

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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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COBRA Report Manager

A "New Tool" for MCPD Defense Attorneys

By Jeff Force, Attorney Supervisor, Vehicular

A.R.S. § 28-1323 provides the foundational requirements for the admissibility of breath test evidence in a DUI trial. One of the requirements is that the breath test 'machine' was operating properly and accurately at the time of the test. This is established by records of periodic maintenance that must be kept as part of the state's Quality Assurance program¹ and disclosed to defense counsel.

The most effective way to challenge the state's assertion that the machine was in proper operating condition is to know what that machine's condition was at or around the time of the subject test. This requires a careful review of all available records for any possible anomalies that may have been occurring in the relevant time period. These records consist not only of the reports that must be maintained as part of the QA program (monthly calibration reports, quarterly function and accuracy tests, and service records), but also the COBRA data that must also be disclosed upon request if kept by the testing agency.²

COBRA data is the test data on all tests performed by the machine and stored in the computer's memory chip. The COBRA software allows these test results to be uploaded to a PC for agency record-keeping and data management purposes and also provides remote diagnostic and calibration verification capabilities by the machine's off-site manufacturer.

Having access to a machine's electronic memory and the test information stored therein is important in preparing a DUI breath test case. The state is only required to reveal one 'before' and one 'after' test result for each of the mandated tests (calibration and function/accuracy) and any repairs that may have been performed on the machine between those time periods. With the COBRA data one can look at the tests prior to and after the subject test - for any time period desired - for a host of potential problems that could effect the admissibility of the breath test result or diminish its credibility in the eyes of a jury (e.g., failed calibration tests, deficient samples, ambient conditions, radio frequency interference, unstable references, interferences, temperature errors).

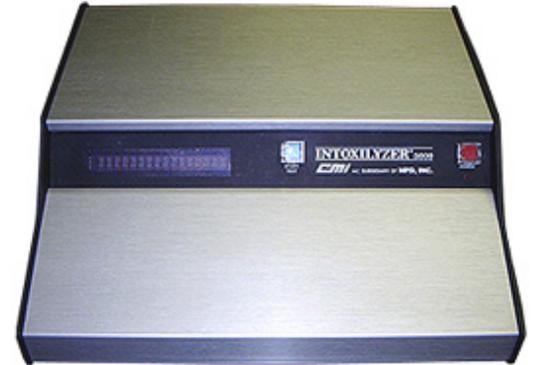
Not all law enforcement agencies in Arizona use the COBRA software and therefore the information that temporarily resides in the limited memory of those machines is constantly being over-written and not available for

review; however, those agencies must still comply with DPS rules and regulations and disclose the paper QA reports and service records. Unfortunately, the fact that they choose not to participate in COBRA is not fatal to the state's case and the breath test results may still be admitted into evidence.³

The state discloses the breath test records in a variety of ways depending upon the agency involved and the model of machine used. For example, while all Phoenix breath test records are available for downloading from the Phoenix Prosecutor's website,⁴ DPS and others provide some information via a data disk and the remainder in paper form. Additionally, there is a significant difference in the manner in which the Intoxilyzer 5000 data is disclosed as compared to the 8000 data.

Brief History

The Intoxilyzer 5000 and 8000 are the two machines used for evidential breath testing in Arizona. Both are manufactured by CMI. The 5000 has been in service over 20 years and is gradually being replaced by the 'new and improved' 8000 model which purportedly uses better technology and is more compact and portable.



Regardless of model, the law mandates that all machines comply with the state's QA program to insure the reliability of the test results obtained. In the past, paper documents were kept for each machine. These records were the P's and Q's, service and repair records, and evidence test cards printed at the time of the test. The P forms recorded the 31-day before-and-after calibration test results that showed whether the machine was operating "accurately," and the Q forms recorded the 90-day before-and-after function and accuracy test results (aka SQAP) that showed whether the machine was operating "properly."⁵

In 1995 CMI introduced the ADAMS (Alcohol Data Acquisition Management System) computer software that replaced the need to maintain paper documents. Essentially, a keyboard and a memory chip capable of storing 100 subject tests were added to the machine. The electronic versions of the P's and Q's were subsequently renamed to PP's and QQ's. In 2000 this ADAMS software was upgraded to a Y2K compliant version called COBRA, and when responsibility for the regulation of alcohol testing in Arizona was transferred from DHS to DPS in 2003, the forms were again renamed to E/G3's and E/G5's (depending upon machine model).

The change to COBRA did not materially affect the way data was reported for the 5000 machines, but when the 8000 machines came online, the data was disclosed in a substantially more cumbersome manner (encrypted and split into multiple files) that made it all but impossible for defense attorneys to locate and decipher the information needed to verify the functioning of the machine during a given time period without engaging the services of a consultant.

The "New Tool"

The problems associated with viewing the COBRA data have been significantly reduced due to the efforts of our IT department who have 'cracked the code' so to speak and developed a query capable of locating and retrieving the requested information and presenting it in a format that allows for a quick evaluation of the machine at issue.

