



for *The Defense*

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

Damage Control Sentencing Advocacy in Maricopa County

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By Shelley Davis Trial Group A Supervisor

We *love* trying cases, arguing to a jury, objecting, and cross-examination. It's all good. That is, until the clerk reads that guilty verdict. Too often, that's when we start thinking about sentencing. In many of our cases, particularly in those where our client enters a plea, the most important work we do is preparing for sentencing. Here are ten things you can do to help minimize the damage to our clients and, hopefully, maximize their chances to succeed on probation. You probably won't do every one of them in every case, but any little extra effort can make a big impact.

Gather Information Early and Often

You know that old Chicago phrase, "Vote early, vote often?" Well it applies in a modified form, to sentencing. There are many opportunities to gather information to help your client. Here are just a few:

- Ask for your client's address and all relevant phone numbers when you first meet in justice court or at your first contact. This will save you considerable time down the road.
- If friends or family members come to court with the client, ask for their names, addresses and phone numbers. You might

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Sentencing Planning for Prison Bound Clients

By Linda Shaw Client Services Coordinator

It has long been perceived that our prison-bound clients have little hope for meaningful treatment programs while in prison. Fortunately, some very positive developments have occurred in this area.

When representing clients who are prison-

bound, it is helpful for attorneys to be aware of the services available to them at the Arizona Department of Corrections (ADC). This knowledge can assist you in discussing plea agreements with clients, preparing clients for the ADC classification process and being a persuasive and informed advocate at sentencing.

Substance abuse is a significant determinant of criminal behavior in our

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for The Defense

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want a letter from them later.

- Obtain releases from your client for his records. You can get school records, medical records, jail records and employment records. You can also obtain previous presentence reports if your client has prior felony convictions. These reports can be very helpful as the present presentence reports are often very brief and provide minimal social history or analysis. You may not need these kinds of records in every case but it is useful to think about how the records can help you explain the client's background and behavior.

Take Calls From Family Members

I know you are thinking, "I just don't have the time!" But family members can provide insight into your client's upbringing and issues. Even if they are upset, insulting or abusive, you can use this to demonstrate the difficulties the client is facing and perhaps explain his or her behavior.

Send Sentencing Memoranda to the Presentence Writer as well as the Court and Opposing Counsel

You may not be able to persuade the APO to adopt your sentencing recommendation, but your memorandum and any attachments such as character letters, psychological reports and client services reports will become part of the presentence report. This information can help the Adult Probation Department determine what services your client needs. If your client goes to prison, this information can assist DOC in properly classifying your client.

Talk to Your Client Service Coordinators

Even though you are not referring your client for a report because the plea agreement stipulates to probation, the CSC's have a wealth of information about drug treatment programs, shelters, halfway houses, jail programs and other services. They are a valuable resource for sentencing alternatives—take advantage of their knowledge and skills.

Send a Letter To Your Client Outlining What He/She Can Do To Assist With Sentencing

Many attorneys have a form "to-do" list for clients, giving direction to them regarding crucial areas, including writing letters to the court, getting in substance abuse programs, obtaining work furlough paperwork, preparing for the presentence interview, and making a positive impression on the court at sentencing. A sample form is provided on pages 4 and 5 of this issue of *for The Defense*. Something like this can be invaluable in getting the client and their family members actively involved in sentencing.

Review A.R.S. §13-702(C) and (D)

This statute sets forth statutory aggravating and mitigating circumstances. Look for ways to fit the facts and circumstances of the case and particular attributes of your client into these categories in order to argue for probation or a mitigated prison sentence. It is also useful to review the aggravating circumstances so you can explain why your client's case does not fit within those factors. Sometimes, referencing a specific 13-702 factor impacts the judge's decision.

Advise Your Client About the Presentence Investigation

We have all read presentence reports where things are going fine until we get to the defendant's statement. Your client is convicted of simple possession of narcotic drugs. He proceeds to tell the presentence report writer that he came to the United States illegally two weeks ago and has been selling crack out of a motel room. To avoid this situation, prepare your client. Tell him that the PSR writer will ask him about the offense. He should be truthful and not minimize his conduct. This does not mean he should talk about any other offenses he might have committed.

If your client is out of custody, review the basics, if necessary (it is often necessary): Be on time to the interview. Dress conservatively. (I have found this works better than "dress appropriately." You would be amazed at what some people think is appropriate.) Accept responsibility for the offense (unless, of course, your client has gone to trial maintaining innocence).

If you spend just five minutes reviewing these helpful hints, it will help give your client a fair shot with the

PSR writer. Additionally, if there is a particular area that your client should avoid discussing with the probation officer instruct him to politely inform the officer that his attorney advised him not to talk about certain things without counsel present. Finally, while it is not realistic for attorneys to accompany all clients to their interviews, there are, however, certain particularly sensitive matters that would warrant the attorney being present. For example, if you have a scared, impressionable client or one with a complicated criminal history, contacting the presentence writer and arranging to be present at the interview may be appropriate.

Suggest That Your Client Write a Narrative Including Goals for the Future

It can be a very frustrating experience to passionately argue for probation for your client, giving all the reasons and the impact of the offense, only to hear, when the judge asks your client if he has anything to say, "No, nothing." It is easy to think that he doesn't care. It is more likely that your client is scared to death to be standing in open court talking about himself. One way to deal with this problem is to have your client put his thoughts down on paper. His history, what led to this offense, how it has affected him, his plans and goals for the future. A well-thought-out letter explaining a realistic plan for the future can go a long way toward demonstrating that your client is showing the type of maturity needed to "turn the corner." Just be sure the client shows you the letter first.

Acknowledge to the Court the Seriousness of the Charge, Your Client's Record, and the Victim's Position

Generally speaking, the court is much more receptive to your arguments for leniency if you acknowledge the "warts" on your case/client first. If he did lousy on probation, admit it. Then talk about the changes he has made, or the support that he now has, which justify giving him another opportunity. Recognize and acknowledge the impact of the offense on the victim, if there is one. Don't paint your client as an angel if the horns and tail are clearly visible. By recognizing the problems, you gain credibility and become a more effective advocate for your client.

Be an Inspired and Passionate Advocate

Don't be afraid to be passionate at sentencing. Everyone has at least one positive quality or attribute that you can emphasize. Take the time to find that in your client. This is one of the most important moments of your client's life. Treat it that way.



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Public Defender



JEREMY D. MUSSMAN
Special Assistant

DIANE J. TERRIBILE
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Office of the Public

Defender

Tuesday, November 21, 2006

Client Name
Street Address
City, State Zip Code

Dear Client's Name:

These are several things you can do in order to help your case during the sentencing phase.

1. Write a letter to the judge. (Dear Judge _____:). Send the letter to me two weeks before sentencing. Your letter should address the following:
 - a) Whether you feel sorry for the crime.
 - b) Whether you accept responsibility for the crime.
 - c) What you are doing now in your life (drug rehab, employment, family).
 - d) Your plans for the future.
 - e) What you want from the judge regarding sentencing.
2. If you are out of custody and have a drug-use problem, go to drug rehab. Get signatures every time you go or a letter from the center. Let me know if you need the names of some good rehab facilities.

If you are in custody and have a drug-use problem, go to rehab in jail as many times as you can. Go to GED classes or any other classes. Get signatures every time. Keep your sign-in sheet and give it to me.

