



for *The Defense*

▶ ◀ **Dean Trebesch, Maricopa County Public Defender** ▶ ◀

Cross-Examination/Bias and Motive Are Never Collateral (Part One)

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By Russ Born Training Director

Limiting a cross-examiner's inquiry concerning the bias or motive of a witness puts a case at risk. Failing to explore a witness's bias and motive on cross-examination puts the client at risk.

Exposing a witness's bias and motive for testifying in a particular manner is one of the most fruitful areas for the cross-examiner. But in order to take full advantage of this method of inquiry one must be aware of the rules and case law that regulate this area of trial practice.

Rules of Evidence

James W. McElhaney the well known trial attorney, NITA instructor and author of numerous articles on trial advocacy, addresses the topic of bias and motive in *McElhaney's Trial Notebook*. In a short essay entitled "Make a Bias Rule," he points out that there is no Federal Rule of Evidence that deals directly with bias and motive. Although several rules give brief mention to the subject, none address it directly. The same holds true for Arizona's Rules of Evidence. Contained in the annotations to Rule 607: Who May Impeach, Rule 608: Evidence of Character and Conduct of Witnesses, and Rule 611(b): Scope of Cross-Examination, are several cases referencing bias and motive. But there is no rule explaining how it works or detailing the parameters within which it operates. Perhaps

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Young Clients and Remorse

By Suzanne Sanchez Defender Attorney – Juvenile Division

Often a defense attorney for a very young adult or teenaged client receives a pre-sentence report, psychological evaluation, victim letter, or other document indicating that the youth lacks remorse, compassion, or empathy. Many youths under the age of twenty years, including those with no criminal-court involvement, have not yet fully developed morally. Beyer, *Recognizing the Child in the Delinquent*,

Kentucky Children's Rights Journal, Vol. VII, No. 1, Spring 1999, 45, 55. However, most youths develop remorse, compassion, and empathy as they mature. *See id.* Thus, a very young adult or teenaged client who seems to lack remorse, compassion, or empathy probably is not unusually callous or otherwise abnormal. He or she probably simply is immature. Most youths are malleable and can mature into emotionally mature adults. *See id.* According to the National Institute of Mental Health, "[b]rain maturity continues into the

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for The Defense

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this is attributable to the universal acceptance by courts and legal scholars that cross-examination into bias and motive is fundamental to the concept of a fair trial. Thus, no one ever thought that a rule was necessary. This means that the only way to discover how bias and motive operates is to analyze the case law. But first, one rule to help the cross-examiner stay out of trouble.

Rule of Practice

When exposing a witness's bias and motive during cross-examination, do not fall into the credibility trap. Do not argue that the evidence is for the purpose of impeaching the credibility of the witness. Argue instead, that the evidence is being elicited for the purpose of exposing the witness's bias and motive to testify in a particular manner.

Arguing that the evidence impeaches credibility subjects the cross-examiner to the restrictions set out in the Arizona Rules of Evidence that deal with impeachment. This means that any inquiry regarding prior conduct or acts of the witness will be severely limited. Arguing that the cross-examination is being done to expose a witness's bias, prejudice or motive frees the cross-examiner from those restrictions.

Impeaching Credibility vs. Exposing Bias

There is an important dichotomy between evidence that impeaches credibility by contradiction and evidence that exposes bias and motive. Where the cross-examiner seeks to introduce evidence that serves no other function than to impeach a witness's credibility by contradiction, Rule 608b governs.

608(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of a crime as provided in Rule 609, may not be proved by extrinsic evidence.

Where the purpose is primarily one of exposing a witness's bias or motive, then it becomes a 6th amendment confrontation issue. This is an important distinction for the cross-examiner. When the evidence is used solely to impeach credibility, the judge can stop the inquiry as being too collateral and not allow the admission of extrinsic evidence. But where the inquiry focuses on the witness's bias or motive to testify, the subject matter of the inquiry is not collateral and extrinsic evidence exhibiting the bias is usually admitted.

A great example illustrating this distinction is the case of *State v. Gertz*, 186 Ariz. 38, 918 P.2d 1056 (1995). In *Gertz*, the victim of a sexual assault was cross-examined regarding

his plans to sue the defendant and St. Joseph's Hospital. The cross-examiner's purpose was to show that the witness had a motive to testify in a particular manner. The relevant

Impeaching Credibility = Loser; too collateral and extrinsic evidence not admitted

Exposing Bias/Motive = Winner; never collateral and extrinsic evidence may be admitted

questioning was:

Q: Let me get back to when I was asking you about this well dressed man in the gray suit here. That is Wendell Wilson, right?

A: Yes.

Q: ...one of your civil lawyers that you hired or your folks have hired, correct?

A: Yes.

Q: And that is in connection with filing some type of a lawsuit in this matter...

A: Well, we haven't talked about filing a lawsuit or anything.

During closings, both sides argued about the victim's motive for testifying in a particular manner. In rebuttal the state downplayed the evidence concerning the civil suit by saying there was no evidence that the victim would sue. After closings the defense was served with a civil summons and complaint. They sought to re-open the case to enter into evidence a copy of the complaint and summons. The court denied the motion and the jury convicted. On appeal, the state characterized the lawsuit evidence as extrinsic impeachment that was properly excluded as collateral. The Court of Appeals reversed. They held that if the evidence had no other purpose except to impeach through contradiction then Rule 608(b) controlled and the evidence was properly excluded. But here the evidence would be used to show that the witness had a bias or motive to testify in a particular manner and may be motivated by a financial interest. Therefore, the evidence was not collateral nor extrinsic and should be allowed into evidence.

"An effort to impeach on a collateral matter differs significantly from an effort to affirmatively prove motive or bias. Rule 608(b) restricts the former; the sixth amendment protects the latter." *See Gertz* at 1060.

Harmless Error Analysis

Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d674 (1986)

Although the exclusion of bias and motive evidence is subject to a harmless error analysis, it should be noted that reviewing courts closely scrutinize these issues and are more apt to reverse a case where the bias and motive evidence was kept from the jury. In *Van Arsdall*, the defendant was convicted of murder. The trial court prohibited cross-examination into the possibility that a witness was biased because a pending public drunkenness charge was dismissed against them before the trial started. Even though this may seem a minor factor, it was error. The case was remanded back to the Delaware Supreme Court. The rule of evidence involved was the Delaware Rule of Evidence 403, which is identical to the Federal Rule of Evidence 403, which in turn is identical to Arizona Rule of Evidence 403.

Parameters of the Bias / Motive Inquiry

Reading through the cases that define the parameter of the bias/motive inquiry one theme reoccurs. Cases are reversed because the cross-examiner was not allowed enough leeway in exploring the witnesses bias. Relying on Rule 608(b) and other Arizona Rules of Evidence, trial courts have mistakenly prohibited relevant inquiry into specific acts of conduct of witnesses that elicit bias. Even where the trial courts allow the inquiry, they often try to limit and structure the types of questions the cross-examiner may ask. Almost always these types of limitations cause a reversal. The only instance where the cases are not reversed is where the bias or motive evidence comes before the jury in some other fashion. The remainder of the article is divided into specific categories in an effort to make it more user friendly. The first three cases should help defense attorneys and the courts appreciate the breadth and depth of bias/motive inquiry.

