for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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Freeing Defendants From Their Chains

Preventing the Routine Shackling of Defendants at Jury Trials

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Too many judges routinely require in-custody defendants to wear restraints during their jury trials. In many cases, this shackling requirement is not based upon an individualized determination that a particular defendant needs to be restrained, as the case law requires, but in apparent deference to generalized security needs and the policies of the sheriff's department. This deference is improper, and shackling for these reasons constitutes an abuse of discretion. In order to get relief for this abuse of discretion, however, defense counsel must make a record of the effects of the restraints on the defendant and the jury.

Routine use of restraints violates defendants' constitutional right to appear shackle-free at their trials and is a clear abuse of discretion, and has been widely condemned throughout the United States

The Arizona Supreme Court has long held that a generalized law enforcement policy is not an acceptable reason for a trial court to require a particular defendant to wear restraints during trial. *State v. Reid*, 114 Ariz. 16, 22, 559 P.2d 136, 142 (1976) (trial court's apparent deference to court security personnel was abuse of discretion in absence of any other basis in the record that justified shackling defendant). The United States Supreme Court has repeatedly stated that shackling a defendant is "'inherently prejudicial.'" *Deck v. Missouri*, 544 U.S. 622, 623, 125 S. Ct. 2007, 2009, 161 L. Ed. 2d 953 (2005) (holding that the visible shackling of a defendant before a jury during guilt or penalty phase of trial violates Due Process absent case-specific security justifications for shackling that particular person), quoting *Holbrook v. Flynn*, 475 U.S. 560, 568, 106 S. Ct. 1340, 1345, 89 L. Ed. 2d 525 (1986). As a result of this inherent prejudice, "[t]he law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." *Deck*, 544 U.S. at 626, 125 S. Ct. at 2010. This prohibition on

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routine shackling stems in part from the belief that shackling has "negative effects that 'cannot be shown from a trial transcript.'" *Deck*, 544 U.S. at 623, 125 S. Ct. at 2009, quoting *Riggins v. Nevada*, 504 U.S. 127, 137, 112 S. Ct. 1810, 1816, 118 L. Ed. 2d 479 (1992).

The United States Supreme Court has given three reasons for its condemnation of the routine use of shackles. First, "[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process" and improperly "suggests to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'" *Id.* at 630, 125 S. Ct. at 2013, quoting *Holbrook*, 475 U.S. at 569, 106 S. Ct. at 1340. Second, the use of physical restraints diminishes a defendant's constitutional right to secure a meaningful defense by "interfer[ing] with the accused's 'ability to communicate' with his lawyer" and impairing his "ability to participate in his own defense, say by freely choosing whether to take the witness stand on his own behalf." *Deck*, 544 U.S. at 631, 125 S. Ct. at 2013, quoting Illinois v. Allen, 397 U.S. 337, 90 S. Ct. 1057, 1061, 25 L. Ed. 2d 353 (1970). Third, the Supreme Court has expressed concern that routine shackling policies undermine the dignity of the courtroom and the justice system itself:

> [J]udges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve. **The routine use of shackles in the presence of juries would undermine these symbolic yet concrete objectives.**

Deck, 544 U.S. at 631, 125 S. Ct. at 2013 (emphasis added).

Obviously, the United States Supreme Court has left no doubt that a routine or standardized policy of using physical restraints to manacle or shackle defendants during jury trials is not to be tolerated. The Arizona Supreme Court has agreed:

> It was a rule at common law that a defendant being tried for a criminal offense had the right to make his appearance in court free from all shackles. Manacling a person when there is no necessity to do so, and bringing him into court in the presence of the jury could not be too strongly condemned.

State v. Stewart, 139 Ariz. 50, 54, 676 P.2d 1108, 1112 (1984) (emphasis added).

Other states similarly condemn the routine use of shackles. In California, "'a defendant cannot be subjected to physical restraints of any kind in the courtroom while in the jury's presence,

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unless there is a showing of a manifest need for such restraints'" because of the "possible prejudice in the minds of the jurors, the affront to human dignity, [and] the disrespect for the entire judicial system which is incident to unjustifiable use of physical restraints." *Small v. Superior Court*, 94 Cal. Rptr. 2d 550, 560 (Cal. Ct. App. 2000), quoting *People v. Duran*, 545 P.2d 1322, 1327 (footnote omitted). The Kansas Supreme Court has explicitly told judges that they must not give control of the courtroom to law enforcement personnel: "Control of an individual in custody from the jail to the courtroom and from the courtroom to the jail is the responsibility of the sheriff." *State v. Powell*, 56 P.3d 189, 197 (Kan. 2002). Control of the defendant in the courtroom, however, is the responsibility of the judge, and "surrender of the control of the courtroom to the sheriff" is plain error. Id. Thus, it is also the responsibility of the judge to ensure a fair trial by refraining from the use of manacles or shackles unless there is a specific need to do so:

> All defendants have the right to appear before the jury free of restraints because such restraints present an unacceptable risk of prejudice and compromise the presumption of innocence. It is the judge's responsibility to insure that the defendant receives a fair trial. In extreme situations, a particularly obstreperous and disruptive defendant may be ordered to be restrained in the courtroom by the judge.
>
> Neither the sheriff nor the trial judge, consistent with the Fourteenth Amendment due process or equal protection requirements, can compel all persons in custody to stand trial before a jury to wear a leg brace to prevent escape.

Id.

It is no different in Arizona. For example, in *State v. Gomez*, 211 Ariz. 494, ¶ 49, 123 P.3d 1131, 1139-40 (2005) (footnote omitted), the Arizona Supreme Court specifically held that "[a] decision based solely on a general jail policy of shackling defendants who wear jail garb or exercise their constitutional right to represent themselves is clearly not the kind of 'case specific' determination of 'particular concerns' that Deck requires." Instead, judges must make a case-specific determination of the need to restrain each particular defendant, and the reasons for doing so must appear in the record. *Reid*, 114 Ariz. at 22, 559 P.2d at 142.

Courts across the country have followed the United States Supreme Court's lead in condemning routine shackling. *See, e.g., United States v. Salehi*, 2006 WL 1759855 (3rd Cir. 2006) (even when shackles are not visible to jury, their use is "something of an affront to the very dignity and decorum of the judicial proceedings that the judge is seeking to uphold"); *Robinson v. Gundy*, 174 Fed. Appx. 886 (6th Cir. 2006) (routine shackling is "clearly established as a constitutional violation"); *United States v. Van Sach*, 458 F.3d 694 (7th Cir. 2006) (stating that "shackling a defendant is an extreme measure"); *United States v. Mahasin*, 442 F.3d 687 (8th Cir. 2006) (agreeing that constitution permits shackling only when a special need exists); *United States v. Baker*, 432 F.3d 1189 (11th Cir. 2005) (shackles should be "rarely used" because of their deleterious impact on the fairness of the process). In a representative case arising out of Arizona, the Ninth Circuit decried the "dehumanizing effect" of restraints and noted that "numerous courts have found that the routine and unjustified shackling of a defendant, at any stage of trial proceedings, violates due process." *Comer v. Schriro*, 463 F.3d 934 (9th Cir. 2006).

