



# for The Defense

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

## Due Process and the Effective Use of Interpreters

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### By Suzanne Sanchez Defender Attorney

An accused who is unable to speak and understand English to the degree necessary to participate in his defense has the due process right to the assistance of an interpreter.<sup>1</sup> In order to comport with the requirements of due process, courtroom interpretation at “crucial hearings,” including sentencing, must be simultaneous.<sup>2</sup> If simultaneous interpretation does not occur, “[i]t would be as though a defendant were forced to observe the proceedings from a soundproof booth or seated out of the hearing at the rear of the courtroom.”<sup>3</sup> Thus, simultaneous interpretation is

essential to the accused’s “right to be present at every stage of a trial.”<sup>4</sup>

If the accused is indigent, the government must bear the cost of the interpreter.<sup>5</sup> Thus, “[t]he appointment of an interpreter is a proper county expense, not to be deducted from the remuneration accorded court-appointed counsel.”<sup>6</sup> The role of the interpreter is not to give an advantage to either side, but to “place the non-English speaker, as closely as is linguistically possible, in the same situation as an English speaker in a legal setting.”<sup>7</sup>

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## Incorrigible Juveniles in the Context of the Public Defender Enabling Statute

### By Art Merchant Juvenile Durango Supervisor

Over the past year, the Juvenile Division of the Public Defender’s Office has been inundated with numerous appointments to represent incorrigible children. Incorrigible acts are status offenses; these acts can only be committed by juveniles. Examples of such acts are truancy, running away, curfew violations, disobedience to

parents and/or guardian, etc. These cases are extremely time consuming, and because of the numerous filings of incorrigible cases, both juvenile divisions of the Public Defender’s Office have been struggling to handle them.

The attorneys of the Juvenile Division do not believe that we should be appointed to these cases under the law. The Juvenile Division’s approach to the incorrigible

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*for The Defense*  
 Editor: Russ Born  
 Assistant Editors:  
 Jeremy Mussman  
 Keely Reynolds  
 Office: 11 West Jefferson  
 Suite 5  
 Phoenix, AZ 85003  
 (602)506-8200  
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## The Importance of a Certified Interpreter

It is a “misconception that if an individual is bilingual he can interpret ... .”<sup>8</sup> “Lay persons commonly believe that anyone who is ‘good with language’ or who ‘speaks another language perfectly’ will be able to interpret accurately in legal settings. Nothing could be further from the truth.”<sup>9</sup>

“Bilingualism is relative rather than absolute.”<sup>10</sup> An interpreter must “transfer all of the meaning he or she hears from the source language into the target language ... .”<sup>11</sup> “This task demands conserving the language level, style, tone, and intent of the speaker.”<sup>12</sup> Thus, a qualified interpreter needs to be able to understand and instantaneously interpret technical legal terms, slang, profanity, and precise connotations and grammatical structures.<sup>13</sup>

Moreover, simultaneous interpretation is a learned skill.<sup>14</sup>

To grasp the nature of the skill required in consecutive interpretation, try reading the following sentence and simply repeating it in English to yourself, without looking at the text. “Well, uh, the thing is, like I told you, me and Joe and Rick had a couple, well maybe more than a couple, say four, I guess, beers apiece before the cops got there, but that was after we had had two scotch and sodas, and two, no one, or was it two, well a couple of margaritas at the bar on 5<sup>th</sup> and Folsom.”<sup>15</sup>

Furthermore, the interpreter must be able to listen and speak at the same time.<sup>16</sup>

Thus, an effective interpreter must have advanced linguistic skills and the ability to interpret simultaneously. A certified court interpreter has passed a test, indicating possession of these requisite qualifications. Use of an unqualified interpreter compromises due process.

## Challenging the Unqualified Interpreter

Interpreters are presumed capable.<sup>17</sup> It is the defense’s burden to show that an interpreter is unqualified.<sup>18</sup> The defense may inquire about an interpreter’s

qualifications.<sup>19</sup> Rule 604, Arizona Rules of Evidence, provides that “[a]n interpreter is subject to the provision of these rules relating to qualifications as an expert and the administration of an oath or affirmation to make a true translation.” Thus, pursuant to Rule 702, the defense can inquire as to whether the interpreter is “qualified as an expert by knowledge, skill, experience, training, or education ... .”<sup>20</sup>

## The Need for a Second Interpreter

In appropriate situations, defense counsel should anticipate the need for a second interpreter, and request one. During court proceedings, the accused needs to be able to confer with counsel. The sharing of an interpreter interferes with, or even prevents, such consultation. For example, the sharing of an interpreter by codefendants inhibits effective communication with counsel and is reversible error.<sup>21</sup>

The best procedure is to use two interpreters in multi-defendant proceedings with an electronic sound system. Thus, one interpreter interprets the proceedings through a closed circuit electronic transmission system, and all the defendants listen by means of individual headphones. This procedure also ensures a uniform interpretation. The other interpreter, who should be seated at counsel table, will assist in communication between client and counsel during the proceedings.<sup>22</sup>

In addition, the court violates the accused’s right to due process when it borrows the accused’s interpreter for interpretation of the testimony of witnesses.<sup>23</sup> Therefore, when both the accused and a codefendant or witness require an interpreter, the accused has the due process right to a second interpreter.

