

# for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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March



## Navigating the Mental Health System

For Our SMI and Dually Diagnosed Defendants

By Linda Shaw, Mitigation Specialist

All of us have dealt with mentally ill defendants, both in and out of custody. In many cases, our clients are receiving the appropriate level of behavioral health services, including substance abuse services, through Value Options (VO), Maricopa County's RBHA (Regional Behavioral Health Agency), which offers psychiatric treatment and medication, substance abuse classes when necessary, education, and assistance in applying for entitlements such as S.S.I. (Supplemental Security).

However, in other cases, the level of services provided are not congruent with the level of need we see in our clients on a daily basis. It is important to understand the various levels of behavioral services provided by Maricopa County so that informed decisions can be made regarding referrals to proper agencies. Services for the seriously mentally ill (SMI) encompass a comprehensive level of mental health care including psychiatric treatment and medication, case management, substance abuse classes when necessary, education, housing, vocational services, and application for S.S.I. if the person is unable to work. Case management is also available on an as-needed basis for individuals.

A person must receive Title XIX (AHCCS) benefits or be on Court Ordered Treatment for being DTS/ DTO (Danger to Self/Others), PAD (Persistently and/or Acutely Disabled) and/or GD (Gravely Disabled) to qualify for these services.

For individuals who do not rise to the level of being SMI, general mental health or substance abuse programs are available, but far more difficult to access. While not as comprehensive as SMI services, they can provide the basics to address the client's psychiatric and substance abuse needs.

### SMI STATUS

SMI criteria are state mandated through the Arizona Department of Health Services, Division of Behavioral Health Services.

### CRITERIA

### QUALIFYING DIAGNOSES

Your client must have received a diagnosis of one of the following mental disorders:



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James J. Haas, Maricopa County Public Defender

**Category I:** Schizophrenia, Schizoaffective Disorder, Major Depression, Recurrent, Severe with Psychotic Features, Bipolar Disorder, Delusional Disorder.

**Category II:** Psychotic Disorder, Dissociative Identity Disorder, Schizotypal Personality Disorder, Borderline Personality Disorder, Posttraumatic Stress Disorder.

**Category III:** Bipolar I Disorder, Single Episode; Bipolar I Disorder, In Full Remission; Major Depression; Other Mood Disorders; Anxiety Disorders; Obsessive Compulsive Disorder; Personality Disorders.

In addition, your client must display functional criteria that are shown to exist as a result of the qualifying diagnosis.

**FUNCTIONAL CRITERIA FOR SMI STATUS**

A person must have problems in one of the following three areas for most of the past twelve months or for most of the past six months with an expected continued duration of at least six months. If your client is in custody, the dysfunction in these areas extends to the period immediately preceding his incarceration.

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Inability to Live in an Independent or Family Setting Without Supervision

That includes:

- The defendant has only sporadic ability to attend to basic needs.
- Needs assistance in caring for self in a safe and sanitary matter.
- Housing, food, and clothing must be provided or arranged for by others.
- Unable to attend to the majority of basic needs of hygiene, grooming, nutrition, medical and dental care.
- Unwilling to seek prenatal care or necessary medical/dental care for serious medical or dental conditions.
- Refuses treatment for life threatening illnesses because of behavioral health disorder.

Impairment in Interpersonal Relations

That includes:

- Very few, in any, close relationships.
- Extremely isolated or withdrawn.
- No age appropriate social skills.
- Difficulty making friends.
- Few friends or tenuous, strained relationships.
- Frequent or major disruption of relationships with others.
- Unable to sustain relationships independent of substance use or illegal activity.

A Risk of Serious Harm to Self or Others

That includes:

- The defendant is seriously disruptive to family and/or community.
- Pervasively or imminently dangerous to self or others bodily safety.
- Regularly engages in assaultive behavior.

*Continued on p. 8*

# The Crib Sheet

## Helpful Hints for When You're in a Pinch

By Jim Wilson, Trial Group B Counsel  
(with thanks to Jeff Roth, Extern Coordinator)



### 1. Objections to the Pre-Sentence Report.

Don't forget to use Rule 26.8 of the Arizona Rules of Criminal Procedure to object to unsubstantiated, prejudicial and irrelevant materials contained in the presentence report (PSR), and to ask for these portions of the report to be excised. The PSR follows your client to DOC, and is used for classification purposes. Furthermore, it wouldn't be without precedent for an informant inside the prison to get ahold of a copy of your client's PSR and share it with other inmates, possibly placing your client's life in danger.

### 2. When an Unlawful Arrest Can Invalidate an Otherwise Valid Consent Search.

Example: A search warrant is served on a private residence, and your client just happens to be there. She is not named or described in the warrant, and there is no probable cause or reasonable suspicion to arrest or search her. Yet, your client is detained, handcuffed and asked to sit outside on the curb for forty-five minutes while the residence is searched. Finally, the police ask for consent to search your client's wallet, wherein they discover a forged check.

A lawful detention can convert into an unlawful arrest with the passage of time, and other factors. *United States v. Recalde*, 761 F.2d 1448, 1456 (10th Cir. 1985), overruled in part on other grounds, *United States v. Price*, 925 F.2d 1268 (10th Cir. 1991). And, if there is an unlawful arrest, verbal evidence (confessions, consent searches) and any fruits must be suppressed as the fruit of the illegal arrest. *Wong Sun v United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). The mere giving of *Miranda* warnings does not remove the taint of an illegal arrest so as to make statements admissible. Warnings are one factor to be considered along with the passage of time, intervening circumstances and the

flagrancy of the official misconduct. *Brown v. Illinois*, 442 U.S. 590, 95 S.Ct. 2254, 45 L.Ed. 2d 416 (1975). In *Cardwell v. Taylor*, 461 U.S. 571, 103 S.Ct. 2015, 76 L.Ed.2d 333 the Supreme Court emphasized the distinction between voluntariness of consent under the 5th Amendment and the "causal connection" for purposes of the 4th Amendment.

