



# for The Defense

▶ ◀ James J. Haas, Interim Maricopa County Public Defender ▶ ◀

## Rethinking the Role of the Public Defender: Miami-Dade County PD's Anti-Violence Initiative

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### By Jim Haas Interim Public Defender

As part of the second phase of the Public Defender Productivity Study, four members of our office administration recently visited the Miami-Dade County Public Defender's Office. While there, we learned more about a remarkable program the Public Defender has developed, called the Public Defender Anti-Violence Initiative (AVI).

The Initiative, in the words of Public Defender Bennett Brummer, "consists of defender-community collaborations designed to help clients lead law-abiding lives by developing more constructive diversion and sentencing options and expanding their access to effective treatment. As a complement to our traditional

criminal justice focus, AVI emphasizes the public health model because of its holistic, positive, research-based prevention and treatment methods, and grant sources. AVI is also intended to improve public safety and reduce the number of victims by expanding the role of public defenders."

Former United States Attorney General Janet Reno recognized AVI in a speech at the National Partnership Meeting of the Bureau of Justice Assistance on April 8, 1999. Here are some excerpts from the speech:

*One area that you'll be surprised to hear me mention, but it is a critical area, for the system will break down without it, is provision for indigent defense. There are too many cases reversed because there was incompetent*  
*(Continued on page 2)*

## HGN: Horizontal Gaze Nystagmus

### By Rick Klosinski Defender Investigator – Group C

What the heck is HGN? It's hard enough to remember what order the letters go in, let alone what they mean. With ever increasing DUI's, we're starting to see more officers use HGN in their field sobriety tests. Do they have the knowledge, training and experience to use it legally in court? Do they really know what they're doing?

HGN refers to the lateral or horizontal jerking

that occurs when the eye gazes to the side. Nystagmus is an involuntary jerking or bouncing of the eyeball when there is a disturbance of the inner ear or the oculomotor of the eye. Alcohol is a central nervous system depressant affecting many of the higher as well as lower motor control systems of the body. When intoxicated, a person's nervous system will display a breakdown in the smooth and accurate control of eye movements. This breakdown in the smooth control of eye movement may result in the

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### for The Defense

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*counsel. And unfortunately, ladies and gentlemen, there are innocent people who have been convicted because they did not have appropriate counsel.*

*If we are to make Gideon versus Wainwright, the Supreme Court decision guaranteeing counsel to those who could not afford it, a reality, if we are to make the law in this country worth something more than the paper it's written on, we've got to make sure that everyone is properly represented in our courts.*

*But I have a challenge to defense lawyers. Most of them think that their job is to get the person off, get the motion to dismiss granted, and they think they've won the case. But too often their client walks out, back into violence, back into drug use, and I think it's time to rethink the traditional role of the public defender.*

*I just received from my old public defender at home, an adversary who I said I got more provoked at than probably anybody in the criminal justice system, a remarkable statement. It's the Public Defender Anti-Violence Initiative of the Eleventh Judicial Circuit in Dade County, Florida: "It is the primary goal of the Anti-Violence Initiative to reduce the likelihood of our clients engaging in future criminal conduct."*

*Here are examples of ongoing AVI partnerships and projects in Dade County:*

*The Public Defender is a partner of the University of Miami Child Service and Policy Research Program in evaluating the effectiveness of the Juvenile Justice Sentencing Project;*

*Teamed with the University of Miami School of Medicine Center for Family Studies in a community partnership to prevent violence; and*

*Worked closely with the Florida Department of Juvenile Justice,*

*– and on and on, focusing on what they can do to make sure their client never returns to violence.*

*If we all thought in those terms about what each of us can do, we can all make a difference. This is a golden opportunity. We have a chance in this country to give our children strong and positive futures so that nobody is left by the wayside, so that nobody is written off, so that everyone has equal opportunity.*

*But we won't do it waiting until they grow up. We've got to start early, with the building blocks of life, with strong and healthy parents, with health care that can make a difference, with solid education, with good schooling, with supervision*

*afternoons and evenings, truancy prevention, conflict resolution skills, school to work opportunities, but most of all giving our kids the spirit and the feeling that they can grow up to make a difference in this life.*

Viewing our work as enhancing the public safety may seem like a radical leap to some. But, when you think about it, it makes sense. After all, we are the ones who stand up in court and advocate for effective dispositions that address our clients' underlying problems, the real reasons that they are before the court. We are the ones who argue that putting a person in prison for a stretch of years, without recognizing and treating those problems, makes it more likely that the client will be involved in future offenses. When we succeed, and our clients get effective treatment, we help them avoid further criminal behavior, and *that* is in the interest of public safety.

Through our Community Relations and Legislative Relations programs, headed by Margarita Silva and Shannon Slattery, The Maricopa County Public Defender's Office will be establishing our own version of the Miami PD's Anti-Violence Initiative. There are many members of our office who are interested in this project, and many more who already work with community groups who help our clients. At an organizational meeting held last month, fifteen attorneys and staff members brainstormed ideas about community partnerships and projects in which we would like to become involved or initiate. Stay tuned! Or better yet, get involved!



## Letter to the Editor

Comments by Peter S. Balkan, Coconino County Legal Defender  
In Response to *2001 A.D. (After Dean): The End of An Era*

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## **BULLETIN BOARD**

### **ATTORNEY RETIREMENT**

**Bob Guzik**, Chief Trial Deputy, retired from his position with the Office of the Public Defender, effective February 23, 2001. Bob is one of the icons of the office. He first joined the office in 1977. He returned to private practice in March 1984, and then resumed his Public Defender career in October 1987. During his years of dedicated service to the Office of the Public Defender, Bob held the positions of Public Defender Senior Counsel, Public Defender Manager, and Chief Trial Deputy. He is respected for his intricate knowledge of the Maricopa County criminal justice system, his ability to resolve problems quickly and professionally, and his calming influence. His leadership role and his sense of humor will be greatly missed by those who worked with and for him. Bob's retirement plans include experiencing as many rounds of golf with as many friends on as many world-renowned golf courses as possible.

### **ATTORNEY ASSIGNMENT CHANGES**

**Dan Carrion** has been appointed Chief Trial Deputy for the Office's new Early Representation Unit. Dan will be responsible for all horizontal justice court activity, misdemeanors, EDC, arraignments, the ASU Clinical Intern Program, and other "front-end loading" efforts. Dan has been with the office since 1987, and has served as supervisor of the DUI Unit for the last three years. He was the recipient of the 2000 Joe Shaw Award.

**Donna Elm** has been appointed Chief Trial Deputy for the Office's Downtown Trial Division. Donna will be responsible for the operation of the downtown trial groups, the

DUI Unit, the Complex Crimes Unit, and Investigations. Donna has been with the office for eleven years, and has been the supervisor of Trial Group D since 1996.

**Jeremy Mussman** has been appointed Special Assistant Public Defender. Jeremy will be responsible for all attorney operations in the Office, working with other criminal justice agencies on systemic improvements, and additional duties as assigned. Jeremy joined the office in 1993. He was appointed Trial Group D Counsel in March 1998, and Trial Group E Supervisor in May 1999.