3. If you are out of custody and have a job, keep it. If you are unemployed, get a job.
4. After you plea, you will make an appointment to see a probation officer for an

interview if you are out of custody. If you are in custody, a probation officer will come to see you at the jail. Call me with the name and phone number of the probation officer who will be interviewing you, and the date of your interview. The Probation Department will give you forms to fill out. This information will be the basis of your presentence interview. It is very important. Call me if you have any questions on the paperwork. Fill it out completely and honestly. It is better if the interviewer gets information from you rather than from other sources. Be on time for your appointment and dress conservatively. Dress the same way for your sentencing. Be polite. Treat this like it is the most important job interview you will ever go to in your life!

5. Send me letters from people who will write to the judge (Dear Judge _____:) on your behalf. (Family, friends, employer, church). They should send their letters to me and I will submit them to the judge. The letters should be sincere, honest, and direct. If possible, they should be in the following form:
 - a) I would like the letters to be typewritten and on letterhead if at all possible. If the writers do not have access to a typewriter, they should write the letter out in longhand using a pen. They should write as legibly as possible and sign the letter in longhand.
 - b) I would like the first paragraph of the letters to describe the writer's general background. The writers should include the length of time they have been in the community, their business, and any other information about themselves that they think is important for the judge to know.
 - c) The second paragraph of the letters should fully discuss how they know you. I would like them to describe the length of time that they have known you, the circumstances surrounding that, and whether it involved employment and/or social contacts. I would also like them to discuss any contact that they have had with your family.
 - d) The final paragraph of the letters should simply set out what they think of you and explain the basis of their opinion. They should write about your character, honesty, integrity, and any other positive things that they can think of that would assist the judge in making the sentencing determination.
 - e) The letters should not discuss the crime or attack the criminal justice system.

I would like the letters to be prepared and sent to me two weeks before sentencing. If you have any further questions, concerns, or problems with any aspect of the process, please do not hesitate to contact me. My telephone number is XXX-XXXX.

Sincerely,

Defender Attorney

Sentencing Planning

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community. Therefore, a strong effort has been placed on providing program services to address addictions. (For the purposes of this article, “drug treatment” includes illegal chemical substances and alcohol). ADC also provides education services, sex offender treatment, spiritual mentoring and work programs.

With reducing recidivism as its prime objective, ADC has designed a treatment paradigm that offers a continuum of care for the inmate that begins upon arrival at the Alhambra Facility (for men) or Perryville (for women)—and may extend for several months after the inmate’s release (the After-Care Program). The following is a brief overview of services offered.

I. INITIAL CLASSIFICATION

Inmates are classified in the following categories: drug treatment, work skills, vocational training, and educational level. The scoring is based upon information provided by interviewing the inmate and evaluating certain documentation (e.g., medical records and/or reports that are included with the inmate’s transfer packet from the Maricopa County Sheriff’s Office).

Scoring criteria for drug offenders and sex offenders are:

A. Needs Scoring at Initial Classification

Every arrival at Alhambra/Perryville goes through a series of assessment screenings to determine their level of public and institutional risk score. Additionally, the need for intervention services are completed in the following areas:

- Alcohol/Drug Abuse Treatment
- Sex Offender Treatment
- Vocational Training
- Work Skills

1. Alcohol/Drug Abuse Treatment (A/D) Needs Scoring

The following represent procedures for Alcohol/Drug Abuse treatment and Sex Offender Treatment assessments:

This scale goes from the most severe level of addiction, ranked as a “5” to the least severe, ranked a “1.”

To be ranked as a “5” the inmate must meet the following criteria:

- in the three (3) years preceding the current incarceration, the inmate has been involved in compulsive, repeated substance abuse involving alcohol/drugs,
- a major portion of the inmate’s time has been occupied in obtaining and/or using alcohol/drugs,
- substance abuse must have contributed directly to the instant offense and the inmate’s arrest record reflects a pattern of apparent substance abuse related offenses, and
- the Presentence Report must mention the defendant’s substance abuse, addiction or chemical dependence.”¹

A “4” ranking indicates that:

- in the three (3) years preceding the current incarceration, substance abuse has contributed to irresponsible behavior or life style in employment, education, vocation training, interpersonal relationships, health, general well being, and criminal activity, and
- the instant offense was committed while the inmate was under the influence of alcohol/drugs and/or was committed to get money to purchase alcohol/drugs.

Level “3” includes the criteria for Level “4,” except that:

- the inmate may or may not have been under the influence at the time of committing the instant offense, and
- the offense was committed for reasons other than obtaining money to buy drugs and/or alcohol.

Level “2” includes all the above, except that:

- the substance abuse occurred more than three (3)

years prior to the instant offense.

To achieve a Level "1" ranking:

- no history of substance abuse is exhibited for at least ten (10) years.

2. Sex Offender Treatment Needs Score

This assessment is intended to reveal the degree of need for participation in programs designed to address the problems of sexual dysfunction and deviant behavior. Convictions for the following offenses are viewed by ADC as an indicator of the inmate's need for this type of intervention and treatment:

A.R.S. §13-604 "Serious Offenses"

- Sexual Assault
- Sexual conduct with a minor under fifteen years of age

A.R.S. §13-604 and A.R.S. §13-604.01 "Dangerous Crimes Against Children"

- Sexual assault
- Molestation of a child
- Sexual conduct with a minor
- Sexual abuse of a minor under fourteen years of age
- Taking a child for the purpose of prostitution as defined in §13-3206
- Child prostitution as defined in § 13-3212

Other sexual offenses as defined in A.R.S. Title 13, Chapters 14 and 32²

B. Handling the Assessment Screening Process

It is critical for the client to be as accurate as possible when confiding his level of substance abuse involvement to the classification officer. This is especially important for defendants who are not directly charged with drug offenses, but, nonetheless, are substance abusers.

It would be understandable for inmates to misconstrue the true purpose of the interviewer from ADC asking questions about an illegal practice and perhaps gloss

over or minimize his involvement with illegal substances. Clients should be advised that it is vitally important for them to discuss the level of their addiction. They can do so without referring to specific instances or actions (such as specific sales or purchases) as a safeguard against their revelations ever leading to further changes. In fact, if the full brunt of the client's addiction is not adequately communicated to the classification officer, chances are the level of treatment services will be deficient. The more acute the problem, the greater the level of treatment services that will be offered to the inmate. After the initial classification, inmates will be reclassified every 180 days.

ADC exercises a strong initiative regarding drug abuse control and interdiction. Ten percent of the general inmate population is tested for drugs by means of monthly urinalysis. All inmates who are in treatment units are tested monthly. Those testing positive are immediately subject to sanctions such as loss of contact visitation and privileges. In addition, if a Treatment Unit inmate tests positive for drugs, he is placed into special intensive intervention groups.

II. SECTION 504 SPECIAL EDUCATION OPPORTUNITIES

The Americans with Disabilities Act prohibits discrimination against persons with a disability. ADC fully implements all facets of the ADA.

A disabled person is defined in the Act as anyone who:

- (1) Has a mental or physical impairment which substantially limits one or more major life activity (major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working);
- (2) Has a record of such impairment; or
- (3) Is regarded as having such an impairment.

The Department has specific responsibilities in implementing the Act, including identifying, evaluating, and, if the inmate is determined to be eligible under Section 504, affording him access to appropriate educational services.