Now, attorneys can go to the COBRA Report Manager,⁶ identify the agency (Phoenix or DPS) and machine model (5000 or 8000), select the machine number from a drop-down list, and enter the desired date range. The program will then search the database and generate a report that can be

easily viewed on screen and printed for use in court.⁷ The information contained in the database goes back to 1999 and is updated on a monthly basis from the data disks disclosed by the state from DPS⁸ and from the Phoenix website.

The Future

As good as the COBRA Report Manager is now, it is anticipated that it will become an even better and more useful resource for DUI practitioners in the future. Currently the program is limited to locating and displaying the historical machine test information, but not the QA reports and service records that must be accessed by other means.⁹

The next phase of the project will be to add a QA data query to the COBRA Report Manager page so that this information will also be accessible in one convenient location. There are some technological hurdles involved in accomplishing this goal, but in the meantime, the COBRA Report Manager is a substantial improvement over how machine information was accessed in the past and an extremely useful tool for making a preliminary determination as to whether the services of an expert may be necessary.

(Endnotes)

1. The DPS rules for alcohol testing can be found at http://www.azsos.gov/public_Services/Title_13/13-10.htm.
2. COBRA stands for "Computer On-Line Breath Records Archive." For an overview of discovery issues pertaining to breath testing, *see generally State v. Moss*, 175 Ariz. 348 (App. 1993) and *State v. Meza*, 203 Ariz. 50 (App. 2003).
3. *State v. O'Dell*, 202 Ariz. 453 (App. 2002) (while defendants have access to paper records of their respective tests, failure of the state to store other test results and make them available to defendants did not violate due process).
4. The Phoenix Prosecutor's website is located at <http://phoenix.gov/phxpros.html>.
5. To work "accurately" the machine must be able to determine the value of a known alcohol reference standard within an acceptable accuracy limit of $\pm 10\%$. To work "properly" the machine has to pass a series of tests designed to demonstrate that the internal safeguards were functioning correctly (e.g., mouth alcohol detector, deficient sample detector, radio frequency interference detector).
6. The COBRA Report Manager can be found on the S: drive in the DUI-Vehicular Crimes\e-Library folder.
7. Exporting in .pdf format and printing in landscape mode is recommended for best results.
8. The DPS disk includes information on DPS machines and other agencies throughout the state (with the exception of Phoenix) that participate in COBRA.
9. Phoenix scans their QA documents and makes them available electronically through their website. DPS and other agencies claim they do not scan their documents and provide only the handwritten paper forms that must be obtained through the County Attorney. The Vehicular Group maintains a repository for all disclosed data disks and paper records.

Gideon Fellowship Established/Inaugural Fellow Selected

By Jim Haas, Maricopa County Public Defender

This year we finally achieved a goal that we have been working on for years – the establishment of a fellowship for indigent defense at ASU Law School.

The Gideon Fellowship was created to give a law student who fervently believes in the core values of indigent defense an unmatched opportunity to gain hands-on experience in the practice.

The Gideon Fellow will spend a year working with public defenders in various types of cases. In the summer, the Fellow will practice in the ASU Public Defender clinical program, representing clients in misdemeanor and lower-level felony cases; in the fall semester, the Fellow will represent clients in more serious felony cases, in the Maricopa County Public Defender's Office; and in the spring semester, the Fellow will work with the Capital Habeas Division of the Federal Defender's Office. The Fellow will thus gain a broad base of experience, working closely with experienced mentors on increasingly serious and complex cases throughout the year.



Brandon Finsterwalder

The Gideon Fellowship will raise the profile of indigent defense at the law school and give students who want to practice criminal law an alternative to the prosecution fellowship, which has been in existence for over 20 years.

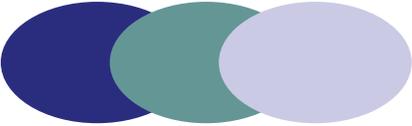
The Gideon Fellow is selected through a competitive process that requires applicants to submit an essay outlining the reasons that they want to practice indigent defense and a writing sample. The applicants also must interview with a panel that includes the directors of the two public defense offices and the Director of Clinical Programs at ASU, currently Art Hinshaw.

After going through this process, one applicant stood out for his commitment to the core values of indigent representation: Brandon Finsterwalder. Brandon was selected as the inaugural Gideon Fellow. He has already completed his work in the Public Defender Clinic and has begun the second phase of the fellowship.

Brandon's selection as the first Gideon Fellow was announced at the awards luncheon at the APDA conference on June 17, and he was presented with a plaque to commemorate his accomplishment by me and Dale Baich, head of the Federal Defender's Capital Habeas Unit.

The establishment of the Gideon Fellowship is another step forward in our continual effort to improve the quality of representation for poor people by recruiting dedicated future lawyers to the practice of indigent defense. We have already begun working with the Pima County Public Defender's Office and the University of Arizona to establish an indigent representation fellowship in Tucson.

The office thanks Art Hinshaw, Rebecca Kirchler and Dan Lowrance for their hard work and perseverance that was essential to the creation of the fellowship.