### 3. Proposition 200 Convictions

**Impeachment v. Historical Priors.** Prop. 200 convictions cannot be used for impeachment purposes under Rule 609 of the Arizona Rules of Evidence. *State ex rel. Romley v. Martin*, 205 Ariz. 279, 69 P.3d 1000 (Supreme Court en banc 2003). However, they can be used for sentencing enhancement purposes. *State v. Christian*, 205 Ariz. 64, 66 P.3d 1241 (2003).

**4. Duplicitous Indictments.** An indictment which charges two or more separate offenses in the same count is duplicitous. *State v. Schroeder*, 167 Ariz. 47, 51, 804 P.2d 776, 780 (Div. 1 1991). Arizona law requires that each separate offense be charged in a separate count. Ariz.R.Crim.P. Rule 13.3(a), *State v. Axley*, 132 Ariz. 383, 646 P.2d 268 (1982). Therefore, an indictment which charges more than one crime within a single count may be dismissed as duplicitous. *Spencer v. Coconino County Superior Court*, Div. 3, 136 Ariz. 608, 610, 667 P.2d 1323, 1325 (1983).

For Example: Defendant is charged with burglary in the 2nd degree for "entering or remaining unlawfully on the residential structure of Jane Doe with intent to commit a theft or a felony therein". This indictment is duplicitous because it charges your client with burglary under two separate theories, i.e., a

burglary premised upon intent to commit a theft, and a burglary premised upon intent to commit a felony.

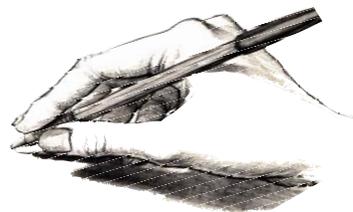
The purpose behind the prohibition of duplicitous indictments is three-fold: (1) duplicitous indictments fail to provide the defendant with adequate notice of the charges against her; (2) they expose the defendant to the possibility of double jeopardy; and, (3) they provide for the possibility of non-unanimous jury verdicts. *Schroeder, supra*, 167 Ariz. at 51, 804 P.2d at 775.

If you find a duplicitous charge in the indictment you must ask yourself whether the confusion caused therein might be more helpful than harmful to your client before moving to dismiss the duplicitous count. For example, if the charge is endangerment, and the person whose peace was supposedly disturbed is not specified, this ambiguity might be more helpful than harmful to you when arguing before a jury. Think the issue through and discuss it with other lawyers. Remember that you must file the motion to dismiss the duplicitous count to preserve the issue on appeal if your client is unsuccessful at trial.

**5. Attorney Conducted Voir Dire:** We keep hearing that we have “attorney conducted voir dire,” yet for many of us the court asks the majority of the questions, and we’re left to mop up after the judge is through. Or, we’re ordered to put our proposed voir dire questions in writing, and the judge then edits them, and thereby limits the scope of our questioning. One suggestion is to file a pleading before trial reminding the court that Rule 18.5(d) specifically provides that, “[u]pon request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors.” As a courtesy you might want to inform the judge of the general topics or areas you intend to cover during your questioning, but not the specific questions you intend to ask. Keep your specific questions (or outline) to yourself, and save it for the moment when it’s your turn to conduct your own voir dire of the prospective jurors.

## Writers' Corner

Garner's Usage Tip of the Day:



Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including *A Dictionary of Modern Legal Usage*, *The Winning Brief*, *A Dictionary of Modern American Usage*, and *Legal Writing in Plain English*. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at [www.us.oup.com/us/apps/totd/usage](http://www.us.oup.com/us/apps/totd/usage). Garner's *Modern American Usage* can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

**each . . . apiece.** This construction is redundant -- e.g.: "The 33 largest American plantations each receive more than \$1 million apiece [delete 'apiece'] in higher sales prices." Stephen Moore, "Corporate Welfare for Select Few Hurting Others," *Houston Chron.*, 6 Apr. 1995, at A33.

**each and every.** This emphatic (and trite) phrase, like "each" or "every" alone, requires a singular verb -- e.g.: "Each and every one of them are [read 'is'] devoted." Robert D. Signoracci, "Outgoing Mayor Thanks Cohoes," *Times Union (Albany)*, 26 Dec. 1999, at B4.

**duly authorized.** Because "authorize" denotes the giving of actual or official power, "duly" (i.e., "properly") is usually unnecessary in this cliché. Likewise, "duly" is almost always redundant in phrases such as "duly signed."

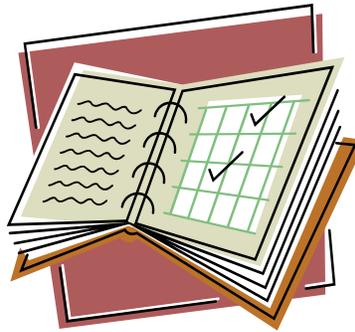
# Practice Pointer: Obtaining Military Records

By Ray Del Rio, Paralegal

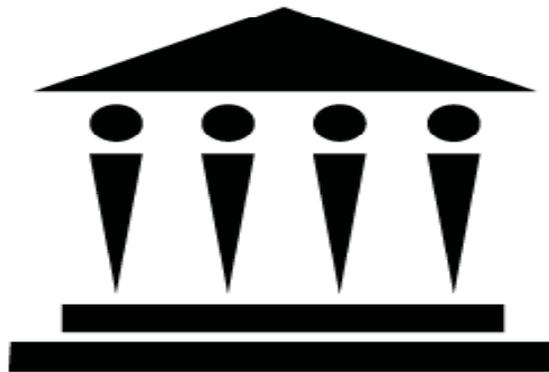
Military records can be a vital source of mitigation for our clients. In order to better serve our clients who are former service members, the following practice should be initiated.

