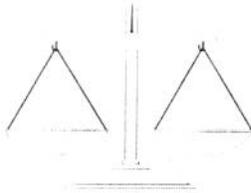


# for The Defense



Volume 8, Issue 07 ~ July 1998

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

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## WITNESSES FOR SALE: 10<sup>th</sup> Circuit Suppresses "Purchased" Testimony

By Paul J. Prato  
Appeals Division Chief

What happens if a defendant, or his attorney, offers a benefit to a witness or prospective witness in return for testimony favorable to the defense? The defendant, and if the attorney is involved, the attorney, would be subject to prosecution for influencing a witness, a class 5 felony.<sup>1</sup> And the attorney, in addition to the criminal charge, would face disciplinary action by the

State Bar of Arizona because the Arizona Rules of Professional Conduct provide that "[a] lawyer shall not ... offer an inducement to a witness that is prohibited by law."<sup>2</sup>

What would you expect to happen if a prosecutor offered a benefit to a witness or prospective witness in return for testimony favorable to the State? Nothing? Guess again.

In a well-crafted decision, a three judge panel of the 10th Circuit Court of Appeals has held in *United States v. Singleton* that a government promise of leniency to a witness in return for testimony favorable to the Government violates both Section 201(c)(2) of Title 18 of the United States Code and Kansas Rule of Professional Conduct 3.4(b).<sup>3</sup>

Section 201(c)(2) prohibits anyone giving, offering, or promising anything of value to a witness for or because of his or her testimony. The statute at issue in *Singleton* provides:

Whoever . . . directly or indirectly, gives, offers or promises anything of value to any person, for or because of the testimony under oath or affirmation given or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court . . . authorized by the laws of the United States to hear or take testimony . . . be fined under this title or imprisoned for not more than two years, or both.<sup>4</sup>

Judge Kelly found this language to be clear and unequivocal. It applies to "whoever" whether the "who" is a defendant, defense lawyer, or prosecutor.

A flavor for the soundness of the legal reasoning of the opinion can be gleaned from the following excerpts:

- ▶ If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so.
- ▶ Because § 201(c)(2) addresses what Congress perceived to be a wrong, and operates to prevent fraud upon the federal courts in the form of inherently unreliable testimony, the proscription of § 201(c)(2) must apply to the government.

▶ [Citing Justice Brandeis] Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, omnipresent teacher. Of good or ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the ends justify the means--to declare that the Government may commit crimes in order to secure the conviction of a private criminal--would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

- ▶ The judicial process is tainted and justice cheapened when factual testimony is purchased, whether with leniency or money.

**“You must read *Singleton* not only for the pleasure of reading a well written and well reasoned opinion, but also because it has practical application to Arizona law.”**

These few excerpts do not do justice to the sound legal reasoning of this opinion. You must read it for yourself.

You must read *Singleton* not only for the pleasure of reading a well written and well reasoned opinion, but also because it has practical application to Arizona law. Arizona law contains a provision similar to § 201(c)(2). A.R.S. § 13-2802, which prohibits influencing a witness, provides:

A person commits influencing a witness if such person . . . confers or agrees to confer any benefit upon a witness in any official proceeding or a person he believes may be called as a witness with the intent to . . . [i]nfluence the testimony of that person[.]”<sup>5</sup>

Like § 201(c)(2) this Arizona statute does not exempt prosecutors. The word “person” in A.R.S. § 13-2802(A) is as all inclusive as the word “whoever” in § 201(c)(2).

There is also a counterpart in the Arizona Rules of Professional Conduct to Kansas Rule of Professional Conduct 3.4(b). The Kansas rule provides, “A lawyer shall not . . . offer an inducement to a witness that is prohibited by law.”<sup>6</sup> The Arizona rule provides, “A lawyer shall not . . . offer an inducement to a witness that is prohibited by law.”<sup>7</sup>

The *Singleton* opinion held that the remedy for a violation of § 201(c)(2) is suppression of the evidence. And in your case here in Arizona you must also move to suppress the evidence where the government has purchased, through some benefit, the testimony of a fact witness.

The *Singleton* litigation is far from over. As I write this, the operation of the case has been suspended pending review by the Tenth Circuit *en banc*.<sup>8</sup> The threat to the “ends justify the means” philosophy of many politicians and prosecutors presented by this decision will bring them out of the woodwork. The assault on this decision will be unrelenting and furious.

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Editor: Russ Born

Assistant Editors: Jim Haas  
Lisa Kula

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

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(cont. on pg. 3) ☞

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## STATE'S USE OF JUVENILE RECORDS IN ADULT PROCEEDINGS

By Jeremy Mussman  
Trial Counsel - Group D

Let's say that you have an 18-year-old client charged with Armed Robbery. It also turns out that your client has an extensive juvenile history. In the past, county attorneys would get copies of all juvenile records on their own without ever giving the defense any notice. This process, however, may be changing.

Recently enacted A.R.S. § 8-208 allows the release of juvenile records to the State upon request by the prosecutor. Some prosecutors are interpreting this to require them to file a specific motion with the juvenile court

requesting release of the records. Consequently, you may receive a "Motion to Release Contents of Juvenile Court Records." How should you respond? You can't really fight the prosecutor's ability to *receive* copies of your client's juvenile records. You should, however, make it clear that (1) you want a copy of all records that the State receives; and (2) the fact that the State *receives* these records does not mean the State can *use* them in your criminal proceedings. After all, these juvenile records frequently contain confidential, highly sensitive social histories and psychological evaluations. In fact, Rule 19.1(b) of the Rules of Procedure for the Juvenile Court specifically states that "the social file of the Juvenile Court shall be confidential and withheld from public inspection except upon order of the Court." Consequently, a possible standard response to this type of motion is:

A.R.S. § 8-208 allows the release of juvenile records to the prosecutor upon request by the prosecutor. The records requested by the prosecutor, however, concern confidential medical records and psychological evaluations. Rule 19.1(b), Arizona Rules of Procedure for the Juvenile Court, recognizes that confidential juvenile records "shall be withheld from public inspection except upon order of the Court." Accordingly, if the court determines that these records shall be released to the prosecutor at this time, defendant requests the court to further order that (1) a full and complete set of all records produced to the State shall be contemporaneously provided to Defense Counsel; (2) no further copies,

Regardless of the ultimate outcome of *Singleton* no defense attorney should any longer meekly accept the fact that prosecutors purchase the testimony of fact witnesses. Challenge the practice at every opportunity using the reasoning of *Singleton* along with your own creativity. Do not give up! Remember it was a long struggle to change the manner in which A.R.S. § 13-604(K) was applied to repetitive offenders,<sup>9</sup> to change the reasonable doubt instruction,<sup>10</sup> to change the lesser included offense instruction,<sup>11</sup> to restrict joinder of offenses under the common scheme or plan exception.<sup>12</sup> The list could go on, but the point is you must continue to make the record again, and again, in the trial court that will enable the battle against the purchasing of fact testimony by the government to continue in the appellate courts.

If our challenge to the current pernicious practice of the government purchasing fact testimony with offers of leniency is reasoned and unrelenting we will someday prevail. Justice Brandeis' dream that "Decency, security and liberty alike demand that government officials shall be subject to the same rules of conduct that are commands to the citizen," will be fulfilled.