In essence, although it is within a trial court's discretion to shackle a defendant, *State v. Johnson*, 122 Ariz. 260, 272, 594 P.2d 514, 526 (1979), it is an abuse of that discretion to require restraints without placing in the record an individualized reason for shackling that particular defendant. *State v. Henry*, 189 Ariz. 542, 550, 944 P.2d 57, 65 (1997) (record must provide some support for imposing the wearing

of restraints); *Reid*, 114 Ariz. at 22, 559 P.2d at 142 (when defendant objects to being shackled, "there must be some reason in the record to support such actions").

The trial court must give an acceptable reason for shackling a particular defendant and make efforts to prevent jurors from observing the device

The Arizona Supreme Court has set forth two acceptable reasons for shacking a defendant: (1) a record of attempts to escape and (2) a past felony conviction for a crime of violence. *State v. Bracy*, 145 Ariz. 520, 532, 703 P.2d 464, 476 (1985); Henry, 189 Ariz. at 550, 944 P.2d at 65. Other courts have approved the use of bilboes when a defendant has been particularly disruptive or threatening during previous court appearances. *United States v. Honken*, 381 F. Supp. 936 (N.D. Iowa 2005) (affirming use of restraints for defendant whose presence in courtroom posed a "unique threat" to protected witnesses); *Peterson v. Commonwealth,* 160 S.W.3d 730, 734 (Ky. 2005) (affirming use of shackles where defendant's "belligerent conduct . . . raised a serious issue of courtroom security); *Weaver v. State*, 894 So.2d 178, 195 (Fla. 2004) (use of unobtrusive stun belt on self-represented first degree murder defendant was justified due to the "more pressing safety concerns inherent in the pro se context"). However, a decision to shackle a defendant for any reason "'must be based on facts, not mere rumor or innuendo.'" *People v. Coombs*, 101 P.3d 1007 (Cal. 2004), quoting People v. Anderson, 22 P.3d 347 (Cal. 2001).

Even when the trial court has made the necessary record that a restraint is needed, the trial court must also make efforts to ensure that the jury does not become aware of the device. *State v. Apelt*, 176 Ariz. 349, 360, 861 P.2d 634, 645 (1993) (even when shackles are justified, court must take steps to prevent potential prejudice by keeping jurors from observing the restraints either inside or outside courtroom). In order to prevent the likely prejudice that would ensue, the trial court must take whatever precautions are necessary to prevent jurors from seeing or hearing the restraining devices at any time.

When a judge knows that routine shackling policies are improper and have been deemed an abuse of discretion, continued use of such policies constitutes judicial misconduct

When a judge has previously been placed on notice that it is an abuse of discretion to shackle a defendant before the jury because of generalized law enforcement or courtroom security policies, continued implementation of such policies violates Arizona's Code of Judicial Conduct. See Ariz. R. Sup. Ct. 81 Canon 1, cmt., 17A A.R.S. ("A judicial decision that is later determined to be incorrect as a matter of law or as an abuse of discretion is not a violation of this code unless done repeatedly or intentionally."); see also In re Quirk, 705 So.2d 172, 178 (La. 1997) (a trial court's "refus[al] to follow the law constitutes a legal error"). Once a judge is made aware that a generalized policy of requiring restraints is improper, continued reliance on such a policy constitutes bad faith:

> [Even a] single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct. Intentionally refusing to follow the law constitutes a legal error made in bad faith and may also be grounds for a finding of judicial misconduct.

Quirk, 705 So.2d at 178 (citations omitted).

When a law is "clear on its face and there is no confusion about its interpretation," judges must not persist in violating the legal standard that is clearly set forth in the relevant case law. Id. When a judge who routinely shackles defendants has been advised of the existence of contrary case law or has been specifically notified by a higher court that it must not require defendants to wear restraints as a matter of course, continued persistence in doing so constitutes

"a pattern of repeated legal error" that "can constitute judicial misconduct, regardless of whether the errors were made in bad faith or were egregious in nature." Id. Such misconduct is grounds for reversal and a new trial. Getting relief, however, depends on the ability to demonstrate that the restraints prejudiced the defendant.

Before a defendant can get relief from a trial court's abuse of discretion in requiring the use of unjustified restraints, defense counsel must have made a record of the problems caused by the restraints

Even when a trial court has clearly abused its discretion by requiring restraints without an acceptable reason for doing so in a particular case, defendants are not entitled to relief without a record that the restraints caused prejudice. *See State v. Miller*, 186 Ariz. 314, 323, [RT 9/21 p. P.2d 1151, 1160 (1996). Proving prejudice requires some showing in the record that a juror observed or may have noticed the manacles or shackles. *State v. McMurtrey*, 136 Ariz. 93, 98, 664 P.2d 637, 642 (1983).

When a defendant has neither a prior conviction for a violent offense nor a record of escape attempts, defense counsel should file a written motion objecting to the use of bilboes during trial. If the trial court denies the motion, defense counsel should ask the court to state for the record the reason for requiring restraints. If the court's justification does not include an acceptable reason for restraining that particular defendant, defense counsel should renew the objection to the restraints at the start of each day of trial. Defense counsel may also file a special action challenging the baseless shackling requirement.

When restraints are used, it is the responsibility of defense counsel to demonstrate the "negative effects that 'cannot be shown from a trial transcript'" by clearly and explicitly stating for the record any problem that is caused by the restraints and any sign that a juror may have become aware of the device. *Deck*, 544 U.S. at 623, 125 S. Ct. at 2009, quoting Riggins, 504 U.S. at 137, 112 S. Ct. at 1816. For example, defense counsel should inform the court whenever the device prevents the defendant from standing up and sitting down smoothly. Defense counsel should make a record every time the shackles make a sound that is audible in court. If a juror appears to see the restraint, defense counsel must make that fact explicit on the record. If a juror even appears to be looking toward the restraints, seems curious, or may be trying to see the device, defense counsel should inform the trial court on the record. Other problems caused by restraining devices that can be placed into the record include awkward or restricted movements, the inability to get comfortable by moving or crossing the legs, distraction from the issues at hand, or feeling reluctant to or inhibited from testifying. Each time the trial court is made aware of a problem with the restraints, defense counsel should renew its objection and request that the restraints be removed.

For appellate purposes, defense counsel must take one of three steps to make the necessary record: (1) make offers of proof on the record that memorialize the effect of the restraints; (2) request that the court question jurors to determine if any noticed that the defendant was wearing a restraint; or (3) request permission to personally question the jurors about the restraint. *McMurtrey*, 136 Ariz. at 98, 664 P.2d at 642. Any one of these actions can potentially complete the record and may make the showing of prejudice that is necessary for appellate relief. If the trial court is resistant to allowing defense counsel to approach the bench to make the necessary record, defense counsel may instead make offers of proof during recesses or, if all else fails, in writing. The failure to make the necessary record will leave the defendant with no recourse on appeal.