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ADC provides special accommodations for eligible inmates. These include:

- Providing a structured learning environment by allowing the student to keep his desk removed from the other students and giving him a written schedule for each day so he can follow the class;
- Placing a student in the least distracting location in the classroom;
- Having the student verbalize to the teacher what the task is and how he or she is to approach it, and checking back periodically to see that the student is still on track;
- Repeating and simplifying instructions; and
- Using multiple modalities of instruction, which will generally be more effective in maintaining attention and increasing learning. This includes using combinations of visual, tactile, and verbal approaches.³

Inmates who test below an eighth grade basic skills level are immediately referred for mandatory Special Education Services. For those who test at above the eighth grade level, all educational services are voluntary.

In addition, a number of advanced education opportunities are offered by ADC through Cochise Community College. It is possible to earn an Associates Degree while incarcerated. Many other courses are offered as well. The inmate can initiate this by submitting a request to his counselor.

If an inmate is able to achieve and maintain a low Institutional Risk score and has graduated from high school, many job opportunities exist at ADC for advancement. Through Arizona Correctional Industries, ADC employs more than 5,000 inmates in several trades, including furniture making, clothing manufacture and making license plates. These jobs reach the \$9.00/hr. level for the highest achievers. Experience in these jobs equip inmates to apply skills in the outside job market, thereby assisting the transition back into the community.

As with all other programs available at ADC, it is the inmate's responsibility to request services. If an inmate is motivated to use time effectively while at ADC and

request services, the opportunities exist.

III. SPECIAL SERVICES DIRECTED TOWARD WOMEN SUBSTANCE ABUSERS IN THE ADC SYSTEM

The ASPC Perryville Complex has been designated to house female inmates and serve as the Northern Arizona Release Center (NACRC). The Southern Arizona Release Center (SACRC) is located in Tucson. ADC has dedicated 192 treatment beds to serve as the Women's Recovery Academy at the Santa Cruz and San Pedro Units (October, 2001). This is a contracted substance abuse program and includes a minimum of twelve weeks of transitional/aftercare services once the inmate is released.

The Arizona Department of Corrections is also a partner in the Women's Treatment Network which was created in 1996 by the Maricopa County Adult Probation Department in conjunction with many other agencies involved in rehabilitating the female offender population.

The mission of the Women's Treatment Network is to create an "...integrated and coordinated system of assessment, supervision, and delivery of services for substance-abusing women in Maricopa County."⁴ This program was initially funded through a five-year Center for Substance Abuse (CSAT) grant. The program will remain operating with a slightly different configuration now that the grant period is expired.

IV. SPECIFIC ADC SUBSTANCE ABUSE TREATMENT PROGRAMS

A. For Convicted DUI Offenders

ASPC Douglas/Papago Unit

Designed to serve 325 males, this Unit offers a program called "Alternatives" that offers five hours of substance abuse education and/or treatment weekly for all inmates in the unit for as long as they are sentenced. In addition to the treatment program, many educational opportunities exist including classes presented by Cochise Community College.

ASP – Phoenix West (Private Prison)

This privatized alcohol treatment unit for 400 men provides a basic thirty hour alcohol and drug abuse treatment program in addition to work opportunities. However, a new contract will be in effect shortly and will mirror the requirements of the ASPC Douglas/Papago Unit. The treatment program, which is called Journeys-West, is delivered by staff employed directly by the private prison corporation and focuses primarily on alcohol abuse. Additionally, many seminar type classes such as parenting, family dynamics of addiction, and stress management are provided.

ASP-Florence West (Private Prison)

The private prison corporation operating this 400 bed privatized unit also manages ASP Phoenix West. The programs and services offered are the same but the program at this location is called *Journeys-East*. When this contract is renewed in 2002, it will mirror the one in the ASPC Douglas/Papago Unit, i.e. it will require a minimum of five hours of treatment per inmate for the entire stay at the unit.

B. For Other Substance Abusers

ASP – Marana Community Correctional Treatment Facility (Private Prison)

This privatized institution offers the *Turning Point* program, a fourteen-week intensive treatment program followed by a second phase of six week duration during which an inmate does release preparation planning. The program is cognitive-behaviorally based with a goal to release inmates directly to the community upon completion. This facility houses 450 male inmates. Admission to Marana is restricted to non-violent inmates who are serving between four and fourteen months, or have that amount of time remaining from a longer sentence being served.

ASPC Perryville/Santa Cruz & San Pedro Units

192 beds have been provided for minimum and medium classified female inmates at this complex. 96 Level III (Medium) beds are located at the Santa Cruz and 96 Level II (minimum) beds are located at the San Pedro Unit.

The program, called the *Women's Recovery Academy*, is

delivered by a private contractor through fifteen hours weekly of substance abuse educational and treatment services. Ninety days prior to release, a relapse prevention/release plan is developed. The participant is involved in making decisions about post-release needs, health care, child care, education, continued treatment etc. and this plan is coordinated by an agency that the inmate has access to once he is released.

ASPC Tucson/Winchester

The Winchester Unit located at ASPC – Tucson, is a Level III (medium) facility for 405 male inmates who have substance-abuse issues. This approximately nine-month intensive program is called *Options for Change*. It employs a cognitive-behavioral, values-based approach that emphasizes personal responsibility and teaches participants how to manage the many tangential aspects of addiction, such as anger, stress, domestic violence, parenting, and mental and physical health.

ASPC Eyman/Cook Unit

The Cook Unit houses inmates who have met the requirements to be housed as sex offenders. For inmates housed at this unit, a treatment program funded by a Residential Substance Abuse Treatment (RSAT) grant is offered. Inmates participating in the *Progressive Recovery* program are housed with those participating in the Mental Health Services Sex Offender program. Inmates are encouraged to participate in both programs.

V. TRANSITIONAL/AFTERCARE SERVICES

We all realize how essential transitional/aftercare services are for the inmate. Life after incarceration is daunting, even under the best of circumstances. However, in the lives of many of our clients, release from custody often brings the double jeopardy of homelessness and joblessness.

Fortunately, there have been some positive developments in this area. ADC now has the use of Proposition 200 funding to provide transitional/aftercare services and treatment for offenders on community supervision (parole). They have partnered with the Arizona Department of Health Services to place a staff person within the Regional Behavioral Health Agency (RHBA), Value Options. Known as a Correctional Officer/Offender Liaison, or "COOL," this person

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works with the offender's Parole Officers to fashion an individual transition plan that tries to match the offender's needs with what is available in the community. The "COOL" Officer is able to extend the continuum of substance abuse treatment for all released offenders—even those who received no substance abuse treatment while incarcerated.

VI. SUGGESTED TIPS FOR ATTORNEYS TO USE AT SENTENCING

A Maricopa County Superior Court Judge does not have the authority to mandate the Arizona Department of Corrections to place inmates in specific programs. However, there is a way to advocate on behalf of clients in court. If a client is definitely headed for ADC, make an informal assessment of his needs and probable risk scores and ask the sentencing judge to recommend specific treatment or programs as part of the sentence. For example, I would request the judge to recommend the defendant be placed in the Marana facility if he was a non-violent substance abuser who is sentenced to a short term (The program runs from 4 – 14 months).

It is always helpful for the sentencing judge to state, in the final Minute Entry, that the crime was precipitated by drug use. If the defendant has many priors, then it is very helpful for the court to indicate in its order that the criminal history derives from ongoing drug use that needs to be treated.