**" The fact that the State receives these records does not mean the State can use them in your criminal proceedings."**

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1. A.R.S. § 13-2802.
  2. Arizona Rules of Professional Conduct ER 3.4(b).
  3. 1998 WL 350507 (10th Cir. 1998).
  4. *Id.*, at 2-3.
  5. A.R.S. § 13-2802 (A)(1)
  6. Kansas Rule of Professional Conduct 3.4(b) (1997).
  7. Arizona Rule of Professional Conduct 3.4(b).
  8. "Appeals Court Postpones Ruling Barring Leniency for Testimony," *The New York Times* 12 (National Edition, Sunday, July 12, 1998).
  9. *See State v. Tarango*, 185 Ariz. 208, 914 P.2d 1300 (1996).
  10. *See State v. Portillo*, 182 Ariz. 592, 898 P.2d 970 (1995).
  11. *See State v. LeBlanc*, 186 Ariz. 437, 924 P.2d 441 (1996).
  12. *See State v. Ives*, 187 Ariz. 102, 927 P.2d 762 (1996).

dissemination, or use of any of the materials provided by the Juvenile Court shall be allowed absent an order from this Court allowing such use; and (3) if either party wishes to use any portion of these records in an adult court proceeding, a motion requesting such use must first be filed in this Court and briefed by both parties.

Filing a response of this type will help preserve the record and put you in a better position to preclude the prosecutor from using these very sensitive materials in open court. In addition, the attorneys in our Juvenile Division can assist you in explaining to the court why it is of utmost importance to maintain the confidentiality of the social file. Juvenile offenders are told that their files will remain confidential. The confidential nature of these files encourages the cooperation and candor of juveniles and their families. They should *not* be made public absent some extremely compelling circumstances. ■

*Many thanks to Helene Abrams for her input on this issue*

*Editors Note: We would also like to thank Helene Abrams for her contribution to last month's article focusing on new legislation that effects juveniles.*

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## ODDS AND ENDS, ETCETERA

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By Dean Trebesch  
Maricopa County Public Defender

"This is a Court of Law, young man,  
not a Court of Justice."  
*Oliver Wendell Holmes, Jr.*

"Little money, little law."  
*English Proverb*

### Training

Lots of new faces. Since last July, Russ Born has conducted four attorney training classes (August, November, February, May). Thirty-five attorneys participated in Russ' training or Helene's juvenile orientation. We are always surprised and delighted by the contagious enthusiasm they inject into our organization.

### Trial Stats

It will be interesting to see the statistics on our trial rates over the first six months of 1998. Last year the number of trials went up 25.1 percent between the first and second half of the year. Over 45 percent of the trials ended with not guilty or lesser-included verdicts, hung juries, mistrials, dismissals, or directed verdicts of not guilty.

**"Speed up the process' has been uppermost on the minds of many in the system for the past year. Well, our statistics indicate plenty of speed has occurred."**

A higher trial rate poses greater stress on resources (and attorneys) due to a need for more interview tapes having to be transcribed, more paralegal/investigative work, more expert witness requests, more investigative travel, difficulties finding others to substitute on court calendar coverage, and ultimately more appeals.

### Vertical Representation

Last year the National Association of Criminal Defense Lawyers (NACDL) endorsed the ABA's and National Legal Aid and Defender Association's (NLADA) standards which call for "vertical representation." Specifically, "The goal of systems providing assigned counsel must be to provide quality, vertical representation...."

The ABA's commentary explains that the "horizontal" alternative--different defenders representing the accused at different stages of the proceedings--has many disadvantages, including the negative perception, by the client, of being processed through an assembly line; and inherent inefficiency where each successive attorney must start from scratch at becoming familiar with the case and the client. "Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased."

### Case Processing Time

Maybe they ought not worry so much. "Speed up the process" has been uppermost on the minds of many in the system for the past year. Well, our statistics indicate plenty of speed has occurred.

For instance, the average length of our trial division cases has gone from 138 days (May, 1996) to 131 days (May, 1997) to 123 days (May, 1998).

Another comparison reflects the percent of trial division cases closed within specified periods. For example, 25 percent of cases closed in 58 days in calendar year 1996 while it took only 44 days when we looked at those closed in May, 1998. The abbreviated time periods hold true throughout (50 percent closed in: 116 days in 1996, 85 days in May, 1998; 90 percent closed in: 328 days in 1996, 274 days in May, 1998; 99 percent closed in: 721 days in 1996, 622 days in May, 1998).

Based on these statistics, we have no reason to be blamed for inordinate delays in the system. Clearly, improvements in front-end case processing have helped, with more innovations still possible. Yet, with all the push for haste, let us never lose sight of the necessity for quality representation which includes adequate time for preparation.

### Pizza Time

I only had to foot part of the bill for the pizza. What an easy way for us to "pay" the many volunteers who assist Russ Born four times a year with our three-week new attorney training classes.

While Russ is certainly the dominant force in our training program, he has had many excellent, willing helpers time-after-time. Remarkably, a large number of office alumni take time out from busy private practice schedules to help out this office. Here are the ones (from inside and outside the office) who helped us in our last class:

*Office Faculty:* Dave Ames, Lisa Araiza, Rick Barwick, Russ Born, Brad Bransky, Terry Bublik, Yolanda Carrier, Peter Claussen, Susan Corey, Ted Crews, Shelley Davis, Robert Ellig, Donna Elm, Rena Glitsos, Sylvia Gomez, Peg Green, Bob Guzik, Jim Haas, Marci Hoff, Michael Hruby, Chris Johns, Paulette Kasietta, Jim Kemper, Candace Kent, Faith Klepper, Chuck Krull, Lisa Kula, Michael Leal, Peggy LeMoine, Dan Lowrance, Lawrence Matthew, Jamie McAlister, Michael McCullough, Ed McGee, Nelida Medina-Tatro, Norma Muñoz, Jeremy Mussman, Alex Navidad, Leslie Newhall, Rebecca Potter, Paul Ramos, Emmet Ronan, Jim Rummage, Mara Siegel, Garrett Simpson, Peggy Simpson, Joe

Stazzone, Andrew Swierski, Dean Trebesch, Anna Unterberger, Victoria Washington, Chelli Wallace, Jim Wilson.

*Visiting Faculty:* Lee Brinkmuller (Adult Probation) Margaret Callaway (SRU, Jails), Chauncey Crenshaw (Jail Unit), Kristen Curry (Search & Seizure), Bob Doyle (Overview of Arizona Criminal Codes), Peggy Lynn (TASC), Pam Morrow (Probation Department), Taylor Pile (PSO III, Juvenile Unit, Jails), Dan Raynak (Interviews), Darrow Soll (Arizona Constitution), Barbara Spencer (Rule 11)

Their help is much appreciated and critical to our training program's success.

**"While Russ is certainly the dominant force in our training program, he has had many excellent, willing helpers time-after-time."**

### Employee Satisfaction Survey

While we will be concentrating during the year ahead on addressing our lowest five scores on the employee satisfaction survey, we should also highlight the many positive employee reactions.

Ten areas had especially positive ratings. Our top three were: 1) people you work with, 2) kind of work you do, 3) feeling of accomplishment. Other high scores went to customer focus, employees being able to make decisions, and work completed at minimum expense. All of these areas enjoyed higher ratings than the County's satisfaction levels in these categories.

### Size-Wise

Including the newly authorized positions for this budget year, we now have 217 authorized attorney positions and 160 authorized non-attorney positions. For the statistical junkies among you, 44 percent of our attorneys are female, while 50 percent of our attorney supervisors are female.

### Judicial Selections

Reflective of the caliber of our practitioners, it was great to witness two judicial selections from our midst within the past twelve months. First, Colleen McNally joined the ranks of Superior Court Commissioners last September. Next, Michelle Lue Sang donned her robes two months ago, in May, as a Mesa City Magistrate.

