against other defendants* (the third category). If the statement only implicates the declarant, it is admissible at the declarant's trial. If it implicates the declarant *and a codefendant*, the statement is not admissible at the codefendant's trial.

### Conclusion

The rationale behind the *Lilly* decision is that accomplices' confessions that inculcate a codefendant are inherently unreliable for two reasons. First, "Due to [the accomplice's] strong motivation to implicate the defendant and to exonerate himself." And, second, because "...they are *not* unambiguously adverse to the penal interest of the declarant but instead are likely to be attempts to minimize the delcarant's culpability." *Lilly*, 119 S.Ct. at 1898.

As a practical matter, consider filing a motion to sever in any case where the codefendant's confession also implicates your client. If your motion is granted and the State tries to elicit the codefendant's statement as a statement against his penal interest, you can probably keep the statement out by citing the *Lilly* decision.



## Make a Note!



The Maricopa County Public  
Defender's Office  
and  
The City of Phoenix Public Defender  
Contract Administrator's Office

# DUI: The Science...and Fiction

Friday February 25, 2000

- ◆ ADAMS: What's Happening
- ◆ Understanding ADAMS Records
- ◆ The Ins and Outs of Blood Draws
- ◆ Understanding Blood Test Results

This year the seminar will be held at the AMC Theater Arizona Center in Downtown Phoenix.

## VOUCHING, THE SERIES

### PART 3: BOLSTERING WITH FACTS NOT IN EVIDENCE

By Donna Lee Elm  
Trial Group Supervisor – Group D

nore it - often serves but to rub it in.’ (*United States v. Grayson* (2d Cir. 1948)166 F.2d 863, 871 (conc. opn. of Frank, J.))

#### *F. Facts Not in Evidence*

This article is the third in a series of articles addressing vouching in closing argument. In this article, we consider issues of “vouching” by referring to facts that the jury has not heard, *i.e.*, facts not in evidence.

This type of argument actually has two separate objections: (1) “facts not in evidence;” and, (2) when those facts are being used to bolster credibility, “vouching.” Introducing facts of any kind not already before the jury is *always* improper. Using them to bolster credibility compounds the error.

Commentators have identified four categories of “facts not in evidence:” (1) exhibiting physical evidence that was never admitted; (2) revealing personal (first person) investigation leading to belief in defendant's guilt; (3) referring to evidence (from third persons) that was never discussed at trial; and (4) alluding to “secret” evidence that was precluded. Annot., Propriety and Prejudicial Effect of Prosecutor's Argument to Jury Indicating that He Has Additional Evidence of Defendant's Guilt Which He Did Not Deem Necessary to Present, 90 A.L.R.3d 646, at §2a. But before going into these subtypes of vouching, we examine what courts do with them, *i.e.*, what remedies are applied.

#### **1. Remedy for Vouching with Facts Not in Evidence**

Courts have struggled with how to handle these improprieties. As we well know, they do not want to dismiss cases for misconduct under any circumstances. But the remedies of instructing the jury to disregard the impropriety are not particularly satisfactory either. In *People v. Bolton*, 23 Cal.3d 208, 589 P.2d 396 (1979). The California Supreme Court considered the problem:

The question therefore remains: between outright reversal and mere verbal rebuke, are there intermediate remedies available that may prove effective against prosecutorial misconduct? One possibility is on-the-spot instruction by the trial judge to the jury to ignore the attorney's improper remarks. However, unless the instruction is sharply worded, it may only exacerbate the problem by calling the jurors' attention to the improper remarks. ‘[M]erely to raise an objection to [improper] testimony -- and more, to have the judge tell the jury to ig-

When “vouching” and “facts not in evidence” are combined in argument, courts may well reverse and mistry cases. The Arizona Supreme Court, in *State v. Neil*, 102 Ariz. 299, 300, 428 P.2d 676, 677 (1967), explained the rationale:

We think the prosecutor's remarks, whether intended as such or not, dragged into the case by insinuation and suggestion matters that were collateral and irrelevant. The remarks, coming as they did in closing argument to the jury, could not help but to have left the impression in the mind of the jury that the county attorney actually had such facts at hand and that probably there was some truth to the insinuations. We do not and cannot condone the use of such an avenue of improper argument to secure the conviction of one charged with a crime for it does not comport with the spirit of fairness which is one of the most basic tenets of the administration of criminal law.

