



# for The Defense

▶ ◀ James J. Haas, Maricopa County Public Defender ▶ ◀

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## Ensuring Work Furlough Success

**By Rebecca Potter  
DUI Unit Supervisor**

The Maricopa County Adult Probation Office administers the Work Furlough Program. This program allows people who have been given a jail sentence to get out to work. Last year, over 400 people per month were enrolled in the Work Furlough Program. Work furlough is not the same program as work release.

### Work Release

The Adult Probation Department does not administer work release. For work release, the Judge sets the days and times that the defendant can be out of custody to

work, and court action is required to change those days or times. When on work release, the defendant is not supervised by the Adult Probation Department. There are no surveillance officers checking up on them. There are no fees associated with work release. Work release is most often given in misdemeanor cases. The majority of our felony clients are not given work release, and in many cases, the plea agreement itself precludes the possibility of work release.

There seems to be a lot of confusion surrounding the criteria and rules of the Work Furlough Program. In an effort to

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## The Third-Party Defense

**By James Kemper  
Defender Attorney – Appeals**

As Judy Tenuta says, "It could happen." You may have a third-party defense. If this is the case, then obviously some *other* individual committed the crime your client is charged with perpetrating. However, since only God and your client know whether your client is really innocent, the more likely situation is that you have come

across something – in the police reports, in the witness interviews, in your visit to the scene, or even in what your client has told you – that suggests another person may have committed the crime. If you can convince the jury that this was so, your client goes home quickly. If you can just make the jury wonder about it, your client might go home. Surely this would create a "reasonable doubt." Wouldn't it?

This effort to point the finger of suspicion

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*for The Defense*

Editor: Russ Born

Assistant Editors:  
Jeremy Mussman  
Keely Reynolds

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

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clear up some of this confusion, I interviewed Bruce Atkinson, who is the Supervisor of the Work Furlough Program, and Meir Dembowski, APO assigned to the Work Furlough Program. As a result of my interview, I found out quite a few things that I hope you will find as helpful as I did.

### **Work Furlough Screening**

The first step in the process is to have your client screened for work furlough. This needs to be done before sentencing. If your client is awaiting sentencing on a new felony charge, then the probation officer assigned to the pre-sentence investigation will conduct the screening. If the case involves a probation violation, the assigned field probation officer will conduct the screening. The probation officer assigned to the Work Furlough Program does not conduct these screenings. There have been times when the probation officer assigned to the pre-sentence investigation, does not realize that they are responsible for the screening. If this happens, it is wise to contact the officer directly or contact their supervisor to clear up this misunderstanding. The officer can also speak to Bruce Atkinson for clarification. It is essential to have the client screened before sentencing.

### **Criteria**

There is a screening criterion that must be met in order to meet the eligibility requirement of the program. The defendant must be at least 18 years of age. The defendant must be statutorily eligible to serve jail time. The defendant cannot have a history of violent behavior in the five years preceding the present offense, or, if the defendant was in prison preceding the current offense, then the five years prior to incarceration. The present offense cannot involve the use of a deadly weapon. The plea agreement cannot preclude work furlough. The defendant must not have other court actions pending, or have an immigration hold. If the defendant is on *Alien Status*, then he/she must have authorization to work in the United States. The defendant must not be in need of long term residential treatment or intensive substance abuse/alcohol counseling or treatment. The defendant is not eligible if he/she suffers from a severe emotional, physical, or medical disability, which makes them incapable of working or going to school full time. The defendant cannot have prior escape charges or present a current escape or flight risk. If the defendant is self-

employed, he/she will be required to provide documentation showing that he/she is engaged in a legitimate business. Documentation can include a copy of a business license and the last two years of income tax returns. The defendant will be ineligible if he/she is a repeat sex offender, has multiple victims involving a sex offense, or has multiple sex offenses. If the defendant is a sex offender, he/she will not be eligible if self employed, working out of the home, employed by a family member or personal friend, or working in environments which the Work Furlough Program deems inappropriate. An example of an inappropriate working environment might be fixing pinball machines in a video arcade.

As you might expect, many of our clients will not be eligible for the program. However, the client will be admitted to the program if the sentencing Judge orders that the client be admitted. Keep in mind that work furlough is a Probation Department program and the Department is dependent on the cooperation of the Maricopa County Jail. If your client is an illegal alien, it is unlikely that the jail will cooperate in moving the client to the work furlough tents, even if the court has ordered that he/she be admitted to the program. The jail will not transfer the client if he/she has an INS hold or other pending charges.

### **Health Certification**

In addition to screening the client before sentencing, it is necessary to give the client a Health Care Provider's Certification form. This form must be filled out and signed by the client's health care provider. Essentially, the form certifies that the client is medically fit to live in the tents. It also certifies that the client does not have active TB or physical disabilities, which would prevent him/her from performing daily living tasks such as eating, dressing or transferring out of bed. The jail will not move the client to the tents unless this form is completed. The client should not take the only copy of this form into custody because it often gets placed in his/her property and is not accessible to the client until they are released from jail after completing their sentence. Often clients give the form to the Detention Officer and the form is misplaced or thrown away.

### **Follow Through**

Many lawyers mistakenly think that once their client has been ordered into the Work Furlough Program, their

work is done. Nothing could be further from the truth. If the lawyer does nothing more after sentencing, it is highly likely that the client will sit in jail for weeks before the Work Furlough Program is made aware of the Court's order. This is true of all clients, even those who were screened and found eligible for the program. The jail must get the paperwork from the Clerk of Court and move the client to the work furlough tents before the Probation Department will ever know that the client is to be admitted into the program. There is no set time as to when this will happen. It has happened in one day. It has happened after several weeks.

In order to ensure that the client gets into the Work Furlough Program as quickly as possible, the lawyer needs to contact the Work Furlough Program directly. It is highly recommended that the lawyer telephone Bruce Atkinson at (602) 372-5919, or Barbara Johnson at (602) 372-5931, to tell them the name, date of birth, and if applicable, the booking number of the person going into the program. If the person is self-surrendering, it is important to give the date of self-surrender. If you call Mr. Atkinson ahead of time with the client's name, date of birth and self-surrender date, the client can be put on the transfer list right away.

In addition, the lawyer should fax a copy of the Judge's order into work furlough, the complete terms of probation, including the monetary terms, and the Health Care Provider's Certification form, to the attention of either Bruce Atkinson or Barbara Johnson. The fax number is (602) 506-6335. It is helpful if the client has extra copies of their probation terms and Health Care Provider's Certification to take into the jail. They should keep these forms with them at all times.

The Judge's written order can be by minute entry, or it can be written as a specific order on the probation terms or as a specific order on the Order of Confinement. The order should state that the defendant is ordered into the work furlough program. If the defendant has been found ineligible after screening, it is not enough for the Judge to state that the defendant is eligible for work furlough. The order should not state which days or times the defendant will be released. If the order has that language, the jail will not know if the Judge intended work furlough or if he/she intended work release. Most often this will result in the jail taking no action at all.

### **Cost**

The Work Furlough Program is not free. The fee amount is calculated on a sliding scale. The daily rate is the client's hourly wage plus \$2.00 per day. For example, if your client makes \$8.00 per hour, his/her daily fee would be \$10.00. All participants must turn over their paychecks to the Work Furlough Program. The checks are sent to the accounting department of the Clerk of the Court. The daily work furlough fees for the pay period are taken out of the check, as are any court ordered fees, such as fines, restitution and jail incarceration costs which have not been deferred to a later time. Therefore, it is very helpful to the client if the court can be persuaded to defer all payments of fines, restitution and other fees until after he/she is released from jail. Work furlough fees will not be waived or deferred. After the client turns over his/her check, and the fees are deducted, the Clerk of the Court then issues its own check, which reflects any remaining monies. There is a two working day turnaround. In other words, if the client is paid on a Friday, they should not expect a check until the following Wednesday.

