for The Defense

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for The Defense

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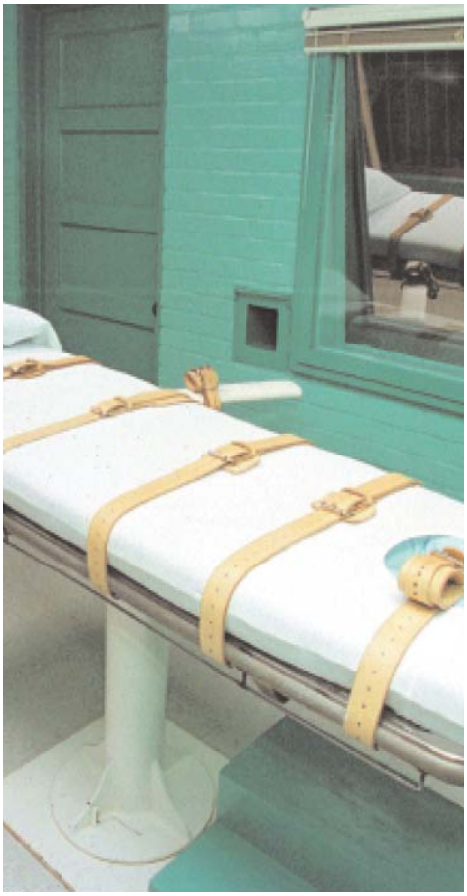
Capital Cases

Mitigation Investigation: A Duty That Demands Expert Help But Can't Be Delegated

By Russell Stetler, National Mitigation Coordinator, Federal Public Defender's Office



For over 30 years, the U.S. Supreme Court has made individualized sentencing a core constitutional requirement in capital cases. In *Woodson v. North Carolina*,[1] the Court captured the breadth of potential mitigating evidence by referring simply to the "diverse frailties of humankind."[2] A decade later in *Skipper v. South Carolina*, the Court made clear that there are no temporal limits to the preoffense time frame: redemption and "good adjustment" in jail should be considered even though they "would not relate specifically to petitioner's culpability for the crime he committed."[3]

The 21st century Court has reiterated both points. In *Tennard v. Dretke*,[4] the Court emphasized that no nexus is required between mitigation and the capital offense, and that there are virtually no limits on what the defense can introduce (noting the low threshold for relevance and defining mitigation as what might serve as a basis for a sentence less than death). In *Ayers v. Belmontes*,[5] Justice Kennedy wrote of the "potentially infinite mitigators" that may be proffered as a reason to reject the punishment of last resort.[6]

Traditional Excuses No Longer Accepted

The Court has acknowledged the national standards set by the capital defense community as reflected in the ABA Guidelines for the

Appointment and Performance of Defense Counsel in Death Penalty Cases ("the Guidelines"), and has rejected traditional excuses for failing to investigate mitigation. The result is an unambiguous mandate for mitigation investigation and a firm basis for counsel to seek the funding and time necessary to fulfill this mandate utilizing the services of a defense team with all the requisite skills and experience.

The single most important case was *Wiggins v. Smith*,[7] in which the Court rejected trial counsel's "strategic" decision to focus on residual doubt after consulting a psychologist, collecting a few records from the department of social services, and obtaining a presentence report. The Court found that the decision "not to expand their investigation" beyond the PSI and DSS records fell short of professional standards, specifically citing the ABA Guidelines. As originally published in 1989, the Guidelines call for "efforts to discover all reasonably available mitigating evidence." The *Wiggins* Court referred to the Guidelines as "well defined norms" in 2003. "Despite these well-defined norms, however, counsel abandoned their investigation of petitioner's background after having acquired only a rudimentary knowledge of his history from a narrow set of sources."[8]

In that same year, the ABA published its revised edition of the Guidelines.[9] The Sixth Circuit quickly recognized the revised edition as simply "explaining in greater detail" the 1989 Guidelines on which the *Wiggins* Court relied.[10]

These national standards of practice have now guided numerous courts in rejecting proffered excuses for failing to investigate mitigation. The Supreme Court rejected uninformed strategy both in *Wiggins* and in an earlier case, *Williams v. Taylor*.[11] Strategic decisions must be informed by investigation, not based on hunches and assumptions. In *Williams*, the Court found that "the failure to introduce the comparatively voluminous amount of evidence that did speak in Williams's favor was not justified by a tactical decision to focus on Williams's voluntary confession."[12] That case also rejected the claim that investigation was a "two-edged sword" which would uncover bad facts as well as good in the course of Williams's life. Indeed, in a dissent Justice Rehnquist described the capital murder as "just one act in a crime spree that lasted most of Williams's life." He noted Williams's juvenile record from age 11 — the savage beating of an elderly woman, car theft, fire setting, and stabbing during a robbery.

Attempts to blame the client for inadequate life-history investigation were rejected by the Sixth Circuit in *Hamblin* and the Supreme Court in *Rompilla v. Beard*.[13] In *Hamblin*, the Sixth Circuit noted that both the ABA and judicial standards do not permits courts to excuse failure to investigate or prepare because the defendant so requested, quoting the clear language of the Guidelines verbatim: "The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing on penalty is not to be collected or presented."[14]

In *Rompilla*, the client's cooperation with the mitigation investigation was "minimal" at best and obstructive at worst: he sometimes sent counsel off on wild goose chases pursuing false leads. Rompilla was reportedly "bored" by discussion of mitigation and "uninterested in helping." In this case, counsel was faulted for failing to obtain a court file on a prior conviction that the prosecution planned to use in aggravation. That public record would have disclosed a completely different picture from what was offered by the client and his family — including a nightmarish childhood, familial mental illness, and potential mental retardation.

In both *Wiggins* and *Rompilla*, consulting mental health experts was rejected as a substitute for conducting the mitigation investigation. In *Wiggins*, counsel had consulted a forensic psychologist. In *Rompilla*, they had consulted a cadre of three top mental health experts. Likewise, counsel had conducted some investigation in both cases. In *Rompilla*, they had interviewed a former wife, two brothers, a sister-in-law, and a son. Such minimal investigation fell below the national standard.

The ABA Web site[15] keeps an updated list of cases citing to the Guidelines since *Wiggins*. In addition to three cases in the U.S. Supreme Court, there have been dozens of cases in the federal courts and in the highest state courts citing the Guidelines.

Quality Representation Requires Teamwork

The core practical wisdom of the Guidelines, embodying the consensus of capital defense practitioners over the past 30 years, is that quality representation requires teamwork. Guideline 4.1 defines the team as no fewer than two qualified attorneys, an investigator, and a mitigation specialist — with at least one member of the team qualified by training and experience to screen for the presence of mental or psychological disorders or impairments.

To some extent, the logic behind capital defense teamwork derives from the adage "two heads are better than one." The following hypothetical will serve as an explanation. Imagine that a true renaissance lawyer is representing a client facing the death penalty. The lawyer is brilliant on her feet in the courtroom, creative in crafting original motions, scholarly in her knowledge of Eighth Amendment jurisprudence, and empathic in her capacity to build a relationship of trust with a paranoid schizophrenic client who grew up in a foreign land. The Guidelines call for a second lawyer, not because the true renaissance lawyer is perceived to be deficient in any area, but because no single lawyer can possibly find the time to do everything that is needed to provide high quality representation in a capital case. Of course, it is common for lawyers with complementary skills to be paired on capital cases. But regardless of the skills of any individual lawyer, a second lawyer strengthens the representation.

In the area of fact development as well, two heads are better than one. An uncommonly gifted individual with expertise ranging from DNA to the DSM can't diligently pursue the two investigative tracks that are part of every capital case: the reinvestigation of the factual allegations which constitute the capital charges, and the biographical inquiry aimed at discovering mitigating evidence that may inspire mercy or compassion in the hearts of jurors. Putting aside whether there are any such renaissance investigators, we can see at the outset that two very different skill sets are involved in the different tracks.