Of course, if there is evidence (direct or inferential) that the prosecutor made the erroneous argument deliberately, dismissal *and* a Pool motion remain good remedies. Under that case, *see Pool v. Superior Court, Pima County*, 139 Ariz. 98, 677 P.2d 261 (1984), the judge would dismiss *with prejudice* because of deliberate and serious improprieties. In practice, attorneys probably would not come forward and admit they intentionally did improper argument. Nonetheless, in finding misconduct constructively, courts have considered the length of time a lawyer has practiced and/or the number of trials, what training the lawyer went through, or whether the lawyer has been known to commit this very type of misconduct in other cases. Consider these factors in a Pool motion.

There is an interesting remedy suggested in federal law which treats such vouching as “plain error.” In *Ginsburg v. United States*, 257 F.2d 950 (5<sup>th</sup> Cir. 1958)(the prosecution argued that there were other witnesses who could prove the charges), the court rejected the notion that the defense objection or motion for a mistrial would suffice to cure the impropriety. The panel noted that an objection would only reinforce the improper argument to the jury, and that a mistrial would not serve as a deterrent to such improper argument. The proper response, the 5<sup>th</sup> Circuit held, was to call (in argument) the prosecutor's bluff and demand that he produce these witnesses. Recognizing that this type of improper vouching usually occurred in the State's rebuttal argument, the court sug-

gested that trial judges should allow the defense to reopen argument after the State's rebuttal -- hence allow the defense to get the "final word." *Id.* This is a creative solution, and should be urged more in Arizona.

## 2. Exhibiting Unadmitted Physical Evidence

This type may be the least objectionable of this highly toxic variety of vouching. For example:

*"[Throughout closing, the prosecutor held up a cassette tape that allegedly contained incriminating conversations involving the defendant.]"*<sup>1</sup>

*"We made reference to police reports and such. Police reports themselves do not come in as an exhibit in this instance. They have not been admitted ... since it does include items which the Judge makes various rulings on."*<sup>2</sup>

These are not as bad since at least the jury is not told what the facts-not-in-evidence actually say. But the mere suggestion or implication that other incriminating evidence exists and possibly an allegation that it supports the charges, coupled with its display, is too influential for courts to overlook. In both examples provided above, the conduct was "highly prejudicial," requiring new trials.

## 3. Prosecutor's Personal (First Person) Knowledge

This type of facts-not-in-evidence combines extraneous facts with injecting the prestige of the government, making it doubly potent. The first example below came from the Arizona *Salcido* case, holding that the remarks could be viewed "as testimony from [the prosecutor's] personal knowledge or as vouching for the credibility of the state's witnesses."

*"[Where the charges turn on the gas tank, and where the defense had just argued the State's failure to produce it] Well, I went over with the agents at lunchtime [State's failure to produce it] Well, I went over with the agents at lunch time and saw the tank. ... it happens to be in a very hard to reach part of the car. ... [Referring to defense argument about failure to fingerprint the evidence] I haven't had [a case] yet where we've had any fingerprints on the gas tank."*<sup>3</sup>

*"[The prosecutor argued that he] knew [his] witnesses had told the truth because [he] had investigated the case."*<sup>4</sup>

*"I knew Mr. Cambridge was not lying to you when he said no one promised him immunity for testify-*

*ing in this case -- because I'm the only person who could have granted him that immunity, and I never did!"*<sup>5</sup>

*"Generally, [the witness] has never been known to tell a jury in Hartford County a lie."*<sup>6</sup>

In this line of cases, courts repeatedly chastise prosecutors for becoming unsworn witnesses testifying without cross-examination. E.g., *Hall v. State*, 115 Tex.Crim. 548, 27 S.W.2d 187 (1930) (regarding the third example above, stating that if prosecutor had wanted to testify, he should not have done so in argument but should have been sworn and taken the witness stand). The case law is replete with reversals for this impropriety, including the Arizona case (see the first example in this section).