## Additional Considerations

Most people in Maricopa County who require an interpreter speak Spanish. Without intending to cause problems, attorneys often ask for the spelling of Spanish names.

Beware of asking Spanish speakers to spell words, even their own names. Spanish is a very phonetic, regular language so Latin

Americans are not routinely drilled in school in spelling aloud, as students are in this country. As a result, even highly educated Spanish speakers will have difficulty spelling aloud with ease. If they see their names written, they can readily confirm the spelling.<sup>24</sup>

Beware also of ambiguous subject pronouns.<sup>25</sup> “[I]n Spanish, the possessive pronoun ‘su’ may refer to ‘your,’ ‘his,’ ‘hers,’ ‘its,’ or ‘their.’”<sup>26</sup> Questions, and resulting answers, containing ambiguous subject pronouns, can create confusion that damages credibility.<sup>27</sup> “Lawyers and interpreters cannot always foresee every linguistic trap, but the more context an interpreter has, the more avoidable these become.”<sup>28</sup>

Bear in mind that cultural, as well as linguistic, differences can affect testimony. For example, “[c]oncepts of time and distance vary from culture to culture. It should not be assumed that a witness is trying to be evasive or vague when he doesn’t answer questions with the same precision expected from someone in this culture.”<sup>29</sup>

It also should not be assumed that a witness who repeats the question is trying to be evasive. “Spanish speakers often repeat the question before responding.”<sup>30</sup> A listener who does not realize this may assume that the speaker is trying to stall or is “exhibiting flippant or sarcastic behavior.”<sup>31</sup>

Interpreters can be more effective if they know what to expect. Interpreters are required to maintain confidentiality.<sup>32</sup> Thus, it will help, not harm, your client to inform the interpreter about the nature of the case. For example,

[w]hen expert testimony is given by forensic doctors or ballistic experts, it is essential that interpreters be provided with a copy of their depositions or their reports ahead of time, if available. Interpreters are expected to handle vast vocabularies in both languages; but only a small percentage of these words spring immediately to mind. While interpreters know the most frequently used expressions in certain areas of expert testimony, they don’t have every equivalent on the tip of their tongues; for that, they need to study the

subject matter ahead of time because arcane or specialized testimony remain in the “hard disk” area of the brain, not in short term memory.<sup>33</sup>

Thus, preparing the interpreter decreases the chance of miscommunication.

## Conclusion

Representation of clients who speak no English, or limited English, includes effective use of interpreters. Effective use of interpreters means insisting upon a qualified interpreter, requesting a second interpreter when appropriate, and maximizing the opportunity for accurate interpretation.

## Endnotes

1. *State v. Natividad*, 111 Ariz. 191, 194, 526 P.2d 730, 733 (1974).
2. *State v. Hansen*, 146 Ariz. 226, 232, 705 P.2d 466, 472 (App. 1985).
3. *Natividad*, 111 Ariz. at 194, 526 P.2d at 733.
4. *Id.*
5. *Id.* at 193, 526 P.2d at 732.
6. *State v. Rios*, 112 Ariz. 143, 144-45, 539 P.2d 900, 901-02 (1975).
7. R. Gonzalez, V. Vasquez, & H. Mikkelson, *Fundamentals of Court Interpretation*, 155, 242 (1991).
8. Claus, *Court Interpreting: Complexities and Misunderstandings*, Alaska Justice Forum, 13(4), 1 (Winter, 2000).
9. Framer, *Through the Eyes of an Interpreter*, The Advocate, 23(3) (May 2001).
10. Claus, *supra*.
11. Gonzalez, *supra*, 155.
12. *Id.*
13. Claus, *supra*, 2.
14. *Id.*
15. *Id.*
16. *Id.*
17. *State v. Navarro*, 132 Ariz. 340, 343, 645 P.2d 1254, 1257 (App. 1982).
18. *State v. Rios*, 112 Ariz. at 144, 539 P.2d at 901.
19. *State v. Mendoza*, 181 Ariz. 472, 475, 891 P.2d 939, 942 (App. 1995).
20. *State v. Burris*, 131 Ariz. 563, 568, 643 P.2d 8, 13 (App. 1982) (quoting Rule 702, Arizona Rules of Evidence).
21. *People v. Resendes*, 210 Cal.Rptr. 609 (1985).
22. Gonzalez, *supra*, 171.
23. *People v. Aguilar*, 35 Cal.3d 785 (1984).
24. Claus, *supra*, 4.
25. Picado, *An Attorney’s Primer: Working with Interpreters*, Proteus, IX, 1-2, 1 (Winter-Spring 2000).
26. *Id.*
27. *Id.*
28. *Id.*
29. Claus, *supra*, 4.
30. Gonzalez, *supra*, 242.
31. *Id.*
32. *Id.* at 475.
33. Picado, *supra*, 1.



