

# for The Defense

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James J. Haas, Maricopa County Public Defender

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*Delivering America's  
Promise of Justice for All*

for The Defense

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## Creating the Appellate Court Record

By Paul J. Prato, Attorney Manager

Creating an appellate record that preserves trial court issues is not difficult. It requires the trial attorney to provide the trial judge with as many opportunities as possible to make rulings on the record. The creation of these opportunities begins the moment a not guilty plea is entered on behalf of the defendant and ends with the filing of the last post-verdict motion. What the trial attorney does, or fails to do, between these two events will determine whether the appellate attorney has the necessary legal foundation upon which to build a successful appeal.

### **RECORD-MAKING PARTNERS—TRIAL ATTORNEY, TRIAL JUDGE, COURT REPORTER**

The Arizona Rules of Criminal Procedure define the record on appeal as consisting of the certified transcript of the trial court proceedings; all documents, papers, books and photographs introduced into evidence; all pleadings and documents in the court file, and "if authorized by the appellate court, an electronic recording of the proceeding."<sup>1</sup> It is the responsibility of the trial attorney to satisfy the requirements of the rule by making sure that the necessary testimony, exhibits, pleadings, and are other documents are placed into the record.

To fulfill the record-making responsibility it may be helpful for the trial attorney to think of the trial judge and the court reporter as partners in this endeavor. The key player in this partnership is the trial attorney. It is the trial attorney who is ultimately responsible for making the record regarding the legal issues the attorney believes should be preserved for appellate review. It is the trial attorney who files appropriate pretrial motions. It is the trial attorney who offers relevant evidence and objects to inadmissible evidence. It is the trial attorney who offers case specific, standard and non-standard instructions, and objects to the failure to give requested instructions and objects to the giving of inapplicable or unlawful instructions offered by the state or the court. It is the trial attorney who files the post-verdict motions, such as a motion for new trial. Each of these opportunities for the trial attorney to take some action is an appellate record building block. Of course, these actions should be in support of the defendant's constitutional rights and the defense theory of the case.

The second member of the record-making partnership is the trial judge. It is the trial judge's rulings that provide the basis for appellate court review, and possibly case reversal. Every time the trial judge rules against the defense a potential appellate issue is created. The corollary of this principle is that every time the trial judge rules in favor of the defense a potential appellate issue evaporates (of course, the favorable ruling may ultimately result in a favorable result for client). It is for this reason that trial attorney must give the trial judge as many opportunities as possible to make rulings in the case. For appellate review purposes it is the "fumble" (using a football metaphor) by the judge that creates the opportunity for the appellate attorney. It enables the appellate attorney to pick up the "fumbled" legal issue and run with it. Staying with the fumble analogy the trial judge cannot fumble the ball (legal issue) if the trial attorney does not place the ball in the trial judge's hands.

If the trial judge is not given the opportunity to rule on an issue, and thereby avoid or correct any error, it is highly unlikely that the issue will be successful before the appellate court. A basic tenet of appellate review is that attorney should give the trial judge an opportunity to correct an error by bringing it to the court's attention. Failure to give the trial judge this opportunity will, in most cases, result in appellate review that is limited in scope to a search for fundamental error.<sup>2</sup> For the appellate court to find fundamental error it must be convinced that the error deprived the defendant of a right essential to his defense, deprived the defendant a fair trial, or is error that goes to the very foundation of the defendant's theory of the case.<sup>3</sup> A review Arizona appellate court opinions will reveal that this argument is rarely successful.

The third member of the record-making partnership is the court reporter (or electronic recording as the case may be). The trial attorney must raise the legal issue in dispute before the trial judge in a timely manner, and not only get a ruling from the judge, but also ensure that the proceedings are contemporaneously recorded. If the proceedings are not recorded then the words spoken by the witnesses, attorneys, jurors, and the judge vanish into thin air, and are not available for the appellate court to review. It is absolutely critical to the making of the appellate court record that the trial attorney not agree to off-the-record proceedings. Off-the-record means just that—No Record!<sup>4</sup>

### **NON-CONTEMPORANEOUS RECORD**

Almost as egregious as going off-the-record is to agree to make the record after-the-fact—a non-contemporaneous record. This practice has been strongly disapproved by the Arizona Supreme Court<sup>5</sup>, and the Arizona Court of Appeals.<sup>6</sup> The Court explained in *Fletcher* that "a contemporaneous record assures a more complete record which does not depend on the memories of court and counsel, and it eliminates disputes about the matter stated and the actions taken."<sup>7</sup> In *Bay* the Court noted its "strong objection to motions argued in chambers without benefit of a court reporter" stating that the practice "should be immediately discontinued."<sup>8</sup> Even though the practice of making a non-contemporaneous record has been disapproved by our appellate courts, the appellate attorney is unlikely to be able to successfully argue the issue on appeal if the trial attorney fails to make a timely objection to the practice, or the appellate attorney is unable to demonstrate unfair prejudice, as the failure to make a contemporaneous record does not rise to the level of fundamental error.<sup>9</sup> To protect against a judge refusing to make a contemporaneous record or ruling that your request is untimely, it is good practice to file a motion early in the case requesting that all matters be recorded contemporaneously. A sample motion can be found on the Maricopa County Public Defender's for The Defense Website: [Newsletter Links](#).<sup>10</sup>