1. ASAP, identify the client as a former service member.
2. Have the client sign SF 180 – Request for Military Records. (This document is available on the Public Defender's common drive, under PD\_FORMS\Military Records\Cover Letter for SF 180 - Request for Military Records).
3. Prepare a letter from our office indicating that you represent the client in a criminal matter in Superior Court and attach it to the request for Military Records. (This form letter is available on the Public Defender's common (S) drive, under PD\_FORMS\Military Records\Cover Letter for SF 180 - Request for Military Records).
4. The majority of military personnel records are stored at the National Personnel Records Center, Military Personnel Records, 9700 Page Blvd , St. Louis, MO 63132. The bureaucratic system takes approximately six months to get the client's military service records. The phone number for this agency is (314) 801-0800.
5. Inform the court that your client is a former service member, that you have requested his/her military service records and the process takes approximately six months to receive these records.
6. The noted request for military records and our letter can be faxed to the center at (314) 801-9195 in order to attempt to expedite the process. If you fax, you should still mail the original request for military records and our letter as follow-up.
7. Be tenacious with follow-up phone calls and letters - the National Center for Military Personnel Records has no sense of urgency with regard to those types of requests. You will need to regularly call and plead with them to get these records to us for your client's sake.





Mark Your Calendars for the  
**2006 APDA Annual Conference!!**



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**June 21 - 23, 2006**  
Tempe Mission Palms Hotel  
Tempe, AZ

More information will be made available soon.

# Practice Pointer: Tips for Self-Surrenders

***Editors' Note: When you have clients with medical needs who will be self-surrendering to the jail, it is vital to alert CHS to these medical needs at least one week prior to the self-surrender date pursuant to the following procedure:***



**MARICOPA COUNTY  
CORRECTIONAL HEALTH SERVICES  
Administration  
3250 W Lower Buckeye Rd  
Suite 2100  
Phoenix, Arizona 85009  
(602) 506-2906  
Fax (602) 442-8659**

## **INSTRUCTIONS FOR SELF SURRENDERS, FUTURE INCARCERATIONS, WITH MEDICAL ISSUES**

These instructions are for persons currently out of custody who present medical issues when self surrendering to the Maricopa County Sheriff, and to persons who will be sentenced in the future to the Sheriff's custody, and where transition and continuity of medical care can be addressed in advance.

Current Detention Policy of the Sheriff's Office provides for self-surrender at LBJ Jail only (3250 W Lower Buckeye Road). Since there is no Maricopa County Correctional Health Services (CHS) medical **intake**/screening at that facility, CHS asks the following to ensure a smooth transition and continuity of care:

1. That self surrender be a weekday (not a county holiday) between 9 and 3
2. At least 7 business days prior to self surrender, the patient provide information from the current provider (s) - eg a current diagnosis, treatment plan, current provider contact information, prescribed medications, any necessary equipment, and any related current medical records to CHS for review.

This material can be faxed, emailed, mailed or delivered to:  
CHS Clinical Liaison  
Correctional Health Services  
3250 W Lower Buckeye Rd Suite 2100  
Phoenix, AZ 85009  
Fax 602 442 8659  
Telephone 602 876 7110

3. At least 7 business days prior to self surrender, CHS is provided with an executed authorization for release of medical information so that CHS staff can discuss issues as need be with current providers. Release of medical information forms are available from CHS Clinical Liaison.
4. At least 7 business days prior to self surrender CHS is provided with a copy of the court order showing the self surrender time and date and a reference to compliance with CHS medical instructions for self surrenders (eg these above)

Inmates participating in work furlough or work release, and currently out of custody, have an obligation to obtain medical clearance on their own for work release/work furlough from current provider(s) [on the standard form provided by the Sheriff and adult probation.] The Sheriff and Adult Probation are also contacts for anyone who will be housed in Con-Tents. CHS does not provide medical services for inmates housed at Con-Tents: within parameters established by the Sheriff, those inmates keep their own property and medications, come and go to work, and have their own private provider's medical clearance for housing at Con-Tents per the Sheriff's standard forms.

**Continued from Navigating the S.M.I. System, p. 2**

- Has been arrested, incarcerated, hospitalized, or at risk of confinement because of dangerous behavior.
- Persistently neglectful or abusive toward others in the person's care.
- Severe disruption of daily life due to thought of death, suicide, or self-harm; often with behavioral intent and/or plan.
- Affective disruption causes significant damage to the person's education, livelihood, career, or personal relationships.



deteriorate to the level of impairment described in the clinical/functional categories described above.

**CONTACTING VALUE OPTIONS**

If you think your client may be SMI or need general mental health services, please call the VO access line, 1-800-654-5465, (Voice Mail Option 7 for English, Option 2 for Provider) for an in or out-of-custody eligibility evaluation. One of the first questions the screener will

ask is whether your client has AHCCS. If you know, that's fine. If you don't know, the VO team will find it out when they interview your client.

**APPEALS PROCESS**

In many instances, our clients are denied SMI services by VO when they first apply. If you believe that your client is, indeed, SMI, it is important to consider the appeals process that is set in place to address this situation.