## Incorrigible Juveniles

*Continued from page 1*

juvenile issue is to insure we are not appointed initially or we are withdrawn from those cases where we were appointed.

A review of the statutes applicable to the appointment of our office, shows that across the board appointment of the public defender on all of these cases is inappropriate. The Public Defender enabling statute, A.R.S. § 11-584(A)(1)(f) states, in part:

The Public Defender shall perform the following duties:

1. Upon order of the Court, defend, advise and counsel without expense to the defendant, subject to the provisions of subsection B of this section, any person who is not financially able to employ counsel in the following proceedings:

...

(f) juvenile delinquency and incorrigibility proceedings **only** when appointed by the court under A.R.S. § 8-221. (emphasis added)

A.R.S. § 8-221(A), in turn, provides:

In all proceedings involving offenses, dependency or termination of parental rights that are conducted pursuant to this title and that **may result in detention**, a juvenile has the right to be represented by counsel. (emphasis added)

Section (B) states:

If a juvenile, parent or guardian is found to be indigent and entitled to counsel, the juvenile court shall appoint an attorney to represent the person or persons unless counsel for the juvenile is waived by both the juvenile and the parent or guardian.

Before July 21, 1999, A.R.S. § 8-221, the right to counsel statute, was found in A.R.S. § 8-225(A). Prior

to 1997, A.R.S. § 8-225(A) read:

In all proceedings conducted pursuant to this title and the Rules of Procedure for the Juvenile Court, a child has the right to be represented by counsel.

In 1997, A.R.S. § 8-225 was amended to read “in all proceedings involving offenses that are conducted pursuant to this title and that may result in detention, a juvenile has the right to be represented by counsel.”

In 1999, A.R.S. § 8-225 was renumbered to A.R.S. § 8-221 with a textual change that read: “In all proceedings involving offenses, dependency or termination of parental rights that are conducted pursuant to this title and that may result in detention, a juvenile has the right to be represented by counsel.”

The critical point is the textual change of the language from A.R.S. § 8-225 to A.R.S. § 8-221. Prior to 1997, § 8-225 meant a juvenile could be appointed a public defender in all proceedings in the Juvenile Court, including status offenses. But the change in the language in the 1997 amendment to A.R.S. § 8-225, stating that in “all proceedings involving offenses that are conducted pursuant to this title and that **may result in detention**, a juvenile has the right to be represented by counsel,” (emphasis added) demonstrates that the legislature intended to distinguish delinquency acts from incorrigible acts. The statutory change reflects the intent of the legislature. A juvenile is entitled to counsel only if he is facing a proceeding that “may result in detention.” The definition of “result” from Webster’s New World Dictionary, is “to end as a consequence.” A disposition in Juvenile Court is a consequence and incorrigibles cannot be detained as part of a disposition. (A.R.S. § 8-341).

A.R.S. § 8-341 refers to the type of dispositions that can be imposed on delinquent and incorrigible children. Under A.R.S. § 8-341, an incorrigible child may not be committed to the Juvenile Department of Corrections, nor may an incorrigible child be incarcerated in detention as part of a disposition. *In the Matter of Gila County Juvenile Action 6325*, 169 Ariz. 47, 816 P.2d 944 (App. 1991). The change in the language from the original A.R.S. § 8-225 prior to 1997, through its subsequent amendment in 1997 and

*(Continued on page 5)*

through its renumbering to A.R.S. § 8-221 in 1999, establishes the legislative intent that incorrigible children are not entitled to representation by counsel. To say otherwise is a *non sequitur* because the legislature would have left the wording as originally stated in A.R.S. § 8-225 prior to 1997.

A.R.S. § 8-225, prior to 1997, indicated that the legislature wanted juveniles, whether delinquent or incorrigible, to have representation if they were indigent. However, the changes that came subsequent, in A.R.S. § 8-225 and then in A.R.S. § 8-221, clearly establish that incorrigible children are not included for representation because they cannot be detained as part of a disposition.

