

for The Defense



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WHAT IS ETHICS?

There is a scene in the 1996 movie *Primal Fear* where the high-priced criminal defense lawyer, Martin Vail, is sitting at the local court watering hole, feeling sorry for himself. An inquisitive reporter is perched on a barstool next to Vail, hoping to get a scoop on the melancholy barrister's latest high-profile case, an altar boy accused of the ritualistic murder of a respected local archbishop.

Vail asks the reporter, "Have you ever been to Vegas?"

"Yeah," the reporter responds.

"Why gamble with money, when you can gamble with people's lives?" says Vail. "That's a joke," he adds.

Asked by the reporter why he does what he does, Vail responds, "I believe in the notion that people are presumed innocent until they are found guilty. I believe in that notion because I choose to believe in the basic goodness of people. I choose to believe that not all crime is committed by bad people. I try to understand that some good people do some bad things."

That soliloquy is a public defender credo. Lawyering is about more than right and wrong. It is about understanding. Criminal defense lawyers are the ultimate insiders. We choose to fight, within the system, to defend our clients.

Lawyers are also as much students of the human soul as of the Constitution, statutes and ethical rules. Every courtroom is a lesson in the complex quirks of race, class, human nature and ethics.

The right to a jury trial, which has been around at least since about 1220¹, derived from "battle" or
(cont. on pg. 2)²

THE ACCIDENTAL ETHICAL CRIMINAL LAWYER

By Christopher Johns
Deputy Public Defender-Appeals

"Virtue down the middle," said the Devil as he sat down between two lawyers.

Danish Proverb, H.L. Mencken, *A New Dictionary of Quotations*, 1946

There are . . . many forms of professional misconduct that do not amount to crimes.

Benjamin N. Cardozo, *People ex rel. Karlin v. Culin*, 248 N.Y. 465, 470 (1928)

“combat.” It is sometimes also referred to as “judicial duel.” Ethics, in trial practice, is not much more than the rules of the game. Ethics is the sum of the rules and standards by which disputes are resolved in the courtroom. As one judge told the lawyers, “Okay, I want a clean fight. No kicking, biting or name-calling.”

What follows are some basic guidelines for the rules of the game in trial:

THE ETHICS OF OPENING STATEMENT: Close Encounters of Some Kind.

Keep thee far from a false matter. Ex. 23:7

Opening statement is supposed to be confined to the issues in the case, and the evidence that the lawyers intend to offer. Before either can be mentioned, there should be a good faith belief that the issues are real, and the evidence is available *and* admissible. There must be a reasonable basis for stating the “alleged facts.” A lawyer cannot allude to personal knowledge of the facts or state a personal opinion.³

A shorthand list prepared by Gary Stuart, author of *The Ethical Trial Lawyer* (State Bar of Arizona 1994), emphasizes the following problem areas:

- Appealing to the passion and prejudice of the jury
- Disparaging a party or opposing counsel
- Expressing a personal opinion³ as to:

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the justness of your cause
the credibility of witnesses
the guilt or innocence of the accused

- Asserting personal knowledge⁴ of a fact
- Alluding to any matter trial counsel does not reasonably believe is relevant.

That’s the easy stuff. The hard stuff is the biggest problem in opening statement: when does opening statement become argument? Most commentators agree that it is improper to argue in opening statement.⁵

The simple test: does counsel’s presentation *inform* the jury as to the nature and extent of the evidence or does it attempt to *persuade* the jury to accept or reject the evidence? Another author notes that, as a rule of thumb, you should ask yourself: do I have a witness that can state, on the stand, the facts I’m telling the jury in opening statement? If the answer is yes, the opening is proper.⁶

Some commentators also think it is objectionable to discuss or explain the law during opening statements.⁷ As a practical matter, some argument or brief mention of the applicable law is almost inevitable. Extended argument or a lengthy legal harangue, especially a misstatement of the law, is likely to draw an objection and a possible trip to the judge’s woodshed.

**DIRECT EXAMINATION ETHICS:
Every Which Way But Loose.**

How forcible are right words! Job 6:25

Criminal defense lawyers generally do not get much of an opportunity to practice direct examination. But they have to know the rules. A few words up front: Direct examination is not only bound by ethical considerations, but also by the rules of evidence. Testimony offered on direct examination must be relevant, authentic, not hearsay, and otherwise admissible.

Trial lawyer Gary Stuart lists six basic goals in the ethical presentation of direct testimony⁸:

1. Establish the foundation for pivotal exhibits.
2. Establish the credibility of the direct witness.
3. Introduce undisputed facts.
4. Enhance the likelihood of disputed facts.
5. Establish final argument points.
6. Attract and hold the jury’s attention.

(cont. on pg. 3)☞

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Again, Rule 3.4 is the touchstone. It is unethical to “allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence” Note also that Rule 3.5 prevents a lawyer from seeking “to influence . . . [a] juror . . . by any means prohibited by law.” False evidence is, of course, prohibited by law. Rule 4.1 is also applicable to jury trials. It proscribes the making of a “false statement of material fact or law to a third person.” Jurors are “third persons.”⁹

Actually, most ethical issues in direct examination happen outside the courtroom. They deal with preparing the witness to testify. It is axiomatic that lawyers cannot have witnesses manufacture testimony. On the other hand, it is an accepted practice of American trial lawyering to “coach” witnesses.¹⁰ “Dressing the witness up” is also a common practice. Suggesting, however, that a witness wear a wedding band, when she is not married, or a six inch crucifix around her neck, when she is not a Christian, “may verge on fraud.”¹¹

The most common problem for the criminal defense lawyer is the presentation of perjured testimony. As the issue relates to witnesses, it is settled. A lawyer shall not “falsify evidence, counsel or assist a witness to testify falsely.” Rule 3.4(b). And, if a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures. Rule 3.3, Model Rules of Professional Conduct.

As for client perjury, that’s beyond the scope of this brief overview. Some practitioners take the controversial view that an accused has a constitutional right to take the stand and to testify even if her lawyer believes the client will perjure herself. Under this view, since the client would be entitled to testify however she would like if she were *pro per*, the lawyer is not committing an ethical violation. That is not the ethical view in Arizona. An excellent resource on the subject is Monroe Freedman’s *Understanding Lawyer’s Ethics* (1990).

**CROSS-EXAMINATION ETHICS:
*The Empire Strikes Back.***

More cross-examinations are suicidal than homicidal.
Emory R. Bucknes and Francis Lewis Wellman, *Art of Cross-Examination*, 1936.

Never, never, never, on cross-examination ask a

witnessa question you don’t already know the answer to was a tenet I absorbed with my baby-food. Do it, and you’ll often get an answer you don’t want, an answer that might wreck your case.

Harper Lee, *To Kill a Mockingbird*, 1960

Cross-examination. Just saying it, if you are a criminal defense lawyer, usually gives you a warm fuzzy, the way an “E-Ticket”¹² at Disneyland did when you were a kid. Cross-examination is also hard; at least, to do it well and ethically.

