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### Instruction on Deadly Force

by Brian Bond, Trial Group Supervisor

In a recent trial I had with Alan Davidon before Judge Dunevant, the three of us worked on and arrived at what I consider a superior self-defense instruction where deadly force is involved. The instruction fairly states the law, and because of the manner in which it is constructed, "deadly force" does not stick out in the middle of things like a sore thumb--also, the instruction seems freer of the seemingly endless redundancy of other self-defense instructions where deadly force is an issue. It also incorporates the *Hunter* burden of proof, a thing it would be embarrassing to forget.

Here is the instruction as given:

A person was justified in using or threatening physical force if the following two conditions existed:

1. a reasonable person in the defendant's situation would have believed that physical force was immediately necessary to protect against another's use or attempted use of unlawful physical force; and
2. the defendant used or threatened no more physical force than would have appeared necessary to a reasonable person in the defendant's situation.

A person is justified in threatening or using deadly physical force against another:

1. if such person would be justified in threatening or using physical force against another, as I have previously instructed you, and
2. when and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

The defendant's honest belief in the necessity of physical force or deadly physical force is immaterial; you must measure the defendant's belief against what a reasonable person would believe in a similar situation.

(cont. on pg. 2)

However, the threat or use of physical force or deadly physical force against another is not justified to resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law.

The state has the burden of proving the physical force or deadly physical force was not justified; therefore, you must be satisfied beyond a reasonable doubt that the use of physical force or deadly physical force was not justified before you find the defendant guilty. If there exists in your mind a reasonable doubt as to whether the defendant was acting in self-defense, you must resolve such doubt in favor of the defendant and find him not guilty.

Actual danger is not necessary to justify the use of physical force or deadly physical force in self-defense. Justification exists if a reasonable person in the defendant's situation would have believed that immediate physical danger was present. The force used may not be greater than reasonably necessary to repel the danger.

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**Actual danger  
is not necessary  
to justify the use of  
physical force or  
deadly physical force  
in self-defense.**

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A person may only use deadly physical force in self-defense to protect against another's use or threatened use of deadly physical force. Apparent deadly physical force can be met with deadly physical force, so long as defendant's belief as to the apparent deadly physical force is a reasonable one.

Self-defense justifies the use or threat of physical force or deadly physical force only while the apparent danger continues. The right to use physical force or deadly physical force in self-defense ends when the apparent danger ends.

The "apparent deadly force" part is based on a new Arizona Supreme Court case which just came down. The name currently escapes me, and I can't find my copy, but "Webster" is one of the names, I think. (Unfortunately, I think "Webster" is the second co-defendant's name, so it probably will do you absolutely no good finding the

case). At any rate there is a new case that says it.

Even with this instruction, I griped about two things: (1) I think the *Hunter* burden of proof stuff should be the last paragraph; and (2) at the end of the "defendant's honest belief" paragraph, the last sentence should read "in defendant's situation" rather than "in a similar situation."

The latter, admittedly, is probably a minor point, seeing as how my jury must have **totally ignored** the instruction in its entirety. It's too hot for juries, I think. In any event, I like this instruction, and here it is for you to use (or not) as you see fit. Ω

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**Vague and Overbroad Criminal Statutes--  
It's Not Just an Exam Question Anymore**  
by Cliff Levenson, Deputy Public Defender

Once the bar exam is over, the doctrines of vagueness and overbreadth rarely have much relevance in criminal defense practice. This is not only because the vast majority of criminal statutes are not so poorly conceived or drafted as to be susceptible to challenge as vague or overbroad. Unless the trial court can be convinced to grant a defense motion to dismiss for vagueness or overbreadth, airing of those issues occurs at the appellate level, after a conviction and sentencing of the defendant, who usually is better served with an acceptable plea than by suffering conviction sanctions while an appeal is pending.