The following case illustrates one Pima County Superior Court judge's reasons for requiring the defendant to wear a leg restraint during his jury trial:

> The reason that he has that [restraint] on is because he's in

> custody. It's the practice of the deputies to use that device. As you'll observe, there is [sic] only two deputies here to cover all the exits, and it helps them with the manpower issues that they have with that device. It also is something that is part of the sheriff's prerogative. To quote from a fine judge who used to sit in this courthouse who used to say, "I don't tell the sheriff how to run the jail or the prisoners and they don't tell me how to run the courtroom," but, of course, that does meet at some point because those policies are prevalent in the courtroom, but this time, I don't see it as something that's likely to provoke any kind of prejudice towards your client, and I believe that it's standard policy to have some sort of device on, and actually, that device is a less intrusive device rather than the ankle bracelets, which are just about impossible to not have a juror notice or to become curious about.

State v. Orduno, No. 2 CA-CR 2002–0472 ¶ 6 (memorandum decision filed Nov. 26, 2003) (holding that use of shackles was abuse of discretion but harmless) (emphases added). Although the Arizona Court of Appeals found that this judge had acted improperly and abused his discretion in requiring the defendant to wear a restraining device during trial, the defendant got no relief because the record lacked any evidence that a juror observed the shackles.

Recently, in another trial that took place several years later, the judge imposed the routine shackling requirement, stating that his decision was based on "staffing levels" in the courthouse and "the sheriff's department policy." *State v. Tague*, CR-20021847. Despite defense counsel's objection as well as a previous written motion for the defendant to appear at trial without restraints, the trial court required the defendant to wear a device that consisted of ankle cuffs connected by a chain. The device was not only uncomfortable, it made clinking noises whenever the defendant shifted or moved. The defendant was also required to sit in a special, non-rolling chair that made his movements even more awkward and restricted. He says he did not testify because he thought jurors were unlikely to believe someone in chains.

Nonetheless, because the trial attorneys did not make a record of the visual and auditory impact of the restraints or note for the record that the restraints bothered and distracted the defendant, the trial court's abuse of discretion in forcing the defendant to be shackled will likely be found harmless. See *Miller*, 186 Ariz. at 323, 921 P.2d at 1160 (no prejudice absent showing in record that juror saw shackles); *McMurtrey*, 136 Ariz. at 98, 664 P.2d at 642 (prejudice requires some evidence in the record that a juror observed the shackles). Had defense counsel alerted the trial court that the defendant's leg shackles were visible at times, that the rattling of the chains were audible to observers in the courtroom, that the defendant's movements at the defense table were restricted and impeded by the restraints, and that he was reluctant to testify in shackles, he may have been entitled to relief. See *Henry*, 189 Ariz. at 550, 944 P.2d at 65.

A proper record of these kinds of problems demonstrate the prejudice caused by unnecessary restraints and can show how insidiously shackles hinder a defendant's participation in trial. See id. Because appellate courts are unable to presume or infer effects that are not made explicit in the record, defense attorneys have a special obligation to place into the record proof of the visual, auditory, and emotional effects of an unjustified restraining device. <u>The claim will be considered forfeited if the attorney does not object or makes an inadequate record of the effect of the restraints.</u> Defense counsel's failure to make a complete record renders the defendant virtually incapable of getting <u>appellate</u> relief from unwarranted shackles.

ATTORNEY'S CHECKLIST

(Freeing Defendants From Their Chains)

1. If warranted in your client's case, file a written motion requesting that the trial court honor defendant's constitutional right to be free from restraints during jury trial.

2. If trial court denies your motion, request the court state for the record its reasons for requiring restraints.

3. If the court's reason is improper, object on constitutional grounds, citing the Fifth, Sixth, and Fourteenth Amendments as well as *Deck v. Missouri*, 544 U.S. 622, 623, 125 S. Ct. 2007, 2009, 161 L. Ed. 2d 953 (2005) (holding that the visible shackling of a defendant before a jury during guilt or penalty phase of trial violates Due Process absent case-specific security justifications for shackling that particular person) and *State v. Reid*, 114 Ariz. 16, 22, 559 P.2d 136, 142 (1976) (trial court's apparent deference to court security personnel was abuse of discretion in absence of any other basis in the record that justified shackling defendant).

4. Argue that Arizona has recognized only two acceptable reasons for requiring restraints: prior conviction for a violent crime, or (2) prior escape attempt.

5. Consider filing a Special Action to stop the court from imposing an unjustified restraint requirement.

6. Renew objection to shackling at the start of each day of trial.

7. Throughout trial, make oral or written **offers of proof** as possible on any or all of the following:
    - Defendant's cooperative conduct at all court appearances
    - Defendant's polite demeanor during trial and pretrial proceedings
    - Any different or separate treatment necessitated by the restraints
    - Inability to rise when judge or jury enter room
    - Any difficulty standing up or sitting down smoothly
    - Restriction in ability to write and take notes
    - Any and every audible sound, no matter how faint
    - Any failure or inadequacy of efforts to minimize impact of restraints
    - Impairment of defendant's ability to fully participate in own defense
    - Interference with attorney-client communication
    - Any possibility that a juror can see (or even might see) the device
    - Any indication a juror is craning the necks or looking toward device
    - Any juror curiosity about the device
    - Any report that a juror saw the shackled defendant outside courtroom
    - Defendant's inability to get comfortable by moving or crossing legs
    - Any awkward or restricted movements
    - Feeling distracted or unable to concentrate
    - Feelings of embarrassment
    - Reluctance to testify in chains

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. Garner's Modern American Usage can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

ex post facto

This is slightly pompous but fairly common when used for "after the fact." The phrase does have legitimate uses in the sense "retroactive" {ex post facto laws}. "Ex post" for "ex post facto" is an odd ellipsis without literary legitimacy -- e.g.: "As a rule, therefore, courts will not engage in ex post inquiries [read 'ex post facto inquiries'] regarding the substantive fairness of contract terms." Maureen B. Callahan, Note, "Post-Employment Restraint Agreements," 52 U. Chi. L. Rev. 703, 704 (1985).

Yet another strange shortening omits the "ex" -- e.g.: "Finally, her charge that after rejecting his overtures she then was discriminated against in her lower-level state job seems a post facto [read 'an ex post facto' or 'an after-the-fact'] concoction by her lawyers." Albert R. Hunt, "Politics & People: Jones v. Clinton," Wall St. J., 29 May 1997, at A19.

The phrase was formerly spelled "ex postfacto" on occasion, but this spelling is archaic. Some writers hyphenate the term when it functions as a phrasal adjective {ex-post-facto reasoning}, but the hyphens are unnecessary in this set phrase.

