

# for The Defense



Volume 6, Issue 11 ~ ~ November 1996

The Training Newsletter for the Maricopa County Public Defender's Office ~ Dean Trebesch, Maricopa County Public Defender

## CONTENTS:

Common Scheme or Plan is Narrowed and Clarified by <i>State v. Ives</i>	Page 1
Computer Corner	Page 3
Batson Made Easier: Top Ten List & Prosecutor Profiles	Page 4
The Defendant Wants to Appeal-What Happens Now?	Page 7
Bulletin Board	Page 8
October Trials	Page 11

scheme or plan, when you know your client has never planned anything in his life? Have you been dismayed when the state drags prior bad acts into a trial, claiming that simply because they were committed in a similar fashion, they must be part of a common scheme or plan? Well, no more! In *State v. Ives*, \_\_\_ Ariz. \_\_\_, \_\_\_ P.2d \_\_\_, 229 Ariz. Adv. Rep. 75 (November 7, 1996), the Arizona Supreme Court adopts, for all cases not yet final on appeal,<sup>1</sup> a narrow definition of the term "common scheme or plan," and rejects the broader definition of that term set out in many Arizona appellate decisions. The primary issue in *Ives* involved severance of counts, however, the *Ives* decision also contains a valuable discussion of Rule 404(b) issues, and some helpful advice to trial courts regarding the application of Rule 403 of the Arizona Rules of Evidence, which balances probative value against unfair prejudice.

## THE DEFINITION OF "COMMON SCHEME OR PLAN"

Citing two Court of Appeals cases,<sup>2</sup> and relying on its own decision in *State v. Stuard*,<sup>3</sup> the Court held in *Ives* that in order for there to be a common scheme or plan, there must be evidence of a particular plan of which the charged crime is a part. It is not sufficient that there are simply similarities between the crimes where one would expect differences, or that there is a "visual connection" between the various crimes.<sup>4</sup> The narrower definition announced in *Ives* applies both for purposes of joinder and severance under Rules 13.3 and 13.4 of the Arizona Rules of Criminal Procedure, and for purposes of determining admissibility of prior bad acts under Rule 404(b) of the Arizona Rules of Evidence.

Arizona courts have often held that a "common scheme or plan" exists when the court can perceive a "visual connection" between the various crimes at issue, or when there are similarities between the crimes where one would normally expect to find differences.<sup>5</sup> Some have even used a broader definition of common scheme or plan.<sup>6</sup>

(cont. on pg. 2) ☛

## COMMON SCHEME OR PLAN IS NARROWED AND CLARIFIED BY *STATE V. IVES*

By James R. Rummage  
Deputy Public Defender--Appeals

Have you ever wondered why a "common scheme or plan" does not require the existence of a scheme or a plan? Have you ever been frustrated when your client is tried on several crimes together as part of a common

However, in *State v. Stuard*, the Arizona Supreme Court suggested that a narrower definition of "common scheme or plan" was appropriate.

In *Stuard*, the Supreme Court cited Udall and Livermore's observation that when deciding severance issues such as the one presented in that case, Arizona courts have gotten around the defendant's claim of severance as a matter of right by interpreting the "identity" exception of Rule 404(b) in the same manner as the "common scheme or plan" exception.<sup>7</sup>

The Supreme Court rejected that approach, stating, "We choose not to stretch the rule to reach the result. Aside from the series of crimes themselves, there is little evidence of any scheme or plan and considerable evidence to the contrary."<sup>8</sup> However, the conviction was not reversed in *Stuard*, because there was no prejudice to the defendant. Even if the severance had been granted, the evidence of each crime would have been admissible at the separate trials of the other crimes for the purpose of proving identity, which was a significant issue in *Stuard*. Although the similarity of the crimes did not support a finding of common scheme or plan, that similarity was relevant on the issue of identity in *Stuard*.

In the *Ives* case, identity was not an issue, so the evidence of the various crimes would not have been admissible had there been separate trials on each count. The

"There is simply no issue in this case as to whether defendant 'accidentally' or 'mistakenly' rubbed the victims' private parts. Instead, the issue is whether defendant did the acts at all."

Court stated in *Ives*, "Similarity and modus operandi may establish identity, but not establish a common scheme or plan. Because the acts in the instant case are merely similar, and because identity and modus operandi are not in issue in this case, defendant's motion for severance should have been granted."<sup>9</sup>

#### RULE 404(B) ISSUES: INTENT AND LACK OF ACCIDENT OR MISTAKE

The Supreme Court was also called upon to rule on whether the failure to sever in *Ives* was harmless error. "If the evidence could have been introduced at separate trials (under Rule 404(b), Ariz. R. Evidence), then defendant will not receive a new trial based on the error."<sup>10</sup> The Supreme Court determined that the evidence would not have been admissible at separate trials under Rule 404(b)<sup>11</sup>. The court rejected the state's argument that the acts were admissible to show intent, stating, "Even a cursory reading of the record below indicates that the issue in this case was whether the defendant committed the acts at all, not what his state of mind was when he committed them."