## 35 Years After Gideon

Attorney General Janet Reno wrote an article for *USA Today* on March 18 entitled, "Legal Service for Poor Needs Renewed Vigilance." In it, our nation's top law enforcement official stated, in part:

"The *Gideon* decision is a testament to our system of justice in so many important ways. It reminds us that we have crafted a system that allows even the least powerful among us to bring about a fundamental change in the law. And it beckons us all to work to ensure that our justice system fully provides, in both fact and spirit, liberty and justice to all, rich and poor alike."

Undoubtedly a great choice of words, but will they overcome the sentiments of Oliver Wendell Holmes, Jr. and an Old English Proverb? I guess that's where we come into the picture..... ■

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### ON THIS YOU CAN DEPEND: The MCPD Dependency Unit

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By Suzette Pintard  
Dependency Division Chief

The Maricopa County Public Defender Dependency Unit began representing young children in May 1997. We are appointed by the Juvenile Court to act as the child's guardian ad litem or attorney in a dependency proceeding. The proceeding begins when a petition is filed in Juvenile Court alleging that the child is dependent. A "dependent child" is defined in ARS 8-546(A)(4). Basically, a dependent child is one who has no parent or guardian willing or able to provide effective parental care and control, one who is destitute, or one whose home is unfit due to abuse or neglect. If a parent was previously represented by the Public Defenders office, a potential conflict of interest exists and representation of the child is declined. Due to potential conflicts of interest, representation is declined in about half the cases referred to the Dependency Unit.

**"The Foster Care Review Board, CPS caseworkers and foster parents have commented very positively about the active role we have taken on the children's behalf."**

The Dependency Unit began with two attorneys working in temporary quarters. Last summer, the Dependency Unit gained a secretary/records person and moved to our present location on the second floor of the Luhrs Tower. We added two client service coordinators to our staff in August 1997. Both client service coordinators are social workers and former Child Protective Services caseworkers. A third attorney was added to our staff in September 1997 and a fourth attorney in November 1997. Since we opened our doors, we have represented 429 children in 272 cases.

The Dependency Unit attorneys and client service coordinators divide their time between court, office, visits to the children, and meetings with caseworkers and other interested parties. The client service coordinators do most of the home visits and continually provide updated information to the attorneys. The Foster Care Review Board, CPS caseworkers and foster parents have commented very positively about the active role we have taken on the children's behalf.

As guardian ad litem, we advocate to protect the best interests of the child. As the child's attorney, we advocate for the child's stated position. Most of our clients are under 10 years of age, many are infants. Most of the children we represent have been removed from their parents' care. Some of the children were neglected or abandoned by their parents. Some have been abused in their parents' homes. While the case is pending, most of the children we represent live in relatives' homes, shelters, and foster homes.

Generally, our cases begin with a plan to reunify the family. Social services are offered to parents and the parents' willingness and ability to provide an appropriate home for the children are assessed. If the child cannot be returned home, an alternative permanent plan, such as guardianship or severance and adoption, must be developed. A dependency case can remain open until the child is eighteen years old.

Representing dependent children is challenging, rewarding and, at times, heartbreaking. We are committed to the children and enjoy our work. If you would like more information about the Dependency Unit, please call 506-5379 or stop by our office. ■

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## A YEAR OF ACCOMPLISHMENTS

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By Dean Trebesch  
Maricopa County Public Defender

With your help, we ended the fiscal year on a very positive note. Most employees were able to receive a substantial incentive, thanks to a year's worth of savings and sacrifices.

The incentives, however, were but one part of a year's worth of accomplishments throughout the office. Briefly, let me highlight some of the other positive achievements:

- Automated on-line legal research at each attorney's desk
- Major Felony Unit
- Video Conferencing with the jail
- DUI Unit
- Sponsored \$25 indigent fee legislation (becomes effective in August), with fees returned to the office
- Relocated Mesa Juvenile offices
- Added several attorneys to Trial and Juvenile divisions
- Successfully started Dependency Division
- Completed office wide PC automation network (added both Juvenile sites and Mental Health)
- Added paraprofessional staff (Legal Assistants, Client Service Coordinators, Investigators)
- Assisted in the successful establishment of Expedited Drug Court
- Established Office Ethics Panel
- Received favorable reactions to internal efforts on Employee Satisfaction Survey
- Received recognition when CBS News was awarded Dupont-Columbia Award for "Enter the Jury Room," which highlighted several of our attorneys

Key issues remain, however. In the months ahead we must tackle salary issues and market adjustment concerns. While such longstanding issues cannot be remedied within one fiscal year, we will try to do as much as practical.

Once again, we surpassed all expectations and fulfilled our mission:

To provide, upon appointment by the court, cost-effective legal representation, pursuant to constitutional and ethical obligations, for indigents facing criminal charges, juvenile adjudications, mental health commitments, or dependency actions.

Your help has been, and will always be, truly appreciated. We have an amazing group of dedicated employees in this law office who, at a very low cost to taxpayers, serve our clients exceptionally well. ■

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## ARIZONA ADVANCE REPORTS

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By Terry Adams  
Deputy Public Defender - Appeals

*State v. Cornish*, 270 Ariz. Rep. 41 (CA 1, 5/26/98)

The defendant pled guilty to burglary, a non-dangerous felony and attempted aggravated assault, a dangerous felony. In a petition for post conviction relief he argued that an attempt is a preparatory offense and therefore cannot be dangerous pursuant to A.R.S. §13-604(F), and that imposition of consecutive sentences was improper because the burglary and assault were simultaneous (the defendant was charged with unlawfully entering a home to commit the assault). The court held that a preparatory offense can be dangerous. The consecutive sentences were proper because the Supreme Court held in *State v. Runningeagle* 176 Ariz. 66, that burglary is factually separate from a crime of violence that is committed

within the residence after a forced entry, and therefore separately punishable.

*State v. Djerf*, 270 Ariz. Adv. Rep. 14 (SC, 5/21/98)

The defendant was charged with four counts of capital murder. He requested and was granted the right to represent himself. He pled guilty to four counts of murder with no agreements as to sentencing. He was sentenced to death on all counts. On appeal he argued that a Rule 11

**"To provide, upon appointment by the court, cost-effective legal representation, pursuant to constitutional and ethical obligations, for indigents facing criminal charges, juvenile adjudications, mental health commitments, or dependency actions."**

hearing should have been conducted and his waiver of counsel was not knowing and intelligent. A Rule 11 pre-screen was conducted and the appellate court determined that there was no evidence presented to require a full Rule 11 examination. Also the trial court carefully examined the defendant regarding his desire to proceed *pro se* and did not abuse its discretion in allowing the defendant to do so. The court affirmed the finding of aggravating circumstances and lack of mitigating circumstances sufficient to impose death.

***State v. Hernandez*, 270 Ariz. Adv. Rep. 34 (CA 1, 5/26/98)**

The defendant shot and killed the victim during a confrontation. Shortly afterward the defendant called 911 and asserted that he shot in self-defense. During trial he introduced the 911 tape as an excited utterance exception to the hearsay rule. The state sought to impeach the defendant's statement with two prior felony convictions. Although the defendant did not testify the priors were introduced. The appellate court affirmed the ruling based on Rule 806 which "...clearly contemplates use of impeachment evidence to discredit hearsay statements by non-testifying declarants." Also, even though the defendant's priors were committed on the same occasion, it was proper to impeach him with both.