## 4. Unadmitted Evidence from Third Parties

### a. Evidence

These statements contain both forms of vouching (putting the prestige of the government behind its witness, and suggesting facts not in evidence). *State v. Bible*, 175 Ariz. 549, 601, 858 P.2d 1152, 1204 (1993). In *Bible*, the Arizona Supreme Court held such remarks as the first quote below was "highly improper." *Id.*

*"If there is two or three people that did the same thing in this case, you will probably only hear from one of them."*<sup>7</sup>

*"We know there were two other witnesses [not called to testify] to this robbery for which this man is accused. Both of the witnesses up there named them, they are persons known to this Defendant, and to these Attorneys."*<sup>8</sup>

*"There's a transaction. He sees defendant Adams. He recognizes him. Yes he recognizes him. And why does he recognize him? Because Detective King is a narcotics officer on the beach. He's all over the place. He's made buys, he's made sales."*<sup>9</sup>

*"The victim had previously identified Tinker's co-defendant, who is now in the penitentiary, and she did not lie in that case, so why can't you believe her now?"*<sup>10</sup>

*"We could have brought in the neighborhood and have them tell you what they saw."*

This vouching is prejudicial because it indicates or suggests

that there is abundant corroboration of the State's evidence. The only "saving grace" for this type of argument is that the evidence would have been admissible (so the subject matter itself would not be precluded). But the danger is that the extraneous evidence referred to may, in fact, not support the State. In Williamson (the last example above), the Court realized that the argument implied that the State had other clearly incriminatory testimony that it simply did not marshal at trial; this was, by no means, the case. Williamson v. State, 459 So.2d 1125 (Fla.App. 1984).

### b. Law

Just as it is improper to argue *facts* not in the record, it is equally improper to argue *law* not in the record or instructions. In an unusual Arizona case, the prosecutor argued that the defendant's testimony should not be believed, "attributing to the Arizona Supreme Court a statement that a convicted felon can reasonably be expected to be untruthful." State v. Martinez, 175 Ariz. 114, 118, 854 P.2d 147, 151 (App. 1993). The prosecutor argued:

*"Now the Arizona Supreme Court has commented on how you should take that in assessing the credibility of the defendant. They said, "All felonies have some probative value in determining a witness' credibility." They went on to say, "major crime" -- meaning a felony -- "entails such an ... injury to and disregard of the rights of other persons that it can be reasonably expected the witness will be untruthful if it is to his advantage.""*

What the Supreme Court had said in that opinion was not, of course, in evidence. More significantly, this loose interpretation of the law misstated the standard and contradicted the applicable RAJI that the Court was instructing the jury on. This required reversal.

### 5. "Secrets"

Intimating to a jury that there are "secrets" kept from it by evidence rulings, especially suggesting that that secret evidence would implicate the defendant, is improper on numerous levels. It places the prestige of the government behind its charges; it refers the jury to facts not in evidence; it deprives the defense of an opportunity to impeach or explain "bad facts;" it asks the jury to consider facts that they could not lawfully consider; it usually violates a preclusion order; and, it taints the jury. Courts are quick to reverse because of the inherent misconduct in addition to the vouching. See Annot., Propriety and Prejudicial Effect of Prosecution's Argument to Jury Indicating That He has Additional Evidence of Defendant's Guilt Which He Did Not Deem Necessary to Present, 90 A.L.R.3d 646. Examples include:

*"You should have seen all the evidence they kept out of this offense!"<sup>11</sup>*

*"Because of a "rule of law", [the prosecutor] was not allowed to present to the jury other information that would support [the defendant's] conviction."<sup>12</sup>*

*"There is a lot more that I want to say but I must be restricted."<sup>13</sup>*

*"Remember I have more records than you have on these cases. There is lots of evidence that we are not permitted to bring before a jury."<sup>14</sup>*

In Schrader v. State, 714 P.2d 1008 (Nev. 1986), the prosecutor in closing made repeated variations on the theme that there was some other information that he had access to which the jury did not get to hear. Communicating that there is such "secret" evidence is highly improper. In the following argument was made:

