



# for *The Defense*

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

## All Facts Are Equal But Some Facts Are More Equal Than Others

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**By Bob Ellig  
Trial Counsel, Group E**

Once upon a time the criminal justice system in Arizona was operating smoothly. We had a system that was called indeterminate sentencing. People were settling their cases or going to trial and people who were convicted were being sentenced. There were approximately 2000 prisoners in the Arizona Department of Corrections. God was in his heaven and all was right with the world – more or less. The legislature looked at this

system and said, “Dear me! This can’t go on! Not enough money is being spent on police and prosecutors and prisons!!” So they changed the sentencing system. Now our prison population is past 25,000 and well on the way to 30,000. In Arizona’s most populous county we are now processing half as many felony cases each year as the County of Los Angeles while only having a third of Los Angeles County’s population. Things are definitely looking up. Actually the previously stated reason for why the system

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## Regaining Perspective: Cherish Our Staff

**By Chuck Krull  
Defender Attorney, Appeals Division**

I had promised Russ months ago I’d give him an article for the December edition of *for The Defense*. The expectation was it would be a law-related article. An insightful analysis of some recent case or rule change that was going to have an immediate impact on

the criminal justice system and the way we conduct business as criminal defense attorneys. But when I sat down at my keyboard this morning to write it, I quickly realized that my thoughts, and my heart, were somewhere else. They were with Bingle Dizon and her family.

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### for The Defense

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changed is not exactly true. What really happened is this. In the late 70s, Arizona, like most states at the time, had a system of indeterminate sentencing. Judges could sentence to a range rather than a specific sentence. The actual amount of time that the defendant would serve in prison would be determined later - in most cases by the parole board. Thus a defendant could be sentenced, for example, to 5 to 50 years in prison. If memory serves, he would be eligible for parole before the minimum sentence was served and he would remain on parole - if he was paroled - until his maximum sentence expired. In this environment sentence enhancers were not needed and generally were not used. If a defendant looked like he might be a vicious psychopath and a threat to society the judge could simply give him a high maximum and let the Department of Corrections and the Parole Board sort it all out later. There was a wide range of available penalties to deal with the wide range of defendants. When imposing a particular sentence in a particular case, judges looked at all the facts about the particular defendant and about the particular case that they have always looked at.

### **The Ascent of Sentencing Enhancers**

In 1977 Arizona passed a comprehensive new criminal code in which the sentencing provisions were completely rewritten. Indeterminate sentencing was done away with and the legislature adopted a system that, not surprisingly, was called determinate sentencing. That is essentially the system that we have today. In the new system judges were required to select a specific sentence within much narrower ranges than had been available under indeterminate sentencing. However the system still had to respond to a wide range of defendants. Therefore the legislature created a gamut of sentencing ranges which slotted defendants into the different ranges based upon such factors as prior conviction history, release status, violent nature of the crime, presence or use of a weapon, and seriousness of the crime. Over

time, additional factors relating to the status of the victim and the mental state of the defendant were added by a process of accretion. That process is still going on.

In this environment sentence enhancers became very important. Of course once a defendant had been slotted into a particular range, the judge would still look at all the relevant facts pertaining to the defendant and the case before actually imposing a sentence within that range. But it was the sentence enhancers that determined the range available to the judge and thus the minimum sentence that could be imposed on the defendant. (As an aside, I suspect - although I have no proof - that if the judges of Maricopa County Superior Court were polled, few, if any, of them could point to cases where they wanted to sentence the defendant to a longer sentence than they actually imposed. But almost all of them could point to cases where they wanted to impose lesser sentences than the law allowed. And I suspect that the number of such cases would be much greater were it not for the fact that so many cases are pled down by agreement between the defendant and the prosecutor.)

When the change to determinate sentencing went into effect, many practitioners - this author among them - saw the change as an aberration. In fact, it was simply part of a national trend away from indeterminate sentencing - a trend that has, perhaps, reached its epitome in the federal sentencing guidelines. That trend started in the 70s and is still going strong. However, I suspect that some day the trend will reverse and that at some point - although probably not in my lifetime - we will again have indeterminate sentencing. I hold this view because it appears to me that these changes are being driven by no more serious policy considerations than a variation of the belief that the grass is greener somewhere else.

### **Playing Judge and Jury**

That is all very nice, you might say. And some of it may even be true. But what has it got to do with the subject of this article? The answer is simply this. When a legislature imbues a fact with the power to effect the range of a sentence, the question eventually arises as to how that fact is to be determined. Can the judge determine the fact in the traditional way that judges have always determined facts that will impact their sentencing decision? Or does the fact have to be determined by a jury by proof beyond a reasonable doubt and after adequate notice? This issue raises a serious constitutional question. The United States Supreme Court has had some difficulty answering it and, I suggest, the Court is still groping toward the answer. I also suggest that the historical background out of which this issue arose aggravated that difficulty, causing the Court to start down a blind alley. The Court has spent the last 15 years recognizing that they were in this blind alley and working to get themselves out.

I turn now to the question at hand – by whom and by what process are facts determined which impact the sentencing range? This is an easy question to answer under Arizona law. The Arizona Appellate Courts have addressed it and they have given a good lawyer-like answer. They say that it depends. Specifically, for all facts that increase the maximum permissible sentence except the fact of prior felony convictions, the fact must be determined by a jury based on proof beyond a reasonable doubt and after adequate notice to the defense. For prior felony convictions and for facts that increase the minimum sentence but not the maximum sentence, the fact may be determined by the judge based on proof by a preponderance of the evidence.

But that's only a snapshot. That is only a statement of what the law is right now. A much more interesting issue is whether the law is going to stay this way for a while, or is it still developing and, if so, where will it

ultimately come to rest? To answer those questions we need to look at the way the law has developed.

### **Leaders vs. Followers**

The first thing to remember is that the Arizona Appellate Courts are not really involved in deciding this issue. The three Arizona cases that have dealt with this issue are *State v. Hurley*, 154 Ariz. 124, 741 P.2d 257 (1987), decided by the Arizona Supreme Court, *State v. Rodriguez*, 200 Ariz. 105, 23 P.3d 100 (App. 2001), decided on April 19, 2001 by Division 2 of the Arizona Court of Appeals and *State v. Gross*, \_\_ Ariz. \_\_, \_\_ P.3d \_\_, (App. 2001), decided on September 4, 2001 by Division 1 of the Arizona Court of Appeals. In each case the courts cited the most recent decision of the United States Supreme Court, recognized the constitutional principles addressed by that Court, and followed both the holding and the rationale. It is clear that, in Arizona, the courts will continue to follow the decisions of the United States Supreme Court on this issue. In short, I suggest that the Arizona law will stay right where it is unless and until the United States Supreme Court hands down another opinion modifying its current position.

From the founding of the Republic until the mid 1980s, the United States Supreme Court was not called upon to address the question of how facts that effect sentencing ranges are to be determined. But when the trend toward determinate sentencing commenced, it became inevitable that at some point the constitutional dimensions of that sentencing scheme would have to be addressed. And that event occurred in 1986, when the Court decided *McMillan v. Pennsylvania*, 477 U.S. 79, 106 S.Ct. 2411, 91L.Ed.2d 67 (1986).