Sometimes, your client's substance abuse history plays a pivotal role in being declined SMI services. That is because the VO evaluator may make the assumption that your client's symptoms reflecting the functional criteria listed above are due to his substance abuse behavior rather than any underlying mental health condition. It is always advisable to refer to the length of time your client has been in custody. Any period of 60 days or more in custody helps to demonstrate that the he has detoxed from any chemical (either alcohol

Disruption in Role Performance

That includes:

- Frequently disruptive or in trouble at work or school.
- Frequently terminated from work or suspended/expelled from school.
- Major disruption of role functioning.
- Requires structured or supervised work or school setting.
- Performance significantly below expectation for cognitive/developmental level.
- Unable to work, attend school, or meet other developmentally appropriate responsibilities; or

Risk of Deterioration

In the opinion of the Value Options evaluator or his designee, the person would predictably

or illegal street drugs) and exhibits the raw symptomology of whatever underlying mental health issue he has experienced.

Anecdotally, many of our clients experience the true abyss of their dysfunction after they have been in custody for awhile without the assistance of alcohol and illegal drugs. In some cases, clients are so despondent and unable to function it is easy to imagine why they turned to illegal drugs and alcohol in the first place. If you observe any significant deterioration in a client's mood, outlook, appearance, or attitude, please contact the CHS liaison on the Global email immediately. They coordinate their services with VO so that appropriate services can be arranged while your client is in custody.

As soon as a client's application for SMI services is rejected, an appeals packet is sent and should be completed. In many cases, your client will then have the opportunity to provide additional records and you may submit a letter in support of your client. That letter should, if possible, explain your experience interacting with him, his general demeanor, family history of mental health, how he may have attempted, without success, to receive SMI services in the past and was unable to navigate the system himself, how his untreated mental health conditions may have led him to "self-medicate" with street drugs and/or alcohol, the age of onset of these symptoms, how these symptoms may have impacted his performance in school, and any other pertinent issues you believe will persuade the VO evaluators to reverse their denial of SMI services.

After the appeal is filed, an informal conference will be scheduled. If the matter is not resolved at that time, it will be forwarded to the Arizona Department of Health Services (ADHS). If no resolution is reached there, the matter goes on to a Fair Hearing heard by ADHS. If no resolution is reached there, other steps may be undertaken. From my experience, the ADHS Hearing Officer is likely to overturn VO's denial if the defense team can provide the type of information discussed above. It is usually

unrealistic to expect our potentially SMI clients to undertake this tedious process on their own, even if assisted by family members. Note that advocates may be requested from ADHS/DBHS at 602-364-4585 or 1-800-421-2124.

In any event, if SMI services are denied to your client, all is not lost. He may receive basic psychiatric services, including medication, counseling, and case management through Value Option's GMH/SA program if eligible for Title XIX services through AHCCCS. (General Mental Health/Substance Abuse).

## CONCLUSION

We all try to represent our clients in a holistic way, going beyond the facts and circumstances of their crimes. By harnessing the tools provided to us through Value Options and their collateral agencies, we will be much more able to find the root cause of many clients' behaviors. Addressing these underlying factors is, oftentimes, the key component to turning clients' lives around and setting them on the path of being functional, productive members of our community.



# TIDBITS FROM VEHICULAR ...

By Jeff Force, Vehicular Trial Group Counsel

## “Now Officer, based on your investigation ...” **OBJECTION!!**

MCPD Attorney Daphne Budge was recently in trial on an Aggravated DUI. She knew going in that the State could not locate the only witness who could identify her client as the driver. But that minor detail didn't stop the prosecutor from proceeding to trial and telling the jury in opening remarks that they would hear evidence that the defendant was positively identified as the driver.

So how were they going to "hear" this, you ask, without their eyewitness? Not a problem. On direct examination of the arresting officer, the prosecutor simply asked (and I'm paraphrasing a bit here), "Officer, based on your investigation, were you able to determine who was driving the vehicle?" Well, Daphne had her antennae up and was on her feet objecting, but of course that did not prevent the professional witness from blurting out his answer that it was the defendant.

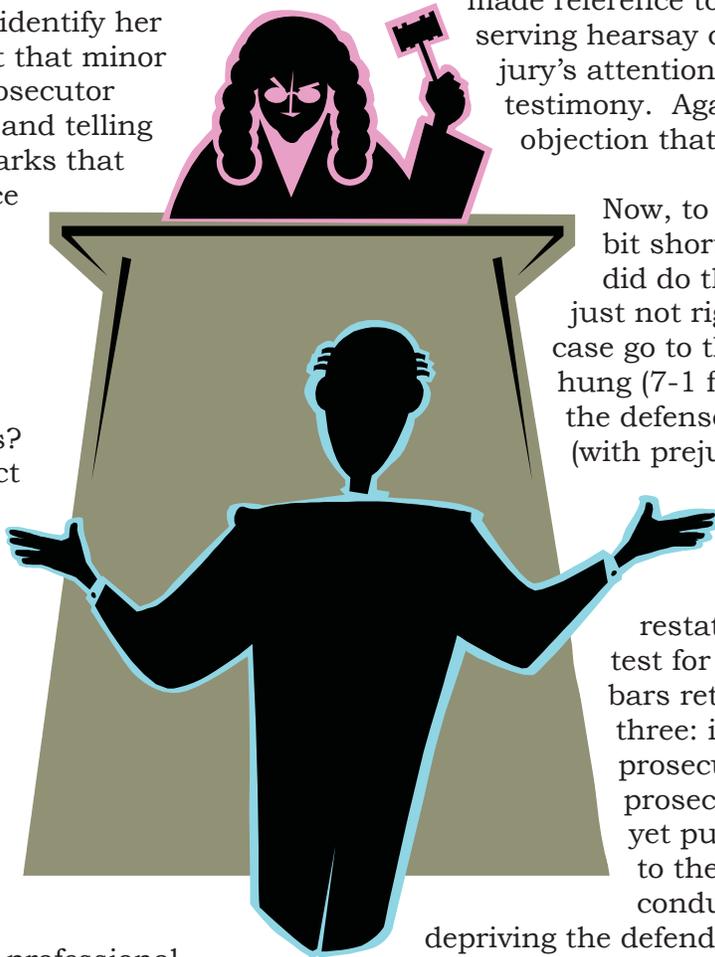
The question, deliberately worded to fly under the radar, was nevertheless clearly intended to elicit inadmissible information the officer obtained from his interview with the now missing witness. In other words, he attempted to get in through the back door that which he knew he could not through the front. Daphne's

objection was sustained, the answer stricken, but her request for a mistrial was denied.