A capital defense investigator's task is to deconstruct the prosecution theory of the case and turn a solved crime into an unsolved mystery. The investigator should challenge all the factual predicates. Typically, the investigator reviews discovery meticulously and is a skilled reader of police reports, autopsy protocols, and a wide range of forensic analyses. She must be thoroughly familiar with the law and science relating to physical evidence, including the protocols for collection, preservation, laboratory analysis, and interpretation of scientific evidence. In the 21st century, a capital defense investigator also needs to understand the implications of the exonerations which have shaken the criminal justice system since the advent of DNA evidence in the late 1980s. The investigator needs to be well-informed about the sources of wrongful convictions such as eyewitness errors, false confessions, perjurious testimony of jailhouse informants, and unreliable scientific testimony (both junk science and forensic fraud).

Thus, skilled investigation of the facts of a capital crime involves more than asking a percipient witness where she was, what she saw, and for how long. Equally important, the investigator needs to find out how the witness came to identify a particular suspect, and how that identification was influenced by police procedures before and after the witness attended a lineup. The investigator needs all the old skills as well: expertise at interviewing, and an ability to knock on a stranger's door and engage the stranger in conversation, without any authority to coerce cooperation. Finally, the modern investigator needs state-of-the-art databases for locating witnesses, familiarity with legal tools like open records acts, and a methodology for comprehensive background investigation of all witnesses, especially experts.

The mitigation specialist investigates a different factual universe and needs a wholly different set of skills. A quarter century ago, a California lawyer hired a former *New York Times* reporter to investigate his client's life history and help outline the empathy-evoking story which ultimately saved that client's life. The journalist, the late Lacy Fosburgh, then wrote about the unusual role she had played:

> A significant legal blind spot existed between the roles played by the private investigator and the psychiatrist, the two standard information-getters in the trial process. Neither one was suited to the task at hand here — namely discovering and then communicating the complex human reality of the defendant's personality in a sympathetic way. Significantly, the defendant's personal history and family life, his obsessions, aspirations, hopes and flaws, are rarely a matter of physical evidence. Instead they are both discovered and portrayed through narrative, incident, scene, memory, language, style, and even a whole array of intangibles like eye contact, body movement, patterns of speech — things that to a jury convey as much information, if not more, as any set of facts. But all of this is hard to recognize or develop, understand or systematize without someone on the defense team having it as his specific function. This person should have nothing else to do but work with the defendant, his family, friends, enemies, business associates and casual acquaintances, perhaps even duplicating some of what the private detective does, but going beyond that and looking for more. This takes a lot of time and patience.

Over the years, capital defense team members giving undivided attention to the client's life story have come to be called mitigation specialists. Their duties and ethical obligations are defined purely by the capital defense function. They are not part of any other freestanding profession. Mitigation specialists come from diverse backgrounds, but have common areas of competency, including the ability to identify collateral evidence of symptoms of mental disorders and deficits, exposure to trauma, brain damage, and substance abuse history. They conduct a multigenerational investigation to identify genetic predispositions, in utero exposures, and intergenerational patterns of behavior, including the historic influences of cultures and subcultures. Their expertise must be multidisciplinary because they are identifying the biological, psychological, and social influences that shaped a client's identity. Their investigation is cyclical and nonlinear. There is no checklist: the end point of the investigation cannot be foreseen.

Mitigation specialists often help to identify issues requiring expert evaluation, especially in mental health areas. Their investigation allows capital defense counsel to make informed choices about the kinds of experts who are needed and what referral questions the experts should address. Their interviewing skills must include an informed ability to explore signs of mental illness and to conduct the interviews according to the professional standards of the mental health and legal professions.

Both the traditional capital defense investigator and the mitigation specialist must understand the need for a unified theory for both the guilt and punishment phases of a death penalty trial. Their spheres will certainly overlap. Each area of investigation will have an impact on the other. Each area of investigation will also most likely identify the need to expand the team to include additional experts.

There is no one-stop shopping in capital cases. Just as the team needs at least two lawyers, the team needs distinct investigators focused on the crime and the client. The crime-focused investigation may well determine the need to consult specialists in DNA, firearms identification, false confessions, or other forensic areas. The client-focused investigation may identify the need for experts in psychiatry, culture, brain development, or sexual trauma. Skilled investigators will help sharpen the focus on the kinds of expertise that may be appropriate.

In sports, it is often said that you play to the level of your team. So, too, in capital cases. The team is more than the sum of its divided parts. The assignments cannot be compartmentalized because the work must be integrated. The goal in adding a skilled player to the team is to make everyone work harder, toward a better result. The ABA Guidelines make clear that the promise of effective representation in capital cases requires a fully staffed defense team. With a life in the balance, no team should go forward until each position has been filled.

The cases and Guidelines also make clear that the ultimate responsibility always lies with counsel. The duty to investigate mitigation is shared, not simply delegated. A first-rate mitigation specialist will bring new skills, the perspective of a different discipline, and new energy to the team. But responsibility for thorough investigation and effective presentation remains with counsel. Fortunately, the Guidelines and the recent cases discussed here provide counsel with powerful support to obtain the resources needed to fulfill that duty to uphold a national standard of quality representation.

This article is expanded from an article that previously appeared in For The Defense, a magazine published by the Tennessee Association of Criminal Defense Lawyers.

Notes

1. 428 U.S. 280 (1976).
2. Id. at 303.
3. 461 U.S. 1 (1986), at 4-5.
4. 542 U.S. 274 (2004).
5. 549 U.S. ____, 127 S. Ct. 469.
6. 127 S. Ct. at 478.
7. 539 U.S. 510 (2003).
8. Id. at 523.
9. 31 HOFSTRA L. REV. 913 (Summer 2003); also available at www.abanet.org/deathpenalty.
10. Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2003).
11. 529 U.S. 362 (2000).
12. Id. at 420.
13. 545 U.S. 374 (2005).
14. Guideline 10.7.
15. www.abanet.org/deathpenalty.

About the Author

Russell Stetler is the national mitigation coordinator for the federal death penalty projects. From 1995 to 2005, he was the director of investigation and mitigation at the New York Capital Defender Office. He has investigated all aspects of capital cases, both trial and postconviction, since1980, and served as chief investigator at the California Appellate Project from1990 to 1995. He will be presenting on this topic in Phoenix on May 25, 2007 (see page 27 of this publication for additional details).