### **The “McMillian” Rationale**

In *McMillan*, the defendants were sentenced under a state sentencing scheme in which the minimum, but not the maximum, sentence

was increased if a weapon was involved in the underlying offense. In that respect the scheme was similar to the situation in Arizona where a defendant is on probation at the time of the new offense. The state law also provided that the facts regarding the weapon were to be determined by the judge by a preponderance of the evidence. At sentencing each judge found the state law to be unconstitutional and sentenced each defendant to a lesser term of imprisonment than was required by the statute, thus striking a blow for judicial discretion and the inherent power of the third branch of government. The Pennsylvania Supreme Court reversed the trial judges and the defendants appealed to the United States Supreme Court claiming a violation of their 14<sup>th</sup> Amendment right to due process and of their 6<sup>th</sup> Amendment right to a jury trial.

This was a new question for the Court, one with which the Justices had no prior experience. They knew that judges have traditionally considered the presence of a weapon as one factor to consider when deciding what sentence to impose within a sentence range. And they knew that no one had ever seriously contended that such factors had to be proved to a jury beyond a reasonable doubt. But, I suggest, they weren't used to standing in the well of a court and fighting criminal cases or even of thinking about these questions amid the hurley-burley that surrounds a criminal law practitioner in that environment. And, although the Court's docket always includes a large number of criminal cases, the Justices were simply never called upon to think about issues like this to the same extent as prosecutors and criminal defense lawyers. They lost sight of the fact that they were not actually dealing with the question of what sentence to give within a specified range but rather with the question of what range to apply. For that reason, they reached back and seized on a line of cases that addressed the constitutionality of state efforts to shift the burden of proof from the state to the

defendant. [Specifically *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368, (1970), *Mullaney v. Wilbur*, 421 U.S. 684, 95 S.Ct. 1881, (1975) and *Patterson v. New York*, 432 U.S. 197, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977)]. They discovered that all facts are equal but some facts are more equal than others, or, to use the Court's phraseology, some facts are elements and others are just sentencing considerations. And, they said, state legislatures could appropriately decide which facts are which.

Of course, this formulation created another problem by forcing courts to figure out whether the legislature decided that a fact is an element or is a mere sentencing consideration. In order to do that, courts must look at the particular statutes. But, at that point the courts will run up against a significant problem. The vast majority of statutes simply do not talk about this stuff in these terms. Furthermore, since the question has to be determined by referring to the statutory language, no black letter rule can be enunciated. Thus, the effect is to impose the requirement that both state and federal courts must decide this question on a case by case basis. In the end, this requirement led directly to the Arizona Supreme Court's tortured analysis in *State v. Hurley* in order to decide whether Arizona Revised Statutes Section 13-604.02(A) (as it was then constituted) was talking about elements or about sentencing considerations. (As an aside, it may be of some interest that in *McMillan*, Chief Justice Rehnquist – although not yet Chief Justice – and Justice O'Connor voted with the majority. Justice Stevens voted with the dissent. No other justice that decided *McMillan* remains on the Court.)

### **A Hint That Things May Change**

After *McMillan*, the issue lay dormant for more than ten years. Then the Court decided *Almendarez-Torrez v. United States*, 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). In *Almendarez-Torrez*, the defendant was

charged with returning to the United States after having been deported. The maximum sentence for that offense was two years. After the defendant had pled guilty, the judge heard evidence that the defendant had been deported subsequent to a conviction for an aggravated felony. Those facts would increase the maximum sentence to twenty years. In *Almendarez-Torrez*, the Court continued to focus on the distinction between elements and sentencing considerations and held that a judge rather than a jury could find facts which would subject a defendant to an increased maximum sentence. The Court also noted that this case included evidence of a previous felony conviction and as such involved "recidivism".

In passing, the Court also said that it knew of no statute that clearly makes recidivism an offense element where the activity would be unlawful even if the recidivism did not exist. Plainly the Justices were unaware of Arizona's felony DUI statutes.

In *Almendarez-Torrez*, Chief Justice Rehnquist and Justices Breyer, O'Connor, Kennedy and Thomas voted with the majority. Justice Scalia filed a dissenting opinion joined by the remaining Justices. In the dissent he invited the Court to view the previous felony conviction in this case as an element of the offense that had to be charged in the indictment or information and proved to the jury beyond a reasonable doubt. Justice Scalia took the view that where facts increase the maximum sentence, the jury has to find those facts beyond a reasonable doubt. This is generally where the law is today. But he also took the view that there was "no rational basis for making recidivism an exception". In short, Justice Scalia thought that where a fact increased the maximum sentence, the fact should be submitted to the jury even if the fact was a prior conviction.

### **The Last Gasp**

Within a year after *Almendarez-Torrez v. United States*, the Court addressed *Jones v.*

*United States*, 526 U.S. 227, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999). *Jones* is a federal case in which the defendant was sentenced for carjacking with serious bodily injury under a sentencing scheme essentially analogous to Arizona's dangerous felony statute. The fact of serious bodily injury was not alleged in the indictment and the issue of serious bodily injury was not submitted to the jury. Everybody involved in the case, including the judge, acted as though the defendant was facing sentence for a simple carjacking – for which defendant faced a maximum sentence of fifteen years. But then the presentence report was received. The presentence report writer recommended a sentence of twenty- five years on the basis that serious bodily injury had actually occurred. The judge then found by a preponderance of the evidence that serious bodily injury had occurred and over defendant's objection sentenced him to twenty- five years. The United States Supreme Court reversed, interpreting the relevant federal statute as making serious bodily injury an element of the offense and not a sentencing consideration. The dissent, of course, took the opposite tack and said that serious bodily injury was not an element but simply a sentencing factor

The way the Court divided on the decision was interesting. The four Justices who had been in the minority in *Almendarez-Torrez* were now in the majority and four of the five Justices who had been in the majority in *Almendarez-Torrez* were now in the minority. The swing vote was Justice Thomas. Justice Thomas wrote no opinion. The four dissenting Justices, however, joined in an opinion authored by Justice Kennedy in which Arizona Revised Statutes section 13-702(C) was cited as an example of a state statute that uses serious physical injury as a sentencing factor. Section 13-702(C) is, of course, the general provision setting out aggravating factors to be considered at sentencing. And the dissent's citation of that statute demonstrates its complete

misunderstanding of the difference between a fact that a judge can consider when deciding what specific sentence to give within a sentence range and a fact determining the applicable sentence range itself. This misunderstanding is highlighted by the fact that section 13-702(C) refers the reader to section 13-604 (the statute that sets out the various sentence ranges available in Arizona). It points out the difference between a fact that can be used to aggravate a sentence and a fact that changes the available sentencing range. It seems a shame – to this author, at least – that the two Arizona members of the Court missed this vital distinction that was staring out at them from the face of the statute.

### **The Light at the End of the Alley**

Finally, the Court decided *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In *Apprendi*, the defendant was charged with and pled guilty to possession of a firearm for an unlawful purpose, an offense carrying a sentence range of five to ten years in prison. After the plea the prosecutor filed a motion to enhance the sentence based on New Jersey's hate crime statute which changed the applicable sentencing range to ten to twenty years in prison based on the defendant's state of mind. I should note that defendant was not surprised. He knew that the state was going to seek the increased sentence and the state knew that he was going to claim that the increased sentence would violate his constitutional rights. The judge found by a preponderance of the evidence that defendant committed the crime with the purpose to intimidate a person or group because of race and sentenced him to twelve years in prison.