***State v. Jensen*, 270 Ariz. Adv. Rep. 49 (CA 1, 5/28/98)**

The defendant was convicted of murder in 1973. In a Petition for Post Conviction Relief he argues that the amended version of A.R.S. §13-453 should be applied to him retroactively, making him eligible for parole because he has served 25 years. The court first held that he was not precluded from raising this by failing to raise it in an earlier petition because a claim based on a significant change in the law is expressly not precluded from rule 32 relief. However, the court found that the legislature did not intend the amendment to apply retroactively, and therefore, he cannot be paroled unless his sentence is commuted by the governor. Fat chance.

***State v. Lee*, 270 Ariz. Adv. Rep. 67 (SC, 5/28/98)**

Lee was convicted of possession and transporting marijuana. He was arrested at Sky Harbor Airport. The state introduced, over objection, evidence of a "drug courier profile". Specifically, that Lee arrived with a large hard sided suitcase, paid cash for the ticket, took the last flight to Chicago, a high demand city, and checked in very late for the flight. It was the police officer's opinion that these characteristics represent those of drug couriers. The court reversed the convictions holding that the reasons for the officer's suspicion were not relevant to guilt, but

*for The Defense*

only to probable cause for a suppression hearing. The court held that introducing this type of evidence to show knowledge would open the door to all sorts of profiles developed by law enforcement officers. "Guilt by association with certain characteristics is the obvious danger of such a scenario". This is a good case if you're dealing with police officer's opinions.

***State v. Scott*, 270 Ariz. Adv. Rep. 45 (CA 1, 5/27/98)**

While he was being arrested, the defendant was laying face down with his hands underneath him. The police were forced to pry his hands loose and struggle with him to complete the arrest. The court held that this was sufficient evidence to sustain a conviction for resisting arrest. The defendant moved to strike the jury panel because there were no African Americans on the panel. This by itself is not grounds to strike. There must also be a showing that the exclusion is due to a systematic exclusion of the group in the jury selection process.

***State v. McDonald*, 271 Ariz. Adv. Rep. 11 (CA 1, 6/16/98)**

The defendant was convicted of aggravated assault, a class 3 dangerous, while on probation. He was sentenced to life with 25 flat before becoming parole eligible. He filed a rule 32 alleging that the sentence was illegal, and under former A.R.S. § 13-604 and *State v. Tarango*, the maximum sentence is 15 years. The court in *Tarango* found that § 13-604(K) which required a defendant to serve two thirds of the sentence superseded §13-3408(D), a drug offense statute, which provided for flat time. Here, however, the defendant was sentenced under §13-604.02(A) which provides "*Notwithstanding any provision of law to the contrary* a person convicted...shall be sentenced to life imprisonment and is not eligible for...release...until the person has served not less than 25 years." Therefore the conflict that existed in *Tarango* is not present here and relief was denied. ■

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## SELECTED 9<sup>TH</sup> CIRCUIT OPINIONS

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By Louise Stark  
Deputy Public Defender - Appeals

***United States v. Hotal*, 1998 WL 230047;1998 U.S. App. LEXIS 9440**

The defendant ordered child pornography in response to an offer mailed as part of a sting. The agents applied for a search warrant. The supporting affidavit

related that on a particular day and time, a package containing two videotapes of child pornography would be delivered to the defendant at his residence. It also recited that the warrant would be executed only after the agents observed the defendant take delivery and bring the videos into his residence, after which the warrant would be executed "in accordance with this warrant's commands." The warrant was issued mistakenly, directing officers to "search forthwith" the described premises, stating that the affidavit was attached and incorporated by reference. The warrant itself did not state that it was an anticipatory search warrant, nor did it state the event necessary to trigger execution. For some reason the government never alleged, and it never appeared in the record, that the affidavit with the critical information was ever attached to or accompanied the warrant.

At the appointed day, an agent delivered the two videos to the defendant at his home. Several minutes later the agents entered, searched for and seized the items listed in the warrant. On finding other items, they got the defendant to sign a general consent to search form. The defendant's motion to suppress was based on the warrant's failure to state it would not be executed until after delivery of the tapes.

The requirement that warrants be drafted with particularity in order to pass Fourth Amendment muster is critical with anticipatory warrants, which rely to a greater degree on discretion of the officers executing it, and therefore, are more susceptible to abuses. The 9th Circuit adopts a rule that an anticipatory warrant is not valid (sufficiently particular) unless it identifies the clear, explicit and narrow events and conditions which must precede execution. The defendant's convictions for receiving and possessing child pornography were reversed, based on improper denial of his motion to suppress items seized on an insufficiently particular warrant.

***United States v. Graves*, 1998 WL 286803; 1998 U.S. App. LEXIS 9462**

The defendant was charged with being an accessory after the fact, to the crime of felon in possession of a firearm. Accessory statute requires a defendant to act with knowledge, that an offense against the United States had been committed. At trial the defendant contended that one element the jury had to determine beyond a reasonable doubt was that he knew the principal had a prior felony conviction. This instruction was refused. Instead the jury was told they merely had to find that Graves knew the offender committed the crime of unlawfully possessing a weapon. The defendant argues that he had to have knowledge that the essential elements of the crime existed

- possession of a weapon, by a felon. This court agrees and reverses his conviction. Accessory after the fact status has different mens rea than aiders, abettors, conspirators.

***United States v. Martinez*, 1998 WL 234538; 1998 U.S. App. LEXIS 9461**

Martinez and Cervantes were indicted in the same drug trafficking conspiracy. Charges against Cervantes were dismissed after his statements were suppressed. Martinez hired Cervantes' former lawyer to defend him against the same indictment. The government then re-indicted Cervantes with new evidence. The government moved to disqualify the lawyer, who stated he would withdraw if Cervantes was to testify against Martinez. Martinez waived any existing or foreseeable conflict after extensive questioning and advice from the court, and continued with his chosen attorney. He entered into a plea agreement that included his cooperation in prosecuting others. He gave incriminating information on Cervantes and was to testify at Cervantes' trial. Just before his testimony was scheduled, Martinez claimed that his mother in Mexico had been threatened by Cervantes' associates. When he was called to testify, Martinez attempted to exculpate Cervantes, and perjured himself. On appeal, Martinez claims he received ineffective assistance of counsel due to his lawyer's conflict of interest. This court holds that he made a valid waiver of his Sixth Amendment right to conflict-free representation.

Martinez also argues that the trial court should have refused to accept his waiver of a conflict. Although the court had the discretion to refuse the waiver, it did not have an obligation to override the waiver in this case. The test is whether a conflict of interest existed that adversely affected the attorney's properly advising or representing Martinez.

***United States v. Garibay*, 1998 WL 216919 ; 1998 U.S. App. LEXIS 8781**

The defendant was caught with 138 lbs. of marijuana in a hidden compartment of the car he drove across the border. He first said he bought the car from a stranger in Mexico, but later said an individual gave him \$100.00 to drive the car across the border and leave it at a fast food place. The record conflicts as to whether he had \$20 or \$106 on him at arrest.

The trial court denied the defendant's motion to suppress his statements which were made without a voluntary, knowing, intelligent waiver of his Miranda rights. This court reverses, and grants a new trial. The defendant was a Spanish speaker, with low intelligence,

(cont. on pg. 10) ☞  
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and cognitive limitations. He was not offered the option of questioning in Spanish, although bilingual agents were available for the interrogation. This, as well as defendant's claim that the agents cut off his attempts to explain himself in Spanish, and his lack of proficiency in English were all established at the suppression hearing. Expert witnesses and people familiar with the defendant's attempts to use English with authority figures testified. The appeals court notes that the trial judge "incorrectly stated the facts" in denying the motion to suppress. Factors considered in the totality of the circumstances test included; language difficulties, mental capacity, and experience with criminal process. Because there was no valid waiver of rights, and because the statements were not harmless, the court reverses. The court also frowns on border patrol or custom's preference for not using written waivers in Spanish or English.