**Wes Peterson** has been appointed Chief Trial Deputy for our Mesa Division. Wes will be responsible for the Mesa operation, which will operate more as a stand-alone unit, as recommended by the Policy Studies, Inc. consultants who recently completed a productivity study of the office. Wes has been with the office since 1988, and has been the supervisor of Group C for the last four years.

**Ken Huls** has been selected to serve as Trial Group D Supervisor. Ken joined the office in April 1997 as a trial attorney in Group D. In June 1999, he was named to a Lead Attorney position in Group E. He returned to Group D as Trial Group Counsel in July 2000.

**Candace Kent** has been selected as the Group E Supervisor. Candace joined the office as a law clerk in May 1990, and became a trial attorney in Group A later that year. She was appointed a Lead Attorney in 1995, and has served as Trial Group E Counsel since May 1999.

**Rebecca Potter** has been selected at the DUI Unit Supervisor. Becca joined the office in 1989, after several years of practice as a

contract attorney in Phoenix City Court, where she developed her expertise in defending DUI cases. In 1997, she was named a Lead Attorney in Trial Group B, and in July 1998, she transferred to the DUI Unit.

**Susan Corey** has been selected as Counsel for Trial Group A. Susan joined the office in July 1990 after two years of criminal defense practice in Florida. She was appointed Lead Attorney in Trial Group A in May 1998, and has also served as an attorney in our Juvenile Division.

**Joel Brown** has been appointed to Lead Attorney for the Regional Felony Center. Joel first joined the office in 1982. He served as a trial attorney for eight years, then left in 1990 to form the law firm of Calvo, Brown and Saint. He returned to the office in December 1995, and joined Group B. He was named a Lead Attorney in July 1998.

### **ATTORNEY DEPARTURES**

**Mark DuBiel**, Defender Attorney assigned to Trial Group C in Mesa, has resigned his position with the Office of the Public Defender, effective February 16, 2001. Mr. DuBiel has been with the office since August, 1997.

**Jeffery Mehrens**, Deputy Public Defender assigned to Trial Group D, has resigned his position with the Office of the Public Defender, effective March 2, 2001. Mr. Mehrens has been with this department since April 12, 1999.

**Olin R. Hale**, Defender Attorney assigned to Trial Group A, has resigned his position with the Office of the Public Defender, effective March 2, 2001. Mr. Hale has been with this law office since October 30, 2000.

## **ARIZONA ADVANCE REPORTS**

**Stephen Collins**

By Defender Attorney – Appeals



### **State v. Canion, 339 Ariz. Adv. Rep. 3 (CA 1, 12/21/00)**

First-degree felony murder and first-degree premeditated murder were charged in separate counts of the indictment. The jury convicted Canion on the felony murder count. It acquitted him on the premeditated murder count, but found him guilty of the lesser-included offense of second-degree murder. He was sentenced for first-degree murder.

If the jury had followed properly given instructions, Canion could not be convicted of second-degree murder unless the jury first rejected both theories for first-degree murder. Therefore, it was argued that the second-degree conviction impliedly acquitted him of first-degree murder.

The state argued the issue was waived on appeal because defense counsel failed to object to the sentencing on first-degree murder. The Court of Appeals noted that an illegal sentence may be reversed on appeal despite the lack of an objection. However, the Court of Appeals was “confident” that any error by the jury was in returning a guilty verdict on second-degree murder rather than finding Canion guilty of first-degree murder.

The dissenting judge believed the case should be reversed because at the very least, the inconsistent verdicts signaled jury confusion. “And it is not an appropriate cure to substitute appellate judgment for that of the jury.”

The dissenting judge also would have reversed on an aggravated assault conviction. Canion was indicted for aggravated assault as a class 2 felony because a deadly weapon was used against a police officer. The jury was not instructed that the use of a deadly weapon was a required element of the offense. The majority of the Court of Appeals found this element was established because the jury found the offense to be dangerous. The dissenting judge found it was improper for the jury to “cobble together bits of evidence and reach its verdict of guilt of an offense about which it was not instructed.”

### **State v. Anderson, 337 Ariz. Adv. Rep. 12 (CA 1, 12/21/00)**

A.R.S. Section 13-2923(A)(1) provides stalking is a class 5

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felony if a person engages in a course of conduct that “would cause a reasonable person to fear for the person’s safety.” Section 13-2923(A)(2) provides stalking is a class 3 felony if a person engages in a course of conduct that “would cause a reasonable person to fear physical injury.”

Anderson was sentenced for stalking as a class 3 felony. The Court of Appeals remanded for resentencing as a class 5 felony because there is no meaningful distinction between the conducted prohibited in (A)(1) and that in (A)(2). A person cannot fear for his or her safety and not fear physical injury. Therefore, the statute is unconstitutionally vague.

“Where a statute is subject to more than one interpretation, the rule of lenity requires that doubts be resolved in favor of the defendant and against imposing the harsher punishment.” Thus, the offense was designated as a class 5 felony.

At trial, Anderson also was convicted of two misdemeanors. He contended that the misdemeanors were not jury eligible and that submitting them to the jury constituted error. This argument was rejected.

Before accepting a defendant’s admission to a prior felony conviction, a trial court must advise the defendant of the nature of the allegation, the effect of admitting the allegation on the defendant’s sentence, and the defendant’s right to proceed to trial and require the state to prove the allegation. The trial judge did not comply with these requirements and the case was remanded for a hearing to determine whether defendant knew from any source the rights he was giving up and the consequences of his admissions.

Anderson argued that the trial judge was required to consider the fact that he was shot during his assault on the victim as “non-judicial punishment” in mitigation of his sentence. A.R.S. Section 13-702(D) lists four mitigating factors that a judge must consider. The judge may consider any other factor he or she deems appropriate but is not required to consider any other factor. Thus, it was held the trial judge was within her discretion in rejecting the shooting as a mitigating factor.

**State v. Logan, 337 Ariz. Adv. Rep. 16 (CA 1, 12/26/00)**

Logan was convicted of theft for taking money from an elderly woman for whom he performed paralegal services. The trial judge failed to instruct the jury on the required element that the property was taken “without lawful authority.” The state argued this was invited error because defense counsel requested the given instruction. The Court of Appeals found the invited error doctrine inapplicable

because the instruction was from the former Recommended Arizona Jury Instructions.

Even though the invited error doctrine did not apply, the Court of Appeals held it would review only for fundamental error because Logan failed to object to the instruction at trial. The case was reversed because the jury was not instructed on a disputed element of the offense.

The trial judge also erred in allowing a detective to testify as an expert on elderly abuse to explain how a perpetrator gains the trust of an elder. The Court of Appeals held the jury needed no assistance from the detective’s experience. “If the jury is as competent to determine the fact in issue as the expert, ordinarily the expert’s opinion will be of no assistance and should not be admitted.”

**In re Shane B., 337 Ariz. Adv. Rep. 35 (SC, 7/27/00)**

After the date of Shane’s offenses, A.R.S. Section 8-341 took effect and provided that if he was adjudicated of a subsequent offense, he may be prosecuted as an adult. It was held the statute could be applied retroactively because it was procedural, not substantive. The Arizona Supreme Court found Shane’s interests are at risk only prospectively, because any transfer to adult court depends solely on future criminal activity.