The Justices divided the same way that they had divided in the *Jones* case. The majority opinion finally abandoned the distinction between facts that are elements and facts that are mere sentencing considerations (*McMillan*), sentencing factors (*Almendarez-Torrez*) or sentence enhancements (*Apprendi*).

They simply said that under the 14<sup>th</sup> and 6<sup>th</sup> Amendments any fact other than a prior conviction that increases the maximum penalty for a crime must be charged in the indictment, submitted to the jury and proven beyond a reasonable doubt. The majority opinion also at long last recognized that there is a difference between sentencing factors that a judge statutory sentencing range and facts that change the sentence range itself. However the majority opinion would not overrule *McMillan* or *Almendarez-Torrez*. Justice Scalia again wrote a concurring opinion in which he clearly expressed his view that a defendant has a right to a jury determination of those facts that determine the maximum sentence the law allows. But he stopped short of reiterating that there is no logical reason why that statement should not also apply to cases in which that fact is a prior felony conviction.

This time Justice Thomas wrote a concurring opinion in which, with good grace, he acknowledged that his decision to concur with the majority in *Almendarez-Torrez* had been an error. He pointed out the inherent absurdity of the element-sentencing factor distinction, and acknowledged that the decision in *McMillan* had been a revolutionary change in the law. He also stated his view that the holding of the Court in *Apprendi* should logically extend to prior felony convictions and to cases (as in *McMillan*) where the minimum sentence is enhanced but not the maximum.

### **What the Defense Bar Needs to Do**

So where do we go from here? First, as I pointed out above, this is a federal constitutional question and I doubt that the Arizona Appellate Courts will follow the trail blazed by Justices Scalia and Thomas. But they will follow that trail behind a majority of the United States Supreme Court. They will not blaze a new one grounded in the logic of the dissent. Certainly, Division One of the Court of Appeals had the opportunity to

follow Justices Scalia and Thomas in its rationale if not in its narrow holding in *Gross* but refused. I strongly suspect that the Arizona Supreme Court will do the same.

But that does not mean that we, as criminal defense practitioners, should simply sit and watch. My second point is that we should request a jury determination beyond a reasonable doubt whenever the sentence range is changed by some fact. We should request it whenever the presence of a prior felony conviction has increased the maximum permissible sentence for one of our defendants. We should request it whenever some fact – such as release status - has increased the minimum but not the maximum permissible sentence for one of our defendants. And we should continue to request it in those cases where the United States Supreme Court has already said that such a jury determination is required. We should request this of the trial court. We should request it of the Court of Appeals. We should request it of the Arizona Supreme Court. And if the Arizona courts continue to follow *Apprendi*, we should do what we can to help defendants raise the question in the federal courts. At every step of the proceedings we should claim that the defendant's rights under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to the United States Constitution have been violated unless a jury determination is made beyond a reasonable doubt.

In the end, the case for the universal application of the *Apprendi* rule to all situations where a particular fact changes the sentencing range is compelling. The rule is logical. It is simple and easy to apply. It does justice and preserves the fundamental right of all accused felons to a trial by jury.



## Regaining Perspective: Cherish Our Staff

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As most of you probably know, Bingle passed away the day before Thanksgiving following a short, unexpected illness. She was 48 years old and, like so many in this office, she was a daughter, a sister, a wife, a mother and, most recently, a grandmother.

Many of you, however, probably didn't actually know Bingle. We in appeals knew her well. She was a good friend to all of us. A devoted, experienced and tireless worker. Always smiling. Always soft spoken. Never complaining. An integral part of our appellate personality, our appellate family. To me she was, in many respects, my right hand person when it came to PCR matters. A problem solver and, in some instances, a face-saver. Yet I didn't know as much about her as I now wish I knew. I knew she had been born in the Philippines where her mother still lives; she had a sister in California she visited regularly; she loved and surrounded her life with angels; she didn't like chicken; and sweet and sour meatballs were her signature dish for our pot-luck gatherings. But somehow, considering all the years we worked together, this didn't seem to be enough.

Working with Bingle made me a better attorney and better person. And while I know in my heart I regularly thanked her for her efforts on my behalf, I'm not sure that she really knew how important she was to me as both a staff assistant and an individual. I'm not sure whether I effectively communicated my feelings about this to her. I'm not sure she knew that I cared.

As attorneys (defense, prosecution, judges) we're inclined to occasionally believe the criminal justice system revolves around us and without us the system would break down. To assist us as we navigate through the system we have written standards and codes that establish the parameters of our relationships with the other participants and

define our duties and responsibilities. We attend CLE courses dealing with ethics and professionalism to reinforce these guidelines. Throughout this training we repeatedly see and hear the c-words — "communication," "candor" and "civility" — being used.

Equally important as the work we do as attorneys, however, are the people we do it with. The secretary who makes the last minute change to the suppression motion or jury instructions that must be filed today. The investigator who was finally able to locate, interview and serve the ever-evasive alibi witness. The law clerk who researches and finds the case that supports the admissibility of the favorable defense evidence. And all of the other support personnel who, collectively, contribute daily to assure that the work of this office is performed efficiently and professionally. These are the individuals who are central to the system. These are the individuals who help us secure for our clients the best possible outcome of their case. These are the individuals who make us, the attorneys, look good. And, while there are no codes or standards we regularly look to for guidance, we must never forget to acknowledge them for their contributions.

A few years ago during a momentary lapse of sanity I considered changing the direction my professional life was going. In furtherance of this episode of "Desperately Seeking Chuck," I took an MBA course in Organizational Development. The course, in a nutshell, dealt with the corporate structure of business organizations and the corporate "culture" that evolved from the organizational choice. As a project for this course I was required to write a paper which examined the structure and culture of this office and analyzed how a supervisor's personality and leadership style would impact the management of attorneys within the office.

In discussing the organizational structure of the office I wrote:

...the office is divided into divisions, with attending supervisors and leaders, based upon the service each division provides to the office. Throughout each division and the office as a whole, however, each attorney operates for the most part as an independent contractor after being assigned a case. The actual role of the supervisors and leaders is to provide encouragement and support for the individual attorneys, to render advise and resolve conflicts that may develop, and to act as a information source/liaison between the office and the courts.

In discussing the corporate “culture” of the office I further wrote:

...every member of the Public Defender understands that the representation of each client is, for all intents and purposes, a collective effort of everyone in the office rather than an individual effort. The office culture encourages and promotes constant communication and personal interaction between members. Formal meetings are few yet there is continuous dissemination of information between members via e-mail or conversation that eliminates the need for a more structured system of sharing information.

Those observations are as true today as they were when I originally penned them.

This is not an office comprised of individuals. It is a family. And, we should treat each other as family, with dignity and respect.

The individuals we work with on a daily basis, those who do not appear in court or whose names do not appear on the pleadings, are

the backbone of this office. As attorneys, we should nurture them and respect them for their knowledge, skill and experience. We should acknowledge them for the tireless effort they put forth each day to assure that we, the attorneys, provide competent representation to our clients. We should praise them for their efforts. And, most importantly, we should do these things regularly.