The Supreme Court likewise rejected the state's argument that all of the acts would have been admissible at separate trials as showing lack of mistake or accident, explaining, "There is simply no issue in this case as to whether defendant 'accidentally' or 'mistakenly' rubbed the victims' private parts. Instead, the issue is whether defendant did the acts at all."<sup>12</sup>

In concluding its discussion of the Rule 404(b) issue, the Supreme Court states, "Just as in *Torres*, evidence was used in this case to create in the jurors' minds the inference that defendant molested one girl because he allegedly molested others in the past. This is the very inference against which Rule 404(b) is designed to protect."<sup>13</sup>

#### PROBATIVE VALUE VS. UNFAIR PREJUDICE

The Supreme Court concludes the *Ives* opinion with a discussion of Rule 403 of the Arizona Rules of Evidence, which provides in pertinent part, "Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice . . . ." Quoting its own opinion in *Stuard*, the Supreme Court states that even if the evidence in a given case is admissible under Rule 404(b), the trial court must still, "ensure that the probative value of the evidence for the purpose offered is sufficiently great in the context of the case to warrant running [the] risk' of unfair prejudice."<sup>14</sup> The Supreme Court cautions the trial courts, "The rules of evidence are designed to provide fair trials, and trial judges should not treat Rule 403 as an empty promise.

(cont. on pg. 3) ☞

for The Defense Copyright©1996

Editor: Russ Born

Assistant Editors: Jim Haas  
Ellen Kirschbaum  
Sherry Pape

Office: 11 West Jefferson, Suite 5  
Phoenix, Arizona 85003  
(602) 506-8200

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. for The Defense is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

There will be situations in which evidence sought to be introduced is more prejudicial than probative, and those situations are very likely to arise in the prior bad act context. When called upon to weigh probative value against unfair prejudice under Rule 403, a trial judge must assure the state is not permitted to prove a defendant's guilt of one act through excessively prejudicial evidence of other acts."<sup>15</sup>

## CONCLUSION

The *Ives* case is obviously most important for its approval of the more narrow definition of "common scheme or plan," rather than the broader definition. However, this decision will also prove useful in cases in which the state argues that other bad acts are admissible to prove intent or absence of mistake or accident. Finally, the concluding language of the opinion gives hope that, in the right case, the Supreme Court is willing to overturn a trial court's conclusion under Rule 403 that bad act evidence is not unfairly prejudicial.

1. The state has filed a motion for reconsideration arguing only that the *Ives* holding should have no retroactivity at all.
2. *State v. Torres*, 162 Ariz. 70, 781 P.2d 47 (App. 1989), and *State v. Ramirez Enriquez*, 153 Ariz. 431, 737 P.2d 407 (App. 1987).
3. 176 Ariz. 589, 863 P.2d 881 (1993).
4. *Ives*, Slip Opinion, p. 16. (All citations to *Ives* are to the slip opinion.)
5. *Ives*, pp. 10-11; *State v. Walden*, 183 Ariz. 595, 605, 905 P.2d 974, 984 (1995); *State v. Tipton*, 119 Ariz. 386, 581 P.2d 231 (1978.)
6. *Ives*, p. 11.
7. 176 Ariz. at 597, 863 P.2d at 889. Morris K. Udall, *et al.*, *Arizona Practice -- Law of Evidence* § 84, at 184 n. 14 (3d ed. 1991) (hereinafter "*Arizona Evidence*").
8. 176 Ariz. at 597, 863 at 889.
9. *Ives*, p.18.
10. *Ives*, pp. 18-19.
11. The state did not attempt to introduce the bad act evidence under the "emotional propensity" exception to Rule 404(b). *Ives*, p. 23.
12. *Ives*, p. 21. For a discussion of intent and lack of accident or mistake under Rule 404(b), see *Arizona Evidence*, § 84, at 182. Udall and Livermore explain that when a person charged with a crime admits the criminal acts, but claims that they were done unintentionally, without knowledge of their criminality, or by accident or mistake, then, "Evidence of other similar acts is usually allowed to rebut those claims." (Emphasis added.)

13. *Ives*, pp. 25-26.

14. *Ives*, p. 26 (emphasis added).

15. *Ives*, pp. 26-27. ■



---

## Computer Corner

---

By Susie Tapia  
I.T. Help Desk

### My Password has Expired?! Access Denied!! @#\$\$%^

Many of the Help Desk calls begin with "Help! I can't get in my computer. It says I've used all my grace logins. What's that?" Normally, I sum the answer up in one word, "Security." But let's elaborate on the explanation, this would be more helpful in preventing your frustrations.

