for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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DRUNK DRIVING . . . A BICYCLE?

By Vicki Lopez
Deputy Public Defender--Trial Group B

This office handles many DUI cases: some fairly standard, some with slightly unusual issues, and some that are just rather extraordinary. A DUI charge incurred while riding a bicycle definitely falls into the latter category. Although it may not be the type of situation an attorney encounters frequently, once you get through laughing and wondering how bored the arresting officer must have been in order to bother with it, it is one case in which a Motion to Dismiss should be granted.

Chapter 6 of Title 28 of the Arizona Revised Statutes, regarding driving under the influence, does not address the issue of whether A.R.S. §28-692 applies to individuals riding bicycles. Furthermore, there is no Arizona case law dispositive of this issue.

The standard argument of the prosecutor is based on A.R.S. §28-692(A) which states that it is unlawful for any person to drive or be in actual physical control of any "**vehicle**", while under the influence of intoxicating liquor. Their position is that the statute was meant to include a bicycle as a "vehicle". If the Legislature had intended to exclude bicycles as vehicles under §28-692, it would have used the phrase "motor vehicle" instead of "vehicle". In further support of this position the prosecutor will argue that A.R.S. §28-812 indicates that a bicycle rider on the roadway is subject to all the same traffic laws which apply to a driver of a motor vehicle, and therefore, the bicycle rider is subject to the DUI laws, just like the driver of an automobile.

However, the definitions of a "bicycle" and a "vehicle" contained in A.R.S. §28-101 are mutually exclusive. Subsection 5 defines a "bicycle" as every device propelled by human power upon which any person may ride, having the tandem wheels either of which is more than sixteen inches in diameter or having 3 wheels in contact with the ground any of which is more than sixteen inches in diameter.

(cont. on pg. 2) ☞

Subsection 69 defines a "vehicle" as a device in, upon or by which any person or property is or may be transported or driven upon a public highway, *excepting devices moved by human power* or used exclusively upon stationary rails or tracks. Since a bicycle is a device propelled by human power and the definition of a vehicle expressly excludes such devices, a bicycle is statutorily precluded from being considered a vehicle. Consequently, bicycle riders may not be charged with DUI.

Another interesting point concerns the implied consent suspension law. A.R.S. §28-691 applies only to those persons operating a "motor vehicle". This means that even if a bicycle was a vehicle under §28-692, a bicycle rider is not subject to a license suspension pursuant to the implied consent law, even if his B.A.C. is equal to or greater than .10, because the bicycle is not a "motor vehicle". The fact that the legislature specifically excluded bicycle riders from the implied consent suspension law corroborates the position that bicycles were never intended to be considered vehicles under the DUI laws.

This analysis has already been successful in obtaining a dismissal of a misdemeanor DUI in Justice Court. No one knows what would happen if this argument were presented in Superior Court, because, so far, the State has not filed any felony DUI's on a bicycle, but you never know..... ■

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ARE YOU BEING SERVED?
The Fiction of the Self-Serving Objection

by Garrett Simpson
Deputy Public Defender--Appeals Division

Officer Jones has just testified that your client confessed to running from the Circle K store with a case of beer under each arm. Your client's checkered past sadly prevents him from taking the stand. Now on cross you want to elicit from the officer your client's additional out-of-court statement that he took the beer to put out a smoldering engine fire on a bus full of kindergartners in the store's parking lot.

"Objection," smirks the prosecutor. "Self-serving." Too many judges would automatically affirm that objection. The culture of the law intuitively informs them to do so. However, "The admissibility of evidence is not affected by its being self-serving," Barrett v. Melton, 112 Ariz. 605, 607, 545 P.2d 421, 423 (1976); Sampson v. Transport Indemnity Company, 1 Ariz.App. 529, 405 P.2d 467 (1965); cf. Richfield Oil Co. v. Estes, 55 Ariz. 81, 98 P.2d 851 (1940). "Presumably, all evidence and testimony offered by a litigant is self-serving," State v. Green, 117 Ariz. 92, 570 P.2d 1265 (App. 1977). Any question of the self-serving nature of the evidence goes to the weight rather than admissibility, Drumwright Lynn Eng. & Mfg., 14 Ariz. App. 282, 482 P.2d 891 (App. 1971).

The chief evil of the "self serving" objection, which appellate lawyers see time and again, is that it tends to unfairly cut off defendants from the full and robust exercise of the right to put on evidence in their own behalf.