Even though the client has been ordered into the Work Furlough Program, they will not be allowed out to work until they have given the program a money order in the amount of \$125. This fee reflects a pre-payment of their work furlough fees and will not be waived by the Probation Department for any reason. The fee will not be waived even if the Court has ordered the defendant into the program and the defendant does not have the \$125.

The client should be told that it could take up to one week after sentencing before he/she will get out to work. Delay often occurs because the jail does not move the client to the tents in a timely fashion. After the client is moved to the tents, he/she will attend an orientation. Orientations are held on Monday through Thursday.

After orientation, the client will be allowed to go home to get five sets of clothing, items for personal hygiene, a mechanical alarm clock, no more than \$20 in cash, and a money order in the amount of \$125, that must be given to the Work Furlough Program. The client must also take a letter of understanding to his employer, which must be filled out and signed by the employer. The letter will tell the employer the rules of the program and

will inform the employer of the crime the client is convicted of. It will also explain the holidays on which the client will not be released to work. The employer must give the job address, phone number and the name of the client's supervisor as well as the client's hours of employment. The client will be expected to turn in the completed letter upon his/her return to jail on the day of orientation.

If a client is admitted to the program but is unemployed, he/she will be allowed five days to look for work. If they find employment, they will need the letter of understanding and the \$125 fee before being allowed out to work as well as the medical release form. If the client does not find a job within five days they will be sent back to full custody. In thirty days, they will be given another chance to find work.

If the client has a job, but his/her sentence is less than thirty days after they are transferred to the program, they will not be allowed out to work unless specifically ordered by the court. If the client does not have a job, the jail sentence after transfer must be 45 days or more. If the Court orders the client into the program and there is less than a thirty day sentence, the client will have to pay his/her fees in full before being allowed out to work.

### **Strict Adherence Policy**

There are very strict rules for the Work Furlough Program as well as strict jail rules. There is a zero tolerance policy for infraction of some of these rules, such as possessing contraband, or using drugs or alcohol. The Adult Probation Department believes that this program is a substantial benefit to our clients. They wish to see the program continue. They enforce the rules because they do not want the program jeopardized. Many counties in our State do not have this program in place.

There is a long list of jail rules and program rules, most of which are expected, for example no drugs or alcohol. But participants may be expelled from the program for less obvious reasons. They may be expelled if they do not return at the scheduled time. The time card or pay stub must be turned over to the program and will be checked. If the hours don't match with the hours out, the client may be expelled. Except for the first day out,

the client cannot return home at all while on work furlough and may be expelled if found at home. The client must get permission to go anywhere except the job site. If the client is working off the job site (with the knowledge of the program), they must page the surveillance officer whenever they move to a new site. If the client is not at the site when the surveillance officer checks up on them, they may be expelled from the program. Unfortunately, once a client is expelled, they will not be re-admitted to the program.

The client cannot be out to work more than twelve hours a day, including travel time. Most clients are allowed out to work up to six days a week. However, DUI clients are prohibited by statute from working more than five days a week. Most clients are allowed to work anywhere within the County. Sex offenders have more stringent restrictions regarding work sites.

### **Conclusion**

We all want our clients to succeed on probation. Hopefully, this article will be helpful to you in answering client questions about work furlough and I hope it will help you to get your client out to work as quickly as possible. I realize this article has given a lot of information about the Work Furlough Program, but, if you forget everything else, please remember the following:

- 1) Have your client screened for the program before sentencing.
- 2) Make sure your client has a copy of the medical form before sentencing and that it is completed before sentencing.
- 3) Telephone Bruce Atkinson or Barbara Johnson and leave a message telling them that your client has been ordered into the program and leave the client's full name, date of birth and booking number if applicable.
- 4) Fax a copy of the Judge's order regarding work furlough to either Bruce or Barbara along with a complete set of terms of probation and the completed medical form.





Frustrated because you just came across a troubling legal issue, but don't know the best place to start with your research? Panicked because you're in the middle of trial and need a specialized jury instruction? Troubled because you've got a strategic decision to make on a case and all of your usual "advisors" are unavailable?

Don't despair – Thanks to our Appeals Division attorneys, we now have an office *Legal Resource Center*. The Center is staffed by experienced appellate attorneys who are available to provide advice and assistance Monday through Friday. Additional resources are also available in the center, including a motion brief bank, RAJIs, and a complete compilation of newsletter articles. Similar materials are available in a resource center located at our Group C facility.



So, take a break from your usual routine, swing on by the legal resource center and pick an appellate attorney's brain – you might be surprised at what you'll find!

**LEGAL RESOURCE CENTER**  
**Luhr's Building, 3rd Floor, Room 301**

## **BULLETIN BOARD**

### **New Attorneys**

**Richard Gaxiola** will join the Office as a Defender Attorney effective June 11, 2001. Mr. Gaxiola is a 2000 graduate of the University of Arizona College of Law.

### **Attorney Move/Changes**

**Bob Ellig** accepted the Counsel position in Trial Group E, effective March 19, 2001. Bob has been with the Office since 1987. He has been a trial attorney in Group A throughout his career in the office, and has been a Lead Attorney since April 2000.

**Peg Green** was chosen as Counsel for Trial Group D, effective March 19, 2001. Peg joined the office in 1987. She has served as a trial attorney in Groups C and A and has been a Lead Attorney in Group A since March 1998.

**Christian Ackerley** became a Lead Attorney in Trial Group E, effective 3/19/01. Chris has been with the Office since 2000. Prior to joining the Office, he was with the Mohave County Public Defender's Office for several years.

**Victoria Washington** accepted a Lead Attorney assignment in Group A, effective 3/26/01. With the exception of 6 months with the Arizona Attorney General's Office, Victoria has been with the Office since 1997.

**Zubair Aslamy**, Defender Attorney assigned to Trial Group C, transferred to Group A, effective April 16, 2001.

**Jerry Hernandez** was selected as a Lead Attorney in Group A, effective April 30, 2001. Jerry has been a trial attorney with the Office since 1990.

**Steve Whelihan** was chosen as a Lead Attorney in Group B, effective April 30, 2001. Steve has been a trial attorney with the Office since 1990.

**Tom Timmer** was selected as the Lead Attorney of

the next Regional Court Center in Glendale. Tom joined the office in 1990 after practicing for a few years as a prosecutor. He was a trial attorney and Lead Attorney in Group A until 1998, when he joined the DUI Unit. Tom served as backup supervisor and mentor in the DUI Unit. Tom began his transition into his new position on May 14 by working with Joel Brown at the downtown RCC, while working off his present caseload.

**Frances Gray** will join the DUI Unit on June 22. Frances has been a trial attorney in Group B since joining the office in August 1996. Prior to joining our office, Frances was an Assistant Public Defender in Fredericksburg, Virginia.

**John Taradash** has been chosen as Lead Attorney for Trial Group B, effective June 25, 2001. John has been a trial attorney with the Office since 1989.

**Gerald T. Gavin**, Defender Attorney assigned to the Complex Crimes Unit, has resigned his position with the Office, effective June 15, 2001. Mr. Gavin began his Public Defender career in 1997 and was assigned to Trial Group D. In 1998, Mr. Gavin became a Lead Attorney for Trial Group C in Mesa. In 2000, Mr. Gavin was assigned to the Complex Crimes Unit. Mr. Gavin will be leaving to enter private practice and has accepted a City of Phoenix contract for indigent defense services.