**In re Dayvid S., 337 Ariz. Adv. Rep. 35 (CA 1, 12/21/00)**

Dayvid sold an undercover officer a crushed peanut packaged to resemble crack cocaine. When he was immediately arrested, he protested that “it’s nuts, just nuts.” The Court of Appeals held the evidence was sufficient to establish the required elements for intent to distribute an imitation controlled substance under A.R.S. Section 13-3453. It was also held the statute is not unconstitutionally vague or overbroad.

**State v. Purcell, 338 Ariz. Adv. Rep. 3 (CA 1, 1/4/01)**

Purcell was charged with first-degree murder. During jury selection, two jury panelists expressed views that shooting into a crowd indicates premeditation. It was held that this did not constitute per se the inability to fairly and impartially evaluate the evidence at trial. Therefore, they did not have to be removed for cause.

Another jury panelist said she was Catholic and worked for the Catholic Diocese. She stated the Catholic Church is

*(Continued on page 11)*

## Shaw Award Presented to Dan Carrion

**By Jim Haas  
Interim Public Defender**

The sixth annual Joseph P. Shaw Award was presented to Dan Carrion at the office holiday party on December 21. The Shaw Award was created in 1995, the 30th anniversary of the office and the year of Joe's retirement, to recognize Joe's integrity and years of dedication to the office and the cause of indigent defense. It was presented to Joe himself in 1995, and is awarded each year to the attorney who best exemplifies Joe's considerable qualities. Prior recipients include Bud Duncan, Helene Abrams, Emmet Ronan, and Ed McGee.

A plaque was presented to Dan by Dean Trebesch. In addition, Dan's name has been added to the plaque honoring the Shaw Award recipients, which is permanently displayed in the Training Facility.

Dan has been a trial attorney in the office since 1987. He took a particular interest in DUI litigation, and began to develop his expertise in that area. In May 1996, he was named DUI Coordinator for Trial Group D. In that capacity, he assisted other attorneys with DUI cases and issues, and handled as many DUI cases as he could. In March 1998, Dan was appointed supervisor for the office's new DUI Unit. He organized and supervised a unit of three to four attorneys, who handle as many of the office's DUI-related cases as possible, including vehicular homicide, and assist other attorneys in their cases.

Dan has always been known as someone who would drop everything to offer assistance to anyone who needed it. But he went beyond the call of duty when the ADAMS issues came to light in June 1999. The litigation was a massive project, involving thousands of documents, hundreds of clients, several different courts and a widely varied cast of private attorneys. Dan took it on and

worked day and night on it for months. In the process, he saved the other attorneys in our office an inestimable amount of time and work. In the end, despite adverse rulings, Dan continued to work and managed to negotiate very favorable plea agreements for most of the PD cases involved.

None of us can really know the tremendous amount of time and effort that Dan put into the ADAMS litigation, or the toll it took on him. Although the strain was sometimes apparent, Dan was usually able to maintain his positive and amiable attitude.

On February 19, 2001, Dan was appointed Chief Trial Deputy for the new Early Representation Unit. In this capacity, Dan will lead the efforts underway to front-load the system by getting to work on the defense of cases earlier than we have been able in the past. Dan was selected for this position because of his creativity, attention to detail, and ability to work with people within and outside the office.

Dan was selected for the Shaw Award by a committee made up of ten members of the office. Each trial group, juvenile site, division, and the support staff was represented. The members of the committee were recruited by their supervisors, who sought out individuals who would be thoughtful, impartial and open-minded in considering potential recipients. They all volunteered to serve for one year.

Congratulations to Dan for earning the respect and admiration of his colleagues. The award is well deserved. And many thanks to the members of the committee, who performed their duties thoughtfully and fairly, and made a great choice.



# Constructive Possession and Mere Presence: A Case Overview

**By Michael Rossi**  
**Defender Attorney – Group C**

The prosecution theory of “constructive possession” is, for many of our clients, a perfect example of being in the wrong place at the wrong time. A typical scenario is that the illegal drugs are not on the client’s person or even in his immediate presence. Yet, the state alleges that he’s criminally responsible for possession of drugs because the drugs were in a place that was under his dominion and control under circumstances from which it can be reasonably inferred that the defendant had actual knowledge of the existence of the narcotics. Typically, these cases are the epitome of the state relying on circumstantial evidence to support its theory of the case. Consequently, it is likely that the state’s position may be vulnerable to attack – after all, circumstantial evidence, by its very nature, is just speculation dressed up with some ribbons and bows. The following overview of cases and statutes that address this area will, hopefully, give you a better opportunity to unravel the state’s theory and expose the weaknesses inherent in many constructive possession cases.

## Constructive Possession Overview

Assuming that the state can establish that the drugs at issue were a “usable amount” (which, as we all know, can be next to nothing (see, e.g., *State v. Quinones*, 105 Ariz. 380, 465 P.2d 360 (1970)), the focal point of these cases is whether there is an evidentiary chain linking the defendant to the drugs so the inference can be drawn that he knew of the drug’s existence and presence. Although possession may be shown by direct and circumstantial evidence, the evidence must link the defendant to the narcotics in such a manner and to such an extent that a reasonable inference may arise that the defendant knew of the narcotic’s existence and of its whereabouts. *State v. Carr*, 8 Ariz. App 300, 302, 445 P.2d 857, 859 (1968). A defendant, however, may not be convicted solely on his own, uncorroborated confession. *State v. Thompson*, 146 Ariz. 552, 557, 707 P.2d 956, 961 (App. 1985). In addition, if a defendant testifies in support of a motion to suppress, his testimony cannot be admitted as evidence of guilt at trial ARCP; *Simmons v. U.S.*, 390 U.S. 377, 88 S.Ct. 967 (1968).

## What is Needed to Convict

The best way to see this theory in action is to analyze the facts of some reported decisions. For ease of reference, these cases are listed below, with a brief explanation regarding their significance.

### Simple Possession

(1) Back in 1987, the Arizona Supreme Court found that evidence was insufficient to support conviction of simple possession where the defendant was not present in apartment when the drugs were seized, the apartment did not belong to defendant, the only piece of evidence which connected the defendant with drugs was a small piece of cardboard with defendant’s nickname written on it, which was found in a basket of drugs, and defendant’s confession was uncorroborated. *State v. Villalobos-Alvarez*, 155 Ariz. 244, 745 P.2d 991 (1987).

(2) The Court of Appeals dealt the mere presence defense in a 1977 decision, holding that presence alone at a place where marijuana is being smoked is not in and of itself sufficient to show possession. ARS 36-1002.05; *State v. Curtis*, 114 Ariz. 527, 562 P.2d 407 (App.1977).

(3) Sole evidence of defendant being cotenant of a house where marijuana is found is insufficient evidence to convict. *U.S. v. Romano*, 382 U.S. 136, 86 S.Ct. 279 (1965).

(4) Mere presence when drug is found is not enough to convict for possession; however, if contraband is found in an arrestee’s home in an unsecluded or obvious place, it is sufficient to sustain verdict for possession. *State v. Van Meter*, 7 Ariz.App. 422, 427, 440 P.2d 58, 63 (1968).