> "The doctrine that a party's out-of-court declarations or statements cannot be evidence in his favor, because 'self-serving,' seems to have originated as a counter-part and accompaniment of the rule, now universally discarded, forbidding parties to testify. When this latter rule of disqualification for interest was abrogated by statute, the accompanying rule against 'self-serving' declarations should have been regarded as abolished by implication. Unfortunately it has lingered in the language of many opinions as a sweeping rule of exclusion." McCormick on Evidence, 1954 Ed., p. 588 § 275.

(cont. on pg.3) ☞

So, how do you pick this lock? Simply apply the Rules of Evidence and look for handy hearsay exceptions. No hearsay exception excludes "self-serving" statements. A useful example is the complete statement doctrine. If part of a statement is exculpatory and part of it is against your client's interest, the entire statement is admissible under Rule 804(b)(3). See, State v. Barger, 167 Ariz. 563, 565, 810 P.2d 191, 193 (1990). Barger generally holds that the exculpatory out-of-court statements of a defendant are inadmissible hearsay, *unless they come under an exception*, such as the complete statement doctrine, State v. Powers, 117 Ariz. 220, 226, 571 P.2d 1016, 1022 (1977); State v. Lovely, 110 Ariz. 219, 220, 517 P.2d 1016, 1022 (1973). This is true even if the statement is the dreaded "self-serving" hearsay.

In Arizona, to be admitted into evidence the exculpatory hearsay statements must relate to the statements already admitted and tend to explain, contradict or qualify the admission in order to be received as part of a complete statement, State v. Britson, 130 Ariz. 380, 384, 636 P.2d 628, 632 (1981).

The bottom line is that where parts of incriminating statements are introduced by the state, the accused has the right through cross examination, hearsay or direct evidence to introduce the allegedly "self-serving" statements.

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Beware of using the evidentiary "catch all" provisions of Rule 803. Their application by the trial bench is highly subjective and appellate courts are loathe to second-guess the trial court. In State v. Smith, 138 Ariz. 79, 84, 673 P.2d 17, 22 (1983), the court held a defendant's out-of-court assertion of his innocence lacked equivalent sufficient circumstantial guarantees of trustworthiness to make it admissible under the residual exception of Rule 803(24), and therefore the statement was properly excluded.

What kind of statements would have the "circumstantial guarantees of trustworthiness?" In a vehicular homicide where the defendant is injured, her denials to trauma doctors of drinking or drug use might qualify under Rule 803(4). Similarly, look for ways to *channel* your client's hearsay onto the well-greased skids of present sense impression, excited utterance or state of mind, Rule 803(1),(2) and (3).

Particularly, the Arizona Supreme Court has profoundly expanded the "excited utterance" exception, e.g., State v. Whitney, 159 Ariz. 476, 768 P.2d 638 (1989). In Whitney, witnesses' incriminating hearsay statements made in response to an officer's questions, twenty minutes after the exciting event, were admitted into evidence even though the state conceded that the out-of-court declarants had also given the police phoney names and addresses. Turn Whitney into a sword to prod admission as an excited utterance of what would otherwise be excluded as self-serving. I don't know about you, but being accused of a crime would be an all too exciting event for me.

A final example of a hearsay exception is admissibility of hearsay on the issue of intent. In State v. Wallace, 97 Ariz. 296, 297-298, 399 P.2d 909, 910-911 (1965) the issue was whether the appellant intended to commit a robbery [The defendant had wanted to testify, or to put on evidence of his statements, that he intended to *sell* a pellet gun to a liquor store clerk, rather than rob him with it]. Where specific intent is an element of the offense, direct testimony by a defendant as to his intent at the time of or accompanying the act is admissible, Richardson v. State, 34 Ariz. 139, 268 P. 615 (1928). The objection that a defendant's out-of-court utterance, either through his own testimony or through others is self-serving, is not a valid basis for exclusion.

What if there is no plausible exception within which to couch your client's hearsay? A rationale for admitting the hearsay is that accused citizens have a Sixth Amendment right to put on a case and confront the evidence against them. Admitting what might otherwise be excluded as hearsay permits him to explain the impeaching material and provide the jury with "the complete picture," Newman v. State, 499 A.2d 492, 497 (Md. 1985). Urge that it violates due process to let out-of-context evidence be unleavened by the explanatory contents of the so-called "self-serving" statements. However, see State v. Conn, 137 Ariz. 152, 155, 669 P.2d 585, 588 (App. 1982), where Division Two criticized the argument that defendants have a Sixth Amendment right to put on hearsay, even as it recognized the fact "self-serving" statements are not automatically excluded.