Think that's the end of the story? Well, not so fast. The State can be mighty persistent. In closing argument, the prosecutor deliberately made reference to the officer's self-serving hearsay conclusion, drawing the jury's attention back to the precluded testimony. Again Daphne made a timely objection that was sustained.

Now, to make a longer story a bit shorter, the judge ultimately did do the right thing - but just not right away. He let the case go to the jury, but after they hung (7-1 for acquittal), he granted the defense motion for dismissal (with prejudice!) for prosecutorial misconduct based on *Miller v. Superior Court*, 189 Ariz. 127 (App. 1997). *Miller* restates the three-part *Poole* test for when double jeopardy bars retrial. The judge found all three: improper conduct by the prosecutor; conduct which the prosecutor knew to be improper yet pursued with indifference to the risk of mistrial; and the conduct caused prejudice by depriving the defendant of his right to a jury.

The lesson to take from this anecdote (if you're looking for one) is simply to listen attentively and ready yourself to jump up when the prosecutor starts asking the witness for a conclusion because there's a very good chance that it's going to be for any number of improper purposes (ambiguous, hearsay, foundation, opinion, facts not in evidence - and my favorite, prejudicial).



Note: Jay Brown (Vehicular Group alum, now in private practice) took over the case after the mistrial and authored the successful motion.

### ***Field Sobriety Tests: They're not all equal!***

Field sobriety tests (FSTs) are those physical agility exercises that the DUI officer has the suspected impaired driver perform at roadside – you know, just before he/she places your client under arrest. They typically consist of the horizontal gaze nystagmus (HGN), walk-and-turn (WAT), and one-leg stand (OLS). The WAT/OLS are also known as “divided attention tests”. This is the three-test battery developed by NHTSA (National Highway Traffic Safety Administration) and the subject of several questionable (prosecution-oriented) studies. Incidentally, it’s always fun to ask the officer what that acronym stands for because they can never get it right – and that may be all the fun you have with this witness!

So why aren’t they equal? And so what? Allow me to lift a quote from the seminal HGN case of *State v. Superior Court (Blake)*, 149 Ariz. 269, 276 (1986): “The HGN test is a different type of test from balancing on one leg or walking a straight line because it rests almost entirely upon an assertion of scientific legitimacy rather than a basis of common knowledge. Different rules therefore apply to determine its admissibility.”

Quite simply, for far too long the State has misrepresented the divided attention tests as something they are not, portraying them to the jury as highly technical and scientific, of equal weight and importance to HGN, and of having a direct correlation to alcohol level or driving impairment. None of this is true. These so-called “tests” are not at all scientific and the jury is quite capable of forming its own conclusions upon hearing how the defendant performed the tasks requested without the unnecessary embellishments (and frequent exaggerations) of the officers.

I digress briefly here to make two points. The first is that it is unfortunate that these have come to be known as “tests”, since that implies that there is an accepted methodology for determining whether a person has “passed” or “failed”. In reality, these are just very subjective observations that are being made of an individual, and two people observing the same individual may come to entirely different conclusions about their performance.

Second, the State must prove the element “impaired to the slightest degree.” The prosecutor would have the jury believe that their burden is to show any impairment whatsoever, when in fact their true burden is to prove that the person’s “ability to control the vehicle” was impaired. *State ex rel. McDougall v. Albrecht (Williams)*, 168 Ariz. 128, 132 (App. 1991). So when you consider that “the HGN test and other field sobriety tests do not test directly a subject’s ability to drive a car,” (a quote right from the American Prosecutor’s Research Institute’s “Resource Guide for Judges, Prosecutors, and Law Enforcement”), you understand better that the prosecutor must still prove a nexus between FST performance and driving ability.

OK, back to the issue. So HGN is a scientific technique that passed *Frye* scrutiny in *Blake*. As such it is foundational for the officer to be qualified as an expert – someone with specialized knowledge who can assist the trier of fact – under Rule 702. It is therefore permissible, even necessary, for the prosecutor to go into the officer’s knowledge, education, training, proficiency, and experience – but with HGN only!

The other tests, the WAT and OLS, are not based on scientific principles, but rather on “common human understanding.” By definition then the jury requires no special help or assistance to comprehend the implications of someone’s performance and so the officer should be testifying merely as a layperson. Such testimony, under Rule 701, is limited to that which the officer himself observed (“based on the perception of the witness”). In other words, the officer may only describe the tasks

the person was asked to perform, and relate the observations of that performance. For example, "I asked her to walk a straight line with her arms at her sides and she stepped off the line twice and raised her arms for balance." The officer may then give his opinion, as any layperson is permitted to do (subject to the limitations of *Fuening* on the ultimate issue, of course), as to whether the performance could be a sign of impairment.

The officer's extensive training, his experience administering the tests, that NHTSA has adopted them, that they are "standardized" and used nationwide, that reliability and validation studies have been conducted, their purported accuracy rates, that they have any correlation to alcohol level or driving impairment, the number of "clues" possible, whether the person passed or failed – all this type of testimony is improper under the existing case law and rules of evidence.