Ethically? Yes, ethically. Superior advocacy does not have to be unethical or dishonest. Abraham Lincoln was no slouch when it came to lawyering. In fact, while practicing in Illinois before his presidency, many considered Lincoln one of the top lawyers in the state. His reputation as a lawyer and skilled courtroom advocate rested, in large part, on the belief in his absolute honesty.

“Honest Abe” or “Honest Old Abe” held himself to the highest standards of truthfulness. In notes for a lecture written around 1850, Lincoln referred to the “vague popular belief that lawyers are necessarily dishonest,” and warned: “Let no young man, choosing the law for a calling, for a moment yield to this popular belief. Resolve to be honest at all events; and if, in your own judgment, you can not be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation.”¹³

To give it another spin, cross-examination can take many forms. But generally, unfair or abusive behavior only loses points with a jury. Cicero’s quote that “When you have no basis for argument, abuse the plaintiff,”¹⁴ isn’t the best advice.

Jurors in a jury trial are judges and are entitled to respect. Rule 41 of the Rules of the Arizona Supreme Court provides that the duties of a member of the bar include:

- To employ for the purpose of maintaining causes confided to him such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of fact or law.
- To abstain from all offensive personalty and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which he is charged.

(cont. on pg. 4)☞

Again, Rule 3.4(e), Model Rules of Professional Conduct, limits cross-examination. There must be a good faith basis for a cross-examination question, supported by admissible evidence. Good faith cannot be supported by rumors, uncorroborated hearsay, or pure speculation.

Criminal defense lawyers probably take it for granted, but the public and others in our profession sometimes don't get it. A criminal defense lawyer is entitled to insist that the government prove its case. The proof must be through evidence that is persuasive beyond a reasonable doubt.

That means that witnesses not only need to be truthful, but convincing. A criminal defense lawyer may try to discredit a witness she knows to be truthful (that it is wise to always do so is, of course, another matter).

Justice White¹⁵ in *United States v. Wade*¹⁶ writes a pretty good guide:

"[A]bsent a voluntary plea of guilty, we . . . insist that [defense counsel] defend his client whether he is innocent or guilty. The State has the obligation to present the evidence. Defense counsel need present nothing, even if he knows what the truth is. He need not furnish any other information to help the prosecution's case. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth. Undoubtedly there are some limits which defense counsel must observe but more often than not, defense counsel will cross-examine a prosecution witness, and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness whom he thinks is lying. In this respect, as part of our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth."¹⁷

On the other hand, a prosecutor has a public duty to avoid convicting the innocent. Consequently, truthful witnesses should not be discredited by the prosecution.¹⁸

CLOSING ETHICS? Who Framed Roger Rabbit?

If you are at all like me, the words "To begin with, this case should never have come to trial . . . [It] . . . is as simple as black and white,"¹⁹ are burned into your brain. Atticus Finch goes on to argue that:

"The state has not produced one iota of medical evidence to the effect that the crime Tom Robinson is charged with ever took place. It has relied instead upon the testimony of two witnesses whose evidence has not only been called into serious question on cross-examination, but has been flatly contradicted by the defendant. The defendant is not guilty, but someone in this courtroom is."²⁰

You won't find much, if anything, improper in Atticus Finch's closing argument. The last sentence above is about as close as he gets to saying anything improper, but the statement is phrased in such a way as not to express a personal opinion. In closing argument, a lawyer is entitled to argue *all reasonable* inferences from the evidence *in the record*. Conversely, it is improper for a lawyer to intentionally misstate the evidence or to mislead the jury as to the inferences it may draw.²¹

Rule 3.4(e) also makes it unethical to "assert personal knowledge of facts in issue . . . or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused."

Likewise, appeals to race, religion, ethnicity and gender are fraught with peril. A lawyer should not make arguments calculated to inflame the passions or prejudices of juries.²² It is generally argued that prosecutors must adhere to a higher standard than defense lawyers in closing.

A shorthand list for closing includes:

- *Avoid statements of personal belief*
- *No appeals to prejudice or bigotry*
- *Cannot misstate the evidence*
- *Cannot misstate the law*
- *No appeals to jurors' personal interests*
- *Avoid appeals to emotion, sympathy and passion*
- *Cannot comment on the exercise of privilege*

It is not hard to be an ethical lawyer. It is much harder to give every case the best you've got.

(cont. on page 5)^{ES}

1. An easy read book on the development of the jury trial is Charles Rembar's *Law of the Law, The Evolution of Our Legal system* (1980).
2. John Wesley Hall Jr., *Professional Responsibility of the Criminal Lawyer*, 2d ed. (1996).
3. In fact, it is unethical for counsel to express a personal opinion or assert personal knowledge of the facts at any point during the trial. See Rule 3.4(e), Model Rules of Professional Conduct.
4. *Id.*
5. See, e.g., Steven Lubet, *Modern Trial Advocacy* (1993); Gary Stuart, author of *The Ethical Trial Lawyer*, notes that is not unethical to argue in the opening statement unless the argument violates a standing order of the tribunal. Rule 3.4(c), Model Rules of Professional Conduct. In Arizona, for example, the Criminal Rules of Procedure do not specifically prohibit "argument" (Rule 19.1), while the civil rules note that opening statement shall "be confined to a concise and brief statement of the facts." Rule 39(b)(1) and (2).
6. Thomas A. Mauet, *Fundamentals of Trial Techniques* (1980).
7. Steven Lubet, *Modern Trial Advocacy* (1993).
8. From materials by Gary Stuart presented at the Tenth Annual Arizona College of Trial Advocacy (1995).
9. *Id.*
10. Steven Lubet, *Modern Trial Advocacy* (1993).
11. *Id.*
12. An "E-Ticket" was for the Matterhorn and the other most exciting rides.
13. Recounted in *Lincoln* by David Herbert Donald (1995.)
14. Louis Levinson, *Bartlett's Unfamiliar Quotations*, 1971.
15. Concurring and dissenting.
16. 388 U.S. 218, 257-58, 18 L.Ed. 2d 1149, 87 S.Ct. 1926 (1967).
17. *Id.* at 388 U.S. 257-58.
18. See also Rule 3.8 of the Model Rules of Professional Conduct.
19. Harper Lee, *To Kill A Mockingbird* (1960).
20. *Id.*
21. John Wesley Hall, Jr., *Professional Responsibility of the Criminal Lawyer*, §19:13, 2d ed.
22. ABA Standards, *The Defense Function*, Std 4-7.7, Commentary; *The Prosecution Function*, Std 3-5.8(c) and Commentary. ■

ARIZONA'S GANG STATUTES- CONTRARY TO THE CONSTITUTIONS; CHILLING TO FREE SPEECH AND ASSEMBLY

By Carol Carrigan
Deputy Public Defender-Appeals

Arizona's gang statutes, A.R.S. §§ 13-105(7) and (8), are vague and overbroad. They are constitutionally infirm under both the United States and Arizona Constitutions. Their terms are imprecise, subjective, and undefined. They do not give fair notice of prohibited activity and do not prevent arbitrary enforcement. They sweep within their coverage free speech rights and the right of assembly and association. Under these statutes:

7. "Criminal street gang" means an ongoing formal or informal association of persons whose members or associates individually or collectively engage in the commission, attempted commission, facilitation or solicitation of any felony act and who has at least one individual who is a criminal street gang member.