Nonetheless, the recent success of an overbreadth challenge to Arizona's extortion statute at the trial court level, affirmed after the state's appeal in *State v. Weinstein*, 1995 WL 365056 (Ariz. App. Div. 1), shows that it can happen here in Arizona. And recently, Oregon's Court of Appeals, in *State v. Norris-Romine*, 134 Or. App. 204, 894 P.2d 122 (1994), affirmed the dismissal of a case brought under Oregon's stalking statute, holding that the statute is unconstitutionally vague. Because the language held to be vague in Oregon's stalking statute appears in Arizona's harassment law, and Oregon's definition of vagueness is virtually identical to Arizona's, *Norris-Romine* suggests that not only an individual client, but all persons charged under our harassment and stalking statutes, would benefit from a vigorous constitutional challenge to those statutes through a motion to dismiss.

In both Arizona and Oregon, a penal statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited. *Norris-Romine*; *State v. Averyt*, 876 P.2d 1158 (Ariz.App. Div.1 1994). Impermissibly vague statutes violate the Due Process Clause of the U.S. Constitution. *Maynard v. Cartwright*, 486 U.S. 356 (1988). Overbroad statutes prohibit activities, such as free speech, that are constitutionally protected. In analysis of an overbreadth claim, however, a person charged with a violation of a statute has standing to assert the invalidity of a statute notwithstanding the fact that his

conduct is not, in itself, constitutionally protected. *Secretary of State of Maryland v. Munson*, 467 U.S. 947 (1984).

In *Norris-Romine*, which consolidated two cases, the defendants were charged with violating O.R.S. 163.732, which prohibits knowingly alarming or coercing another person "by engaging in repeated and unwanted contact with the other person without legitimate purpose." In the Respondent's brief to the Oregon Court of Appeals, Deputy State Public Defender Andy Simrin noted that the Deputy County Attorneys at the trial level, and the Oregon Attorney General on appeal, offered three different interpretations of "legitimate purpose,"--ready ammunition for the accused's vagueness argument. Respondent's Brief, Appellate Case No. A83772, Oregon Court of Appeals (1994). (Interestingly, the argument that prosecutors, rather than "persons of average intelligence," proffered these explanations of "legitimate purpose" was not raised by the state on appeal, and so was forever lost.) The court found that phrase "with no legitimate purpose" was impermissibly vague, and upheld the trial courts' dismissals of the complaints.

**Apparently,  
the legislature felt that  
persons of reasonable  
intelligence can resolve,  
in daily and often  
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about how to behave,  
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courts have wrestled with  
for two hundred years . . .**

The *Norris-Romine* decision suggests that Arizona's harassment statute is similarly susceptible to a vagueness challenge. A.R.S. §13-2921(D) defines harassment, prohibited by the statute, as "conduct directed at a specific person which would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms annoys or harasses the person and which serves no legitimate purpose." Aside from the circularity of the definition and the vagueness of the word "seriously," the phrase "no legitimate purpose," following the *Norris-Romine* analysis, renders the statute unconstitutional.

Arizona's harassment statute was amended in 1995 to reduce the classification of harassment from a class 6 felony to a class 1 misdemeanor, and to omit the reference to "course of conduct" in the harassment definition. The 1995 amendment also added a new section. A.R.S. §13-2923, stalking, prohibits an intentional or knowing course of conduct that would cause a person to fear for that person's or that person's family's safety and in fact causes that fear (a class 5 felony), or that would cause a reasonable person to fear for that

(cont. on pg. 4) 

person or that person's family's imminent physical injury or death and in fact causes that fear (a class 4 felony). This section apparently reflects an awareness of potential overbreadth problems in that 13-2923(C)(1) specifies that the course of conduct constituting stalking "does not include constitutionally protected activity."

The 1995 stalking amendment raises two interesting issues to consider when filing the motion to dismiss a stalking or harassment charge. First, note that an overbreadth challenge should be raised in the motion, particularly where the client's alleged conduct in the case seems egregious enough that it might not be constitutionally protected, because a client accused of such conduct would still have standing to make an overbreadth challenge. Secondly, while the stalking statute's exclusion of "constitutionally protected activity" from its ambit makes the overbreadth issue problematic, it raises a vagueness issue. "Constitutionally protected activity" makes the phrase "legitimate purpose" a virtual fountainhead of clarity. Apparently, the legislature felt that persons of reasonable intelligence can resolve, in daily and often split-second decisions about how to behave, an issue that the appellate courts have wrestled with for two hundred years--that is, exactly what the constitution does and does not protect.