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So, back to our client at the Circle K. When the prosecutor objects that the statement is self-serving, argue the intent exception and cite to Wallace. Also tell the judge that the Arizona Supreme Court in State v. Goodyear, 98 Ariz. 304, 326, 404 P.2d 397, 412 (1965) noted that ". . . when a confession is admitted in evidence, parts of the confession which are self-serving must also be admitted. In other words, you cannot just admit the part of the confession that incriminates the defendant and leave out the part which supports his theory of innocence."

States objection "overruled!" ■

Computer Corner

By Ellen Hudak
Administration

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are fashioned for WordPerfect 6.1 Windows in DOS. If you have any problems, questions or suggestions that you would like to share, please contact the Help Desk (506-6198).

DRIVES:
Commonly used **Drives** are as follows:

- **S:** Drive = is the shared drive on the server that every employee in the office has access to. You do not want to save anything to this drive that is confidential. This drive is used to transfer files between users, instead of using a diskette. This drive is backed up daily.
- **H:** Drive = is your portion of the server. No one has access to this drive but you. The advantage of saving to this drive, as opposed to your hard drive (C:\), is that all documents saved on this drive will be backed up daily by a system wide backup. This drive is confidential.
- C:\ Drive = is the hard drive located in your pc. **DO NOT SAVE** files to C:\.

FILE MANAGEMENT:
For better file management, we recommend that you create directories under a default directory of "wpmain." This is the same directory we used in the WordPerfect 5.1 version. When you create a directory, the path will be: H:\WPMAIN\(DIRECTORY)\(SUBDIRECTORY). One way to understand this is to image your computer as a file cabinet. Each directory is similar to a "drawer" and a subdirectory are the file folders within that drawer. The subdirectories (filefolders) contain the documents.

A **colon** (:) separates drives from directories and file names; a **backslash** (\) separates directories from subdirectories and file names. A file name may contain a maximum of eight characters, with no spaces.

CREATING SUBDIRECTORIES:
When you are in a document in WordPerfect, move your mouse to **File**, and click on **Open**. An Open File Screen will appear. Click on **File Options**, and click on **Create Directory**. A new screen called "Create Directory" will appear. Type the name of directory you want to create including the drive on which you want to store your directory; i.e. H:\WPMAIN\henry\ (if the current drive is not already set to H:\wpmain\. Hit **Enter**. You have now created a directory. To create an additional subdirectory, follow the same directions as listed above. You must first decide the structure of your subdirectories: examples follow.

H:\WPMAIN\ Default Directory
H:\WPMAIN\ARAIZA\ Subdirectory
H:\WPMAIN\ARAIZA\LETTERS\ Subdirectory OR
H:\WPMAIN\ARAIZA\BROOKS\ Subdirectory

SAVE OPTIONS:
SAVE: type the name of the document you wish to save. When you want to use this document again, open it and complete your changes. If you select "save" when closing this document, it will overwrite the original.

To keep the original in its entirety, but also save the same document with the changes, you will select the "Save As" Option under **File**. This "Save As" will then have you record a new name and directory for this document.

SAVE AS: saves the file in its revised form. ■

DUI CHART

EDITOR'S NOTE: I would venture to say that all of us who have represented clients on misdemeanor or felony DUIs dread that one question that is always asked, "What do I have to do to get my license back?" Usually, we shrug our shoulders or shake our heads and say "ask M.V.D." Now your shrugging and shaking days are over! Todd Coolidge, one of our attorneys in the specialized Aggravated D.U.I unit, has put together the following chart with guidelines and advice. ***Tear it out*** of the newsletter and keep it with you. You should still advise your client to talk to M.V.D. but now you can give some solid advice on what they can expect. [R.B.]

What Happens To My License After Justice Court Proceedings?

A Guide for Attorneys representing individuals at the Criminal and Civil Traffic Level.