8. "Criminal street gang member" means an individual to whom two of the following seven criteria that indicate criminal street gang membership apply:

- a) Self-proclamation.
- b) Witness testimony or official statement.
- c) Written or electronic correspondence.
- d) Paraphernalia or photographs.
- e) Tattoos.
- f) Clothing or colors.
- g) Any other indicia of street gang membership.

Arizona's Definitions of "Criminal Street Gang" and "Gang Member" are Void for Vagueness

A law is void on its face if it is so vague that persons of common intelligence must necessarily guess at its meaning and if it differs as to its application. The purpose of the vagueness doctrine is to:

(cont. on pg. 6) ^{ES}

- 1) ensure fair notice of prohibited activity,
- 2) prevent arbitrary enforcement, and
- 3) avoid inhibiting free expression when such rights are implicated.¹

The Arizona gang statutes offend all three. They are vague because they give no specific notice of prohibited activity and do not prevent arbitrary enforcement. These statutes are also overbroad in that they prohibit free speech or free expression (e.g., clothing, colors, tattoos) and prohibit the right to assemble or associate. Therefore, they offend the First and Fourteenth Amendments to the United States Constitution and Article II, Sections 5 and 6 of the Arizona Constitution.

1. The gang statutes give no notice of prohibited activity.

To avoid the constitutional vice of vagueness, it is necessary, at a minimum, that a statute give *fair notice* that certain conduct is proscribed.² Arizona's gang statutes give no hint or clue; yet, all persons are entitled to be informed as to what the state commands or forbids.³ The United States Supreme Court has said: "No man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."⁴ Yet, the elements of the Arizona gang statutes could be fulfilled without the defendant's even being aware of it.

To avoid the constitutional vice of vagueness, it is necessary, at a minimum, that a statute give fair notice that certain conduct is proscribed.² Arizona's gang statutes give no hint or clue;

The gang statutes list seven items and state that one is a "criminal street gang member" if as few as two of these very vague criteria apply. Without any specificity or guidance, the list includes tattoos (which are often seen on members of the United States Navy), paraphernalia (the dictionary lists cooking paraphernalia as an example), photographs (which probably can be found in the chambers of any member of the courts), clothing (presumably, one would be criminally punished for being without this item), colors (any color of the rainbow), and written or electronic correspondence (again, commonly found in the offices of those who practice law). Yet, men of common intelligence should not be required to guess at the meaning of the criminal law.⁵ The Arizona gang statutes are vague not because they *require* a person to conform his conduct to an imprecise but comprehensible standard, but rather in the sense that *no standard of conduct is specified* at all.⁶ Just as in the flag case, *Smith v. Goguen*, such provisions simply have no core. This absence of an ascertainable standard for inclusion or exclusion is precisely what offends the due process clause.⁷ Then, too, just as in the Arizona *Steiger* case, the

gang statutes provide numerous instances in which the statute reaches harmless behavior.⁸ Yet, if only two of the seven vague criteria can be applied to an individual, he or she may be a "criminal street gang member." In fact, with just one factor, an individual can be called an "associate member."

The definition of "criminal street gang" means both an ongoing formal or an informal association of persons. Therefore, if one of the seven criteria applies (and it is difficult to imagine who among us would not have at least one of these criteria apply), and a person has an informal association with a large or small group one of whose members attempted, facilitated, or solicited "any felony act," that person is a member of a "criminal street gang" under the Arizona statutes. In order to qualify as a "criminal street gang," a member or associate member need not actually commit a felony; attempt, facilitation, or solicitation is enough. In addition, an individual does not have to be an actual member of the group but can be "just an associate" as long as there is a formal or informal ongoing association. The predicate act need not be gang related, it can be *any* type of felony. And the felony act does not have to be a conviction; just one member or associate *attempting* a felony is enough to call the group a "criminal street gang."

The constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*.⁹ Yet, the Arizona gang statutes have absolutely no requirement of *mens rea*. One can innocently be declared a gang member through the amorphous terms of this vague statute.

The Arizona Supreme Court has said that a penal statute is vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited or is drafted in such a manner that it permits arbitrary and discriminatory enforcement.¹⁰ Using this principle alone, the Arizona gang statutes should be declared void for lack of notice.

2. The Arizona gang statutes permit arbitrary and discriminatory enforcement.

As a matter of due process, a criminal statute that is so indefinite that "it encourages arbitrary and erratic arrests and convictions is void for vagueness."¹¹ Or, as the United States Supreme Court more succinctly stated: An ordinance which does not provide standards for those who apply it must fail.¹² In accord with this precept, the

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United States Supreme Court held the flag contempt statute void for vagueness because it set forth standards so indefinitely that police, courts, and juries were free to react to nothing more than their own preferences for treatment of the flag. Further, as the United States Supreme Court has noted, in matters of such things as clothing, colors, or tattoos, the court should keep in mind that "what is contemptuous to one man may be a work of art to another."¹³

The void for vagueness doctrine requires legislatures to set reasonably clear guidelines for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement of a criminal statute.¹⁴ In *Papachristou*, the United States Supreme Court stated: "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who could be set at large."¹⁵ In the Arizona gang statutes, as in *Papachristou*, "the net cast is large, not to give the courts the power to pick and choose but to increase the arsenal of the police."¹⁶ The Arizona gang statutes, like the vagrancy statute discussed in *Papachristou*, make criminal certain activities (e.g. expression, association) which by modern standards are normally innocent.¹⁷

The evidence in any case which utilizes the gang statutes should amply demonstrate how subject to arbitrary enforcement these statutes are. When asked who makes the decision whether or not the various items listed (e.g., tattoos, etc.), indicate gang membership, the officer must respond "we do." The police make the decision as to what paraphernalia, tattoos, clothing, distinctive markings, and indicia satisfy the statutes. When asked if there are any statutes or any rules which the police must follow in making the decision whether an item meets one of the criteria or not, the officer must admit that none exists.

One good example of a group which becomes a "gang" under the Arizona statutes is the Phoenix Police Department. Members of the Phoenix P.D. were discovered to be selling prohibited weapons, a felony. The officers wore the same color: blue; self-proclaimed themselves to be members of the group by wearing uniforms; wore badges as indicia of membership; and a number of them were engaged in felony activities making the entire police department a "street gang" by definition under the statutes.