Specific Acts/ Belief or Expectation of a Benefit

State v. Little, 87 Ariz. 295, 350 P.2d 756 (1960)

In *Little* the court disallowed evidence of a specific act to show a bias on the part of the witness. In *Little*, the Arizona Supreme Court reversed a conviction for unlawful sale of narcotics. The trial court had refused to allow cross-examination of the prosecution witness regarding that witness's open and notorious co-habitation. The co-habitation (still a crime in Arizona) was known by the state and no action was being taken by the state even though the co-habitation was in violation of a statute.

There is some great language in *Little* that illustrates the breadth of a bias/motive inquiry. Where evidence is sought to be introduced regarding a witness's motive to testify for the state or against a defendant, such evidence is admissible. Even where the evidence tends to prove that the witness has committed acts in violation of the law. "The fact that the answer of the witness may demonstrate that the alleged

motive, bias or prejudice does not exist, does not render the question inadmissible." See *Little* at 301.

It is the "witness's expectation or hope of a reward not the actuality of a promise by the state" which is relevant. The reward, whether it is a favor, leniency or some other benefit, need not be connected to the case being tried. The focus of the cross-examination is the witness's "belief" that he or she may gain some advantage. Even though that "belief is mistaken, unreasonable or is not based on any words or conduct of the prosecution". See *Little* at 302.

State v. Torres, 97 Ariz. 364, 400 P.2d 843 (1965)

Torres is an example of a case where the trial judge narrowly restricted the bias/motive inquiry. In *Torres*, burglary charges were dismissed by the state against a witness. Defense counsel asked "Isn't it true...burglary charges were dismissed provided you would cooperate with the police." The county attorney objected and after a bench conference the trial court forced defense counsel to re-word the question, not mentioning burglary. The re-worded question was "Have you been promised leniency or police protection to testify today?" The answer of course was "No." The trial court did not allow any further inquiry into the matter.

The Arizona Supreme Court held that this was reversible error because it limited defense counsel's ability to cross-examine on the issue of motive. Further, the court ruled that "even where cross-examination tends to prove that a witness has committed acts in violation of the law which may or may not have resulted in convictions such inquiry is proper where motive or bias is an issue". See *Torres* at 366

State v. Swinburne, 116 Ariz. 403, 569 P.2d 833 (1977)

In *Swinburne*, the witness was on probation in Missouri and the police may have commented that there was no reason why Missouri should know about the witness's problems here in Arizona. The state made a pre-trial motion in-limine to preclude any cross-examination concerning the Missouri probation. The officer and the prosecution witness both said that no promises were made regarding the Missouri probation. The trial judge then decided that there was no promise made by the officer. Ruling that this sort of inquiry would only open up a new collateral matter, the judge did not allow it. The Arizona Supreme Court reversed. It held that expectations are a proper area for cross even if the officers made no promise. Even if cross-examination shows other crimes or misdemeanors, it is proper, not collateral. Whether or not promises were made was an issue for the jurors to decide, not the judge.

Accomplice, Co-defendant, Informant

Accomplice:

State v. Briley, 106 Ariz. 397, 476 P.2d 852 (1970)

In *Briley*, the accomplice had already been tried on the same charges and acquitted. The defense wanted to show that since the accomplice had testified in his own trial and placed the blame on *Briley*, that in order to now avoid perjury he had to testify similarly at defendant's trial. The defense wanted to show the motive of the witness for blaming defendant. The trial court would not allow any mention of matters related to the witness's trial. The Arizona Supreme Court reversed. The state conceded in their brief that the defense counsel should have been allowed to show the jury the witness's relationship to the crime for the purpose of showing possible bias and motive for testifying.

The right of a defendant to cross-examine on issues that shed light on a bias and motivation of the witness is of particular importance especially during cross-examination of an accomplice.

Attorney Client Privilege:

State v. Towery, 186 Ariz. 168, 920 P.2d 290 (1996)

The Arizona Supreme Court in *Towery* affirmed the defendant's conviction for murder. But there is important language in the case concerning when a defendant's right to cross-examine an accomplice may overshadow the attorney-client privilege between the accomplice and his attorney. The interest of confidentiality can be outweighed by a defendant's right to prove bias or motive. The privilege, however, will not be disturbed unless defendant has no other means to bring the bias to the jury's attention.

Arrest of Witness on Related Charges:

State v. Ramos, 108 Ariz. 36, 492 P.2d. 697 (1972)

Mr. Ramos' 2nd degree murder conviction was reversed. The state made a motion in-limine to prohibit cross-examination of a witness concerning his arrest for the same crime for which the defendant was on trial. The witness was released and charges dropped the same day of his arrest. The trial court granted the state's motion.

The Arizona Supreme Court held that the trial court abused its discretion in restricting cross-examination. The jury has a right to know any fact which tends to show a witness is biased, prejudiced or hostile in passing on that witness's credibility. Even though the charges were dropped, inquiry into the subject matter was relevant to show possible motive or even hostility generated by the fact that the witness was arrested and charged with the crime another committed.

Informants' Early Release:

State v. Figueroa, 98 Ariz.146, 402 P.2d 567 (1965)

Court must be careful not to limit cross-examination in area of motive to testify in a particular manner. This is especially true where a witness gives equivocal answers to cross-examiners questions.

The witness, a police informant, testified he was released from prison under the conditions of expiration of sentence. This could have been due to a commutation of the original sentence. The defense counsel should have been allowed to pursue further questions regarding the witness's original sentence. The Arizona Supreme Court said that AWe do not hold such influences actually affected the witness= testimony, but point out that the jury should not be foreclosed from considering any testimony which may bear on the motive of such a witness.@ See *Figueroa* at 570. It was reversible error to not allow the defense counsel to pursue this line of questioning.

The real advantage of the bias/motive inquiry is that it delves into the psyche of the witness. Bringing out the expectations and the beliefs of a witness allows the jurors to use their every day life experiences and common sense to decide whether or not the witness is credible.

The second part of this article will follow-up with more specific instances of proper bias/motive inquiry.



BULLETIN BOARD

Community Outreach Team

By Derek Zazueta, Community Relations Liaison

Recently I was attending a family reunion in Mesa when I met one of my cousins on my mom's side of the family for the first time. The conversation went something like this:

Mom: This is my son Derek, he is a Public Defender in Maricopa County.

Derek: What's up.

Cousin: That must be interesting work? How do you represent child molesters, rapists and murderers? How can you represent people you know are guilty? When are you going to become a lawyer?

Everyone who works or has worked in a Public Defender Office has heard these questions. People outside the criminal defense community do not understand what we do and why we do it. The Community Outreach Team was developed to promote our mission and inform the public of our role in the justice system. The goal of the new Community Outreach Team (COT) at the Maricopa County Public Defender's Office is to improve and heighten the image of our office and its employees.