**Gregory J. Navazo** resigned his Trial Group B Defender Attorney position with the Office of the Public Defender, effective May 4, 2001. Mr. Navazo will continue to assist the Office on a part-time basis for the Regional Court Center beginning May 7, 2001.

**Mark Nermyr** has resigned his Defender Attorney position with the Office, effective June 22, 2001. Mr. Nermyr began his Public Defender career in 1997. Mr. Nermyr is leaving the office to enter private practice.

**Trent Stewart**, Defender Attorney assigned to Trial Group C in Mesa, has resigned his position with the Office, effective May 4, 2001.

## The Third-Party Defense

*Continued from page 1*

at someone other than the person you represent is called the third-party defense. We often hear that a trial is a search for the truth, so one's first thought about this may be that it ought to be easy. After all, who could possibly object to the suggestion that perhaps someone else committed the crime? And surely no one would hold you to a higher standard than the prosecutor is held to in trying to prove your client guilty. Don't be too sure about that.

Your client is charged with robbery. He says he didn't do it. For whatever reason you come to believe that a third party – let's call him Mr. Smith – may have committed the robbery, not in any way with your client, but separate and apart from him. Establishing Mr. Smith's guilt establishes your client's innocence. You have what you think is some evidence of this. The question is, "What are you up against when you try to present this evidence?" A review of the Arizona case law on this subject demonstrates that the answer depends on the nature of your evidence against Mr. Smith. If your evidence consists of something other than incriminating statements made by Mr. Smith, then you have to deal with one standard. If, on the other hand, Mr. Smith has made incriminating statements, there is a different standard. It is fair to say that neither standard is designed to make things easy for you.

### The Inherent Tendency Rule

If you are trying to show that Mr. Smith committed the robbery with something other than Mr. Smith's statements, your evidence, to be admissible, must have an *inherent tendency* to show that Mr. Smith committed the robbery. Arizona has followed this rule at least since *State v. Schmid*, 109 Ariz. 349, 509 P.2d 619 (1973), a case that lawyers with four digit bar numbers will remember as involving the "Pied Piper of Tucson." Mr. Schmid killed his girlfriend and her younger sister, then foolishly told a man named Bruns about his deeds. Bruns soon told the police about the killings and even led the police to the bodies. At his trial, Schmid wished to suggest to the jury that Bruns himself had killed the two girls, by showing that Bruns had threatened his own girlfriend. The trial court wouldn't allow it. That ruling

was affirmed by our Supreme Court, which said, "The rule is that threats by a third person against a victim may not be shown unless coupled with other evidence having an inherent tendency to connect such other person with the actual commission of the crime." *Id.*, 109 Ariz. at 356, 509 P.2d at 626.

*Schmid*, of course, involved the most far-fetched sort of third-party defense – an attempt to show that, because the third party threatened to commit a similar crime against an unrelated victim, he may have committed the crime in question. *State v. Williams*, 133 Ariz. 220, 650 P.2d 1202 (1982) did not involve nearly so great a stretch. In that case, Williams sought to introduce evidence of threats by a third party to the same victim he was on trial for killing. The purpose was to show that the victim may have been killed by the person who made the threats. The trial court excluded the evidence and once again our Supreme Court affirmed. It said, in doing so, that these threats by the third party showed no more than "... a vague ground of suspicion...." *Id.*, 133 Ariz. at 231, 650 P.2d at 1213.

The most recent substantial pronouncement on this topic by our highest court came in *State v. Fulminante*, 161 Ariz. 237, 778 P.2d 602 (1988). In that case, the defendant was on trial for strangling and shooting to death his eleven-year-old stepdaughter. The third-party defense evidence which Fulminante wanted to introduce, and which the trial court excluded, was "...that a neighbor of the victim and the defendant drove a motorcycle, owned a .357 magnum handgun, had attempted to kill a police officer on one occasion, and was suspected of committing crimes against children." *Id.*, 161 Ariz. at 252, 778 P.2d at 617. Affirming the exclusion of this evidence, our court said:

Before a defendant may introduce evidence that another person may have committed the crime, the defendant must show that the evidence has an inherent tendency to connect such other person with the actual commission of the crime. Vague grounds of suspicion are not sufficient.

*Id.*

In light of these decisions, you are probably wondering if any conviction in Arizona has been reversed because the defendant was not allowed to present a third-party defense. The answer, so far as I am able to tell, is no.

You could conclude, I think, that the defense is mostly a mirage, just like many rules that in theory benefit a criminal defendant. You could also conclude that the inherent tendency rule requires more from a man trying to defend himself than is required of the prosecutor who is trying to convict him. The prosecutor, in trying to prove your client did it, need only have his evidence be relevant for it to be admissible. Rule 401, Arizona Rules of Evidence, states evidence is relevant if it has "...any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (my emphasis). Webster's Ninth New Collegiate Dictionary (1990) defines "any" as "one or some indiscriminately of whatever kind." The same dictionary defines "inherent" as "involved in the constitution or essential character of something." Thus, it is clear to me, at least, that there is a higher threshold for the defendant, when he tries to prove that Mr. Smith did it, than there is for the state when it tries to prove that the defendant did it.

Our colleague, Garrett Simpson, turned this criticism into an argument which he advanced in *State v. Wooten*, 193 Ariz. 357, 363, 972 P.2d 993, 999 (App. 1998). The argument fell, as they say, on deaf ears.

### Confessions

Let's change the facts a little. Now let's suppose that, in your trial preparation, you learn that Mr. Smith has *told* someone he did the robbery for which your client is on trial. Surely, you say to yourself, even the prosecutor would agree that Smith's admission possesses an inherent tendency to show that Smith is guilty of the crime. I think you're right about that. Mr. Smith said *he did it*, which has an inherent tendency to show that he did, in fact, do it because all one needs is to believe him. But what do you do? What do you face?

In an ideal world you would serve a subpoena on Mr. Smith, put him on the stand, and have him tell the jury that *he*, not your poor innocent client, did the robbery. As for this scenario, I say again – "It could happen" – but it comes under that heading "if pigs could fly." It is not likely. To start with, you may not be able to serve a subpoena on him due to the fact that he may be less than a model citizen. I have a case right now in which a third party told someone he did the murder for which my client was convicted (or at least this someone, who

was himself less than a model citizen, said he said it). But, alas, when it came time to serve a subpoena on him this third party was on death row in California.

If you do succeed in serving a subpoena on Mr. Smith, he may not honor it. If he does, there are other possibilities. Mr. Smith may be a criminal himself and/or he may be crazy – two conditions which are not mutually exclusive. But if you do serve him, what is most likely to happen is that – not wishing himself to go to the penitentiary – he will appear and invoke his rights under the Fifth Amendment. If this happens, you can't make him talk because you have no power to grant him immunity. The prosecutor certainly isn't going to increase the minuscule chance that he will lose the case by granting immunity. Nor will the trial judge compel the prosecutor to do so. So what do you do now? Can you use Mr. Smith's out-of-court confession? Surprisingly, you may be able to. But remember one thing, in this jurisdiction if you can get an out-of-court statement admitted, it becomes *substantive* evidence, which means that Mr. Smith's out-of-court statement may, if believed, "... prove the *truth* of the facts recited in the statement." *State v. Skinner*, 110 Ariz. 135, 141, 515 P.2d 880, 886 (1973) (emphasis supplied).

Rule 804(b)(3) of the Rules of Evidence is the avenue by which you may seek to have Smith's out-of-court statement admitted. The subheading of this rule is "Statement Against Interest." The rule provides that "... if the declarant (Smith) is unavailable as a witness..." then the following is admissible:

A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability *and offered to exculpate the accused* is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(emphasis added).