Another example of the overly broad reach of these definitions was used effectively during a recent trial. Counsel asked the officer expert to demonstrate

application of the seven criteria to two groups: one group called A/C, and one group called D/C. In the example, a member of A/C proclaims that he is a member as does a member of D/C (self proclamation). If another individual says that the member is a member of A/C (or D/C), that satisfies the witness testimony or official statement criterion. If a member of the organization writes a letter or is tape recorded as saying he is a member or some other individual does this, the third criterion of written or electronic correspondence is satisfied. A photo of a member with that group satisfies the fourth item: paraphernalia or photographs. Clothing (e.g. a "Raiders" jacket) would meet the sixth criteria. As to the seventh criterion ("any other indicia"), it would seem that *anything* which is indicia in the mind of the officer will suffice. Counsel must clarify with the officer that for a group to be called a criminal street gang, only *one* person need commit a felony or merely attempt, facilitate, or solicit a felony. Using this example, counsel went further and asked if the fifty members of the A/C group and the fifty members of the D/C group had only one member among them who had committed a felony or attempted to commit a felony, would that be enough to label the group a criminal street gang. The officer responded: "If it is a formal or an informal ongoing association, by the definition and in the statutes, yes, that's enough." In final argument, defense counsel pointed out to the jury that the

A/C group would be called the Arizona Cardinals and the D/C group would be called the Dallas Cowboys.

Defense counsel also noted for the jury that it was common knowledge that Michael Ervin of the Dallas Cowboys and Louis Sharpe of the Arizona Cardinals had committed a felony act. Since the members of either one of these groups could be described as satisfying more than two criteria of the statute, these members of either team were "criminal street gang members" and each team was a "criminal street gang." Yet, no member of the Phoenix Police Department, the Dallas Cowboys or the Arizona Cardinals has been prosecuted using the Arizona gang statutes - discriminatory enforcement?

It is not the role of police to determine arbitrarily what activities should be proscribed.¹⁸ Where, as here, there are no standards governing the exercise of the discretion granted by the statute, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It furnishes a convenient tool for "harsh and discriminatory enforcement by local prosecuting officials against particular groups deemed to merit their displeasure."¹⁹

Due process is denied where inherently vague statutory language permits selective law enforcement.²⁰

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One good example of a group which becomes a "gang" under the Arizona statutes is the Phoenix Police Department.

Legislatures may not abdicate to policemen, prosecutors, and juries their responsibilities for setting the standards of the criminal law. Where the statute permits such selective law enforcement, there is a denial of due process. This is especially true where the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights.²¹

3. The criminal gang statutes inhibit free expression and right of assembly.

A criminal statute must punish only unprotected speech and not be applicable to protected expression.²² A close examination of the specificity of the statutory limitation is required when the legislation imposes criminal penalties in an area permeated by First Amendment interest.²³ Arizona courts have recognized this principle that a statute is unconstitutionally overbroad if it proscribes expression protected by the First Amendment.²⁴

In the Arizona *Steiger* case, the statute was declared overbroad because it was so vaguely drafted that it covered a wide and potentially chilling range of activity.²⁵ In the *Steiger* case as here, the statute attempted to regulate certain forms of expression. Yet, tattoos, indicia, written or electronic correspondence, or even clothing or colors can be legitimate forms of expression. Then, too, the "ongoing formal or informal association" language impinges upon the right of assembly and association. Even though some of these associations, particularly those on the west or south side of Phoenix, are not popular with the general public, it should be noted that for the purpose of determining whether proposed speech is within the protection of the First Amendment, the inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source.²⁶ The First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.²⁷ It is a reality for many in the City of Phoenix today that one cannot grow up or go to school in certain areas of the city without being in association at least "informally" with members of some gang. The officer expert must concede that gangs tend to be neighborhood oriented.

It is a reality for many in the City of Phoenix today that one cannot grow up or go to school in certain areas of the city without being in association at least "informally" with members of some gang. The officer expert must concede that gangs tend to be neighborhood oriented.

The Arizona gang statutes are constitutionally vague because they subject the exercise of the right of assembly to an unascertainable standard and they are overbroad because they authorize punishment of constitutionally protected conduct.²⁸ The First and

Fourteenth Amendments do not permit the state to make criminal the exercise of the right of assembly simply because its exercise may be annoying to some people. Such a prohibition, in addition, contains an obvious invitation to discriminatory enforcement against those whose association together is annoying because their ideas, life style, or physical appearance is resented by the majority of their fellow citizens.²⁹ Of course, these statutes are useful to the police. Of course, these statutes make it easy to round up so called undesirables, "but the rule of law implies equality and justice in its application. [Such] laws . . . teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together. [These statutes] cannot be squared with our constitutional standards and [are] plainly unconstitutional."³⁰

When First Amendment Rights are intruded, an exception to the traditional standing rule exists

Your client has standing to raise the unconstitutionality of the gang statutes. Division Two's decision in *State v. Baldenegro* is wrong.³¹ There is no requirement that in attacking the statutes as unconstitutionally vague and overbroad your client demonstrate that his own conduct could not be regulated by a statute with more narrowly drawn language.³² An exception to the traditional standing rule is recognized when a litigant challenges the constitutionality of a statute on the ground that the statute intrudes upon First Amendment rights.³³ The litigant may challenge the constitutionality of the statute even though *his* conduct was not constitutionally protected and clearly falls within the statute's legitimate scope.³⁴ Although, as applied to a certain individual, a statute is not vague or otherwise invalid, the individual can raise its vagueness and unconstitutional overbreadth as applied to others; a statute which is plainly unconstitutional cannot be applied to such an individual unless a satisfactory limiting construction is placed upon it.³⁵

CONCLUSION

The Arizona gang statutes are unconstitutionally vague and overbroad and include within their reach constitutionally protected activity.

These arguments cannot be raised if no objection is made in the trial courts. With the right record, even
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failure at the trial level can be victory on appeal, and, ultimately, death to these constitutionally repugnant statutes.

1. *State v. Jones*, 177 Ariz 94, 865 P.2d. 138 (App. 1993).
2. *Rabe v. Washington*, 405 U.S. 313, 92 S. Ct. 993, 31 L. Ed. 2d 258 (1972).
3. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972) citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888 (1939).
4. *Palmer v. City of Euclid*, 402 U.S. 544, 91 S. Ct. 1563, 29 L. Ed. 2d 98 (1971).
5. *Smith v. Goguen*, 415 U.S. 566, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974).
6. *Coates v. Cincinnati*, 402 U.S. 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971) citing *Connelly v. General Construction Co.*, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 2d 322 (1926).
7. *Smith v. Goguen*, 94 S. Ct. at 1250.
8. *State v. Steiger*, 162 Ariz. 138, 781 P. 2d 6616 (1989).
9. *Colautti v. Franklin*, 439 U.S. 379, 99 S. Ct. 675, 58 L. Ed. 2d 596 (1979).
10. *State v. Steiger, supra*.
11. *Papachristou v. City of Jacksonville, supra; Colautti v. Franklin, supra*.
12. *Hynes v. Mayor and Council of Borough of Oradell*, 425 U.S. 610, 96 S. Ct. 1755, 48 L. Ed. 2d 248 (1976).
13. *Smith v. Goguen, supra*, 94 S. Ct. at 1247.
14. *Id.*
15. *Papachristou, supra*, citing *United States v. Reese*, 92 U.S. 214, 221, 23 L. Ed. 2d 563 (1975).
16. *Papachristou v. City of Jacksonville*, 92 S. Ct. at 845.
17. *Papachristou v. City of Jacksonville*, 92 S. Ct. at 844.
18. *State v. Jones*, 177 Ariz. 94, 865 P. 2d 138 (App. 1993).
19. See *Papachristou v. City of Jacksonville*, 92 S. Ct. at 847.
20. U.S.C.A. Const. Amend. XIV; *Smith v. Goguen, supra*.
21. *Colautti v. Franklin, supra*.
22. *Gooding v. Wilson*, 405 U.S. 518, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972).
23. *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *Smith v. Goguen, supra*.
24. *State v. Steiger, supra; State v. Weinstein*, 182 Ariz. 564, 898 P.2d 513 (App. 1995).
25. *State v. Steiger, supra*.

26. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978).
27. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 95 S. Ct. 2268, 45 L. Ed. 2d 125 (1975).
28. See *Coates v. City of Cincinnati, supra*.
29. *Coates v. City of Cincinnati*, 91 S. Ct. at 1689.
30. Mr. Justice Douglas in *Papachristou v. City of Jacksonville, supra*, 92 S. Ct. at 848.
31. *State v. Baldenegro*, 229 Ariz. Adv. Rep. 59 (filed Nov. 1, 1996).
32. *Gooding v. Wilson, supra*, citing *Coates v. Cincinnati, supra*.
33. *State v. Steiger, supra*.
34. *Id.*
35. *Plummer v. Columbus*, 414 U.S.2, 94 S. Ct. 17, 38 L. Ed. 2d 3 (1973). ■

VIDEO VISITATION: Beam Me to Jail, Scotty!

By Jim Haas
Senior Deputy Public Defender

Our next stop along the automation superhighway will be **videoconferencing**. The county has approved and funded a pilot program that will make it possible for us to visit in-custody clients from the friendly confines of our own office, using personal computers that are dedicated to this purpose.

Initially, our office will receive three video-ready personal computers ("machines," for lack of a better term). One machine will be placed at Group C in Mesa; the other two will be in the Luhr's Building, one on the fifth floor and one on the seventh floor. The sheriff will be installing one machine in each of the four main jail facilities: Madison, Durango, Towers, and Estrella. Other machines will be provided to Adult Probation and the Legal Defender's Office. Installation is expected to be complete by the end of the fiscal year, June 30.

The jail machines will be located in secure areas where clients can engage in confidential conversations with their attorneys. The jail machines will be encased in Plexiglas and steel, so that they will be protected from damage. Fax machines will be incorporated on both ends, so that documents can be sent to the client for review during the visit.

Scheduling logistics are still being worked out. If you do the math, you will see that an awful lot of people
(cont. on page 10)☞

will be competing to use very few machines. The scheduling of appointments will be a formidable task, but may be made much easier if we can use our PC's scheduling features. Since our attorneys are usually in court every morning, mornings will probably be reserved for probation officers, and afternoons reserved for attorneys. This should avoid a lot of headaches.

Obviously, videoconferencing cannot completely replace jail visits. Initial visits, visits that are expected to take more than half an hour, and visits to discuss important decisions, such as whether to take the plea, should be done in person. But video is ideal for the short, routine visit to advise the client on the status of the case, what to expect in court tomorrow, what Mom said, etc.

It will be vital that we all work to make this program a success, as it will only be expanded if it proves worthwhile. For our part, we must take care to be in the right place at the right time for scheduled videovisits. We must start and finish scheduled visits on time. And, most important, we must *use* this technology, and not let the machines gather dust.

Hopefully, videovisitation will result in increased communication between attorneys and clients. Increased communication should help move cases along more smoothly. Client relations should improve. Time will be saved. Congestion and delay at the jail will be reduced. And everyone will live happily ever after.

Editor's Note: This is not the first time that video jail visits have been conducted by the attorneys of this office. About twenty years ago, a closed circuit television system was set up between the office and the jail. That project was discontinued when funding ran out. Several attorneys presently in the office remember that project, and felt that it was very beneficial. Based on that experience, we have reason to be enthusiastic about the potential of videovisitation for saving time and improving client relations. ■

ARIZONA ADVANCE REPORTS

A Summary of Criminal Defense Issues

By Terry Adams
Deputy Public Defender

State v. McClure 237 Ariz. Adv. Rep. 10 (CA1, 2/18/97)

Defendant on parole from a federal conviction and

commits burglary and theft in Arizona. He enters a plea here for five years to be served consecutively to the remainder of the federal sentence. His parole was revoked and he was sentenced to 968 days. He was brought to Arizona and was in custody here for 136 days awaiting disposition. He was not given credit for that time against his Arizona sentence. Since he agreed to consecutive time he is not entitled to credit under A.R.S. § 13-709(B). If sentence was concurrent he would have been entitled to credit even if he was getting credit against his federal sentence.

State v. Detrich 237 Ariz. Adv. Rep. 3 (SC 2/25/97)

Defendant and his companion Charlton, after consuming 12-24 beers each, picked up a female walking alone on a street in Tucson. At their behest, she purchased some cocaine and the three went to her house to consume it. The defendant became enraged when he determined that neither the syringe nor the cocaine were any good. Defendant took her at knife point to "repay" him with sex. The three got in the car with Charlton driving. He observed the defendant on top of her "humping" her and repeatedly striking her with the knife and demanding to know who sold her the drugs. The only reply he heard was that she "gurgled" several times. The defendant said to Charlton "It's dead, but it's warm, do you want a shot at it?" Charlton declined. They drove to a remote area where defendant drug her out of the car. An autopsy later showed that she had been stabbed forty times and her throat slit from ear to ear. Defendant admitted that he had killed her. Defendant charged with murder, kidnap and sexual assault. At the first trial he was convicted of murder, kidnap and sexual abuse (lesser of sex assault). The Supreme Court reversed for failure to instruct on false imprisonment. Retrial resulted in conviction of murder and kidnap, and Defendant was sentenced to death. Defendant argued on appeal that collateral estoppel barred evidence of sexual assault in second trial because he was acquitted of that in first trial. However, since state introduced this to show intent to commit sex assault as an element of kidnap, there is no estoppel. Death qualification of jury is permissible if the jurors can be fair and impartial despite their feelings about the death penalty. Jurors' ties with law enforcement, without showing partiality, are insufficient to disqualify. *Batson v. Kentucky* does not extend to death qualification. Death penalty properly imposed. Murder was cruel: Evidence showed victim consciously suffered physical pain and mental duress. Murder was heinous and depraved: Defendant's statement to Charlton clearly showed he relished the murder, he engaged in gratuitous violence beyond that necessary to cause death, the victim was helpless and the crime senseless. Mitigating factors insufficient to overcome aggravating factors. Conviction and sentence affirmed. (cont. on page 11)☞