***United States v. Omene*, 1998 WL 227639 ; 1998 U.S. App. LEXIS 1297**

The defendant was accused and convicted of filing false tax returns and using false social security numbers in his tax preparation business. Towards the end of the trial, defense counsel related that Omene's intent to testify posed an ethical dilemma. At an ex parte discussion with Omene present, the defense counsel explained "he had an 'overwhelming' belief that his client would" perjure himself, although the client's story had not changed during representation. The lawyer said he could not explain further without disclosing confidential communications. The judge denied the motion to withdraw based on the time already put into trial, and the lack of any right to present perjured testimony. She explained to Omene that he could testify in a narrative fashion as to matters his lawyer believed were untrue, and be assisted by his lawyer in all other areas. She explained that the attorney would not argue the matters he believed perjurious, and that this procedure might cause a negative inference in the jury panel. The judge advised Omene to consider counsel's advice, all the while reminding him of his right to testify, or right to remain silent without any inference from that silence. After trial, the court specifically found that Omene had perjured himself, thereby spurning the effective assistance offered. This court rejects Omene's claim that the procedure denied him of 6th Amendment right to effective assistance of counsel by forcing him to choose between not testifying or testifying in narrative form.

***United States v. Burt*, 1998 WL 227645;1998 U.S. App. LEXIS 9318**

Significant evidence was presented supporting Burt's claim that he was induced by the government agent

to commit a crime, and that he lacked predisposition. The defendant, representing himself, raised an entrapment defense to drug trafficking charges. Instead, the court gave a model instruction that was struck down earlier by the U.S. Supreme Court, because it relieved the government of its burden to prove each element beyond a reasonable doubt. Despite offering a defective instruction himself, there is no waiver of the error, nor an invited error theory as none of the parties seemed to realize the instruction given was invalid, the error was plain, affected substantial rights, and seriously affected the fairness, integrity or public reputation of judicial proceedings.

***Singh v. Prunty*, 142 F.3d 1157 (9th Cir. 1998)**

The defendant's wife and step-daughter were murdered while the defendant was away on a hunting trip in late August 1983. In April 1984 a jailed felon, Copas, told authorities he'd been approached by the defendant to do the murders for hire. Copas testified at a preliminary hearing in May 1984 but charges were dismissed. In March 1985 Singh was held to answer after Copas testified at another prelim. The state's theory was that Singh hired someone else after attempting to hire Copas. Circumstantial evidence suggested Singh's guilt. After unsuccessful state appeals, Singh filed for habeas in state court alleging *Brady* violations when the state: 1) concealed the substantial benefits (dismissing or reducing numerous criminal charges and sentences) given in exchange for Copas' testimony, and 2) failed to correct Copas' lies about the recency of his heroin use, and his motivation to testify. The lower state court granted relief on both grounds, but state appellate courts reversed, affirming the convictions, as did the federal district court.

This court finds that evidence of the agreement with Copas was exculpatory, material (reasonable probability disclosure would have changed result), and failure to disclose it violated Singh's rights to due process and a fair trial, but does not reach the perjury issue. They note the prosecutor's closing argument in which he pointed out that the jury only heard one witness with a motive to lie, and that there's been no attempt to deceive anyone in this case. Reversed and remanded with directions for Singh's release unless a new trial is given within a reasonable time.

***Crandell v. Bunnell*, 1998 WL 257284 ; 1998 U.S. App. LEXIS 10100**

The defense counsel was ineffective, and the defendant need not show prejudice when the failure to investigate and prepare forced the defendant to choose between incompetent counsel or none at all in a capital case. The defense counsel decided there was no defense,

and especially not justification, as the defendant wanted to present. But the failure to return the defendant's calls or letters, request additional discovery, investigate and interview witnesses, and try to develop a relationship with the client, was ineffective. The result might have been different if the defendant was unreasonable or had made no efforts to have a working relationship. What counsel should have done was continue to investigate, file appropriate motions, interview witnesses and develop a working relationship with defendant. Even if a plea was the goal, these actions could only enhance his bargaining position.

*United States v. Martinez-Salazar*, 1998 WL 276138; 1998 U.S. App. LEXIS 10899

To a question asking for anything that might affect the ability to serve impartially, a juror wrote "I would favor the prosecution." Asked about this comment in light of the duty to follow the law and decide based on evidence, he responded "all things being equal, I would probably tend to favor the prosecution." When asked "if you were the defendants...and all of the jurors...had your background and your opinions, do you think you'd get a fair trial?" the juror was unable to answer. In response to further voir dire about in which direction he would err, the juror said he'd "probably be more favorable to the prosecution...most people are...predisposed. You assume that people are on trial because they did something wrong." When the judge again explained the presumption of innocence, this juror said he understood "in theory." The judge erroneously denied the defendant's challenge to strike the juror for cause. Where the defendant used a peremptory to strike the juror in question, his Fifth Amendment due process rights were violated. This denial of full use of peremptories to strike jurors who were qualified, but undesirable, requires reversal with no showing of an unfair jury panel.

*United States v. Rapal*, (9th Cir. Hawaii 1998) 1998 U.S. App. LEXIS 10909

Rapal was first sentenced to six months in custody, with one month in prison and the rest in home confinement. This occurred a few days before Christmas, and the judge said the "shock value" of being separated from her family at this time was intentional. Rapal immediately filed a notice of appeal, and the judge stayed the sentence. The sentence was reversed because Rapal had not been given a chance to speak. On remand for sentencing ten months later the judge said that the chance to shock the defendant in a very short period of time was lost, so he imposed a four month term, all to be served in prison. The defense pointed out that the holidays were only 10 weeks away, and that less than four months would

serve the same purpose. On this appeal, the sentence is vacated as vindictive. Although the judge said he was not punishing her for the appeal, any appeal may change the timing of a sentence. Nothing else Rapal did in the interim could justify a harsher sentence after appeal. The fact that a total of four months was imposed rather than six, with all four in prison was a harsher sentence for all practical purposes, despite the government's argument to the contrary. ■

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## BULLETIN BOARD

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### *New Attorneys*

**Ulises Ferragut**, will join the office on August 10. He received his J.D. from McGeorge School of Law in California. He is currently on the faculty of the Los Angeles Law Magnet High School as the moot court instructor/coach. He also served an internship with the Sacramento County Public Defender's Office.

**Allyson Ochs** received her J.D. from Wayne State University in Michigan. She graduated from Michigan State University with a B.A. in Education. While in law school, she participated in the Moot Court program, as well as serving in a variety of intern and law clerk positions, including the Cook County Public Defender's Office. She will join the new attorney class on August 10.

**Patrice Peterson-Klein** graduated from the Washburn University School of Law. She holds a M.B.A. from ASU in addition to her B.S. in Business from the University of Wisconsin. She will join the new attorney class on August 10.

**Rob Reinhardt** will be rejoining the office in Group A on July 13. In addition to his previous experience with our office, he has also worked in the Mohave County Legal Defender's Office and private practice.

**Dean Roskosz** graduated from the University of Oregon with a B.A. in Philosophy, then obtained his J.D. from the University of California Hastings College of Law. His experience includes both public and private practice, including a five year tenure with the Legal Defender's Office in Kingman. He will join the office on July 27.