Further, if you have had your client evaluated by a psychiatrist, psychologist or neuropsychologist, ask the sentencing judge to staple the report onto the final Minute Entry. That piece of paper will follow your client as he heads out the door of the Maricopa County Jail system and into the Arizona Department of Corrections. It should be very helpful to the classification officers at Alhambra/Perryville to have a clinical evaluation of your client's state of mental health to assist in arranging the proper placement.

VII. ADC ON THE WEB

ADC maintains an excellent website that may be accessed at: www.adc.state.az.us. I recommend that all attorneys keep the site bookmarked. Approximately six weeks post-sentencing, you can go into the site and find out where your client ended up in the ADC system.

Information regarding classification scores, housing, disciplinary action, work detail and expected release date are all there for your perusal.

VIII. CONCLUSION

From a legal perspective, a prison sentence for any client is certainly the most undesirable outcome. For the defendant and the defense team, a sense of failure may be experienced when, after so much effort, a prison term is mandated by the sentencing judge. When seen from a substance-abuse treatment point of view, however, the outcome is not necessarily so grim. Attorneys have the opportunity to improve the experience of incarceration in ADC for defendants, regardless of the length of their sentence or nature of the crime, by familiarizing them with the addiction treatment and other services ADC now offers.

ENDNOTES

1. Arizona Department of Corrections Operating Manual, Chapter 11, Adopted 10/01/95.
2. ADC Classification Operating Manual, Chapter 11, Adopted: 10/1/95.
3. Arizona Department of Corrections: "Section 504: Information and Rights," 1996.
4. "Maricopa County Partnership Network Responds to Female Substance Abusers in the Criminal Justice System," Hoskins, Robin, April, 2000.



Great Grandson of Joel

By Joel Glynn
Defender Attorney – Appeals

Dear Reader,

You haven't heard from me for a while, but a lot has happened. The Arizona Rules of Procedure for the Juvenile Court ("RPJC") were amended on January 1, 2001. RPJC 88 through 93 (formerly RPJC 24-29) now deal with appellate procedure. There is also a new member of the family. You may recall that I wrote three articles about juvenile appellate procedure in the past and likened three generations of questions to the old Universal Pictures horror movies like "Frankenstein" and "Son of Frankenstein." Yes, there was "Joel," "Son of Joel," and, my personal favorite, "Grandson of Joel." I am much too young to admit this, but I have a new great-grandson. Ladies and Gentlemen, please meet my latest generation of top-ten "questions and answers" entitled "Great-Grandson of Joel."

QUESTION 10: I know that a Juvenile has fifteen (15) days after the disposition hearing to file a notice of appeal. When does that 15-day period begin to run?

I need to review this question again with you.

A juvenile's right to appeal is authorized under RPJC 88. A *Notice of Appeal* must be filed "no later than 15 days after the final order [of the juvenile court judge/commissioner] is filed by the clerk." RPJC 89(A). The "final order" for purposes of RPJC 89(A) is usually the disposition order, if there is no issue of restitution. If there is no issue of restitution, a *Notice of Appeal* filed not later than 15 days after the signed disposition order is filed is timely as to both the adjudication order and the disposition order. However, if there is a restitution order, the restitution order becomes the "final order" for purposes of RPJC 89(A) and the *Notice of Appeal* must then be filed no later 15 days after the restitution order is signed by the judge/commissioner and filed by the clerk. *In re Eric L.*, 189 Ariz. 482, 943 P.2d 842 (App. 1997). Where the notice was filed after the restitution order, the *Notice of Appeal* would be timely as to (1) the

adjudication order, (2) the disposition order, and (3) the restitution order. *In re Eric L. supra.* Therefore, do not file a *Notice of Appeal* if the issue of restitution remains an open question and/or a restitution hearing is scheduled on a future date. Wait until the clerk of the superior court files the signed written restitution order before you file a *Notice of Appeal*.

Sometimes a judge/commissioner will schedule a restitution hearing at the disposition hearing and set it to be heard on a future date. They then determine at the subsequent restitution hearing that the issue of restitution is closed because the victim failed to file a Verified Victims Statement of Financial Loss or they determine that the juvenile owes no restitution. In this instance the 15-day period to file a *Notice of Appeal* would begin to run from the filing date of the court's signed minute-entry and not from the date of the disposition hearing.

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Remember, the “final order” must be in writing and signed by the judicial officer. It makes no difference whether you were in court and heard the judge’s/ commissioner’s oral pronouncement of the order. The adjudication order or disposition order or restitution order is not deemed to be a “final order,” until it is reduced to writing, signed by the judicial officer, and filed by the Clerk. It makes no difference whether the “final order” comes in the form of a minute-entry or a separate written order prepared by counsel. RPJC 89 (A). *The significant date is not the day the judge or commissioner actually signs the order or the date that appears at the top of the minute entry. Rather, the important event is the filing date.* “Filing with the Clerk” takes place when the Clerk (1) affixes a file stamp on the signed minute entry or separate written order; or (2) marks the date of filing on the signed minute-entry or separate written order; or (3) separately memorializes the date of filing in the Clerk’s official records. RPJC 89(A). Consequently, a written order is not final for purposes of RPJC 89(A) if a busy courtroom clerk, for example, mistakenly files an unsigned minute-entry or written form of order. If that happens in your case, I suggest that you immediately contact the assigned judge’s/commissioner’s judicial assistant or courtroom clerk, explain the order’s deficiency, and request that the assigned judge/commissioner sign a new order.

QUESTION 9: What happens if the restitution order precedes the disposition order? Which order constitutes the “final order” for purposes of filing a timely Notice of Appeal?

The disposition order.

Arizona Revised Statutes Annotated § 8-235(A) (Supp. 2000) authorizes an appeal only from a “final order” of the juvenile court. Ordinarily, when restitution is an issue in a delinquency case, that is normally the last issue to be resolved, and the court’s final order is therefore the restitution order. *See In re Alton D.*, 196 Ariz. 195, 195-200, 667-68 (2000); *In re Eric L.*, 189 Ariz. 482, 484, 943 P.2d 842, 844 (App. 1997). If a restitution obligation has been imposed, but all other disposition issues remain to be determined at a future date, the “final order” from which the juvenile commences his appeal is the disposition order.

QUESTION 8: The juvenile files a timely Notice of Appeal from the restitution order. Due to his non-appearance, the judge orders that the disposition hearing be vacated and continued until the juvenile is in the custody of the juvenile court center. Does the Court of Appeals lack appellate jurisdiction?

Yes.

A.R.S. § 8-235(A) authorizes an appeal only from a “final order” of the juvenile court. When a restitution obligation has been imposed, but all other disposition issues remain to be determined at an unknown point in the future, the restitution order is interlocutory in nature and there remains no “final order” for purposes of A.R.S. § 8-235(A). For lack of a final order, the Court of Appeals lacks appellate jurisdiction and will dismiss the appeal for lack of jurisdiction, *sua sponte*, or pursuant to counsel’s motion to dismiss the appeal.

QUESTION 7: What is the page limit for the opening brief, answering brief, and reply brief?