Finally, be sure to carefully analyze the response to a motion to dismiss for vagueness. As the Respondent's brief in *Norris-Romine* noted, the state's suggested definition of a vague phrase such as "legitimate purpose" often would prohibit constitutionally protected activity. If this is the case, the reply should make clear to the court that it must find the statute either vague (per the defense) or overbroad (per the prosecution). The opportunity is there, in the right harassment/stalking case, to restore a client's liberty, to expose and encourage rectification of the legislature's unartful drafting, and to help safeguard the constitutional freedoms we all so sorely need in this post-Garcia, post-Mantle world. Ω

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## RoUNd Up tHE UsUAl sUSpects

"Suspects" is still here, like Easy Rawlins in a Walter Mosley mystery, in case anyone out there is still listening. Okay, let's get down to the regular smorgasbord of legal issues that enquiring minds want to know.

### Special Guest During New Attorney Training *Sunwolf to howl during new attorney training*

Sunwolf, a former Colorado public defender, instructor at the National Criminal Defense College, and world-famous legal lecturer (she just returned from teaching in Paris, France), will do a session on Advanced Trial Tactics during the next new attorney training session. The session will be held in the Public Defender Training

Facility from 1:30 pm. to 4:30 p.m. on Wednesday, September 27. There will be some extra spots for non-training attorneys who want to attend.

### Say It Ain't So, Joe

Despite all the "get tough" propaganda, there are some programs still available in the Maricopa County Jail for our clients. According to information obtained by "Suspects," the G.E.D. program is still available, as well as English as a Second Language, Literacy Tutoring, and the Twelve-Step Addiction Recovery Groups.

Several of the jails have specialized programs that may be available to our clients. For example, Pre Hab of Arizona contracts with Maricopa County Sheriff's Office to provide an in-jail, job readiness program at the Estrella Jail for female inmates. While incarcerated, participants may be able to get pre-employment readiness training classes, career exploration and self-esteem building. For more information, contact Ellen R. Kirschbaum, Administrative Support Manager (256-5318).

### ADA

Speaking of jail, does the ADA apply to prisoners, inmates or those held in custody? Yes. Any programs offered to inmates must be accessible. For

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example, if a deaf inmate wishes to attend AA meetings, the jail must make reasonable modifications to permit that inmate to participate.

**Law On Billing Inmates**

"Suspects" readers may have seen the Peter Claussen letter in the editorial page of a local newspaper pointing out the problems that may develop when inmates' access to health care is discouraged.

In 1976, the Supreme Court established in *Estelle v. Gamble*, 429 U.S. 97 (1976), that the government has an obligation to provide medical care for prisoners. This fundamental premise has been upheld in subsequent cases and establishes a prison's obligation to provide for inmates' basic needs--which include medical care and treatment.

At least one case provides further support for the proposition that some fee schemes may not pass constitutional muster. A decision from the Tenth Circuit Court of Appeals in *Collins v. Romer*, 962 F.2d 1508 (10th Cir. 1992) is the most instructive case. In *Collins*, the court, although dealing with an attorney fees issue, thoroughly discusses the (unreported) district court opinion which found the Colorado Department of Corrections' payment scheme unconstitutional (prior to its amendment). The original policy required a \$3 payment whenever a prisoner was seen by a physician, dentist or optometrist. The court observed that this requirement was much too harsh considering the meager level of prisoner pay and the state's corresponding duty to provide medical care.