(5) Defendant was found guilty of possession as a result of testimony disclosing that the drugs were found in an open cardboard box on the back porch of defendant’s apartment, although the box was located on a concrete slab which was accessible to those using the area between the two apartments. *State v. Villavicencio*, 108 Ariz. 518, 502 P.2d 1337 (1972).

(6) Evidence that marijuana was found under chest of drawers which defendant admitted was his, his acknowledgment that he lived in his mother’s apartment off and on, fact that the chest of drawers, although located in the hallway, was under his dominion and control, and finding manuals on cultivation in his chest of drawers was sufficient to support inference that defendant knew of and had dominion and control over marijuana seeds found under chest of drawers in his mother’s apartment. *State v. Jenson*, 114 Ariz. 492, 562 P.2d 372 (1977).

(7) Evidence that residence in which marijuana was found was leased in defendant’s name, that he had paid at least part of the rent, that he was present when the police entered the premises, and that personal papers bearing his name were found throughout the house was sufficient to establish that the

defendant knowingly possessed and exercised dominion and control over the marijuana, and even assuming that other persons may have lived in the residence, possession may be held jointly by two or more persons. *State v. Donovan*, 116 Ariz. 209, 568 P.2d 1107 (1977).

(8) Defendant found guilty of simple possession when, after he crashed his motorcycle, a package of hashish that had been strapped to the seat was found to be in plain view. *State v. Floyd*, 120 Ariz. 358, 586 P.2d 1107 (App. 1977).

#### Possession for Sale

(1) Accused sitting on passenger seat with drugs protruding four inches from underneath not found to be in possession for sale or simple possession of those drugs. *State v. Miramon*, 27 Ariz.App. 451, 555 P.2d 1139 (1976).

(2) Person can exercise dominion and control over property without having access to it. Person can be guilty of transportation of marijuana for sale without having personal possession. *Pima County Juvenile Delinquency Action No. 12744101*, 187 Ariz. 100, 927 P.2d 366 (App. 1996); ARS 13-3405 (b).

(3) Once possession of narcotics is shown, fact that the defendant is a nonuser of drugs may also be shown on issue of possession for sale, since person's nonuse of narcotics is a circumstance from which the jury may reasonably and logically infer that possession is for sale. *State v. Villavicencio*, 108 Ariz. 518, 502 P.2d 1337 (1972).

(4) Evidence was sufficient to sustain conviction for possession and possession for sale, where evidence showed that defendant had been in the house during the previous night, when police, who were lawfully on the premises, saw a marijuana roach in the ashtray, and where, at a later time, police entered house to conduct search they observed a grocery sack and several articles a few feet from the door, which sack was found to contain a considerable quantity of drugs. The defendant had been at the house since the previous night and it was his dwelling. *State v. Ballinger*, 19 Ariz.App 32, 504 P.2d 955 (1973).

#### **Mere Presence Overview**

As discussed earlier, many of our clients are arrested because they were in the wrong place at the wrong time. For these types of cases, the affirmative defense of "mere presence" can save the day. In addition, whenever you have a constructive possession case that gives rise to a mere presence defense, it may very well be ripe for a motion for directed verdict. Guilt cannot be established by defendant's mere presence at a crime scene or mere association with another person at a crime scene. The fact that the defendant may have been present does not, in and of itself, make defendant guilty of the crimes

charged. See, *Recommended Arizona Jury Instruction, Standard Criminal Instruction No. 31*. Here's a brief synopsis of some key cases in this area.

(1) The fact that a defendant is present at the scene of a crime with knowledge of what is happening does not make him guilty of that crime. *State v. Green*, 117 Ariz. 92, 94, 570 P.2d 1265, 1267 (App. 1977).

(2) The mere presence of a person at the time and place of a crime does not make him an aider, abettor, or principal. *State v. Hernandez*, 112 Ariz. 246, 247, 540 P.2d 1227, 1228 (1975).

(3) "Mere presence" means more than a lack of criminal intent; it refers to passivity and nonparticipation in the crime. *United States v. Perkins*, 926 F.2d 1271, 1283-84 (1<sup>st</sup> Cir. 1991).

(4) Mere presence of a person where drugs are found is insufficient to establish that the person knowingly possessed or exercised dominion and control over the drugs. *State v. Van Meter*, 7 Ariz.App. 422, 440 P.2d 58 (1968).

(5) Mere presence of accused at place where drugs are found is insufficient to show knowledge of its presence there. *State v. Carroll*, 111 Ariz. 216, 526 P.2d 1238 (1974).

#### **Conclusion**

Take a hard look at your constructive possession cases in light of the applicable cases, statutes, and jury instructions. Being in the wrong place at the wrong time just ain't enough. Take these matters to trial (particularly if they are Proposition 200 cases), poke holes in the state's circumstantial evidence, make your motions for directed verdict, arm yourself with the pertinent cases and jury instructions and soon your desk will very likely be the new home of one of our office's battleworn spittoons!



## HGN: Horizontal Gaze Nystagmus

*Continued from page 1*

inability to hold the eyes steady, resulting in a number of observable changes of impaired functioning. In other words, the subject cannot control their eye movements to a certain extent.

Gaze nystagmus is a type of jerk nystagmus where the eye gazing upon or following an object begins to lag and has to correct itself with a saccadic movement toward the direction in which the eye is moving or gazing. Gaze nystagmus is due to disruptions within the nervous system. Alcohol gaze nystagmus (AGN) is gaze nystagmus caused by alcohol. AGN occurs as the eye moves from looking straight ahead, to the side, or up.

This test has been around since 1977 when the National Highway Traffic Safety Administration commissioned the Southern California Research Center to determine the best methods of detecting impaired drivers using field sobriety tests.

Most police departments now use the HGN test as a field sobriety test (FST). However, in my experience, there is not a lot of training and most of it occurs on the street in "let's have fun and see who can guess how UI the subject is," guessing at the degree of onset (the bouncing or jerking of the eye) of nystagmus. In court, it's important to understand that the HGN test is used to establish only one portion of the FST, and secondly to evaluate the officers training, experience and knowledge of HGN. There are many types of nystagmus (HGN, alcohol gaze nystagmus, positional, physiological, pathological, neural and natural) and, I can guarantee you, most officers that use this test don't have a clue as to even the basic mechanics of HGN.

There are six items an officer should be looking for when conducting the HGN test; three items in each eye which I'll describe after outlining the test itself. The officer should demonstrate the test in the following order.

- 1) The officer must see the subjects' eyes clearly.
- 2) The area in which the test is conducted should be well lit or lit by the use of a flashlight.
- 3) The subject should not face towards the blinking lights of the patrol car or passing cars.
- 4) The officer must inform the subject that he is going to check the subjects' eyes.
- 5) The officer should ask the subject to remove their glasses as it's easier to track their eyes; although glasses or contacts do not effect the HGN results.
- 6) The officer should note if the subject is wearing contacts.
- 7) The officer places the tip of an object (e.g. pen, penlight) approximately 12-15 inches in front of the subjects' eyes,

a little above eye level.