Presented by Federal Public Defender Habeas Unit, Maricopa County Public Defender, Office of the Legal Defender and Office of Legal Advocate

Death Penalty 2006

December 7 & 8, 2006

Death Penalty Overview for the Uninitiated
Pre-Conference
December 7, 2006
Registration: 8:30-9:15am
Sessions: 9:15-11:30am

Conference
December 7, 2006
Registration: 12:00-1:00pm
Sessions: 1:00-5:00pm

Conference
December 8, 2006
Registration: 8:30-9:00am
Sessions: 9:00-4:30pm
REGISTRATION IS LIMITED!

Pre-Conference: It may qualify up to 2 hrs. CLE
Conference: It may qualify up to 9.75 hrs. CLE

Phoenix Convention Center
2nd Floor—Lecture Hall
100 N. 3rd. Street
Phoenix, AZ

Pre-Conference Topics Include:
- **History**
- **Statute**
- **Aggravation-Mitigation**
- **Process**

Conference Topics Include:
- **Update on DNA**
- **Supreme Court Updates**
- **Mental Health Issues**
- **Jury Instructions**
- **Round Table Discussion**

Seminar Registration—Death Penalty 2006

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$ 150.00 ___ Other/Private
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$50.00 ___ Other/Private

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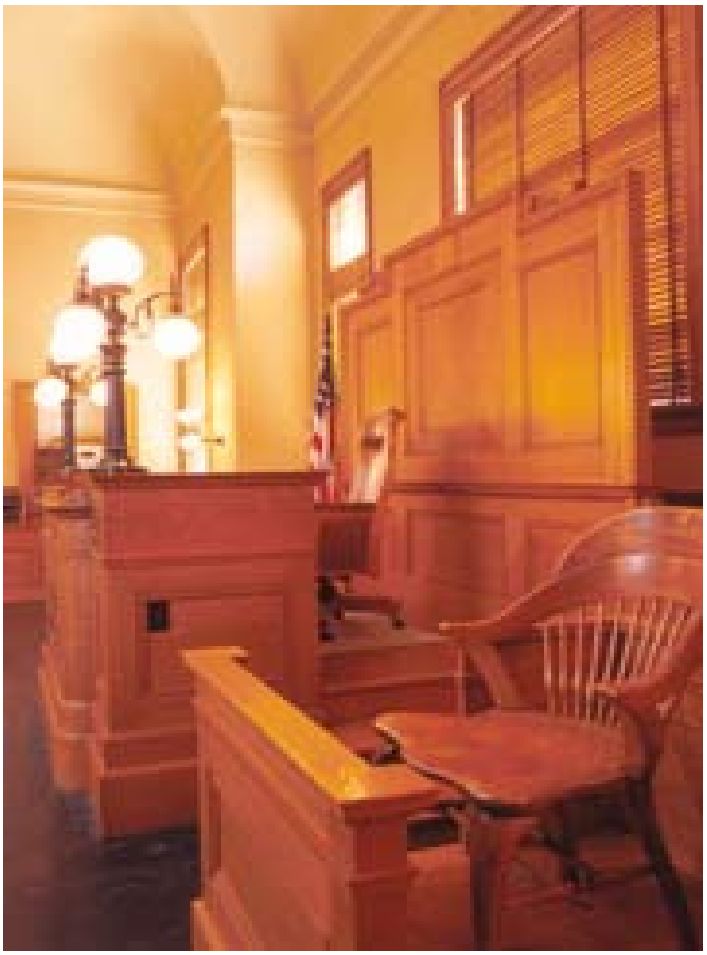
Sometimes, the Confrontation Clause is Left High and Dry

By Edie Lucero, Defender Attorney



The United States Confrontation Clause entitles an accused the right to confront and cross-examine his or her witnesses and applies to the states through the 14th amendment. U.S. Const. amends. 6, 14. Arizona's constitutional equivalent of the Confrontation Clause is found in Art. 2, § 24 and entitles an accused the right "to meet the witnesses against him face to face." The Confrontation Clause is a procedural right, which ensures the reliability of evidence "by testing [it] in the crucible of cross-examination." *Crawford v. Washington*, 541 U.S. 36, 61, [7], 124 S.Ct. 1354, 1370, 158 L.Ed.2d 177 (2004). However, as discussed below, the courts have recognized a number of niches that do not implicate *Crawford*.

Testimonial vs. Non-Testimonial and "Not Testimonial"

The requirements of the Confrontation Clause only apply to testimonial statements based on the rationale that non-testimonial statements are not subject to cross-examination. Testimonial statements by unavailable witnesses are inadmissible unless the witness was previously cross-examined.[1] So, the main issue in *Crawford* typically becomes whether a statement is testimonial or non-testimonial. Yet there is another category to consider: a third-subset is quietly emerging, a category that does not implicate the Confrontation Clause, often called *not testimonial.* This is confusing, since the courts sometimes use that phrase to mean non-testimonial. What is the difference?

Non-testimonial is juxtaposed to testimonial when determining what statements qualify as testimonial to receive constitutional protections. For example, statements made to a 911 operator are analyzed statement-by-statement to determine which parts qualify as testimonial (subject to cross-examination) versus non-testimonial (not subject to cross-examination). But statements deemed *not testimonial* never receive that type of analysis. The hearsay remains free of categorization, seen as not implicating the Confrontation Clause at all.

There are out-of-court statements that simply do not implicate the 6th Amendment. The purpose of the 6th Amendment seeks <u>to find the truth</u> procedurally through cross-examination; but if the truth of a statement doesn't matter, it eliminates the need, and right, to cross-examination. The 6th Amendment entitles a defendant to challenge or prove the truthfulness of witnesses against him. Moreover, the 6th Amendment has been held to be strictly a trial right.[2]

A recent case exemplifies the "testimonial vs. not testimonial" approach. In *State v. Roque,* the Arizona Supreme Court concluded that the truthfulness of several statements at issue didn't matter. The court took a rather technical approach to analyzing the applicability of the Confrontation Clause, focusing on whether statements were being offered for their truth. 213 Ariz. 193, ¶ 69-70, 141 P.3d 368, 388-389 (2006). During a videotaped police interrogation, police told Roque that his wife made statements to police incriminating him. Defense counsel argued that introducing the wife's purported statements through the videotaped interrogation violated Roque's Confrontation Clause rights, since the wife refused to testify and was not subject to cross-examination. The court held that the admission of 3rd party statements (the wife) through the detective did not violate the Confrontation Clause, because the wife's statements were not being offered for their truth so they did not constitute hearsay.

The *Roque* court based its holding on whether the statements were "testimonial hearsay statements," reiterating that the 6th Amendment only "attaches to testimonial witness statements made to police to establish some fact."[3] But *Crawford* repeatedly pointed out that the rules of evidence do not determine the admissibility of testimonial statements from an unavailable witness who was not previously cross-examined.[4] In fact, *Crawford* criticized the rules of evidence as being too amorphous to satisfy the constitutional demand for reliability.[5] Cross-examination achieves reliability, because the jury weighs the truthfulness of the statement.