**Jury Salaries**

For a trial that could take as long as six months, you will probably be surprised to know that the O.J. Simpson trial jury will get only \$5 a day for their work. This salary is the lowest in the nation. Here is a glance at what states pay jurors across the nation:

Alabama	\$10.00
Alaska	(half day) \$25.00
Arizona	\$12.00
Arkansas	\$20.00
California	\$ 5.00
Colorado	\$50.00
Connecticut	\$50.00
Delaware	\$15.00
D.C.	\$30.00
Florida	\$15.00
Georgia	\$35.00
Hawaii	\$30.00

Idaho	(half day) \$10.00
Illinois	\$15.00
Indiana	\$50.00
Iowa	\$10.00
Kansas	\$10.00
Kentucky	\$12.50
Louisiana	\$12.00
Maine	\$10.00
Maryland	\$15.00
Massachusetts	\$15.00
Michigan	\$15.00
Minnesota	\$15.00
Mississippi	\$15.00
Missouri	\$ 6.00
Montana	\$25.00
Nebraska	\$20.00
New Mexico	(per hour) \$4.25
Nevada	\$30.00
New Hampshire	\$30.00
New Jersey	\$ 5.00
New York	\$50.00
North Carolina	\$30.00
North Dakota	\$25.00
Oklahoma	\$12.50
Ohio	\$10.00
Oregon	\$10.00
Pennsylvania	\$25.00
Rhode Island	\$15.00
South Carolina	\$10.00
South Dakota	\$40.00
Tennessee	\$10.00
Texas	\$30.00
Utah	\$17.00
Vermont	\$30.00
Virginia	\$30.00
Washington	\$25.00
West Virginia	\$15.00
Wisconsin	\$16.00
Wyoming	\$50.00

NOTES:

Salaries may vary by county.  
All federal courts pay \$40.00 a day.

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**Testimony From O.J. Simpson Trial;  
July 18, 1995**

(In the following segment, prosecutor Brian Kelberg questions Simpson's physician Robert Huizenga about Simpson's health after viewing his workout videotape:)

KELBERG: First of all Doctor, in viewing this videotape, did you see Mr. Simpson limp as you say he limped, in the same fashion you saw him limp on June 15, 1994, in a situation that led you to describe it as "like Tarzan's grandfather."

HUIZENGA: There was no clear walking sequence ... so I can't actually assess that. But he definitely does have a lot of the same disabilities I talked about (inaudible) --

KELBERG: Doctor, my question --

HUIZENGA: I didn't see a walking segment well enough to totally evaluate his gait.

KELBERG: You saw him in a walking maneuver forward and backwards during the course of the exercise, did you not?

HUIZENGA: Yes, I did.

KELBERG: My specific question then to you again is, sir, did you see any evidence of the same kind of limp that you say you saw on June 15 that led you to describe Mr. Simpson as walking "like Tarzan's grandfather?"

HUIZENGA: In this tape --

KELBERG: Yes, or no, doctor?

HUIZENGA: In this tape he has an altered cadence, but his limp was definitely more pronounced when I saw him on 6-15-94.

KELBERG: Is your answer that you did not see the limp as you say you saw it on the 15th?

HUIZENGA: That is correct.

DEFENSE ATTORNEY SHAPIRO: Objection, argumentative.

JUDGE ITO: Overruled.

KELBERG: And your answer, doctor?

HUIZENGA: That is correct.

KELBERG: And doctor, would it be accurate to say

that none of the activity that you witnessed in this video segment would create the kind of adrenaline rush that you testified one might expect if a person like Mr. Simpson were enraged, is that correct?

HUIZENGA: This video would not create an adrenaline rush. This workout video, unless he were very, very nervous about going in front of the camera to give, you know, some of his prepared lines.

KELBERG: Did Mr. Simpson appear nervous to you in delivering any of his lines?

HUIZENGA: No, he did not.

KELBERG: And so would it be accurate to say, doctor, that again no circumstance here would have caused the kind of adrenaline rush that can lead to exertion beyond normal capability that one might see if a person is in an -- an enraged emotional state, is that correct?

HUIZENGA: When a person is in an enraged emotional state, presumably they have more adrenaline than what he would have for this sort of exertion, which the body would -- would still need to call up some mechanism for the -- the exercise. But no, I think that that's a fair statement, he wouldn't have the kind [sic] adrenaline rush you would if, hypothetically, you would if you were enraged.

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(In the following segment, Kelberg asks Huizenga if Simpson was lying about his health after viewing a videotape of him giving a motivational speech:)

KELBERG: Doctor, you were apprised this tape was going to be played before you came into court today, weren't you?

HUIZENGA: I've never seen that tape.

KELBERG: You were told there was going to be a motivational speech tape of Mr. Simpson making this, didn't you?