### **ISSUE KILLER--WAIVER**

When waiver of an issue has been found to have occurred, the appellate attorney is only left with fundamental error argument to present to the appellate court. And, as previously noted, fundamental error arguments are rarely successful. Waiver will probably be found if the trial attorney fails to object to a jury instruction;<sup>11</sup> fails to object to testimony;<sup>12</sup> fails to object to

errors in the *voir dire* process;<sup>13</sup> invites the error by opening up a field of inquiry into otherwise inadmissible evidence;<sup>14</sup> fails to object to prosecutorial misconduct;<sup>15</sup> or fails to raise a suppression issue.<sup>16</sup> There are numerous other examples that could be listed, but the point is you must make the error known to the trial judge in time for the judge to correct the error. Finally, in preserving constitutional issues for appellate review don't forget to cite to both the United States Constitution and the Arizona Constitution. In some instances the Arizona Constitution provides greater protection than the Federal Constitution.<sup>17</sup>

If you, as the trial attorney, do not want to repeat one of the above forms of waiver or add your own special form of waiver, make timely objections, making sure the objections are specific and on the record. Explain on the record why the error if not prevented or if left uncorrected it will unfairly prejudice the defendant. If the error occurs before you have an opportunity to object, don't forget to make a "motion to strike" if your belated objection is sustained. You must also follow-up the motion to strike with a request for a limiting instruction or a request for a mistrial.<sup>18</sup> Failure to take these steps will most likely result in appellate review limited to fundamental error.<sup>19</sup>

### **HARMLESS ERROR**

Even if your objection is timely and preserved on the record, it may not result in appellate court relief if the trial court error is deemed to be "harmless." The harmless error rule is the nemesis of the appellate attorney. The rule:

Error, be it constitutional or otherwise, is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict. "The inquiry ... is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this trial was surely unattributable to the error.*" *We must be confident beyond a reasonable doubt that the error had no influence on the jury's judgment.*<sup>20</sup>

And, even though the burden is upon the State to establish that the trial court error is harmless,<sup>21</sup> as a matter of practice you should spell out on the record why the error unfairly prejudices the defense theory of the case or deprives the defendant of a constitutional right.

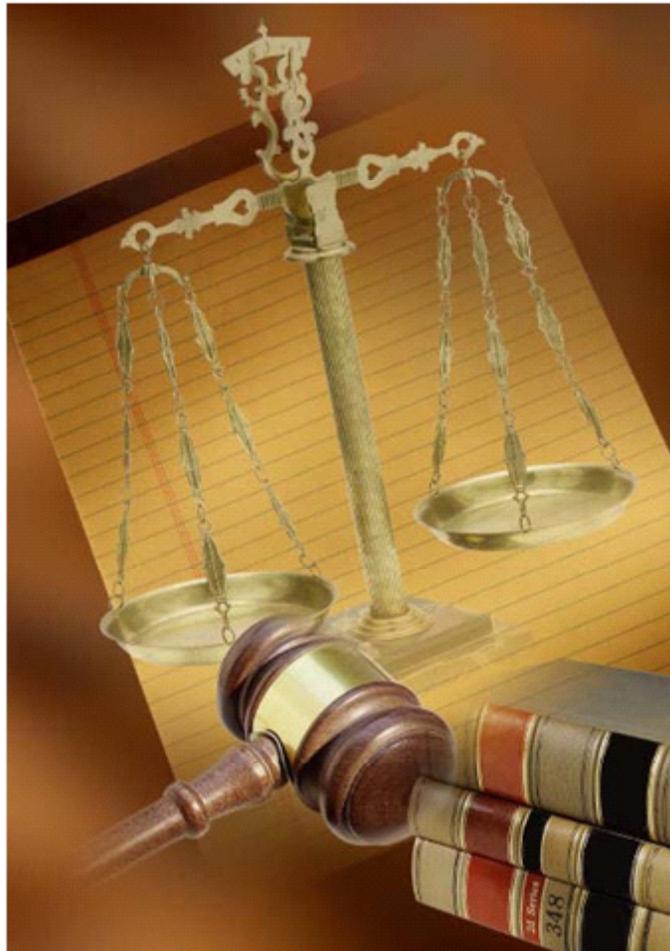
### **CONCLUSION**

It is vital for you as the trial attorney to create a trial court record that will enable the appellate attorney to present viable issues to the appellate court for review. You will create this record by providing the trial judge with as many opportunities as possible to rule on legal issues. Of course, the issues and the rulings must be preserved on a contemporaneously created record.

#### (Endnotes)

1. Rule 31.8 (1), *Arizona Rules of Criminal Procedure*.
2. *State v. Rankovich*, 159 Ariz. 116, 121, 765 P.2d 518, 523 (1988).
3. *State v. Valenzuela*, 194 Ariz. 404, 407 ¶ 15, 984 P.2d 12, 15 (1999).
4. E.g., "Court: Do you have any objections? *Defense Attorney*: None other than those stated in the off-the-record bench conference." (Citation omitted to protect the uninformed).
5. See, *Grosewisch v. America Honda Motor Co.*, 153 Ariz. 400, 408, 737 P.2d 376, 384 (1987), *State v. Bay*, 150 Ariz. 112, 722 P.2d 866 1(1986); *State v. Fletcher*, 149 Ariz. 187, 189, 717 P.2d 866, 868 (1986) *State v. Sanchez*, 130 Ariz. 295, 636 P.2d 1217 (1981).
6. *State v. Babineaux*, 22 Ariz. App. 322, 324, 526 P. 2d 1277, 1279 (1974).
7. *Supra*, at 868, 717 P.2d at 189.