Arguably, the wife's statements should have qualified as testimonial under *Crawford*, since the statements were made to police to further an investigation or prove past events.[6] However, the *Roque* court saw the police as using an "interrogation technique" to elicit a confession as opposed to endorsing the veracity of the wife's statements. This leads to the question of what other police action labeled "interrogation technique" will get a pass? Remember, statements offered for something other than their truth, under *Roque*, do not implicate the Confrontation Clause. It is likely that prosecutors will try to use this fact-driven analysis as widely as possible, so be on the alert. Speculation is not allowed on appeal, however, so if a prosecutor claims a statement *is* being offered for something other than its truth, make a record on how the statement *is* being offered for its truth to preserve the issue for appeal.

Penalty Phase

In *State v. McGill,* the Arizona Supreme Court held that the Confrontation Clause only applies to trials and not the penalty phase in a capital prosecution. 213 Ariz. 147, ¶ 49, 140 P.3d 930, 941 (2006) (Hurwitz, J., dissenting). Historical practices support the use of hearsay at sentencing, and a sentencing judge should receive complete disclosure when fashioning the appropriate sentence. *McGill,* 213 Ariz. at ¶ 52, 140 P.3d at 942 (holding no Confrontation Clause violation in allowing hearsay at sentencing to negate defendant's mitigation).

McGill did not classify whether the hearsay was actually testimonial or non-testimonial, seemingly because the Confrontation Clause was not implicated. *McGill* acknowledged that other states, and federal courts, apply the Confrontation Clause to all phases, including sentencing.[7] But whose job is it to interpret the extent of the 6th Amendment's confrontation rights in light of federalism?

Rule of Completeness and Impeachment.

In *State v. Ellison,* the Arizona Supreme Court held that when the defense makes a tactical decision to introduce portions of a recorded statement, the State receives the opportunity to introduce the remaining portions to complete the story. Ariz. R. Evid. 106; 213 Ariz. 116, ¶ 46, 140 P.3d 899, 913 (2006)[8]. If not, an inequity would result by allowing a defendant to introduce beneficial portions of a statement, while simultaneously using the Confrontation Clause as a shield to prevent the State from offering the remainder of the statement.[9] The rule of completeness "extinguishes" confrontation claims for the sake of equity.

Another limitation in the Confrontation Clause appears in impeachment. In *State v. Ruggiero*, the Court of Appeals held there was no Confrontation Clause violation when the State introduced the out-of-court statement as rebuttal testimony as opposed to its truth and was solely limited to impeachment. 211 Ariz. 262, 120 P.3d 690 (App. 2006), *review denied,* (April 6, 2006).

Forfeiture-by-Wrongdoing

Another policy-based limitation: defendants can forfeit their confrontation rights. In *State v. King,* the State had to introduce the girlfriend's statements through the officer because of her unavailability. 212 Ariz. 372, ¶ 37, [FN5], 132 P.3d 311, 319 (App. 2006). The State exercised great efforts to try to locate the girlfriend. The trial court expressed concern that the defendant induced the girlfriend's unavailability. *King* appreciated that *Crawford* expanded confrontation rights, but it was not going to come at the expense of achieving justice. Otherwise, it may encourage a defendant to intimidate witnesses and prevent them from testifying. *State v. Davis* emphasized the "rule of forfeiture by wrongdoing . . . extinguishes confrontation claims on essentially equitable grounds." 126 S.Ct. 2266, 2280, [7]. The Sixth Amendment does not bind the courts to acquiesce to a defendant's wrongdoing.

Preserve Crawford for Appeal

A hearsay objection and Confrontation Clause objection are not the same and serve different purposes.[10] Thus, in order to preserve a *Crawford* issue, it is necessary to object on Confrontation Clause grounds as opposed to hearsay when arguing the admissibility of testimonial hearsay (statements at issue) or else the State argues trial counsel waived the issue and most likely prevails. At a minimum, it is important that your objection refer to the defendant's right to confront his or her witnesses or that the witness was not previously subject to cross-examination. These key words trigger the Confrontation Clause analysis. Here are few suggestions for language to use when raising a Confrontation Clause objection. I object:

- based on my client's constitutional right to confront witnesses;
- to the admission of the evidence on Confrontation Clause grounds; or
- because the unavailable witness [declarant] was not previously cross-examined . . .

What is critical is to "preserve" the issue at the trial court level. Failing to raise a Confrontation Clause objection may result in a potential Rule 32 issue for Ineffective Assistance of Counsel in light of *Crawford* being law since 2004. All in all, if you are not 100% sure whether the hearsay qualifies as testimonial or non-testimonial, raise a Confrontation Clause objection to preserve the issue. It will be examined more closely on appeal.

(Endnotes)

1. *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

2. *Crawford* distinguished between "testimonial" and "nontestimonial" for 6th Amendment purposes, reasoning that the Confrontation Clause "'applies to 'witnesses' against the accused-in other words, those who 'bear testimony.'" *Bohsancurt v. Eisenberg*, 212 Ariz.. 182, 184, ¶ 9, 129 P.3d 471, 473 (App. 2006) (citing *Crawford v. Washington*, 541 U.S. 36, 51, 124 S.Ct. 1354, 1364 (2004) (citations omitted). Arizona's State Constitution Art. 2 § 24 contains language, suggesting the State constitution offers greater protection - it is a face-to-face confrontation as opposed to the federal language "to be confronted," which is less defined. This argument is currently up on appeal.

3. *Roque*, 213 Ariz. at ¶ 70, 141 P.3d at 389.

4. *Crawford*, 541 U.S. at 61, [7], 124 S.Ct. at 1370.

5. See also *State v. McGill*, 213 Ariz. 147, ¶

99, 140 P.3d 930, 949 (2006) (Hurwitz, J., dissenting) (*Crawford* makes clear that the extent of the Confrontation Clause is to be determined not by reference to modern rules of evidence, but rather by the expectation of the Framers at the time the Sixth Amendment was adopted in 1791 ((citing *Crawford* at 43, 124 S.Ct. 1354 ("We must therefore turn to the historical background of the Clause to understand its meaning.")).

6. *Davis v. Washington*, 126 S.Ct. 2266, 2274-2275, [1], 165 L.Ed.2d 224 (2006).

7. *McGill,* 213 Ariz. at ¶ 52, [FN7], 140 P.3d at 942.

8. Accord *State v. Prasertphong*, 210 Ariz. 496, ¶ 17, 114 P.3d 828, 832 (2005) (discussing defendant forfeited his Confrontation Clause rights when tactically deciding to introduce selected portions of a statement).

9. *Ellison*, 213 Ariz. at ¶ 47, 140 P.3d at 913-914.

10. *State v. Alvarez*, 2006 WL 2790029, ¶ 7, -- P.3d -- (App. 2006) (discussing hearsay objection does not preserve a Confrontation Clause objection).