*Prosecutor: Mr. Hochdorf indicated that we didn't get - we, of course, have access to our information that didn't come out in trial and can't present that too --*

*Defense: Objection, Your Honor.*

*Judge: Don't argue anything that was not put in evidence, Mr. McGimsey.*

*Prosecutor: I am not. Is it not true that we have access to things that are not in the trial?*

*Judge: I don't know. That's why you can't bring it up. You can't do that.*

*Prosecutor: What I'm saying, we have access to things that are not available, so we can't really get into that about what happened before.<sup>15</sup>*

There is case law that, despite the substantial prejudice arising from this argument, did not reverse the conviction. Two Arizona cases are on point. In State v. Dumaine, 162 Ariz. 392, 783 P.2d 1184 (1989), the prosecutor stated:

*"Now, there are some things that I cannot tell you about this case."*

The Defense objection was overruled; in context, he was only saying that there were gaps in the story that he could not fill,

not that he had evidence that was precluded. Apparently the fact that the evidence was inadmissible (so the jury could not consider it) creates extreme prejudice leading to a new trial. Another Arizona case, State v. Woods, 141 Ariz. 446, 687 P.2d 1201 (1984), is an outrageous example because the prosecutor not only told the jury that “secrets” were kept from them, but also teases them with offering to reveal those “secrets” post-conviction. After the defense discredited the snitch, the prosecutor argued:

*“Remember one thing, at no time during the trial have I given you my reasons for offering Jeff Lange this plea agreement and I will not because I can't. If you want to know why I offered Jeff the plea agreement, ask me outside the court, because the only relevance of this plea agreement which he has marked and flashed in front of you is whether the plea offer would make Jeff testify falsely.”*

141 Ariz. at 454, 687 P.2d at 1209. Concluding that the argument was “patently improper” (“inviting the jury to speculate about facts or matters which had not been introduced in evidence and, even worse, those which could not have been introduced in evidence”), and “serious misconduct,” the Court found it harmless due to other circumstances. 141 Ariz. at 455, 687 P.2d at 1210. This is the same result that a Texas court reached after this argument was made:

*“I'll stand with you on the verdict, and I want you to come to me and I'll tell you after it's all over that I'll stand with you right down the line and you'll have a little different light on this matter.”<sup>16</sup>*

Note that polygraphs fall into this category since they are never admissible, not being competent evidence. *E.g.*, People v. Bass, 84 Ill.App.3d 624, 405 N.E.2d 1182 (1980); People v. Rocha, 110 Mich.App. 1, 312 N.W.2d 657 (1981); People v. Adams, 182 Cal.App.2d 27, 5 Cal.Rptr. 795 (1960).

Often, prosecutors defend their vouching for other, unadmitted evidence, since it was an “invited response” to defense argument. Many courts have turned a deaf ear to defense objections because, after all, they asked for it!” This is not a principled approach and should be confronted. Some courts have given serious consideration to the issue and come up with a more reasoned rule. In Williams v. State, 548 So.2d 898 (Fla.App. 1989), the defense had argued that, although there had been 7-10 eyewitnesses, the state had brought in only one; the prosecutor replied that the state had additional, highly incriminating, testimony that was not submitted to the jury.” The court cited the “established rule” is that:

It is perfectly permissible for the defense to comment on the paucity of incriminating evidence adduced by the state, and the state is entitled to re-

spond. However, the response cannot suggest there are other witnesses who would corroborate the state's case had they been called to testify.

It is likely that Arizona would follow that rule; in State v. Brazeal, 99 Ariz. 248, 408 P.2d 248 (1965), the Court refused to apply the “invited response” doctrine when the defense merely discussed the subject matter without opening the doors that the prosecutor then walked through.

## 6. Mixture of Facts and Argument

There is a “gray area” where it is difficult to tell whether a summation is mere argument or injection of facts not in evidence. This occurs predominantly where a prosecutor makes broad statements that could have been introduced as expert testimony (but was not) and that sound like facts not in evidence. These arguments can be permitted based upon being reasonable inferences from the evidence or information within the common knowledge of jurors (*i.e.*, “don't leave your common sense at the door”). For example in child molest cases, the prosecutors' arguments that the child victims would not have known about certain sex acts *but for* being molested by this defendant, courts have come out on both sides of the issue.