That doesn't seem to deter prosecutors, however, from invariably introducing this kind of fluff to bolster this otherwise lame evidence that has no direct bearing on driving. As the court rhetorically asked in *U.S. v. Horn*, 185 F.Supp.2d 530 (Dist.Ct.Md. 2002), "Does the fact that a suspect missed two cues in the WAT test mean that the driver cannot safely drive a car, or does it simply mean that the driver has some inability to perform the test that is unrelated to his or her ability to drive?" Very good question! In addition to *Horn*, I would recommend reading (that is, if you're into this stuff) *State v. Meador*, 674 So.2d 826 (Fla.App. 1996). Both cases give an excellent review of field sobriety testing and call into question some of the myths that have been associated with them for so long.

The Arizona Supreme Court has in a number of cases cautioned trial courts to be wary of such testimony that gives the divided attention tests an undeserved "imprimatur of scientific accuracy," "aura of special reliability and trustworthiness," or "undue significance as scientific truths." As the court warned in *Blake*, "because science is often accepted in

our society as synonymous with truth, there is substantial risk that the jury may give undue weight to such evidence."

By the way, these same limitations apply equally to the State's criminalists. No matter who is testifying, it does not alter the fact that the divided attention tests are nothing more than simple physical tasks that require no scientific explanation. As stated in *State ex rel. McDougall v. Albrecht (Williams)*, 168 Ariz. 128, 132-33 (1991): "The state's criminalist attempted to give the field sobriety tests the imprimatur of scientific accuracy. The qualification of a witness as an expert does not necessarily qualify the data on which he relies."

Now, if you wait until the witness is testifying in trial to object to this type of improper testimony, don't be surprised when the judge lets it in. It's a better practice to file a motion beforehand, setting forth the issues and the support for your position, and getting a pretrial ruling on the limits of permissible testimony (the Vehicular Unit just so happens to have such a motion - imagine that). With that said, still don't be surprised when the judge allows the testimony. This has been going on for so long that it will no doubt take some time to properly educate them, but in the meantime you're making a clear record that your motion will preserve.