The MCPD pc's are connected with all the pc's in the County. With all these users on multiple networks, security is a **MUST**. Every forty days you will be requested to change your password. A message will be displayed when it is time to change your password. In the message, note the grace logins, these are the maximum number of opportunities you have to change the password. Each user is given six grace logins.

#### Message:

Password for User XXXX has expired. You have # grace logins to change your password. Do you want to change your password: Y/N? Y

Select Yes now and type in a new password. (Passwords are not displayed on the screen.)

Enter your new password: Type the password press <Enter>  
Re-Type your password: Used for verification.

#### Password Specifications:

- Changes every 40 days
- Must be 5 characters or more
- Can contain alpha, numeric or a combination
- Passwords must be unique - they can not repeat
- Only six grace logins available

If you use all your grace logins you will have to contact the **Help Desk at 6198** to have additional grace logins set.

#### Upcoming Events:

Watch for the December Training Calendar for our new pc's training room. Classes to be offered are; GroupWise, Windows, WordPerfect, Advanced WordPerfect, mini 1 topic sessions and more.

Contact the Help Desk for further details.

Happy Computing! ■

---

## BATSON MADE EASIER: TOP 10 LIST & PROSECUTOR PROFILES

---

By Lawrence S. Matthew  
Deputy Public Defender--Appeals

### A. Dial 1-800-Prosecutor Profile.

At various seminars I have repeatedly stressed the importance of being able to anticipate the reasons opposing counsel may offer to justify striking racial minorities from the panel. Why is this information important in the context of *Batson*? Because knowing the potential basis of a peremptory strike will enable you to better focus on those facts and circumstances that will help you prove the strike is actually motivated by racial bias.

Effective immediately there is available a "*Batson* Profile" on county attorneys. These profiles consist of transcript excerpts and a summary of the reason(s) given by particular prosecutors during recent *Batson* challenges. You can now see for yourself just what a particular prosecutor argued in response to a *Batson* challenge. Be advised, however, this information is somewhat limited at this time -- not all prosecutors are profiled -- since the collection of data began only recently.

These profiles are being assembled by the appeals attorneys. Anytime one of us comes across a *Batson* challenge in an appellate transcript, copies of the relevant pages are made and a synopsis of the arguments of both parties is prepared. Thus, our data gathering is limited to cases which have been appealed. To receive profile information and/or copies of previous arguments, call me at 5754.

### B. *Batson* Top Ten List.

As another trial aid, I have prepared what I call a "*Batson* Top Ten List." An example of this document follows this article. One column lists the ten most common reasons given by prosecutors in response to a *Batson* challenge. The second column provides a space for prospective jurors' names or numbers. Since defense counsel is required to demonstrate that a strike is race or gender based, one of the best ways to do this is to show that jurors possessing characteristics similar to the stricken juror remain on the panel. The Top Ten List will help you to keep track of juror information.

For example, if a prosecutor claims the sole African-American on the panel was removed because he has a relative with a criminal record, your trial notes might indicate that three Caucasians with felon relatives remain on the panel.

Thus, an argument should be made that the prosecutor's reason for the strike is clearly pretextual since he failed to strike white jurors in the same situation.

The Top Ten List offers a method of keeping close track of important juror information. It will enable you to better challenge explanations given in support of the prosecutor's strikes.

### C. *Batson* in a Nutshell.

Not completely comfortable with *Batson*? Here is a short primer on it. The black-letter law on *Batson* can be summarized as follows: Peremptory strikes which are based on discrimination violate the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.<sup>7</sup> *Batson* applies to race or gender based peremptory challenges by either side. This is true regardless of whether the party making the objection shares the same race or gender as the stricken juror.<sup>2</sup>

In addition to the Federal Constitution, counsel should also state on the record that a *Batson* objection is also being made on state constitutional grounds -- Article 2, Section 24 -- as well as on the basis of the supervisory power of the court.<sup>3</sup>

To determine whether a strike is based on discrimination, a three-step procedure is followed:

- 1) The party opposing the strike must make a *prima facie* showing of discrimination;
- 2) Upon such a showing, the party exercising the strike must provide reasons for the strike;
- 3) The Court decides if the explanation rebuts the existing inference of discrimination.<sup>4</sup>

#### 1. The *Prima Facie* Showing.

The first requirement of a *prima facie* showing is that the stricken juror is a member of a cognizable group. Cognizable groups are those which have historically been subject to discriminatory treatment and have needed occasional assistance from the courts to secure equal treatment under the law.<sup>5</sup> The final step in the *prima facie* showing requires that the party challenging the strike reveal the existence of facts and other circumstances sufficient to raise an inference that the strike was used to discriminate on the basis of race or gender.

#### 2. Facially Neutral Explanations: The Trojan Horse of Discrimination.

When a prosecutor gives an explanation for a peremptory strike, all that is required is a race or gender neutral reason.<sup>6</sup> Obviously, coming up with a facially neutral reason requires virtually no effort.<sup>7</sup>

(cont. on pg. 5) ☞

Consequently, little effort is usually utilized in coming up with reasons supporting a strike. In fact, several specific reasons are routinely given when the state strikes a racial minority from the panel. (See, *Batson* Top Ten List on Page 6).