Obviously the first obstacle you must overcome is the necessity that Smith be unavailable. Fortunately, our Supreme Court has given that requirement a somewhat generous interpretation. For years it has held that a witness is “unavailable” if the witness asserts his privilege against self-incrimination. *State v. Fisher*, 141 Ariz. 227, 243, 686 P.2d 750, 766 (1984). Moreover in *State v. LaGrand*, 153 Ariz. 21, 27, 734 P.2d 563, 569 (1987) the court said that “[a] declarant need not expressly assert the privilege if his unavailability is ‘patent’ and assertion of the privilege is a mere formality.” If we apply these principles to our hypotheticals it seems to me we can draw several conclusions. The first is that, if Smith is in a position analogous to the declarant in my case (on death row in another state), you may have him considered unavailable under *LaGrand* without bringing him here, and perhaps without even serving a subpoena on him. The second is that, if you bring Smith to the courthouse and he says he will assert his Fifth Amendment rights, he is unavailable under *Fisher*. Of course, if you make a good faith effort to find Smith but fail to serve him, I think there is no question he is unavailable for purposes of the rule.

Once you have established Smith is unavailable, the admissibility of his statement should be analyzed under *State v. Lopez*, 159 Ariz. 52, 764 P.2d 1111 (1988). *Lopez* is the only Arizona case I am aware of in which a conviction was reversed because the defendant was improperly prevented from presenting a third-party defense.

In *Lopez*, the defendant and Guerrero were roommates. On this particular night, they were out driving around in Lopez’s car when they crashed into another vehicle. Unfortunately, they left the scene. Obviously, the question was “who was driving when the accident happened?” Because the authorities thought Lopez was driving, he was prosecuted and ultimately convicted. But before that happened, Lopez brought Guerrero to the courthouse because Guerrero had made various out-of-court statements to the effect that he, not Lopez, had been driving. Mr. Guerrero invoked his right to remain silent. The trial court refused to allow Lopez to use Guerrero’s out-of-court statements, thus preventing a third-party defense.

The Supreme Court reversed and remanded for a new trial based on a three-step analysis. First, it ruled that

Guerrero was indeed unavailable based on his assertion of the privilege. Second, it concluded that Guerrero’s statements to various people satisfied the first part of Rule 804(b)(3) saying, “Guerrero’s statements that he was the driver subjected him to criminal liability. Subjecting oneself to criminal liability qualifies as a declaration against interest.” *Lopez*, 159 Ariz. at 54, 764 P.2d at 1113. Finally, the court examined the facts in close detail to determine that the second aspect of Rule 804(b)(3) was satisfied.

In the present case, Guerrero stated no less than eight times to various individuals that he, not Lopez, was driving at the time of the accident. Among the persons to whom Guerrero made inculpatory statements are the prosecuting attorney, the defendant’s parents, and mutual friends of Guerrero and Lopez. In addition, there was evidence that corroborated Guerrero’s statements. Admittedly, there was other evidence that contradicted Guerrero’s statements, including the defendant’s own admissions of guilt. However, the existence of contradictory evidence alone does not automatically render Guerrero’s statements untrustworthy, and therefore, inadmissible. Instead, we must examine the facts of this case under the test we established in *LaGrand*, and decide whether the trial court correctly determined that Guerrero’s statements did not qualify under the statement against interest exception. (Citation omitted).

The evidence corroborating Guerrero’s inculpatory statements is: the number of times Guerrero made the statements; the variety of persons to whom Guerrero made the statements; Guerrero often drove Lopez’s car; Guerrero was with Lopez at the time of the accident; Guerrero was driving the Lopez car earlier the night of the accident; shortly after the accident, the driver’s seat was in the forward position – the way Guerrero, but not Lopez, drove the car; and Guerrero’s offer to assume partial responsibility for repairing Lopez’s car. The evidence contradicting Guerrero’s statements consists primarily of his own contradictory statements and of Lopez’s admissions that he was the driver.

In determining admissibility under Rule 804 (b) (3), however, the trial judge does not determine ultimate questions of credibility. That is a jury function. The trial judge's responsibility is only to determine whether a reasonable person could conclude that the declarant's statements could be true. If so, it is admissible and the jury determines the weight, if any, to be given to the statements. (Citation omitted).

After reviewing both the corroborating and the contradicting evidence, we are satisfied that a reasonable person could conclude that Guerrero's inculpatory statements could be true. Therefore, they are admissible.

*Id.*, 159 Ariz. at 55, 764 P.2d at 1114.

### CONCLUSION

It will probably be the very rare case in which the available evidence even suggests a third-party defense. If you have that case, this outline may help you to see what you are up against, and give you some suggestions on how to overcome the obstacles barring a third-party defense.



## *EXcerpts...*

*from letters received by the Public Defender*

April 2001 – I would like to thank you for allowing **Michael Eskander** the opportunity to present “Middle East Meets the Wild West.” We want to thank you so much for allowing Michael the time to make this presentation.

It was the most outstanding class we have had so far this year. He gave our officers and support staff valuable information about Middle Eastern culture and beliefs. These insights are so important in today's multi-cultural society.



His presentation and expertise have had a positive impact on our organization. We appreciate the dedication and commitment of your office to allow its employees to share their knowledge and expertise with other agencies. By doing so, we all benefit.

## Shannon's Law with a Dangerous Kick

### By Brad Reinhart Defender Attorney – Trial Group A

Shannon's Law (A.R.S. §13-3107) changed firing a gun within the city from a class 1 misdemeanor to a class 6 felony. But the defendant has a strong negotiating position when charged with a class 6 felony because a judge may leave the offense undesignated after a jury trial. Recently, however, the Maricopa County Attorney's office began filing an allegation of dangerousness (A.R.S. §13-604) in §13-3107 cases. By adding this enhancement, a defendant risks a year and a half to three years in prison *without the possibility of probation*. Fortunately, prosecutors may dismiss the allegation of dangerousness in exchange for taking a plea--which, unfortunately, is sometimes a 6 designated. The question becomes, "What choice is there at that point but to take the deal?"

Well, there is a choice: Convince the judge to dismiss the allegation of dangerousness. The State's allegation of dangerousness is based on the fact that there was a discharge or use of a firearm. The question of whether there was a discharge or use of a deadly weapon is a jury question. The defendant's argument, however, is that as a matter of law dangerousness cannot be applied to §13-3107. The basis for this is that the discharge or use of a deadly weapon is a necessary element of §13-3107 and it is therefore inappropriate.

There are three Arizona Supreme Court cases that address the use of an element of the underlying crime to enhance the punishment: *State v. Bly*, 127 Ariz. 370, 621 P.2d 279 (1980); *State v. Orduno*, 159 Ariz. 564, 759 P.2d 1010 (1989); and *State v. Lara*, 171 Ariz. 282, 830 P.2d 803 (1992). In *Bly*, the Court held that the presence of a weapon could not only be used as an element of armed robbery, but as a factor allowing for the enhanced range of sentencing and as an aggravating factor. The Court reasoned that the legislature created the enhancement statute and the Court would abide by the more severe punishment that results. *Bly* at 373, 282.

*Bly* set out the parameters that controlled the use of an element of the underlying crime to also enhance the sentence until *Orduno* was decided in 1989. *Orduno* is an aggravated DUI case where the jury found that the offense was dangerous because there was a dangerous instrument involved – the vehicle. The Arizona Supreme Court held that this was impermissible because the presence of a vehicle is a "necessarily included element of the underlying felony." *Orduno* at 567, 1011. The Court stated that the presence of the dangerous instrument **could not** increase the underlying crime because the instrument must always be present. *Orduno* at 566, 1012.