Sponsored by Maricopa County Public Defender

New Attorney Training: Case Management & Trial Skills

Case Management October 14-17, 2008

Trial Skills October 27-31, 2008

**Downtown Justice Center
Maricopa County Public Defender
620 W. Jackson, 5th Floor Training Room
Phoenix, AZ 85003**



Training Topics Include:

Professionalism

Overview of the Criminal Code

Prior Convictions

Sentencing Advocacy

Cross Examinations

DUI: Everything You Wanted To Know

Search & Seizure

Inside View of Adult Probation

Opening Statements

Drugs: The Good, The Bad & The Ugly

For a complete agenda and to register, please contact Celeste Cogley by September 26th cogleyc@mail.maricopa.gov or call 602-506-7711 X37569. There is no fee for Public/Legal Defenders. Please contact Celeste for registration fees for Private and Contract Counsel.

Avert Your Gaze: The Truth of Officers as Lie Detectors

By Thomas Baird, Defender Attorney

**“Unthinking respect for authority is the greatest enemy of truth.”
- Albert Einstein**

You know the drill. The county attorney calls her next witness, Officer Omniscient, and his gun belt creaks as he sits in the witness stand. He gives expected details about his interview with your client. Then comes the unexpected:

Q: Will you explain to us what his overall demeanor was during the interview?

A: During my interview with the accused, as I was speaking to him, he was constantly keeping his head down. He refused to make any kind of eye contact with me. Every time I would ask him a direct question about what happened, he would try to avoid the question, or change the subject, or not answer my question. He had a calm demeanor, but would hesitate a lot when I asked him a question. Almost trying to think about what he had to say. It just gave me the impression that he was guilty of something.



You've tried objecting to this sort of thing before. You recall another trial:

Q: Based on your interaction with the defendant and the way he was answering questions . . . and your personal observations of the defendant . . . did your observations indicate to you that he was confident about that actually happening?

DEFENSE ATTORNEY: Objection. Speculation.

COURT: Well, he's asking about his observations. The objection's overruled.

A: He did not get excited. He did not change the tone of his voice or the cadence of his voice, the speed at which he was talking. Pretty much the entire conversation with him was monotone.

You know perfectly well what is happening. The government uses officers as lie detectors. They can attribute just about any behavior to your client and link it to signs of deception. This article proposes a standard set of objections to maximize your odds of persuasion at the trial level and, if that fails, adequately preserve the issue on appeal.

Province of the Jury

Arizona prohibits lay and expert testimony concerning the veracity of a statement by another witness. *State v. Moran*, 151 Ariz. 378, 382, 728 P.2d 248, 252 (1986) (expert witness); *State v. Reimer*, 189 Ariz. 239, 240-41, 941 P.2d 912, 913-14 (App.1997) (lay witness). Determining veracity and credibility lies within the province of the jury, and opinions about witness credibility are “nothing more than advice to jurors on how to decide the case.” *Moran*, 151 Ariz. at 383, 728

P.2d at 253. In some jurisdictions, such questions constitute prosecutorial misconduct. *See, e.g., State v. Maluia*, 108 P.3d 974, 978-79 (Haw. 2005).

This objection is clear and simple. The problem is that the improper testimony may come at you sideways. As illustrated by the first set of questions with the officer above, the prosecution may be sly enough to approach the issue by asking for declarant behaviors and let the officer run with the answer. Or, as shown by the second example, the judge may not sense the actual significance of the testimony and focus instead on the mere observational nature of the testimony. If a province objection does not work we should make more objections.

Foundation

Foundation objections may be the second most effective defense in this circumstance. Sadly, courts stop listening once they hear the F-word probably because they believe (with some reason) that defense attorneys make this objection when they are thinking about their real objection. To break through the wall of indifference, spell the foundation objection out in detail.

For our purposes, we will assume that the officer has not been qualified as an expert and we are operating under Rule 701 which governs lay witness' opinion testimony. There are two types of lay opinion foundation: collective fact and skilled lay observer opinions. Edward J. Imwinkelried, *Evidentiary Foundations* 279 (4th ed.1998). The former applies to matters that lay persons commonly and reliably draw and where the witness cannot verbalize all of the underlying sensory data. Examples of appropriate matters are height, distance, speed, color, and identity. The foundational elements for this category are:

1. The witness was in a position to observe.
2. The witness in fact observed.
3. The witness observed enough data to form a reliable opinion.
4. The witness states the opinion.

Id.

The skilled lay observer requires more foundation. Examples of appropriate matters within a skilled lay observer's authority are handwriting, voice, and mental health. The following prerequisites apply here:

1. The witness is familiar with the person and the trait in question.
2. The witness explains how he or she became familiar.

Id.

For obvious reasons, we should argue that if the court wants to accept an officer's testimony as a lay opinion the State must meet the requirements of a skilled opinion. We should stress the pressure points of both reliability and the familiarity with the declarant. Imwinkelried comments that intimate familiarity is a necessary requirement. As is the norm with our cases, the officer probably had little if any prior dealings with our clients. Accordingly, we should be ready to claim inadequate foundation because of the inability of the officer to compare the present behavior against an intimately familiar baseline. Without a baseline, the testimony is necessarily unreliable.