Once the reason is given, defense counsel must be prepared to argue facts and circumstances which will enable the judge to see that the "neutral" reason given is really a discriminatory reason in disguise.

This can be done in several ways. One or more of the following arguments may support an argument that the facially neutral reason is not as neutral as it may seem:

- a) The reason given is not reasonably related to the case;
- b) Non-minorities with same or similar characteristics were not struck;
- c) Disparate examination of members of the panel, i.e., questioning the stricken juror so as to evoke a certain response without asking the same question of other members of the panel;
- d) The explanation is based on a group bias (stereotype) where the group trait is not shown to apply to the stricken juror;
- e) The extent to which the party exercising the strike questioned the stricken juror;
- f) The reason offered for the strike is implausible, silly, or based on superstition.

The above list is not intended to be all-inclusive. It merely suggests some of the arguments that may be made in response to the reason given for the strike.

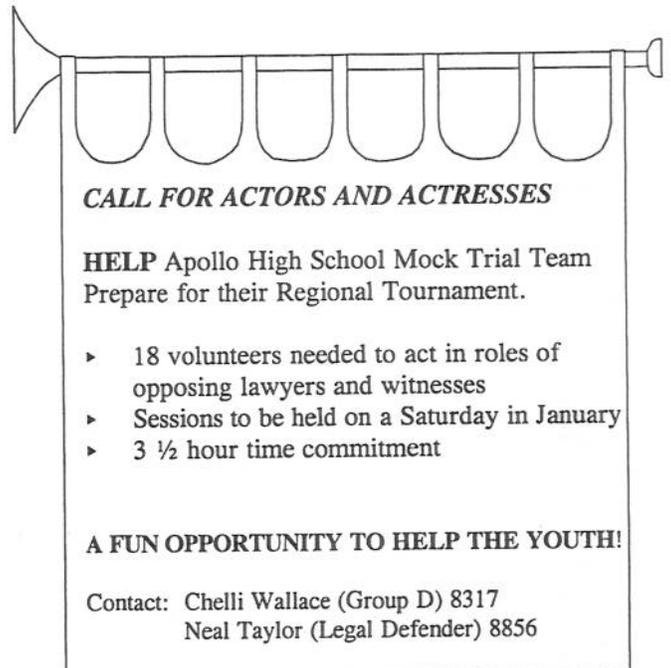
### 3. Unusual Situations.

The obvious *Batson* situation arises when the prosecutor strikes a minority. But what if you are in trial with a co-defendant and counsel for the co-defendant strikes a minority juror. Does *Batson* apply? YES! If you believe counsel for the co-defendant removed a juror for discriminatory reasons, you may make a *Batson* challenge.<sup>8</sup>

What about a situation when the prosecutor fails to exercise all preemptory strikes and as a result, a minority juror is automatically removed from the panel pursuant to Rule 18.5(g) (clerk is required to strike jurors from bottom of list). Again, *Batson* applies.<sup>9</sup>

Contrary to what some may believe, *Batson* is not dead and a skilled attorney will be able to keep the prosecutor from continually assembling all white juries to try minority defendants.

1. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986).
2. See, *J.E.B. v. Alabama*, \_\_\_ U.S. \_\_\_, 114 S.Ct. 1419 (1994); *Georgia v. McCollum*, 505 U.S. 42, 112 S.Ct. 2348 (1992); *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364 (1991).
3. Standard No.1 of Arizona Supreme Court administrative order 92-23 provides: "The opportunity for jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, or any other factor that discriminates against a distinctive group in the jurisdiction."
4. *State v. Harris*, 157 Ariz. 35, 754 P.2d 1139 (1988).
5. *State v. Jordan*, 171 Ariz. 62, 66, 828 P.2d 786, 790 (App.1992).
6. *Purkett v. Elem*, \_\_\_ U.S. \_\_\_, 115 S.Ct. 1769 (1995).
7. As Justice Marshall observed in his concurring opinion in *Batson*, "[a]ny prosecutor can easily assert facially neutral reasons for striking a juror." *Batson*, 406 U.S. at 106, 106 S.Ct. At 1728.
8. *State v. Anaya*, 170 Ariz. 436, 825 P.2d 961 (App. 1991).
9. *State v. Scholl*, 154 Ariz. 426, 743 P.2d 406 (App. 1987).