A.R.S. § 8-221(B) does say a juvenile court shall appoint an attorney if the juvenile is found to be indigent and entitled to counsel. However, for the juvenile to be entitled to counsel, the juvenile must be subject to detention as a disposition. *See* A.R.S. § 11-584(A)(1)(f), A.R.S. § 8-221(A).

If the Juvenile Court believes it to be appropriate to appoint an attorney to represent an incorrigible child under 8-221(B), the juvenile court has the power to order court-appointed or private counsel. A public defender, however, should not be appointed. *See* A.R.S. § 11-584 (A)(1)(f), 8-221(A).



## HGN

### Horizontal Gaze Nystagmus Follow Up Questions

**By Robert Kresicki**  
**Defender Investigator – Trial Group C**

A few months ago, I read an article written by another investigator on HGN. Quite frankly, I didn't have a clue what HGN is and how in-depth the subject was. I was overwhelmed to the extent of training and competency required by officers in the field. In my 28 years as a Pennsylvania State Trooper, luckily, we relied on our street smarts, training, experience and intoxicizers. As I was reading on, I noticed a reference to checklists for officers, supervisors and others. I was surprised that only a few I talked with knew about these checklists, which are hard to find unless someone shows you where to look. I checked around, and was also surprised to find out that I wasn't the only one with limited knowledge. I showed the checklists to others, and they were as taken aback as I was on how well they were written, how easy they were to understand and how they make complete sense on direct and re-direct.

The checklist covers the full range of questions directed to the officer's training, experience, knowledge, certificates, etc., that would rattle the most experienced veteran. I don't view this as trickery; in fact there are no trick questions. This checklist is designed to qualify the officer's training and experience. I was asked by others where this information is, and why this hasn't been made available sooner (this checklist and others are and have been available). There are other checklists that are available to include SFST (Standard Field Sobriety Test) Instructor, Optometrist, ER Physician and Case Law. So, without further fanfare, the checklist found on the following page includes the 62 questions from the NHTSA manual, appendix H, Predicate Questions for the Arresting/SFST Officer.



## Appendix H: Predicate Questions for the Officer at Trial

### PREDICATE QUESTIONS ARRESTING/SFST OFFICER

1. State your name for the record.
2. Where are you employed?
3. What is your current assignment with the police department?
4. How long have you been assigned to traffic patrol?
5. Were you on duty \_\_\_\_\_(date)?
6. Did you stop a \_\_\_\_\_ (description of car)?
7. When you walked up to the car what did you see?
8. Did you notice anything else about the defendant? (There may be a number of foundation questions or questions surrounding the stop that you want to ask the officer. This list of predicate questions is strictly to assist in admitting the HGN test at trial. You will want to develop your own questions for other areas of examination.)
9. Did you ask the defendant to perform field sobriety tests?
10. What are field sobriety tests?
11. Were you trained in administering these tests?
12. Officer, I want to ask you specifically about a test known as horizontal gaze nystagmus or HGN. Are you familiar with this test?
13. What part of the body are you observing when you give this test?
14. Have you received specific training in the administration of the HGN test?
15. What is HGN?
16. Where did you receive your training in the administration of the HGN test?
17. How many hours of training did you receive?
18. When did you receive this training?
19. Who were the instructors?
20. Was there an alcohol workshop as part of your training?
21. What is an alcohol workshop?
22. So you know at the workshop that people have probably been drinking. Do you know how much an individual has had to drink before you test him/her?
23. Do all of the subjects at the alcohol workshop drink?
24. Do you know before administering the field sobriety tests whether a particular subject has been drinking or not?
25. Other than the alcohol workshops, have you given the HGN test to persons that you knew were sober?
26. Under what circumstances?
27. What differences have you observed in the eye movements of sober persons vs. impaired persons in doing this exercise?
28. When you learned the HGN test, were you required to pass a practical skills examination?
29. Please describe this examination.
30. As a result of your training, did you receive any certificates?
31. From what organization(s) did you receive this certificate?
32. Do you have this certificate here today? (If you wish to have the certificate entered into evidence, be sure to have a photocopy to submit. Have the officer bring the original in case there are questions about