It is worth arguing, as an additional foundational requirement, that lie detection is always suspect. Our courts reject evidence from polygraphs. *State v. Valdez*, 91 Ariz. 274, 280, 371 P.2d 894, 898 (1962). The rejection of polygraphs is premised, in part, on the lack of endorsement by a larger segment of the psychology and physiology branches of the science world. *Id.* A substitute method of reaching the same ends should be subjected to the same requirements. Academic research, however, indicates that officers are not able to detect deception better than chance. Garrido & Masip, 1999; Hartwig, Granhad, Sromwall, & Vrij, 2004. Some officers are supposedly trained in lie detection and look for cues such as gaze aversion, placement of the hand over the mouth when speaking, and displaying unnatural posture changes. Such training is subject to academic criticism because “none of these behaviors have been found to be reliably related to lying in deception research.” Mann, Vrij, & Bull, 2004, p. 139. In fact, participants who were trained using the cues identified as indicators of deception had a significantly worse rate of deception detection compared to untrained observers. Kassin and Fong, 1999.

Relevance, Probative Value, Prejudice, and Confusion

Note that the testimony detailed above has two parts. The first part is the list of behavior traits attributed to the declarant. The second is the opinion drawn from the observations. That a declarant acts with a particular set of characteristics can only constitute relevant evidence if the court deems the opinion as admissible. Without the ultimate opinion, the fact that a declarant was sweating or averting his gaze, under ordinary circumstances, would not tend to make the elements of an offense more or less probable.

Courts recognize that, at least with respect to the opinion, the probative value is absent. *Moran*, 151 Ariz. at 383, 728 P.2d at 253; *see also State v. Bell*, 931 A.2d 198, 217 (Conn. 2007) (such questions “have no probative value . . .”). But what about the behavior traits?

We should argue that behavior traits have uncertain probative value and they clearly open the door to all sorts of prejudice and confusion. As public defenders, we know that clients present a range of social behaviors that can be misconstrued. For instance, Native Americans, Hispanic Americans, and Anglo Americans may communicate with different degrees of eye contact, cadence, and silence. Environmental and individual factors exist too; clients may react quite differently to stress (e.g., a police interrogation) or may respond to thirst, sleep deprivation, drug use, and so on. The monotone defendant mentioned above, just hours before his interview, was in a fatal accident and released from the hospital where he was given pain killers and stitches. When you have an authority figure such as a police officer detailing a declarant’s aspect, the inference is clear and unavoidable. The state should not be able to accomplish by insinuation what it cannot do directly. E.R. 3.4(e) (A lawyer shall “not *allude* to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence . . .”) (emphasis added).

Speculation

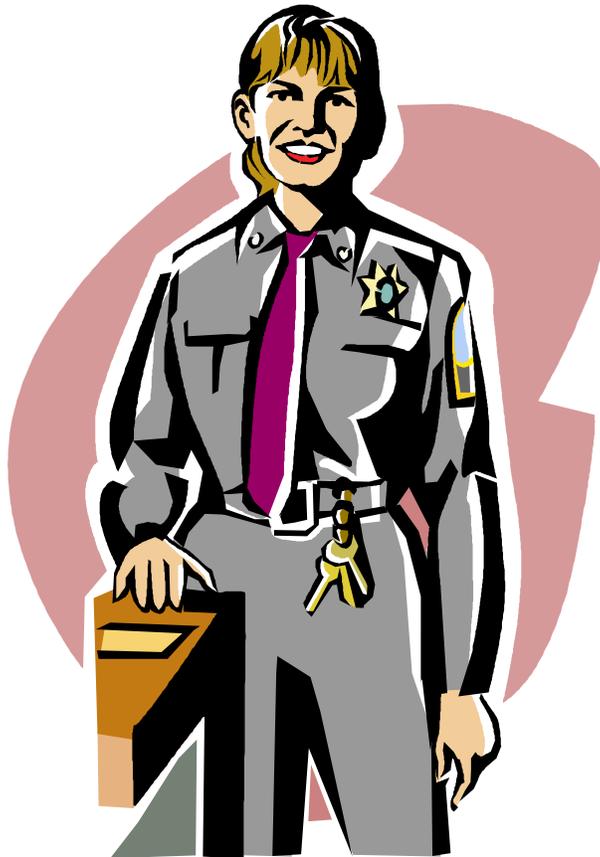
Speculation may be the least effective objection. According to Rule 602, lay witnesses are limited in their testimony to the extent of their personal knowledge. Personal knowledge can, however, include inferences and opinion as long as they are grounded in personal observations and experience. *United States v. Rodriguez*, 162 F.3d 135, 144 (1st Cir. 1998)(citations omitted). The rule itself provides that a witness can establish their own personal knowledge. Ariz. R. Evid. 602.

Officer Omniscient will testify that he has conducted many interviews, he possesses the ability to note the telltale signs of prevarication, and he will state his opinion. If his testimony is limited to an opinion, a judge may well conclude that it is rationally based on personal knowledge and it is therefore not speculation. After all, it’s hard to argue that the police officer is speculating about his own thoughts.