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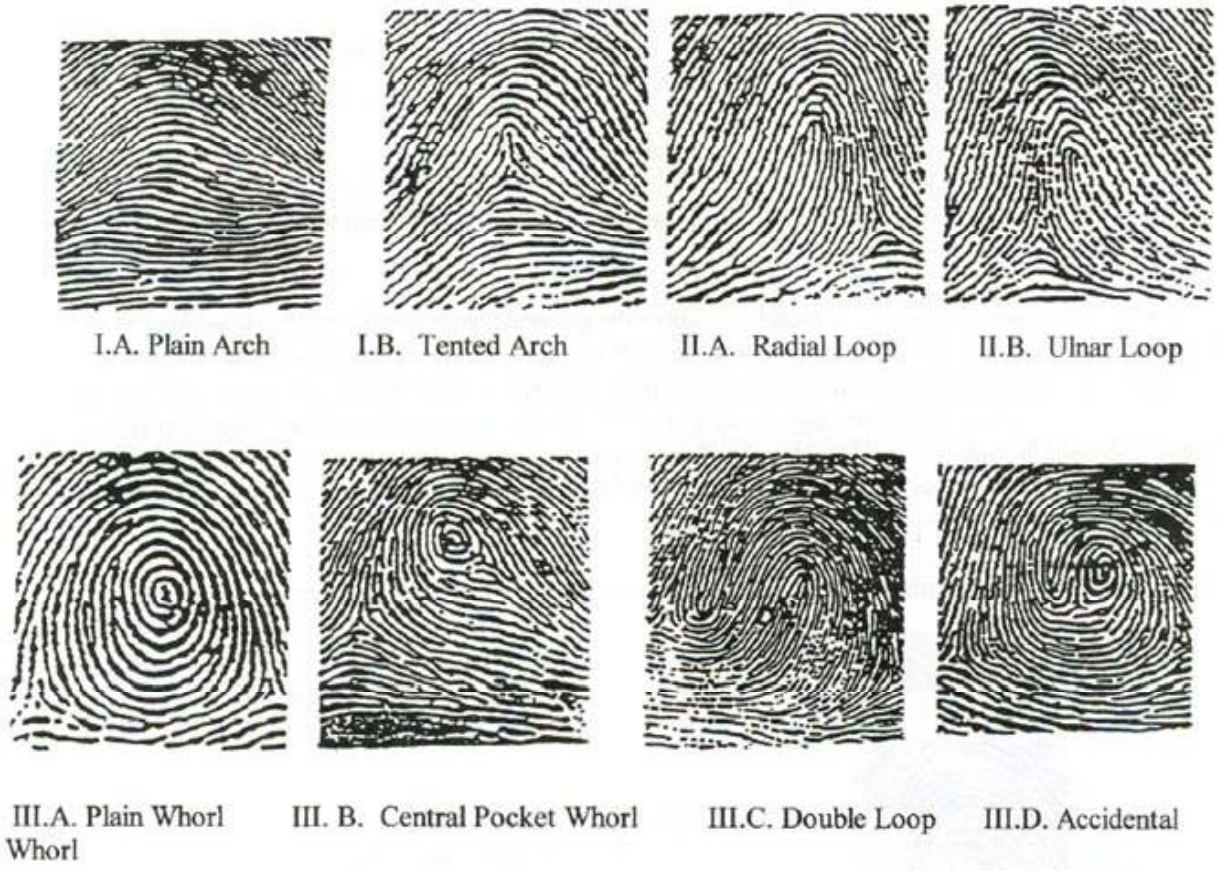
The Science of Fingerprints

By Dave Moller, Investigator Chief

A basic understanding of the science of fingerprints is an essential tool for criminal defense practitioners. Armed with a working knowledge of fingerprint essentials, attorneys are better prepared to ask pertinent questions of fingerprint technicians during interviews and more comfortable in their cross-examination of fingerprint experts during trial. This article is the first in a three part series. It is intended to provide a basic understanding of the science of fingerprints and to present questions every fingerprint examiner should answer. Future articles will focus on developing a thorough understanding of fingerprint analysis including techniques used to process crime scenes for fingerprints and how computers are used to assist in the matching an unidentified individual to prints recovered from a crime scene.

To start, take a close look at your fingers, palms, toes, and even the soles of the feet. You will notice that the inner surface of these appendages have elevated minute ridge details, these visible lines are known as ridges. In between, the ridges are valleys, which are known as furrows. On the tips of the fingers and toes, there are reoccurring random "patterns." These patterns have been classified into three major categories based on their general appearance – "**Loops**," "**Whorls**," and "**Arches**." Each pattern has been further subdivided into a number of subcategories. For example, there are four subcategories of Whorls including Plain, Central Pocket Loop, Double Loop and Accidental. A list of the categories with their corresponding subcategories is shown in Illustration 1.

Illustration 1



Generally, a latent print examiner classifies fingerprints using categories of patterns to prepare a **Classification** formula. The classification formula is used to place prints into a filing sequence for storage and retrieval. The loop pattern comprises approximately 65% of all fingerprints, whorls, 30%, and arches, 5%. *Fingerprint patterns, and the subsequent classification formula established for a print, do not allow for the positive identification of one set of fingerprints to another.*

To match two prints to one another, an examiner looks for a variety of individual **"Points of Identification"** within the print. Illustration 2 depicts a sample print with several individual points of identification labeled. The points of identification are found within the ridge details and some occur more frequently then others. Points of identification may consist of combinations of any of the following:

- Bifurcation: when two ending ridges combine to form a fork.
- Trifurcation
- Dot
- Ridge Ending
- Short Ridge
- Spur
- Enclosure: where ridges meet to form bifurcations on each end

Illustration 2

When an examiner is comparing prints, the same "points of identification" must be present in the same relative position on each of the prints being examined. Points of identification cannot be dissimilar, unless that dissimilarity can be explained.

An example of dissimilarity would be if a ridge ends on one print but touches in the second. This creates a bifurcation in one and an ending ridge in the other. An experienced examiner may explain that a small particle of dirt may have prevented the continuation of the first print's ridge to complete or to become the bifurcation in the second print.

How many points of identification are necessary for an examiner to make a positive identification or match between two prints? This is the most frequently asked question when it comes to fingerprint comparisons. The question is easy to ask but not so simple to answer.

- Examiners must base their findings on several factors including:
- The quality of the prints being matched – is it a clear image or a poor quality smudge
- The uniqueness of the pattern
- The uniqueness of the points of identification - a point of identification such as an enclosure is much rarer then an ending ridge
- The training and experience of the examiner

A limited number of points may be sufficient in order to determine a match. A fingerprint usually contains an estimated 75- 175, different points of identification. The palms on the hands will contain well over a thousand. All the above factors must come into consideration when a small number of points of identification are used for the match.

Having said that, it is critical to remember that *there is no standardized minimum number of points of identification required.* Ultimately, the final decision regarding whether prints match is that of the

fingerprint examiner, based on his or her experience and training. As such, it is always important to consider the training and length of experience of the print examiner. In addition, an important question may be, "Has a print confirmation been made, and the match agreed upon by another senior technician?" Most police departments today *require* a confirmation comparison be made by a senior examiner.

Therefore, when a case involves a print comparison, fingerprint examiners should never be automatically accepted or stipulated as an expert without first establishing their qualifications. Your case may be the first time the examiner has been called upon to testify and provide an opinion. Forever more they will be able to state that they are recognized as experts in court, without ever having being challenged as to their abilities. Detailed questions regarding their training and qualifications should be asked regarding their formal training. Consider the following line of questions:

- Where did the examiner receive his or her training?
- Was training obtained "on the job," from college courses from an accredited institution, correspondence courses, online classes, law enforcement generated, state agency-DPS, FBI, etc.?
- Was the training recent? When was the last time they had training?
- Was the training specific to the identification and comparison of prints?
- How long have they been working as a fingerprint examiner? What is their length of experience as a fingerprint examiner with their current employer? Former employer?
- How many hours have then spent comparing prints?
- Are they involved or do they have membership to any forensic professional organizations (i.e., Arizona Identification Council, International Association for Identification (IAI))?

One particularly insightful question to ask is whether the examiner is a "Certified-Latent Print Examiner" recognized by the International Association for Identification. The IAI is a recognized worldwide organization of professionals, which comprise numerous aspects of forensic identification. The IAI certification is a difficult testing process with very strict criteria. You may want to ask the witness if they ever applied for certification or have taken the certification test. If not, why not? Have they failed it in the past? If so, how many times?

Although being "IAI certified" is not a court requirement in order to provide testimony, it may reflect a less experienced, or unmotivated examiner. Many Police Departments are now making it part of the essential requirements that an examiner be certified, or achieve certification within a set period to remain on the job, or seek promotional opportunities.

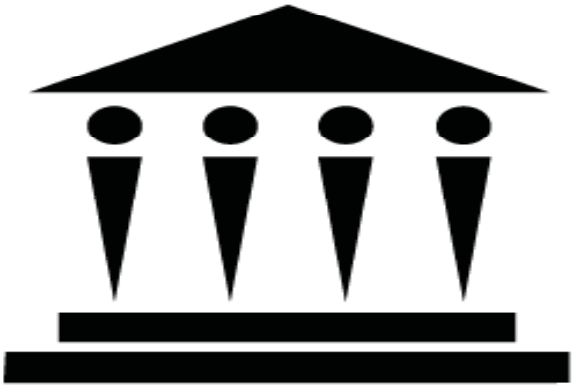
Other appropriate questions might be to ask for a brief "history of fingerprints," questions concerning the formation of fingerprints, crime scene processing techniques, lifting of the latent prints, and adherence to the chain of custody of the latent print evidence cards.