We should do this because it is the “culture” of this office to act in this caring manner. We should do this because it is important to this office to preserve this “culture.” We should do this because caring for our family is as important as the communication, candor and civility that is expected of us when dealing with clients, tribunals and opposing counsel.



# A Comprehensive Overview

Available Services Provided By Pretrial Services Agency of Maricopa County

**By Penny Stinson, Director  
Maricopa County Superior Court  
Pretrial Services Agency**

The law favors the release of defendants pending determination of guilt or innocence, consistent with the protection of the public interest. Pretrial detention should only be resorted to in very special circumstances, such as capital cases, where proof is evident, and cases in which there is compelling evidence presented at a judicial hearing that preventative detention is needed to ensure the defendant's future appearance or to protect society from harm.<sup>1</sup>

The utilization of a variety of release alternatives should be considered so that the widest protection of interests – both individual rights and societal interest – is achieved.<sup>2</sup> The numerous supervision services and modalities provided by the Pretrial Services Agency serve as viable alternatives to preventative detention.

Despite the availability of these services, the Maricopa County Pretrial Services Supervised Release Program remains one of the most under-utilized programs by lawyers representing criminal defendants. With the Agency's continued introduction of services to enhance monitoring and provide client services, it is hoped the defense bar will be able to use this Agency to effectively maneuver their clients through the pre-adjudication process.

## **Pretrial Release – A Brief Historical Perspective**

The history of the bail system from the time of the English Bill of Rights of 1869 supports the principle, if not always the practice, that defendants should not be detained simply

because they have been charged with criminal offenses. Until the early 1960s, two features characterized pretrial release decision making. First, according to an American Bar Association report, the decision was generally made in such a "haphazard fashion that what should be an informed, individualized decision is in fact a mechanical one in which the name of the charge, rather than all the facts about the defendant dictates the amount of bail."<sup>3</sup> The second feature was an almost exclusive reliance by judges on financial bond.<sup>4</sup> As a result, only defendants with the financial means to post bail secured pretrial release.

In the 1960's, the Bail Reform Movement was born as courts had long recognized that setting bail so the wealthy could obtain release while the poor could not raised serious equal protection issues.<sup>5</sup> Throughout the 1960's, the Movement produced a serious look at release decisions and bonding issues through such projects as the Manhattan Bail Project, the Illinois Deposit Bail Plan, the 1964 National Conference on Bail and Criminal Justice and finally the Federal Bail Reform Act of 1966.<sup>6</sup> The states quickly followed suit with statutes establishing "*the presumption of **release by the least restrictive means**, including personal recognizance and conditional release.*"<sup>7</sup> Many of these statutes relegated money bail from the option of choice to the choice of last resort.

After the enactment of the Federal Bail Reform Act, professional organizations began implementing standards addressing the pretrial release decision, to include: the American Bar Association, the National District Attorneys Association and the National Association of Pretrial Services Agencies. All of these organizations recommended the abolishment of commercial

surety bail.<sup>8</sup>

The Bail Reform Act of 1966 specified that the release decision in federal courts should be made by taking into consideration the following factors: family ties, employment, financial resources, character and mental condition, length of residence, criminal record, and appearance record at court proceedings.<sup>9</sup> The law left unclear who should gather this information. Today, we recognize these specified areas as the core areas of the pretrial services initial interview.

The second generation of bail reform occurred during the 1980's. An initial result of this movement addressed the issues of community safety and risk of failure to appear as being appropriate considerations in the bail decision. The outcome was that preventative detention was appropriate when the court could find no condition or combination of conditions, which would assure appearance or public safety. A final result of this movement was the recognition that an essential function of a pretrial agency included a supervision component.<sup>10</sup>

The importance of pretrial agencies was acknowledged in 1985 in the American Bar Association's standards on criminal justice which recommends *that every jurisdiction establish a pretrial services agency or similar facility, empowered to provide supervision for released defendants.*<sup>11</sup>

With renewed focus on law and order and a climate of getting tough on crime and drugs, jail populations have swelled to overwhelming proportions within the last 20 years. Addressing growing jail populations was made even more urgent as communities came to grips with the cost of building and maintaining new jails.

Many jurisdictions have looked to pretrial services programs to play a key role in assisting in reducing jail populations. As a result, the goal of a pretrial services agency is

to maximize rates of release while minimizing rates of failure to appear and rearrest, so that the only persons who are detained are those for whom no condition or combination of conditions can reasonably assure appearance in court and community safety.<sup>12</sup> Such a goal has made pretrial services an effective tool in efforts to minimize jail overcrowding.

## **Pretrial Services Agency – Superior Court of Arizona in Maricopa County**

### **Jail Unit**

#### **History:**

In 1975, the Superior Court of Arizona in Maricopa County established the Appearance and Indigency Determination Program (AID), satisfying statutory requirements per ARS §13-3697C. The statute required that a judicial officer consider all available information on defendants, such as employment, community ties, financial resources, criminal history, prior failure to appear rates, etc., when determining the type of release, detainment, or bail amount. Three staff members were initially hired under a Law Enforcement Assistance Administration grant to conduct defendant interviews at the jail prior to Initial Appearance (IA) hearings. In Arizona supervised release laws are also governed by Rule 7.3 and 7.5 in the Arizona Rules of Criminal Procedure.

#### **Current:**

Today, the Pretrial Services Agency (PSA) Jail Unit is staffed 24 hours a day, seven days a week with 18 employees who conduct investigations on over 32,000 defendants a year. The Jail Unit performs the primary and original function of PSA, interviewing newly booked defendants into the Maricopa County Madison Street Jail prior to Initial Appearance Court. National and state automated databases are used to compile criminal histories and to conduct warrant checks. An assessment is completed

regarding flight risk and charge severity. The Bail Guidelines Classification Matrix (BGCM) is used to provide a range of release options to aid judicial officers in their release/detainment decisions.

One of the most important functions of any pretrial program is to gather as much accurate and verified information as possible about an arrestee so that it can be used to set conditions of release. The Pretrial Services Agency in Maricopa County is committed to expanding our resources to allow for increased information gathering and to improve our verification methods in an effort to ensure the court will have as much information as possible to allow them to make informed release decisions.

#### **Future:**

Pretrial Services will be undertaking a project in 2002, to study the Bail Guidelines Classification Matrix. Objective risk assessment instruments are a valuable tool that can assure consistency, equitability, visibility and testability.<sup>13</sup> The age of technology has provided access to a large bank of data, which allow for assessing and revising these tools, to assure that the criteria used is valid and most accurately reflects the changing circumstances of our jurisdiction.<sup>14</sup> Such periodic re-assessment is vital to maintaining a tool that accurately assesses risk in the *local* jurisdiction. Our system is continually bombarded with new issues and the complexion of our jail population is ever changing. Incarcerated populations now include juveniles, the mentally ill, substance abusers and domestic violence arrestees. The standard risk assessment tools were developed for an adult defendant population and do not necessarily address the special circumstances of many of our arrested defendants. Included in the development of any future instrument is the undertaking of a research effort to identify the salient factors in our jurisdiction and their associated risks

and devise an instrument that will reflect these considerations.

#### **Defendant Monitoring Unit**

##### **History:**

The Pretrial Services Agency program services expanded in 1979, forming the Supervised Release Unit, to incorporate defendant supervision and bond reduction reports. Initially, supervised release entailed what is now identified as General Supervision, involving the monitoring of defendant's compliance with standard conditions of release such as telephonic check-in and office visits.