We might argue that Officer Omniscient lacks the ability to know the hearts and minds of others. The ability to peer into the inner thoughts of another is beyond the ordinary human ability and that such testimony is a dressed-up form of speculation. Whether these types of arguments will prevail is an open question. At a minimum, it would be unwise to base a challenge solely on the grounds of speculation, since the judge may well leave the matter to the jury.

Closing thoughts

Be vigilant and anticipate these tactics at trial. We want juries independently to make these determinations and not rely on a biased authority figure. A few gentle reminders: (1) Always link notions of due process and fair trials, under both Arizona and Federal Constitutions, to any of the above objections; (2) Don't forget to assert your potential remedies of motions to strike for lack of responsiveness and a mistrial if an officer takes the initiative and offers up his opinions; (3) Consider a pretrial motion *in limine* if you have good reason to expect these issues to arise; and (4) Even if you lose your objections, the issues addressed above provide a framework for cross examination.



Resources

The Psychology of Confessions, Kassin & Gudjonsson, 2004.
http://www.psychologicalscience.org/pdf/pspi/pspi5_2.pdf

"I'd Know a False Confession if I Saw One": A Comparative Study of College Students and Police Investigators, Kassin, Meissner, Norwick, 2005.
http://www.williams.edu/Psychology/Faculty/Kassin/files/Kassin_Meissner_Norwick_05.pdf

What Your Investigator Can Do For You

By Dusty Sain, Defender Investigator

Often the attorneys I work for are surprised at what information I can or cannot obtain for them from the computer and other sources. They will normally only know if they've had occasion to ask for something and it's been promptly provided or is not available.

The purpose of this outline is to give attorneys and support staff some idea what sources we use. Since the sources change often, it is by no means an all-inclusive list and I would strongly recommend that you talk with your investigators and learn some of the "tricks of the trade" they use to obtain information.

MVD

Several investigators in the office have access to the State of Arizona's driver's license and vehicle database. This system allows us to check for the following information:

1. Driver's License Records

This can be checked by name and date of birth. In the case of an uncommon name, it is sometimes possible to obtain a license record with a name only. The system will display the name and the last address the MVD has for the driver. If you only have the person's name, please provide any other contact information you have. Common names will give the investigator a response of hundreds or thousands of names that are the same or close in spelling. For that reason, a date of birth is always necessary in common names. Also remember that the computer will only show the last address the state has for that person, which is very often not their current address.

Also available is a printout of the last thirty nine months or five years of a person's driving record. This is not a certified copy; however, certified copies can be obtained from MVD.

2. Motor Vehicle Records

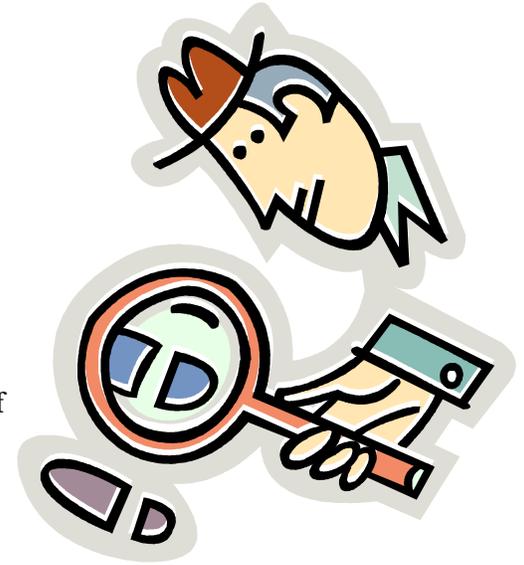
If you have an Arizona plate, we can provide you with a registration record for that plate. This will show the vehicle the plate is issued to, the last registered owner, and the vehicle identification number or VIN. Since license plates in Arizona go with the owner from vehicle to vehicle, the system will also show a list of the different vehicles that license has been associated with.

3. All Vehicles Registered

One of the options available is to run a request for "all vehicles registered" to a person. As the name implies, this will give you a list of all the vehicles the person currently has registered to them.

4. Driver's License Photographs

Black and white photographs can be obtained within twenty-four hours. Color photographs require a faxed request and take at least a week.



5. Complete Title Histories for Vehicles

The normal wait time is a month to six weeks or more.

Arizona Department of Economic Security (DES)

The DES system allows us to obtain current and past employment records for your subject.

The system provides a list of all employers within Arizona that reported earnings to the state. It also lists the official mailing address and phone number for that employer and the dates of the employment.

Since the system operates using the subject's social security number, it is absolutely necessary that we have this number to make a search.

Experian

The office subscribes to the Experian Credit System and can run very limited searches by social security number in this system.

The search will give a list of the person's names used, past addresses used, and their spouse's first name. Each time a person applies for credit, the address used is added to the system. I have found it to be an excellent source for current addresses and former addresses. Often the first address listed in the report will be that of a parent or other relative who will know the person's whereabouts.

It is sometimes possible to obtain a social security number with the person's full name and current address. I have had little luck with these searches; however, other investigators report they have been successful.

Accurint

Accurint is a system the office subscribes to for background checks on subjects. As with most systems of this type, the more information you have to identify the person, the better the information you will receive.