The 1998 amendments eliminated page-limits unless the briefs were prepared in monospaced typeface. The Arizona Rules of Procedure for the Juvenile Court, effective January 1, 2001, continue that practice. Word-count is the key. RPJC 91 provides that ARCAP 13 and 14 apply to appeals from final orders of juvenile court, except that:

- (1) ...
- (2) A principal (opening or answering) brief prepared in a proportionately spaced typeface may not exceed 7,000 words, and a reply brief so prepared may not exceed 3,500 words....
- (3) A principal (opening or answering) brief prepared in a monospaced typeface may not exceed 20 pages, and a reply brief so prepared may not exceed 10 pages.

These word and page limits do not include the Table of Contents, Table of Citations, Certificate of Service, Certificate of Compliance, and any Appendix. (RPJC 91). Please remember that the text and footnotes must be 14 points or more and the word count may not exceed an average of 280 words per page including

quotations and footnotes, when briefs are produced with a proportionately spaced typeface.

QUESTION 6: If I discover that an automatic or requested transcript was not filed with the Clerk of the Court of Appeals and my opening brief is now due within 20 days, can I file a *Motion to Vacate Notice of Completion of Record* with the Clerk of the Court of Appeals?

Yes. The 1998 amendments significantly changed the procedure in this area.

Under former RPJC 26(f) and (g), service of the *Designation of Transcript* imposed on the court reporter the duty to prepare, file, and distribute the designated transcript within 30 days of service. The court reporter had no obligation to do anything under those rules, unless the court reporter was served with a *Designation of Transcript*. Former RPJC 26(c) authorized the Clerk of the Court of Appeals, after the appeal had been docketed, to file the record as received and to immediately mail notice to all parties of the date in which the appeal was docketed. Appellant's opening brief was then due within 20 days after the mailing of this notice. (See Former RPJC 27(b)). The notice contemplated by former RPJC 26(c) merely notified counsel that the record had been filed, not that it was "complete." Therefore, the running of the 20-day period for filing Appellant's Opening Brief in the Court of Appeals was not affected—in the old days—by the lateness or absence of a transcript.

Things changed in 1998. Counsel was no longer required to file a *Designation of Transcript*. The 1998 amendments eliminated the designation of transcript and placed the responsibility on the Clerk of the Superior Court to review the court file and to serve a copy of the *Notice of Appeal* on each court reporter or word processing operator who was required to file a transcript of proceedings automatically in the record on appeal. See, former RPJC 25(c)(1) and 25(d)(2). RPJC 89(C)(1) and 89(D)(2) continue that practice.

The Clerk of the Court of Appeals is still required "upon receipt, . . . [to] file each portion of the record on appeal . . . [and] mail notice to all parties on the date in which the record on appeal is complete." RPJC 90(E). If a transcript is missing when the opening brief is due, you may file a *Motion to Vacate Notice of Completion*

of Record and advise the Court of Appeals that a designated transcript (or one that is automatically included in the record on appeal) was not filed by the court reporter or word processing operator. Be sure to identify the court reporter/word processing operator and the date of the missing transcript. Alternatively, you can contact the court reporter, discuss the missing transcript(s), and determine when the court reporter can file the original transcript(s) with the Court of Appeals and deliver a copy to you. If the court reporter cannot file the original transcript and deliver a copy to you before the opening brief is due, you could then file a *Motion for Extension of Time* to file the opening brief with the Clerk of the Court of Appeals. See RPJC 88 (C). If you take this approach, be sure to advise the Court of Appeals in your motion that the missing transcript was included in the record on appeal (automatically or by designation); that you contacted and discussed the matter with the court reporter/word processing operator, and that the court reporter/word processing operator advised you that the missing transcript would be filed with the Clerk and a copy delivered to you by a certain date.

Then again, you might not have to do anything. RPJC 90(B) requires the court reporter/word processing operator to file a completed original transcript of proceedings with the Clerk of the Court of Appeals within 30 days following the filing of the *Notice of Appeal*. Once the record is deemed complete, the Clerk of the Court of Appeals is then required to "mail notice to all parties of the date in which the record on appeal is complete." (RPJC 90(E)).

The Court of Appeals sometimes mails notification to the court reporter/word-processing operator that the transcript(s) is due within the 30th day following the filing the *Notice of Appeal*. Generally, this notice is mailed before the due-date of the transcript and includes the following court order:

" . . . The opening brief shall be filed on or before the later of . . . [the original due date] . . . , or the twentieth day following the filing of the last outstanding transcript with the clerk of this court."

(Continued on page 14)

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No notice is sent pursuant to RPJC 90(E), because this order sets the due date for the opening brief.

QUESTION 5: RPJC 90(B) requires a court reporter to file the transcript no later than 30 days after the filing of a *Notice of Appeal*. If the court reporter can't comply and does not obtain an extension of time from the Court of Appeals for preparing and filing the transcript, what action can the Court of Appeals take?

The 1998 amendments eliminated the provision of former RPJC 25(i) that permitted court reporters or word processing personnel to apply to the presiding judge of the juvenile court for an extension of up to 30 days for preparing and filing the transcript. Historians will remember that the 1998 amendments—RPJC 26 (b)—then required court reporters or juvenile court word processing personnel to file the transcript with the Court of Appeals. This was to be done within 30 days after the filing of the *Notice of Appeal*, if the *Notice of Appeal* stated that the juvenile proceeded with appointed counsel in the juvenile court when the final order was filed. RPJC 90(B)(1) continues that practice. Because the court reporter or word processing operator is now required to file the transcript(s) with the Clerk of the Court of Appeals and not the Clerk of Superior Court, the court reporter or word processing operator may only apply to the Court of Appeals for an extension of time to file the transcript.

History tells us that some court reporters do not take the time to ask the Court of Appeals for an extension of time to file the transcript(s). Sometimes, they fail to obtain an extension of time to file the transcript, even though the Court of Appeals mailed notice to them, telling them in advance when the transcript is due and when Appellant's Opening Brief is to be filed. What happens then?

The Court of Appeals can impose sanctions against the noncomplying court reporter pursuant to RPJC 90(C). RPJC 90(C) provides that "[i]f the transcript is not timely filed with the clerk of the court of appeals, the noncomplying court reporter or reporters or juvenile court word processing personnel shall be subject to such orders or sanctions as the court of appeals deems appropriate in its discretion."

The Clerk of the Court of Appeals is vigilant and routinely reviews the record for compliance. The court reporter's failure to file the transcript(s) in a timely fashion or to request an extension of time will surely surface to the clerk's attention. When this happens, the Court of Appeals will order the court reporter/word processing operator to 1) prepare and file the missing transcript(s) with the clerk of that court and 2) distribute the missing transcript(s) to the parties by a certain date. If the transcript is not timely filed with the Clerk of the Court of Appeals and appropriately distributed by the targeted date, the court reporter is ordered to appear before a department of the Court of Appeals on a certain date and time to show cause why sanctions should not be imposed for violation of the Court's order.

When that happens, it is unnecessary for appellate counsel to seek an extension of time to file Appellant's Opening Brief. The Court of Appeals would generally order that Appellant's Opening Brief be filed on or before a certain date. But be careful.

Always contact the clerk to determine the status of the case. Contact the clerk and ask if the transcript was filed and when it was filed. Remember, the 20-day period to file the opening brief runs from the date that the transcript was filed and not when appellate counsel receives it in the mail.

QUESTION 4: Is a juvenile's red file or social file automatically included in the record on appeal?

The answer is still "No."