After *Orduno*, some Arizona courts began holding that no element of a crime could be used to enhance sentencing. See e.g., *State v. Lara*, 170 Ariz. 203, 823 P.2d 70 (Ariz. App. Div. 1 1990). The Arizona Supreme Court addressed this in a combined appeal, *State v. Lara*, 171 Ariz. 282, 830 P.2d 803 (1992), in which one person was convicted of armed robbery and kidnapping and the other appellant of manslaughter. In both cases there was a finding of dangerousness. The Court addressed the difference between *Bly* and *Orduno* by holding that *Bly* controls all cases except DUIs. The Court did state, however, that if it were writing on a clean slate, it might extend the rationale of *Orduno*. "[A] healthy respect for *stare*

*decisis*" motivated the Court, along with the fact that "hundreds, if not thousands, of non-DUI cases" have followed *Bly*. *Lara* at 285, 806.

*Lara* left it pretty clear that *Orduno* was only relevant in DUI cases and *Bly* is still controlling. Thus, the only effective method of fighting the allegation of dangerousness is to distinguish *Lara* and compare the application of dangerousness in DUIs to its application to §13-3107.

*Lara* is distinguished by the fact that the Court was not writing with a clean slate when it was decided in 1992, and it, therefore, had to maintain a "healthy respect for *stare decisis*." Section 13-3107 was not made a felony until 2000, so the *Lara* Court could not have considered it when writing its decision. Further, the fear of overturning hundreds, if not thousands of cases is inapplicable, as there have not been any appeals of §13-3107 as a felony--thus, no cases to overturn. Courts now have the chance to write on a clean slate as the *Lara* Court would have liked to do and still have a healthy respect for *stare decisis*.

After distinguishing *Lara*, a comparison of the application of dangerousness in DUI cases and the application of dangerousness in §13-3107 is accomplished by pointing out that only in these two types of cases is the presence of a deadly weapon or dangerous instrument absolutely necessary. The *Orduno* court's decision was based on the common sense realization that all DUIs involve a vehicle. Similarly, in all Unlawful Discharge of a Firearm cases, there must be a firearm. In other crimes, it is not essential that a weapon be present. In armed robbery cases for instance, the presence of a weapon is not a necessary element of the crime because the simulation of a weapon is enough. See e.g., *State v. Bousley*, 171 Ariz. 166, 829 P.2d 1212, (1992). The same is true with all other crimes which are enhanced by the presence of a weapon. Only in DUIs and §13-3107 is a deadly weapon or dangerous instrument always present. Furthermore, only with DUIs and §13-3107 is it impossible to increase the seriousness of the underlying crime because the element which would be used to enhance is always present.

If you win the motion to dismiss the allegation of dangerousness, you are back in a strong negotiating position. A copy of the motion I used is available internally on the shared drive under Newsletter/SampleMotions/DismissDangerousAllegation or by calling me at (602) 506-8251. This motion can be used on almost any § 13-3107 case because the only applicable fact is that a gun was fired and the State alleges dangerousness. Good luck.



# Internships: Linking Students, Professionals, and Community

**By Mike Fusselman**  
**Lead Investigator - Trial Group D**

At the Arizona State University School of Justice Studies internship fair held on March 26, 2001, Jim Fieberg, Internship Coordinator, provided each participating agency with a copy of the Maricopa County Public Defender's Office Investigation's Division Internship Program. We were honored to learn that the school has adopted our program as exemplifying a model internship.

As part of our ongoing commitment to provide service to the community, we are proud to participate in ASU's Undergraduate Internship Program. This program affords selected students the opportunity to take that which is learned in the classroom and apply it in a real world setting. Through experiential learning, students develop a practical understanding of the fundamental concepts that govern the operations in which they find themselves. In the case of the Public Defender's Office, students become familiar with the various aspects of providing quality indigent defense services. In addition to gaining valuable experience, interns earn either three credit hours for 128 clock hours of service or six credit hours for 256 clock hours of service.

Twice a year, representatives from various governmental agencies attend an internship fair held on the ASU campus. Judi Wheeler, our Facilities Coordinator, organizes the internship efforts of our various divisions. Margarita Silva, our Community Relations Coordinator, and representatives from Initial Services, Investigations and Legal Assistants appear at the fair on behalf of our office. At the fair, students have an opportunity to meet with our representatives and to familiarize themselves with the mission and organization of the various units.

Students who are interested in an internship opportunity within a particular function submit resumes and fill out applications. Applicants are later contacted by representatives from that unit. Successful candidates are required to complete an Internship Agreement, outlining the internship mission and the goals and objectives of the individual intern. The primary components of this agreement are knowledge acquisition, performance assessment, skill development, personal growth and professional development. Additionally, a University-Placement Agreement is signed, ensuring that the responsibilities of the placement, the University and the intern are clearly understood by all.

Each party in this cooperative endeavor benefits from the relationship. Interns have an opportunity to apply classroom theories in an actual work environment. They gain access to a professional network as well as opportunities for mentoring relationships. Internships allow students to evaluate their career options and to clarify their goals. They also develop responsible,

mature work habits and are exposed to a variety of individuals from varied backgrounds. An internship allows students to develop work experience consistent with their degrees and thus increases their post-graduation employability.

Departments providing internship opportunities form partnerships with educational institutions and provide input to better inform those institutions as to the relevancy and quality of the curriculum. Departments providing internships serve their community by helping to produce experienced, well-rounded individuals who are ready to contribute and achieve. Interns provide placements with valuable manpower and assistance in day-to-day operations. Educational institutions develop ties with the community and increase the employability of their students after graduation. This, in turn, enhances recruitment of new students and increases student retention.

Having an intern in your division or group is a very rewarding experience. It allows each employee within that unit to become a mentor and to share their knowledge and experience with the intern. Mentors benefit from the additional assistance and from the fresh perspective that students often bring. They increase their visibility and gain recognition for their efforts.

Interns receive valuable career guidance from mentors. They gain access to information that they may not otherwise obtain. Interns gain insight into the expected or appropriate behaviors for various professional settings. They receive feedback and direction on where to concentrate improvements to match expectations. Mentors provide emotional support and advice on balancing work and personal life.

This semester, Ken Strauss, a senior at ASU, has been working with the investigators of Trial Group D. Besides being a full time student, Ken works full time and is a member of the Arizona National Guard. Ken has spent time both in the office and in the field with each investigator in the group. Each investigator has assumed the role of mentor and has generously shared their knowledge and experience with Ken.

Our participation in the School of Justice Studies Undergraduate Internship Program helps to forge positive relationships among our county, our department, the students and faculty of Arizona State University, and our community. Please contact me, Judi Wheeler or Margarita Silva if you would like more information on how to be a part of this great program.



## **BULLETIN BOARD**

### ***New Support Staff***

**Stacy L. Begaye** joined the Office as a Records Processor assigned to the downtown Records Division, effective April 30, 2001.

**Annabelle Henderson** is a new Legal Secretary assigned to the Office's Trial Group A. Ms. Henderson joined the Office effective May 14, 2001.

**Carole A. Besore** joined the Office as a Legal Secretary Floater, effective May 14, 2001. Ms. Besore will be assigned to the downtown office.

**Jeffrey J. Tellez** has accepted a Law Clerk position with the Office, effective May 28, 2001. Mr. Tellez will be assigned to Trial Group B.

**Lauren R. Guyton** has accepted a Law Clerk position with the Office, effective May 28, 2001. Ms. Guyton will be assigned to Trial Group A.

**Fredrica L. Strumpf** has accepted a Law Clerk position with the Office, effective May 28, 2001. Ms. Strumpf has been assigned to Trial Group D.