Accurint supplies a shocking amount of information on a person if given the correct name, date of birth, and social security number.

It will give lists of current and all past addresses, phone numbers, social security numbers used, and criminal records. It will also list parcel numbers for property the person owns or has owned and bankruptcy records. The system provides lists of possible relatives for the person, neighbors, and associates. It will include addresses and phone numbers for these people and sometimes their social security numbers.

Accurint uses a "shotgun" approach in the information it provides and often will give you the information for several people with the same name or social security number. It is valuable as a tool to give you a well-rounded image of the person you are searching for, but it should not be trusted as the single source of information.

Since Accurint derives its information from public records, it can only locate those people who have public records. If you are looking for a homeless unemployed witness, Accurint will most likely give you no record.

Requests to View Inmate Property

We often get requests to review or photograph items in a client's jail property. Depending on what jail we deal with, the staff can either be very helpful or very difficult. A request of this type always requires a court order, signed by a judge, and certified by the court. A court minute entry is not considered a court order by the jail. Please make sure the order spells out in detail that your investigator is to inspect all of the property, including the clothing and items that were in the client's pockets or wallet. If you want photographs taken of the property, please include that in the order. Please remember that department policy prevents us from collecting any inmate property. If your client has property he wants to release, they will have to give it to a friend or family member.

Jail Booking Photographs

We often receive requests for jail booking photographs of our clients or others involved in their cases. The jail will not provide these photographs without a booking number. Normally you can obtain this via the Sheriff's Information Line, or SIMS line: 602-876-5490. Black and white photographs can normally be obtained within twenty-four hours. A color photograph requires a faxed request to another department at the jail and normally takes at least two weeks.

Death Certificates

Certified copies of a death certificate can be obtained without cost. If the death occurred within the last forty-five days, it must be obtained from the county. This requires a faxed request and takes at least a week.

If the death occurred over forty-five days ago, the certificate can be obtained from the state, normally the same day.

Police Reports, etc.

Phoenix PD is the only agency that will give us a police report the same day. The only exceptions to this are cases still being investigated that will need to be reviewed before release. This normally takes a week to ten days to complete. They charge a fee of \$3 to \$5 for the report and it is due when it is picked up.

All other agencies require either a faxed request, in person application, payment in advance, and a week to ten days to process. Phoenix PD can also provide color "mug shots" taken at the time of their investigation; however this requires a few days and a fee of fifty cents each. If a photo lineup was used in your case, a copy can be obtained using the lineup ID number in the upper right corner. Color copies are also available for a fee of fifty cents. It normally takes two to three days to get these back.

Superior Court Records

All superior court records for the past five years have been placed on a computer and the file cannot be checked out. Files older than five years can be checked out and provided within twenty-four hours of the request. Older files on micro film can be obtained within two to five days depending on the size. Please specify in your request if you want the file certified.

Local/Justice/Municipal Court Records

These files are normally available within two to three days of the request.

Out of State Court and Arrest Records

A few states like Washington, Illinois, and Wisconsin allow us to do internet searches for court records without a charge. Most of the rest either require a fee or we need to know what county the case was filed in. All of them require advance payment for copies and a self-addressed stamped envelope for the return.

Investigators do not have access to law enforcement databases like NCIC. We cannot run a nationwide criminal history check. This can only be done by the County Attorney or a law enforcement agency.

Cell Phone Records

As I'm sure you are aware, cell phones have changed. It seems like everyone is selling cell phones and providing service plans. Cell phones break down to three different types.

The first is the traditional phone that many of you have. You buy the phone from Verizon or another company and pay a monthly fee for a set amount of minutes. These companies keep records of every call you make or receive so that they can bill you later if you go over your allotted minutes.



The second type of phone is the pay-as-you-go phone. These are the phones you buy at Circle K and charge with a phone card of minutes. These phones are normally issued by second party providers who buy the service from someone like T-Mobile or Sprint. They do not keep records of your calls because they don't care. When you run out of minutes, your phone is dead. When we try to obtain the records from T-Mobile or Sprint, they tell us they don't have them because it was sold to a second party provider.

The last type of phone is the Cricket style. These phones charge a flat rate for unlimited use per month. They don't keep records on non-toll calls because they don't care how many minutes you use. Some of these records can be recovered, but it is very expensive.



This is the last price list we have from them.

PRICE LIST:

COSTS FOR PRODUCTION OF RECORDS OR SERVICE RENDERED:

1. Subscriber Information (no other requests):
10 or more within one subpoena/order/search warrant or in one packet: \$5 per name/number lookup
2. Subscriber Information (in combination with any other request for which a charge is made):
\$5 per name/number lookup
3. Call Detail Records:
Less than 2 months of records: \$50 per phone number/name
2 months or more of records: \$100 per phone number/name
4. Pen Register/Trap and Trace or Wire Tap/Title III:
\$2,200 per number per order (renewals or extensions are new and separate orders)

Exception: If an active Pen Register/Trap and Trace is converted to a Wire Tap during the pendency of the order, there is no additional charge

EXPEDITE FEES: (These are in addition to any charges for production of records)

AUTHORIZATION FOR THE SPECIFIC EXPEDITE SERVICE DESIRED MUST BE INDICATED PROMINENTLY ON THE FAX COVER SHEET – for example, “1 business day expedite authorized”

1. One business day turnaround: \$100/request
2. 2-3 business day turnaround: \$50/request
3. One business week turnaround: \$25/request

If there are questions, contact Janet Schwabe at jschwabe@cricketcommunications.com or by telephone at (858) 882-6258

All cell phone companies require a subpoena to release the records, as well as the phone number for the phone used and the name of the subscriber.