State v. Ochoa 238 Ariz. Adv. Rep. 8 (CA,1 3/4/97)

Defendant convicted of four counts of attempted murder, one count of drive by shooting, and one count of assisting a criminal street gang. Testimony of cop, as an expert on gangs, that defendant and victim were members of rival gangs and that the shooting would further the interest of the gang, was sufficient to overcome a rule 20 motion. A.R.S. §13-604(T), that allows for enhancement of sentence of any felony conviction when the defendant intends to promote criminal conduct of a gang, and the corresponding definitions in Sections 13-105 (7) and (8) defining street gangs and street gang members, are not void for overbreadth or vagueness. Defendant not subjected to double punishment because application of 13-604(T) to enhance sentence on counts I-V was premised on same conduct that supported conviction on count VI, assisting a criminal street gang. Prohibition against double punishment does not cover enhancement, and if it did, it wouldn't apply here because sentences ran concurrently. Cops had "reasonable suspicion" to stop car Defendant was driving because it was identified as a car that drove by the crime scene several times before the shooting, and, the day before, the cop had seen four gang members inside the same car. Cop did not exceed the scope of the stop by searching the car and seizing the gun, because he considered the defendant a threat if he were to return to the car before it was searched.

State v. Mann 238 Ariz. Adv. Rep. 18 (SC 3/11/97)

In 1989 the defendant shot and killed two men in a drug rip-off, netting \$20,000. One died instantly. The other took 3-5 minutes to die, while Defendant had his foot on his arm to prevent him from getting his gun. Assisted by his girlfriend, they dumped the bodies, thoroughly cleaned the crime scene, dismantled the gun and disposed of it, and gave the victim's car to a friend. In 1994 after their relationship cooled and, apparently, the \$20,000 was gone, the girlfriend told the cops. Defendant convicted of murder and given the death penalty. During trial, the girlfriend testified that she had not been given immunity, which was not correct, and the prosecutor did not correct this testimony. This was not prosecutorial misconduct, because prosecutor and defense attorney told the jury during argument that she was immunized. Finding of aggravating factors: pecuniary gain, multiple murders and cruelty upheld. Cruelty because the length of time between shooting and death of one victim showed he suffered both physical and mental pain. Victim impact evidence can be considered to rebut mitigation evidence but cannot be used to impose death penalty. Here record does not indicate that the judge gave weight to family opinions. Letters written by non-victims, specifically extended family and friends, do not constitute ex parte communication if judge does not rely on this for aggravation. Mitigating factors insufficient to overcome

aggravation, conviction and sentence upheld. Supreme Court will no longer review for fundamental error since repeal of A.R.S. § 13-4035 requiring it.

State v. Boles 238 Ariz. Adv. Rep. 37 (SC 3/13/97)

State v. Hummert, 238 Ariz. Adv. Rep. 25 (SC 3/11/97)

Both of these cases involve the admissibility of DNA evidence in sexual assault cases. Both allow its admission. *Boles* allows an expert to testify on the rarity of match of DNA of two persons based on his own experimentation and observations. *Hummert* is a more detailed discussion of what is required for admission of DNA evidence. Limitations of space, time and the intellectual capacity of this author do not allow for a complete summary of these cases. It is suggested that if you are involved in a DNA case that you read them.

State v. Banicki 238 Ariz. Adv. Rep. 6 (CA 1 3/4/97)

Defendant's Arizona license was suspended in 1992. Subsequently he moved to Georgia and obtained a drivers license there. In December, 1995 he was arrested in Arizona for D.U.I. and presented his Georgia drivers licence. He was charged and convicted of Agg. D.U.I. On appeal he argued that the period of suspension for his Arizona license had been completed and possession of his valid Georgia license was an exercise of his non-resident driving privilege. A.R.S. § 28-450 provides a non-resident whose Arizona drivers license has been suspended may not legally drive in Arizona even with an out of state license during the period of suspension. A.R.S. § 28-402(17) provides that suspension means the privilege to drive is withdrawn during the period of suspension and until application for reinstatement is made. M.V.D. may suspend for only one year (A.R.S. § 28-448(A)), but the privilege is not automatically restored. Since defendant did not reapply, his privilege was not restored, his Georgia license notwithstanding.

State. V. Delgarito 238 Ariz. Adv. Rep.39 (CA 1 3/11/97)

Court may not designate a class 6 open-end offense a felony without notice to the defendant and without conducting a hearing. A defendant is entitled to relief on direct appeal to correct this order even if he originally plead guilty. A.R.S. § 13-4033(A)(2) provides that a defendant may appeal "from an order made after judgment affecting [his] substantial rights." A felony designation is such a right. ■

(cont. on page 12)■

PROFILES -- WHO'S WHO IN THE PUBLIC DEFENDER'S OFFICE- *BOB STEIN*

By Ellen Kirschbaum
Training Administrator

It's not too often that I encounter individuals who are happy with their life; in love with their spouse, embrace life, and genuinely like their employer and profession. Now, don't get me wrong...usually us folks are happy with most of these items but there's usually something missing. If I mentioned this person was also vivacious, a great conversationalist and a New York transplant, would you guess it was Bob Stein? If you've met Bob, then you would know what I'm talking about. He's currently assigned to the Group C Trial Division in Mesa.

I had the pleasure to meet with Bob and although he was initially reluctant to talk about himself (like most of us), he was more than willing to help out! I knew then that he was a likeable guy and a real "team player." Bob joined the Office nearly eight months ago and he fervently extolls it. He calls his employment "a rebirth." He has the highest regard for his colleagues. He is "surprised at the quality and excellence of lawyers in our office, the dedication of the judges, and how hard everyone works, including prosecutors and court staff." He is most impressed by our support staff who truly dedicate themselves to working with the lawyers. This doesn't seem unusual but for someone who practiced as a prosecutor and a defense attorney in New York, Bob assured me that the work ethic there is much different. He noted that court calendars start much earlier here. The typical courtroom begins at 10:00 a.m. in New York. There is even a union for lawyers and Bob knows both sides of the table. When the union struck, he went out and when he was part of management, he stayed in. He likened his experiences to the movie, *How Green is My Valley*.

Surprisingly, Bob feels the atmosphere is more cultured in our courtrooms. The rules are very different and the cases complicated but he enjoys the challenge to learn. He feels sophisticated in some ways but a neophyte in others. He credits his smooth transition to the Arizona courtroom to the Public Defender's excellent training program and to his experienced colleagues in Mesa.

Bob was born in Albany, N.Y. but grew up mainly in Buffalo. He lived in New York for thirty two years and he calls himself a "real New Yorker." His introduction to the field of law was as a court reporter in

the Army Reserves. He later received a commission in the Navy Reserves as a law officer. Upon completing his stint, he began his civilian career as an Assistant District Attorney in Manhattan. He worked under District Attorney Frank Hogan who by then had earned a national reputation as "Mr. District Hogan." After four years, Bob went to work representing the clients in a hospital methadone program, operated by Drs. Dole and Nyswander. They were the first to discover the methadone properties that blocked the effects of heroin. From there, he joined the Legal Aid Society and was assigned to the major offense bureau. Then went on to the Attorney General's Office. He was an Assistant Attorney General for nine years prosecuting white collar crime.