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- authenticity, however, enter the photocopy into evidence. Otherwise, the officer may not get the certificate back for months.)
33. Have you had any additional training in the administration of the HGN test other than that which you have just described?
  34. Please describe that training.
  35. Approximately how many times have you given the HGN test?
  36. Do you keep a log of the times you have administered the HGN test? (This is not required and the officer may not maintain a log. Be sure to check this in advance.)
  37. What is your purpose in maintaining this log?
  38. Officer, based on your training and experience, is the presence of HGN a reliable indicator that a person has consumed alcohol?
  39. Is there a standard way in which the test for HGN should be given?
  40. Please describe the test. (You might offer as demonstrative evidence a videotape of the HGN test. However, some courts may find such evidence too prejudicial.)
  41. What specifically are you looking for when you administer this test?
  42. Did you give the test to the defendant in the same way that you have described?
  43. Did you ask the defendant if s/he understood what s/he was supposed to do?
  44. Did s/he indicate that s/he understood?
  45. Did the defendant have any difficulty in following your directions?
  46. Officer, I would like to ask you about the six clues you previously testified that you are looking for when you give this test. What is the first clue of the HGN test? (Lack of smooth pursuit)
  47. Can you describe for the jury what you mean by a lack of smooth pursuit?
  48. When you gave this part of the test to the defendant, what did you see?
  49. What is the second clue of the test? (Distinct nystagmus at maximum deviation)
  50. How long do you hold the stimulus at the point of maximum deviation?
  51. Why?
  52. When you gave this part of the test, what did you see?
  53. What is the final part of this test? (Angle of onset)
  54. How is this part of the test done?
  55. How do you estimate the angle of onset?
  56. When you gave this part of the test to the defendant, what did you see?
  57. What did your observations of the defendant's performance on this test indicate to you?
  58. In your experience, is there a connection between horizontal gaze nystagmus and the amount of alcohol a person has consumed?
  59. What is that connection? (Be clear before trial that you are not asking the officer to tell you that a specific angle of onset equals a specific BAC. The information you are seeking is that people who have been drinking tend to show nystagmus and the more they have had to drink, the easier the nystagmus is to see. You might even have a judge allow the officer to state that the earlier the angle of onset, the higher the BAC but be careful not to sound as if a numeric correlation is being made.)
  60. Officer, are the clues you saw when you administered the test to defendant indicative of alcohol impairment?
  61. Based on your training and experience, what does the presence of all six clues indicate?
  62. And how many clues did you see when you gave the test to the defendant?

# Surreptitious Tape Recording

**By Donna Elm**  
**Chief Trial Deputy – Downtown**

The victim calls you and wants to talk; you reach for your tape-recorder, but don't want to tell her you are recording for fear of scaring her off. A witness you badly need to impeach starts to change his story when you get him on the phone; you instinctively reach for the record button. You know a particular cop talks more freely "off record," so you direct your investigator to call him and secretly record the discussion. Yet there's a nagging thought in the back of your mind: "Wasn't Linda Tripp just prosecuted for this?" "Is this ethical?"

Your instincts are good, because it isn't legal in many jurisdictions, and it wasn't ethical in Arizona until recently. Under Arizona law, surreptitious recording has never been illegal. However, through the 1970's, the Arizona Bar clearly took a hard stand against secret tapings by attorneys. See State Bar of Arizona Ethics Opinions nos. 176(A), 74-18, and 74-35. Neither attorneys nor their agents (including police acting for the prosecution) could record conversations on the sly. Period.

By the mid-70's, this absolutist policy gave way to four limited exceptions:

- (a) an utterance that is itself a crime, such as a bribe, threat, or extortion;
- (b) a conversation to protect against perjury (a narrow shield *for the lawyer*, but not a general license to grab potential impeachment evidence or inconsistent statements);
- (c) conversations with people under investigation, for lawyer's protection; and,
- (d) recordings specifically authorized by statute or court order. Ethics Opinion no. 75-13.

Two of those exceptions, wiretaps and criminal utterances, don't matter to our daily practice much. The other two, protecting against perjury and for lawyer protection, sounded promising but turned out to be highly restricted. Although these exceptions helped lawyers protect *themselves*, because impeachment use was essentially ruled out, they did not help lawyers protect their clients

much.

In 1990, a more practical rationale was adopted. Recognizing that law enforcement routinely secretly records pre-indictment (but the defense and its agents could not), the State Bar reconsidered its stance. The Bar finally authorized taping to "obtain impeachment material should the testimony of the witness be different at trial." Ethics Opinion no. 90-02. This opened up a vast amount of covert recording *of witnesses* by criminal practitioners.

Witnesses are one thing, but could lawyers secretly tape conversations with each other? Back in 1965, the Bar had prohibited this practice due to the civility factor. Lawyers needed an atmosphere of trust and confidence in dealing with each other, and taping would undermine that (and "weaken the entire structure of our profession"). Ethics Opinion no. 176(A). Given the Bar's liberal trend, in the mid-90's, the issue was revisited. Nonetheless, the Bar remained firm that surreptitious recording *of opposing counsel* "involves an element of deceit and misrepresentation" that does not comport with Arizona's ethical standards. Ethics Opinion no. 95-03. Hence, clandestine recording of counsel remains a no-no.