A more structured supervised release program was instituted in 1987 in conjunction with the implementation of the Bail Guidelines Classification Matrix. In July 1988, a U.S. Department of Justice, Bureau of Justice Assistance grant provided funds for drug testing of pretrial defendants released to PSA. The grant-funded program was renewed in July 1989 and renamed the Drug Testing and Intensive Supervision Program. A structured Intensive Pretrial Supervision program was implemented in 1993 offering additional release conditions. In 1997, the Citizens' Advisory Committee on Jail Planning recommended that an Electronic Monitoring Program (EMP) be implemented under the Pretrial Services Agency. The EMP began to accept referrals in July 1999, providing another alternative to incarceration.

##### **Current:**

The Defendant Monitoring Unit (DMU), which prior to 1998 was called the Supervised Release Unit, is responsible for the supervision of released defendants, pending disposition of their court matter(s). The unit provides monitoring and supervision to all felony offenders, and misdemeanor DUI, assault and domestic violence cases.

Maricopa County Superior Court Judges, Commissioners, Hearing Officers, and the 23 Justice Courts can release defendants to PSA at any point during case adjudication, from the IA hearing up until disposition of the case. It is a multifaceted unit comprised of several programs, services and sub-units including general and intensive supervision, bond reduction reports, Failure to Appear Unit, specialized caseloads (e.g. Women's Network, Youthful Offender).

Defendants released with standard conditions of release are placed on General Supervision. Standard conditions of release contain the following provisions:

- Remain in Maricopa County unless authorized by PSA.
- Maintain contact with PSA on a weekly basis as directed.
- Seek and maintain employment or enroll and regularly attend an educational/vocational program. Provide PSA written proof of employment/schooling within 30 days of release.
- Submit to visits at home, work or school at PSA discretion.
- No contact, direct or through a third party, with alleged victims or complainants.
- Submit to financial assessment to determine ability to pay for Pretrial Services programming.

Defendants with additional conditions of release are placed on Intensive Supervision. These conditions may include one or a combination of the following provisions:

- Drug/Alcohol Testing. Defendant must submit to drug/alcohol testing substance abuse evaluation, and treatment as directed by PSA.

Defendant must not use, possess, or consume any illegal controlled substance(s) unless prescribed by a licensed physician.

- Residence. Defendant must reside at the address ordered by the court
- Electronic Monitoring Program:
  1. House Arrest. Defendant must participate in the Electronic Monitoring Program and must remain inside his/her home at all times unless authorized by PSA.
  2. Curfew Restriction. Defendant must participate in the Electronic Monitoring Program and must remain inside his/her home during designated hours. Curfew may be modified at the discretion of PSA.
- Any other restrictions the court may wish to impose.

PSA monitors defendants' compliance with release conditions until case resolution, reducing risk of flight and potential to reoffend. The wide range of supervision alternatives offered to the bench by PSA provide effective means toward improving community safety while at the same time assisting in alleviating jail overcrowding.

A judicial officer may, at any time, modify conditions of release either reducing or increasing the level of restrictions placed on a defendant, as deemed appropriate or necessary. Additionally, a defendant's release may be revoked by the Court upon noncompliance with terms of supervision and/or conditions of release.

Judge Thomas O'Toole, who presides over the Maricopa County Superior Court's Criminal Division said of the program:

"Lawyers should be more appreciative of Pretrial Services' supervised release because it helps their clients in the long run," adding

that defendants who demonstrate they comply with the requirements of supervised release may end up with a more favorable resolution of their criminal case.

Within the last six months Pretrial Services has expanded its locations to include the Southeast Court facility and the downtown Regional Felony Center.

The Agency hopes to continue to de-centralize in an effort to allow defendants to fulfill their reporting and/or treatment obligations closer to the areas in which they reside. The Agency hopes to house employees at future regional court sites.

### **Utilization of Electronic Monitoring Program**

At any given time, up to 150 defendants – who would otherwise be in jail – can participate in the Electronic Monitoring Program. “It has tremendous cost benefits and helps to ensure public safety,” said Judge O’Toole.

Electronic monitoring can range from daily curfews to 24-hour home arrest. Defendants with curfews may be allowed to leave their residences for employment purposes or to attend educational programs, but are required to be home at all other times. Those on home arrest may be allowed to attend scheduled hearings in their pending case, verified meetings with defense counsel in pending criminal matters, and verified, pre-approved medical/treatment appointments.

Defendants released with electronic monitoring can continue to work or attend school and reside at preapproved homes. Electronic monitoring can enhance public safety because Pretrial Services Officers are alerted if a defendant leaves home without authorization or tampers with the monitoring device.

Commissioner Lindsay Ellis, whose court work focuses on criminal matters, said electronic monitoring provides another tool for making informed decisions.

“I look at a defendant’s performance under pretrial supervision as an indicator of how they will perform on probation,” Commissioner Ellis explained.

The electronic monitor provides Pretrial Service officers more time to conduct fieldwork, making random checks on defendants at their homes, jobsites and schools. Response to an alert can be immediate.

Some defense lawyers complain about the bond amount set at a client’s initial appearance, but do not ask the court to re-determine bond at subsequent court proceedings. This may indicate why there is only an average of 75 defendants a month participating in the electronic monitoring program. The program’s success lies in the hands of defense lawyers, who are encouraged to make use of the service.

Defense lawyers must ask the court for supervised release of their clients. Prosecutors can be expected to oppose such motions. The court can be reluctant to reduce a previously set bond unless the defense attorney can show a change in conditions affecting the defendant or that the previously established bond is unreasonably high. Prosecutors’ objections often suggest the defendant presents a risk of threat to the alleged victim or the community as a whole. Defense attorneys, however, may increase the potential to get their clients released if they include electronic monitoring as a condition of release.

Craig Meherns, of Mehrens & Wilemon, P.A., has successfully petitioned the court to release clients on a reduced bond with an electronic monitoring supervision component.

“The electronic monitoring bracelet has added an option that will allow more people, who are presumed innocent, to be released than before. It gives the judge an effective tool unavailable to them in the past,” Mehrens said. “This sort of release alternative is something that gives comfort to the court and the victim in most cases. I highly recommend it.”

The most appropriate candidates for the Electronic Monitoring Program are criminal defendants who have community/family ties and a willingness to participate in the program. Eligible defendants must reside in Maricopa County and have a residence accessible to Pretrial Services staff. The home must have electricity and a working telephone on a private line. Cordless phones are not permitted and no special features such as caller ID, call forwarding, call waiting, answering machines or voice mail can be in service while the defendant is on electronic monitoring. Household members must understand the defendant’s conditions of release and be willing and able to comply with them.

For eligible defendants, electronic monitoring is a highly preferable alternative to pretrial incarceration. If assistance is needed in determining the eligibility of a case, staffing can be conducted by contacting the supervisor of the unit, Taylor Pile at (602) 506.0193 or his pager (602) 868.5648.

#### **Future:**

The philosophy behind pretrial services supervision is in transition and the Pretrial Services Agency in Maricopa County is adapting to that change. Gone are the days where client contact was only telephonic and the Agency solely focused on monitoring and compliance enforcement.