- 8) The officer must tell the subject to follow the tip of the object with the eyes and eyes only, the head must not move.
- 9) If the subject cannot hold their head still, the subject is told to hold his head still by resting the their head in the palms of their hands.
- 10) The officer must ask if the subject has any medical condition, or is on any medication. Many over the counter medications can have a positive response resulting in nystagmus.
- 11) The officer then checks for equal tracking by moving the object quickly across the subjects' entire field of vision to see whether the eyes follow the object simultaneously.
- 12) The officer must check for equal pupil size. Lack of equal size may indicate blindness in an eye, a glass eye, a medical disorder or an injury. If the subject shows any of these signs, the officer must stop the test.

The six items (three in each eye) the officer looks for are:

- 1) **Lack of smooth pursuit.** The officer moves the object slowly but steadily from the center of the subjects' face towards the left ear, the eyes should smoothly follow the object, but if the eye exhibits nystagmus, the officer notes the clue. The procedure is repeated in the other eye.
- 2) **Distinct nystagmus at maximum deviation.** Starting again from the center of the subjects face, the officer moves the object towards the left ear, bringing the eye as far over as possible, and holds the object there for four seconds. The officer notes the clues if there is a distinct and sustained nystagmus at this point. The officer holds the object at maximum deviation for at least four seconds to ensure that quick movement of the object did not possibly cause the nystagmus. Repeat the procedure with the other eye.
- 3) **Angle of onset of nystagmus prior to 45 degrees.** The officer moves the object at a speed that would take about four seconds for the object to reach the edge of the subjects left shoulder. The officer notes the clue if the point or angle at which the eye begins to display nystagmus is reached before the object reaches 45 degrees from the center of the subjects face. Repeat with the other eye. The sooner the eye begins to bounce or jerk prior to 45 degrees, the better chance that the subject is under the influence and to a greater degree.

This is just a short overview of what HGN is and the test the officers use. As you can see, officers should have extensive training in this area. A qualified officer should be able to explain the basics of HGN and the tests used to identify it. demonstrate HGN and the order of the test.



## Arizona Advance Reports

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against the death penalty and she did not believe in capital punishment. The prosecutor used a peremptory strike against her.

The Court of Appeals held that *Batson v. Kentucky* applies to peremptory jury strikes based on religious affiliation. However, it was held *Batson* does not apply to this panelist's relevant opinions even though the opinions may have a religious foundation.

### **State v. Samano, 339 Ariz. Adv. Rep. 27 (CA 1, 10/17/00)**

During a home invasion, Samano ordered a woman to control her two-year-old son who was wandering around. Samano was convicted of kidnapping the child and the sentence was enhanced for being a dangerous crime against children. The Court of Appeals reversed holding that it was not a dangerous crime against children because Samano did not specifically prey on a child. The essence of the offense was not any form of sexual or drug-related exploitation of a minor, but rather a theft and robbery directed at the child's mother's boyfriend. The dissenting judge would find it is a dangerous crime against children in every kidnapping of a child younger than fifteen.

### **State v. Carlos, 339 Ariz. Adv. Rep. 10 (CA 2, 1/25/01)**

Carlos, a Florence inmate, was charged with stabbing F., another inmate. At the first trial, F. refused to take the witness' oath, twice responding using profanity to the judge's request that he raise his right hand to be sworn. F. also turned his back on the judge and refused to face the attorneys. The trial ended with a hung jury.

At the second trial, the judge refused to allow Carlos to call F. to testify because Carlos could not establish that F. would cooperate as a witness. The Court of Appeals reversed because the trial judge violated Carlos' Sixth Amendment right to compulsory process. The trial judge improperly shifted to Carlos the responsibility of showing F. would cooperate. Instead, the trial judge should have first made a factual inquiry to determine the witness' intentions before precluding Carlos from calling the witness.

The Court of Appeals noted that because F. was an inmate, he was not entitled to the protections of the Victim's Bill of Rights. Therefore, F. had no constitutional right to refuse an interview with Carlos.

### **State v. Hoskins, 339 Ariz. Adv. Rep. 39 (SC, 1/11/01)**

Hoskins and his brother-in-law were convicted of first-degree murder for killing the driver of a Suzuki Samurai that they car-jacked. Hoskins was given the death penalty. The sole aggravating factor was pecuniary gain for taking the vehicle.

A prosecution witness testified at trial that he knew Hoskins because they had been arrested together while making a "beer run." This improperly admitted evidence of a prior bad act, but the Arizona Supreme Court held it was harmless error.

Hoskins argued it was unconstitutional to deny him the right to a jury during the sentencing process in a capital case. The Arizona Supreme Court stated, "we have considered and rejected this argument and see no reason to depart from this settled area of law ... the issue was similarly resolved by the Supreme Court of the United States in *Walton v. Arizona*." A footnote states that *Apprendi v. New Jersey*, which required a jury for sentence enhancement, was not briefed in this case. "Accordingly, until the Arizona death penalty statutes are fully analyzed under *Apprendi* and a final determination is made by the Supreme Court, this court remains bound by *Walton*."

Hoskins argued there should have been a finding of the statutory mitigating factor of mental impairment because he had an antisocial or borderline personality disorder. The Arizona Supreme Court held there must be significant impairment and proof of actual causation between the impairment and the criminal act and that antisocial and borderline personality disorders are simply conduct disorders and are not mental illnesses. Therefore, it was found that the disorders did not support a statutory claim of significant impairment. It was further held that the disorders could not even support mental impairment as a nonstatutory mitigating factor because there was no proof of "any causal nexus between the disorder and the killing."

The Arizona Supreme Court stated that "good conduct during incarceration adduces a positive reaction, but does not ordinarily warrant a reduction in sentence." It was held that because of the nature of the murder, Hoskin's good behavior in prison could not be given any weight as a mitigating factor.

**DISSENT:** Two justices felt there was reasonable doubt on the sole aggravating factor of pecuniary gain. Pecuniary gain existed if the murder was committed in the course of or in furtherance of a robbery such as a car-jacking. Such

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## Arizona Advance Reports

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conduct would also constitute felony murder. However, only three of the jurors voted for felony murder. Nine of the jurors voted for premeditated murder only. Thus, the dissenters conclude that nine jurors had reasonable doubt that pecuniary gain was involved in the murder

The dissenters also found there was improper sentencing disparity because the co-defendant received a natural life sentence. His “involvement in this crime was at least equal to that of the defendant.”

The dissenters also felt Hoskin’s “horrific” childhood could have caused his antisocial or borderline personality disorders. Therefore, his “mental abnormalities” were linked to his dysfunctional family background and affected his ability to control his actions. Accordingly, Hoskins established by the required preponderance of the evidence, the nonstatutory mitigating factor of mental impairment.

“The death penalty should not be imposed in every capital murder but should be reserved for cases where either the manner of the commission of the offense or the background of the defendant places the crime ‘above the norm of first-degree murders.’” The dissenters would have sentenced Hoskins to natural life because of his age, emotional immaturity, extremely dysfunctional family background, mental impairment, and the fact “the only aggravator, pecuniary gain, is at least in question.”



## GUIDELINES FOR SUBMISSION OF ARTICLE FOR PUBLICATION

Articles should be submitted  
by the 5<sup>th</sup> of each month.