*“Little five-year-old girls do not lie about things like this” a five-year-old girl who is an innocent and pure little child is not capable of such deceit and deception.”<sup>17</sup>*

*“A child can't be taught to lie about sexual abuse in front of a packed courtroom.”<sup>18</sup>*

*“The victim, by reason of her tender age, could not have had the knowledge to assert that defendant had abused her as she alleged he did unless the incidents had actually occurred.”<sup>19</sup>*

The court found the first two examples above to be proper. In the first, the defense had argued (in its objection) that it was improper for the prosecutor to comment on the victim's credibility without an evidentiary foundation as to the truth-telling proclivity of children in sexual abuse cases. That foundation could only come from expert testimony. The court rejected this assertion, however, because expert testimony as to the child's truthfulness would be inadmissible (as it is in Arizona). In addition, the prosecutor inserted in his argument that the jurors could rely upon their common sense to tell them this was so. In the second example, the court considered the argument fair as “a comment on the demeanor of the witness and was in response to the suggestion of the defendant's attorney during cross-examination that the complainant's testimony was rehearsed.”

In the third example, however, the court found the argument improper. In that case, it was noted that the State had precluded (under Rape Shield laws) the victim's prior rape allegations, and so the prosecutor's comment was *not* true. Thus when evaluating the prosecutions closing arguments, one must especially keep in mind the evidence which the prosecution successfully kept from the jury. As occurred in the third example, the prosecution cannot suppress the evidence and then argue that it doesn't exist.

### Endnotes

- 1 Thomas v. State, 601 So.2d 191 (Ala.App. 1992).
- 2 State v. Leon, 190 Ariz. 159, 945 P.2d 1290 (1997).
- 3 State v. Salcido, 140 Ariz. 342, 344, 681 P.2d 925, 927 (App. 1984).
- 4 Tubb v. State, 217 Miss. 741, 64 So.2d 911 (1953).
- 5 Adapted from Hall v. State, 115 Tex.Crim. 548, 27 S.W.2d 187 (1930).
- 6 State v. Murphy, 124 Conn. 554, 1 A.2d 274 (1983).
- 7 State v. Bible, 175 Ariz. 549, 601, 858 P.2d 1152, 1204



- (1993).
- 8 Johnson v. State, 504 S.W.2d 496 (Tex.App. 1974). *See also*, People v. Keller, 415 N.Y.S.2d 529 (App. 1979) (certain people, if called, would have supported the witness's testimony); United States v. Molina-Guevara, 96 F.3d 698 (3rd Cir. 1996)(non-testifying officer would have corroborated witness's story).
- 9 Adams v. State, 585 So.2d 1092 (Fla.App. 1991).
- 10 Tinker v. State, 130 Tex.Crim. 199, 93 S.W.2d 441 (1936). *See also* Berger v. United States, 295 U.S. 78, 95 S.Ct. 629 (1935)(after the witness failed to do an in-court identification, the prosecution argued that "I was examining a woman that I knew knew Berger.").
- 11 People v. Evans, 80 Ill.App.3d 444, 399 N.E.2d 1333.
- 12 People v. Castricone, 198 A.D.2d 765, 604 N.Y.S.2d 365 (1993).
- 13 People v. Crayton, 216 Cal.App.2d 864, 31 Cal. Rptr. 378 (1963). Note that the Court nonetheless found that this statement, taken in context, referred to the prosecutor considering himself restricted rather than the evidence he was presenting.
- 14 People v. Beal, 116 Cal.App.2d 475, 254 P.2d 100 (1953).
- 15 Schrader v. State, 714 P.2d 1008 (Nev. 1986).
- 16 Bowers v. State, 171 Tex.Crim. 345, 350 S.W.2d 27 (1961).

- 17 Commonwealth v. Achorn, 25 Mass. 247, 517 A.2d 486 (1988).
- 18 People v. Wheeler, 216 Ill.App.3d 609, 575 N.E.2d 1326 (1991).
- 19 State v. Ross, 249 N.J.Super. 246, 592 A.2d 291 (1991).