**CALL FOR ACTORS AND ACTRESSES**

**HELP** Apollo High School Mock Trial Team  
Prepare for their Regional Tournament.

- ▶ 18 volunteers needed to act in roles of opposing lawyers and witnesses
- ▶ Sessions to be held on a Saturday in January
- ▶ 3 ½ hour time commitment

**A FUN OPPORTUNITY TO HELP THE YOUTH!**

Contact: Chelli Wallace (Group D) 8317  
Neal Taylor (Legal Defender) 8856

<b>BATSON TOP TEN</b>	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R	J U R O R
AGE													
APPEARANCE (out of ordinary)													
CRIMINAL RECORD (Personal/Family)													
DIFFICULTY ANSWERING QUESTIONS?													
DEMEANOR (e.g. distracted/bored)													
EDUCATION LEVEL													
EMPLOYMENT (Type/ how long)													
MARITAL STATUS (S/M/D/W)													
PRIOR JURY SERVICE (Crim/Civ) (Guilty/Not Guilty)													
SPECIAL KNOWLEDGE (Case Related, e.g. Drugs/Medical)													
OTHER													

---

## THE DEFENDANT WANTS TO APPEAL--WHAT HAPPENS NOW?

---

By Paul J. Prato  
Public Defender Division Chief --Appeals

The client who decides to appeal his or her trial conviction or finding of probation violation following a contested hearing often has many questions about the appeal process. The purpose of this article is to provide you with basic information about the processing of appeals by the Office of the Maricopa County Public Defender and assist you in answering these questions.

The first step you must take is to insure that a notice of appeal is filed in a timely fashion. The notice of appeal must be filed within twenty days of sentencing. If the case is not one generated by the Public Defender's Office, then counsel should file a notice of appeal and a motion to withdraw requesting the appointment of the Public Defender. If the case is one generated by the Office of the Public Defender, you need only complete a one-page form entitled Request for Appeal (Appendix A). The section entitled "Potential Issues" is particularly helpful to appellate counsel. Hopefully, you kept notes during your processing of the case of the potential appellate issues that bear a closer look so that you can note them in this section. After you have completed the form, send it to or drop it off at the Appeals Division located on the third floor of the Luhrs Building. The form should be completed and dropped off on the day of sentencing or as soon thereafter as possible. Please do not wait until the twentieth day to deliver the form.

When the request for appeal is received in the Appeals Division, a file is opened. The first two documents filed in the appeal are the Notice of Appeal from Superior Court and the Designation of Record on Appeal. These documents are filed with the Clerk of the Superior Court. The notice formally starts the appeal process. The designation gives the Clerk, and the court reporters, a general idea of the portions of the superior court proceedings that will be needed for the processing of the appeal and those portions of the record that will not be needed.

Upon the filing of the notice and the designation, the Clerk of the Superior Court will forward to the Court of Appeals, and to counsel for the appellant and counsel for the state, a copy of all the minute entries and instruments filed in the case. Included within the instruments sent to the Court of Appeals is the presentence report and the appellant's criminal history.

Exhibits, other than photographic or documentary evidence, generally remain with the Clerk of the Superior Court unless either of the parties or the Court itself requests that they be sent to the Court of Appeals.

Immediately after the notice of appeal is filed, an initial contact letter (Appendix B) is sent to the appellant. The letter generally advises the appellant of what he or she can expect during the appeal process and the approximate length the appeal will take to be processed to conclusion. The letter encourages the appellant to write with any issues he or she believes should be reviewed for the appeal and explains when and how the appellant can receive the transcripts of his or her trial prior to the completion of the direct appeal process. After the initial contact letter is sent, I attempt to make telephone contact with each appellant to confirm receipt of the letter and to answer any questions left unanswered by the letter or generated by the letter.

I monitor the file from the date it is opened until a Notice of Completion of Record is received from the Court of Appeals. Sixty days following the filing of the Notice of Appeal I prepare and file with the Court of Appeals a Notice of Record Status advising the Court whether or not all of the necessary records and transcripts have been prepared. If the record is not complete, the Court of Appeals issues the necessary orders for the completion of the record. Once the record is complete the Clerk of the Court of Appeals issues the Notice of Completion of Record advising counsel for appellant when the opening brief is due. The opening brief is due forty-five days following the filing of the Notice of Completion of Record.

Upon receipt of the Notice of Completion of Record, the case is assigned for briefing to one of the fifteen attorneys within the Division who handle adult appeals. I then write to the appellant and advise him or her of the attorney's name. Once the case is assigned, that attorney will be responsible for any future proceedings in the case including the processing of any post-conviction relief proceeding filed concurrently with the direct appeal or after the direct appeal process is completed.

The Court of Appeals has had a policy since April 1, 1996 that absent extraordinary circumstances no extension will be granted for the filing of the opening brief. Workload is not an extraordinary circumstance. The Court of Appeals views the no-extension policy of such importance that each notice of completion is sent by registered mail and contains the following language:

IT IS ORDERED that, if appellant's counsel fails to timely file the opening brief by 5:00 p.m., [DUE DATE], attorney  
(cont. on pg. 8) 

[NAME OF ATTORNEY] shall appear before this court on [DATE] at [TIME], before Department [DEPARTMENT DESIGNATION] to show cause why sanctions should not be imposed.