We are currently working on three areas in furtherance of our goal:

1. Improving the positive self-image of the office. We need to start our campaign from within the office. Participation by trial attorneys and staff is imperative in changing the public's view of our office. We encourage people to sign-up who want to give back to the community, love their job, and have a positive attitude.
2. Grassroots Outreach: We have developed a brochure that conveys the office's Vision, Mission and Goals. We are using the brochure as the starting point for our speakers when they go out into the community. The speakers go to a school or community group meeting to answer questions and talk about the justice system. We have received excellent feedback from the students and teachers that we have visited. Our speakers have also reported having a good time interacting with the students.
3. Community Relations: We want to become a resource for the community when people are looking for insight on criminal defense issues. In the future, we hope the public will utilize the Public Defender web sight to bring information to the community. We would also like to develop a relationship with the media, informing them of the good deeds and positive stories from our office.

Everyone in the office is invited to join the team. Just e-mail me letting me know you want to be on the team. We currently have over 50 people signed up. Team members will be notified when they will be called upon to represent the office in the community.

Special thanks to the Community Outreach Team members, several of which have already gone out into the community to represent our office, including Nick Alcock, Mark DuBiel, Chris Flores, Karen Jolley, Vicki Lopez, Leo Valverde, Ellen Hudak, Jeanne Hyler, and Keely Reynolds.

DISMISSAL FOR POST-INDICTMENT DELAY

**By Diana Patton
Deputy Legal Defender**

With the Maricopa County Attorney's Office struggling to indict and prosecute ever-growing numbers of defendants (arrested by ever-growing numbers of law enforcement officers, thanks to federal funding), the defense bar is encountering unconscionable delays between charging and actual prosecution of clients.

The typical case begins with a grand jury indictment, that the client knows nothing about, and issuance of a summons, which is never served. The blissfully ignorant client goes about his business, optimistic that no charges will result from his original encounter with police. A bench warrant eventually issues for his failure to attend his arraignment, of which he had no notice. The typical client does not follow up on the results of his original arrest, lest he remind the state they have a bone to pick with him – not such a dumb idea when you think of it.

You enter the picture when the client is picked up, let's say 4, 5, or 6 years later. You read the DR and yell into the brittle and yellowing pages, "They can't do that!"

But they have. And to make matters worse, your prosecutor has less than zero interest in prosecuting a stale, six-year-old arrest for one measly rock of crack cocaine. They shove the file in to a bottom drawer after their supervisor refuses to allow them to dismiss it. Not only has no one *ever* worked on this case but no one is *about* to work on it, except you. You can file a motion to dismiss for post-indictment delay, which in the scheme of things is ever so much more egregious than *pre*-indictment delay.

Areas of Inquiry

The United States Supreme Court has delineated four areas of inquiry that your trial judge should weigh when considering your motion to dismiss the indictment: (1) whether delay before trial was uncommonly long; (2) whether the government or the criminal defendant is more to blame for that delay; (3) whether, in due course, the defendant asserted his right to a speedy trial; and (4) whether he suffered prejudice as the delay's result.¹ Of the four factors, the length of the delay is the least important, and the prejudice the defendant suffers is the most important factor.²

Length of Delay

In *Doggett v. United States*,³ the defendant was indicted in
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1980 on drug charges but went to Panama before the DEA could arrest him. They later learned that he was imprisoned in Panama, and requested that he be returned to the United States. However, the DEA did not follow up on its own request and later learned that Doggett had left Panama for Columbia. The DEA made no further attempt to locate him. In 1982, Doggett returned to the U.S., acquired a college degree, steady employment, and a wife, and lived openly under his true name. A simple credit check put the government on Doggett's trail, and he was arrested in 1988 – 8.5 years after his indictment.

In reversing Doggett's conviction, the Supreme Court discussed the first area of inquiry, whether 8.5 years between indictment and arrest was "uncommonly long." Not surprisingly, they decided it was. The Court relied upon *Barker v. Wingo*⁴ for guidance and held that a criminal defendant cannot claim a violation of his speedy trial rights if the state has "prosecuted his case with *customary promptness*"⁵ (emphasis added). The Court also offered the common sense proposition that, all things being equal, the required showing of prejudice will intensify as the pretrial delay grows longer.⁶

There is no "magic number" of years when it comes to post-indictment delay. However, certain delays are considered "presumptively prejudicial" as the delay approaches one year.⁷ Mr. Doggett's delay stretched 8.5 years; in Arizona, five years' delay has been established as violating the defendant's speedy trial right, sufficient to warrant dismissal of the indictment.

Who Is To Blame

In *Humble v. Superior Court*⁸ the pivotal issue was whether the state had used due diligence to serve Mr. Humble with notice of his charges. Upon his arrest for DUI, the defendant provided the officers with a correct name, current address, social security number, and the name and local phone number of his father. He attended his preliminary hearing, was told his case had been "scratched," and was given no further information. A summons was prepared when the indictment was filed. An unsuccessful attempt was made to personally serve defendant at home. The summons also was mailed but was returned as "unclaimed." After these efforts, a warrant was partly drafted, but was neither completed nor served. In determining whether Mr. Humble's speedy trial rights had been violated by the passage of five years between the indictment and arrest, the court of appeals considered whether the state had exercised due diligence in service of the summons and warrant. The court held that "'due diligence' requires a showing that the state has followed the 'usual

investigative procedures for determining the whereabouts of a person.”⁹ The court held that a mere two attempts to serve the summons even by accepted methods was not “due diligence” when the state had other “significant leads” to locate Mr. Humble. The court also rejected the excuse that alternative methods were not used because of a shortage of manpower and resources.

In *Doggett’s* conviction, the Supreme Court reached the same conclusion concerning the efforts of the federal government, which knew *Doggett* was living abroad. The Court even made the sweeping statement that, “if the Government had pursued *Doggett* with *reasonable diligence* from his indictment to his arrest, his speedy trial claim would fail.”¹⁰

Thus, both the *Doggett* and *Humble* courts held that the state was to blame for the delays, not the defendants. Neither of them fled prosecution but lived openly under their true names, right under the government’s nose, as it were, while the authorities failed to follow up on known leads.¹¹

Prejudice

The final consideration in determining whether post-indictment delay mandates dismissal of the indictment is the prejudice suffered by the defendant. The *Doggett* court rejected the notion that a specific or actual prejudice must be shown (e.g., the death of an important witness). The Supreme Court found that “presumptive prejudice” is *inherent* in undue delay, because it is usually impossible to guess in hindsight what advantages the defendant might have employed at a timely trial: “Thus, we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or, for that matter, identify.”¹²

In addition to “presumptive prejudice,” you should make your trial judge aware of actual or specific prejudice to your client that justifies dismissal of the indictment. One frequently occurring prejudice after a delay of several years is the destruction of evidence.¹³ That the destroyed evidence “might” have been exculpatory suffices for dismissal, for negligent destruction of critical evidence denies the accused due process whether or not it can be determined that the exculpatory evidence would have developed from the destroyed evidence.¹⁴