**Michael Rossi** begins new attorney training on August 10. He received his J.D. from Capital University Law School in Columbus Ohio. While in law school, he studied at the University of Paris/Tulane Law School. His B.S. in Marketing is from ASU. He has served as a law clerk for the Franklin County Public Defender's office.

### *Attorney Moves/Changes*

**Corwin Townsend** left the office for other opportunities on July 17. He has been a member of Group A since 1995, and has been an attorney since 1997.

### *New Support Staff*

Three new students joined the ASU College of Law Clinic program with Dan Lowrance this summer. They are:

**Brian Pearlman** plans on graduating in May of 1999. He completed his undergraduate work at Binghamton University in Binghamton, New York with a degree in Philosophy, Politics and Law. He holds an A.A. in Criminal Justice from Nassau Community College. Brian is a street law teacher at South Mountain High School and serves as coordinator of the program.

**Carrie Voeglti**, received her B.A. from ASU in Management. While in law school, she received the Excellence in Advocacy Award for the Administrative Law Moot Court Team. She has also participated in the Women's Law Student Association.

**Tammara Wright** will graduate from ASU College of Law in December of 1998. She is the President of the Black Law Student's Association and Treasurer of the Phi Alpha Delta Fraternity. Tammy holds both a Master's and Bachelor's degree in Education from ASU.

**Julie Born**, will serve as the temporary Administrative Receptionist for the summer.

**Mac Bozza** will assume ADA Reader duties at SEF on Aug 10.

Two new office aides began working on June 15. **Christopher Hyler** will be assisting in Group B, and **Alicia Miner** in Group D.

**Michael Eskander**, Client Service Assistant, began working part-time on July 13. He will also serve as a volunteer law clerk. Michael received his LL.M. from the University of Iowa College of Law. He also holds a LL.B. in Law from the University of Ein Shams in Cairo, Egypt. He is a member of the Iowa State Bar and plans on sitting for the Arizona Bar in February.

**Stephanie Nusser**, Legal Secretary, started working with Group A on June 29. She holds a B.S. in Criminal Justice from Northern Arizona University and most recently worked for the Clerk of the Court.

**Christene Paro**, began working as an office trainee at Durango on June 24.

*for The Defense*

**Dan Ridley** became the new Operations Manager on July 13. Dan has spent the last eight years working with Adult Probation. His experience there included working with statistical data, budgetary issues, payroll, accounts payable, automation assessments, inventory, and forecasting functions. He received his Master's degree from ASU in Business Administration. Prior to 1990, he worked for First Interstate Bank. He will assume most of Rose Salamone's functions.

**Joyce White**, Legal Secretary, joined Group D on June 29. Joyce has held a variety of support positions with county and state agencies including Adult Probation.

### *Support Staff Moves/Changes*

**Frances Dairman**, Training Coordinator, has assumed special assignment duties in budget and statistical reporting.

**Salina Godinez**, Administrative Receptionist, has assumed a special duty assignment as the Training Coordinator.

**Julie Roberg**, Lead Secretary at the Mesa Juvenile office, assumed a special duty assignment on June 22. She will be working with the Information Technology department, answering calls to the Help Desk, and conducting computer training.

**Nancy Shevock**, Office Aide in Group D, became the DFM for that group on June 15.

**Jason Swetnam**, Office Aide, became the Group A DFM on June 15.

**Lisa Tibbedeaux**, Sign Language Interpreter, left the office June 26.

**Geoff Budoff**, ADA Reader, will be leaving Group C on August 14.

**Frances Arevalo**, an office fixture since 1985, left her post as receptionist on July 2. She will be working instead for the Federal Public Defenders. Her smiling face will be greatly missed.

**Kathleen Blake**, Clerk, left the office effective July 22.

**Kathryn Bright**, Legal Secretary for Group C, left the office on June 26.

**Mitch Lincoln**, Group C Investigator, left the office on July 17. Mitch had been with the office since 1997. ■

## June 1998 Jury and Bench Trials

### Group A

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
5/27-6/1	Howe	Jarrett	McKessey	CR 97-13385 Armed Robbery/F2D With 2 priors	Guilty	Jury
6/1-6/2	Ryan	Mangum	Woodburn	CR 97-12563 Arson of Property/F5	Guilty	Jury
6/1-6/3	Rock	Schneider	Davis	CR 96-00157 Agg. Assault/F3D	Not Guilty of Agg. Assault Guilty of Lesser Included- Disorderly Conduct/F6D Motion for a new trial granted.	Jury
6/2-6/2	Lawson	Dunevant	Newell	CR 98-01886 Indecent Exposure/F6 Indecent Exposure/M1	Directed Verdict on felony Guilty of Indecent Exposure/M1	Bench
6/2-6/5	Farney/ Clesceri	Baca	Robinson	CR 97-14402 PODD/F2; Agg. Asslt on a Police Officer/F6	Guilty	Jury
6/16-6/17	Klepper/Jones	Sheldon	Freeman	CR 97-12217 PODD/F4; Poss. of drug paraphernalia/F6	Not Guilty on both counts	Jury
6/16-6/19	Farrell/ Robinson	Hilliard	Hicks	CR 97-11033 Sale of Narcotic Drug/F2 with 6 priors	Hung Jury	Jury
6/16-6/23	Parsons/ Brazinskas	Baca	Gadow	CR 97-12994 2 Cts. Armed Robbery/F2D; 1° Burglary/F2; Kidnapping/F2 with 1 prior and on parole	Guilty on all counts- prior felony not proven	Jury
6/18-6/18	Tosto	Osterfeld	Shreve	CR 98-00297M1 Assault/M1	Not Guilty of M1 Guilty of M3	Bench
6/22-6/24	Parsons/ Brazinskas	Baca	Gadow	CR 97-12995 Armed Robbery/F2D; Agg. Assault/F3D; 1° Burglary/F2 with 1 dangerous prior and on parole	Not Guilty	Jury
6/30-7/1	Parsons	Hauser	Doering	CR 97-08301 POND/F4; PODP/F6 w/ 6 prior felonies alleged	Not Guilty	Jury

(cont. on pg. 14) ☞

## Group B

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/1-6/4	Whelihan	O'Toole	Ainley	CR 98-01326 Resisting Arrest/F6 1 Ct. Agg. Assault/F5 3 Cts. Agg. Assault/F6	Guilty	Jury
6/2-6/2	Liles	Gastelum	Forness	CR 98-00101MI Interference with Judicial Proceedings/M1	Guilty	Bench
6/3-6/5	Burns	Dougherty	Grimes	CR 97-12610 Burglary 3°/F4	Hung	Jury
6/3-6/5	Walton/ Ames	Hilliard	Rahi Loo	CR 98-00523 Forgery/F4	Not Guilty	Jury
6/8-6/8	F. Gray	Knapp	Kimble	TR 98-00238 Reckless Driving, M1	Guilty	Bench
6/15-6/16	Landry (Advisory Counsel)	Hotham	Woodburn	CR 97-10264 Agg. Assault/F4ND w/2 priors	Client pled during trial. One prior dismissed pre-trial.	Jury
6/15-6/17	Navidad	Boyle	Dougherty	CR 97-03813 Agg. DUI w/two priors & Suspended License/F4	Guilty	Jury
6/15-6/19	Taradash	Wilkinson	Mitchell	CR 97-12263 Ct. I, Sexual Aslt./F2 Ct. II, Sexual Abuse/F5 Ct. III, Sexual Aslt./F2	Not Guilty - Count III Hung Jury - Counts I and II (11- 1 for acquittal)	Jury
6/16-6/17	Liles	Gottsfeld	DeBrigida	CR 97-13907 Attempted Possession of Cocaine/F5	Guilty	Jury
6/16-6/18	Lopez/ Erb	Schwartz	Davidon, A.	CR 98-01413 POND/F4 PODP/F6 Misconduct Involving Weapons/F4 w/four priors and on parole	Not Guilty on Misconduct Involving Weapons Guilty of POND and PODP  (Client tried in absentia.)	Jury
6/17-6/18	Park/ Corbett	Dougherty	Doerling	CR 97-09979 POND/F4 w/three priors	Guilty - admit one prior, State dismissed other priors	Jury
6/18-6/23	F. Gray	Gottsfeld	Davidon, A.	CR 98-04105 POND/F4 PODP/F6	Not Guilty - PODP Guilty - POND	Jury
6/22-6/24	Navidad	Hilliard	Poster	CR 98-02791 Agg. DUI w/one prior, on Probation & Suspended License/F4	Not Guilty -- Guilty of lesser included Driving on a Suspended License	Jury