There is a safety valve provision in this policy whereby one, and only one, fourteen-day extension may be obtained in those infrequent instances where several briefs are due on the same date or on about the same date. The continued existence of this safety valve depends upon its infrequent use. So far the no-extension policy has proved workable and the safety valve has been used infrequently.

After the opening brief is filed the state, generally represented by the Office of the Arizona Attorney General, has thirty-five days within which to file the answering brief. The no-extension policy applies to the state as well. Within fifteen days of the filing of the answering brief a reply brief may be filed on behalf of the appellant. After the briefing is complete, either party may request oral argument.

Either with or without a request for oral argument the case is now in the hands of the Court of Appeals for decision. The length of this process varies but generally within a year of the date of sentencing a decision is rendered. The length of time from the completion of the briefing to the receipt of a decision appears to be steadily declining through the efforts of the judges and staff attorneys of the Court of Appeals.

If the decision of the Court of Appeals is to affirm the trial court proceedings, the appellant has the option of filing a motion for reconsideration with the Court of Appeals. Whether or not a motion for reconsideration is filed the appellant has the option of filing a petition for review with the Arizona Supreme Court seeking discretionary review of one or more of the issues decided by the Court of Appeals.

If after reviewing the decision of the Court of Appeals appellate counsel decides that there is no reasonable basis for the filing of a petition for review, the appellant is notified and permission is requested from the Court of Appeals for the appellant to file a *pro per* petition for review. If a petition is filed and denied or upon the expiration of the time for the filing of a petition for review, the Court of Appeals issues its mandate ending the direct appeal process and returns jurisdiction of the case to Superior Court. The appellate record in our possession is then sent to the appellant and our file is closed.

It will be most helpful to your clients, and will greatly improve the client's view of you and appointed counsel in general, if you become generally conversant with the appeal process so that you can explain to the client what to expect if he or she decides to appeal.

Defense counsel should discuss the appeal process and whether the client wishes to appeal prior to the day of sentencing. Ideally this explanation should occur when you are discussing the presentence report with the client. Your explanation will help ease the client's uncertainty in the transition period between the end of your representation and the client's receipt of the initial contact letter from the Appeals Division.

*Editor's Note: Please see Pages 9 and 10 for referenced appendixes.* ■

---

## Bulletin Board

---

◆ *Attorneys*

◆ *Moves/Changes*

Patti O' Connor and Shelly Smith, assigned to the Southeast Juvenile Facility, are working in a part-time capacity.

◆ *New Support Staff*

Dorothy Storey, also known as Dottie, joined our office November 18 as Administrative Coordinator handling benefit and new employee processing, personnel processing, and performance management issues. Dottie will also provide administrative support to Dean Trebesch and others. Before joining the Office, Dottie worked in the County Attorney's Office.

◆ *Moves/Changes*

Francis Dairman, a former legal secretary in Trial Group C has left the Office to work as an Adult Probation Officer. ■

### Time is running out...

DON'T FORGET to register for the "Current Trends in Juvenile Sex Offender Treatment" Seminar on December 6, 1996 at the Hyatt Hotel.



Return completed form and payment by November 29, 1996 to Sherry Pape at 506-7569

A fee of \$15 will be charged for late registrations.

REQUEST FOR APPEAL

TO: Sara Fierro, Appeals Division; Office of the Public Defender
FROM: Trial Group
DATE: Telephone:
RE: Filing of Notice of Appeal

\* \* \*

Defendant's Full Name: First Middle Last

Aliases:

Date of Birth: Booking # & Location:

Cause Number(s) to be Appealed: CR- CR- CR-

Public Defender Records Number: F- F- F-

DETERMINATION OF GUILT WAS BASED UPON: (please check one for appropriate CR#)

- A JURY TRIAL CR-
A TRIAL TO THE COURT CR-
PROBATION VIOLATION (contested) CR-
CHANGE OF PLEA (prior to 9-30-92) CR-
RESENTENCING (after appeal remand) CR-

DATE OF SENTENCING/DISPOSITION:

SENTENCE IMPOSED:

CONVICTED OF:

SENTENCING JUDGE:

POTENTIAL ISSUES (if any):

This request for appeal was received by of the Appeals Division on , 199 . (rev. MCPD 5-94)

APPEAL.REQ

## INITIAL CONTACT LETTER

A Notice of Appeal has been filed in the above cause. I will be responsible for monitoring your file pending preparation of the records and transcripts that are to be used in the appeal. This means that you should contact me with any questions that you may have. Once the records and transcripts have been prepared, the Court of Appeals will issue a Notice of Completion and set a due date for the filing of the opening brief. Upon receipt of the Notice of Completion, I will assign an attorney to research your case and write the opening brief. When I make the attorney assignment, I will notify you of his or her name so it is important that you notify us of any change of address.