HUIZENGA: I was never told this tape was going to be played by anyone.

KELBERG: Did you prepare that answer in advance expecting --

HUIZENGA: No, I didn't.

KELBERG: -- the question?

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HUIZENGA: No, I did not.

KELBERG: Let me ask it this way, then, doctor: You were saying Mr. Simpson was merely a pitchman who was lying to the people there because what he said about his health was not true, based on your experience with the Raiders. Is that what you're saying, doctor?

HUIZENGA: I'm giving all those as possibilities --

KELBERG: Are you saying --

HUIZENGA: I do not know his condition.

KELBERG: Excuse -- excuse me, your honor.

ITO: He is entitled to finish his answer.

KELBERG: If it's responsive, I suggest --

ITO: Well, let's -- I didn't even hear -- I heard four words out of the doctor's mouth.

KELBERG: I'm sorry, I thought I heard the end of the sentence.

ITO: Go ahead and finish your answer.

HUIZENGA: Could you repeat the question.

KELBERG: Doctor, you are saying, are you not, that Mr. Simpson, when he's giving his medical condition up there, is lying to those people that, in fact, that does not represent his condition? Isn't that what you're saying by relating this to your experience with the NFL players?

SHAPIRO: Objection to this (inaudible).

ITO: Sustained. Rephrase the question.

KELBERG: Doctor, you're suggesting that Mr. Simpson is not being truthful with these people regarding his medical condition because he views himself as a pitchman for a product, as a result of which he's willing to say things that are not true to please the people paying him to make the speech. Is that what you're suggesting?

SHAPIRO: Objection, mischaracterizing what Mr. Simpson said.

ITO: Overruled.

KELBERG: You may answer the question, doctor.

HUIZENGA: I cannot get inside Mr. Simpson's head. I do know that he had a lack of understanding of his rheumatoid arthritis. He constantly denied the fact that he had rheumatoid arthritis. He did not want to see himself

as a [sic] arthritic patient. And so I can't say whether it was: A, a full lack of understanding of his disease that led him to not understand the possible effect of the anti-rheumatoid arthritis medication he was taking at the time of that speech, or whether he was knowingly misrepresenting to make money. I have no idea. And I'm not qualified to say.

KELBERG: Well doctor, if he was being truthful about his condition, that he wasn't making false statements just to please somebody paying him, then, in fact he is saying his condition is such "I don't need the pills any more," as of this time, isn't that what he's saying?

SHAPIRO: Objection, calls for speculation.

ITO: Sustained.

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## July Trials

### July 5

Jim Likos: Client charged with burglary, criminal damage, and theft (with two priors). Trial before Judge Hertzberg ended July 6. Defendant found guilty of burglary and criminal damage; guilty of a lesser included theft. Prosecutor Duncan.

### July 6

Rebecca Donahue: Client charged with aggravated DUI. Trial before Judge Dougherty ended July 11. Defendant found guilty of a lesser included misdemeanor. Prosecutor Ainley.

### July 10

Greg Parzych/Vernon Lorenz: Client charged with robbery. Trial before Judge Scott ended July 12. Defendant found guilty. Prosecutor Zettler.

John Taradash: Client charged with unlawful flight and forgery. Trial before Judge Sticht ended July 11. Defendant found guilty. Prosecutor Mason.

(cont. on pg. 8) ☞

July 12

Gary Bevilacqua: Client charged with aggravated assault (dangerous) and burglary. Investigator H. Jackson. Trial before Judge Mangum ended July 12. Charges dismissed on defense motion. Prosecutor Whitten.

July 14

Susan Corey: Client charged with two counts of aggravated DUI. Trial before Judge Sargeant ended July 17. Defendant found guilty. Prosecutor Smith.

July 17

William Peterson: Client charged with robbery. Trial before Judge Topf ended July 19 with a hung jury. Prosecutor Rapp.

Barbara Spencer/Larry Grant: Client charged with first degree murder. Trial before Judge Gerst ended July 27 with a hung jury. Prosecutor Levy.