These questions should be easily answered by a knowledgeable examiner, who is trained and experienced in this field.

If a fingerprint examiner is accepted based on their experience and will testify regarding their work in a specific case, it is critical to ask how many points of identification they used in the match and what types of points of identification were found. You will also want to ask if the examiner if they have ever made mistake in their identification. A second opinion by a defense expert may be appropriate when a small numbers of points were used for the identification.

Mark Your Calendars for the

2007 APDA Annual Conference!!



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More information will be made available soon.

Defending the Deaf Offender

By Sara Austin, Mitigation Specialist

Hearing loss is one of the most common health care concerns among offenders in America. It not only impacts their communication skills, but their social and educational development as well. The average deaf offender reads at only a third grade level, which meets the federal criteria for functional illiteracy. Therefore, writing as a means of communication is usually ineffective. This linguistic disability often makes it impossible for deaf suspects to understand the Miranda Warnings as it is read or written before them at the time of their arrest. In fact, according to an article written by McCay Vernon, Ph.D. entitled *Deaf Murderers: Clinical and Forensic Issues*, a significant percentage of deaf defendants had such severely limited communication skills in both English and American Sign Language (ASL) that they lacked the ability to even understand the charges brought against them.

Even though ASL is an expressive language, it lacks 'signs' for many legal and abstract concepts (Vernon, Raifman, & Greenberg, *Deaf Suspects and the Miranda Warnings*, 1996). For highly educated, fully competent deaf defendants, this poses no problem. They can read the warnings or have the words that do not translate finger-spelled for them. Most deaf defendants, however, read below the sixth grade level and have not mastered the English syntax. In their case, phrases such as "the right to remain silent", "constitutional", "you have the right to speak with a lawyer and have him present with you at any time during questioning" bear no meaning and cannot be translated in terms they can understand. In fact, in many districts, police officers are warned not to attempt to translate Miranda Warnings. They are required to have an attorney present for the defendant before they even attempt questioning. This is not the case in Arizona. Therefore, as a defense attorney, it may be possible to find that Miranda Warnings given to illiterate or semi-illiterate deaf suspects either orally, in writing, or in sign language could be inadmissible at trial (Vernon and Raifman, 1997).

Before introducing such an argument, it may be helpful to understand the difference between a person who is deaf from birth or early childhood (prelingually deaf) versus a defendant who has lost their hearing as an adult. Prelingually deaf individuals are those who do not have adequate useful residual hearing for understanding speech and learning language. As a result, most grow up with huge information gaps, low educational achievement levels, and limited understanding of the English syntax. It is especially difficult for these individuals to identify meanings for abstract or intangible ideas, memories, and/or social mores. According to studies of psycholinguistics and cognition, our ability to code and store information in long and short term memory is closely linked to language.

Those who have lost their hearing as an adult are at an advantage. They are able to connect meanings of intangible thoughts or concepts from their previous experiences. Interpreters working within this field should be prepared to administer tests of language to determine if the defendant can comprehend legal terminology and concepts. Furthermore, they should be willing to identify the social barriers that may misrepresent a defendant with lack of empathy for their victims or a misunderstanding of their wrongdoing. Often times, when questioned by law enforcement, deaf suspects respond inappropriately. This may be because they are unable to interpret the

actual meaning of the question, they have experienced underprivileged socialization, or hey have inadequate vocabulary yet they attempt to respond to portions of the questions which they did comprehend resulting in an insufficient response. This should be considered when reviewing the discovery of police officers' routine questioning. Does your defendant fully comprehend the question he has been asked to answer? Was the answer incriminating because he answered with only partial understanding?

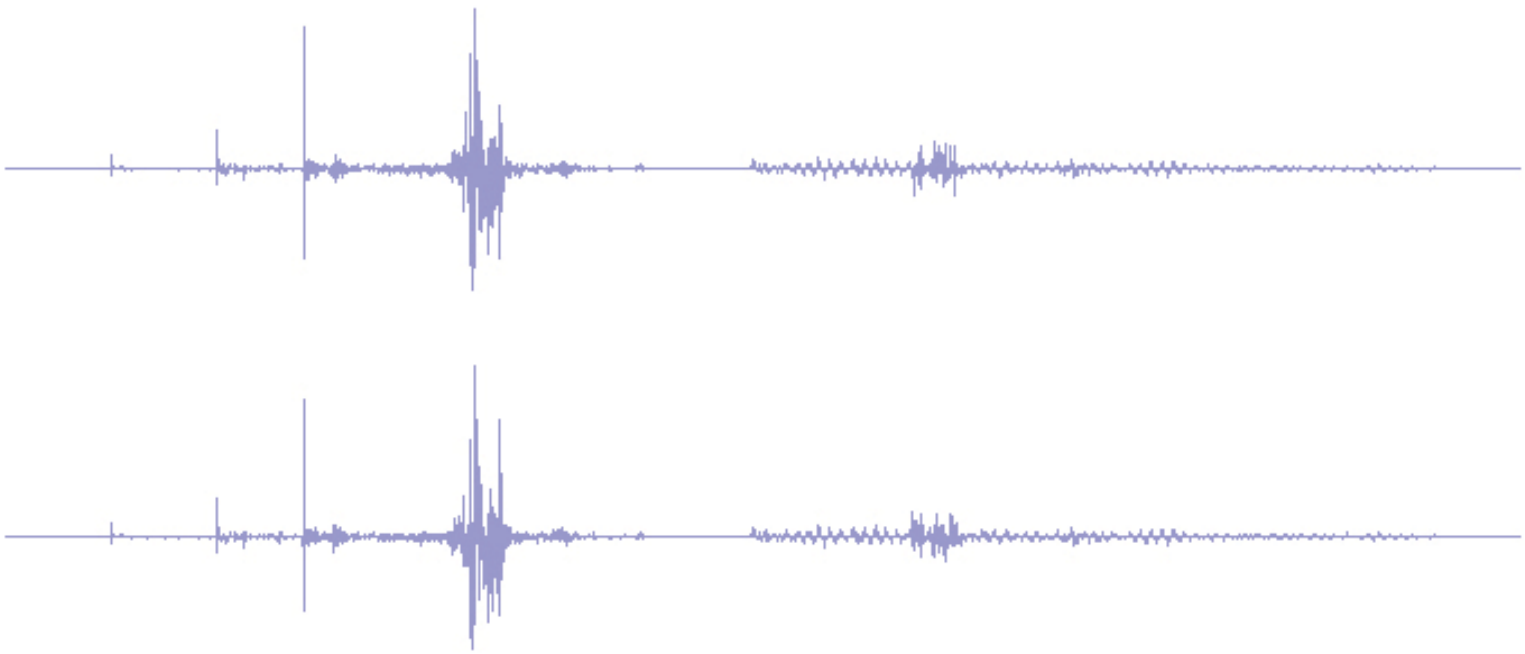
An example is provided in an article entitled *Assessing Linguistic Diversity in Deaf Criminal Suspects* by Katrina R. Miller and McCay Vernon.

> Police Officer: "If you saw the theft occur, why didn't you report it?"

This question is not only syntactically complex, but also relies heavily on sociocultural knowledge that many deaf defendants lack. Studies conducted to create this article indicate that a minimal legal background for deaf individuals with minimal language skills pose a serious threat to their understanding of otherwise expected social norms. It is important to remember that deaf individuals with minimal language skills or who lack a symbolic language system may not have the capacity to encode or organize their thoughts using typical language. They may also be challenged by understanding concepts that cannot be seen in the here and now. Furthermore, they may have no understanding of how language suggests internal experiences such as thought, intent, or affect.