By Todd Coolidge
Deputy Public Defender--Trial Group C

Your client has been stopped for D.U.I, arrested, and submits to a BAC test. The result is .10 or higher:

Admin Per Se Suspension
90 days: 30 days no driving/60 days work permit*

↓

then

[A] Client does not request MVD hearing. Suspension starts 16th day after arrest.	[B] Client does request MVD hearing. Suspension stayed pending outcome.	[C] Client does request MVD hearing. Suspension stayed pending outcome.
↓	↓	↓
90 day suspension 30 no driving/60 work permit *	Loses hearing	Wins hearing
↓	↓	↓
Later, client is plead to or convicted of DUI/BAC	90 day suspension 30 no driving/60 work permit *	No suspension
↓	↓	↓
Additional 3 month "points" suspension . . . **unless:** Client enrolls in Traffic Survival School # + $50 reinstatement fee $25 new license	Later, client is plead to or convicted of DUI/BAC	Later, client is plead to or convicted of DUI/BAC
	↓	↓
	Additional 3 month "points" suspension . . . **unless:** Client enrolls in Traffic Survival School # + $50 reinstatement fee $25 new license	90 day suspension 30 no driving/60 work permit * **Then**, client must pay: $10 reinstatement fee $25 for new license + S.R. 22 insurance for 3 yrs (very costly). **See Practice Tip #1.**

PRACTICE TIP #1

If your client is in category C--that is, client has an MVD hearing scheduled to fight the Admin Per Se suspension--and a conviction for DUI is likely, you may want to call MVD (255-7737) to cancel the hearing and stipulate to the 90 day suspension to save your client the costly S.R.22 insurance.

WORK PERMITS

The work permit is automatically computer generated and mailed immediately prior to the start of the work permit period. MVD assumes employment, so there is no need to verify. The work permit hours are unlimited; however, the driving is limited only to travel to, during, and from work, school, or medical treatment. Driving during work hours must be work related.

To be eligible, your client must have:

(1) valid driving privileges;

(2) no prior DUI convictions or DUI related suspensions within 5 years; and

(3) the Implied Consent/Admin Per Se affidavit must indicate no "serious physical injury."

Your client has been stopped and arrested for DUI, but refuses to submit to a test of the officer's choice.

Implied Consent Suspension
12 month, no permits available
↓
then

[A] Client requests MVD hearing. Suspension stayed pending outcome.	[B] Client requests MVD hearing. Suspension stayed pending outcome.	[C] MVD hearing not requested. Suspension begins 16th day after arrest.
↓	↓	↓
Wins hearing	Loses hearing	
↓	↓	↓
No suspension	12 month suspension	
↓	↓	↓
Later, client is plead to or convicted of DUI/BAC	Later, client is plead to or convicted of DUI/BAC	Later, client is plead to or convicted of DUI/BAC
↓	↓	↓
Treated as if defendant took test: 90 day suspension, 30 no driving/60 work permit * + $10 reinstatement fee $25 new license S.R.22 insurance for 3 years	The additional 3 month "points" suspension, concurrent with the 12 month suspension, **unless:** Traffic Survival School♯ + $10 reinstatement fee $25 new license S.R.22 insurance for 3 years	The additional 3 month "points" suspension, concurrent with the 12 month suspension, **unless:** Traffic Survival School♯ + $10 reinstatement fee $25 new license S.R.22 insurance for 3 years

PRACTICE TIP #2

It is always in a client's best interest to request an Implied Consent MVD hearing. This hearing should never be waived by the client or attorney.

TRAFFIC SURVIVAL SCHOOL:

If a client accumulates excessive points within a 1 year period, attendance at T.S.S. avoids a suspension. Clients are eligible once every 2 years. If client is eligible for T.S.S., but fails to complete, a 6 month suspension is ordered.

REQUIREMENTS:

- 8 to 12 points within one year
- Can participate only once every 2 years
- Cannot participate if over 12 points
- Cost is $75.00 and includes 8 hours of instruction.
- The date of conviction is determinative for the accumulation of points.

POINTS FOR TRAFFIC OFFENSES:

- DUI = 8 points
- Reckless Driving = 8 points
- Hit and Run = 6 points
- Speeding = 3 points
- All other civil traffic = 2 points

PENALTIES:

- 8-12 points: within 1 year, client eligible for T.S.S.

- 8-12 points: within 1 year, and client has already attended T.S.S., 3 month suspension entered

- 13-17 points: client not eligible for T.S.S. and 3 month suspension entered

- 17-21 points: client not eligible for T.S.S. and 6 month suspension entered

- Over 21points: client not eligible for T.S.S. and a 12 month suspension entered

LESSER OFFENSES:
Your client pleads to a lesser offense or points on D.U.I.