July 18

Jim Cleary: Client charged with two counts of shoplifting and one count of theft (with one prior). Trial before Judge Hertzberg ended July 20. Defendant found guilty. Prosecutor Lynch.

July 19

Tim Agan: Client charged with threatening and intimidating to promote interest of criminal street gangs. Investigator P. Kasieta. Trial before Commissioner Lewis ended July 27. Defendant found guilty. Prosecutor Daiza.

Ray Vaca: Client charged with three counts of aggravated assault. Trial before Judge Scott ended July 21. Defendant found guilty of three counts of lesser included endangerment. Prosecutor Zettler.

July 20

Darius Nickerson: Client charged with aggravated assault (dangerous and with priors). Trial before Judge D'Angelo ended July 27 with a hung jury. Prosecutor Harris.

Greg Parzych: Client charged with theft. Trial before Judge Barker ended July 25. Defendant found **not guilty**. Prosecutor Mills.

July 24

Wesley Peterson: Client charged with child molestation and sexual abuse with a minor under 15. Trial before Judge Ishikawa ended July 27 with a hung jury. Prosecutor Bowen.

Ray Schumacher: Client charged with aggravated assault (with three priors). Trial before Judge Araneta ended July 27 with a hung jury. Prosecutor Smyer. Ω

**Bulletin Board**

**Personnel**

***New Attorneys:***

The following trial attorneys will start our training program on September 11:

**Anthony Bingham** received a B.S. in Business Finance from Brigham Young University in 1987, and a J.D. from Gonzaga University School of Law (Spokane, Washington) in 1992. While in law school, he was a legal clerk at the City of Spokane Public Defender's Office. Before joining our office, Mr. Bingham served as an associate attorney at Howard & Glenn, P.C. in Casa Grande. Mr. Bingham speaks and writes Spanish.

**Ronee Korbin** earned a B.A. in International Studies (*cum laude*) at Ohio State University in 1990. During her undergraduate years, Ms. Korbin (who is fluent in French) studied for one summer session in France and another summer session in Jerusalem, Israel. She earned her J.D. at Temple University School of Law (Philadelphia, Pennsylvania) in 1993. While in law school, Ms. Korbin served as editor of the Temple Political and Civil Rights Law Review, and as an assistant district attorney intern at the Office of the District Attorney in Philadelphia. Prior to coming to Arizona and joining our office, she was a law clerk for the Honorable Samuel M. Lehrer, Court of Common Pleas, Trial Division in Philadelphia. Ms. Korbin has been admitted to practice in New Jersey and Pennsylvania as well as Arizona.

**Laura Plimpton** obtained a B.A. in Psychology (*summa cum laude*) at the University of California in 1977, an M.A. in Education-Counseling Psychology at the same university in 1979, her MBA at UCLA Anderson School of Management in 1981, and her J.D. at Arizona

(cont. on pg. 9) ☞

State University in 1993. Prior to joining our office, Ms. Plimpton was in private practice as a trial consultant in addition to serving as an associate at Shapiro & Sutton in Phoenix.

**Rick Tosto** received a B.A. in Criminal Justice at Michigan State University in 1988 and his J.D. at Detroit College of Law in 1993. While in law school, he served as an intern for a judge in the Wayne County Circuit Court. Prior to joining our office, Mr. Tosto practiced law at Combs & Associates and at the Law Offices of Dan Raynak.

**Chelli Wallace** earned a B.S. in Finance at Arizona State University in 1989 and a J.D. at Pepperdine University School of Law (Malibu, California) in 1992. While in law school she served as a law clerk for the Honorable John Foreman. Prior to joining our office, Ms. Wallace was a deputy county attorney in Coconino County.

#### *New Support Staff:*

**Elisa Daniel** joined our office on August 08 as a temporary secretary for Mental Health. Ms. Daniel, who is bilingual, previously worked as the sole secretary for a small, private investigations office.

**Linda Lintz** started as the new legal secretary in Trial Group C on July 31. Ms. Lintz, who recently completed training in a Legal Assistant program, has extensive secretarial and administrative experience in the medical field, and formerly was the office manager for a psychiatrist.