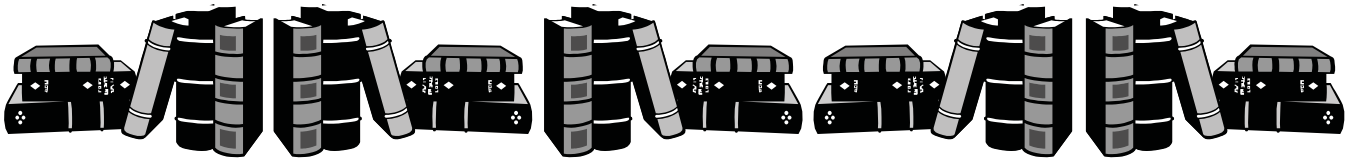
Although interpreters carry a weighted responsibility for recognizing complex linguistic and social barriers, it falls upon the defense attorney in assuring that these systematic barriers are communicated to both the courts and criminal justice agencies.

In conclusion, there is an important relationship between deafness and an inability to access linguistic information such as societal values and expectations of behavior. It is imperative that our judicial systems consider the weight of culpability in such a defendant.



Helping Your Appellate Lawyer

Tips from the MCPD Appellate Division



- **Offers of Proof**

Whenever trial counsel loses a request to get a particular item or bit of testimony into evidence, he/she must make an offer of proof as to what that item was, or the issue is forfeited. Rule 103(a)(2) of the Arizona Rules of Evidence declares that an offer of proof is a necessary prerequisite to any claim of error based on the exclusion of evidence unless the substance of the evidence is apparent from context. *State v. Bay*, 150 Ariz. 112, 722 P.2d 280 (1986).

Rule 103. Rulings on Evidence

> (a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and
>
> > (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
> >
> > (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.
>
> (b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling thereon. It may direct the making of an offer in question and answer form.
>
> (c) Hearing of jury. In jury cases, proceedings shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.
>
> (d) Fundamental error. Nothing in this rule precludes taking notice of errors affecting fundamental rights although they were not brought to the attention of the court.

- **Renewal of Motions to Sever**

If there has been a motion to sever, trial counsel must renew it during trial, at or before the close of the evidence, or the issue is forfeited by the specific terms of Rule 13.4(c). We see this all the time. In a recent case, counsel for the defendant neglected to do this and the net result was that the Court of Appeals found no problem in joining 65 counts of sexual abuse for one large trial even though there was a strong argument that none of the cases of the 23 victims should have been joined due to the trial court's failure to evaluate the credibility of each accuser as required by Rule 404(c) and *State v. Aguilar*, 209 Ariz. 40 (2005).

Rule 13.4. Severance

(a) In General. Whenever 2 or more offenses or 2 or more defendants have been joined for trial, and severance of any or all offenses, or of any or all defendants, or both, is necessary to promote a fair determination of the guilt or innocence of any defendant of any offense, the court may on its own initiative, and shall on motion of a party, order such severance.

(b) As of Right. The defendant shall be entitled as of right to server offenses joined only by virtue of Rule 13.3(a)(1), unless evidence of the other offense or offenses would be admissible under applicable rules of evidence if the offenses were tried separately.

(c) Timeliness and Waiver. A defendant's motion to sever offenses or defendants must be made at least 20 days prior to trial or at the omnibus hearing and, if denied, renewed during trial at or before the close of the evidence. If a ground not previously known arises during trial, the defendant must move for severance at or before the close of the evidence. Severance is waived if a proper motion is not timely made and renewed.

(d) Jeopardy. No motion by the prosecutor to sever offenses of defendants may be granted after trial has commended unless the defendant consents. Severance of offenses during trial upon motion of the defendant or with the defendant's consent shall not bar a subsequent trial of that defendant on the offenses severed.

Amended May 7, 1975, effective Aug. 1, 1975; July 28, 1993. effective Dec. 1, 1993. Amended Oct. 6, 1997, effective Dec. 1, 1997.

- **Objections to Jury Instructions**

Jury instructions are the most productive source of jury trial reversals on appeal, because errors in jury instructions are errors of law and the standard of review for an error of law is de novo – the standard least deferential to the ruling of the trial court. Despite this, we see few objections to the "stock" jury instructions offered by the court and few records made on trial courts' refusal of instructions proffered by the defense. Sometimes defense lawyers do not even object to supplemental instructions offered by the prosecution. In any of these situations, the failure of trial counsel to make a timely and explicit objection to offending jury instructions and to the failure of the court to give defense-requested instructions waives the jury instruction issue for appeal – something that is explicitly stated in Rule 21.3(c) of the Rules of Criminal Procedure. A good example of an objectionable instruction that is rarely challenged is one of the instructions regarding burden. "The State must prove guilt beyond a reasonable

doubt with its own evidence. The defendant is not required to produce evidence of any kind. The decision on whether to produce any evidence is left to the defendant acting with the advice of an attorney. The defendant's failure to produce any evidence is not evidence of guilt." The use of the word "failure" connotes that the defendant had a "duty" to do something and failed to do so and yet I have never had an attorney object to the failure language and, in fact, I have had defense attorneys ask for that instruction.

Rule 21.3. Rulings on Instruction and Forms of Verdict

(a) Conference. The court shall confer with counsel and inform them of its proposed action upon requests for instructions and forms of verdict prior to final argument to the jury.

(b) Duty of the Court. The court shall not inform the jury which instructions, if any, are included at the request of a particular party.

(c) Waiver of Error. No party may assign as error on appeal the court's giving or failing to give any instruction or portion thereof or to the submission or the failure to submit a form of verdict unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds of his or her objection.

(d) Jurors' Copies. The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. In limited jurisdiction courts, the court may record jury instructions on audiotape and provide these audiotape instructions to the jury for their use during deliberation.

Amended July 28, 1993, effective Dec. 1, 1993; Oct. 24, 1995, effective Dec. 1, 1995.

- **Unreported Bench Conferences or Bench Conferences that are Reconstructed Later in the Day**

These are anathema for all the reasons discussed in *Gosewich v. American Honda Motor Co.*, 153 Ariz. 400, 737 P.2d 376 (1987) and *State v. Babineaux*, 22 Ariz App. 322, 526 P.2d 1277 (1974). Memories fade, judges get a chance to think all day about better grounds for denying the motion than the ones they articulated at the sidebar conference, the prosecutor has the entire day to think up better arguments, and testimony occurring after the unreported sidebar may render an issue moot when it might still have been profitable for tactical reasons to have won the argument on the objection when it was made. The list of bad things that can happen when the bench conferences are reconstructed later is a long one. If a judge has a reputation for doing this – and several of ours do – then counsel should file a pretrial motion

demanding contemporaneous recordation of the sidebars, and if the judge denies the motion, then counsel should special action him. This is not an issue that will survive until a later appeal. Christopher Johns wrote a fine motion to this effect which is available in *for The Defense*, Volume 2, Issue 1, page 5.

- **Timeliness of Objections**

Failure to make articulate and timely objection to anything that counsel doesn't like is a recurrent problem. Arizona recognizes the "contemporaneous objection" rule: no issue survives for appeal that has not been the subject of a contemporaneous objection. Even if the issue arises just before a recess and counsel returns from the recess and makes the objection as soon as proceedings resume, it is still too late. See *State v. Harris*, 157 Ariz. 3 (1988)

- **Twelve Person Juries**

There are a number of cases where the court impanels an eight person jury when there should have been a twelve person jury. It is one of those things that can get glossed over in the often rushed (the jurors are waiting in the hallway) "housekeeping" types of conversations that occur before trial particularly when stacking of sentences would be required to warrant the twelve person jury. Arizona Const. article 2 section 23 and A.R.S. 21-102(A) specify a twelve person jury for criminal cases in which a sentence of death or imprisonment for 30 years or more is authorized by law. A.R.S. 21-102(B) specifies that other criminal trials have an eight person jury.

- **Proving a Prior Conviction**

The state's burden in proving a prior is clear and convincing as opposed to proof beyond a reasonable doubt. *State v. Cons*, 208 Ariz. 409, 414, ¶ 14, 94 P.3d 609, 614 (App. 2004). If a defendant denies the alleged prior conviction(s), then the state must then prove "(1) that the defendant in the present case and the one convicted in the prior case are the same individual, and (2) that there was in fact a prior conviction." *State v. Pennye*, 102 Ariz. 207, 208, 427 P.2d 525, 526 (1967). Technically, the state should offer in evidence a certified copy of the conviction and connect the defendant to the document. *State v. Hauss*, 140 Ariz. 230, 231, 681 P.2d 382, 383 (1984) (citations omitted). Certified copies of court records are self-authenticating document. Cons, 208 Ariz. at 416, ¶ 18, 94 P.3d at 616 (citing *State v. Lee*, 114 Ariz. 101, 559 P.2d 657 (1976); see also Ariz. R. Evid. 902(4)).