The Maricopa County Public Defender Takes Diversity on the Road to Mesa

By Norma Munoz, Training Facilitator

Maricopa County furthered its efforts to support diversity by celebrating Hispanic Heritage Month from September 15 - October 15, 2006. A series of weekly presentations were presented from the Maricopa County Supervisor's Conference Room. The themes and topics discussed included Hispanics' vital roles in entrepreneurship, Arizona history, arts, music, dance (including an outstanding performance by flamenco dancers) and the media. Hispanic leaders from across the Valley contributed their knowledge and expertise to these events, including County Supervisor Mary Rose Wilcox, television anchors Frank Camacho and Katherine Anaya, and local business owners. All presentations were aired through the County EBC network

Derek Zazueta and Brian Bond, both SEF Public Defender Attorneys, enjoy the festivities and pose by the piñata!

On October 5th, the Public Defender's Training Division took the celebrations to Mesa for the last presentation, "Arizona History and Contributions by Hispanics", for the SEF employees to enjoy. A potluck provided all types of delicious Mexican food prepared by many employees to share and enjoy together while celebrating diversity. The presentation was aired on the EBC, allowing employees to view an excellent presentation by Dr. Marin, an ASU Professor, sharing the Arizona History of the Hispanics from the early 1900s. Celeste Cogley, Irene Esqueda and I coordinated the event.

More diversity celebrations are scheduled for 2007 honoring other diverse groups and ethnicities. The Public Defender's Office, in its commitment to honor diversity, has plans to coordinate and collaborate with the County to celebrate diversity. I, as our office's diversity coordinator, am looking for volunteers to help organize and coordinate celebrations for 2007 for all the employees of the Public Defender's Office. If you would like to volunteer, please contact me at extension 3-3045 or Celeste Cogley at extension 3-7569.

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
7/14 - 8/7	**Farney** Carson *Armstrong*	Hicks	Charbel	CR04-013571-001DT Second Degree Murder, F1D	Directed Verdict	Jury
8/1	**De La Torre, D.** Flannagan *Armstrong*	Burke	Shipman	CR06-115989-001DT Aggravated Assault, F6	Not Guilty	Jury
8/2 - 8/3	**Sloan**	Burke	Foster	CR06-101649-001DT 2 cts. Aggravated DUI, F4	Directed Verdict	Jury
8/14 - 8/23	**Farrell** Flannagan	Davis	Sponsel	CR06-106170-001DT MIW, F4	Guilty	Jury
8/16 - 8/17	**Iacob Willmott** Sain *Curtis*	Trujillo	Shipman	CR06-115455-001DT TOMOT, F3	Guilty	Jury
8/17 - 8/22	**Timmer**	Anderson	Minnaugh	CR05-011243-001DT 2 cts. Aggravated DUI, F4	Guilty	Jury
8/17 - 8/29	**Reece** *Armstrong*	O'Toole	Hoffmeyer	CR04-008342-001DT 2 cts. Child Abuse, F2 DCAC	Guilty	Jury
8/22 - 8/24	**Timmer**	Holding	Smith	CR05-137940-001DT 2 cts. Aggravated DUI, F4	Guilty	Jury
8/23 - 8/30	**Fischer**	Akers	Reckart & Squires	CR04-022854-001DT 2 cts. Armed Robbery, F2D Attempted Armed Robbery, F3D	Not Guilty - Attempt Armed Robbery; Guilty 2 cts. Armed Robbery	Jury
8/17 - 9/7	**Farney** Page Sikora *Armstrong*	Heilman	Phipps-Yonas	CR05-141029-001DT Ct. 1, Molestation of a Child, F2 DCAC Cts. 2, 3, 4, 6, 7, 8 & 9, Sexual Conduct w/a Minor, F2 DCAC Ct. 5, Sexual Abuse, F3 DCAC Ct. 10, Sexual Abuse, F5 Cts. 11 & 12, Sexual Assault, F2	Directed Verdict - Counts 1, 5 & 10 Guilty - Counts 2, 3, 4, 6, 7, 8, 9, 11 & 12	Jury
8/29 - 9/5	**Engle**	French	Shipman	CR06-111446-001DT POND for sale, F2 POM, F6 PDOP, F6	Not Guilty	Jury
8/31 - 9/5	**Farrell** Flannagan	Burke	Reckart	CR06-119741-001DT Aggravated Assault, F3D	Not Guilty	Jury

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1 (Continued)						
9/6 - 9/13	**Fischer** Hales	Burke	Fuller	CR06-109472-001DT Drive by Shooting, F2D Discharge Firearms in City Limits, F6	Guilty	Jury
9/12	**Dominguez**	Hall	Goddard	CR05-011607-001DT Sale or Transportation of DD, F2	Guilty	Bench
9/13	**Engle** Evans	Akers	Church	CR06-005516-001DT Sale/Transportation of Dangerous Drugs, F2	Guilty Except Insane	Bench
9/13 - 9/15	**Reece**	Porter	Squier	CR06-106155-001DT Resisting Arrest, F6 Criminal Trespass, 3°, M3	Not Guilty of Resisting Arrest; Guilty of Trespass - Held in Absentia	Jury
9/18 - 9/19	**Fischer** Flannagan	Burke	Shipman	CR05-015378-001DT Criminal Trespass, 1°, F6	Not Guilty	Jury
9/26 - 9/28	**Farney**	Burker	Church	CR06-114320-001DT Aggravated Assault, F3D Disorderly Conduct, F6 MIW, F4 - w/2 prior felony convictions and while on probation	Not Guilty	Jury
Group 2						
7/11 - 8/3	**Budge**	Gordon	Harder	CR05-100059-001 Leaving the Scene of Fatal Collision, F3 Manslaughter, F2D	Guilty - Lesser Negligent Homicide, F4, Guilty - Manslaughter, F2D	Jury
8/2 - 8/7	**Roskosz**	Gordon	Rassas	CR05-109177-001DT 4 cts. Fraudulent Use of Credit Card, F5	Mistrial	Jury
8/17 - 8/18	**Widell Evans**	Schneider	Pollak	CR05-145334-001DT TOMOT, F3	Guilty (Retrial)	Jury
8/14 - 8/16	**Iniquez**	Anderson	Cotter	CR05-034524-001DT 2 cts. Agg. DUI, F4	Guilty	Jury
8/21 - 8/25	**Davison** *Burns*	Duncan	Zabor	CR06-111788-001DT Unlawful Flight, F5	Guilty	Jury
8/21 - 8/25	**Kirchler Bublik** Munoz O'Farrell *Burns* *Curtis*	Gordon	Warrick	CR05-131767-001DT PODD, F4	Not Guilty	Bench