It is well-settled that “[w]hen the state destroys evidence that a defendant has specifically requested be kept, a sanction must be imposed.”¹⁵ However, the defendant need not make a specific request when the evidence is of a crucial nature.¹⁶ Arizona courts also are in agreement that the appropriate sanction for destruction of crucial evidence is dismissal.¹⁷

So – your motion either has succeeded in convincing the state to move for dismissal or the judge has seen it your way and

has dismissed the indictment. How do you achieve that sublime state known as “with prejudice”? Rule 16.6(d)¹⁸ states that dismissal of the indictment, information, or complaint “shall be without prejudice to commencement of another prosecution, unless the court order finds that the interests of justice require that the dismissal be with prejudice.” The test for “prejudice” is the same imprecise general test as set forth in the four *Doggett* factors, and thus prejudice will increase the longer the delay has been. In determining whether interests of justice require dismissal of the prosecution, consideration should be given to normally pertinent factors, such as whether defendant’s right to a speedy trial was violated, and again, what prejudice he has sustained by the delay.¹⁹ Other types of prejudice might be whether the state used the delay to gain a tactical advantage over the defendant, or some other improper purpose, as opposed merely to being negligent or understaffed.²⁰ And do not ignore as prejudicial the anxiety and inconvenience suffered by your client. Did he perhaps get fired for missing too much work while he attended court or for having a felony case pending? Did he depend on public transportation to get to the courthouse for the 25 appearances at which the state continued and continued the matter rather than work on the case?²¹ Presenting all the prejudice sustained by your client will give the trial judge ammunition they need to justify putting a silver stake in an already dead case.

Conclusion

Delays that stretch into years between indictment and prosecution are unconscionable and have been held in Arizona and elsewhere to warrant dismissal of the indictment. The message being sent by the courts is clear: if the government can’t or won’t diligently prosecute a case, they must be persuaded or forced to let the case go, and work on the ones they are willing and able to put some effort into. Dead cases clutter an already strained system, and the defendant’s life should not be put on hold simply because the government never met a case it didn’t like.

Endnotes

- 1 *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 2689, 120 L.Ed2d 520 (1992), quoting *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1992). See also, *State v. Kangas*, 146 Ariz. 155, 704 P.2d 285 (App. 1985); *State v. Granados*, 172 Ariz. 405, 837 P.2d 1140 (App. 1991); and *State v. Gilbert*, 172 Ariz. 402, 837 P.2d 1137 (App. 1991).
- 2 *State v. Kangas*, 146 Ariz. 155, 704 P.2d 285 (App. 1985); *State v. Granados*, 172 Ariz. 405, 837 P.2d 1140 (App. 1991); and *State v. Gilbert*, 172 Ariz. 402, 837

- P.2d 1137 (App. 1991).
- 3 505 U.S. 647, 112 S. Ct. 2686, 2689, 120 L.Ed2d 520 (1992).
- 4 407 U.S. 514 (1992).
- 5 *Id.* at 533-34.
- 6 *Id.* at 536.
- 7 *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686, 2689, 120 L.Ed2d 520 (1992), quoting *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101 (1992).
- 8 179 Ariz. 409, 880 P.2d 629 (1993)
- 9 179 Ariz. at 414, 880 P.2d at 634, quoting *Duron v. Fleishman*, 156 Ariz. 189, 192, 751 P.2d 39, 42 (App. 1988).
- 10 505 U.S. at 656, 112 S.Ct. At 2693 (emphasis added).
- 11 The *Humble* court pointed out that the state had the name of defendant's employer, who was listed in the phone book; the name and phone number of the defendant's father; a residential address; and no effort was made to trace his social security number. In the present matter, the state had even more information at its disposal.
- 12 505 U.S. at 656.
- 13 For example, in *State v. Richard Smith*, CR 94-02985, the evidence facility destroyed the drug evidence after the co-defendant – also named Smith – entered his guilty plea. Thus, not only was Richard Smith deprived of the opportunity to test the substances' chemistry, but could not objectively prove that the weights were below the threshold – the difference between prison and probation. Ultimately it was not the judge who dismissed this case, but the prosecutor, in response to defense motions.
- 14 *State v. Hannah*, 120 Ariz. 1, 583 P.2d 888 (App. 1988) (police inadvertently destroyed evidence which was not requested by defense counsel till shortly before the trial date).
- 15 *State v. Lopez*, 156 Ariz. 573, 754 P.2d 300, 302 (App. 1988) (state destroyed tape recordings requested by defendant only three days after his arrest).
- 16 *Id.* At 303.
- 17 *Id.*; see also *State v. Escalante*, 153 Ariz. 55, 734 P.2d 597 (App. 1986)(state failed to preserve semen samples in a rape case in which the victim was unsure about identification).
- 18 Ariz. R. Crim. Pro.
- 19 *State v. Kangas*, 146 Ariz. 155, 704 P.2d 285 (App. 1985); see also *State v. Garcia*, 170 Ariz. 245, 823 P.2d 693 (App. 1991); *State v. Gilbert*, 172 Ariz. 402, 837 P.2d 1137 (App. 1991); and *State v. Granados*, 172 Ariz. 405, 837 P.2d 1140 (App. 1991).
- 20 170 Ariz. at 249.
- 21 In *State v. Richard Smith*, *supra* note 13, the client had been arrested and re-arrested so many times while the state kept dropping the ball, that he confided he was frightened to attend his court appearances because he never knew but that he would be picked up again for reasons he didn't quite understand.



Young Clients and Remorse

Continued from page 1

teen years and even the 20s.” Begley, *Mind Expansion: Inside the Teenage Brain*, Newsweek, May 8, 2000, 68. “As a result, although today’s teens mature physically at younger ages than their parents, and although they take on many of the behavioral trappings of adulthood, ‘that does not mean that they understand the full implications of their behavior....’” *Id.* (quoting psychologist Deborah Yurgelun-Todd). “Both the pattern of brain use and the structure of brain regions change through the teen years.” *Id.* Thus, “the brain regions that teens use for several tasks differ from the regions adults use.” *Id.* This explains why younger people often have trouble managing emotions, understanding others, and using good judgment. *Id.*

Sentencing Considerations

At sentencing, it is a mitigating circumstance that “[t]he defendant’s capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was significantly impaired but not so impaired as to constitute a defense to prosecution.” A.R.S. § 13-702(D)(2). In contrast, an aggravating circumstance is the “[e]specially heinous, cruel or depraved manner in which the offense was committed.” A.R.S. § 13-702(C)(5). In many young clients, these two provisions seem at odds with one another.

This apparent disparity occurs because many adolescents and very young adults have not yet developed the full capacity for empathy that most adults possess. This incomplete development is not indicative of an antisocial personality or of any other abnormality. Rather, it simply is an indication of immaturity.