Recently, the Bar considered another issue in Ethics Opinion no. 2000-04. Though lawyers can record witnesses they are speaking to, and though civilians can record each other willy-nilly (as long as they satisfy federal laws), can lawyers *advise* their clients to record conversations for potential litigation? The Bar noted initially that lawyers cannot advise clients to break the law. While there are no Arizona statutory prohibitions, the federal code states that recording a communication is *not illegal* as long as at least one party to that conversation consents to it. 18 U.S.C. §2511(2)(c,d). Hence an attorney cannot advise her client to record *others'* conversations that the client is not part of. But a lawyers' obligation to give clients meaningful advice about the legality of proposed conduct would require her to explain the law of surreptitious recording to them. In fact, an attorney can advise them of the right to record even when they did not bring it up! Nonetheless, "attorneys may not use third parties to tape record conversations which an attorney ethically cannot tape-record under the prior opinions" discussed above.

What, then, is the current ethical standard? A lawyer or

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his agent (client):

- Can record a witness as long as the lawyer/agent is aware of it;
- *Cannot* record another lawyer (unless that other attorney knows and consents);
- *Cannot* record a conversation where none of the parties are aware of or consenting to the recording;

and

- Can advise a client to record another person, as long as she is not asking the client to do any of the above prohibited acts for her.



## ARIZONA ADVANCE REPORTS

By Terry Adams

### State v. Farley

344 Ariz. Adv. Rep. (CA 1, 4/3/01)

The defendant was convicted of second-degree murder. His defense was justification. On appeal he argues that A.R.S. Section 13-205 (A) which imposes upon a defendant the burden of proving by a preponderance of the evidence any affirmative defense raised, violates due process. The court affirmed finding that there is a distinction between the elements of an offense and an affirmative defense. As long as a jury is properly instructed that it may only convict if the state has proven each element of the crime beyond a reasonable doubt, it does not offend due process to require the defendant to prove by preponderance of the evidence that he is nevertheless blameless because he acted in self defense. Due process does not require the state to prove absence of an affirmative defense. The defendant also argues that the court erred in instructing the jury on the use of deadly force in defense of a third person. Although the instruction given was improper the defendant requested it and therefore it was invited error.

### State v. Newton

344 Ariz. Adv. Rep. 33 (SC, 4/3/01)

The defendant committed a crime in 1998 while he was on early release for an offense committed in 1993. The trial court enhanced his sentence for the 1998 offense pursuant to A.R.S. 13-604.02 for an offense committed while on release. The version of 13-604.02 in effect in 1993 included earned credit releases in the group of offenders subject to sentence enhancement. In 1994 the law was amended to exclude this group. The question on appeal is which law applies to the defendant. The Supreme Court determined that the law in effect in 1998 applies and the enhanced sentence was error.

### State v. Sanchez

344 Ariz. Rep. 7 (CA 2, 2/13/01)

for The Defense



The defendant was convicted of aggravated DUI. He appeals the trial court's denial of his motion to suppress blood evidence. The motion was based on the Tucson crime laboratory's practice of preparing a single aliquot from the defendant's blood sample and testing it twice, rather than preparing and testing two separate aliquots of blood. The latter practice is used by the Phoenix DPS lab. The court affirmed the trial court's ruling that the method was generally accepted within the scientific community and therefore satisfied the requirements of *Fry*.

### State v. Skiba

344 Ariz. Adv. Rep. 6 (CA 1, 3/29/01)

The defendant was convicted of aggravated DUI, specifically driving while impaired while her driver's license was restricted as a result of a prior DUI offense. The defendant attempted to present a defense that she was not violating the restriction when the offense occurred. The trial court refused her requested instruction finding that the violation occurs if she drove impaired while her license was restricted and whether she violated the restriction was irrelevant. The Court of Appeals agreed finding that the statute is clear. It states that a person is guilty of aggravated DUI if she drives a vehicle while under the influence "...while a restriction is placed on the person's driver license..." It does not matter if the restriction is violated.