# Jury and Bench Trial Results

## December 2005/January 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group A</b>						
11/17 - 12/1	<b>Kirchler</b> (Advisory Coun- sel)	Akers	Fuller	CR05-048600-001DT Aggravated Assault, F3D	Guilty	Jury
11/29 - 12/6	<b>Engle</b>	Blakey	Adel	CR05-010384-001DT PODD, F4	Guilty	Jury
12/1 - 12/6	<b>Bressler</b> Sain	Burke	Green	CR05-108664-001DT Aggravated Assault, F5 Resisting Arrest, F6 Criminal Trespass 1, M1	Guilty	Jury
12/5 - 12/7	<b>Fischer</b>	Akers	Garrow	CR05-112688-001DT Resisting Arrest, F6 Criminal Trespass, M3	Criminal Trespass dismissed before trial; Guilty of Resisting Arrest	Jury
12/5 - 12/7	<b>Roy / Davis</b> Hales	Gottsfield	Wright	CR05-110136-001DT TOMOT, F3 Theft, M1	Guilty	Jury
12/5 - 12/8	<b>Farney</b> Sain <i>Armstrong</i>	Donahoe	Andrus	CR04-015936-001DT Unlawful Discharge of Firearm, F6D	Not Guilty	Jury
12/7 - 12/8	<b>Willmott / Iacob</b> Hales <i>Curtis</i>	Burke	Vaitkus	CR05-119204-001DT Aggravated Assault, F3D	Not Guilty	Jury
12/19	<b>Iacob /</b> <b>Willmott</b>	Burke	Woo	CR05-048574-001DT Forgery, F4 Taking ID of Another, F4	Guilty	Jury
12/12 - 1/24	<b>Reece</b> Sain <i>Armstrong</i>	Akers	Larish	CR04-021330-001DT Murder 2°, F1	Guilty	Jury
1/9 - 1/11	<b>Howe / Taylor</b>	Cole	Vaitkus	CR05-120120-001DT Robbery, F4	Not Guilty of Robbery; Guilty of lesser included Theft, C1M	Jury
1/11 - 1/12	<b>Farney</b> Page <i>Armstrong</i>	Udall	Andrus	CR05-123295-001DT Aggravated Assault, F3D 2 cts. MIW, F4	Pled guilty the second day of trial to ct. 2, MIW, F4 w/one prior felony conviction.	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group B</b>						
12/14 - 12/19	<b>Dominguez</b> <i>McDonald</i>	Hicks	Charbel	CR04-013082-001DT TOMT, F3 Disorderly Conduct, F6 Resisting Arrest, F6	Guilty	Jury
1/12 - 1/20	<b>Doyle/Guenther</b> Ashmore	Cole	Mayer	CR05-122683-001 Armed Robbery, F2	Guilty of Armed Robbery ND	Jury
1/24 - 2/2	<b>Doyle/Beck</b>	Holt	Kirka	CR05-125190-001DT Kidnapping, F2	Guilty of Unlawful Imprisonment	Jury
<b>Group C</b>						
12/6 - 12/14	<b>Fisher</b>	Dairman	Starkovich	CR04-135203-001SE Armed Robbery, F2D Agg. Assault, F3D Buyrglary 1st Degree, F3D	Guilty	Jury
12/14 - 12/16	<b>Dehner</b>	McClennen	Smith	CR05-031286-001SE PODD, F4 PODP, F6	Guilty	Jury
1/17 - 1/18	<b>Nurmi</b>	Talamante	Baker	CR05-006119-001SE Escape 2nd Degree, F5	Guilty	Jury
1/20 - 1/20	<b>Engineer/ Shoemaker</b>	McClennen	Smith	CR05-031286-001SE PODD, F4 PODP, F6	Guilty	Jury
<b>Group D</b>						
12/5 - 12/6	<b>Whalen</b> O'Ferrell	Porter	Rassas	CR05-006678-001DT PODD, F4 POND, F4	Directed Verdict	Jury
12/9 - 12/9	<b>Baird</b> Charlton	Mahoney	Dahl	CR05-117872-001DT Agg. Assault, M1 Resisting Arrest, M1	Not Guilty	Bench
12/13 - 2/16	<b>Jackson</b>	Gordon	Letellier	CR05-115289-001DT Trespass, F6, Criminal Damage, M1 Assault, M2	Not Guilty	Jury
12/7 - 12/14	<b>Lockard</b>	Porter	Rassas	CR05-122099-001DT TOMOT, F3 Possession of Burglary Tools, F6	Guilty	Jury
12/19 - 2/21	<b>Washington</b>	Cole	Doering	CR05-116654-001DT Agg. Assault, F3D	Directed Verdict	Jury
12/20 - 12/22	<b>Sitton</b>	Trujillo	Rothblum	CR04-023012-001DT Burglary 2nd Degree, F3	Not Guilty	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group D (Continued)</b>						
1/3 - 1/12	<b>Parker Sain</b>	Trujillo	Okano	CR04-020949-001DT Sexual Conduct w/ Minor, F2, Public Sexual Indecency, F5, 2cts. Child Molest, F2, 6cts. Sexual Exploitation of Minor, F2	Rule 20 Acquittal on 3cts Sexual Exploitation of Minor, Guilty rest of counts	Jury
1/4 - 1/5	<b>Washington</b>	Mahoney	Beaver	CR05-122072-001DT Agg Assault, F3D	Guilty Agg. Assault, F3N	Jury
1/5 - 1/9	<b>M. Cain/Vincent Charlton</b>	Steinle	Grant	CR05-119790-001DT 3rd Degree Burglary, F4	Dismissed with Prejudice	Jury
1/5 - 1/10	<b>Sitton Charlton</b>	Gottsfeld	Wright	CR05-121826-001DT Agg Assault, F3, Threat-Intimidate, F4	Guilty Assault, M2, Threat-Intimidate, M1	Jury
1/19 - 1/24	<b>M. Cain/Vincent</b>	Hicks	Grant	CR05-106329-001DT PODD, F4	Not Guilty	Jury
<b>Group E</b>						
11/28 - 12/12	<b>Evans Greene Tomlinson Reilly Del Rio</b>	Gama	Cohen	CR05-111803-001DT 8 cts. Sexual Conduct w/Minor, F2DCAC	Not Guilty	Jury
11/29 - 12/1	<b>Roskosz</b>	Cole	Voyles	CR05-110371-001DT Criminal Trespass, F6 Criminal Damage, F6 Agg. Assault, F6	Guilty on Criminal Trespass and Crimi- nal Damage Not Guilty of Agg. Assault	Jury
11/30 - 12/2	<b>Rees Stinson</b>	Cunanan	Wicht	CR05-111594-001DT MIW, F4 Disorderly Conduct, F6D	Guilty	Jury
12/12	<b>Goodman Ames/Munoz</b>	McMurray	Arino	CR04-122683-001DT IJP, M1	Not Guilty	Bench
12/12	<b>Goodman Ames/Munoz</b>	McMurray	Arino	CR04-105717-001DT IJP, M1	Not Guilty	Bench
12/12 - 12/13	<b>Tavassoli/Mays Munoz Del Rio</b>	Steinle	Kovacs	CR05-121023-001DT Burglary 3, F4 Poss. Burglary Tools, F6	Not Guilty	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group E (Continued)</b>						
1/18 - 1/24	<b>Tavassoli/Mays</b> Munoz Del Rio	Donahoe	<b>Kovacs</b>	CR05-122681-001DT Burglary 2, F3 Theft, F6	Guilty on Burglary Theft dismissed day of trial	Jury
12/30 - 1/4	<b>Greene/Houston/ Mays</b> Souther	Gottsfeld	<b>McDermott</b>	CR05-118618 Att. Agg. Assault, F4 Crim. Damage, F6	Pled during trial Ct. 2 dismissed	Jury
1/25	<b>Benson</b>	Orcutt	Sammons	CR05-127386-001(E#2JC) IJP, M1	Dismissed day of trial	Bench
<b>Group F</b>						
12/5 - 12/7	<b>Peterson</b>	Udall	Krabbe	CR03-039723-001SE POND, F4 False Report to Law Enforcement, M1	Guilty of lesser included	Jury
12/8 - 12/9	<b>Gaziano</b>	Stephens	Brenneman	CR05-030267-001SE MIW, F4	Guilty	Jury
12/15 - 12/20	<b>Klopp</b>	Stephens	Brenneman	CR05-115348-001SE MIW, F4	Hung Jury	Jury
12/19 - 12/20	<b>Little / Ditsworth</b> Thomas	Stephens	Giordano	CR05-031424-002SE Criminal Damage, F5 Criminal Trespass 1st Degree, F6 Disorderly Conduct, M1	Criminal Damage Not Guilty; Others Dismissed day of trial	Jury
1/3 - 1/6	<b>Gaziano / Fluharty</b>	Stephens	Beatty	CR05-123142-001SE 2 cts. Agg Asslt, F3D Theft by Extortion, F2 Burglary 1st Degree, F2D	Ct.1 Agg Assault- Guilty Ct.2 Agg Assault- Dismiss/Prosecution Theft-Not Guilty Burglary-Not Guilty	Jury
1/10 - 1/13	<b>Turley</b>	Talamante	Smith	CR05-030630-001SE Theft, F5	Not Guilty	Jury
1/23 - 1/23	<b>Lewis</b>	Arellano	Harbulot	CR05-032680-001SE Unlaw Use of Means of Transportation, F5	Guilty	Jury
1/25 - 1/26	<b>Lewis</b>	Udall	Harbulot	CR05-114269-001 2 cts. Forgery, F4	1 ct. Forgery-Guilty 1 ct. Forgery-Not Guilty	Jury
<b>Vehicular</b>						
11/30-12/15	<b>Budge</b>	Nothwehr	Jerald Hale	CR05-008538-001DT 2 cts. Agg DUI, F4	Hung Jury / Mistrial	Jury
12/07-12/14	<b>Timmer</b>	Nothwehr	Minnaugh	CR05-100785-001DT 2 cts. Agg DUI, F4	Guilty	Jury
12/14-12/19	<b>Conter</b>	Anderson	Adel	CR03-037821-001SE 2 cts. Agg DUI, F4	Guilty	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Vehicular (Continued)</b>						
1/3 - 1/4	<b>Meshel</b>	Anderson	Herd	CR04-136831-001DT 2 cts. Agg. DUI, F4	Guilty	Bench
1/09 - 1/09	<b>Timmer</b>	Nothwehr	Menaugh	CR05-032066-001SE 2 cts. Agg. DUI, F4	Guilty	Bench
1/09 - 1/11	<b>Sloan</b>	Anderson	Foster	CR05-011111-001DT 2 cts. Agg. DUI, F4	Not guilty	Jury
1/10 - 1/19	<b>Iniguez Ryon</b>	Mahoney	Goddard	CR05-121821-001DT 1 Agg Asslt F3 1 Endangerment F6	Guilty	Jury
1/19 - 1/24	<b>Timmer</b>	Nothwehr	Adell	CR05-011138-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
1/23 - 1/24	<b>Souccar</b>	Nothwehr	McDermott	CR05-006861-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
1/23 - 1/25	<b>Iniguez</b>	Anderson	McGregor	CR05-011240-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
1/25 - 1/26	<b>Mais</b>	Nothwehr	Salcido	CR05-032898-001SE 2 cts Agg DUI F4	Not Guilty Agg Driving under the influence (Impair) Not Guilty Agg Driving Under the Influence (Alcohol Level) Guilty Driving Under the Influence (alcohol Level)	Jury
<b>Homicide</b>						
11/8 - 12/01 11/8 - 2/06	<b>Brown / Stein Ames Southern</b>	Talamante	Martinez	CR01-092032 1 Ct. Murder 1st Degree, F2D, Capital 1 Ct. Kidnap, F2D 1 Ct. Armed Robbery, F2D 1 Ct. Burglary 1st Degree, F2D	Phase I: Guilty All Counts Phase II: Hung Jury	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
11/29 - 12/1	<b>Glow/ Brauer</b>	Gottsfeld		CR2005-108890-001-DT Ct 1 - Agg Ass. Dangerous - F3 Ct 2 - Misd. Ass.	Guilty Ct. 1 Misd. Assault.; Ct. 2 Misd. Assault	Jury
12/7 - 12/13	<b>LeMoine Brauer</b>	Klein		CR2005-011275-001-DT POND - F4; PODD - F4	Not Guilty	Jury
12/20 - 12/22	<b>LeMoine Stovall</b>	Burke		CR2005-011275-001-DT & CR2005-120940-001-DT; Agg Ass. Dangerous - F3	Not Guilty	Jury
1/17 to 1/27	<b>Glow, Sinsabaugh</b>	Trujillo		CR2004-019350-001-DT; 2nd Deg. Murder - F1	Guilty	Jury
1/19 to 1/20	<b>Craig, Reinhardt</b>	Burke		CR2005-010880-001-DT Agg Ass. - F3	Not Guilty	Jury