To some extent, immaturity is a factor at sentencing. “The age of the defendant” is a mitigating circumstance. A.R.S. § 13-702(D)(1). This makes sense in light of the cognitive differences between youths and emotionally-mature adults. Moreover, “[p]rogress toward completion of cognitive and moral development stages can be detoured or delayed by cultural, intellectual, and social disadvantages.” Grisso, *Society’s Retributive Response to Juvenile Violence: A Developmental Perspective*, Law and Human Behavior, Vol. 20, No. 3, 1996, 229, 233. Thus, some younger clients, especially those with social and intellectual disadvantages, may seem more culpable than they really are.

Juvenile Cognition vs. Adult Cognition

Cognitive differences explain how a youth may act without malice, but might be perceived as malicious if judged as an

older person. For example, “[c]arrying a weapon and even using a weapon does not mean a child had adult intent to harm.” Beyer, *Recognizing the Child in the Delinquent*, Kentucky Children’s Rights Journal, Vol. VII, No. 1, Spring 1999, 45, 47. “[I]t is clear that from the standpoint of cognitive development, young people have diminished capacity to intend harm to others or to anticipate harm as an unintended outcome of their actions.” *Id.* Moreover, “[f]ear interferes with the adolescent’s ability to make choices.” *Id.*

Young people are surrounded by danger with little effective adult protection. Many believe their peers are armed, and they feel they must take care of themselves. They carry weapons for self-protection “to look big,” without the adult capacity to anticipate the unintentional outcomes of their actions. *Id.* at 55.

Younger people often fail to perceive danger that is obvious to older people. *Id.* at 48.

Youths are spontaneous thrill-seekers and seldom consider the worst possible outcomes of their actions. Difficulty managing impulses is a normal characteristic of teenagers. Inconsistent impulse control in adolescents is not a reliable predictor of adult psychopathology nor does it suggest that the delinquent will always have poor judgment. *Id.*

Many youths cannot think hypothetically. *Id.* at 53. Youths “usually view as ‘accidents’ the unintended consequences of actions that adults would have predicted could have a bad outcome.” *Id.* at 46.

When a young person says an offense was accidental, he/she usually wishes it had not happened. The meaning of statements such as “I did not think it would turn out like this” or “I didn’t mean for this to happen” must be explored. Not taking responsibility for causing the unintended consequences does not demonstrate lack of remorse or weak moral values. In addition, the more emotionally immature a young person, the more difficult it is for him/her to face shame about an offense. When they cannot or do not express their guilt feelings, an erroneous conclusion can be drawn that they do not feel sorry for the offense. Adolescent bravado also should not be misinterpreted as a lack of remorse: acting tough can be the young person’s only way

to avoid overwhelming feelings of sadness and shame about the offense. It is very unusual for a young person to have empathy for no one. *Id* at 48.

Most youths are moralistic. *Id* at 47. However, older people sometimes do not realize this. *Id* at 48.

Young people face difficult moral problems all the time, such as: if politicians do not tell the truth, why is it wrong for high school students to cheat on exams? If famous athletes abuse their partners, why is it wrong to have sex with a peer too drunk to resist? A simple code that values loyalty above all else meets the needs of teenagers struggling with these moral questions. Gangs operate by the same absolute fairness rules that have appealed to generations of adolescents who have joined the military. ... Sometimes delinquents genuinely believe that what they did, although wrong in some contexts, was a response to higher moral principles of loyalty or fairness. *Id* at 48.

Furthermore, egocentrism is normal for youths. *Id*. "Adolescents can be intensely self-absorbed, believing that they are so unique that no one can understand what they are experiencing." *Id*. Consequently, "[a]dolescent morality is rigid and is often limited by the young person's inability to see the larger social context of a choice." *Id* at 47. Moreover, "[i]n situations where adults see several choices, adolescents may believe they have only one option." *Id* at 47. "Often adolescents feel cornered and are incapable, because of immaturity, to see any way out except in actions that show poor judgment and may violate their moral values. It is not unusual, even for intelligent adolescents, to imagine only one scenario." *Id*. Thus a youth's "judgment under stress may be inconsistent with his/her moral values." *Id* at 48.

Moreover, "as decision-making skills emerge in adolescence, they are manifested earlier or later in different task domains." Grisso at 234. For example, "[u]nder stress, adolescents typically cannot use their most advanced judgment and decision-making skills." Beyer at 46. Often, offenses are committed under stress. Also, many clients, especially younger ones, feel confused, frightened, and overwhelmed by the justice system. Obviously, this increases stress levels and decreases cognitive skills.

Conclusion

Younger people differ cognitively from older people. Due to these differences, younger clients can appear callous, when

really they simply are immature.



Do you have an idea for an article? Would you be interested in writing an article for publication in *for The Defense?*

If so, give us a call with your ideas.

WHAT CAN A LEGAL ASSISTANT DO FOR YOU?

By Deborah Rosiek
Legal Assistant Supervisor

In this "rocket docket" world, a Legal Assistant can be the answer to your prayers. The Legal Assistants in the Public Defender's Office perform a wide variety of tasks, including: coordinating the collection of discovery materials; organizing discovery; creating/organizing trial notebooks; organizing documents; creating/organizing trial exhibits; creating charts and logs for trial; and collecting, organizing and summarizing various records, such as medical, school, and employment records. Legal Assistants can also prepare and track subpoenas and subpoenas *duces tecum*.

Legal Assistants sometimes participate in scene investigations. We set up, participate in and sometimes conduct client and witness interviews. Legal Assistants often take responsibility for contacting expert witnesses, providing expert witnesses with relevant case materials, and arranging transportation and lodging for expert witnesses for trial appearances. Legal Assistants can assist in the scheduling of psychological and/or medical evaluations for our clients.

Legal Assistants often act as a liaison between the attorney and the client. Legal Assistants do a lot of "hand-holding" for clients, their families and witnesses. We often become the "contact person" for the client and the client's family. Legal Assistants visit clients in jail, or occasionally at their homes, if out-of-custody.

In some instances, Legal Assistants perform limited legal research. We do not conduct extensive research, in which issues are identified and developed. Attorneys should use a Law Clerk for that type of research assignment. But, if an attorney needs a case located and copied or shepardized, a Legal Assistant can help.

A Legal Assistant can be quite helpful at trial. An extra set of eyes and ears has proven to be a valuable asset in many cases. Legal Assistants are trained to take extensive notes during jury selection. They have received some training with regard to *Batson* issues and are learning to recognize where they may apply and why. Legal Assistants can help coordinate the presentation of defense witnesses, and keep the witnesses advised of the progress of the trial. Legal Assistants can also help by taking notes throughout the course of trial, and by locating and displaying trial exhibits.

All of our Legal Assistants have been trained to do all of the above-mentioned tasks, but are not limited to those tasks. As with any project, most of the assistance available to an attorney is based on the level of comfort the attorney feels

with any of their team members. Legal Assistants will not take on any project that they feel is above and beyond their level of expertise. If Legal Assistants do not feel comfortable completing a task that an attorney has asked them to do, they will let the attorney know that they do not feel that they are qualified to do such a task.