8. *Supra* at 115, 722 P.2d at 283,
9. *State v. Paxton*, 186 Ariz. 580, 589, 925 P.2d 721, 730 (App. 1996).
10. Johns, Christopher. "Motion for Contemporaneous Record of Motions and Objections to Preserve Defendant's Appeal Rights." *for The Defense*, Vol. 2, Issue 01, p. 5.
11. *State v. Carreon*, 211 Ariz. 32 ¶¶ 76, 82, 88, 116 P.3d 1192 (2005).
12. *State v. Ellison*, 213 Ariz. 116 ¶ 54, 140 P.3d 899 (2006).
13. *State v. Garza*, 216 Ariz. 56 ¶ 20, 163 P.2d 1006 (2007).
14. *State v. Woratzeck*, 134 Ariz. 452, 657 P.2d 865 (1982).
15. *State v. Morris*, 215 Ariz. 324 ¶¶ 46, 47, 160 P.3d 203 (2007).
16. *State v. Newell*, 212 Ariz. 389 ¶ 34. 132 P.3d 833 (2006).
17. See Feldman, Stanley G., and David L. Abney. "The Double Security of Federalism: Protecting Individual Liberty Under the Arizona Constitution." 20 *Ariz. State L. J.* 115.
18. *State v. Roque*, 213 Ariz. 193 ¶ 60, 141 P.3d 368 (2006)(e.g., "That testimony is stricken from the record. It's inadmissible under the rules of evidence as not being reliable. Please disregard it.").
19. *State v. Ellison*, *supra* at \* ¶ 61, 140 P.3d at \*.
20. *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993).
21. *Id.*



# Manifest Injustice Criteria

## When Can a Defendant Withdraw from a Plea Agreement?

By Brian Sloan, Defender Attorney

The ABA Standards for Criminal Justice: Pleas of Guilty, 3d ed., Standard 14-2.1. Plea withdrawal and specific performance (1999) provides:

Withdrawal may be necessary to correct a manifest injustice when the defendant proves, for example, that:

- (A) The defendant was denied the effective assistance of counsel guaranteed by constitution, statute, or rule;
- (B) The plea was not entered or ratified by the defendant or a person authorized to so act in the defendant's behalf;
- (C) The plea was involuntary, or was entered without knowledge of the charge or knowledge that the sentence actually imposed could be imposed;
- (D) The defendant did not receive the charge or sentence concessions contemplated by the plea agreement and the prosecuting attorney failed to seek or not to oppose these concessions as promised in the plea agreement; or
- (E) The defendant did not receive the charge or sentence concessions contemplated by the plea agreement, which was either tentatively or fully concurred in by the court, and the defendant did not affirm the plea after being advised that the court no longer concurred and after being called upon to either affirm or withdraw the plea; or
- (F) The guilty plea was entered upon the express condition, approved by the judge, that the plea could be withdrawn if the charge or sentence concessions were subsequently rejected by the court.

As delineated by the ABA Standards, the term "manifest injustice" is a term closely akin to "fundamental unfairness" and possibly confined to a deprivation of due process.

### Discretion of Court:

- Discretion of trial court to grant a motion to withdraw a plea of guilty should be liberally exercised in favor of permitting withdrawal where there is any showing that justice will be served thereby. *State v. Gibbs* 6 Ariz. 600 (App. 1967); *State v. Franklin* 2 Ariz. 414 (App. 1966); *State v. Wilson*, 95 Ariz. 372 (1964); *State v. Williams*, 107 Ariz. 421 (1971)
- Court has wide discretion to allow a defendant to change his mind and withdraw from a plea agreement. *State v. De Nistor*, 143 Ariz. 407 (1985); *State v. Defoy* 109 Ariz. 159 (1973); *State v. Jones* 95 Ariz. 4 (1963)

### Manifest Injustice Reasons:

- D lied for the purpose of establishing the factual basis – must be set aside for denial of due process of law. *State v. Hershberger*, 180 Ariz. 495 (App. 1994).
- D must be allowed to withdraw from admission of probation violation if done as part of a plea agreement that the court rejected. *State v. Flowers*, 159 Ariz. 469 (App. 1989)
- D misunderstood material terms of plea agreement. *State v. Richardson*, 175 Ariz. 336 (App. 1993)
- D learned after entering guilty plea, but prior to sentencing, that he had a fatal illness (HIV). *State v. Dockery*, 169 Ariz. 527 (App. 1991)
- D can present substantial objective evidence to show that he mistakenly believed terms of plea agreement were more lenient than sentence imposed by trial judge. *State v. Diaz*, 173 Ariz. 270 (1992)
- State's main case is based on credibility of witness, and that credibility is called into question. *State v. Fritz*, 157 Ariz. 139 (App. 1988); *Duran v. Superior Court In and For County of Maricopa*, 162 Ariz. 206 (App. 1989)
- Defense counsel was so ineffective, and so unreasonable under all circumstances, where "but for" counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Anderson*, 147 Ariz. 346 (1985)
- Defense counsel gave incorrect advice on requirements to withdraw from a plea agreement. *State v. Anderson*, 147 Ariz. 346 (1985)

### Not Manifest Injustice:

- D changing his mind, despite being advised by counsel, understanding the proceeding, and while under no coercion or misapprehension concerning the consequences of his guilty plea is not enough. *State v. Ellison*, 111 Ariz. 167 (1974).
- D believes sentence is too harsh. *State v. Richardson*, 175 Ariz. 336, 857 (1993).
- D says didn't realize a certain element of the offense was required to be found guilty, yet stated upon entering plea that element of the crime was met. *State v. Wilson*, 126 Ariz. 348 (App. 1980)
- Inaccuracies in PSR. *State v. Watton*, 164 Ariz. 323 (1990)

### State Not Allowed to Withdraw:

- State cannot withdraw plea agreement once accepted by the trial court, as jeopardy has attached. *Dominguez v. Meehan*, 140 Ariz. 329 (1983)

# Death Penalty 2007

Presented by Federal Public Defender Habeas Unit, Maricopa County Public Defender, Legal Defender and Legal Advocate

December 6 & 7, 2007

**Death Penalty 101**  
**Pre-Conference**

**December 6, 2007**

Registration: 8:30-9:00am

Sessions: 9:00-11:30am

**Death Penalty Conference**

**December 6, 2007**

Registration: 12:00-1:00pm

Sessions: 1:00-5:00pm

**Conference**

**December 7, 2007**

Registration: 8:30-9:00am

Sessions: 9:00-4:30pm

**REGISTRATION IS LIMITED!**

**Phoenix Convention Center**

**2nd Floor—Lecture Hall**

**100 N. 3rd. Street**

**Phoenix, AZ**

This seminar is designed to meet the Arizona Supreme Court C.L.E. requirements for criminal defense attorneys engaged in death penalty litigation under Rule 6.8, AZ Revised Criminal Procedures. It will provide valuable information to any lawyer who anticipates involvement in the defense of homicide cases.