Until the records and transcripts are prepared, I will not know very much about the merits of your appeal. The Clerk of the Superior Court and the court reporter(s) are now in the process of preparing the needed records and transcripts which they will forward to the appellate court. The preparation and transmission of the record and transcripts usually takes between one and three months. Copies of the record and transcripts will be furnished to our office for use in processing your appeal. The attorney assigned to prepare your appeal will retain possession of the record and transcripts while your appeal is pending as these documents are needed for reference during the various stages of the appeal. When the appeal is completed, the record and transcripts will be sent to you. If you wish to obtain a copy of these documents before the end of the direct appeal process, it will be your responsibility to pay for the copies.

The opening brief will set forth any grounds for appeal that the attorney has found. If you have any suggestions you wish to make regarding issues to be raised in your appeal, please put them in writing and send them to me. I will place your letter in the file for review by the attorney writing the brief.

The opening brief will be filed within 40 days of the filing of the Notice of Completion. You will receive a copy of the opening brief as well as a copy of the answering brief filed by the Attorney General on behalf of the State.

Since you have appealed your case, the deadline for filing any Rule 32 post-conviction relief notice has been extended to 30 days after your appeal has ended. Generally, I recommend that the notice not be filed until after the appeal has ended. Sometimes special considerations require that the notice be filed while the appeal is pending. It is very important that you consult with me before filing a notice so that we can decide which course of action is best for you.

If you have any other questions about your appeal or Rule 32 rights, please write me. Also, please write with any suggestions you may have regarding issues to be raised in your appeal.

**OCTOBER, 1996**  
**Jury & Bench Trials--Group A**

Dates: Start/Finish	Attorney	Inv.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dng	Priors	On Prbn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
October 2-8	Kristen Curry		Yarnell	Garner	CR96-01848 Forgery	F4				Hung (7 guilty/1 not guilty)	Jury
October 9-9	Cary Lackey		Johnson (NW) Protem	Romand/ Moore	TR 96-03111(CR) DUI	M1				Not Guilty	Jury
September 30 - October 17	Tom Timmer	Neus	Mangum	Hicks	CR96-06588/CR96-06777 10 cts. Armed Robbery 3 cts. Aggravated Assault	F2 F3	√ √			Guilty on all counts.	Jury
October 10- 17	Kathryn McCormick		Scott	Schesnol	CR95-11923 Possession of a Prohibited Weapon	F4				Hung (6 guilty/2 not guilty)	Jury
October 21- 24	Rick Tosto		Sargeant	Cappellini	CR96-06107 Possession of Narcotic Drugs	F4				Not Guilty	Jury
October 28- 31	Robert Ellig	Neus	Yarnell	Altman	CR95-11600 2 cts. Aggravated Assault	F3	√			Not Guilty both counts.	Jury
October 21- 24	James Cleary	Jones	Mangum	Morrison	CR95-12122 Aggravated DUI	F3				Guilty	Jury

**October, 1996  
Jury & Bench Trials--Group B**

Dates: Start/Finish	Attorney	Invstgr	Judge	Prosc.	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbm./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
10-8 to 10-10	LeMoine	Erb	McDougall	Frick	96-04178 SOND	F2		X	X	Not Guilty	Jury
10-18 to 10-18	Agan		Wilkinson	Bernstein	96-00104 Disorderly Conduct	F3	x			Guilty	Bench
10-22 to 10-24	Park		Wilkinson	Kelly	96-05726 Burglary 3	F4		X	X	Hung (4Not Guilty/ 4Guilty)	Jury
10-21 to 10-24	Sheperd		Topf	Rea	95-05717 Agg. Assault	F2	X	X		Not Guilty	Jury
					Disorderly Conduct	F6	X	X		Not Guilty	Jury
10-28 to 10-28	Agan		Topf	Rudd	96-03137 Misd. Theft	F4		X	X	Guilty	Jury
10-7 to 10-17	Vogel		Ishikawa	Wilderm uth	96-04345 Agg. Assault	F		X		Mistrial	Jury
10-15	Navidad	Ames	Soto	Combs	TR96-03567 DUI	M				Guilty	Jury
10-9 to 10-10	Brown	Ames	Hall	Dion	96-06775 Armed Robbery	F2		X		Guilty	Jury