The office is working on increasing the number of Legal Assistants per trial group. When fully staffed, we will have three Legal Assistants in trial groups A, B, D & E. Because of its size, Trial Group C will have four Legal Assistants. We hope to be fully staffed by the middle of August 2000. Until we are fully staffed, all of the Legal Assistants would appreciate your understanding of their limited time available for new projects. In addition, it is my goal to train all of the Legal Assistants in the electronic presentation of trial exhibits by the end of this year. The presentation software we will use is "Microsoft PowerPoint."

For the most part, Legal Assistants in this office get assigned a case and see it through to resolution. Their concentration is on pre-litigation and trial, as opposed to post-litigation and mitigation. The Legal Assistants in this office have proven to be valuable assets, and should become even more valuable as the pressure to move cases faster increases. They can help decrease the stress on attorneys and other support staff. I welcome suggestions, comments, training recommendations, and ideas for enhancing the capability and utilization of our office's Legal Assistants. Best of luck to you and your Legal Assistant.

OUR CURRENT LEGAL ASSISTANTS

Trial Group A:	Michelle Molina, x68373
Trial Group B:	Christine Oliver, x62573 Marcia Linden, x66192
Trial Group C:	Renee Rivera, x62133 Dana McMullen, x26153 Mary Southern, x63212
Trial Group D:	Michael Kay, x67924
Trial Group E:	Joyce Bowman, x60402 Raymond Del Rio, x61790



ARIZONA ADVANCE REPORTS

By Stephen Collins
Defender Attorney – Appeals



In re Sheree M., 320 Ariz. Adv. Rep. 67 (CA 1, 4/25/00)

Although the juvenile was adjudicated as incorrigible, the juvenile court had no authority to impose juvenile intensive probation. However, home detention may be imposed. Intensive probation may be imposed if the juvenile is also adjudicated as delinquent.

State v. Paleo, 320 Ariz. Adv. Rep. 3 (CA 1, 5/2/00)

The prosecutor used only four of his six peremptory challenges. This election automatically eliminated the only remaining Hispanic venireperson because if the parties do not use their full number of challenges, the clerk strikes the jurors on the bottom of the list. In *Batson v. Kentucky*, the United States Supreme Court held that using peremptory challenges to exclude jurors on the basis of their race or gender is unconstitutional. In the present case, the prosecutor argued *Batson* did not apply because there was no affirmative exercise of the peremptory challenges. The Arizona Court of Appeals disagreed and remanded this case for a new trial.

Logerquist v. McVey, 320 Ariz. Adv. Rep. 15 (SC, 4/19/00)

This is a civil case regarding the admissibility of expert testimony of alleged repressed memory of sexual abuse by a former pediatrician. There is a detailed discussion of the standards for admission of expert testimony in both civil and criminal trials. The Arizona Supreme Court states it will continue with the present standards under Arizona Evidence Rule 702 and *Frye v. United States*. The court declined to adopt the standards set out in *Daubert v. Merrell Dow Pharmaceuticals*.

State v. Adams, 321 Ariz. Adv. Rep. 15 (CA 1, 5/12/00)

The police legally obtained a warrant to search a theater owned by Defendant. However, the police also searched Defendant's residence, which was on the floor above the theater. The prosecution argued Defendant did not have a reasonable expectation of privacy in his residence because it was illegally maintained in a commercial business. It was held that evidence found in the residence was properly suppressed. The dissenting judge felt a finding of probable cause as to a portion of the premises was sufficient to support a search of the entire structure.

State v. Cotton, 321 Ariz. Adv. Rep. 19 (CA 1, 5/16/00)

Defendant accidentally shot and killed his girlfriend. She was eight and one-half months pregnant at the time. The child was born alive but died because the fatal injury to the mother had so decreased the blood supply to the baby that the infant died the following day. Defendant was convicted of two counts of reckless manslaughter. On appeal, he argued that the Arizona homicide statutes do not apply to the killing of a newborn infant when the death results from injuries inflicted *in utero*. The Court

of Appeals rejected the argument.

State v. Talmadge, 321 Ariz. Adv. Rep. 3 (SC, 5/5/00)

Defendant was charged with child abuse because his three-month-old daughter had broken bones. Defendant asserted that abuse was not involved and the fractures were the result of temporary brittle bone disease (TBBD). The defense sought to present testimony from Dr. Marvin Miller who was regarded as one of the nation's premiere experts on TBBD. Dr. Miller resided in Ohio and refused to comply with a subpoena to appear at trial. The Ohio courts refused to enforce the Arizona subpoena. The trial judge refused to allow Dr. Miller's testimony to be presented to the jury on videotape. The Arizona Supreme Court held this was not an abuse of discretion. The trial judge also refused to allow "arguably the world's preeminent TBBD witness to testify in surrebuttal." The trial was to commence on June 18 and this witness could only testify on June 28. The Arizona Supreme Court held preclusion of this witness deprived Defendant of the only real opportunity she had to introduce meaningful exculpatory evidence. Therefore, the case was reversed and remanded for a new trial. Defense counsel and the prosecutor were chastised for failure to make reasonable concessions on matters such as the scheduling of depositions. "We find it appropriate to caution trial counsel to avoid extracurricular tension." The Supreme Court also pointed out that the prosecutor had an ethical duty to see that justice was done. Justice in this case required allowing the defense to call their best expert witness.

State v. Martinez, 321 Ariz. Adv. Rep. 6 (SC, 5/11/00)

In this death penalty case, a prior conviction for dangerous or deadly assault by a prisoner was an aggravating factor under ARS Section 13-703. It was found to be a "serious offense" even though it was not enumerated in 13-703. Prior to 1993, reckless crimes could not be used as aggravating factors in a death penalty case. However, Section 13-703 was amended in 1993 to allow several reckless crimes to be used as aggravating factors. Defendant was diagnosed as having Anti-Social Personality Disorder. The Arizona Supreme Court held this was not entitled to substantial weight as a mitigating factor.



BULLETIN BOARD**SUPPORT STAFF****New Attorneys**

S. Marie Looney will be a new Defender Attorney effective June 26, 2000. Ms. Looney will participate in the June 26 New Attorney Training Class and will be assigned to a trial group following the three-week training. Ms. Looney graduated from Emory University School of Law in 1995 and most recently was with the Mohave County Public Defender's Office in Kingman, Arizona.

Ronald Ozer will be a new Defender Attorney effective June 26, 2000. Mr. Ozer will participate in the June 26 New Attorney Training Class and will be assigned to a trial group following the three-week training. Mr. Ozer graduated from Arizona State University School of Law in 1992. Mr. Ozer was recently with the Law Office of David M. Cantor.

Mark D. Benson will be a new Defender Attorney effective July 24, 2000. Mr. Benson graduated from the University of Oregon School of Law in 1991 and has been with the Pinal County Public Defender Office since 1992 as a Senior Attorney.

Josephine Jones will be a new part-time Defender Attorney with the Mental Health Division effective July 24, 2000. Ms. Jones graduated from the University of San Francisco School of Law in 1992. Ms. Jones is currently a part-time attorney with the Office of the Arizona Attorney General representing the Arizona State Hospital and the Arizona Community Protection and Treatment Center.