Several reported cases have discussed the type of evidence sufficient to prove a prior conviction. In *State v. Robles*, 213 Ariz. 268, ¶¶ 3, 17, 141 P.3d 748, 750 (2006), evidence included a certified copy of Arizona Department of Corrections' "pen pack" and testimony from a fingerprint expert. In *State v. Van Adams*, 194 Ariz. 408, 419, ¶ 37, 984 P.2d 16, 27 (1999), even without a photograph or fingerprint, evidence included a matching name, description, and date of birth. In *State v. Cons*, 208 Ariz. at 415, ¶ 17, 94 P.2d at 615, evidence included name, date of birth, and testimony from fingerprint expert. Evidence that falls short of this should always be objected to. Failure to object likely leads to a defendant forfeiting any appellate relief, unless the error rises to fundamental prejudicial error, which is one of the highest and most difficult standards of review to meet.

Suggestions for Developing Mitigation

By Tammy Velting, Mitigation Specialist

According to A.R.S. § 13-702 (D), the court shall consider the following mitigating circumstances: 1) The age of the defendant. 2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution. 3) The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution. 4) The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution. 5) Any other factor that is relevant to the defendant's character or background or to the nature or circumstances of the crime and that the court finds to be mitigating.

Finding other relevant factors for the Judge to consider is very important. In some cases, it may be the only chance your client will have at receiving a mitigated sentence. Be prepared to spend some time interviewing your client and ask open-ended questions. Some questions are too personal to ask until you have developed a rapport, but many clients will talk to you about mental health and drug abuse issues the first time you meet them.

When you first meet your client, I recommend you obtain the names, addresses, and phone numbers of family members, significant others, and employers. I would also have them sign several releases of information. Many agencies and medical facilities require an original signature on a release of information so it is important to have them sign more than one.

The following is a brief checklist of topics to discuss with your client:

Mental health

- Diagnosis – when and where were they evaluated, what was the diagnosis
- Medications – past and current
- Were they ever a ValueOptions client – if an active client, get name and number of case manager
- Hospitalizations for mental health or suicide attempts – when and where
- Did they ever have a serious head injury – if so, get details

Substance Abuse

- Drug of choice
- Addicted for how long
- How old were they when started using drugs
- What drugs have they used
- Did parents or siblings abuse alcohol and/or use drugs
- Have they ever participated in substance abuse treatment

Education

- Were they ever placed in special education classes
- How far did they go in school
- When and why did they drop out

Living arrangements

- Where were they living before they were arrested
- Where could they live if they were released from jail
- Have they ever been homeless – if so, get details

Social background

- Who raised them – parents, grandparents, or other family members
- Did they move frequently while growing up
- Was CPS ever involved with their family
- Did they ever live in a group or foster home
- In trouble as a juvenile – arrested, placed on probation, or sent to Adobe
- Did they ever hang out with gang members or join a gang – if so, ask how they got involved and if other family members are affiliated with a gang
- Any family members previously or currently on probation or in prison

Abuse

- Were they sexually or physically abused as a child or an adult
- Victim of domestic violence – witnessed it as a child and/or experienced it themselves as an adult
- Did they ever participate in treatment
- Are there police reports documenting the abuse

Miscellaneous

Physical health problems

- Military experience
- Employment – current or recent
- Police reports in present offense – check for comments about alcohol and drug admissions, not on medications, hearing voices, etc.
- Court records – order court files from the Clerk of the Court in prior cases so you can get the Presentence Reports, Petitions to Revoke, and Probation Violation reports on previous cases. Ask clients about any failures on probation or parole.

If your client feels remorse and takes responsibility for his actions, it is very important to convey that to the judge and consider having your client write a letter of apology to the court and the victim. I also suggest asking family members, friends, employers, etc. to show their support for your client by writing character letters. Finally, it is essential to prepare your client to make an appropriate statement in court at sentencing.

Jury and Bench Trial Results
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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
1/4 - 1/9	**Shelley**	Blakey	Scherle	CR06-139137-001DT Forgery, F4	Not Guilty	Jury
1/8 - 1/9	**Guyton** *Armstrong* *Ralston*	Porter	Shipman	CR05-138404-001DT Poss. Dang. Drug, F4 Shoplifting, M1	Guilty	Jury
1/9 - 1/11	**Barraza**	Cole	Susser Steinberg	CR06-134427-001DT Poss. Marij., F6 Poss. Drug Paraph Viol., F6	Not Guilty	Jury
1/10 - 1/11	**Iacob** *Curtis*	Abrams	Oberpriller	CR06-009047-001DT Poss. Dang. Drug, F4	Guilty	Jury
1/10 - 1/16	**Farney** *Ralston*	French	Morse	CR06-009176-003DT 2 cts. Dang. Drug Viol, F2	Guilty	Jury
1/16 - 1/19	**Reece** *Armstrong*	Burke	Reckart	CR05-108364-001DT Agg. Robbery, F3 Agg. Assault (Serious Physical Injury), F3	Guilty	Jury
1/22 - 1/24	**Shelley**	Blakey	Hernacki Godbehere	CR06-005046-001DT Theft, F4	Not Guilty; Guilty of Lesser-Included Theft, F5	Jury
1/23 - 1/25	**Guyton** Trimble *Armstrong* *Curtis*	Johnson	Voyles	CR05-112131-001DT 2 cts. Agg. Assault, F3D (DV)	Not Guilty	Jury
1/24 - 1/30	**Farney** *Armstrong*	Ishikawa	Squier	CR05-015276-002DT Forgery, F4	Guilty	Jury
2/5 - 2/7	**Taylor** *Ralston*	Blakey	Steinberg	CR06-149573-001DT Aggravated Harassment, F5 IJP, M1	Guilty	Jury
2/12 - 2/14	**Williams** **Guyton** Rankin	Klein	Beaver	CR06-112746-001DT PODD f/s, F2 PODP, F6	Guilty	Jury
2/12 - 2/15	**Ventrella** Carson *Ralston*	Duncan	Weinberg	CR06-157636-001DT Aggravated Assault, F3D PODD, F4	Guilty - Aggravated Assault (D); Pled guilty to PODD (w/two prior felony convictions)	Jury
2/13 - 2/16	**Farrell**	French	Shipman	CR06-009465-001DT Aggravated Assault, F3D	Not Guilty	Jury
2/20 - 2/23	**Reece** Sain *Armstrong*	Johnson	Squier	CR06-108797-001DT Aggravated Assault, F6 Resisting Arrest, F6	Second Mistrial (7-1 Not Guilty)	Jury