**Pay Parking Areas**

**Chase Garage**

2nd St/Monroe St

**Regency Garage**

Washington/2nd St



***Seminar Registration—Death Penalty 2007***

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State \_\_\_\_\_

Zip code: \_\_\_\_\_ Phone# \_\_\_\_\_

State Bar ID#: \_\_\_\_\_

▶ **Conference Fees—Please Check**

No Fee Federal/County Public & Legal Defenders

\$75.00 Court Appointed/Contract Counsel; City Public Defenders

\$ 150.00 Other/Private

\$ 15.00 Late Fee (After November 29)

▶ **Pre-Conference Fees—Please Check**

No Fee Federal/County Public & Legal Defenders

\$25.00 Court Appointed/Contract Counsel; City Public Defenders

\$50.00 Other/Private

TOTAL: \_\_\_\_\_ \*\*No Refunds after 12/3/07

***Please return completed form & payment by November 29, 2007***

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***Attn: Celeste Cogley***

***Downtown Justice Center***

***620 W. Jackson, Suite 4015***

***Phoenix, AZ 85003***

Enclose a check payable to

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**Any Questions please contact Celeste Cogley at 602-506-7711 X37569 or [cogleyc@mail.maricopa.gov](mailto:cogleyc@mail.maricopa.gov)**

# What Do Clients Want?

## What Does Client-Centered Representation Really Mean?

By Jim Haas, Public Defender

Ever wonder what clients really want? Immediate dismissal of charges, an apology and promise never to be bothered again from law enforcement officials, maybe a check for their trouble? Sure. But given that our clients know that is not realistic, what do they really want from their attorneys?

We like to say that we are a “client-centered” office. What exactly does that mean?

There are standards for attorney performance all over the place. Standards have been adopted by the ABA, NLADA, APDA and a bunch of states and jurisdictions. There are so many attorney performance standards out there that the U.S. Department of Justice has created a “Compendium of Standards for Indigent Defense Systems” that includes standards for attorney performance in a variety of types of cases.

But has anyone ever asked the clients?

The New York State Defender Association did. NYSDA set out to get answers to the above questions from public defense clients in 2002. Its Client Advisory Board drafted a set of standards defining client-centered representation. The Board then gave the standards for review to 72 public defense clients in prison and three focus groups: a panel of former prisoners who had worked in law libraries and as law clerks and jailhouse lawyers while in prison; staff and representatives of the Neighborhood Defender Service of Harlem and The Bronx Defenders; and 20 former state prisoners and clients with pending criminal cases that were in diversion.

The result is a compelling set of statements defining client-centered representation, standards which were finalized by the Client Advisory Board in July 2005 and approved and endorsed by the Board of Directors of the New York State Defenders Association in October 2005.

The NYSDA’s Client-Centered Representation Standards are reprinted with permission below. While there are no big surprises in the standards, they do serve as a reminder, directly from public defender clients, of how attorneys should treat their clients. They are confirmation that, even when we think there is “nothing we can do” for a client, that is not true. The standards list things that we can and should aspire to do in every case.

I encourage every attorney to keep a copy of these standards close at hand for guidance when you begin to get that burned-out, “what am I doing?” feeling.

Our clients don’t expect us to perform miracles (well, most don’t). They expect, want, and deserve, this.

(The editors wish to thank Barbara Baggott, Executive Assistant of the New York State Defender Association, for her assistance in obtaining permission to reprint and outlining the history of the standards.)



**Client Advisory Board  
of the New York State Defenders Association  
CLIENT-CENTERED REPRESENTATION STANDARDS**

**Clients Want A Lawyer Who—**

1. Represents a person, not a case file; represents a client, not a defendant.
2. Listens to them and represents them with compassion, dignity and respect.
3. Makes sure the client's privacy is respected and that communications take place in a space and by means that protect the confidential nature of the client-attorney relationship.
4. Refrains from displays of affection and other behavior with the prosecution that might project the image of a conflict of interest.
5. Meets with them and visits them when incarcerated, accepts phone calls, answers letters, and takes time to counsel and explain in a manner that communicates understanding and respect.
6. Listens to the client's family and with permission of the client shares and exchanges information so that the client, lawyer, and client's family remain informed.
7. Uses language in court, legal writing, and conversation that is clear and understandable to the client.
8. Pursues an investigation of the facts of the case, is culturally sensitive, appreciates the dimensions of the client's life, and becomes familiar with the communities from which his or her clients come.
9. Acknowledges personal cultural values, beliefs, and prejudices that might affect his or her ability to effectively represent a client and takes appropriate steps to shield the client from resulting harm.
10. Thoroughly and carefully reads all documents, discusses them with his or her client, and provides the client with copies.
11. Knows the law and investigates the facts, and applies the knowledge of both creatively, competently, and expeditiously.
12. Aggressively seeks resources, such as interpreters, experts and investigators, necessary for effective representation.
13. Works and strategizes in collaboration with his or her client.
14. Is committed to obtaining the best outcome for the client, zealously advocating on the client's behalf.
15. Identifies disabilities of his or her client, and obtains assessments and services to address needs.
16. Informs the client about plea negotiations, tells the client when a plea has been offered, explains the importance of the client's decision whether or not to plead guilty, advises the client on the appropriateness of any plea and all of its consequences and, acting in the best interest of the client, helps the client reach an informed decision.
17. Aggressively pursues alternatives to incarceration, assesses immigration and collateral consequences of a client's criminal conviction, acts to prevent such consequences, and explains the reason for any fines or penalties.
18. Relays to the client what criminal history information is being relied upon, makes sure the information is accurate, and sees that errors are corrected.
19. Accurately informs the client about sentencing, reviews the presentence report with the client, makes sure the court removes any errors in the report, ensures that the client has a copy of the report, and files where appropriate a comprehensive defense presentence memorandum.
20. Accurately informs the client who may be incarcerated about the incarceration process, including jail and prison programs, and works with the client to plan the future in terms of treatment while incarcerated, transitional issues, and reentry.