**Jason Smith** has joined the Office as a Law Clerk, effective May 28, 2001. Mr. Smith will be assigned to the Juvenile Division, and will be located at SEF.

**Tammy L. Velting** has accepted a Client Services position with the Office of the Public Defender, effective June 4, 2001.

**Andrea Robertson** will return to the Office to be a summer aide in the Records Division, effective May 21, 2001.

**Matt Babicky** will return to the Office to be a summer aide in Trial Group A, effective May 22, 2001.

**Paul Espinoza** will be a summer Office Aide with the Office assigned to the Records Division, effective May 21, 2001.

**David Fierro** will be a summer Office Aide with the Office assigned to the Records Division, effective May 21, 2001.

**Juan Rodriguez** will be the Office Aide with the Office

assigned to the Administration Division, effective May 21, 2001.

### ***Staff Moves/Changes***

**Carol Hernandez** was promoted to Public Defender Secretary assigned to the Office's Juvenile Division at SEF effective 4/30/01.

**Luisa Lechuga**, Legal Secretary, has transferred from Juvenile Durango to Trial Group B, effective May 14, 2001.

**Lois Keith**, Legal Secretary in Trial Group E, has transferred to the Office's Juvenile Division at Durango, effective May 14, 2001.

**Iman Soliman**, Law Clerk in the Office's Juvenile Division at SEF, has transferred to Trial Group E, effective April 30, 2001.

**Amy Oberholser** has resigned her Trial Group B Lead Secretary position with the Office of the Public Defender, effective April 27, 2001. Amy will continue to work for the Office as a part-time transcriptionist.

**Matt Elm** is taking a temporary leave of absence from the Office of the Public Defender in order to resume his summer counselor position with the Boy Scout Camp near Payson, Arizona. Matt will return to the office on August 13, 2001.

**Jim Knapp**, Law Clerk in the Office's Juvenile Division at Durango, resigned his position, effective April 27, 2001.

**Jacqueline Conley** has resigned her position as Legal Secretary for Trial Group C with the Office, effective May 11, 2001.

**Patricia Taube** has resigned her Legal Secretary DUI Unit position with the Office, effective May 11, 2001.

**Roxane Mondhink** has resigned her Trial Group C Legal Secretary position with the Office, effective May 18, 2001.

**Lee Fuller** has resigned her position as Legal Secretary for Trial Group D, effective June 1

## ARIZONA ADVANCE REPORTS

By Stephen Collins



### **State v. Estrada, 342 Ariz. Adv. Rep. 8 (CA 2, 2/27/01)**

Defendant was charged with first-degree murder and pled to second-degree murder. The trial judge sentenced him to a maximum aggravated, twenty-two year term of imprisonment. As an aggravating factor, the judge found the murder was committed in an “especially heinous and depraved manner.” It was argued that this was improper because this aggravating factor was never alleged in the prosecutor’s sentencing memorandum.

The Court of Appeals held that a judge may find an aggravating factor from the evidence or from the presentence report. Unlike a capital case, the aggravating factor does not have to be alleged by the prosecution.

The “especially heinous, cruel or depraved” aggravating factor in capital cases, set forth in A.R.S. Section 13-703(F)(6) is worded similarly to the aggravating factor in A.R.S. Section 13-702(C)(5) for noncapital crimes. However, the noncapital “especially heinous, cruel or depraved” has been found to be justified on much broader grounds than its capital counterpart. Here, it was sufficient that Defendant had threatened his wife with a shotgun for an appreciable length of time before shooting her in the head.

The Court of Appeals held that the trial judge did not have to articulate mitigating factors. It is sufficient if the judge states the mitigating factors were insufficient to overcome the aggravating factors.

### **State v. Ossana, 342 Ariz. Adv. Rep. 11**

### **(CA 2, , 2/28/01)**

After a bench trial, Ossana was found guilty of possession of a narcotic drug, a class two felony. He was sentenced to prison for a term of 2.5 years.

A motion to suppress was combined with the bench trial. On appeal, Ossana asserted this was not merely a waiver of a jury but the submission of the issue of his guilt or innocence to the trial judge. As such, he argued he had to be informed of the range of sentence for the charge. The Court of Appeals held he merely waived the jury and did not have to be informed of the sentencing range.

The offense was covered by Proposition 200, which precludes the imposition of prison for possession of a controlled substance. There is an exception under A.R.S. Section 13-901.01(G) if there are two or more prior convictions for possession of a controlled substance. Ossana had two prior convictions for “attempted” possession of narcotic drugs.

The Court of Appeals held Ossana should not have been sentenced to prison because “attempted” possession could not be considered a prior possession conviction. It found “because Section 13-901.01(G) is ambiguous as to whether preparatory offenses are included in its purview, we apply the rule of lenity, which ‘dictates that any doubt should be resolved in favor of the defendant.’”

### **State v. Guillory, 342 Ariz. Adv. Rep. 3 (CA 2, 2/28/01)**

Guillory was found guilty by a jury of unlawful possession of a narcotic drug. He admitted a prior felony conviction for conspiracy to unlawfully possess a narcotic drug and a prior conviction for unlawful possession of a narcotic drug. He was sentenced to an eight-year prison term.

Proposition 200 requires probation for a drug offense unless a defendant has been convicted three times of possession or use of drugs. Guillory argued that this means he could be sentenced to prison only if he has three prior felony convictions. The Court of Appeals held that the “instant offense” was the third conviction and a prison sentence was appropriate.

Guillory also challenged the use of the conviction for conspiracy to unlawfully possess drugs as a prior conviction under Proposition 200. Conspiracy is not specifically listed in A.R.S. Section 13-901.01(G). The Court of Appeals held it was a prior conviction under Proposition 200 because it was drug-related.

Guillory had moved to suppress crack cocaine, which was discovered by police officers from whom he had fled. He ran when a police officer, patrolling in a “high narcotics area,” looked at him and made a hand gesture indicating the officer wished to talk to him. The Court of Appeals held this was not a seizure under the Fourth Amendment because there was no reason to believe Guillory was not free to leave or end the encounter.

**State v. Powers, 342 Ariz. Adv. Rep. 5**  
(CA 2, 2/27/01)

Powers drove into two pedestrians and then fled the scene. He was convicted of two counts of leaving the scene of an accident. The Court of Appeals vacated one of the convictions because, even though there were two victims, there was only one accident scene.

**In re: ROBERT A., 342 Ariz. Adv. Rep. 38**  
(CA 1, 3/8/01)

While at a football game on school property, Robert fired a flare gun into the sky to celebrate a touchdown

scored by his high school team. The flare traversed the sky and merged with the school’s fireworks and then burned out.

The state filed a two-count delinquency petition against Robert alleging misconduct with a deadly weapon and disorderly conduct. He was adjudicated delinquent on both counts.

A deadly weapon is defined as “anything designed for lethal use.” An expert testified that the flare gun was not designed for nor could it be modified for lethal use. Nonetheless, the juvenile court found the flare gun was a deadly weapon. The Court of Appeals held this was error and vacated the finding of misconduct with a deadly weapon.

A conviction of disorderly conduct requires proof of two mental states: (1) intent or knowledge of disturbing the peace and (2) recklessly discharging a deadly weapon or dangerous instrument. A disorderly conduct adjudication based solely on use of a dangerous instrument required proof that Robert acted recklessly. Recklessness required proof that he was aware of a substantial and unjustifiable risk that discharging the flare gun would disturb a person’s peace and that he consciously disregarded this risk. The risk must constitute a gross deviation from the standard of care that a reasonable person would observe in the situation.

The Court of Appeals found there was insufficient evidence that the use of the flare gun made it a dangerous instrument. It also found the state failed to prove the required mental state. Therefore, the adjudication of disorderly conduct was vacated.