**Lynda Turner** will start on August 28 as a legal secretary for one of our downtown trial groups. Ms. Turner, who has an AA in business and who recently completed a legal assistant program at Phoenix College, has ten years' secretarial experience as a school secretary.

#### *Moves and Changes:*

**Teresa Carranza**, a Trial Group B legal secretary, transferred to Trial Group D on August 11.

**Naomi Manasco**, a legal secretary in Trial Group A, transferred to our Appeals Division.

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## Sexual Harassment

*Rena Glitsos, Trial Group A Supervisor, was recently designated as one of the contact people in our office for staff members with questions or concerns regarding sexual harassment. Jim Haas and Diane Terribile remain as the our other designated, harassment contact people.*

*The following policy is reprinted as a reminder of our office's position and procedures regarding sexual harassment. NOTE: Employees in our department with questions or problems may follow one of two approaches, (1) discuss the matter with a supervisor, progressing through the normal "chain of command" and skipping the immediate supervisor if that individual is the offending party, or (2) discuss the matter with one of our office's designated, harassment contact people (listed above).*

### Maricopa County Sexual Harassment Policy and Procedure

#### Definition

Sexual harassment is defined as any unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- \* Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- \* Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- \* Such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment. Retaliation against an employee or applicant for filing a sexual harassment complaint may be considered to be grounds for a new sexual harassment complaint.

#### County Policy on Harassment

Maricopa County prohibits sexual harassment by all employees at all levels. It is the responsibility of all

(cont. on pg. 10) 

County employees, supervisors and appointing authorities and department heads to actively pursue the elimination of sexual harassment in County employment. All incidents of alleged sexual harassment involving County employees, which cannot be resolved within the department should be called to the attention of the Personnel Department, Employee Relations Division. County employees should raise sexual harassment questions promptly so that an immediate investigation may be conducted and appropriate steps taken.

After a thorough investigation has been conducted by either the department or the Personnel Department, employees who are determined to have been involved in the sexual harassment of another person while on duty or while representing Maricopa County will be disciplined according to Maricopa County Employee Merit Rules. This discipline may include dismissal from County employment.

#### Employee Responsibilities

Any employee who believes that he or she is being sexually harassed by a supervisor, co-worker, customer or client should promptly take the following action:

1. The person felt to be involved in the harassing should be confronted in a polite but firm manner. This person should be told how the harassing is perceived and to cease it immediately. Feelings of intimidation, offense or discomfort should be expressed to the harasser. If practical, a witness should be present for this discussion. If a confrontation is not possible, a memorandum should be written describing the incident(s) of harassment, the date(s), a summary of any conversations with the harasser and the harasser's reactions. This should be retained for future use.

2. If the harassment continues or if it is felt that some employment consequences may result from the confrontation with the harasser, the employee may, either orally or in writing, bring the complaint to a higher level supervisor, the department head, other appropriate person within the department or the Employee Relations Division of the Personnel Department. This should be done as soon as possible so the problem can be resolved.

3. If the employee is dissatisfied with the actions of the supervisor or departmental staff, the complaint may be brought to the Employee Relations Division of the Personnel Department in accordance with the Procedure detailed herein.

4. The Employee Relations Division of the Personnel Department is available to provide advice to any employee who feels that he or she may be a victim of

sexual harassment or has any questions on the issue. All inquiries and complaints directed to Employee Relations will be treated in a confidential manner unless directed otherwise by the employee.

#### Department's Responsibilities

Department should:

1. Make all employees, including supervisors, aware of the County policy regarding sexual harassment. A department may even wish to issue its own internal policy emphasizing the importance of eliminating sexual harassment in the department.

2. Formally make supervisors aware of sexual harassment problems and express employer disapproval of sexually harassing conduct.

3. Encourage open communication so that employee will not feel uncomfortable in bringing complaints forth.

4. Investigate all sexual harassment complaints impartially and promptly, keeping the complaint as confidential as possible.

5. Upon learning of sexual harassment, take prompt corrective actions.

#### Supervisor's Responsibilities

1. Set a good example. Do not participate.

2. Do not condone even seemingly innocent acts of discrimination or harassment.

3. Remember that you are management's representative.

Requests for assistance and advice in preventing or eliminating sexual harassment or in correcting apparent sexual harassment may be obtained from the Employee Relations Division of the Personnel Department.