ADMIN PER SE
If client's license was/is suspended pursuant to Admin Per Se and the criminal charge is later reduced, amended down, or dismissed, MVD will remove the notation of the Admin Per Se suspension after suspension completed. (See A.R.S. §28-428)

To expedite this, client needs to take a certified copy of court abstract to MVD.

IMPLIED CONSENT
However, if client refused to submit to test, MVD will not remove the notation, or effect, of Implied Consent Suspension from driving record after plea to lesser charge, points, or dismissal.

REVOCATIONS

(1) Your client pleads to or is convicted of any combination of 2 DUI or Reckless Driving convictions within 5 years. This will result in automatic 1 year revocation of client's license. (See A.R.S. §28-445(A)(7).
Note: the date of the offense is determinative in applying the 5 year period.

(2) Any DUI drug conviction (including prescription drugs) will result in an automatic 1 year revocation.

PRACTICE TIP #3
If you can make the factual basis, have client plead to alcohol DUI and make sure court abstract does not indicate "drugs."

GETTING THE LICENSE BACK AFTER REVOCATION

Before your client can submit an application packet, your client must meet all of the following criteria:

(1) There are 30 days or less left in client's revocation period;

(2) If the client's driving privilege is also suspended, the end of the suspension period must also be on or before the ending date of the client's revocation. A mandatory insurance suspension or financial responsibility suspension will not prohibit the client from completing an application;

(3) If the client's driving privilege is suspended in another state, the client must satisfactorily complete any reinstatement of the privilege to drive in that state and provide a clearance letter. If the client's driving privilege is revoked in another state, a minimum period of one year from the effective date of the revocation must have elapsed before applying;

(4) All warrants must be quashed and all traffic complaint suspensions must be court satisfied.

(5) If the client was issued a citation for any traffic violation while driving a vehicle, the client may not submit the application until 12 months have elapsed since the date of the violation.

In addition to the 5 criteria listed above, the client must also file: an Investigation Application Affidavit, a Court Compliance Letter, and a Substance Abuse Evaluation. These 3 forms are included within the Reinstatement Packet available at any MVD licensing office.

SUSPENSIONS:

A.R.S. §28-473(A)
Includes court ordered suspensions, financial responsibility suspensions, **Implied Consent Suspension**, and other miscellaneous causes.

A.R.S. §28-473(B)
Admin Per Se and/or relating to DUI convictions.
Mandatory 48 hours in jail.

A.R.S. §28-473(C)
Failure to appear for and/or pay tickets.

A conviction for driving on a suspended license for A.R.S. §28-473 (A) or (B) will result in another suspension for a like period of time. The length of suspension is a maximum of one year from the time the client would have been eligible to apply for a new license.

REINSTATEMENT FEES:
The fees range from $10 to $50, depending on the type of suspension.

SUSPENSIONS OF LICENSES FOR PERSONS UNDER 18 YEARS OF AGE PURSUANT TO A.R.S §28-445.01

The following is effective July 20, 1996, and pertains to violations committed on or after July 20, 1996. In addition to the grounds for mandatory revocation, the Motor Vehicle Division shall immediately suspend the driving privilege of a person who is under 18 years of age, upon receipt of conviction, as follows:

(1) Suspend for a period of 2 years for a conviction of violating A.R.S. §4-244.34 (DUI under age 21), §28-692 (DUI), or §28-697 (Aggravated Driving). The suspension for conviction of violating A.R.S. §4-244.34 was previously court ordered.

(2) Suspend until the person's eighteenth birthday for a conviction of violating A.R.S. §13-1602(A)(1) (Damage or Disfigurement of Property by Graffiti). There will no longer be a revocation for conviction of a second or subsequent violation of A.R.S. §13-1602(A)(1).

(3) Suspend until the person's eighteenth birthday for a conviction of violating A.R.S. §8-232(B)(6) or any statute or ordinance involving the purchase or possession of materials used for graffiti. There will no longer be a revocation for conviction of the second or subsequent violation of A.R.S. §8-232(B)(6).

(4) Suspend until the person's eighteen birthday for a conviction of violating any provision of Title 13, Chapter 34 (Drug Offenses), A.R.S. §13-3402 through §13-3421. The suspension for conviction of violating any provision of Title 13, Chapter 34, was previously court ordered.