## JUNE 2001 JURY AND BENCH TRIALS

### GROUP A

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/29-6/12	<b>Farrell</b> Clesceri	Willett	Washington Amato	CR01-01139 Theft Means Transportation, F3 PODD, F4 Unlawful Flight, F5 Criminal Trespass, M1 While on parole with 4 priors	Guilty	Jury
6/12	<b>Noland</b> <b>Valverde</b> Elzy	Schwartz	White	CR01-02379 2 cts. Agg. DUI, F4	Mistrial	Jury
6/12	<b>Edwards</b>	Watkins	Eliason	CR01-00017MI IJP, M1	Guilty	Bench
6/13-6/14	<b>Knowles</b>	Hilliard	Bailey	CR01-01616 Att. Sexual Conduct with minor DCAC, F3	Guilty	Bench
6/20-6/22	<b>Scanlan</b>	Franks	Toftoy	CR01-02026 Assult, M2 Disorderly Conduct, M1 Agg. Assault, F6	Assault – Guilty Disorderly Conduct – Dismissed with prejudice Agg. Assault - Not Guilty	Jury
6/20-6/26	<b>Edwards</b> <i>Francis</i>	Willett	Wolfram	CR00-18708 Agg. DUI, F4 Leaving the Scene, M3	Guilty	Jury
5/26	<b>Rock</b>	Schneider	Loefgren	CR00-19324 POM, F6	Pled to misdemeanor POM day of trial	Jury
6/19	<b>Cotto</b>	Schneider	Macrae	CR01-01462 Burglary, F3 Theft, F6	Dismissed day of trial	Jury
6/28	<b>Cotto</b>	Warren	Munoz	CR00-00572 IJP, M1	Dismissed day of trial	Jury

**JUNE 2001**  
**JURY AND BENCH TRIALS**

**GROUP B**

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
6/5	<b>DeWitt</b>	ProTem Williams	Eliason	CR00-01462MI IJP	Not Guilty	Bench
6/12 – 6/14	<b>Gray</b> Kasieta / King	Schneider	Baca	CR01-00250 2cts. Theft, F5 Shoplift, M1	1ct. Theft dismissed on pretrial motion; 1ct. Theft- DV; Shoplift Guilty	Jury
6/18 – 6/23	<b>DeWitt</b> <b>Peterson</b>	Ballinger	Bernstein	CR01-03718 Stalking, F3	Guilty	Jury
6/19 – 6/21	<b>Maga</b> <b>Grant</b> Kasieta	Hilliard	Robinson	CR01-02733 Agg. Assault, F6	Not Guilty	Jury
6/21	<b>Mitchell</b>	Yarnell	Lindquist	CR01-02328 POM, F6 PODP, F6	Guilty	Jury
6/19 – 6/22	<b>Whelihan</b>	Hilliard	Godbehere	CR01-03711 Theft, F3 2cts. Burglary, F4 Poss. Burg. Tools, F6	Guilty	Jury
6/27	<b>Tom</b>	Orcutt	Boegher	CR01-00420MI IJP	Directed Verdict	Bench
6/26 – 6/29	<b>DeWitt</b> <b>Taradash</b>	McClennen	Fuller	CR00-19515 Burglary, F4 Theft, F4; Poss. Burg. Tool, F6	Guilty	Jury
6/18	<b>Giancola</b>	Guzman	Basta	CR01-00602FE Assault, M1	Dismissed without prejudice day of trial	Bench
6/26	<b>Colon</b>	Kuhl	Gaines	CR01-03185 2 cts Agg. Assault, F6 Resist Officer Arrest, F6	Pled day of trial	Jury

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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
6/4 – 6/5	<b>Logsdon / Little</b>	Willrich	Gordwin	CR00-92433 Attempt Commit ND Vio, F5N	Not Guilty	Jury
6/11 – 6/12	<b>Hamilton / Buckallew</b> Klosinski <i>Gavin</i>	Oberbillig	Brooks	CR01-90587 Agg Assault, F6N	Guilty	Jury
6/11 – 6/21	<b>Shoemaker / Klopp</b> Klosinski <i>Gavin</i>	Barker	Barry / Duax	CR00-95961 Murder Second Deg, F1D	Guilty of Manslaughter, F2N	Jury
6/13 – 6/15	<b>Carey / Little</b> Beatty / Arvanitas <i>Geary</i>	Oberbillig	Pierce	CR01-91485 Agg Assault, F3D	Guilty of Disorderly Conduct, F6D	Jury
6/18 – 6/20	<b>Rosales</b>	Fenzel	Brewster	CR01-90946 2 Cts. Agg DUI, F4N	Guilty	Jury
6/18 – 6/21	<b>Pettycrew</b> Klosinski	Hoag	Brooks	CR01-90358(A) Theft of Mns of Tran, F3N Flt frm Pur Law Veh, F5N	Guilty of Lesser Unlaw Use Mns of Tran, F5N and Guilty of Flight	Jury
6/21 – 6/26	<b>Kavanagh / Burns</b> <i>Southern</i>	Fenzel	Cutler	CR00-95767 PODD, F4N PODP, F6N	Guilty	Jury
6/25 – 6/26	<b>Stein</b>	Willrich	Brewster	CR00-93982 2 cts. Agg DUI, F4N	Mistrial	Jury
6/11	<b>Burns / Felmy</b> Arvanitas	Gaylord	Evans	CR00-94914 4 cts. of Child Molest, F2N	Dismissed day of trial	Jury
6/11	<b>Carey</b> <i>Geary</i>	Fenzel	Weinberg	CR01-90530 Flt fm Pur. Law Veh, F5N Dr. w/Lic. Susp/Rev, M1N	Pled day of trial	Jury
6/13	<b>Moore</b>	Willrich	Brenneman	CR00-92609 Agg DUI, F4N CR00-92608 Theft of Mns Tran, F3N	Pled day of trial	Jury
6/19	<b>Carey</b>	Oberbillig	Bennink	CR00-96647 POND, F4N PODP, F6N	Pled day of trial	Jury