#### Responsibility of the Employee Relations Division of Personnel

The Employee Relations Division of the Personnel Department is responsible for thoroughly investigating employment discrimination allegations brought to its attention by County employees or job applicants, including all complaints of sexual harassment. The Employee Relations Division will notify the department when a complaint is received and work closely

(cont. on pg. 11) 

with the department throughout its investigation in a spirit of cooperation to reach a resolution. All complaints are handled in a manner which is confidential and will help preclude retaliation against the employee.

### Complaint Procedure

An employee or job applicant who believes he or she has been sexually harassed as defined in the definition section, and whose complaint has not been resolved with the department, may file a complaint with the Maricopa County Personnel Director, 301 West Jefferson Street, 2nd Floor. Such complaints must be filed timely so that the investigation and corrective action can be effective. The employee filing the complaint may contact the Employee Relations Division at 506-3895 for assistance. Departmental supervisors who wish to discuss situations which may be harassment are also urged to contact the Employee Relations Division. The Employee Relations Division's investigative findings and recommendations will be reviewed with the appointing authority. Ω

### SUBSCRIPTIONS

Annual subscriptions for our newsletter, for *The Defense*, expire on September 30. If you are a subscriber and wish to continue the delivery of your monthly newsletter with no interruption, please renew with us by September 15. The year's subscription (which runs from October 01 to September 30) is still only \$15.00.

For renewal, please send your name, mailing address, and a \$15.00 check or money order (payable to "Maricopa County") to

Office of the Public Defender  
Maricopa County  
132 South Central, Suite 6  
Phoenix, Arizona 85004  
ATTN: Sherry Pape

Helene Abrams is a member of the Phoenix Fire Department's Citizens' Advisory Panel. She has provided us with the following reminder:

Everyone is watching what they *eat* these days, but watching what we *heat* doesn't always get the attention it deserves. And that can be dangerous.

Cooking equipment is the leading cause of home fires in the U.S., causing one-fourth of all home fire injuries. Take care when cooking.

And, keep anything that can burn, including people, at least three feet away from heaters, wood stoves and fireplaces. Be sure to turn off space heaters before going to sleep or leaving home.

Watch what you heat--prevent home fires.



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## Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are designed for WordPerfect 5.1 in DOS. If you have any suggestions that you would like to share, please contact Georgia Bohm at *for The Defense* (506-3045). If you have any problems or questions regarding the tips offered below, contact Ellen Hudak in Trial Group B (506-8331) or Georgia.

### Cursor Movement Tips

KEYSTROKE(S)	ACTION
(Ctrl-Left Arrow) (Ctrl-Right Arrow)	Move one word to the left Move one word to the right
(Ctrl-Up Arrow) (Ctrl-Down Arrow)	Move up one paragraph Move down one paragraph
(Home), (Left Arrow) (Home), (Right Arrow)	Move to the left side of the screen Move to the right side of the screen
(Home), (Home), (Left Arrow) (End) or (Home), (Home), (Right Arrow)	Move to the beginning of the line (in front of text) Move to the end of the line
(Home), (Home), (Home), (Left Arrow)	Move to the beginning of the line (in front of all codes and text)
(-)* or (Home), (Up Arrow) (+)* or (Home), (Down Arrow)	Move to the top of the screen Move to the bottom of the screen
(Home), (Home), (Up Arrow) (Home), (Home), (Down Arrow) (Home), (Home), (Home), (Up Arrow)	Move to the top of the document Move to the bottom of the document Move to the top of the document (in front of all codes and text)
(Ctrl-Home), <i>page#</i> , (Enter) (Ctrl-Home), (Ctrl-Home)	Move to any page you select in document Move to the previous cursor position
(Ctrl-Home), (.) (Ctrl-Home), (Enter)	Move to the end of a sentence (after the first period) Move to the end of the paragraph (after the <b>HRT</b> [Hard Return] code)

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\* Use this character on numeric key pad only (not the character at top of keyboard over letters) and make sure *num lock* is "OFF."

Ω