With such an illustrious career, you would think his eighteen year old daughter, Michelle, would be following Dad's footsteps. Not the case! According to Bob, it was watching him in court that changed her mind. She's currently attending Northeastern University in Boston, majoring in advertising.

A few years ago, the telephone wires changed Bob's direction. He fell in love with his wife, Annette, over the phone. Mutual friends felt they should meet and thus a "telephone" romance between Arizona and New York began. Eventually, they met at a Thanksgiving dinner; marriage resulted. Annette relocated but convinced Bob to return to Arizona. Presently, Annette is the Program Manager for the Maricopa County Public Health's Homeless Outreach/Clinic on Madison Street.

Bob and Annette enjoy living in Arizona. They both are walkers and like visiting the Tempe Library. Bob likes history, movies, and reading novels. He is a photographer and collector of cap guns as well as "tinted" photographs. Did you know that tinting photographs was an early 1900's cottage industry for women started by Wallace Nutting? I'm on the lookout the next time I go antiquing. Thanks for a fascinating conversation, Bob! ■

BULLETIN BOARD

◆ *New Attorneys*

Allysson H. Abe joins our office as an attorney assigned to the Juvenile SEF Division. Ms. Abe formerly practiced with the firm of Kessler & Doyle as well as the Maricopa County Attorney's Office. She also worked as a volunteer Law Clerk in our Mesa office. Ms. Abe graduated with a B.A. in Political Science and obtained her J.D. from the Arizona State University College of Law. (cont. on page 13)☞

Kenneth Huls is a graduate of Arizona State University and the Emory University School of Law at Atlanta, Georgia. Prior to joining our Office, he was a capital litigation law clerk for the Superior Court of Arizona. Prior to his admittance to the Bar, he was Assistant Director for the Victim Witness Program in the Office of the District Attorney in Gainesville, Georgia and was Program Director for the Wayland Family Centers in Glendale, Arizona.

Judy Lutgring began employment as an attorney in Group C on April 2. Ms. Lutgring worked for over seven years as an Assistant Public Defender in the Pima County Public Defender's Office in Tucson. She obtained her undergraduate degree in English and her J.D. from the Cleveland State University. She is fluent in Spanish.

Michael McCullough graduated from the Arizona State University College of Law and was admitted to the Bar in 1995. He has been working with the National Law Center working in Mexico on border environmental issues. He is fluent in Spanish.

Lisa Parsons has been hired as an attorney. She has been an attorney in Yuma since 1988, and since 1991 has been a sole practitioner handling mostly criminal matters, with a County contract for trial work and more recently for appellate work.

Lisa Shannon has been hired as an attorney. She obtained her J.D. from Valparaiso University School of Law in Indiana and has practiced in Indiana and Arizona. In Arizona, she practiced with the firm of Hecker, Phillips, and Zeeb and the Arizona Corporation Commission.

Charles Shell became a member of the Arizona Bar in 1996. He obtained his J.D. from the Thomas M. Cooley Law School in Lansing, Michigan and a B.A. in Political Science from Boston University. Prior to his employment, he practiced with the firm of Cheifetz and Iannitelli in Phoenix.

◆ **Attorney Moves/Changes**

Daphne Budge leaves the office this month to relocate in Germany.

Ingrid Miller and **Lynn Moore**, two of our current Juvenile Division Attorneys, are joining the Trial Division.

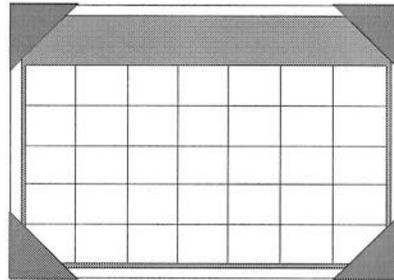
◆ **New Support Staff**

Gary Applegate started April 14 as a Group D Investigator. He is a retired Phoenix Police Officer with over 20 years in the Department. A significant portion of his assignment was in the Special Investigations; Narcotics.

Also assigned to Group D as a new investigator

is **Mitchell Lincoln**. Mr. Mitchell was previously employed as an Investigator by the State of Arizona's Department of Economic Security. He retired from the U.S. Army in 1987 as a Counterintelligence Special Agent/Officer.

Welcome back to **Oscar Lopez**. Oscar left the Office last October to work with his father in California. He has returned as an Office Aide. ■



**APRIL 23
SECRETARY'S DAY!**

Did you remember to say **THANK YOU?**
It's still not too late!

COMPUTER CORNER

By Susie Tapia & Gene Parker
Information Technologies-Help Desk

Share Drive:

The share drive S:\ has undergone a complete restructure. The new structure is as follows:

s:\secretaries name
s:\secretaries name\your name
s:\groupA,B,C,D etc

When saving files to the S: drive you should look for your secretaries name first then your name will be listed below. This is the location you should save files to. Example: S:\Velia\Billar. To save a file for your specific group to share save it to the S:\GroupA or GroupB, etc. Do not save file in just S:\, place them in the appropriate locations.

The share drive should be used as a temporary dropping off point to transfer files to your secretary or to another user. Do not save all your files on S:, remember
(cont. on page 14)☛

the entire Public Defenders office has access to the share drive, use your H:\wpmain for your permanent save location. All the files in your H: drive are secured by your password.

Don't forget: If you temporarily store files on the share drive don't forget to either move them to your H: drive or have the receiver of the file move it.

Other documents found in the share drive:

- Experts list is in s:\pd_info
- Letterhead and envelope are in s:\pd_forms
- Tuition assistance information is in s:\pd_info
- Raji's are in s:\raji
- Proposition 200 documents are in s:\pd_info

April's Flip-Its: Archiving Messages in GroupWise

Archiving is the method used to permanently save a message. Currently any read mail or phone message is automatically deleted after 30 days unless archived. April's Flip-Its instruct you on how to archive messages, access the archive database and unarchive messages.

Back Issues of the Flip-Its:

- January GroupWise Attachments
- February GroupWise Proxy
- March GroupWise Personal Groups

Call the Help Desk at x6198 for your copy today! ■



CONTEST TIME AGAIN....



Once again, *for the Defense* is conducting a contest for the members of the Maricopa County Public Defender's Office during the months of May through July. The contest is designed to encourage and reward contributors to our newsletter.

Any employee of our Office may submit an original, unpublished, educational article of 200 words or more regarding criminal defense. If the article is accepted for publication (after a standard screening by the staff), the author automatically is entered in the contest.

All qualifying articles published in the newsletter during the months of April, May, June and July will be reviewed by a distinguished panel of judges. The judges will be looking for creative and thought provoking writing on educational, criminal defense topics.

A bag full of prizes is waiting so get writing!