(Also approved and endorsed by the Board of Directors of the New York State Defenders Association, October 7, 2005.)

# Marc Mauer

## The Hidden Problem of Time Served in Prison

ASSESSING THE POLITICAL AND CULTURAL FORCES BEHIND THE UNPRECEDENTED increase in the use of incarceration in the United States in the late decades of the twentieth century is a complex undertaking. If we are to some day reverse these trends and move toward a more humane and constructive response to interpersonal conflict, it behooves us to both transform the political climate in which policies are developed and to identify the particular policy changes necessary to move toward decarceration. This essay attempts to address the latter point, and to address an area of sentencing policy—time served in prison—that has received far too little attention.

At its essence, the size of a prison system is a function of how many people are admitted to prison and how long they remain there. Policymakers and reformers who have been concerned about rising prison populations have been far more focused on the admissions side of the equation. Areas of concern in this regard have included such factors as: the availability of alternatives to incarceration; sentencing policies that restrict judicial discretion; the rise in incarceration of drug offenders; and in recent years, probation and parole revocations as a growing source of admissions.

These are clearly all important areas of attention and indeed, there is evidence of some impact on diverting offenders from prison. Such examples include drug courts and other treatment-oriented diversion structures, sentencing guideline mechanisms that encourage community-based sanctions for nonviolent offenses, and the development of graduated sanctions for parole violations that avoid lengthy new prison terms. One can argue that many of these policies encourage or result in a net-widening effect as well, but there is nonetheless reason to believe that there have been at least modest successes in reducing admissions to prison in some jurisdictions.

Despite these successes, the prison population continues its inexorable rise. Of particular note here is that the increase in the prison population has far outpaced the rise in the number of felony convictions in recent years. Between 1992 and 2002, the number of people in state prisons increased by 59 percent, compared with an 18 percent rise in the number of felony convictions. And with virtually no change in the likelihood of receiving a prison term upon conviction during this period, neither of these dynamics provides the bulk of the explanation as to why prison populations have continued to climb.

One part of the explanation, as was noted, is the increasing rate of parole violators sent back to prison. But the other contributing factor, much less the focus of policymaker attention, is the increasing length of time served in prison, particularly since the 1990s.

Time served in prison has been the focus of some attention at the extremes of the policy. The spate of “three strikes and you’re out” policies that were enacted in the 1990s in half the states have resulted in a truly distorted use of correctional resources in states such as California. That state now has 8,000 people serving sentences of 25 years to life, nearly half of whom were convicted of a property or drug crime as their third strike. Similarly, federal mandatory penalties have resulted in such cases as the 55-year prison term given to Weldon Angelos, a 24-year-old record producer convicted of three marijuana sales. Because Angelos possessed a weapon during the transactions—which he did not use or threaten to use—the sentencing judge was obligated to impose this

draconian sentence. Upon doing so, Judge Paul Cassell noted that “The Court believes that to sentence Mr. Angelos to prison for the rest of his life is unjust, cruel, and even irrational.”

While these policies have justifiably been critiqued, their prominence tends to overshadow the rise in time served for all offenses since 1990. The most recent Department of Justice analysis of these issues documents that the mean time served in state prison before first release rose from 22 months to 29 months from 1990 to 1999. While a seven-month increase may not strike some as dramatic, note that this represents a 32 percent rise in average time served.

To provide some context for these trends, it is important to note that time served in prison for many offenses is considerably greater than in other industrialized nations. Individuals sentenced to prison for burglary, for example, spent an average of 16.2 months in prison in the United States, compared with 5.3 months in Canada and 6.8 months in England/Wales. For high-end drug crimes, a US conviction in federal court for selling a kilogram of heroin yields a mandatory 10-year sentence, compared with six months in prison in England.

From a public safety point of view, addressing the issue of time served is quite significant for several reasons:

- ▶ *Time served is a significant component of the rising prison population.* Looking at the state prison population of 1.2 million, we can calculate what the scale of incarceration would be today if time served had not increased since 1990. Given the 32 percent increase noted above, this would have resulted in nearly 400,000 fewer prisoners overall even absent any change in the number of people sentenced to prison.
- ▶ *Time served does not influence recidivism.* One might speculate that increasing time served in prison would have an effect on reducing recidivism, either through individual deterrence or rehabilitation. But the most comprehensive data on recidivism from the Department of Justice demonstrate that while recidivism rates are high—two-thirds of released prisoners are rearrested within three years of release—there is no significant difference among people spending anywhere from one to five years in prison. Only after five years do recidivism rates begin to decline somewhat, but this is no doubt due to the aging process and not to any inherent effect of incarceration. And lest anyone suggest that we could reduce recidivism by requiring five- or ten-year stays in prison for all offenders, recall that this would represent a doubling or quadrupling of what is already a world record prison population. Keeping people in prison longer has a delaying effect on recidivism, but not an overall reducing effect.
- ▶ *Increasing time served does not contribute to general deterrence.* One of the rationales offered for adopting mandatory and longer prison terms is that they will “send a message” to potential offenders that crime will be punished harshly. Theoretically, this would cause some people to refrain from committing a crime due to a cost-benefit calculation of the consequences of doing so. Unfortunately, such logic conflicts with a long line of criminological research that demonstrates that any deterrent effect of the criminal justice system is achieved primarily by certainty of punishment, not severity. That is, if the odds of apprehension are increased—such as stationing more state troopers on the highway during a holiday weekend to stop speeders—some people will engage in such reasoning to avoid being caught (in this example, driving under the speed limit). But merely increasing the scale of punishment has little effect on deterrence since most offenders do not expect to be apprehended anyway. Thus, the “message” that lawmakers try to send is not heard very distinctly.
- ▶ *Time in prison is expensive.* As a corollary of potential reductions in prison populations through changes in time served, state governments could realize significant cost savings. In rough terms, at a cost of \$25,000 a year to house a person in prison, a 32 percent reduction in

time served, would yield savings of more than \$150 million a year for a state prison system of 20,000 inmates.

- ▶ *Longer prison terms erode community ties.* Given high rates of recidivism, it is essential to enable people in prison to maintain ties to family and community that can aid in the reentry process after leaving prison. Increasing the length of prison terms only contributes to a fraying of those ties because of the difficulties involved in visiting and communicating with incarcerated family members. In addition, lengthy terms of imprisonment result in financial and emotional burdens on the family members left behind, further disadvantaging many low-income neighborhoods.

Enacting change in the time served in prison can come from several quarters, and can be accomplished either through front-end or back-end reforms. At the level of sentencing policy, such changes could take place through the actions of a state sentencing commission or a legislative body. Areas of focus would need to include mandatory sentencing provisions, “truth in sentencing” statutes that increase time served, parole eligibility policies, and the creation of a range of sentencing options.

Longer stays in prison, though, are not just a function of sentencing policy, but also result from sentencing decisions by judges. In this regard, we can view sentencing practice as determined in part by the political and cultural environment in which it takes place. Since sentencing practices for similar offenses are more punitive in the United States than in other nations, we need to attempt to understand why the prevailing climate in the United States leads to such outcomes and how we might begin to engage in political debate and public education that could alter those dynamics in favor of a more rational approach to sentencing policy and practice.

Such a change in the climate is clearly not one that will happen overnight, but there are at least some signs of a change in the public perception of issues of crime and punishment. In the area of public policy, increasing numbers of states have enacted sentencing reforms in recent years, including diverting drug offenders to treatment programs and scaling back mandatory sentencing terms. Similarly, the prison reentry movement has rapidly gained bipartisan political support focusing on practical, and not ideological, approaches to reducing recidivism. It remains to be seen whether the reentry model—providing services and support to reduce reoffending—can be translated to the sentencing stage as well, but that would clearly be a logical next connection. Overall, we need to begin to reverse the mechanistic approach to sentencing that has characterized much of the determinate sentencing movement of recent decades and recall that since human behavior is complicated and individualized, our approach to sentencing needs to respond to the uniqueness of each individual as well.

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social research Vol 74 : No 2 : Summer 2007  
 Alternatives to the Carceral State: A Panel Discussion



# View Case Transfers

## Job Aid for Attorney's

Superior Court of Arizona, Maricopa County  
Court Wide Automation Training



### OBJECTIVES:

- To be able to view Case Transfers from the online Attorney Calendar



*"Innovation Serving Justice"*

Acknowledgements: CTS Business Intelligence and Training Team

Created: 10/12/07



# Job Aid - Case Transfers

## VIEWING ATTORNEY CASE TRANSFERS

Case Transfers can be viewed from the Attorney Calendar on the Judicial Branch of Arizona, Maricopa County website.