As an historical note, the juvenile's social file used to be called the "red file", because all the reports in the social file are/were actually housed in a file that was red in color. It is still called the "red file" even though the clerk's practice of actually transmitting a red file containing the social file to the Clerk of the Court of Appeals has long been abandoned. In fact, you will see the words "red file" written on the social file that is filed with the Clerk of the Court of Appeals.

The social file is not the same as the legal file. The social file contains disposition report(s), written reports of any psychological examination(s) conducted on the juvenile, counseling reports, school records, verified victim's statements of financial loss, and any related correspondence. The legal file includes certified copies

of all pleadings, orders, and other documents filed with the Clerk of the Superior Court. The legal file is automatically included in the record on appeal unless any portion is deleted pursuant to RPJC 89(E)(2). RPJC 89(D)(6).

The social file is still not automatically included in the record on appeal. If you wish to include the social file in the record on appeal (e.g., because you have an issue regarding the disposition imposed on your client); you must designate the social file in the *Designation of Record* form. RPJC 89(E)(1).

QUESTION 3: When the Court of Appeals renders a decision, affirming the orders of the juvenile court, where do I file a *Petition for Review* and can I ask for an extension of time to file a *Petition for Review*?

A *Petition for Review* should be filed with the Clerk of the Court of Appeals “within 30 days after the clerk of the court of appeals has given notice that a decision or final order disposing of the appeal has been rendered.” RPJC 92(A). In other words, the *Petition for Review* must be filed within 30 days of the date of the Court of Appeals’ decision. This 30-day deadline to file the *Petition for Review* is not extended by an extra 5 days to compensate for the mailing of the Court of Appeals’ decision.

If you cannot file the *Petition for Review* within 30 days, it is still possible to obtain an extension of time to file it. Motions to extend the time for filing a *Petition for Review* shall be filed in and determined by the Court of Appeals. RPJC 92(J). Please note that any motion to extend the time for filing a *Cross-Petition for Review* should be filed in and determined by the Arizona Supreme Court. RPJC 92(J).

QUESTION 2: The juvenile decides to dismiss his appeal after the *Notice of Appeal* was filed. What procedure do I use to dismiss the appeal and does it make any difference whether the juvenile decides to dismiss the appeal after the opening brief or the reply brief was filed?

You can move to dismiss the appeal at any stage. However, you have to do more than merely file a written *Motion to Dismiss Appeal*.

RPJC 88(G) provides that certain sections of the Arizona Rules of Civil Appellate Procedure (“ARCAP”) apply to appeals from final orders of the juvenile court. ARCAP 26 (Voluntary Dismissal) is one of those sections.

A written *Consent to Dismiss Appeal* form should accompany the *Motion to Dismiss Appeal*. This consent form should reflect the juvenile’s wish to dismiss his/her appeal, that you have discussed the case and reasons for the dismissal with the juvenile, that the juvenile understands that he/she cannot resurrect the appeal or the issues once the appeal is dismissed. The juvenile’s dated signature must appear on the *Consent to Dismiss Appeal* form. The juvenile’s signature does not have to be notarized. The suggested language to be featured in a *Request for Dismissal of Appeal* form is as follows:

“(Name of the Juvenile), the Appellant in this action, hereby requests that the appeal in this matter be dismissed as I no longer wish to appeal the (adjudication of delinquency or disposition or restitution) (transfer order) entered against me in this case.

I have had the opportunity to discuss this matter fully with my attorney and I understand that my attorney will file a motion to dismiss my appeal.

I also understand that once the appeal is dismissed, I will not ever be able to appeal the adjudication of delinquency or disposition or restitution order [or transfer order] in this case.”

QUESTION 1: My client was committed to the Arizona Department of Juvenile Corrections for an incorrigible offense. That disposition was illegal. Does the juvenile court retain jurisdiction to change that disposition even though I have filed a notice of appeal on my client’s behalf?

Yes.

The juvenile court lacks statutory authority to detain juveniles in a juvenile detention facility as a dispositional consequence for incorrigible behavior.

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Gila County Juvenile Action v. Duber, 169 Ariz. 47, 816 P.2d 944 (App. 1991); *In re Sheree M.*, 197 Ariz. 524, 4 P.3d 1067 (App. 2000). A “juvenile detention facility” is a facility where juveniles are detained.

A “juvenile secure care facility” is a secured facility through the Juvenile Department of Corrections. (See A.R.S. § 41-2816). For a juvenile to be in a juvenile secure care facility means that the child has been committed to the Juvenile Department of Corrections until the child turns 18. The term “secure care” under A.R.S. § 8-201(25) and A.R.S. § 41-2801(5) means:

“Confinement in a facility that is completely surrounded by a locked and physically secured barrier with restricted ingress and egress.”

The juvenile court cannot commit your client to the Arizona Department of Juvenile Corrections for incorrigible behavior. If it happens, the disposition constitutes an illegal sentence. An illegal sentence is void. *Kennedy v. United States*, 330 F.2d 26 (9th Cir. 1964). In my judgment, the juvenile court can modify an illegal disposition even though you have filed a *Notice of Appeal*.

The superior court may grant *habeas corpus* relief to a juvenile who is unlawfully held in custody. *H.M.L. v. State*, 131 Ariz. 385, 641 P.2d 873 (App. 1981); *Arizona State Department of Public Welfare v. Barlow*, 80 Ariz. 249, 296 P.2d 298 (1956). Consequently, the Superior Court has jurisdiction, because a *Writ of Habeas Corpus* is a proper means for requesting release of a prisoner and for requesting release of a child from a custody order. (See *e.g.*, *Carrion v. State*, 113 Ariz. 303, 552 P.2d 1197 (1976); *Tyree v. Moran*, 113 Ariz. 275, 550 P.2d 1076 (1976); *Aye v. O’Neal*, 9 Ariz. App. 437, 453 P.2d 553 (1969)). (See also, A.R.S. § 13-4121 *et seq.*).

RPJC (F) states that:

“During the pendency of an appeal, the juvenile court may proceed within its legal authority on an issue remaining before it or newly presented to it to the extent . . . (2) the juvenile court’s ruling on the issue would be in furtherance of

the appeal; or . . . (4) the juvenile court’s ruling on the issue would not legally or practically prevent the appellate court from granting the relief requested on appeal. . . .” [Emphasis added].

If a juvenile is detained at the Adobe Mountain Juvenile Correctional Facility as the result of committing an incorrigible act, the disposition is illegal and void. Counsel may file a *Petition for Writ of Habeas Corpus* and *Affidavit* in juvenile court and ask the committing juvenile court judge to order the release of the juvenile from the Arizona Department of Juvenile Corrections—e.g., Adobe Mountain Juvenile Correctional Facility—pursuant to RPJC 88(F) and A.R.S. § 13-4121 *et seq.* The *Petition for Writ of Habeas Corpus* should specifically ask the Clerk of Superior Court to issue a *Writ of Habeas Corpus*, directing Respondent (Arizona Department of Juvenile Corrections) to have the body and person of the juvenile before the committing judge at a time and place certain and to show cause why the juvenile should not be released or, in the alternative, immediately released to the custody of his parents. Counsel would also request that the dispositional order, committing the juvenile to the Arizona Department of Juvenile Corrections, be vacated.