(cont. on pg. 15) ☞

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/22-6/26	Liles/ Castro	Hotham	Gorman	CR 98-02977 Armed Robbery/F2	Hung - (4 Not Guilty - 4 Attempted Armed Robbery)	Jury
6/23-6/25	Whelihan	O'Toole	Hicks	CR 98-03555 Prohibited Possession of a Firearm/F5	Guilty	Jury
6/24-6/26	LeMoine/ Castro	Hotham	Gaertner	CR 97-14392 Agg. Assault/F3D	Guilty	Jury
6/26-6/29	Bublik & Kratter	Schneider	Kalish	CR 98-01918 Theft of Vehicle/F3	Guilty (Client tried in absentia.)	Jury

## Group C

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
5/26-6/18	Gavin/Moller	Gerst	Perry	CR 97-07635 Consp. to Commit Murder 1°/F1 Arson of Occupied Structure/F3	Guilty	Jury
5/26-6/3	Rosales/Breen	Ishikawa	Cook	CR 98-91133 Burglary 2° /F3 Theft/F6	Guilty	Jury
6/4-6/4	Mabius	Johnson (E. Mesa)	Park	CR 97-02972 DUI/M1 Interf. w/Jud. Proc./M1	Guilty	Bench
6/16-6/17	Klobas	Keppel	Flader	CR 97-92132 Disorderly Cond./F6	Guilty	Bench
6/17-6/18	Lorenz & Burkhart	Grounds	Aubuchon	CR 98-91339 Burg/F3	Guilty	Jury
6/17-6/30	Antonson/ Thomas	Dairman	O'Neill	CR 97-92332 2 cts. Child Molest/F2 3 cts. Sex Condt w/Mnr/F2 1 ct. Sex Abuse Und 15/F3 1 ct. Pub Sex Indcy/F6	Not Guilty on all counts	Jury
6/23-6/24	Coolidge/ Beatty	Barker	Vick	CR 96-94816 2 cts. Agg DUI/F4	Guilty	Jury
6/24-6/25	Mackey/ Beatty	Wilkinson	Brenneman	CR 98-90342 Forgery/F4	Guilty	Jury

(cont. on pg. 16) ☞

## Group D

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/1-6/3	Stazzone/ Applegate	Martin	Clarke	CR 97-05501 Child Abuse/F4	Not Guilty	Jury
6/2-6/3	Enos	Schwartz	Pacheco	CR 97-11417 Agg. Asslt./F3 Misc. Inv. Weap./F4	Guilty	Jury
6/4-6/16	Dwyer	D'Angelo	Moore	CR 97-10886 Agg. DUI/F4	Guilty	Jury
6/23-6/24	Stazzone/ O'Farrell	Skelley	Bayardi	CR 97-08110 POND/F4 PODP /F6	Guilty	Jury
6/24-6/30	Steiner	Kamin	Maasen	CR 98-02066 Traffic-Stolen Prop./F3	Guilty	Jury
6/30-7/1	Schreck	Hall	Hammond	CR 98-04073 POM F6; 1Ct. PODP, F6	Guilty	Jury

## DUI Group

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
6/1- 6/3	Wray & Carrion	Hall	Moore	CR97-13297 1 Ct. Agg DUI/ F4	Not Guilty on Agg DUI--Guilty of lesser included Driving on a Suspended License	Jury
6/22-6/23	Timmer	Scott	Morrison	CR97-08722 1 Ct. Agg DUI/ F4	Guilty	Jury

## Office of the Legal Defender

Dates: Start/Finish	Attorney/ Investigator	Judge	Prosecutor	CR# and Charge(s)	Result w/ hung jury, # of votes for not guilty / guilty	Bench or Jury Trial
6/2-6/23	Hughes	Jarrett	Sandler	CR95-09919 Kidnapping, DAC Sexual Conduct w/Minor, DAC Att.Sex.Cond.w/Minor, DAC Agg.Asslt., DAC	Guilty	Jury
6/15-6/25	Parzych & Steinle/ Soto & Pangburn	Bolton	J.Martinez	CR 96-93304 (A) 1 ct. 1° Murder 6 cts. Attmp. 1° Murder 1 ct. Viol.Gang Statute	Guilty	Jury
6/29-6/30	Dupont	Sheldon	Patchett	CR98-01354 Att.Poss.Narcotic Drugs/ F5	Not Guilty	Jury
6/18-6/18	Baeurle	Orcutt	J.Leigh	CR 97-955 MI Disorderly Conduct/ M1	Not Guilty	Bench

# INSIDE ADDITION

The Insider's Monthly

July 1998

## TRAINING NEWS

### The Rock

By Ed Boks  
Organizational Planning and Training

While back I was reading about an expert on subject of time management. One day, this expert was speaking to a group of business students, and to drive home a point, used an illustration I'm sure those students will never forget. After I share it with you, you'll never forget it either. As this man stood in front of the group of high-powered over achievers he said, "Okay, time for a quiz." Then he pulled out a one-gallon, wide-mouthed mason jar and set it on a table in front of him. Then he produced about a dozen fist-sized rocks and carefully placed them, one at a time, into the jar.

When the jar was filled to the top and no more rocks would fit inside, he asked, "Is this jar full?" Everyone in the class said, "Yes."

Then he said, "Really?" He reached under the table and pulled out a bucket of gravel. Then he dumped some gravel in and shook the jar causing pieces of gravel to work themselves down into the spaces between the big rocks.

Then he smiled and asked the group once more, "Is the jar full?" By this time the class was onto him. "Probably not," one of them answered.

"Good!" he replied. And he reached under the table and brought out a bucket of sand. He started dumping the sand in and it went into all the spaces left between the rocks and the gravel. Once more he asked the question, "Is this jar full?"

"No!" the class shouted. Once again he said, "Good!" Then he grabbed a pitcher of water and began to pour it in until the jar was filled to the brim. Then he looked up at the class and asked, "What is the point of this illustration?"

One eager beaver raised his hand and said, "The point is, no matter how full your schedule is, if you try really hard, you can always fit some more things into it!"

"No," the speaker replied, "that's not the point. The truth this illustration teaches us is: If you don't put the big rocks in first, you'll never get them in at all."

What are the big rocks in your life? A project that YOU want to accomplish? Time with your loved ones? Your faith, your education, your finances? A cause? Teaching or mentoring others? Remember to put these BIG ROCKS in first or you'll never get them in at all.