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2 (Continued)						
8/23 - 8/25	**Rees**	French	Letellier	CR05-138466-001 Disorderly Conduct, F6D	Guilty	Jury
8/29	**Mays** **Evans** Souther	O'Connor	Yuva	CR06-102814-001DT POND, F4	Not Guilty	Jury
9/5 -9/6	**Roskosz**	Cunanan	Rassas	CR05-109177-001DT 2 cts. Fraudulent Use of Credit Card, F5 CR05-121951-001DT 2 cts. Fraudulent Use of Credit Card, F5	Guilty on both cause numbers	Jury
9/11 - 9/12	**Davison** **Evans** *Burns*	Rayes	Kelly	CR06-100626-001DT Forgery, F4	Guilty	Jury
9/11 - 9/14	**Greene** **Mays**	O'Connor	Robinson	CR05-008994-001DT Theft, F4 Criminal Damage, F4	Not Guilty Guilty of Lesser Offense Criminal Damage, M1	Jury
9/18	**Budge**	Notwehr	Foster	CR06-116924-001DT 2 cts. Agg. DUI, F4 2 cts. Agg. DUI, F6	Mistrial (1st day of trial)	Jury
9/18 - 9/20	**Roskosz**	Lee	Morse	CR05-010760-001DT 2 cts. Agg. Assault, F3D Assault, M3	Not Guilty	Jury
9/19 - 9/21	**Salter** **Bublik**	Cunanan	Yuva	CR06-122722-001DT Burglary 3, F4 Theft, F6	Directed Verdict on Felony Theft Guilty Theft, M1 Guilty on Burglary	Jury
9/19 - 9/21	**Lee** *Del Rio*	McNally	Voyles	CR06-120746-001DT Agg. Assault, F3D Criminal Trespass, F6	Not Guilty	Jury
9/19 - 9/25	**Mays** Reilly *Burns*	Granville	Huddleston	CR05-138348-001DT Hindering Prosecution, F5	Guilty	Jury
9/20 - 9/23	**Iniguez**	.Anderson	Cottor	CR06-116178 2 cts. Agg. DUI, F4	Guilty	Jury

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3						
8/2 - 8/9	**Baird** Trimble Charlton *Brown*	Mahoney	Low	CR05-142470-001DT Agg. Assault, F3D	Guilty - Lesser Disorderly Conduct Non-dangerous, F6	Jury
8/28 - 8/30	**Conter**	Nothwehr	Cotter	CR06-005638-001DT 2 cts. Agg. DUI, F4	Not Guilty - Agg. DUI guilty lesser included offenses x 2	Jury
8/28 - 8/30	**Reasons** Ryon *Browne*	Trujillo	Beaver	CR05-013207-001DT Resisting Arrest, F6 DUI, M1	Not Guilty - Resisting Arrest Guilty - DUI, M1	Jury
8/30 - 8/31	**Emerson**	Nothwehr	Adel	CR06-104848-001DT 2 cts. Agg. DUI, F4	Guilty on both counts	Jury in absentia
9/5 - 9/11	**Traher**	Trujillo	Vick	CR06-105465-001DT Abandonment or Concealment of a Dead Human Body, F5	Guilty	Jury
9/11	**Jackson** *Browne*	Nothwehr	Voyles	CR05-013242-001DT Agg. Assault, F4D	Not Guilty	Jury
9/11 - 9/12	**Stone**	Gaines	Baker	CR06-112865-001DT Poss. Of Burglary Tools, F6 TOMT, F3	Guilty	Jury
9/13	**Baird** **Bradley**	Porter	Duvall	CR06-006428-001DT 2 cts. Agg. Assault, F3D	Guilty on two counts of Class 6 Disorderly Conduct Dang.	Jury
9'14 - 9/20	**Traher**	Ishikawa	Levinson	CR04-040687-001DT Armed Robbery, F2D Burglary 1st Degree, F3D	Guilty on both counts	Jury
9/22 - 9/28	**Jackson** Trimble	Trujillo	Vick	CR05-135249-001DT Agg. Assault, F3D	Guilty non-dangerous	Jury
9/26 - 9/27	**Kirchler** Curtis	Jones	Sponsel	CR05-012720-001DT 2 cts. POND, F4 PODD, F4	Guilty	Jury
9/22	**Jackson** Trimble *Curtis*	Mahoney	Bonaguidi	CR05-140448-001DT Resisting Arrest, M1	Guilty	Bench
9/17 - 9/25	**Kirchler** Carson *Curtis*	Burke	Goebel	CR06-124308-001DT TOMT, F3 Threatening or Intimidating, M1 Assault, M1	Guilty-TOMT, F3; Dismissed with Prejudice Threatening or Intimidating, M1; Assault, M1	Bench

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3 (Continued)						
9/15	**Knost** Charlton *Browne*	Burke	Sponsel	CR05-122392-001DT TOMT, F3 Theft, F3	Guilty-TOMT; Not Guilty-Theft	Jury
9/26	**Baird** Trimble	Davis	Baker	CR05-139289-001DT TOMT, F3	Dismissed	Jury
9/27	**Knost** Bradley *Browne*	Lee	Rueter	CR06-007105-001DT Meth Lab, F2 PODP, F6	Guilty on both counts	Jury
9/26 - 9/28	**Cain** Bradley	Ishikawa	Valenzuela	CR05-133857-001DT Burglary 2nd Degree, F3	Guilty	Jury
Group 4						
8/7 - 8/15	**Gaziano Whitney**	Talamante	Fowler	CR06-111222-001SE 3 cts. Agg. Assault, F3D Endangerment, F6D POM, F6	Guilty of Lesser-Disorderly Conduct Not Guilty - Endangerment Guilty - POM	Jury
8/14 - 8/17	**Klopp**	Arellano	Blair	CR06-114070-001SE Agg. Assault, F3D	Guilty	Jury
8/14 - 8/24	**Crocker** Thomas *Cowart*	Udall	Murphy	CR05-032072-003SE Agg. Assault, F3D	Guilty of Assault, M1	Jury
8/15 - 8/24	**Nurmi** Salvato *Lenz*	Talamante	Baker	CR05-110548-001SE Violent Sexual Assault, F2D Kidnap, F2 Agg. Assault, F3D	Hung Jury	Jury
8/23 - 8/28	**Barnes** Arvanitas	Arellano	Borges	CR06-115197-001SE Criminal Trespass First Degree, F6	Hung Jury	Jury
8/23 - 9/6	**Ditsworth** Arvanitas *Lenz*	Stephens	Smith	CR06-106829-001SE 2 cts. Agg. Assault, F6D Assault Touched to Injure, M3	Guilty	Bench
8/24 - 9/5	**Watson**	Stephens	Eliason	CR05-0144204-001SE Burglary, 1st Degree, F2D 3 cts. Armed Robbery, F2 Unlawful Flight from Law enforcement Veh., F5	Guilty	Jury
8/29 - 9/7	**Engineer**	Sanders	Starkovich	CR06-103687-001SE Theft of Means of Transportation, F3	Not Guilty - Theft of Means Guilty of Use of Means of Transportation, F5	Jury