## APRIL 2001 JURY AND BENCH TRIALS

### GROUP A

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/2-4/4	<b>Terpstra/Corey</b> Brazinskas Jaichner	Gerst	Blumenreich	CR00-17345 Forgery, F4	Not Guilty	Jury
4/3-4/4	<b>Cotto</b> Clesceri	Hutt	Toftoy	CR00-16955 Forgery, F4	Guilty	Jury
4/3-4/5	<b>Hernandez</b> Clesceri	McVey	Boyle	CR00-14002 2 <sup>nd</sup> Degree Murder, F1	Guilty	Jury
4/3-4/9	<b>Davis</b> Molina	Schwartz	Sukenic	CR00-08266 Practicing Homeopathic Medicine without a License, F5 Endangerment, F6	Guilty	Bench
4/6-4/6	<b>Hernandez</b>	McVey	Greer	CR00-17191 Child Abuse, F4	Guilty - Lesser Included Child Abuse, F5	Bench
4/9-4/10	<b>Reinhart/Dergo</b>	McVey	Beresky	CR00-10143 POM, F6 PODP, F6	Guilty – POM Directed Verdict on PODP	Jury
4/9-4/11	<b>Knowles</b>	Fenzel	Musto	CR00-13166 Agg. DUI, F4	Guilty	Jury
4/17-4/18	<b>Valverde</b>	Akers	Washington	CR00-17800 Forgery, F4	Not Guilty	Jury
4/24-4/26	<b>Valverde</b>	Budoff	Bernstein	CR01-00763 Agg. Assault, F3	Guilty	Jury
4/11	<b>Looney/Valverde</b> Jones	McVey	Flores	CR00-18636 2 cts. Theft Means of Transportation, F3 with 2 priors	Dismissed with prejudice day of trial	Jury
4/16	<b>Hernandez</b>	Schwartz	Godbehere	CR00-17314 Agg. Assault Dangerous, F3	Pled day of trial	Jury
4/17	<b>Farney</b> Clesceri Jaichner	Schwartz	Hunt	CR00-16467 Agg. Assault, F3 Dangerous	Dismissed without prejudice day of trial	Jury
4/19-4/23	<b>Looney</b> Clesceri Jaichner	McVey	Loefgren	CR00-19500 Agg. Assault, F5 Resisting Arrest, F6	Hung Jury	Jury
4/23	<b>Farrell</b>	Akers	Bernstein	CR00-18251 Kidnapping, F2 Dangerous Agg. Assault, F3 Dangerous	Dismissed day of trial	Jury
4/30	<b>Noland</b> Jaichner	Akers	Fish	CR00-17284 2 cts Forgery, F4 Taking Identity of Another, F5 Poss. Of Forgery Device, F4 Allegation of 702.02	Pled day of trial to 1 ct. Forgery; Dismissed remaining charges; Dropped 702.02	Jury

## APRIL 2001 JURY AND BENCH TRIALS

### GROUP B

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
3/26 – 4/4	<b>Noble</b> King Oliver	McClennen	Parson	CR00-14855 3 cts. Sexual Conduct w/Minor, F2	Guilty	Jury
4/3 – 4/11	<b>Roth</b> Muñoz Wells	Myers	Johnson	CR00-02639 Sexual Conduct w/ Minor, F2 2 cts. of Sex Abuse, F3	Guilty	Jury
4/4 – 4/5	<b>Mitchell</b>	Martin	Baldwin	CR00-16127 Theft Means of Transp., F3	Guilty	Jury
4/5 – 4/11	<b>Colon</b> <b>Bublik</b>	Hilliard	Clarke	CR00-019153 Custodial Inference, F6 Burglary 2, F3 Criminal Damage, M2	Not Guilty of Burglary; Guilty of Lesser Trespass and Criminal Damage; Hung on Custodial Inference;	Jury
4/10 – 4/12	<b>Peterson</b>	Martin	Green	CR00-13792 Drive by Shooting, F2	Not Guilty	Jury
4/11 – 4/13	<b>DeWitt</b>	Burke	Wolfram	CR00-16931 Agg. DUI, F4 Leaving Scene of accident, M1	Guilty	Jury
4/16 – 4/17	<b>Giancola</b> <b>Lopez</b> Wells	McClennen	Lindquist	CR00-10939 POND, F4 False Report, M1	Not Guilty - POND Guilty – False Report	Jury
4/23 – 4/24	<b>Walton</b> Erb	Schneider	Lindquist	CR00-16963 Unlawful flight, F5	Guilty	Jury
4/25 – 4/26	<b>Peterson</b>	Martin	Shreve	CR00-18172A POND, F2 PODP, F6	Guilty	Jury
4/8	<b>Healy</b> Erb	Schneider	Baldwin	CR00-12584 Attempted Armed Robbery, F2D Armed Burglary Dang., F3	Hung	Jury
4/25	<b>Navazo</b>	Guzman	Steinberg	CR01-00136 Disorderly Conduct, M1 Criminal Damage, M1	Dismissed with prejudice day of trial	Bench

### OFFICE OF THE LEGAL DEFENDER

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/2 - 4/2	<b>Ivy</b>	Jarrett	Mclroy	CR2000-097402 POM, F6	Guilty	Jury
4/4 - 4/6	<b>Westervelt</b>	Hoag	Flores	CR2001-000111 Theft-Means of Trans, F3; Poss. of Burg. Tools, F6	Not Guilty – Theft of Means and Poss. of Tools; Guilty – Unlawful Use of Means of Trans.	Jury

APRIL 2001  
JURY AND BENCH TRIALS

**GROUP C**

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/3 – 4/5	<b>Gaziano</b>	Jarrett	Goldstein	CR00-94917 Burg First Degree, F2N 2 cts Agg Battery w/weapon, F3D	Guilty	Jury
4/4 – 4/6	<b>Ozer</b>	Gaylord	Brenneman	CR00-96479 2 cts Agg DUI, F6N	Ct I – Not Guilty Ct II – Guilty	Jury
4/5 – 4/9	<b>Logsdon</b>	Willrich	Harrison	CR00-95589 Marij Poss/Grow/Proc, F6N PODP, F6N	Not Guilty	Jury
4/9 – 4/11	<b>Bond</b>	Gaylord	Gonzalez	CR01-90312 2 cts Agg DUI BAC .10 w/ passenger und. 15, F6N	Ct I – Guilty Ct II – Not Guilty	Jury
4/10	<b>Walker</b>	Oberbillig	Wilson	CR00-96696 Ct I, Agg Harassment, F5N Ct II, Crim. Trespass, F6N	Guilty of Interfering w/ Jud Proc on Ct I & Guilty on Ct. II	Bench
4/11 – 4/12	<b>Fox / Ramos</b>	Gaylord	Gordwin	CR00-96175 Resist Arrest, F6N	Directed Verdict	Jury
4/11 – 4/13	<b>Aslamy / Fox</b>	Barker	Rueter	CR00-96251 Fraud Schemes, F2N 3 cts Theft, F2N 3 cts Theft, F3N	Guilty of Fraud and 2 cts Theft, F2N; Not Guilty 3 cts Theft, F3N and 1 ct Theft, F2N	Jury
4/13	<b>Dunlap-Green</b>	Ore	Thompson	TR98-15354 DUI, M1	Guilty	Jury
4/16 – 4/20	<b>Stein</b>	Willrich	Sandish	CR00-93982 2 cts Agg DUI, F4N	Guilty	Jury
4/17 – 4/18	<b>Carey / Logsdon</b> Klosinski <i>Southern</i>	Oberbillig	McCoy	CR00-96107 Agg DUI, F4N	Guilty	Jury
4/24 – 4/25	<b>Zazueta</b> Geary	Fenzel	Gonzalez	CR00-97200 2 cts Agg DUI, F4N	Guilty	Jury
4/9	<b>Carey</b> Beatty <i>Southern</i>	Gaylord	Forness	CR00-95963 Child Abuse DCAC, F2N	Pled to C6 undesig. Child Abuse day of trial	Jury
4/13	<b>Kavanagh</b>	Hamblen	Baker	TR00-13505 Extreme DUI, M1	Pled to 1 <sup>st</sup> time DUI day of trial	Jury
4/17	<b>Hamilton/ Shoemaker</b> Arvanitas	Jarrett	McIlroy	CR00-97180 Agg Assault, F4N	Dismissed with prejudice day of trial	Jury
4/17	<b>Zazueta</b>	Oberbillig	McCoy	CR00-96646 2 cts Agg DUI, F4N	Dismissed with prejudice day of trial	Jury
4/19	<b>Buckallew / Lawrance</b> Kresicki	Fenzel	Brenneman	CR00-95364 2 cts Agg DUI, F4N	Mistrial	Jury
4/24	<b>Logsdon</b>	Willrich	Gordwin	CR00-95072 Marij Poss/Grow/Proc, F6N PODP, F6N	Dismissed without prejudice day of trial	Jury
4/25	<b>Sheperd</b>	Willrich	Krabbe	CR00-96773 2 cts. Agg Assault, F3D Discharge Firearm City Limits, F6N	Pled to Ct 1 Agg Assault; Ct 2 & 3 dismissed day of trial	Jury