**OCTOBER, 1996  
Jury & Bench Trials--Group C**

Dates: Start/Finish	Attorney	Invstgr	Judge	Prosc.	CR# and Charge(s)	Class F/M	Dng	Priors	On Prbmn./Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
Sept. 25- Oct. 8	K. Carty P. Ramos	T. Thomas	Araneta	Krabbe	CR94-93464 1 ct. Murder 2nd Degree	F1	✓			Guilty	Jury
Sept. 26- Oct. 1	Wesley Peterson		Araneta	Rueter	CR96-91030 1 ct. Poss of Cocaine 1 ct. PODP	F4 F6				Guilty Not Guilty	Jury
Sept. 30- Oct. 3	Cliff Levenson	L. Clesceri	Armstrong	Vincent	CR95-92440 1 ct. Agg Aslt	F3	✓			Not Guilty	Jury
Oct. 1- 11	Raymond Vaca	M. Breen	Hendrix	Martinez	CR95-90707 & CR 93293 7 cts. Agg Aslt 2 cts. Threat/Intim.	F3 F4	✓ ✓			1 ct. Agg Aslt-Direct. Verd. 5 cts. Agg Aslt-Not Guilty 1 ct. Agg Aslt-not dangerous 2 ct. Threat/Int. Not Guilty	Jury
Oct. 4-4	Diana Squires		Hamblen W. Mesa Justice Ct.	Miller	TR96-06166 DUI	M1		✓		Guilty	Jury
Oct. 7-9	Tony Bingham	T. Thomas	Scott	Mellroy	CR96-90576 1 ct. Crim Dam 1 ct. Assault	F6 M1				Stip. to suspend prosecution and dismissal of charges for Defendant's agreement to complete anger control counseling.	Jury
Oct. 9- 21	Eugene Barnes		Armstrong	Guthrie Atty. Gen.	CR94-93527 Ct. 1, Fraud Ct. 2, Theft	F2 F3				Not Guilty Guilty	Jury
Oct. 15- 15	Mark Potter	G. Beatty	Hamblen W. Mesa Justice Ct.	Miller	M96-3183 1 ct. Disord. Cond. 1 ct. Assault	M1 M1				Guilty Dismissed CA requested Aggravation Hearing	Bench
Oct. 22- 22	Shade Lawson	L. Clesceri	Scott	Harris	CR95-92963 1 ct. Agg Aslt 1 ct. Miscond Inv Wpns	F3 F6	✓ ✓	3	✓	Mistrial--Police officer mention excluded information	Jury
Oct. 22- 24	Paul Ramos		Hendrix	Rueter	CR96-90701 1 ct. Burg 2nd Degree	F3				Guilty	Jury
Oct. 28- 29	Sylvina Cotto		Armstrong	Gundacke r	CR95-93308 Agg DUI	F4				Guilty for lesser DUI (Driving While License Suspended)	Jury
Oct. 29- 31	Vernon Lorenz		Scott	Harris	CR96-91260 1 ct. Agg Aslt	F5		4		Guilty State was able to prove only one prior.	Jury

## OCTOBER, 1996 Jury & Bench Trials--Group D

Dates: Start/ Finish	Attorney	Invstgr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbmn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
10-3 10-7	Robert Jung Marie Dichoso- Beavers		deLeon	Lawritson	CR-92-01511 2Cts. Aggravated DUI	F4				Guilty	Jury
10-16 10-16	Elizabeth Feldman		Ortiz	Kaduda	TR-96-08211 1Ct. Reckless Driving	M2				Not Guilty	Bench
10-22 10-23	Dan Carrion		Comm. Hicks	Rehm	CR-95-12220 1Ct. Aggravated DUI	F4				Guilty	Jury
10-23 10-23	Dan Lowrance C. Parker R38		Ore Tempe JC	Hicks	TR-12236 1Ct Driving With Suspended License	M1				Not Guilty	Bench
10-28 10-31	Donna Elm Mary Kay Grenier	David Erb	McDougall	Droban	CR-95-10006 1Ct. Aggravated Assault					Not Guilty	Jury
10-29 10-31	Dan Lowrance	Sid Bradley	Nastro	Manning	CR-95-09858 1Ct. Aggravated DUI	F4				Guilty	Jury

**OCTOBER, 1996**  
**Jury & Bench Trials--Group Office of the Legal Defender**

Dates: Start/ Finish	Attorney	Invstgr.	Judge	Prosc.	CR# and Charge(s)	Class F/M	Dng	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
October 16-24	Parzych	K. Brandenberger	Ishikawa	C.Smyer	CR96-90448 Cts. 1-5: Aggravated Assault Ct. 6: Att. Armed Robbery	C3F C3F	✓ ✓	No	No	Guilty	Jury
October 7-22	Ivy	L.DeSanta	Hilliard	M.Rand	CR95-09343 Ct. 1: Manslaughter Ct. 2: Aggravated Assault Ct. 3: Aggravated Assault Cts. 4-14: Endangerment Cts. 15-16: Child Abuse	C2F C3F C3F C6F C3F	✓ ✓ ✓ ✓ ✓	No	No	Guilty Guilty Dismissed Guilty Guilty	Jury
October 8-22	Babbitt	E.Soto	Hotham	A .Davidon	CR95-10158 Ct. 1: Aggravated Assault Ct. 2: Theft Ct. 3: Misconduct w/weapon	C2F C3F C4F	✓	2	No	Guilty	Jury