Jury and Bench Trial Results August/September 2006

Public Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
9/7 - 9/20	**Gaziano Quesada** Thomas *Spears*	Stephens	Murphy	CR05-117709-001SE Armed Robbery, F2D Agg. Assault, F3D 8 cts. Kidnap, F2D	Guilty	Jury
9/11 - 9/14	**Barnes** Beatty	Udall	Bennett	CR06-030493-001SE Burglary, 2nd Degree, F3	Not Guilty	Jury
9/13 - 9/14	**Fluharty**	Arellano	Brooks	CR06-106736-001SE Burglary 3rd Degree, F4 Burglary Tools Poss., F6	Guilty in absentia	Jury
9/19 - 9/20	**Gaziano Ditsworth**	Stephens	Bennett	CR06-117876-001SE 2 cts. Child/Vulnerable Adult Abuse, F4	Guilty 2 cts. Attempted Child/ Vulnerable Adult Abuse, F5	Jury
9/19 - 9/26	**Ziemba** *Lenz*	Sanders	Blum	CR05-032492-001SE Trafficking in Stolen Property, F3	Guilty	Jury
9/21 - 9/25	**Sitver**	Stephens	Smith	CR06-119307-001SE Agg. Assault, F3D	Guilty of Assault, M1	Jury
9/26 - 9/27	**Little Lockard** *Baker*	Stephens	Brenneman	CR06-048160-001SE Agg. Assault, F3D Shoplift, M1	Guilty	Jury
9/26 - 9/27	**Jolley**	Talamante	Smith	CR05-140654-001SE Unlawful Use of Means of Transportation, F5	Guilty	Jury
Homicide						
9/18 - 10/3	**Stein Brown Unterberger** Brazinskas-PangBurn *Bowman*	Gottsfield	Kalish / Grimsman	CR03-017983-001 DT Murder 1, F1, Child Abuse, F2, 7cts. Child Abuse, F4	Mistrial	Jury

Jury and Bench Trial Results August/September 2006

Legal Defender's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
8/3	**Bushor**	Gaylord	AG	JD505365 Guardianship Trial	Guardianship Granted	Bench
8/3 - 8/7	**Bushor**	Gaylord	AG	JD506211 Dependency Trial	Dependency Found	Bench
8/4	**Ivy**	Talamante	Schultz	CR04-043219-002 Possession or Use of Marijuana, Class 1 misdemeanor	Guilty	Bench
8/9	**Kolbe**	Rees	AG	JD505800 Severance Trial	Severance Granted	Bench
8/14	**Bushor**	Gaylord	AG	JD504157 Guardianship Trial	Guardianship Granted	Bench
8/16	**Kolbe**	Araneta	AG	JD505481 Guardianship Trial	Guardianship Granted	Bench
8/30	**Kolbe**	Araneta	AG	JD506267 Guardianship Trial	Guardianship Granted	Bench
8/24 - 8/28	**Shaler**	Duncan	Morse	CR06-105799-002 Sale or Transportation of Narcotic Drugs, F2	Guilty	Jury
9/6 - 9/6	**Rosenberg**	McClennen	Heller	JD14869 Dependency Trial	Dependency Found	Bench
9/5 - 9/8	**Hozier**	Reinstein	Hunter	JD13407 Dependency Trial	Severance Granted 1 child; Dependency petition dismissed as to other child.	Jury
9/14 - 9/19	**O'Neal**	Cole	Beaver	CR05-015365-001 Aggr. Assault, F3 Dangerous, 3 Cts	Not Guilty: Aggr, Assault, F3 Dangerous, 2 Cts Guilty: Disorderly Conduct, F6 Dangerous, 1 Ct Dismissed: [before start of trial] Aggr. Assault, F3 Dangerous, 1 Ct	Jury
9/7 - 9/06	**Garfinkel**	Foster	Southard	JD13596 Guardianship Trial	Guardianship granted	Bench
9/18 - 9/19	**Carlson**	Cunanan	Letellier	CR04-129274-001 Crim. Trespass, 1st Degree, F6	Guilty	Jury

Jury and Bench Trial Results August/September 2006

Legal Defender's Office (Continued)

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
9/11 - 9/20	**Shaler**	Heilman	Green	CR06-007281-001 Aggr. Assault, F3 Dangerous, 3 Cts Burglary 1st Degree, F2 Dangerous Armed Robbery, F2 Dangerous Theft by Extortion, F2 Dangerous	Guilty	Jury
9/13 - 9/22	**Ripa**	Woodburn	AG	JD14933 Dependency Trial	Dependency Found	Bench
9/26 - 9/26	**Wilhite**	O'Connor	Rassas	CR06-112129-001 POM, F6	Not Guilty: POM, F6 Guilty: POM, M1	Bench
9/27	**McGuire**	Verdin	AG	JD506104 Dependency Trial	Dependency Found	Bench
5/5 - 9/28	**Rosenberg**	Foster	Moreski	JD13639 Severance Trial	Severance Granted	Bench
9/27 - 9/28	**Shaler**	Nothwehr	Vanwie	CR2005-015108-001 Forgery, F4	Not Guilty	Jury
9/22 - 9/29	**Sanders**	French	Moreski	JD11897 Severance Trial	Severance Granted	Jury

Jury and Bench Trial Results August/September 2006

Legal Advocate's Office

Dates: Start - Finish	**Attorney** Investigator *Paralegal*	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
8/23 to 8/28	**Gray** Stovall	Ishikawa		CR06-106143-001-DT; Burg. 2d; F3 (2 priors)	Guilty of Criminal Trespass; F6	Jury
8/23 to 8/26	**Glow** Mullavey	Porter		CR05-006570-002-DT; Traf. Stolen Prop; F3	Mistrial	Jury
5/1 to 8/8	**Garcia** **Glow** Brauer	Granville		CR94-006023-A-DT; Felony Murder; Kidnap (3 cts) F-2; Agg Ass (2 cts) F-3; Att Armed Rob (3 cts) F-3; Consp. To Commit Armed Rob F-3	Guilty	Jury
8/14 to 9/6	**Everett** Mullavey Prieto Sinsabaugh Stovall	Irvine		CR03-031405-001-SE; Sex. Explot. Of Minor - 7 Cts-F2; Forgery-F4; Harrassment-M1	Guilty; Harrassment Dismissed	Jury
8/28 to 9/6	**Koestner** Stovall	Gottsfield		CR05-005190-001-DT; 2nd Deg. Murder; F1	Guilty	Jury
9/6 to 9/18	**Glow** Sinsabaugh	Gottsfield		CR05-110594-001-DT; POND Viol-F2; MJ Viol-F6; Drug Para. Viol-F6.; MIW-F4	Guilty ND Viol; DP Viol; MIW; Not Guilty MJ Viol.	Jury
9/12 to 9/14	**Reinhardt**	Duncan		CR06-006340-001-DT; Crim. Tres; F6	Not Guilty	Jury
9/18 to 9/29	**Centeno-Fequiere** Brauer	Gordon		CR05-014675-001-DT; Agg. Ass.; F3; Asst. Criminal Street Gang Dang; F3; Mis. Involv. Weapon; F4	Agg. Ass. - Not Guilty; Asst. Criminal Gang Dang; Guilty; Mis. Involv. Weapon; Guilty-Non-Dangerous	Jury

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M C P D

for The Defense

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