Attorney Changes

Rickey Watson, Defender Attorney assigned to EDC Downtown has transferred to the Mesa EDC effective June 17, 2000.

James A. Wilson, Defender Attorney assigned to Trial Group D, is leaving the office effective June 30, 2000. Jim joined the Public Defender Office on October 29, 1990. Jim will be in private practice and is accepting an indigent defense contract with the Phoenix Municipal Court.

New Support Staff

Lisa Born is a new Office Trainee assigned to the Appeals Division effective Monday, May 15, 2000.

Jeffrey J. Pape is a new Office Trainee assigned to Trial Group B effective May 22, 2000.

Ruby Saccente is a new Office Trainee assigned to Trial Group E effective May 31, 2000.

Andrea J. Robertson is a new Trainee assigned to the Records Division effective June 5, 2000.

Mary E. Southern is a new Legal Assistant assigned to Trial Group C in Mesa, Arizona, effective Monday June 5, 2000.

Stephen Rosales in a new Client/Server Programmer Analyst assigned to Information Technology effective June 12, 2000.

Manuel R. Alvarado is a new Public Defender Receptionist assigned to the Records Division effective June 12, 2000.

Amy L. Barnes is a new Legal Secretary assigned to Trial Group D effective June 12, 2000.

Susan L. West is a new Legal Secretary assigned to Trial Group E effective June 12, 2000.

Laura Gillis, is the new Legal Assistant assigned to the Appeals Division, effective June 26, 2000.

Support Staff Changes

Eugene C. Cope, Records Processor in Trial Group C, departed the office effective May 26, 2000.

Sarah J. Smith, Office Aide assigned to Administration, has been promoted to Records Processor and is assigned to Trial Group C effective June 12, 2000.

Support Staff Retiring

Curtis E. Yarbrough, Lead Investigator of Trial Group A, is retiring effective June 29, 2000. Curtis has been with this office since June 4, 1990. Curtis was a detective with the Los Angeles Police Department from 1963 through 1984. Following his retirement from that position, Curtis was self-employed in the wholesale automotive business until 1989.

MAY 2000 JURY AND BENCH TRIALS

GROUP A

Dates: Start–Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/3-5/4	Knowles / Davis Clesceri	McVey	Beresky	CR 99-18018 Resisting Arrest/F6	Dismissed with prejudice 2 nd day of trial	Jury
5/11-5/11	Lehner	McVey	Farnum	CR 00-02529 Agg. DUI/F4	Pled to misdemeanor DUI day of trial after Motion to Preclude due to discovery violations	Jury
5/22-5/22	Valverde	Akers	Brinker	CR 99-14899 2 cts. Agg. Assault/F6	Dismissed after State spoke with victim. No facts to support Agg. Assault.	Jury
5/23-5/31	Flores	Akers	Takata/ Aubuchoun	CR 99-018091 Theft of Means of Transportation/ F3 Unlawful Flight/F5	Guilty	Jury
5/25-5/25	Valverde	Wilkinson	Cohen	CR 00-02144 Escape – 3 rd Degree/F6	Not Guilty	Bench
5/26-5/28	Rempe	Lowenthal	Robinson	CR 99-16079 PODD for sale/F2 PODP/F6 Unlawful Flight/F5	Not Guilty of Poss. For Sale Guilty of PODD Guilty of PODP Guilty of Unlawful Flight	Jury
5/30-5/31	Valverde	Padish	Brnovich	CR 00-00306 Child Abuse/F4	Guilty	Jury

GROUP B

Dates: Start–Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/1 – 5/8	Gray Erb	Ballinger	Gialketsis	CR98-13097 Ct 1 Theft of Means of Transporta- tion, F3 Ct 2 MIW, F4; Ct 3 PODP, F6	Hung 11:1 to acquit on Ct 1 & 3; hung 9:3 to acquit on Ct 2	Jury
5/8/00	Navazo / Bublik	Hutt	Sampson	CR99-17820 Agg. Assault on Police Officer, F6	Dismissed day of trial	Jury
5/9	Gray	O'Toole	Rahi Loo	CR99-04165 Theft, F2; Theft, F3	Dismissed day of trial	Jury
5/15 – 5/16	Blieden	Gerst	Cotitta	CR99-01789 Forgery, F4	Guilty	Jury
5/15- 5/17	Colon / Bublik Erb	Hilliard	Brnovich	CR99-17823 Disorderly Conduct, F6	Not Guilty	Jury
5/15- 5/17	Agan	Hutt	Horn	CR95-08176 Rape, 2DAC Child Molest, 2DAC Kidnapping, 2DAC Aggravated Assault, 2DAC	Guilty on Rape & Kidnapping; Child Molest Dismissed; Aggravated Assault not guilty	Jury
5/15 – 5/17	McCullough Kasieta / Casanova	Sheldon	Bernstein	CR99-15728 Attempt Burglary, F3D Stalking, F3 Non-D	Guilty on Stalking & Attempted Burglary, F3 Non-D	Jury
5/18	Walton	Hilliard	Novak	CR99-09561 Escape, F5	Guilty	Jury
5/22	Navazo	Galati	Sampson	CR00-000935 Resisting Arrest, 6F Interfere w/ Judicial Process, M1	Dismissed day of trial	Bench Trial
5/22	Primack Munoz	Hilliard	Novak	CR00-000707 Aggravated Assault, F5 Aggravated Assault, F6	Plead on day of Trial	Jury
5/22 – 5/23	Tom	Gottsfeld	Altman	CR99-12387 Aggravated Assault, F6 (Victim under 15)	Not Guilty	Jury

MAY 2000
JURY AND BENCH TRIALS

GROUP C

Dates: Start–Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/28 – 5/1	Eskander / Ramos <i>Rivera</i>	Pearce	Zia	CR99-04421 DWI Liq/Drg/Tox Sub /M1	Guilty	Jury
5/1 – 5/5	Lorenz / Davis Klosinski	Dairman	Brame	CR1999-096138 2 cts. POND for Sale/F2N 1 ct. POM/F6N 1 ct. Miscon. w/Wpns/F4N	Not Guilty on all counts	Jury
5/2 – 5/8	DuBiel / Moore Beatty <i>Rivera</i>	Jarrett	Stalzer	CR1999-092957 Ct. 1 Agg Aslt/F2D Ct. 2 Agg Aslt/F2D Ct. 3 Burg 1 st Deg/F3N Ct. 4 Marij Vio/F6N Ct. 5 DUI/M1N Ct. 6 DUI/M1N	Ct. 1- Guilty Ct. 2- Not Guilty Ct. 3- Guilty Ct. 4- Guilty Cts. 5 & 6 - Dismissed	Jury
5/8 – 5/9	Murphy	Barker	Arnwine	CR1998-094802 Ct. 1 Forgery/F4N	Case dismissed w/out prejudice 2 nd day of trial	Jury
5/9 – 5/16	Cotto Thomas <i>Rivera</i>	Keppel	Bennink	CR1998-094557 Ct. 1 Attmp Arm Robb/F3D Ct. 2 Agg Asslt/F3D	Hung Jury (11 Guilty; 1 Not Guilty)	Jury
5/16	Bond	Barker	Andersen	CR1999-094801 Ct. 1 Escape, 2 nd Degree/F5N	Guilty	Bench
5/18 – 5/25	Little / Ramos Breen	Dairman	Sampanes	CR2000-090938 2 Cts. Agg Dr-Lq/Drg/Tx Sub/F4N	Guilty	Jury
5/22	Gaziano	Skousen	Gordwin	CR99-00987 Interfere w/Judicial Proceedings, M1	Guilty	Bench
5/22	Gaziano	Skousen	Gordwin	TR00-01725 Driving on Suspended License, M1	Dismissed day of trial	Bench
5/23 – 5/23	Hamilton Klosinski	Keppel	Truty	CR2000-090414 Ct. 1 POM/F6N	Dismissed day of trial	Jury