(5) Suspend until the person's eighteenth birthday or for a period of 2 years for a conviction of a second or subsequent violation of A.R.S. §4-244.9 (Possession of a Spirituous Liquor). The court will order the suspension and will specify the period of suspension.

SEPTEMBER, 1996 Jury & Bench Trials--Group A

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
August 27-Sept. 3	Steve Rempe		Dougherty	Palmer	CR95-02803 3 cts. Aggravated Assault	F3	√		√	Guilty on two counts of Agg. Assault. One count dismissed by the court.	Jury
Sept. 4-6	Candace Kent	Jones	McDougall	Tucker	CR95-12886 Aggravated Assault	F3	√	2		Guilty	Jury
Sept. 11-13	Dennis Farrell		Schafer	Stephens	CR95-06039 1 ct. Fraudulent Schemes 10 cts. Theft 6 cts. Theft 2 cts. Theft	F2 F3 F4 F5				Guilty on all counts.	Jury
Sept. 12-17	Jamie McAlister		Reinstein	Cudahy	CR94-10942 3 cts. Theft	F3				Guilty	Jury
Sept. 16-19	Rick Tosto		Dougherty	Charnell	CR95-11760 Burglary	F4		5		Guilty	Jury
Sept. 19-23	Genii Rogers	Neus	Dunevant	Whitten	CR96-05062 Aggravated Assault Burglary	F3 F3	√ √			Guilty	Jury
Sept. 19-19	Michael Gerity		Osterfeld	Ghelfi	TR96-02752 Driving on a Suspended License	M1				Not Guilty	Jury
Sept. 19-25	Steve Rempe		Lewis	Georgelos	CR95-11326 Forgery	F4				Guilty	Jury
Sept. 25-27	Michael Hruby		Mangum	Hernandez	CR96-03228 Aggravated Assault with a deadly weapon	F3	√	1	√	Not Guilty of Agg. Assault -- Guilty of lesser-included Creating a Disturbance - Misd.	Jury

September, 1996 Jury & Bench Trials--Group B

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
9-23-96 to 10-3-96	Grant		Hotham	Blake	95-02635 Kidnap Manslaughter Agg. Asslt. Agg. Asslt. Disorderly Conduct	 F2 F3 F3 F3	 X X X X			Guilty of lesser: Unlaw.Impris. Guilty Guilty of Lesser: Disord.Cndct. Guilty Guilty	Jury
9-5-96 to 9-12-96	Agan	Corbett	Arellano	Lynch	96-02964 Agg. Robbery	F3		X		Hung Jury	Jury
9-23-96 to 9-24-96	Agan		Campbell	Rudd	96-03259 Burglary	F3		X		Not Guilty	Jury
9-16-96 to 9-19-96	McNally	Erb	Topf	Moorison	95-06415 Agg. DUI	F4		X		Guilty of lesser: Driving on Suspended License	Jury
9-23-96 to 9-25-96	McNally	Castro	Hicks	Wildermuth	96-04049 Armed Robbery	F2	X			Guilty	Jury
9-4-96 to 9-10-96	Movroydis		Lewis	Iafrate	96-01283 Theft	F3				Not Guilty	Jury
9-9-96 to 9-12-96	Vogel		Hicks	Lawritson	95-10904 Agg. DUI	F4				Guilty	Jury
8-29-96 to 8-9-96	Whelihan	Kasieta	Optf	Rapp	95-06636 2 counts Sex.Cndct w/Mnr. 3 counts Child Molest 1 count Pub.Sex.Indec.	 F2 F2 F5	 X X X			Guilty 1 count Sex.Cndct.w/Mnr Hung Guilty all other counts	Jury

SEPTEMBER, 1996 Jury & Bench Trials--Group C

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
Sept. 18-19	Anthony Bingham		Scott	McKay	CR96-90264 1 ct. Poss. of D. Drug 1 ct. Poss. of D. Para.	F4 F6				Mistrial--404(b) brought out by officer--highly prejudicial and inflammatory Reset for 10/28/96	Jury
Sept. 25-	Katie Carty and Paul Ramos	T. Thomas	Araneta	Krabbe	CR94-93464 1 ct. Second Degree Murder	F1	√			Ongoing.	Jury
Sept. 30-	Clifford Levenson	L. Clesceri	Armstrong	Vincent	CR95-92440 Aggravated Assault	F3	√			Ongoing	Jury
Sept. 30	Ronald Rosier		Hendrix	Puchek	CR96-91758 Poss. of Marij. Poss. of D. Drug	F6 F4		5		Guilty	Jury