1. Login to the website using the following URL (web address):

<http://www.superiorcourt.maricopa.gov>

2. The Home Page of the website will load:

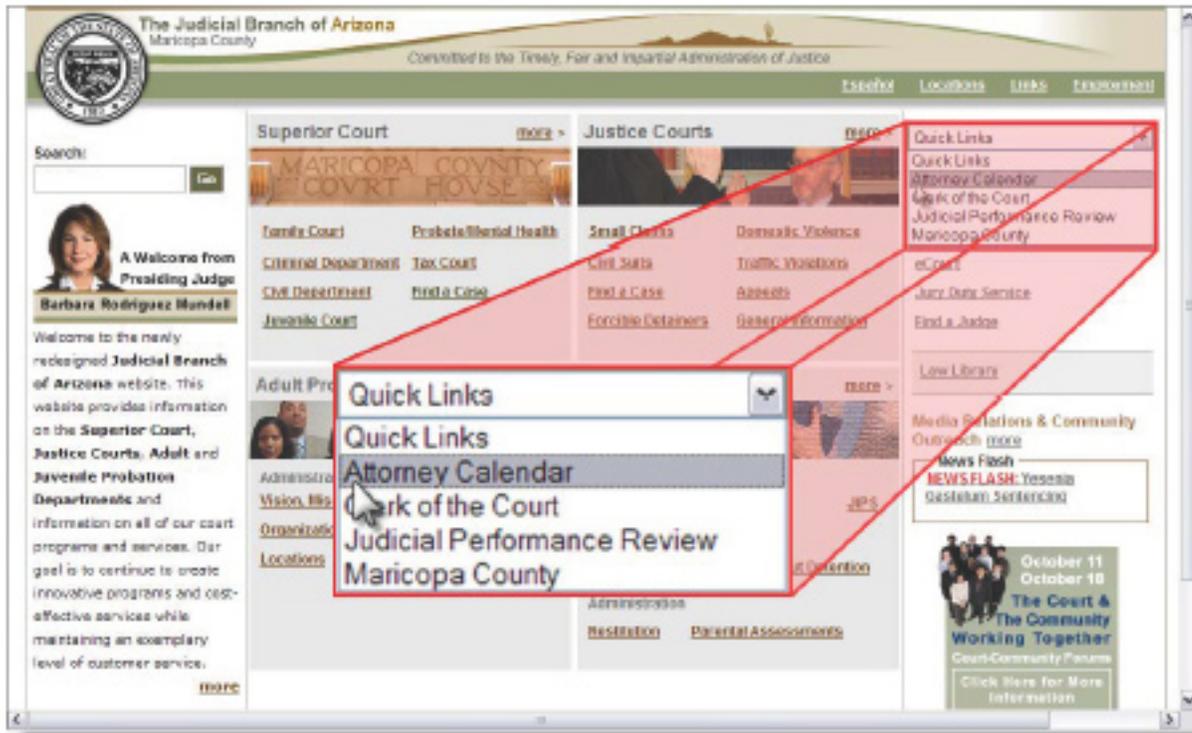


3. Open the "Quick Links" dropdown menu in the upper right corner of the screen.



# Job Aid - Case Transfers

- From the Quick Links dropdown list, click on the "Attorney Calendar" option.



- The Attorney Calendar User Authentication Entry Point page will then load:



Note: New users will be able to enter their personal information to receive a User Name and Password.

# Job Aid - Case Transfers

6. Once logged in, the Attorney Calendar page will appear:

The screenshot shows the Attorney Calendar page for JOHN DOE. The page has a navigation menu with links for Home, Superior Court, Justice Courts, Adult Probation, Juvenile Probation, Escorted, Locations, Links, and Employment. The main content area includes a search bar, a 'Choose a timeframe' section with radio buttons for One Week (selected), One Month, and Two Months, and a 'Get Calendar' button. A callout box with a hand icon points to a 'View Case Transfer' hyperlink. The page footer includes the text '© 2007 The Judicial Branch of Arizona, Maricopa County' and a list of links including Escorted, Locations, Links, Employment, etc.

➤ Click on the radio button next to a time frame option

- One Week
- One Month
- Two Months

➤ Then click on the “View Case Transfer” hyperlink

7. Details of each Case Transfer can now be viewed:

The screenshot shows the Case Transfers page. The page header includes 'The Judicial Branch of Arizona' and 'Maricopa County'. The main content area shows a table with the following data:

Date Recd	Trial Date & Length	Case Number	Defendant	Custody Status	Charge(s)	Last Day	Sending/Receiving Judge
10/12	10/3 10 days	CR2004-172375	Mosos Clinton Hall D: Gp C Public Defender CA: COUNTY ATTORNEY CRR/WUL-2E	In Custody	AGGRAVATED ASSAULT P2; SEXUAL ABUSE P2; 2 ch. MOLESTATION OF CHILD P2	5/14	Balinger, Jr/Vandenberg
10/11	11/17 0 days	CR2005-012948	Alissa Marie Warren D: Delivered To D:	Released	DANGEROUS DRUG VIOLATION P2; DRUG PARAPHERNALIA VIOLATION P2	4/9	Biskey/Eliens

# Jury and Bench Trial Results

## July 2007

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group 1</b>						
7/31 - 8/2	<b>Stewart Vidrighin</b> Charlton Kunz	Steinle	Rubalcaba	CR06-170346-001DT Vulnerable Adult Abuse, F4 Assault, M1	Guilty; Assault charge dismissed the second day of trial.	Jury
8/13 - 8/15	<b>Baker Stewart</b> Carter	Lee	Tasopulos	CR06-162826-001DT Resisting Arrest, F6	Not Guilty	Jury
8/16 - 8/21	<b>DeWitt</b> Sain Jaichner Armstrong	Hall	Low	CR07-005662-001DT 2 cts. Agg. Harassment, F5 DV	Guilty	Jury
8/21 - 8/30	<b>Farrell</b> Carte Ligouri	Grant	Kittredge	CR06-168082-001DT Molestation of a Child, F2 DCAC Furnishing Obscene or Harmful Items to Minors, F4	Not Guilty	Jury
<b>Group 2</b>						
8/1-8/3	<b>Kephart Kozelka</b> Schaaf	Brnovich	Telles	CR07-104734-001DT Forgery, F4	Guilty	Jury
8/16 & 8/21	<b>Davison</b>	Granville	Telles	CR07-109934-001DT Forgery, F4	Directed Verdict	Jury
8/23 - 8/30	<b>Davison</b>	Akers	Coates	CR07-122322-001DT Burg. 3rd Deg., F4 Poss. Burg. Tools, F6 False Reporting, M1 Criminal Trespass, M2	Guilty	Jury
8/8-8/9	<b>Davison</b> Souther Burns	French	Low	CR07-121079-001DT Stalking, F5	Dismissed w/ prejudice 2nd day of trial	Jury
8/28 - 8/29	<b>DeLaTorre</b>	Anderson	Felcyn	CR07-048176-001DT PODD, F4 PODP, F6	Guilty	Jury
8/31	<b>Kozelka</b>	Mroz	Felcyn	CR06-107031-001DT POM, F5	Guilty POM, M1	Bench