- ◆ 1 Inch Margin – Left, Right, Top, Bottom
- ◆ Times New Roman 10 Point Font
- ◆ Single Space with Full Paragraph Justification
- ◆ Leave a blank line between each paragraph (as opposed to indenting the first line of a new paragraph)
- ◆ Quotes should be indented only .5 inches on the left and right
- ◆ Do not use section breaks, page breaks or dual column
- ◆ Do not be concerned with widow/orphan control as page breaks will change in newsletter format
- ◆ Include citations within text of article (as opposed to using endnotes/footnote)
- ◆ Use italics when citing legal authority (as opposed to underlining)

These settings will differ from those that would normally be used in formatting a paper. Because articles need to be formatted for newsletter publishing, any formatting other than the specifications set forth above will need to be removed. Removing formatting can be a time intensive process so please follow these guidelines in submitting any articles. If you will use the article for publication or presentation elsewhere and want to format the article for that purpose, please save your article for submission to *for The Defense* as a separate document prior to applying any additional formatting. Thank you for your cooperation.

## ***BULLETIN BOARD (Continued)***

### **NEW SUPPORT STAFF**

**Iman Soliman** has been hired as a part-time Law Clerk for the Public Defender Mesa Juvenile office, effective January 22, 2001.

**Sophia A. Rosales** has been hired as a Public Defender Client Services Assistant, effective January 29, 2001.

**Denise A. Coleman-Jokic** has been hired as a Records Processor, effective February 12, 2001.

**Tina Bahe** has returned to the office and has accepted the 8th Floor Legal Secretary Floater position, effective February 19, 2001.

**Sonya Carnero** has been hired for the Trial Group B Trainee position, effective February 20, 2001.

**Amanda Knight** has accepted the position of 10th Floor Trainee, effective Monday, February 26, 2001.

**Ryan Sanchez**, Trainee, has accepted the Trial Group E Trainee position with the Office, effective February 26, 2001.

**Taylor Goin** will join the Office as a Legal Assistant assigned to Trial Group D effective March 12, 2001.

**Karen J. Geary** will join the Office as a Legal Assistant assigned to Trial Group C in Mesa, effective March 19, 2001.

### **SUPPORT STAFF MOVES/CHANGES**

**Doris Jeanne Roberts**, DFM for Trial Group A, was promoted to Legal Secretary for Trial Group A, effective February 19, 2001.

**Vanessa G. Villa**, Records Processor, has been promoted to Designated File Manager for Trial Group B, effective March 5, 2001.

**Christine Orabuena**, Office Aide for Trial Group E, has accepted the Designated File Manager for Trial Group A position, effective March 5, 2001.

**Julien Jones**, Law Clerk assigned to Trial Group C, has resigned his position with the Office of the Public Defender, effective Friday, January 19, 2001.

**Lupe Mares**, DFM for Trial Group B, has resigned her position with the Office effective February 2, 2001.

**Falissa M. Ramirez**, Records Processor, has resigned her position with the Office, effective February 2, 2001.

**Kathleen Wilmer**, Legal Assistant assigned to Trial Group D, has resigned from her position with the Office, effective January 25, 2001.

**Chris Jones**, Office Aide for Administration, concluded his temporary assignment with this department, effective February 1, 2001.

**Stephanie Medina**, Office Aide for Trial Group B, has resigned her position with the Office, effective February 7, 2001.

**Michelle Wood**, part-time, Legal Secretary Floater, has resigned from her position with the Office, effective February 12, 2001.

**Deborah R. Rosiek**, Legal Assistant and Law Clerk Supervisor, has resigned her position with the Office, effective February 16, 2001. Deborah began her career with this department on May 5, 1997 as a Legal Assistant. Deborah was promoted to Legal Assistant and Law Clerk Supervisor on March 23, 1998.

**Leah Fillbach Lenzendorf**, Law Clerk assigned to Trial Group B, has resigned her position with the Office, effective Friday, February 16, 2001.

**Chantilly Little**, Client Services Coordinator assigned to Trial Group C in Mesa, has resigned from her position with the Office, effective February 23, 2001.

# JANUARY 2001 JURY AND BENCH TRIALS

## GROUP A

Dates: Start-Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/9-1/9	<b>Reinhart/Davis</b> <i>Jaichner</i>	Padish	Beresky	CR99-00646 PODD, F4; PODP, F6	Guilty	Jury
1/10 – 1/10	<b>Looney</b> Barwick <i>Jaichner</i>	Schwartz	Mueller	CR00-10596 2 cts. Agg. DUI, F4; PODD, F4	Pled to 1 <sup>st</sup> time Misdemeanor DUI	Jury
1/11-1/11	<b>Valverde</b>	Padish	Cohen	CR00-14548 Burglary, F3	Dismissed day of trial	Jury
1/11-1/16	<b>Hernandez</b>	Padish	Cohen	CR00-13039 Agg. Assault Dangerous with one prior while on probation, F3	Not Guilty	Jury
1/16-1/17	<b>Reece</b>	Heilman	Duvendack	CR00-10018 Sale of Narcotics, F2	Not Guilty	Jury
1/17-1/19	<b>Hernandez</b>	O'Toole	Hunt	CR00-14094 Agg. Assault w/one prior, F3D MIW with one prior, F4	Not Guilty of Agg. Assault Guilty of MIW	Jury
1/17-1/22	<b>Knowles</b>	McClennen	Simpson	CR00-13166 Agg. DUI, F4	Mistrial	Jury
1/23-1/24	<b>Looney/Davis</b>	McVey	Pittman/ Horn	CR00-15611 2 cts. Indecent Exposure to Minor, F6 Indecent Exposure, M1 Public Sexual Indecency, M1	Guilty	Jury
1/29-1/29	<b>Valverde</b>	Padish	Duvendack	CR00-14255 POND for Sale, F2; MIW, F4; POM, F6	Dismissed day of trial	Jury
1/29-1/29	<b>Valverde</b>	Akers	Fish	CR00-015407 Theft Means of Transportation, F3	Dismissed day of trial	Jury
1/30-1/31	<b>Valverde</b>	Gottsfeld	Fish	CR00-17217 Burglary, F3 Robbery, F4	Guilty of lesser included Criminal Trespass, F6 Guilty of Robbery	Jury
1/30-2/1	<b>Farney</b>	Padish	Hunt	CR00-16733 Agg. Assault, F4 Kidnapping w/2 prior felony convictions and while on probation	Not Guilty of Kidnap Guilty of Agg. Assault	Jury
1/31-1/31	<b>Knowles</b>	Oberbillig	Blumenreich	CR00-13959 4 cts. Theft of Credit Card, F5 Theft with 2 priors, F4	Dismissed w/prejudice after suppression of confession day of trial	Jury
1/31-1/31	<b>Cotto</b>	Schwartz	Blumenreich	CR00-17309 Robbery, F4 with a prior	Dismissed day of trial	Jury