Of course, another approach could be taken. Counsel could file a *Motion To Stay* the execution of the disposition order with the Clerk of the Court of Appeals. See, RPJC 88(B). The Court of Appeals could then stay execution of the disposition order, provided suitable provision is made for the care and custody of the juvenile while the matter is pending on direct appeal. In exercising its discretion to grant or deny a stay, the appellate court “may consider the likelihood that the order on appeal will be reversed, the best interest of child, and any other pertinent legal or equitable questions.” RPJC 88(B).



ARIZONA ADVANCE REPORTS

By Terry Adams
Defender Attorney – Appeals



State v. Ward
 348 Ariz. Adv. Rep. 3 (CA 1, 05/24/01)

The defendant was found guilty except insane for two counts of aggravated assault class 3 dangerous felonies. He was committed to the Arizona State Hospital for 15 years, the equivalent to two consecutive 7.5 year terms. On appeal he argues that the court was without authority to sentence him to consecutive terms because the statute, A.R.S. 13-502 (D) does not include any reference to statutory authority for consecutive sentencing. The appellate court found that the court has the inherent power to impose consecutive sentences, and absent an abuse of discretion the sentence is proper.

State v. Wilson
 348 Ariz. Adv. Rep.40 (CA2, 05/31/01)

The defendant was charged with fraudulent scheme for allegedly filing a fraudulent claim for workers' compensation benefits. The indictment was based on the discrepancies between the defendant's complaints to physicians and various physical activities he engaged in. He asserted the physician-patient privilege and the trial court agreed and suppressed any statements made to the various doctors. The state appealed. The state argued that the privilege did not apply because the defendant was pursuing a false claim and there was no real injury. The court disagreed holding that the privilege applies even if there is an ulterior motive in seeking treatment. Besides, the state's argument is based on the premise that he committed fraud, which has not been proven. The court also rejected the state's argument that public policy justifies an abrogation of the privilege. The court also found no waiver in this particular case and affirmed the trial court's ruling.

Kyle M, In re,
 349 Ariz. Adv. Rep. 22(CA 1, 6/07/01)

The defendant was charged and adjudicated delinquent for threatening and intimidating in violation of A.R.S. section 13-202-(A)(1). The defendant grabbed a schoolmate's arm and told her he would kill her if she

told anyone of a threat he had previously made toward someone else. On appeal he argued that the state failed to prove that he acted with "wrongful intent," and that he uttered a "true threat" to the victim. The court held that the statute does not require the state to prove wrongful intent. However the state must prove that the defendant communicated a "true threat." A true threat is one that under the circumstances a reasonable person would foresee his words would be taken as a serious expression of an intent to inflict bodily harm, and his statements were not a result of mistake, duress, or coercion. In this case there was sufficient evidence to uphold the trial court's ruling.

State v. Weekley
 349 Ariz. Adv. Rep. 3 (CA 1, 06/05/01)

The defendant had rented a hotel room. On the last day of his rental agreement hotel employees entered the room for housekeeping purposes. They discovered what appeared to be a drug lab. They called the police. An officer arrived and was shown the room and the items that had been discovered. The officer waited for the defendant to return at which time he was arrested. The police eventually seized the chemicals and other drug related items in the room without obtaining a warrant. The trial court suppressed the evidence and the state appealed. The appellate court found that the hotel employees search constituted a private, rather than state, action and therefore did not implicate the Fourth Amendment. And because the initial entry by the police did not exceed the initial private search, that also did not constitute a fourth amendment "search." The second search and seizure occurred after noon when the defendant's rental agreement expired and therefore he no longer had the right to use the room nor did he have any expectation of privacy. Therefore that search was not in violation of the Fourth Amendment either. The trial court's ruling was set aside.

JULY 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
6/12-6/13	Rempe Jones Roka	Ballinger	Pacheo	CR00-17657 Theft, F3	Hung Jury 7-1 for Not Guilty	Jury
6/27-7/3	Valverde	Franks	Conrad	CR00-03027 Manf. Dang. Drugs, F2 Poss. Equip. Manf. Dang. Drugs, F3 2 cts. Misconduct with Weapons, F4 PODD, F4 PODP, F6 Resisting Arrest, F6 Agg. Assault, F6	Not Guilty of Manufacturing Dang. Drugs and Agg. Assault Guilty on all other counts	Jury
7/18-7/20	Rempe Elzy	Yarnell	Adleman	CR01-05889 Unlawful Imprisonment, F6	Not Guilty	Jury
7/19-7/19	Looney	Henry	McLaughlin/ Brinker	MCR01-00079 3 cts. Assault DV	Not Guilty	Bench
7/24-7/25	Scanlan	Kaufman	Washington	CR01-04107 POND, F4	Guilty	Jury
7/26-7/26	Valverde	Watkins	Serafine	CR95-00970 5 cts. Game & Fish Violations, M2	Not Guilty	Bench
7/16-7/26	Aslamy	Henry	McLaughlin	TR01-00347 Reckless Driving, Ms	Not Guilty	Bench
7/30-7/30	Scanlan	Willett	Washington	CR01-05884 Burglary, F4 Poss. Of Burglary Tools, F3	Pled day of trial	Jury
7/31-7/31	Noland	Cates	Todd	CR01-03566 2 cts. Agg. DUI, F4	Dismissed w/o prejudice day of trial	Jury

GROUP B

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/3	Duncan	Yarnell	Green	CR01-00750 Theft of Means of Transp., F3	Guilty	Jury
7/9 – 7/11	DeWitt	McClennen	Fuller	CR00-04959 Theft of Means of Transp., F3; Att. Trafficking in Stolen Prop., F4	Guilty	Jury
7/10 – 7/12	Walton	Schneider	Sampson	CR01-01916 Sexual Abuse, F5	Guilty	Jury
7/12	Duncan	Katz	Gellman	CR01-01638 Theft of Means of Transp., F3	Hung	Jury
7/12 – 7/13	Giancola Peterson	Davis	Robinson	CR01-02673 Unlawful flight, F5	Guilty	Jury
7/16	Maga	Steinle	Kuhl	CR01-01271 Forgery, F4	Guilty	Jury
7/25 – 7/31	Blieden	McClennen	Shreve	CR01-09231 4 cts. Agg. Asslt., F3D	Guilty – 3cts. Disord. Cond., F6D; Guilty – 1 ct. Agg. Asslt, F3D	Jury

JULY 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
7/10 – 7/12	Walker	Pillinger	Weinberg	CR01-90713 POM / F6N PODP / F6N	Not Guilty	Jury
7/18 – 7/19	Klopp-Bryant	Willrich	Gordwin	CR01-91102 POM / F6N	Guilty	Jury
7/23 – 7/26	Hinshaw / Klopp-Bryant Geary	Gaylord	Forness	CR01-90828 Agg Assault w/deadly weapon / F3D	Guilty of Lesser - Disorderly Conduct / F6D	Jury
7/27 – 7/27	Dennis	Hamblen	Baker, R.	TR01-00497 DWI / M1	Guilty	Jury
7/10 – 7/10	Klopp-Bryant	Willrich	Blake	CR01-91040 Unlaw Flt from Law Enf. Veh / F5N Extreme DUI / M1	Pled day of trial – Unlaw Flt from Law Enf Veh / F5N and DUI / M1	Jury
7/23 – 7/23	Wallace Klosinski Moncada	Davis	Vercauteren	CR00-09993 2 nd Deg. Murder / F1D	Pled day of trial to Manslaughter	Jury
7/24 – 7/24	Klopp-Bryant	Akers	Wilson, S.	CR01-91783 Vulnerable Adult Abuse / F4N	Dismissed w/o prejudice day of trial	Jury