A report prepared by the Pretrial Resource Center, advises: “Effective supervision should

include, at a minimum, timely and effective notification of court dates. At best, it would include a broad range of options for individualized supervision with effective sanctions for violations. If both are practiced, an agency can expect a reduction of FTA’s (due to improved notification and supervision) and re-arrests (due to effective supervision).”<sup>15</sup>

The Agency intends to concentrate on matching defendants with social services in an effort to reduce their risk of re-entry into the system. Services for specialized populations, such as the mentally ill, domestic violence population and juveniles, will continue to be explored and offered by PSA. Furthermore, an effort is being made to “piggy-back” with probation treatment providers so a pretrial treatment component can be added to those programs, and for those placed on probation, a continuation of services and treatment will be provided.

As a large percentage of the pretrial population ends up at the door of probation for supervision it seems irresponsible to allow the time spent under pretrial supervision to be “wasted” time in terms of matching defendants’ risk/needs with services. Additionally, technology will also provide the Agency with additional tools to allow for the expansion of services and release options.

#### **Additional Services Provided by the Defendant Monitoring Unit**

##### **Failure to Appear Unit:**

The Failure to Appear Unit locates and notifies defendants within 14 days of a missed Not Guilty Arraignment court date, encouraging them to appear for court; thereby, preventing increased arrests and incarcerations resulting from bench warrants being issued on defendants failing to appear at Not Guilty Arraignment (NGA) continuances. In addition, the Unit tracks

defendants failing to appear at a scheduled court date while under PSA's supervision; therefore, encouraging warrant resolution by the defendants and/or notifying law enforcement of the defendants' whereabouts for apprehension. The avoidance of Failure to Appear (FTA) bench warrants for NGA continuances and resolution of FTA warrants for PSA defendants incurs jail days savings by preventing detainment resulting from bench warrant arrests. A defendant arrested on a bench warrant for a FTA spends an average of 60 days in jail.

### **Bond Reduction Reports:**

Bond Reduction Reports are prepared upon the request of a judicial officer to assist in responding to motions made by defense counsel seeking to reduce a defendant's bond or modify release to own recognizance, third party custody, or supervised release. Bond Reduction Reports are compiled through verification of local references, preparation of the Bail Guidelines Classification Matrix, if one was not previously prepared or if there is new information, assessment of flight risk and community safety, and a complete criminal history check. The report, which includes PSA's recommendation, is submitted to the judge prior to the bond motion hearing or pretrial conference. PSA has recently adopted the policy that these reports will be available to the Court within 5 business days of the request. Defense counsel is asked to prepare an Attorney Information Sheet (AIS) for submission to PSA. This form is available from the court division and can soon be found on the Superior Court web site ([www.superiorcourt.maricopa.gov](http://www.superiorcourt.maricopa.gov)). For more information you may contact Pretrial Services Officer Don Thompson at (602) 506-7017.

### **Conclusion:**

The Pretrial Service Agency is committed to providing a wide range of release options and supervision services throughout the Valley.

Continued efforts will be made to adapt to the needs of the court, the legal community and the criminal defendants we supervise. Please feel free to contact us at anytime. The Agency intends to foster a positive communication with all parties involved in the criminal justice system in an effort to be receptive to the ideas and suggestions provided by those that we serve.

*Penny Stinson has been the Director of the Pretrial Services Agency since September 2000. She previously served as a Deputy Court Administrator for the City of Scottsdale and served in various capacities with the Maricopa County Adult Probation Department.*

*She has been employed in the criminal justice system in Arizona for the past 17 years.*

*This article was prepared with the assistance of DMU Supervisor Margaret Callaway and DMU Electronic Monitoring Supervisor Taylor Pile.*

### **Endnotes**

- 1) *National Prosecution Standards* (Washington, D.C., National District Attorneys Association, 2<sup>nd</sup> edition). p. 138.
- 2) *Ibid*, p. 138.
- 3) American Bar Association Report on Minimum Standards for Criminal Justice, *Standards Relating to Pre-Trial Release* (New York: Institute for Judicial Administration, September 1965).
- 4) *Ibid*.
- 5) *The Pretrial Services Reference Book* (Washington, D.C., The Pretrial Resource Center, 1999). p. 4.
- 6) *Ibid*, pp.4-8.
- 7) *Ibid*. p. 6.
- 8) American Bar Association, *Standards Relating to the Administration of Criminal Justice*, Chapter 10, "Pretrial Release," 1968, updated in 1985.
- 9) *Criminal Justice Standards; Chapter 10, Pretrial Release* (Washington, D.C., American Bar Association, 1985), p. 26.
- 10) *supra*, *The Pretrial Services Reference Book*,

pp.6-8.

- 11) *supra*, *Criminal Justice Standards*, p. 26.
- 12) *supra*, *The Pretrial Services Reference Book*, p. 8.
- 13) *Ibid.* p. 16.
- 14) *Ibid.* p. 17.
- 15) *Ibid.*, p. 20.



## ARIZONA ADVANCE REPORTS

Our regular column including summaries of recent appellate decisions will return in our next issue.



## PROP 200 UPDATE

**BY LAWRENCE MATTHEW  
DEFENDER ATTORNEY, APPEALS**

The Supreme Court finally resolved the conflict between Division One and Division Two regarding Proposition 200 and drug paraphernalia. On Thursday, November 15th the Court published the *Estrada* decision. It is official, drug paraphernalia comes within the scope of Prop. 200. However, there are a few wrinkles.

Pursuant to the opinion, Prop. 200 applies to paraphernalia convictions where the presence of paraphernalia is associated only with personal use by individuals simultaneously charged with possession of drugs and possession of drug paraphernalia, or persons who could have been simultaneously charged.

The opinion holds that Prop. 200 does not apply to paraphernalia associated with sale, production, manufacturing, or transportation of a controlled substance.

The opinion states that it does not reach the issue of whether persons who possess only paraphernalia -- no drugs -- related to personal use come within the scope of Prop. 200. (Notwithstanding this statement in the opinion, the majority hold, "we have no authority to expand the proposition to cover circumstances in which drugs are not present.")

The concurring opinion (Feldman and Zlaket) would expand Prop. 200 to the "stand-alone" case where no drugs are recovered and only paraphernalia for personal use is found.

The decision can be found on the Court's website.