## GROUP B

Dates: Start-Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/2/01	<b>Noble</b> Muñoz	Martin	Baca	CR00-13032 Agg. Assault, F3	Dismissed Day of Trial	Jury
1 /4 - 1/10	<b>LeMoine</b> Erb	Galati	Sorrentino	CR00-15145 Sexual Assault, F2; Kidnap, F2	Not Guilty	Jury
1/8	<b>Primack</b> Muñoz <i>Wells</i>	Wilkinson	Charnell	CR00-14843 Agg. Assault, F3D; Kidnapping, F2D Armed Robbery, F2D; Burglary Dang, F2D	Dismissed Day of Trial	Jury
1/10 – 1/17	<b>Agan</b>	McClennen	Horn	CR00-08512 3 cts. Child Molest, F2; Sexual Abuse, F3	Child Molest-Guilty all counts; Sexual Abuse - Dismissed	Jury
1/22 – 1/23	<b>Whelihan</b>	Gottsfeld	Kuhl	CR00-13602 Agg. Assault on Police Officer, F6	Not Guilty	Jury
1/22 – 1/24	<b>Noble</b> King	Padish	Davis	CR00-15370 Agg. Assault on Police Officer, F6 Resisting Arrest, F6 Interference w/ Judicial Proceeding, M1	Agg. Assault on Police Officer – Not Guilty All other counts – Guilty	Jury
1/30	<b>DeWitt</b>	McVey	Kuhl	CR00-08952 POM, F6	POM-Guilty as M1	Bench
1/31	<b>Whelihan</b>	Hilliard	Gellman	CR00-14459 Agg. DUI, F4	Guilty	Jury

## JANUARY 2001 JURY AND BENCH TRIALS

### GROUP C

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/2 – 1/4	<b>Shell</b>	Barker	Weinberg	CR00-093926 2 cts. Agg DUI/F4N 2 cts. Agg DUI w/p/F4N	Guilty on all counts	Jury
1/3 – 1/3	<b>Antonson</b>	Keppel	Bennink	CR00-092787 Agg Crim Dam/F6N	Pled on day of trial	Jury
1/4 – 1/4	<b>Hamilton/Ramos</b> Arvanitas	Padish	Udall	CR00-091984 Poss/Use ND/F4N	Not Guilty	Jury
1/9 – 1/10	<b>Shell</b>	Oberbillig	McCoy	CR98-093413 Agg DUI w/2 Priors/F4N Agg Dr. BAC over .10 or greater/F4N	Guilty on both cts.	Jury
1/9 – 1/11	<b>Little/Logsdon</b>	Barker	Griblin/Andrews	CR00-093860 Theft Means of Transportation/F3N	Not Guilty	Jury
1/10 – 1/17	<b>Davis</b>	Jarrett	Wilson	CR99-095674 3 cts. Child Abuse/F5N	Not Guilty	Jury
1/23 – 1/24	<b>Rossi</b>	Fenzel	Weinberg	CR00-092096 2 cts. Agg DUI/F4N	Guilty on both cts.	Jury
1/24 – 1/29	<b>Fox/Ramos</b> Kresicki McMullen	Fenzel	Gonzalez	CR00-092168 2 cts. Agg DUI/F4N	Guilty on both cts.	Jury
1/29 – 1/30	<b>Zazueta</b> Moncada	Bollinger	Wilson	CR00-094642 Agg Assault/F6N	Guilty	Jury

### OFFICE OF THE LEGAL ADVOCATE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/3	<b>Logan</b> Cano	Hall	Simpson	CR 2000-011394 Agg. Aslt. F3D Endang. F6D	Pled day of trial	Jury
1/8	<b>Storrs</b>	Hall	Hanlon	CR99-016470 CR99-016471 Poss DD for sale, poss. Drug para., att poss. DD for sale, misconduct involving weapons,	Pled day of trial	Jury
1/8	<b>Mackey</b>	Hall	Lamm	CR2000-015688 Agg Aslt	Mistrial	Jury
1/14	<b>Eaton</b>	Gottsfeld	Fuller	CR2000-014769 Burglary	Guilty	Jury
1/15	<b>Logan</b>	Gottsfeld	Mitchell	CR2000-103965 Agg Robbery	Dismissed day of trial	Jury
01/17	<b>Logan</b>	Hall	Greer	CR 97-10568 Murder first degree, 3cts intentional child abuse, forgery, false info	1 ct Child abuse, forgery and false info dismissed Guilty murder 2 <sup>nd</sup> and 2 cts Reckless child abuse	Jury
1/22	<b>Storrs</b>	Gerst	Anagnopoulos	CR2000-005244 Burglary	Dismissed. Civilian witness fta d.	Jury
1/29	<b>Storrs</b>	Wilkinson	Anagnopoulos	CR2000-006601 Theft	Dismissed. Civilian witness fta d.	Jury

# JANUARY 2001 JURY AND BENCH TRIALS

## GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
11/4-11/15	<b>Eskander / Berko</b>	Hillman	Anagnopoulos	CR00-010608 Disorderly Conduct, F6	Mistrial	Jury
12/15	<b>Eskander</b>	Goodman	Edwards	CR99-05520A-MI IJP	Not Guilty	Bench
1/4	<b>Eskander</b>	McVay	Vignelli	MCR99-00559 IJP	Not Guilty	Bench
1/8	<b>Parker</b>	Akers	Hicks	CR 99-12992 1 <sup>st</sup> Degree Murder	Dismissed w/o Prejudice	Jury
1/8	<b>Cuccia / Enos</b>	Cole	Anagnopoulos	CR 00-006754 Agg. Assault, F3; Resisting Arrest, F6	Agg. Assault-Not Guilty Resisting Arrest-Guilty	Jury
1/9	<b>Kibler</b>	Budoff	Greer	CR 00-004410A Kidnap, F2; Child Abuse, F4	Guilty Lesser Included – Unlawful Imprisonment, F6	Jury
1/10	<b>Radovanov</b>	Donahoe	Naber	CR00-015450 Burglary 2, F3; Theft, F6	Dismissed Day of Trial w/o Prejudice	Jury
1/11	<b>Falduto</b>	Dougherty	Morton	CR99-02113 Agg DUI	Plead to M-D Day of Trial	Jury
1/16	<b>Falduto Bradley</b>	Gerst	Reddy	CR00-013367 CR00-010592 Theft of Means; Unlawful Use	Plead Day of Trial to Theft of Means, Dismissed Unlawful Use of Means of Trans.	Jury
1/16	<b>Wallace</b>	Gerst	Eaves	CR 00-011339 Agg Assault, F3D	Dismissed Day of Trial	Jury
1/17	<b>Cain</b>	Winer	Denney	TR00-06881 MD DUI	Guilty	Jury
1/16-1/17	<b>Harris</b>	Cole	Larish	CR00-13607 POND, F4; PODP, F6	Guilty	Jury
1/18	<b>Wallace</b>	Dougherty	Bernstein	CR 00-011768 Agg Assault. F3D	Plead day of trial to class 6 designated Stip. Probation	Jury
1/17-1/19	<b>Eskander / Berko</b>	Gottsfeld	Reddy	CR00-012711 Burglary 3, F4; Theft, F6	Not Guilty	Jury
1/22-1/22	<b>Stazzone</b>	Cole	Ronald	CR99-03918 Agg. Assault, F3	Plead day of trial to M1	Jury
1/22-1/22	<b>Eskander</b>	Dougherty	Anagnopoulos	CR00-012450 Theft, F6; PODD, F4; PODP, F6	Plead to one charge mitigated term day of trial	Jury
1/22-1/22	<b>Elm / Reid</b>	Fletcher	Vignelli	MCR00-010804 Cruel Neglect, M1; Cruelty to animals, M1	Dismissed w/o Prejudice	Bench
1/23	<b>Falduto</b>	Budoff	Kozinets	CR00-014428 Forgery, F4	Dismissed w/Prejudice day of trial	Jury
1/23-1/24	<b>Harris</b>	Myers	Neugebauer	CR00-12223 2 cts. Agg DUI	Guilty	Jury
1/29/01	<b>Radovanov</b>	Goodman	Agra	TR00-014655 DUI, M1	Dismissed w/o Prejudice	Jury
1/30	<b>Falduto</b>	Perris	Agra	TR00-00404 M-D DUI	Not Guilty	Jury
1/30-1/30	<b>Reid / Silva</b>	Budoff	Hipps	CR00-15441 Resisting Arrest, M1	Guilty	Bench
1/31	<b>Kibler</b>	Gerst	Ronald	CR 00-017209 Resist Ofcr/Arrest, F6; Agg Assault, F6	Guilty – Resist Arrest Dismissed – Agg Assault	Jury