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If so, call with your ideas.

**DECEMBER 1999  
JURY AND BENCH TRIALS**

**DUI Unit October 1999**

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
10/18-10/20	Timmer	Gottsfeld	Morrison	CR99-08273 3 Cts. Agg DUI, F4 1 Ct. Agg DUI, F5	Guilty	Jury
10/27-10/28	Force	Galati	Lemke	CR99-09030 1 Ct. Agg DUI, F4	Guilty	Jury

**DUI Unit November, 1999****DUI Unit December 1999**

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
11/4-11/8	Timmer	Wilkinson	Eckhardt	CR99-08496 1 Ct. Agg DUI, F4 w/priors	Guilty	Jury
11/16-11/16	Timmer	Katz	Morrison	CR99-10081 1 Ct. Agg DUI, F4	Pled	Jury
11/17-11/22	Force	Gerst	White	CR99-01839 2 Ct. Agg DUI, F4 w/priors	Guilty	Jury

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
12/8-12/10	Force	Schneider	Maasen	CR99-11279	Guilty	Jury
12/16-12/16	Carrion	O'Toole	Lemke	CR99-06638	Dismiss w/out Prejudice	Jury

**OFFICE OF THE LEGAL DEFENDER**

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
11/29-12/10	<b>Cleary Dupont</b> Horral <i>Rubio</i>	Gerst	Lynch	CR96-11714 Murder 1 / F1, Dangerous Kidnapping / F2, Dangerous	Guilty	Jury
11/29-12/13	<b>Orent</b> J. Williams <i>Parker</i>	Akers	Hicks	CR98-09027 Murder 1 / F1	Hung Jury (10 to 2 for guilty)	Jury
11/30-12/02	<b>Patton</b> De Santiago	Sheldon	Naber	CR99-09657 2 Cts. Burglary 3 / F4	Guilty	Jury
12/13-12/15	<b>Phillips</b>	Gerst	Cottor	CR99-12679B 2 Cts. Agg. Robbery / F3	Guilty of 1 Ct Agg. Robbery and 1 Ct. Lesser-included Robbery	Jury

**GROUP A**

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
12/1-12/1	<b>Zick</b>	Dunevant	Duaz	CR 98-02905 Child Molest, F2/DCAC	Dismissed w/o prejudice	Jury
12/8-12/9	<b>Klepper/ Jones</b>	Wilkinson	Bladwin	CR 99-04213 Misconduct Involving Weapons/F4 with 2 priors	Not Guilty	Jury
12/9-12/9	<b>Knowles</b>	Tolby	Noland	TR 99-04387 Driving on Suspended License/M1	Directed Verdict	Bench
12/9-12/15	<b>Leal/ Robinson</b>	Jarrett	Palmer	CR 99-11836 Armed Robbery/F2 Agg. Assault/F3 Agg. Assault/F3	Guilty of Armed Robbery Guilty of Agg. Assault Not Guilty of Agg. Assault	Jury
12/16-12/16	<b>Knowles/ Yarbrough/ Clesceri</b>	Galati	Lemke	CR 98-10019 Agg. DUI/F4	Dismissed on day of trial	Jury
12/16-12/21	<b>Rossi/ Brazinskas</b>	Akers	Fuller	CR 99-13227 Burglary/F4	Guilty	Jury

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
11/29-12/8	<b>Bublik Ames</b>	Gottsfeld	Bailey	CR97-06669 2 Cts Aggravated Assault/F6	Not Guilty -- Guilty of lesser included Disorderly Conduct, Class 1 Misdemeanor	Jury
12/15-12/16	<b>Walton</b>	Reinstein, P.	Todd	CR99-01121 Aggravated DUI/F4	Not Guilty -- Guilty of lesser included driving on a suspended license	Jury
12/20-12/22	<b>Gray Munoz</b>	O'Toole	Novak	CR99-09851 Aggravated Assault/F5 Resisting Arrest/F6	Guilty	Jury