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**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
6-4	<b>Harris</b>	Pro Tem	Adleman	CR00-00957MI 2 Cts IJP Endangerment	Not Guilty	Bench
6-11	<b>Cain</b>	Budoff	Simpson	CR01-001303 4 Ct Agg DUI, F5	Mistrial 2 Cts Dismissed	Jury
6/15-6/18	<b>Schreck</b> Seaberry	Gaylord	Naber	CR01-003198 Offer Sell Drugs w/ 2 priors, F2	Mistrial	Jury
6/26-6-27	<b>Harris</b>	Ballinger	Naber	CR01-002115 POND, F4 PODP, F6	Guilty	Jury
6-1	<b>Eskander</b>	DeMars	Herman	TR99-04968 DUI, Misd.	Dismissed with prejudice day of trial	Jury
6-12	<b>Reid</b>	Wilkinson	Simpson	CR00-18452 2 Cts. Agg DUI, F4	Pled day of trial	Jury
6/18	<b>Parker</b>	Budoff	Frick	CR00-17684 2 Cts Drive By Shooting F2	Dismissed without prejudice while in case transfer	Jury
6/19	<b>Clemency</b>	Myers	Naber	CR00-12072 Shoplifting, F4 w/2 priors	Pled day of trial	Jury
6-26	<b>Reid</b>	Wilkinson	Simpson	CR01-03543 2 Cts Agg DUI, F4	Pled day of trial	Jury
6/19	<b>Kibler</b> Salvato	Davis	Clarke	CR00-018685 3 Cts. Agg Assault, F3 Agg Assault, F4	Pled day of trial	Jury
6/26	<b>Silva</b>	Wilkinson	Reddy	CR01-004350 2 Cts. Agg Assault, F3	Dismissed without prejudice day of trial	Jury

## JUNE 2001 JURY AND BENCH TRIALS

### GROUP E

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
5/29 - 6/14	<b>Benson</b> Reilly <i>Bowman</i>	Jones	Clayton	CR99-18188 Murder 1, F1	Guilty	Jury
6/19 - 6/20	<b>Dergo</b>	Gaines	Vingelli	CR01-02890 PODD, F4 PODP, F6	Guilty	Jury
6/20-6/21	<b>Van Wert</b>	Kaufman	Hanlon	CR01-01284 Sale Narcotic Drug, F2	Guilty	Jury
6/26 - 6/27	<b>Van Wert</b>	Heilman	Musto/Simpson	CR01-01719 2 Cts. Agg. Asslt., F4	Not Guilty	Jury
6/21	<b>Walker</b>	Anderson	Raymond	CR01-03974 Misc. Inv. Weap., F4	Dismissed w/o prejudice day of trial	Jury
6/25	<b>Flynn</b>	Heilman	Todd	CR01-04100 2 Cts. Agg. DUI, F4	Pled day of trial	Bench

### 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
6/06 – 6/06	<b>Tate</b>	Akers	Fish	CR2001-000035 PODD, F4 PODP, F6	Not Guilty	Bench
6/08 - 6/12	<b>Spencer</b> Otero	Hall	Koplon	CR2000-019292 POND, F4	Guilty	Jury
6/12 – 6/19	<b>Jones</b> Otero <b>Bolinger</b>	Cates	Martinez	CR94-007881 Murder, F1 Burglary, F6	Hung jury on Murder 1 [8 G; 4 NG]; Guilty on Burg.	Jury
6/26 – 6/27	<b>Spencer</b> Otero	Topf	Simpson	CR2001-004056 Theft of Means of Trans, F3	Guilty	Jury

### *for The Defense*

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