As I stated earlier in this article, this is not an all-inclusive list and some things change from month to month. If you have any questions about what your investigator can dig up for you, ask them. You might be surprised.

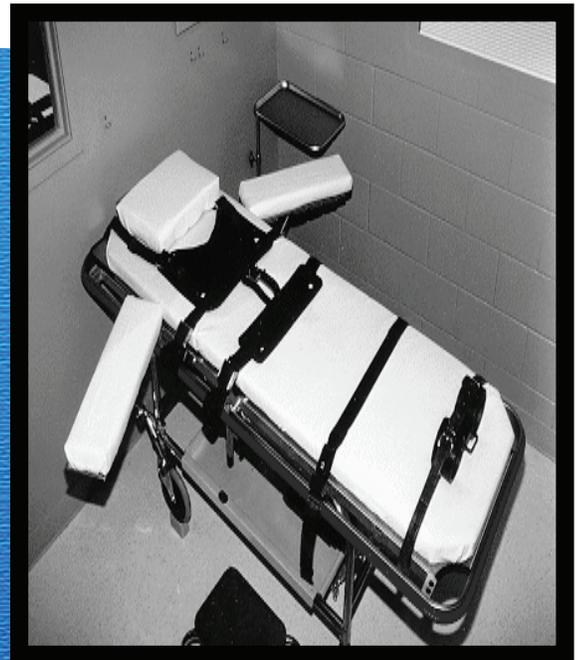
Valuable assistance provided by Investigative Aide Jim Evans

SAVE THE DATE!

Death Penalty 2008 Annual Conference

December 4 & 5, 2008

**Phoenix Convention Center
Phoenix AZ**



**Registration and Agenda
will follow in the next
few weeks.**

**Questions? Contact
Celeste at 602-506-7711
X37569**

Jury and Bench Trial Results

June 2008

Public Defender's Office

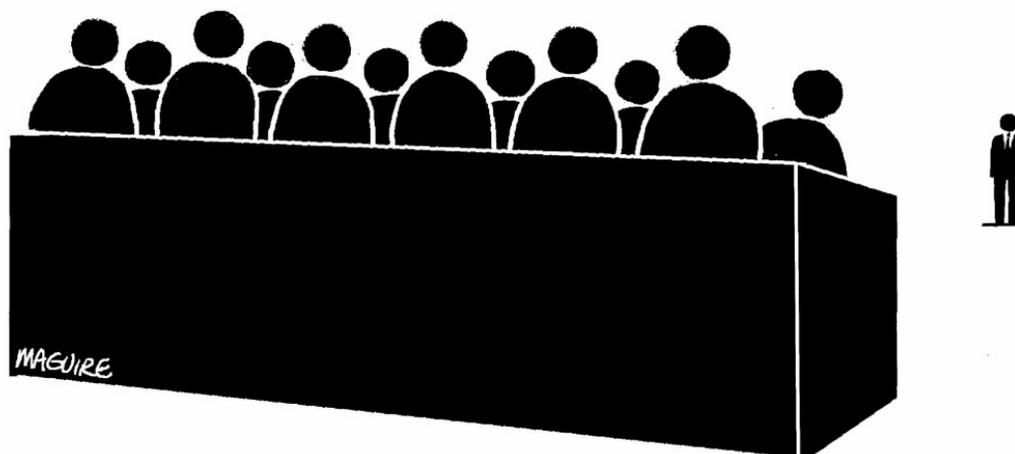
Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
5/19 - 6/2	Dominguez Brazinskas	Foster	Prichard	CR07-165962-001DT 3 cts. Burg. 3rd Deg., F4D Theft, F3	Guilty	Jury
6/6	Farrell	Grant	Flynn	CR06-009531-001DT Fraud Schemes, F2 6 cts. Forgery, F4	Not Guilty	Bench
Group 2						
6/9 - 6/12	Mestaz Beatty	Blomo	Hagerman Molina	CR07-152816-001DT POND, F4 PODD, F6 Assault (DV), M1	Guilty POND Hung Jury PODD Not Guilty Assault	Jury
6/25 - 6/26	Crawford Leonard Reilly	Brnovich	Thomas	CR08-102199-001DT 2 cts. Criminal Trespass, F6	Guilty	Jury
Group 3						
6/23 - 6/27	Clemency Spizer <i>Browne</i>	Holding	Lish	CR08-101151-004DT Armed Robbery, F2D	Guilty (ND)	Jury
6/23 - 6/24	Jackson	French	Arino	CR07-115203-001DT Agg. Assault, F6D	Not Guilty	Jury
Group 4						
6/2	Whitney	Arellano	Rodriguez	CR07-141801-001SE Resist Arrest, M1 Agg. Assault, M1	Guilty	Bench
6/2 - 6/4	Ditsworth	Abrams	Judge	CR07-119543-001SE PODD, F4 PODP, F6	PODD - Guilty PODP - Directed Verdict	Jury
6/2 - 6/5	Dehner	Contes	Blum	CR07-167483-001-SE Child Abuse, F5	Guilty	Jury
6/3 - 6/12	Corbitt Lockard	Sanders	McGregor	CR07-107758-001SE Murder 2nd Degree, F1D Endangerment, F6D Unlaw Flight/LE, F5 Hit and Run w/Death Inj., F3	Guilty	Jury
6/9 - 6/13	Akins Turley	Abrams	Willison	CR07-144487-001SE Burg. 1st Deg., F2D Theft Extortion, F2D Agg. Assault, F3D Kidnap, F4D	Guilty	Jury
6/10 - 6/11	Sheperd	Gottsfield	Krabbe	CR07-103445-001SE Forgery, F4	Guilty	Jury