**GROUP C**

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
12/2/99 –12/6/99	<b>Corbitt</b>	Dairman	Wineberg	CR98-93907 2 Cts. Agg DUI, F4N	Guilty both counts	Jury
12/6/99 –12/7/99	<b>Gavin</b>	Schwartz	Gingold	CR99-93354 2 Cts. Agg DUI, F4N	Not Guilty	Jury
12/2/99 –12/8/99	<b>Stein</b>	Aceto	Mark Anderson	CR99-93781 1 Ct. Theft, F4N	Not Guilty	Jury
12/7/99 -12/13/99	<b>Gaziano</b>	Dairman	O'Neill	CR99-92274 1 Ct. Kidnapping, F2N 1 Ct. Sexual Assault, F2N	Guilty both counts	Jury
12/13/99 –12/15/99	<b>Corbitt</b>	Aceto	Holtry	CR99-91852 2 Cts. DUI w/minor, F6N	Guilty on Ct. 1 Ct. 2 dismissed by Judge	Jury

**GROUP D**

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
11/17/99 continued to 11/28/99 - 12/7/99	<b>Kibler Kay</b>	Arrellano	Sorrentino	CR 97-12089 3 Ct. Sexual Cndct w/mnr, F2 1 Ct. Child Molesting, F2	Guilty on all charges	Jury
12/1 – 12/7	<b>Cox</b>	Ballinger	Farnum	CR 98-16734 1 Ct. Aggravated Assault, F3	Guilty	Jury
11/29- 12/8	<b>Zelms</b>	Dougherty	Tucker	CR 99-07812 1 Ct. Attempted Kidnapping, F3 1 Ct. Attempted Arm Rob., F3	Guilty on all charges	Jury
11/29 – 11/30	<b>Mehrens Timmer</b>	Wilkinson	Mueller	CR 99-11830 2 Ct. Aggravated DUI, F4	Guilty of Class 4 Misdemeanor DUI	Jury
12/13- 12/16	<b>Wallace</b>	Ballinger	Muehler	CR 99-09719 7 Ct Aggravated Assault, F3 1 Ct Forgery, F4	1 Ct. Severed Not Guilty on other charges	Jury
11/29 –12/16	<b>Berko Silva O'Farrell Fairchild</b>	Katz	Amato	CR99-12261 1 Ct Murder 2, F1	Guilty of Reckless Manslaughter	Jury
11/30-12/2	<b>Varcoe</b>	Hall	Alexov	CR99-10275 1 Ct Armed Robbery, F2	Not Guilty of Murder 2 Guilty of Armed Robbery-5 priors	Jury

**GROUP E**

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result:	Bench or Jury Trial
11/10/99 - 11/17/99	<b>Rock</b>	Baca	Kerchansky	CR99-06703 1 Ct. Agg. Asslt./F2 (dangerous) 1 Ct. Disorderly Conduct/F6	Guilty (Filed Motion for New Trial Pending Based Upon Jury Misconduct)	Jury
11/22-12/1	<b>Ryan</b>	Baca	Greer	CR 98-17433A 1 Ct. Child Abuse/F2 4 Cts. Child Abuse/F4	Mistrial	Jury
12/2 - 12/9	<b>Porteous</b> O'Farrell	O'Toole	Kerchansky	CR 99-06017 1 Ct. Armed Robbery, F2D	Not Guilty	Jury
12/6-12/8	<b>Roskosz</b> Souther	Reinstein	Lamm	CR 99-11578 3 Cts. Agg. Asslt./F3D	Not Guilty 1 Ct. Guilty 2 Cts.	Jury
12/7	<b>Doerfler</b> <b>Pelletier</b> Ames	Reinstein	Adams	CR 99-06425 Agg. Asslt./F3D	Dismissed with Prejudice day trial was to begin	Jury
12/8-12/17	<b>Leyh</b> Souther	Sheldon	Newell	CR 99-10830 SOND/F2	Guilty	Jury
12/14/99 - 12/15/99	<b>Rock</b>	Hall	Lemke	CR 99-06470 1 Ct. Unlawful Flight/F5	Guilty	Jury

The Office of the Maricopa County Public Defender  
*Presents*  
**The 4th Annual Trial Skills College**



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