**APRIL 2001**  
**JURY AND BENCH TRIALS**

**GROUP D**

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/4-4/9	<b>Washington</b>	Hotham	Sampson	CR00-14793 3 Cts. Sexual Conduct with a Minor under 12, F4 Attempt Sexual Conduct with a Minor under 12, F4	2 Cts. DV; 1 Ct. Not Guilty; 1 Ct. Guilty of Lesser Attempt	Jury
4/5-4/9	<b>Clemency</b>	Araneta	Kalish	CR00-17234 POND, F4; PODP, F6	Not Guilty	Jury
4/4-4/12	<b>Berko Salvato</b>	Budoff	Parsons	CR00-14803 2 Cts. Child Molestation, F2 Sexual Conduct with a Minor, F4	Not Guilty	Jury
4/25	<b>Parker</b>	Cole	Lemke	CR00-18797 2 Cts. Agg. DUI, F4	Guilty	Jury
3/21	<b>Berko / Geranis</b>	Budoff	DeBrigida	CR00-14632 PODD, F4 PODP, F6	Pled guilty to lesser/ fewer charges day of trial	Jury
4/9	<b>Harris</b>	Gerst	Reddy	CR01-00009 Agg. Asslt., F5	Pled to Cl. 6 Open day of trial	Jury
4/16	<b>Harris</b>	Budoff	Kever	CR00-15467 POND, F4 PODP, F6 POM, F6	Pled to PODP & 6 open POM day of trial	Jury
4/16	<b>Billar</b>	Gerst	Berstein	CR00-18793 Agg. Asslt., F3	Dismissed day of trial	Jury
4/17	<b>Geranis</b>	Gerst	Rodriguez	CR00-16475 Theft Means of Transportation, F3	Pled day of trial	Jury
4/19	<b>Parker</b>	Wilkinson	Davis	CR01-00560 Agg. Asslt., F6 IJP, M1	Dismissed without prejudice day of trial	Jury
4/19	<b>Billar</b>	Budoff	Kamis	CR01-00467 Theft of Means of Transportation, F3	Dismissed day of trial	Jury
4/23 – 4/27	<b>Schreck O'Farrell</b>	Budoff	Clarke	CR00-18804 Agg. Asslt. with deadly weapon, Dang., F3	Dismissed without prejudice day of trial	Jury

**OFFICE OF THE LEGAL ADVOCATE**

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/4	<b>Eaton</b>	Schneider	Wolfram	CR2000-008837 2 cts Agg DUI	Not Guilty	Jury
4/17-4/19	<b>Schaffer</b>	Schnieder	Schreve	CR2000-18188 MVT, F3	Guilty of lesser offense, F5	Jury

## APRIL 2001 JURY AND BENCH TRIALS

### GRUPE

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
4/9 - 4/12	<b>Flynn</b> Castro	Wilkinson	Gallagher	CR01-00279 Agg. Assault, F2D 2 Cts. Agg. Assault, F3D	Not Guilty F2 & F3; 1 ct. F3 dismissed	Jury
4/9 - 4/16	<b>Evans / Kent</b> Ames <i>Del Rio</i>	Jones	Hughes	CR00-14816 Murder 2, F1	Guilty	Jury
4/10 – 4/13	<b>Hanson / Pajerski</b>	Pillinger	Knudsen	CR00-11152 POM, F6; PODD, F4	Not Guilty	Jury
4/17 –4/18	<b>Goldstein</b>	Schwartz	Ireland	CR00-15654 Agg. Asslt. w/DW, F3 Agg. Asslt., F6D	Directed Verdict	Jury
4/23 – 4/27	<b>Goldstein</b> Souther/Gotsch	Schwartz	Lamm	CR00-14848 Agg. Asslt. w/DW, F3	Guilty	Jury
4/2	<b>Flynn</b> Castro	Araneta	Gallagher	CR01-00279 POND, F4; Assault, M1	Pled day of trial – POND Not Guilty of Assault	Bench
4/3	<b>Pajerski / Zigler</b>	Araneta	Adams	CR00-17987 Theft, F3	Pled day of trial	Jury
4/10 - 4/10	<b>Rock</b> Souther	Araneta	Mayer	CR00-18488 2 Cts. Agg. Asslt., F D	Dismissed without prejudice day of trial	Jury
4/12	<b>Roskosz</b>	Araneta	Todd	CR00-04074 Agg. DUI, F4	Pled to Endangerment, F6 day of trial	Jury
4/13	<b>Goldstein</b>	Heilman	Petrowski	CR00-18710 Child Molest, F2	Dismissed day of trial	Jury
4/16	<b>Richelsoph</b>	Reinstein	Simpson	CR00-00612 Crim. Damage, F4 Endangerment, F6D Assault, M1	Pled No Contest to F6 Open Stip. Probation	Jury
4/17	<b>Hanson</b>	Reinstein	Koplow	CR00-19034 Thft. of Mns. of Trnsp., F3	Dismissed	Jury
4/19	<b>Dergo / Duffy</b> Ames	Heilman	Mayer	CR01-00182 2 Cts. Misc. Inv. Wpns., F4	Pled 1 ct; ct 2 dismissed; 4 new cts dismissed	Jury
4/23 - 4/24	<b>Richelsoph</b>	Reinstein	Pittman	CR00-16161 Burglary, F3 3 Cts. Sex. Abuse, F5N	Hung Jury (5-3 guilty)	Jury
4/25	<b>Hanson / Pajerski</b>	Reinstein	White	CR00-18141 Agg. DUI, F4	Pled day of trial	Jury
4/25	<b>Flynn</b> Souther / Romberg	Araneta	Hanlon	CR00-18146 Attempted Armed Robbery, F3D	Dismissed day of trial	Jury
4/25	<b>Flynn</b> Souther	Araneta	Hanlon	CR00-16588 POM, F6; PODF, F6	Dismissed day of trial	Jury

### *for The Defense*

*for The Defense* is the monthly training newsletter published by the Maricopa County Public Defender's Office, James J. Haas, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 5th of each month.