Jury and Bench Trial Results

June 2008

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Vehicular						
6/23 - 6/27	Taylor	Harrison	Humm	CR06-158148-001 DT Burg. 3rd Deg. - F4 Burg. Tools Poss. - F6	Guilty - Burg. 3rd Deg. Not Guilty - Burg. Tools Poss.	Jury
6/23 - 6/30	Sloan Black	Passamonte	Smith	CR07-172520-001 DT 2 cts. Agg DUI - F4	Guilty on lessers	Jury
Juveniles in Adult Court						
6/2 - 6/5	Traher Burgess Browne	Kemp	Allen	CR08-030212-001DT 2 Cts. Armed Robbery, F2D 2 Cts. Kidnapping, F2D 2 Cts. Agg. Assault, F3D	Guilty on 2 cts. Armed Robbery Guilty on 2 cts. Kidnapping Ct. 1 Agg. Assault-DV Ct. 1 Agg. Assault- Guilty of Lesser, M1 All counts ND	Jury



Jury and Bench Trial Results

June 2008

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
5/27 - 6/6	Ross	Brodman	AG	JD14727 Severance Trial	Severance Granted	Bench
6/2	Bushor	Keppel	AG	JD506773 Severance Trial	Severance Granted	Bench
6/3	Ross	McClennen	AG	JD14752 Severance Trial	Severance Granted	Bench
6/5	O'Neal	Verdin	White	CR2006-163173-002 POM, F6 PODP, F6	POM - Not Guilty PODP - Guilty	Bench
6/10	Ripa	Gama	AG	JD16292 Dependency Trial	Dependency Found	Bench
6/11	McGuire	Talamante	Johnson	JD507139 Guardianship Trial	Guardianship Granted	Bench
6/13	Bushor	Ishikawa	AG	JD506384 Severance Trial	Severance Granted	Bench
6/24	Bushor	Keppel	AG	JD506395 Severance Trial	Severance Granted	Bench



Jury and Bench Trial Results

June 2008

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	CR# and Charges(s)	Result	Bench or Jury Trial
6/2	Tucker	McMurdie	CR07-149105-001-DT POND, F4 PODP, F6	Pro Per client; Guilty	Jury
6/5 - 6/26	Garcia Sinsabaugh Coquelet	Newell	CR07-007415-001-DT Att. 2nd Deg. Murder, -F2 Agg. Asst., F2 Agg. Asst. on a Minor, F2 MIW, F4 Dis. Conduct., F6	Guilty on all Charges	Jury
6/4 - 6/9	Whiteside	Foster	CR07-119472-001-DT PODD, F4	Guilty	Jury
6/23 - 7/2	Whiteside Brauer Rood Coquelet	Spencer	CR08-102036-001-DT Theft-MOT, F3	Guilty	Jury
6/19 - 6/26	Agan	Whitten	CR07-173267-004-DT Kidnapping, F2D Theft by Extortion, F2 Smuggling, F4	Guilty on Unlawful Imprisonment-F6; Hung Jury-Extortion; Not Guilty-Smuggling	Jury
5/27 - 6/12	Burns Schmich Brauer	Mahoney	CR07-005547-001-DT 1st Deg. Murder, F1 4 cts Agg. Asst., F3 MIW, F4	Guilty on All Counts	Jury
5/22 - 6/26	Buck Brewer Joseph	Verdin	CR06-013269-004-DT 1st Deg. Murder, F1 Att. Armed Robbery, F3 1st Deg. Burglary. F2 Consp. To Commit Armed Robb, F2 Agg. Asst., F3	Guilty on 1st Deg. Murder; Att. Armed Robbery; 1st Deg. Burglary; Consp. To Commit Armed Robb. Not Guilty on Agg. Assault Charges	Jury
6/3	Russell	McClennen	JD14752 Termination of Parental Rights	Parental Rights Terminated	Bench



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for The Defense

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, James J. Haas, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