MAY 2000 JURY AND BENCH TRIALS

GROUP D

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/8-5/9	Silva	Gerst	Naber	CR 00-00357 1 Ct. Traffic Stolen Prop, F3	Guilty	Jury
5/17 – 5/17	Handler	Gerst	Larish	CR 99-18346 1 Ct of Burglary 1 Ct of Tools Possesion	Not Guilty of Burglary Guilty on Tools Possession	Bench
5/17-5/18	Enos <i>Salvato</i> <i>Geranis</i>	Arellano	Simpson	CR 00-000280 1Ct. Poss. Narc Drug Sale, F2	Convicted Simple Possession Lesser Included	Jury
5/17-5/18	Castillo Wilson	Dougherty	Eaves	CR 99-14692 1 Ct. of Agg. Assault on Officer, F6	Not Guilty	Jury
5/22-5/31	Martin Ferragut	Ballinger	Davis	CR 00-02867 1 Ct. of Agg. Assault Dangerous 1 Ct. of Agg. Assault 1 Ct. of Criminal Trespass	Not Guilty on Agg. Assault Dangerous Not Guilty on Agg. Assault Guilty on Criminal Trespass	Jury
5/23-5/23	Wallace	Ballinger	Clarke	CR 99-18198 1 Ct. Agg. Assault w/ Dangerous Weapon	Dismissed w/o prejudice day of trial	Jury
5/25-5/31	Enos	Dougherty	Clarke	CR 00-000280 1 Ct. Theft Stolen Vehicle, F3	Not Guilty	Jury
5/1	Ferragut	Gerst	Adams	CR 99-13213B 2 Cts. Agg. Assault Dangerous, F2 hate/bias crime enhancement	Dismissed at trial State lost on Dessareault Mo- tion	Jury
5/11-5/18	Willmott	Katz	Adleman	CR 99-18250 1Ct-POND, F4 1 Ct-PODP, F6	Hung (5-3)	Jury
5/22	Varcoe	Ballinger	Clarke	CR 99- 1 Ct. Trafficking stolen property burglary in the 3 rd degree	Dismissed	Jury

MAY 2000 JURY AND BENCH TRIALS

GRUPE

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/9 - 5/11	Passon Ames	Wilkinson	Frick	CR99-12594 Burglary/F3	Not Guilty	Jury
5/10	Evans	Jones	Blumenreich	CR99-17430 POND/F4 PODP/F6	Dismissed day trial was to begin	Jury
5/10 - 5/11	Goldstein / Kent	Gottsfeld	Hanlon	CR99-16956 Agg. Asslt on Officer/F6 Disorderly Conduct/M1	Not Guilty on Agg. Asslt. Guilty on Misdemeanor	Jury
5/11 - 5/19	Doerfler / Gotsch Bowman	Reinstein	Sorrentino	CR99-12220 Child Molest/F2DCAC Sex. Condt. w/Minor/ F2DCAC	Guilty both counts	Jury
5/17	Pelletier	Arellano	Hanlon	CR 00-01013 3 Cts. Agg. Asslt./F3	Dismissed w/prej. day trial was to begin	Jury
5/22 - 5/25	Goodman / Kent	Reinstein	Lamm	CR99-17177 4 Cts. Agg. Asslt./F2D	Not Guilty (4 cts.)	Jury
5/23-5/24	Richelsoph	Bloom (West Phx.J.Ct.)	Blumenreich Gialketsis	TR99-10844CR DUI/M1	Guilty	Jury
5/25 - 5/30	Evans / Pelletier Gotsch	Arellano	Blumenreich	CR 99-17123 Fogery/F4	Guilty	Jury
5/30	Walker	Reinstein	Brnovich	CR99-10481 Agg. Asslt/F3D	Dismissed day trial was to begin	Jury
5/31	Passon Gotsch / Ames	Dunevant	Fuller	CR99-14048 2 Cts. Agg. DUI/F4	Dismissed w/o prej. day trial was to begin	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
4/25 - 5/08	Steinle Apple	Katz	Hicks	CR99-03546B Murder 1° / F1 Dang.	Guilty	Jury
5/02 - 5/03	Dupont Horral	Sheldon	Godbehere	CR99-12575 Agg. Assault / F3 Dang.; Misc. w/ Weapon / F4 Two Priors alleged	Agg. Assault Dismissed; Guilty of Misc. w/ Wpn, two priors	Jury
5/02 - 5/04	Cleary Apple	P. Reinstein	Boyle	CR99-17044 Manslaughter / F2 Dang.	Guilty	Jury
5/03 - 5/08	Patton	Dougherty	Simpson	CR99-17992 Trans. Narc. Drugs for Sale / F2	Guilty	Jury
5/08 - 5/10	Canby Reger / Apple	Ballinger	Pineda	CR99-04818C Conspiracy To Manufctr. Dang. Drugs / F2; Poss. Equip. to Manufctr. Dang. Drugs / F3; POM / F6	Not Guilty of Conspiracy; Guilty of Poss. charges	Jury
5/22 - 5/23	Curry Otero	Arellano	Brnovich	CR99-18135 Kidnapping / F2 Dang; Misc. w/ Weapon / F4 Disord. Conduct / F6 Dang.	Guilty of Unlawful Imprison- ment / F6 Dang; Misc. w/Wpn / F4; & Disord. Conduct / F6 Dang.	Jury

Interesting Websites

By Mike Fusselman
Lead Investigator – Group D

These sites should be of interest to Attorneys, Investigators, Client Services Coordinators and Legal Assistants. I hope you find this to be the case.

www.expertwitness.com

www.sentencingproject.org (National Association of Sentencing Advocates)

www.aafs.org (American Academy of Forensic Sciences)

www.capdefnet.org (Capital Defense Network)

www.clinicalsocialwork.com

www.piperinfo.com/state/states.html (nationwide state and local government information)

www.pac-info.com/usa/nationwide.html (an impressive variety of information)

www.pac-info.com/general/home.html (public record information by state)

www.peoplesearch.com (Don't let the dollar signs put you off. There is free info here. Click on Free Public Records, then Gator Web for state MVD info)

www.brbpub.com/pubrecsites.asp (additional public records information)

for The Defense

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