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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2						
1/4 - 1/10	**Roskosz**	Ditsworth	Rassas	CR06-143011-001DT 2 cts. Agg. Assault, F3D	Guilty	Jury
1/9 - 1/11	**Kephart** **Evans** James *Burns*	Akers	Scott Sponsel	CR06-154352-001DT Poss. Of Marij. , F6 Agg Assault on Officer, F6	Guilty POM Not Guilty Agg Assault	Jury
1/16 - 1/19	**Nelson** **Bublik** Reilly *Burns*	Johnson	Mayer	CR05-104367-001DT Theft, F3	Not Guilty	Jury
1-18 - 1/24	**Roskosz**	Akers	Easterday	CR06-149158-001DT Poss Dang. Drug f/s, F2 Poss Drug Paraph, F6	Guilty Lesser offense - PODD, F4 Not Guilty Poss Drug Paraph.	Jury
1/23 - 1/25	**Leonard** **Kephart** Reilly *Burns*	Ditsworth	Jorgensen/ Yuva	CR06-008141-001DT Agg. Assault, F4	Not Guilty	Jury
1/29 - 1/31	**Davison** Souther *Burns*	Duncan	Sponsel/ Scott	CR06-008283-001DT Agg. Assault, F4	Guilty	Jury
1/30 - 2/2	**Nelson** **Evans** Reilly *Burns*	Rayes	Mayer	CR05-104367-001DT Burglary, F3	Not Guilty	Jury
2/14 - 2/15 (&2/20)	**Martens** Spizer Burns	Gottsfield	Pollak	CR06-137572-001DT Unlawful Discharge of Firearm within City Limits, F6D	Guilty (non-dangerous)	Jury
2/21	**Roskosz**	French	Cohen	CR06-159510-001DT 2 cts. Sexual Abuse, F3DCAC 2 cts. Child Molest, F2DCAC Sexual Contact w/Minor, F2DCAC	Guilty all counts	Jury
2/27 - 3/1	**Guenther** Reilly	Blakey	Susser	CR06-107499-001DT Forgery, F4	Not Guilty	Jury
Group 3						
1/8 - 1/16	**Jackson** Trimble *Browne*	Lee	Greene	CR06-105264-001DT Agg. Assult, F2D 2 cts. Miscon. Inv. Wpns., F4 Resist Arrest, F6	Not Guilty Guilty Guilty	Jury

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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3 (Continued)						
1/8 - 1/11	**Sitton** Charlton	Porter	Long	CR06-128250-001DT Narc. Drug Viol., F4	Guilty	Jury
1/10 - 1/18	**Cain** Schreck	Steinle	Browne	CR2006-122997-002 Kidnap F2D Extortion F2 Agg. Assault, F6	Guilty Guilty Not Guilty	Jury
2/13 - 2/14	**Sitton** Burgess	Hoffman	Beckstead	CR06-127690-001DT Criminal Trepass, F6 Criminal Damage, M2 Assault, M1	Not Guilty	Jury
2/8 - 2/23	**Kirchler** *Curtis*	Akers	Church	CR05-14684-001DT Agg. Assault, F3D	Not Guilty	Jury
2/1 - 2/20	**Falduto** Bradley MacDonald	Ishikawa	Cohen	CR03-022321-001DT 2 Cts. Sex Assault, F2D Sex Abuse, F5D 9 Cts. Sex Assault, F2 Kidnapping, F2D Agg. Assault, F3D	Guilty on all counts as charged	Jury
Group 4						
1/3 - 1/5	**Gaziano** **Ditsworth**	Talamante	Kelly	CR06-030589-001SE Theft, F2	Hung Jury (Split 4/4)	Jury
1/19	**Dehner**	Pearce	Hawkins	JC06-149305-001NM DUI-Watercraft, M1 DUI-Watercraft, Alcohol BAC .08, M1 Extreme DUI-Watercraft BAC .15, M1	Not Guilty	Jury
1/22 - 1/24	**Watson**	Stephens	Smith	CR06-151738-001SE Sale or Transportation of Dangerous Drugs, F2	Guilty	Jury
1/31 - 2/1	**Engineer**	McMurdie	Schultz	CR06-145910-001SE Theft Means of Transportation, F3	Guilty of Lesser Charge - Unlawful Use of Means, F5	Jury
2/12 - 2/14	**Lockard** *Cowart*	Sanders	Starkovich	CR06-155868-001SE POM, F6 PODP, F6	Guilty	Jury
2/12 - 2/16	**Sheperd**	Udall	Borges	CR05-032127-001SE Agg. Assault, F3D Unlawful Imprisonment, F6	Agg. Assault - Found guilty of non-dangerous Unlawful Imp.-Hung (no split given)	Jury

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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
2/14	**Little**	Abrams	Smith	CR06-126412-001SE Burglary Third Degree, F4 Theft, F6	Not Guilty on all counts	Jury
2/20 - 2/23	**Engineer** **Peterson**	Udall	McGregor	CR06-123472-001SE Hit and Run w/Death/Injury, F4 Liquor-Minor in Possession, M1	Hit and Run - Mistrial (Split 6 Guilty/2 Not Guilty) Liquor - pled guilty day of trial	Jury
2/21	**Brink**	Cunanan	Bennett	CR05-145122-001SE Criminal Damage, F5	Mistrial	Jury
Capital						
10/4 - 2/8	**Brown** **Stein** **Unterberger** Page *Bowman*	Gottsfield	Kalish Grimsman	CR03-017983-001 DT Murder 1st Degree, F1, Child Abuse, F2, 6cts. Child Abuse, F4	Not guilty on count 2, child abuse, F4, Hung on counts 3-9 (6 guilty - 6 not guilt of intentional/knowing abuse, 8 guilty - 4 not guilty of reckless abuse, 10 guilty - 2 not guilty of crim. negligent abuse)	Jury
Vehicular						
1/3 - 1/4	**Sloan**	Foster	Nothwehr	CR06-125717-001 SE DUI/Liquor/Drugs/Vapor M1 Agg DUI, F4	2nd day of trial, 1ct Agg DUI dismissed 1ct Pled guilty to DUI, M1	Jury
1/8 - 1/10	**Sloan**	Rothblum	Nothwehr	CR06-008237-001 DT 2cts Agg DUI, F4	Guilty	Jury
1/9 - 1/19	**Souccar** Ryon *Renning*	Duncan	Hale	CR06-138762-001 DT Negligent Homicide, F4	Guilty	Jury
1/16 - 1/19	**Sloan**	Cottor	Holding	CR05-013392-001 DT 2cts Agg DUI, F4, Assault, M1	Guilty	Jury
1/22 - 1/23	**Iniguez**	McDermott	Holding	CR05-034973-001 DT 2cts Agg DUI, F4	Guilty	Jury

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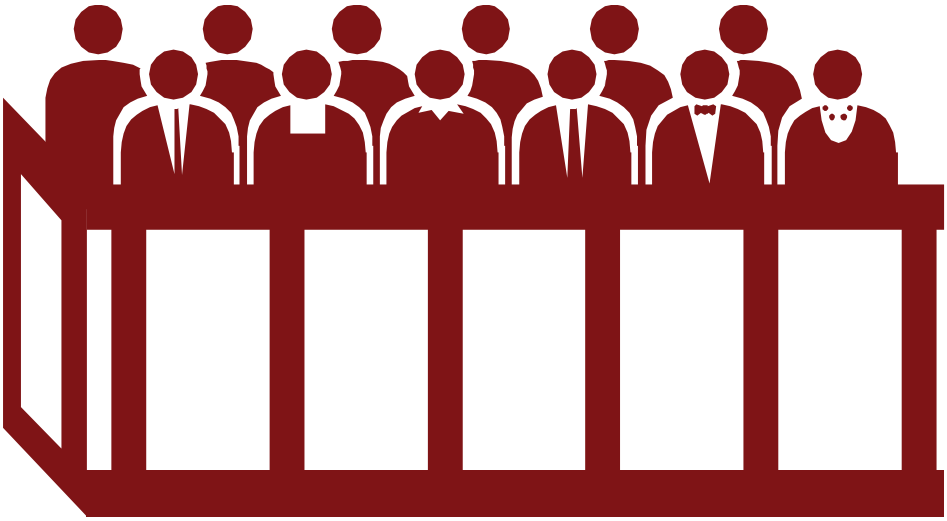
Vehicular (Continued)						
1/30 - 1/31	**Whitehead** *Renning*	Foster	Anderson	CR05-015140-001 DT 2cts Agg DUI, F4 Agg DUI/Pass U 15, F6	Guilty	Jury
1/30 - 2/2	**Timmer**	Nothwehr	Hale	CR06-006361-001 DT Negligent Homicide, F4	Guilty	Jury
1/31 - 2/5	**Sloan**	Holding	Rothblum	CR06-133880-001 DT 2cts. Agg DUI, F4	Guilty	Jury
2/13 - 2/15	**Timmer**	Porter	Foster	CR06-141124-001 DT 2cts. Agg DUI, F4	Guilty	Jury
2/26 - 2/27	**Conter**	Holding	Salcido	CR99-95398 Agg DUI, F4	Guilty	Jury