## COMPLEX CRIMES UNIT

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/16 – 2/1	<b>Gavin / Moore, L.</b> Thomas <i>Southern</i>	Keppel	Imbordino	CR98-091481 Murder 1, F1D Arson of Occupied Structure, F2D Criminal Damage, F4N	Retrial Guilty of Murder 2 Dangerous and Guilty of Arson and Criminal Damage	Jury

## JANUARY 2001 JURY AND BENCH TRIALS

### GRUPE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/4 - 1/23	<b>Kent / Smiley</b> Reilly Bowman	Jones	Parsons / Johnson	CR00-01986 9 cts. Sex. Cndt. w/min., F2DCAC Molest, F2DCAC 2 cts. Child Abuse, F3&4 2 cts. Sex Abuse, F3DCAC	Hung - 9 cts. Sex. Cndt./w min. & Molest (hung ct. not known); Dismissed before trial - 1 ct. child abuse; Guilty 1 ct. child abuse; Guilty both cts. Sex abuse	Jury
1/8 - 1/19	<b>Richelsoph</b>	Reinstein	Gellman	CR00-13477 Agg. DUI, F4 Leaving Scene, M3	Guilty both counts	Jury
1/11	<b>Flynn</b> Reilly	Cole	David	CR00-16108 Agg. Assault, F3D Crim. Dam., M2 Assault, M1	Pled day of trial to Att. Agg. Assault, F4	Jury
1/11 - 1/16	<b>Rock</b>	Reinstein	Kay	CR00-01995 Burglary, F4	Guilty	Jury
1/16	<b>Dergo</b>	Hall	Mayer	CR00-03788 Impt./Trsp. Nrc. Drg. F/S, F2	Dismissed - Rule 8	Jury
1/16 - 1/23	<b>Flynn</b>	Araneta	Robinson	CR00-09992 PODD F/S, F2; POM, F6 PODP, F6; MIW-Prohib. Poss., F4 MIW - Drug Offense, F4 Transport Dang. Drug F/S, F2	Guilty PODD, F4 (lesser included); Guilty POM; Guilty PODP; Dismissed MIW - Prohib. Poss.; Not Guilty MIW-Drug Offense; Hung (6- 2) Transp. Dang. Drug	Jury
1/16 - 1/24	<b>Walker</b> Souther	Galati	Lamm	CR00-15190 3 cts. Agg. Assault, F3	Guilty Cts. 1 & 2 Not Guilty Ct. 3	Jury
1/17	<b>Richelsoph</b>	Reinstein	Simpson	CR00-14126 POM, F6 PODP, F6	Dismissed w/o prej. day of trial (after evidence suppressed)	Jury
1/22	<b>Rock</b> Souther	Reinstein	Hanlon	CR00-14827 Arm. Robb., F2D	Dismissed w/o prej.	Jury
1/22 - 1/23	<b>Goldstein</b> Castro	Gerst	Simpson	CR00-13788 Agg. Assault, F6	Guilty	Jury
1/23- 1/26	<b>Ackerley</b>	McClennon	Rodriguez	CR00-10373 2 cts. Armed Robbery, F3	Guilty both counts	Jury
1/24	<b>Goodman</b>	Orcutt (E#2 J.C.)	Baker	CR0-0732MI IJP	Not Guilty	Bench
1/24 - 1/25	<b>Flynn</b> Romborg	Schneider	Knudsen	CR00-15996 Forgery, F4	Not Guilty	Jury
1/26	<b>Squires</b>	Jones	Pierce	CR00-14086 Theft, F3	Dismissed w/prej. day of trial.	Jury
1/29 - 1/30	<b>Goldstein</b>	Jones	Parsons	CR00-12618 Child Molest, F2DCAC Sex Abuse Under 15, F3DCAC	Pled on 2 <sup>nd</sup> Day of Trial	Jury
1/30	<b>Dergo</b> Gotsch	Yarnell	Simpson	CR00-15008 2 cts. Drv. Under Fin. Res. Sus., F4	Pled Day of Trial to 1 Ct	Jury
1/31 - 2/1	<b>Pajerski / Kent</b> Reilly	Kaufman	Hanlon	CR00-12190 Agg. Assault, F3	Hung (7-1 NG)	Jury

### OFFICE OF THE LEGAL DEFENDER

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
1/5 -1/12	<b>Cleary</b> Horrall/Otero Williams	Schwartz	Stevens	CR2000-02604 1° Murder, F1 Dangerous 1° Attempted Murder, F2 Dangerous	Guilty	Jury
1/25-1/29	<b>Dupont</b>	Schwartz	Aubuchon	CR2000-02656 Criminal Damage, F4	Plea Agreement during trial inclusive of pending indictment	Jury
1/31-1/31	<b>Patton</b> Reger	Akers	Kamis	CR2000-08276 Possession of Narcotic Drugs, F4 Possession of Drug Paraphernalia, F6	Guilty	Bench



## The Courthouse Experience

Each year, the Maricopa County Superior Court recruits attorneys to participate in "The Courthouse Experience" program. It is designed to give students in sixth through twelfth grades a positive, firsthand experience with lawyers and the court system. During the last ten years, your peers have helped more than 49,000 students in Maricopa County to gain a better understanding of the courts and the legal profession through this program.

Your help is needed to continue the success of "The Courthouse Experience." The program needs attorneys to volunteer to meet with students. All it takes is 2½ to 3 hours of your time for at least one morning of the school year. Attorney volunteers will be matched with a valley school to take students through the downtown courthouse. Attorneys who choose to participate will typically take students to observe a criminal morning calendar or trial. After court, the attorney conducts a question and answer session to discuss what the students observed and explain basic principles of the legal system.

For further information on how you can volunteer and play a part in this wonderful program, contact "The Court Experience" office in Court Administration as follows:

**Helen H. Cahill**  
**Program Coordinator**  
**The Courthouse Experience**  
**(602)506-3206**  
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*for The Defense*

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