## OCTOBER 2001 TRIALS AND TRIAL DATE PLEAS/DISMISSALS

### GROUP A

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/04-10/09	<b>Scanlan</b>	Cates	Brougher	CR01-010141 Agg. Assault, F6	Guilty	Jury
10/10-10/12	<b>Valverde</b>	McClennen	Hunt	CR01-000557 Agg. Assault, F3; Armed Robbery, F2 Agg. Assault, F6 Agg. Harassment, F6 Criminal Damage, M2	Not Guilty Agg. Assault; Guilty Lesser Assault M; Not Guilty Armed Robbery; Guilty of remaining	Jury
10/22	<b>Valverde</b>	Foreman	Cohen	CR01-003544 Theft, F3	Guilty	Bench
10/04-10/05	<b>Reinhart</b>	Myers	Washington	CR01-009233 Misconduct w/weapon, F4 w/2 priors	Mistrial during 2nd day of trial – Pled after mistrial	Jury
10/09	<b>Scanlan</b>	Franks	Altman	CR01-006690 2 cts. Agg. Assault, M1 Criminal Dmg, M2	Dismissed day of trial	Jury
10/16	<b>Scanlan</b>	Willett	Simpson	CR01-006793 Agg. DUI, F4	Pled day of trial	Jury
10/17	<b>Edwards</b>	Franks	Sherman	CR00-002443 PODD, F4	Dismissed day of trial	Jury
10/17	<b>Hall Jones</b>	Willett	Blumenreich	CR01-010767 2 cts. Endangerment, F6	Pled day of trial	Jury
10/17	<b>Scanlan</b>	Cates	MacRae	CR01-009587 Theft, F6	Pled day of trial	Jury
10/22	<b>Looney</b>	Davis	Bernstein	CR01-003908 Agg. Domestic Violence, F5	Dismissed without prejudice day of trial	Jury
10/25	<b>Edwards</b>	Henry, JP	Geyer	MCR01-000276 Assault/Trespass, M1	Dismissed day of trial	Bench
10/29	<b>Scanlan</b>	Cates	Eaves	CR01-010655 Forgery, F4	Pled day of trial	Jury

### GROUP B

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/1-10/3	<b>Grimm</b>	Hilliard	Bernstein	CR01-09901 Stalking, F5	Not Guilty	Jury
10/3	<b>Noble Erb Oliver</b>	Schneider	Craig	CR00-11417 2 cts. Attp. Murder, 2 <sup>nd</sup> degree, F2	Guilty but insane	Bench
10/24-10/25	<b>Grimm</b>	Gottsfield	Raymond	CR01-07416 Forgery, F4	Guilty	Jury
10/29-10/30	<b>Gaxiola</b>	Schneider	Robinson	CR01-08946 Theft, F6	Guilty	Jury
10/30	<b>DeWitt</b>	Pro Tem Pellinger	Workman	CR01-11932 POM, F6; PODP, F6	Guilty	Jury
10/9	<b>Noble Muñoz Oliver</b>	Schneider	Sorrentino	CR01-05369 Child Molesting, F2; Kidnap, F2; Sexual Conduct w/minor, F2; Attp. Sexual Conduct w/minor, F3 Sexual Abuse under 15, F3	Pled day of trial	Jury
10/30	<b>Roth</b>	Yarnell	Baca	CR01-10769 Unlawful Use of Means of Tranp., F6	Pled day of trial	Jury

**OCTOBER 2001**  
**TRIALS AND TRIAL DATE PLEAS/DISMISSALS**

**GROUP C**

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/1 – 10/4	<b>Shell</b> Arvanitas <i>Moncada</i>	Akers	Martinez	CR00-94276 Agg Assault, F3D	Not Guilty	Jury
10/2	<b>Walker</b>	Willrich	Weinberg	CR01-90512 2 cts. Agg DUI, F4N	Guilty	Jury
10/17	<b>Walker</b>	Jarrett	Brewster	CR01-91028 Ct. I, Agg DUI, F4N Ct. II, Taking ID of Another, F5N	Ct I - Not Guilty Ct II - Guilty	Jury
10/22-10/24	<b>Sheperd / Fox</b>	Keppel	Andrews	CR01-94337 Kidnapping, F2N Assault, M1N	Hung Jury (Vote count not disclosed)	Jury
10/5	<b>Wallace</b>	Willrich	Cutler	CR96-95021 5 cts Fraud Schemes, F2N 2 cts Attmt/Commit Fraud Schemes, F3N	Dismissed with prejudice day of trial	Jury
10/17	<b>Wallace</b> <i>Moncada</i>	Budoff	Roberts	CR00-12601 3 cts Child Molest, F2N 2 cts Sex Cond w/ Minor, F2N Sex Abuse Und. 15 , F3N Attempt/Com Sex Abuse, F4N	Dismissed without prejudice day of trial	Bench
10/22	<b>Dennis</b> Beatty	Willrich	Andrews	CR01-94280 Agg Assault, F3D	Dismissed without prejudice day of trial	Jury
10/23	<b>Kavanagh</b> <i>Southern</i>	Keppel	Pierce	CR01-92468 Forgery, F4N	Dismissed without prejudice day of trial	Jury
10/25	<b>Dennis</b> Kresicki	Akers	Cutler	CR01-93797(A) Theft Means of Transportation, F3N	Pled day of trial	Jury

## OCTOBER 2001 TRIALS AND TRIAL DATE PLEAS/DISMISSALS

### GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
9/19-9/20	<b>Javid/Green</b> Salvato	Mangum	Stienburg	CR01-004781 PODD, F4 PODP, F6	Guilty	Jury
10/4	<b>Adams</b> Bradley Curtis	Katz	Pacheco	CR01-010075 Theft of Means with 2 priors, F3	Guilty	Bench
10/9	<b>Billar</b>	Harrison	Anagnopolou s	CR00-18678 Imp/Trsp Nrc Drg-SA, F2	Guilty	Jury
10/9	<b>Schreck</b> Salvato	Holt	Nelson	CR00-19119 Aggravated Assault, F5; Resist Offcr/Arrst, F6, w/3 priors	Not Guilty	Jury
10/17-10/18	<b>Cain</b>	Davis	Wolfram	CR01-010014 Agg Dui, C4F	Guilty	Jury
10/29	<b>Harris</b>	McVay	Brisson	CR00-00609MI Interfering w/Jud. Proceedings	Guilty	Bench
10/30-10/31	<b>Billar</b>	Davis	Steiner	CR01-010258 Possession of Narcotic Drugs, F4	Guilty	Jury
8/30-8/31	<b>Rothschild</b> Salvato	Holt	Reddy	CR01-005659 Prohibited Possessor, F4	Mistrial	Jury
9/10	<b>Cuccia</b>	Budoff	Lindstedt	CR01-003928 Agg Ass w/ a deadly wpn, F3	Pled day of trial	Jury
9/17	<b>Cuccia</b>	Wilkinson	White	CR01-004567 2 cts Agg Dui, F4	Pled day of trial	Jury
9/24	<b>Javid/Green</b>	Budoff	Reddy	CR01-007043 Forgery, F4	Pled day of trial to class 6 open	
9/27	<b>Cain</b>	Foreman	Reddy	CR01-000898 Agg Assault on Child, CF6	Pled day of trial to C1M	Jury
10/2	<b>Carter</b> Bradley	Foreman	Reddy	CR01-010041 Agg Assault, F2D	Dismissed without prejudice day of trial	Jury
10/2	<b>Silva</b>	Barrett	Gialketsis	CR98-03658 2 cts. Agg Asslt., F3 Dang.	Pled day of trial to 1 ct. Agg asslt. non-dang., no agreements, concurrent with prior POM case.	Jury
10/8	<b>Adams</b> Bradley Curtis	Budoff	Pacheco	CR01-007144 POND, PODP w/2 priors	Dismissed with prejudice day of trial	Jury
10/11	<b>Adams</b> Seaberry Rivera	Hotham	Gadow	CR00-004814 6 cts Sexual Exploitation of a minor under 15, DCAC w/ 1 prior	Dismissed with prejudice day of trial	Jury
10/18	<b>Reid</b> Bradley Cassanova Reidy	Budoff	Spaw	CR00-018781 Arson, F2	Dismissed without prejudice day of trial	Jury
10/22	<b>Clemency</b>	Wilkinson	Morton	CR01-001418 Aggravated DUI, F4, w/1 prior	Pled day of trial to 4 mos. DOC and probation	Jury
10/23	<b>Parker</b>	Foreman	Simpson	CR01-011284 POND for sale, F2 w/ 4 priors	Pled day of trial	Jury
10/23	<b>Cuccia</b>	Hotham	Coolidge	CR01-006887 Burg, F3	Pled day of trial	Jury
10/31	<b>Parker</b>	Hotham	Larish	CR01-011284 Robbery, F4	Dismissed with prejudice day of trial	Jury