# Jury and Bench Trial Results

## July 2007

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group 3</b>						
7/31 - 8/2	<b>Cooper</b> Spizer Jachiner	Lee	Eidemanis	CR07-108192-001DT Criminal Trespass 1st Deg. Res. Struct., F6 Criminal Damage, M2	Guilty on both counts	Jury
8/7 - 8/8	<b>Harrison</b> Burgess	Cunanan	Sammons	CR06-177743-001DT Prisoner Assault w/Bodily Fluids, F6	Guilty	Jury
8/7 - 8/9	<b>Sanford</b> Charlton Browne	Mahoney	Arino	CR05-014920-001DT Forgery, F4	Not Guilty	Jury
8/22 - 8/23	<b>Harrison</b> Browne	Hyatt	Sammons	CR06-146626-002DT POND, F4	Guilty	Jury
8/28	<b>Jackson</b> Burgess Browne	Heilman	Willison	CR07-122653-001DT Armed Robbery, F2D POM, M1	Armed Robbery dismissed w/o prejudice day of trial. Guilty POM, M1	Jury
<b>Group 4</b>						
7/31 - 8/1	<b>Braaksma</b> <b>Antonson</b>	Contes	Smith	CR06-121362-001SE Forgery, F4	Guilty	Jury
8/2 - 8/9	<b>Klopp</b>	Grant	Smith	CR07-113658-002SE Agg. Assault, F3D	Hung Jury 6 Guilty/2 Not Guilty	Jury
8/6 - 8/8	<b>Fluharty</b>	Hall	Rubalcaba	CR06-176904-001SE Agg. Assault, F4 2 cts. Endangerment, F6D	Agg. Assault - Guilty Endangerment-Not Guilty but found guilty of Lesser Included Reckless Driving, M2 Endangerment-Directed Verdict	Jury
8/6 - 8/16	<b>Vincent</b> <b>Braaksma</b> Thomas Cowart	Arellano	Blum / Cook	CR06-160487-001SE Att. Commit Murder, 2nd Deg., F2D Agg. Assault, F3D	Att. Commit Murder - Hung Jury Agg. Assault - Guilty	Jury
8/7 - 8/15	<b>Crocker</b> Salvato Cowart Baker	Udall	Wade	CR06-031008-001SE Agg. Assault, F3D	Not Guilty	Jury
8/13 - 8/21	<b>Watson</b>	Abrams	Strange	CR05-032107-001SE 9 cts. Sexual Exploitation of Minor, F2	Guilty	Jury
8/14 - 8/16	<b>Fluharty</b>	Hicks	Bennink	CR06-177356-001SE Theft Means Trans., F3	Not Guilty	Jury
8/20 - 8/22	<b>Brink</b>	Udall	Blum	CR06-106869-001SE Criminal Damage, F5	Guilty	Jury
8/27	<b>Dehner</b>	Udall	Brenneman	CR05-033122-001SE Burg. 2nd Deg., F3	Guilty	Jury

# Jury and Bench Trial Results

## July 2007

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Vehicular</b>						
8/15 - 8/20	<b>Timmer</b>	Passamonte	Collins	CR07-005472-001DT Agg. DUI, F4	Guilty	Jury
8/23 - 8/28	<b>Davis</b>	Passamonte	Harder	CR06-008684-001DT 2 cts. Agg. DUI, F4	Not Guilty	Jury
<b>Capital</b>						
6/19 - 8/28	<b>Matthew</b>	Gottsfeld	Grimsman Stevens	CR04-037319-001DT Murder 1, F1 Child Abuse, F2	Guilty	Jury

### Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
8/7 - 8/13	<b>Dorr</b>	Akers	Scott	CR06-012780-002 Burglary 1st Degree, F2	Not Guilty	Jury
8/8 - 8/14	<b>Fortner Lawson</b>	Granville	Scott	CR06-178600-001 PODD, F4	Not Guilty	Jury
8/13 - 8/16	<b>Wilhite</b>	Garcia	Coates	CR07-103204-001 PODD, F4	Not Guilty	Jury
8/20 - 8/21	<b>Rothschild</b>	Mahoney	Munoz	CR07-106296-001 PODD, F4	Guilty	Jury
8/22	<b>Kolbe</b>	Araneta	AG	JD50521 Dependency Trial	Dependency Found: Failure to appear	Bench
8/29	<b>Bushor</b>	Hoag	AG	JD506766 Dependency Trial	Dependency Found	Bench



# Jury and Bench Trial Results

## July 2007

### Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
8/6 - 8/14	<b>Gray</b> Brauer	Ditsworth	Kittredge	CR2005-013112-001- DTSex Abuse-F5; Sex Conduct W/Minor-F2 (2 counts); Kidnap-F2 (1 Count)	Not Guilty On All Counts	Jury
8/16	<b>Russell</b> Gill	Davis	AG-Covarubias; Rosanelli (Mom's Atty)	JD-15753; Dependency	Dependency Found	Bench
8/22	<b>Christian</b> Christensen	Talamante	AG-Villanueva; Nelson (Mom's Atty); O'Connor (Dad's Atty)	JD-505022; Dependency	Dependency Found	Bench
8/27	<b>Christian</b> Christensen	Keppel	AG-Hererra- Gonzalez; Ramiro- Shanahan (Mom's Atty); Perez (Dad's Atty)	JD506161; Severance	Severance Found	Bench
8/2 - 8/3	<b>Timmes</b> Gill	Keppel	AG-Welch	JD506310; Severance	Awaiting Decision	Bench
7/26 & 8/31	<b>Valdez</b>	McClennen	AG-Van Dorn	JD14135	Under Advisement	Bench
8/17	<b>Rich</b> Mullins	Davis	N/A	Revocation of Guardianship	Revocation Granted	Bench



# SAVE THE DATE...

## "CRASH COURSE 101"

January 24, 2007

Wells Fargo Conference Center

100 W. Washington Street

Phoenix, AZ 85003

**MORE INFORMATION WILL BE MADE  
AVAILABLE SOON**



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*for The Defense*

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