GROUP D

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/23- 7/24	Cain / Green	Foreman	Simpson	CR01-003253 Agg DUI, F4	Guilty	Jury
7/24	Geranis / Parker / Willmott Seaberry	Hutt	Gallager	CR01-003874 Resist Offcr/Arrst, F6	Hung Jury	Jury
7/25-7/26	Cain /Green Fusselman	Ballinger	Simpson	CR01-002709 2 Cts Agg DUI, C4F	Guilty	Jury
7/25 – 7/27	Eskander / Martin	Foreman	Ronald	CR01-005947 Robbery, F4 Pond, F4	Not Guilty	Jury
7/31	Silva/Nurmi	Katz	Kamis	CR01-003685A Agg Aslt w/Ddly Wpn, F3 Fit Frm Purs Law Veh (With 1 Prior)	Guilty	Jury
7/24	Carter/Silva	Foreman	Flores	CR01-003695 Theft Means of Transpr, F3	Dismissed day of trial	Jury
7/30	Adams / Martin Seaberry Baugh	Reinstein	Simpson	CR00-14866 2 Cts Agg Assault, F6 Resist Offcr/Arrst, F6	Pled day of trial to C3M	Jury
7/31	Enos	Davis	Reddy	CR01-001276B Theft Means of Transpr, F3	Dismissed with prejudice day of trial	Jury
7/31	Eskander	Wilkinson	Kamis	CR01-001756 Forgery, F4	Dismissed day of trial	Jury

JULY 2001 JURY AND BENCH TRIALS

GROUP E

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/17-7/19	Pajerski	Gaylord	Kay	CR01-00266 Flt. frm. Purs. of Law Veh., F5	Guilty	Jury
7/23 – 7/25	Dergo	Buttrick	Knudsen	CR01-05917 Cruelty to Animals, F6 Crim. Dmg. to Propl, F6	Guilty Ct. 1; Dismissed Ct. 2 on R. 16.6	Jury
7/19 – 7/25	Goldstein	Harrison	Craig	CR00-17324 Burglary 2, F3 Agg. Asslt. w/Ddly. Wpn., F3D Agg. Asslt., F4	Hung Jury all counts (10-2 Not Guilty)	Jury
7/16-7/17	Walker	Anderson	Vingelli	CR01-01717 Agg. Asslt., F6, Resist. Arrest, F6	Not Guilty	Bench
7/12	Walker	Anderson	Koplow	CR01-003885 Burglary, F4	Dismissed without prejudice day of trial	Jury
7/17	Benson	Araneta	Kay	CR01-02631 Agg. Robbery, F3	Dismissed without prejudice day of trial	Jury
7/18	Goldstein	Heilman	Adleman	CR01-05662 Burglary 1, F2 Agg. Asslt. w/Ddly Wpn, F3	Dismissed day of trial	Jury
7/5	Rock	Araneta	Bernstein	CR01-01979 Attempt. Murder, F2D Agg. Assault, F3D Burglary 1, F2D Escape, F5N Resist, F6N Stalking, F3N	Pled day of trial to fewer charges	Jury
7/9-7/10	Walker	Schneider	Knudsen	CR01-04955 2 Cts Armed Robbery, F6D	Pled day of trial	Jury
7/12	Rock	Araneta	Altman	CR01-00914 2 Cts. Agg. Assault, F3D Burglary 1, F2D	Pled day of trial to fewer charges	Jury
7/17	Benson	Araneta	Clarke	CR01-03321 Agg. Aslt. w/Ddly. Wpn., F3	Pled day of trial to fewer counts	Jury
7/20	Dergo	Heilman	Koplow	CR01-04331 PONDS, F2 Use Wpn. Drg. Off., F4 Use Bldg. Drg. Sale/Mfg., F6	Pled day of trial Ct 1. Cts 2 & 3 Dismissed on R. 12.9 Mtn.	Jury
7/23	Walker	Anderson	Kay	CR00-19626 Theft of Credit Card, F5	Pled day of trial	Jury

JULY 2001 JURY AND BENCH TRIALS

GROUP F

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/18 – 7/20	Leonard / Kavanagh Arvanitas Moncada	Oberbillig	M. Anderson	CR96-90334 Agg. Assault, F3D	Guilty	Jury
7/24 - 7/24	Burns	Fletcher	Baker	CR00-3312M1 – 1 ct. CR00-3325M1 – 1 ct. CR01-0016M1 – 3 cts. 5 cts. Interfering with Judicial Proceeding	Guilty – 4 cts. Not Guilty – 1 ct.	Bench
7/25 – 7/30	Little / Logsdon Klosinski	Akers	Cutler	CR01-91453 Burglary 2 nd degree, F3N	Mistrial	Jury
7/27 – 7/27	Gaziano	Freestone	Zia	TR00-08556 Extreme DUI, M1	Not Guilty	Jury
7/12 – 7/12	Jolley	Fenzel	Cathcart	CR01-90819 Forgery of Credit Card, F4N	Pled day of trial to Theft, C6U	Jury
7/16 – 7/16	Jolley	Freestone	Zia	CR00-01703 (A) Interfering with Judicial Proceed, M1	Dismissed with prejudice day of trial	Bench
7/16 – 7/16	Shoemaker	Oberbillig	Brenneman	CR01-90665 2 counts Agg. DUI, F4N	Dismissed with prejudice day of trial	Bench
7/23 - 7/23	Rosales / J. Moore	Oberbillig	Udall	CR01-90796 Robbery, F3N	Pled day of trial to Burglary 3 rd Degree, F4N	Jury
7/31 – 7/31	Jolley	Jarrett	Wilson	CR01-91463 Agg. Assault, F3D Disorderly Conduct, F6D	Pled day of trial to Endangerment, F6U	Jury
7/31 – 7/31	Logsdon Moncada	Gaylord	Doane	CR01-91260 Promoting Prison Contraband, F5N	Pled day of trial to Lesser, F6N	Jury

COMPLEX CRIMES

Dates: Start-Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result	Bench or Jury Trial
7/9 – 7/13	Dwyer	Araneta	Kamis	CR00-013455 Theft, F3	Guilty	Jury

JULY 2001 JURY AND BENCH TRIALS

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
6-25 – 7/02	Shaler	McVey	Stevens	2 nd Degree Murder , F1 Agg. Assault, F3 Miscndt. w/ Wpns., F4	Guilty	Jury
7/31 – 7/31	<i>Westervelt</i>	Hoag	Ronald	Resisting Arrest, F6 Agg. Assault, F6	Both charges amended by state at trial to Class 1 Misdemeanors; Guilty	Bench

OFFICE OF THE LEGAL ADVOCATE

Dates: Start–Finish	Attorney Investigator <i>Legal Assistant</i>	Judge	CR# and Charge(s)	Result	Bench or Jury Trial
7/2-7/9	Eaton/Agan	Ballinger	CR2000-016705 Neg. Homicide	Guilty	Jury
7/12	Logan	Donahoe	CR2001-000943 Agg Assault – F2 -Dangerous	Guilty	Jury
7/31-8/2	Mackey	Yarnell	CR1997-003370 2 cts armed robbery 7 cts kidnapping	Guilty	Jury

for The Defense

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