## OCTOBER 2001 TRIALS AND TRIAL DATE PLEAS/DISMISSALS

### GROUP E

Dates: Start-Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
9/27 -10/2	<b>Roskosz</b>	Gottsfeld	Raymond	CR01-09224 Aggravated Assault, F3D	Not Guilty	Jury
10/2 – 10/3	<b>Pajerski/Goldstein</b>	Kaufman	Kay	CR01-07835 Theft-Mns of Trans, F3	Guilty	Jury
10/8 – 10/15	<b>Ackerley Castro</b>	Anderson	Pittman	CR00-19168(A) 3 Cts. Sex Abuse, DCAC F3; 3 Cts. Sex Con W/Mnr, DCAC, F2; Child Molest, DCAC, F2; Kidnap, DCAC, F2	Not Guilty 3 Cts. Sex Abuse; Guilty 3 Cts. Sex Con W/Mnr; Guilty, Child Molest, Guilty Kidnap	Jury
10/11 – 10/16	<b>Smiley/Walker Ames</b>	Padish	Koplow	CR01-09142 PODD, F4	Not Guilty	Jury
10/17- 10/19	<b>Rock</b>	Anderson	Altman	CR01-08344 Child Abuse, F4	Not Guilty	Jury
10/25 – 10/30	<b>Roskosz</b>	Franks	Vingelli	CR01-08096 PODD, F4 PODP, F6	PODD - Guilty PODP – Not Guilty	Jury
10/30 – 11/2	<b>Evans Souther Del Rio</b>	Steinle	Adleman	Agg Asslt Dang, F3 Misc Inv Weapons F4 POM, F6	Guilty	Jury
10/1	<b>Walker Gotsch</b>	Anderson	Knudsen	CR00-05035; 05034 Armed Robbery, F2D Theft, F6 (w/priors)	Pled day of trial (F6 w/2 priors) Dismissed Armed Robbery	Jury
10/10	<b>Lopez</b>	Hilliard	Kuhl	CR01-08902 Poss/Sale Toxic Sub, F5	Dismissed without prejudice day of trial	Jury
10/15	<b>Smiley/Evans</b>	Anderson	Eaves	CR01-08634 2 Cts. Fraud Schemes, F2	Dismissed day of trial	Jury
10/15	<b>Squires</b>	Anderson	Knudsen	CR01-08784 2 Cts. Arm. Robbery, F2D Agg. Assault, F3D Burglary, F2D	Dismissed with prejudice day of trial ; Rule 15 violation	Jury
10/22	<b>Smiley</b>	Padish	White	CR01-03344 Lv. Scene of Inj. Acc., F4	Dismissed day of trial	Jury

### GROUP F

Dates: Start-Finish	Attorney Investigator Legal Assistant	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
10/1 – 10/4	<b>Cutrer</b>	Willrich	Andrews	CR01-92143 PODD, F3N	Guilty	Jury
10/9 – 10/11	<b>Rosales / Fox Thomas Moncada</b>	Oberbillig	Bennink	CR01-92113 (B) Agg. Assault, F3D	Guilty	Jury
10/15 – 10/16	<b>Felmly / Shoemaker Arvanitas</b>	Wilkinson	Weinberg	CR01-91389 Agg. DUI, F4N	Guilty	Jury
10/18	<b>Gaziano</b>	Freestone	Murphy	TR00-3519 DWI, M1N	Guilty	Jury
10/22 – 10/23	<b>Felmly / Shoemaker Arvanitas Geary</b>	Fenzel	Bennink	CR01-92097 Att. Arson, F2N Depositing Explosives, F4N	Mistrial	Jury
10/3	<b>Buckallew Klosinski</b>	Freestone	Doane	TR01-03418 Driving w/ License Suspended, M1N	Dismissed with prejudice day of trial	Bench

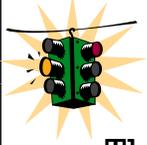
## OCTOBER 2001 TRIALS AND TRIAL DATE PLEAS/DISMISSALS

### 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
09/17 – 10/15	<b>Parzych Babbitt</b>	Keppel	Barry	CR98-93180C Murder 1, F1; Conspiracy/Att. Murd 1, F1; Armed Robbery F2; Theft, F3	Not Guilty of Consp/Att Mur- der and Armed Robbery; Guilty of Murder and Theft	Jury
09/25 - 10/03	<b>Cleary Dupont</b> Apple Otero <i>Bolinger</i>	McVey	Myers	CR99-15230B Murder 1, F1, Dangerous; Kidnapping, F2, Dang.; Burglary 1, F2, Dang.; Att. Armed Robbery, F3, D; Sexual Abuse, F5 4 Cts. Agg. Assault, F6	Guilty Murder 1; Att. Armed Robbery, D; Kidnapping, D; and 3 Cts. Agg. Assault	Jury
10/9 – 10/10	<b>Granda</b>	Gaines	Flanigan	CR01-008107 PODD, F4; PODP, F6	Guilty	Jury
10/15 – 10/16	<b>Allen, M.</b>	Foreman	Baca	CR01-06150 SOND, F2	Not Guilty	Jury
10/12 – 10/25	<b>Cleary Reger</b> Horrall <i>Bolinger Williams</i>	McClennen	Clayton	CR00-10030 Murder 1, F1, Dang.	Guilty	Jury
10/15 – 10/16	<b>Ivy Reger</b>	Jarrett	Schultz	CR01-93649 Theft of Means of Trans., F3	Guilty	Jury
10/15 – 10/16	<b>Patton</b>	Hotham	McCauley	CR01-04973 Agg. Assault, F3, Dang.	Guilty	Jury
10/19	<b>Allen, M.</b>	Heilman	Kay	CR01-003301 Theft F3	Dismissed on day of trial	
10/30	<b>Tallan Reger</b>	Hotham	Cohen	CR01-010135 Armed Robbery, F2, Dang.	Pled to Att. Burg, F4, on day of trial	Jury

### OFFICE OF THE LEGAL ADVOCATE

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	CR# and Charge(s)	Result	Bench or Jury Trial
10/22-10/25	<b>Gray</b>	Schneider	CR2001-05692 Agg Asslt 3F Dangerous	Dismissed w/ prejudice before closing argument	Jury



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

# **Annual DUI Seminar**



**Friday, February 8, 2002**

Marcelline Burns, the foremost authority on  
field sobriety testing, is expected  
to present.

Holiday Inn Hotel and Suites, Mesa Arizona

Additional information will be available soon.





# Season's Greetings



**Best Wishes for a Safe and  
Joyous Holiday Season and  
New Year!**



*for The Defense*

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