So tonight, or in the morning, when you are reflecting on this short story, ask yourself this question: What are the "big rocks" in my life or business? Then, put those in your jar first. ■



Be sure and check out the training opportunities available in the County's Third Quarter catalog. Copies of the catalog have been distributed to all supervisors. It is also available electronically through the EBC.

## PERSONNEL PROFILE

### Taz Clark Lead Secretary - Group C

Taz was born and raised in Japan and became an American by choice. Away from the office, she is been busy as the president of an organization called "Arizona Tomono-Kai" (friendship association). The group provides community service, such as going to different elementary schools to introduce Japanese culture and history to students and assist in exchange student programs. She enjoys her life as it is. No complaints. Life is pretty good.

#### What is your idea of perfect happiness?

When my son realizes his dream of becoming a major league baseball catcher, and I can live in south of France, preferably Provence area, and be a mushroom farmer and eat all the truffles I want..

#### What is your greatest fear?

Not being healthy. I don't mind getting older, but I want to go through that process in good health.

#### Which living person do you most admire?

My best friend. I've known her for six years. She is an artist who paints wonderful surreal sceneries. So talented, not only with her work, but also with things like cooking and sewing. She is a good enough cook to be a chef in a five star hotel. I don't think "can't do" is in her vocabulary.

#### Which living person do you most despise?

Despise is a pretty strong word, but I dislike this woman I know who uses people to her advantage - very conniving.

#### Who are your heroes in real life?

My father, a nurse friend of mine, and my artist friend I mentioned above.

#### Who is your favorite hero of fiction?

"Songoku" who is a human/monkey magical being.

#### What is the trait you most deplore in yourself?

Too independent and picky.

#### What is the trait you most deplore in others?

Meanness.

#### What is your greatest extravagance?

Traveling. I try to travel as often as I can anywhere in the world.

#### On what occasion do you lie?

I used to lie (if I could color code it, it would be white) a lot. Being brought up in Japan, when I came to this country, I had hard time saying "no" because it is very impolite to directly oppose others. So I used to beat around the bush and ended up, in effect, lying. But watch out now, I have learned well to say "No!" I also lie when I go through the customs window at the airport.

#### If you could change one thing about yourself, what would it be?

I want to be tall.

#### What do you consider your greatest achievement?

Working in the Public Defender's Office for 13 years and I have been able to stay sane.. (There may be argument from different sources about this.)

#### What is the quality you most like in a man?

A strong man who knows what he wants and goes after it.

#### What is the quality you most like in a woman?

A strong woman who knows what she wants and goes after it.

#### What do you most value in your friends?

Sense of humor.

#### If you were to die and come back as a person or thing, what do you think it would be?

Probably as a pilot. My recurring dream of many years is I can fly.

**If you could choose what to come back as, what would it be?**

My cat "Tama" whose life is pretty good chasing lizards, fighting with birds and just being a loveable self.

**What is your motto?**

My mother used to say time is so easy to waste, so be conscious of it and spend it wisely. This has become my motto. ■

**COMMUNITY BOARD****Reduce, Reuse, Recycle**

Thanks to the Herculean effort of Michelle Wood, a new recycling program has been started in the office. Weyerhaeuser is providing this free opportunity to us. The paper is processed in a secure manner so as to protect the confidentiality of our paper waste. Still, if you have concerns, you may shred, rip, or fold the paper as needed. As with any worthy cause, it will only be effective if everybody participates, and adheres to the standards. The types of materials that are acceptable for this program are slightly different than your home recycling bins.

The "ROW" (Recycle Office Waste) boxes will be placed by each secretary, and by the copier and printer on each floor. When these boxes are full, they should be emptied into the bin which will be on each floor. The bin will be picked up by Weyerhaeuser. Please make an effort to only put the appropriate office papers in the recycle bins. The list of "do's and don'ts" appears on the side of each green recycle "ROW" box. If you are uncertain, please check, or ask someone who attended the training classes.

If you have any questions regarding the program, please call Michelle Wood at 65759.

Following is a quick check list of recyclable items.

**YES PLEASE! ☺**

**White papers:** Copy machine, letterhead, computer printout

**Colored papers:** Pastels only, carbon less

**Envelopes:** White and pastel, plastic windows, no adhesives

**Direct Mailings:** Opened to check for contaminants,

**Coated Paper:** Fax, brochures, advertising without glue bindings.

**File folders:** Manila or pastel only, no labels

**NO, THANK YOU ☹**

Newspapers, magazines, phonebooks

Food Wrappings and paper towels

**Non-water soluble adhesives:** Glues, tapes, pressure sensitive labels

**Unbleached papers:** Cardboard, tablet backings, brown paper, brown or tan envelopes

**Bright colors:** Goldenrod, neons, deep tones, file folders, envelopes

Wax or plastic coated papers

And the number one misrecycled item:

**Paper ream wrappers.** When unwrapping a ream of paper, please throw the wrapper in the trash. ■

**THE LIGHTER SIDE**

Charlotte was astounded to see that her attorney's bill was \$2,300. She demanded that he send her an itemized bill, which he did:

Consultation: \$300

Court Appearance: \$500

Waking up at night and

thinking about your case: \$1,500

**July Puzzle**  
**"Independence"**  
**Word Search.....**

H	F	R	A	N	C	I	S	S	C	O	T	T	K	E	Y	R	S
I	O	T	A	P	A	T	R	I	C	K	H	E	N	R	Y	T	N
D	R	S	T	H	G	I	R	F	O	L	L	I	B	L	A	F	I
E	P	H	I	L	A	D	E	L	P	H	I	A	O	R	D	I	L
C	R	I	S	P	U	S	A	T	T	U	C	K	S	C	E	R	K
L	Y	T	S	E	F	F	L	O	N	G	L	P	T	O	C	E	N
A	A	E	E	R	R	F	L	B	O	G	A	Y	O	N	N	W	A
R	N	L	N	E	E	T	I	A	T	N	F	N	N	S	E	O	R
A	K	A	O	V	E	R	H	L	G	I	A	O	T	T	D	R	F
T	E	H	J	E	D	R	R	L	N	P	Y	I	E	I	N	K	N
I	E	N	L	R	O	I	E	A	I	M	E	T	A	T	E	S	I
O	D	A	U	L	M	D	K	C	H	A	T	U	P	U	P	E	M
N	O	H	A	U	B	S	N	S	S	C	T	L	A	T	E	L	A
L	O	T	P	A	U	I	U	R	A	N	E	O	R	I	D	P	J
O	D	A	N	P	C	U	B	O	W	L	A	V	T	O	N	A	N
P	L	N	H	C	O	N	G	R	E	S	S	E	Y	N	I	M	E
E	E	C	O	O	K	O	U	T	S	S	O	R	Y	S	T	E	B
R	E	V	J	U	L	Y	L	U	J	F	O	H	T	R	U	O	F

### Search List

Benjamin Franklin	Congress	Francis Scott Key	Paul Revere
Betsy Ross	Cook out	Freedom	Philadelphia
Bill of Rights	Crispus Attucks	Independence Day	Picnic
Boston Tea Party	Declaration	John Paul Jones	Revolution
Bunker Hill	Fireworks	Lafayette	Star Spangled Banner
Camping	Flag	Nathan Hale	Washington
Constitution	Fourth of July	Patrick Henry	Yankee Doodle

Answers to last month's puzzle can be found on [s:/Pd-info/puzzle](http://s:/Pd-info/puzzle)

*Thanks to Gene Parker, Puzzle Editor*