- ✍ Articles need to be submitted by the 10th of the month to be considered for that month's issue. Submit to Russ Born, Training Director.
 - ✍ No staff member of *for the Defense* is eligible to win.
 - ✍ Winners will be announced in the August issue of *for the Defense*.
-

MORE DETAILS TO COME IN THE MAY ISSUE.



MARCH, 1997 Jury & Bench Trials

Group A

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s) Class F/M	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench / Jury Trial
2/27-3/4	Steve Rempe	Yarnell	Altman/ Gadow	96-03755 Attempted Robbery/F5	Not Guilty	Jury
3/3-3/5	Jamie McAlister/ Yarbrough	Dunevant	Martinez	CR-96-07204 Aggravated Assault, Dangerous/F3	Guilty	Jury
3/6-3/7	Brian Bond	Balkan	Eckhardt	CR-96-07229 Aggravated DUI/F4	Guilty	Jury
3/11-3/13	Rick Tosto/ Jones	Akers	Hudson	CR-96-12456 Possession of Dangerous Drugs/F4	Not Guilty	Jury
3/12-3/17	Robert Ellig/ Yarbrough	Yarnell	Lawritson	CR-96-05444 Aggravated DUI/F4	Guilty	Jury
3/13-3/24	Randy Reece/ Neus	Mangum	Altman	CR-95-04961 Robbery/F4	Guilty	Jury

Group B

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s) Class F/M	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench / Jury Trial
3/10/97- 3/11/97	Joel Brown/ Dave Ames	Dougherty	Rudd	96-07817 Theft, 3F	Not Guilty	Jury
3/18/97 - 3-27-97	Alex Navidad/ Dave Ames & Ron Corbett	Arellano	Pappalardo	96-077565 Unlawful Flight, F5; Agg. Asslt, F6	Guilty Guilty	Jury
3/31/97- 4/1/97	Charlie Vogel/ Ron Corbett	Hotham	Marcus Earl	96-07007 Armed Robbery, F2; Imp/Trsp Nrc.Drg., F2; Mscndct w/wpn, F4	Not Guilty Not Guilty Not Guilty	Jury Jury Jury

Group C

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s) Class F/M	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench / Jury Trial
3/3 -3/11	Squires/ Breen	Scott	Gann	94-91185 Agg Aslt, F3	Hung jury (6 G/2 NG)	Jury
3/2	Gaziano	Armstrong	Breneman	96-92470 Poss Crack Cocaine, F4	Not Guilty	Jury
3/10 - 3/13	Lorenz Ramos/ Clesceri	Ishikawa	Miller	96-94502 3 cts. Sex Cond W/Mnr, F2	Ct I, Not Guilty Ct II & III, Hung jury (11 NG/ 1 G)	Jury
3/14	Corbitt	Orr Tempe JP	Gingold	TR 96-123 DUI, M1	Guilty	Jury
3/17 -3/20	Peterson	Balkan	Breneman	96-92322 1 ct. Agg Aslt, F5	Not Guilty	Jury

Group D

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)/ Class F/M	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
3/24-3/25	Hines	Hall	Wendell	96-10782/Solicitation to Commit Fraud Scheme F4	Not Guilty	Jury
3/27	Jung	Gerst	Newell	95-11223/Agg DUI 2 cnts. F4	Guilty	Bench
3/17-3/20	Jung		Newell	96-06314/Agg DUI F4	Not Guilty - Convicted on Lesser Included Driving while License Suspended	Jury
2/27-3/3	Hines	Dougherty	Bustamante	96-09334/Agg Assault F4	Guilty	
3/17-3/19	Carrion	Nastro	Rehm	96-07838/Agg DUI F4	Guilty	Jury
3/24/-3/25	Carrion	Balkan	Eckhardt	96-05649/Agg DUI F4	Mistrial/Pled	Jury
3/6-3/13	Hoff/Bradley	D'Angelo	Gialketsis	96-09680/MCIW F4	Guilty	Jury
3/31- 4/2	Budge	Sergeant	Kramer	96-01146/ 2 cts Agg. DUI F4	Guilty on both counts	Jury
3/27-3/27	Silva/ Fusselman	Johnson	Cummings	TR95-09327CR/ MC1 DUI/BAC .10	Directed Verdict	Jury
3/13-3/17	Claussen/ Bradley	Bolton	Brnovich	96-02684/Burglary 2nd F3	Guilty	Jury
3/24--3/31	Claussen/ Barwick	DeLeon	Myers	96-13161(A) 1 Ct. Theft F3 2 Cts. Agg. Assault F3	Guilty	Jury
3/31-4/1	Dichoso- Beavers/ Bradley	Rogers	Coury	96-12663/Poss/Crack Cocaine F4	Guilty	Jury
3/26-3/27	Silva	Johnson	Farnum	94-00108/False Information MC1	Dismiss w/o prejudice	Bench

OFFICE OF THE LEGAL DEFENDER

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s) Class F/M	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench / Jury Trial
2/13-3/11	Hughes/ DeSanta	Hotham	Jorgenson	CR 95-08503 Murder 1, C1F Burg., C3D Theft, C3F	Not Guilty Guilty, Lesser Incl. Burg.2d, Non-dangerous Guilty, Theft, C6F	Jury
3/17-3/27	Allen	Hendrix	Imbordino	Murder 1, C1; Armed Robbery, C2D	Guilty, Lesser Incl. Murder 2d Deg. Hung Jury	Jury
3/17-3/26	Babbitt/ Soto	Hotham	Daiza	CR 95-10257 Driveby Shooting, C2D Miscond.Inv. Weaps., C3F 2 Cts.Agg.Asslt, C3F	Not Guilty Not Guilty Not Guilty Guilty, Lesser Incl.Disorderly Conduct w/weapon, C6F	Jury
2/18-3/5	Orent/ Brandenberger	Araneta	Ditsworth	CR95-92364 2 Cts. Murder 1, C1F	Guilty, Lesser Incl.Manslaughter, & Negligent Homicide	Jury
3/5-3/11	Alldredge	DeLeon	Schumacher	CR 96-04484 Robbery, C4F Agg.Asslt., C3D	Not Guilty Not Guilty	Jury
3/24-3/26	Alldredge	Dougherty	Gialketsis	CR96-05415 2 Cts. Agg.Asslt, C3D	Guilty	Jury



**MISSION STATEMENT
of Maricopa County
Public Defender's Office**

To provide, pursuant to constitutional and ethical obligations, effective legal representation for indigent persons facing criminal charges, juvenile adjudications and mental health commitments when appointed by Maricopa County Superior and Justice Courts.

VISION STATEMENT:

To achieve national recognition as an effective and dynamic leader among organizations responsible for legal representation of indigents.

GOALS:

- to protect the rights of our clients and guarantee that they receive equal protection under the law
- to enhance the professionalism and productivity of all staff
- to pursue the development of cost-effective alternatives to incarceration
- to perform our obligations in a fiscally responsible manner
- to ensure that ethical and constitutional responsibilities and mandates are fulfilled
- to produce the most respected and well-trained attorneys in the legal community