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9/26 - 1/12	**Garfinkel**	Fenzel	AG	JD12829 Severance Trial	Severance Granted	Bench
10/18 - 1/9	**R. Miller** **Curry,** **Dupont** **S. Anderson** B. Abernethy *Bolinger* *Rodriguez* *Williams*	Heilman	Shutts Marshall	CR97-03949A Murder 1, F1, Re-sentencing	Mistrial / Hung Jury (9 Death/3 Life)	Jury
1/3/ - 1/4	**S. Anderson**	McMurry	Kent	TR06-104370 DUI, Misdemeanor, 2 Cts	Not Guilty	Jury
1/8	**Kolbe**	Araneta	AG	JD505273 Dependency Trial	Dependency Found	Bench
1/8	**Bushor**	Gaylord	AG	JD505990 Severance Trial	Severance Granted	Bench
1/11 - 1/12	**Cassels**	Heilman	Goebel	CR2006-119104 Poss. Dang. Drugs, F4 Poss. Drug Paraphernalia, F6	Guilty	Jury
1/17 - 1/22	**Rothschild**	Nothwehr	Plicht	CR06-008350-001 Poss. Dang. Drugs, F4 Poss. Drug Paraphernalia, F6	Not Guilty	Jury
1/19	**Vogel**	Heilman	Golomb	CR06-134870-001 Poss Marijuana, F6 [later designated a Misdemeanor]	Not Guilty	Bench
1/19 - 1/30	**Gaunt**	Franks	Crabb	JD13681 Severance Trial	Severance Granted	Bench
1/23 - 1/24	**Ivy** Apple	Lee	Judge	CR06-139155-001 Aggr. Assault, F3, Dang.	Judgment of Acquittal, Dismissed w/ Prejudice	Jury
1/23 - 1/24	**Souza**	McVey	Nies	JD13916 Guardianship Trial	Guardianship Granted	Bench
1/25	**Souza**	McVey	Thiss	JD14686 Dependency Trial	Dismissed - child returned to mother on 1st day of trial	Bench
1/29	**Bushor**	Gaylord	AG	JD506092 Guardianship Trial	Guardianship Granted	Bench
2/1 - 2/2	**Cassels**	Newell	Lau/ McKessy	CR06-137651-001 Possession Dang. Drugs, F4	Not Guilty	Jury

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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
2/7	**Kolbe**	Araneta	AG	JD506492 Dependency Trial	Dependency Found	Bench
2/12	**Bushor**	Gaylord	AG	JD506524 Dependency Trial	Dismissed	Bench
2/12	**Kolbe**	Araneta	AG	JD506139 Guardianship Trial	Guardianship Granted; Client consented	Bench
2/12	**Rosenberg**	Woodburn	Liszak	JD15322 Dependency Trial	Dependency Found; Client consented on 1st day of trial	Bench
2/12 - 2/15	**Schaffer** De Santiago *Prusak*	Granville	Martinez	CR06-113978-001 Murder 1st Degree, F1	Guilty	Jury
2/13 -2/27	**Napper**	Arellano	Kay	CR06-048036-001 Murder 2nd Degree, F1	Guilty	Jury
2/23	**Kolbe**	Rees	AG	JD506466 Dependency Trial	Dismissed	Bench
2/23	**Rosenberg**	McClennen	Liszak	JD15226 Dependency Trial	Dependency Found; Client submitted on 1st day of trial	Bench
2/26	**Bushor**	Reinstein	AG	JD14301 Severance Trial	Severance Granted; FTA	Jury
2/28	**Kolbe**	Araneta	AG	JD506537 Dependency Trial	Dependency Found	Bench
2/28	**Kolbe**	Araneta	AG	JD506539 Dependency Trial	Dependency Found	Bench
2/28	**Rosenberg**	McClennen	Van Doren	JD15317 Dependency Trial	Dependency Found; Client consented on 1st day of trial	Bench

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Legal Advocate's Office

Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
1-10 to 1-11	**LeMoine** Sinsabaugh	McMurdie	CR05-121552-001-DT PODD-F4	Hung Jury	Jury
1-18 to 1/24	**Garcia**	Gama	CR06-140093-001-DT POND For Sale-F2	Guilty on Lesser; POND-F4	Jury
1-24 to 1-30	**Tucker**	Ishikawa	CR05-015276-001-DT Forgery-F4	Guilty	Jury
1-29 to 1-30	**LeMoine**	Cole	CR05-120385-001-DT POND-F4; Res. Arrest-F6	Guilty on Both	Jury
12-5 to 1-25	**Hatfield** Beckman	Schwartz	JD-14149 Severance Trial	Under Advisement	Bench
1-9 to 1-12	**Lunde**	Whitten	JD14207 Severance Trial	Jury severed on Sub. Abuse; Mental Illness and 9 months in care	Jury
1-10 to 1-10	**Hatfield** Beckman	McVey	JD12472 Guardianship Trial	Guardianship granted; Court agreed w/OLA	Bench
1-18 to 1-22	**Christian** Contreras	Gaylord	JD505990 Severance Trial	Severance Granted	Bench
1-22 to 1-23	**Hatfield** Beckman	Reinstein	JD12472 Severance Trial	Father submitted to severance on 2nd day of trial; severance granted; Court agreed w/OLA	Jury
1-29 to 1-29	**Kenyon**	Kemp	JD13005 Dependency Trial	Dependency Found	Bench
1-29 to 2-2	**Rich,** Mullins	Comm. Johnson	JD13827	Terminated Mother's Rights	Jury
12-14 to 2-5	**Timmes**	Owens	JD506431 Dependency Trial	Under Advisement	Bench
1-31 to 2-5	**Gray** Sinsabaugh	Gama	CR2006-136691-001-DT; Agg. Assault-F3 Dang; 1 prior	Not Guilty	Jury
2-8 to 2-12	**Koestner**	Comm. Porter	CR2006-008770-001-DT; Armed Robbery-F2 Dang.; 2 priors	Rule 20 Judgment of Acquittal	Jury
1-22 to 2-12	**Reinhardt**	Holt	CR2005-128086-001-DT; 2nd Deg. Murder-F1; 2 Cts Att. Murder-F2; 2 Cts Agg. Ass.-F3 Dang; Dis. of Firearm at Struct-F4	Mistrial	Jury
2-9 to 2-14	**Lunde**	McVey	JD-14628 - Termination	Severance	Jury
2/6	**Timmes**	Owens	JD-505096	Dependency Granted	Bench

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Dates: Start - Finish	**Attorney** Investigator Paralegal	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
2/22 to 2/28	**Burns,** Mullavey	Holt	CR06-150385-001-DT 2 Cts. Agg. Ass-F3 (Dang); 1 Ct Agg. Ass-F3 (DCAC)	Not Guilty on all counts	Jury
02/13 & 2/20	**Christian**	Hoag	JD 506495 - Dependency Trial	Dependency Found as to Mother	Bench
2/15	**Christian**	Hoag	JD 505002 Supp	No Contest	Bench
2/20	**Christian**	Hoag	JD506538 - Dependency	Dependency Granted	Bench
2/28	**Kenyon**	Foster		Guardianship	Bench

Save the Date!!!

Sponsored by
Arizona Capital Representation Project,
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Maricopa County Public Defender

Mitigation Seminar

Friday, May 25, 2007

Seminar Topics:

- Mitigation Focus
- Protecting Mitigation Work
- Standards of Mitigation Work
- Mitigation Work Across the Country

Speakers will Include:

- Russ Stetler, Federal Mitigation Specialist
- Courtney Bell, Mitigation Specialist
- Sean O'Brien, Attorney/Professor University of Missouri
- Lauro Amezcua-Patiño, MD, FAPA

To Register
Please contact Jessica Michals at
azcaprep@hotmail.com or
Phone: (520) 229-8550

for The Defense

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