# Jury and Bench Trial Results

## December 2005/January 2006

### Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
10/31 -12/16	<b>Dyer</b>	Gaylord	Froech	JD504624 Severance Trial	Severance Dismissed	Bench
11/29-12/15	<b>Canby</b>	Hauser	Gallagher	CR2004-005097 Murder 1, F1	Guilty	Jury
12/19 - 12/22	<b>Carroll</b>	Ronan	Benny	JD504705 Severance Trial	Severance Granted	Jury
1/04 - 1/26	<b>Napper</b> Landtiser <i>Williams</i>	Rayes	S. Charbel	CR2004-134908-001 Murder 1, F1	Not Guilty - Murder 1 Guilty - Murder 2 Not Guilty - 604(t) gang enhancement	Jury
1/10 - 1/18	<b>Schaffer</b> Abernethy <i>Prusak</i>	Burke	Kay	CR2004-022636-001 Murder 1, F1 Kidnapping, F2 Armed Robbery, F2	Guilty	Jury
1/13 - 1/13	<b>Cuccia</b>	J. Donahoe	J. Beaver	CR2005-107491-001 POM, F6	Guilty	Bench

The Maricopa County  
Public Defender's Office  
Presents

**HOMICIDE OR ACCIDENT: ANATOMY OF VEHICULAR CASES**



**APRIL 21, 2006**  
**8:00 A.M. - 4:45 P.M.**  
**PHOENIX CIVIC PLAZA**  
**111 N. 3<sup>RD</sup> ST., PRESCOTT ROOM**

For registration information, please contact Norma Munoz: (602) 506-8200



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**for The Defense**

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