SEPTEMBER, 1996 Jury & Bench Trials--Group D

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
August 28 - September 10	Tennie Martin, Elizabeth Feldman	R. Barwick	Nastro	Heilman	CR-95-09220 1Ct. Sex Conduct W/Minor, 2Cts. Sex Abuse over 15	F2 F5				Not Guilty (All Counts)	Jury
August 30 - September 3	Jerald Schreck, Bob Jung	S. Bradley	Campbell	Manning	CR-95-09633 1Ct. DUI	F4		Alleg.		Not Guilty/DUI Guilty of Lesser (Driving on Suspended License)	Jury
September 9-12	Daphne Budge	A. Velasquez	Dann	Whitten	CR-96-11660 1Ct. Aggravated Assault	F3	√			Guilty	Jury
September 9-11	Jerald Schreck, Donna Elm		Rogers	Wolac	CR-95-09220 1Ct. PODD F/Sale	F3				Mistrial	Jury
September 16-24	Dan Carrion		Nastro	Fleenor	CR-96-02419(B) 1Ct. Aggravated Assault	F6	√			Guilty	Jury
September 19-24	Dee Nickerson	A. Velasquez	deLeon	Rose	CR-96-06599 1Ct. Aggravated Assault		√	1		Not Guilty	Jury

SEPTEMBER, 1996 Jury & Bench Trials--Office of the Legal Defender

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
September 5-12	Christine Funckes		Arellano	C.Lynch	CR96-02964A Aggravated Robbery	F3		2		Hung jury/second hung jury	Jury
September 18-26	Christine Funckes		Arellano	V.Liles	CR95-09054B Ct. 1: Transporting for sale 99.66 # marijuana Ct. 2: Possession for sale 99.66 # marijuana	F2 F2				Not guilty Not guilty	Jury
September 10-18	Gregory Parzych	L.DeSanta	Scott	V. Harris	CR96-90447 Aggravated Assault	F3	√			Not guilty	Jury
September 30-October 1	Paul Ivy	E.Soto	Shafer	B.Astrowsky	CR95-09775 Aggravated Assault	F3	√			Guilty	Jury
August 26-September 6	Loyd Tate		Cole	S.Skibba	CR96-05362 Ct.1:Burglary Ct.2:Theft Ct.3:Trafficking in Stolen Property	F3 F3 F4		9		Not guilty	Jury
September 26-October 1	Bruce Alldredge	L.DeSanta	Dougherty	A.Rehn	CR93-03049 DUI	F5				Guilty	Jury

Sexual Harassment

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 below).

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 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. (cont. on pg.15) ☞

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 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.

Rena Glitsos, Trial Group A Supervisor, Jim Haas and Diane Terribile are the individuals to contact concerning questions regarding sexual harassment. ■

Bulletin Board

◆ ***Five Trial Attorneys will start training on November 4:***

Toby Schmich joins the office as a new attorney in Group C beginning November 4. Since 1992, Toby has been a Maricopa County Adult Probation Officer. She has also held the position as bailiff for Judge B. Schneider. Toby graduated from Arizona State University Law School.

Cynthia Leyh has been an Assistant Public Defender in the Office of the Public Defender of Cook County for almost seven years. She handled both juvenile and felony casesloads. Cynthia graduated from the California West School of Law. She will join Group D.

Douglas Passon graduated from the Washington University School of Law in St. Louis, MO. Doug has been working as a part-time law clerk at the Office of the Federal Defender in Phoenix and has also clerked with the Office of the Federal Defender in St. Louis, MO. He will join Group A.

Christopher Lonn has been in private practice with the firm of O. Joseph Chornenky, P.C. since 1993. Prior to that, he was a clerk with the US Attorney's Office in Sacramento, CA. Chris graduated from University of the Pacific, McGeorge School of Law, Sacremento. Christopher will be assigned to Group C.

Maria Dichoso-Beavers, a law clerk from Group D, will join the attorney ranks in Group D in November. Maria graduated from Arizona State University School of Law.

(cont. on pg. 16) ☞

Also, **Vonda Wilkins**, who recently left our office for a hiatus in Puerto Rico, will return and has been rehired as an attorney, effective December 9.

◆ *Moves /Changes*

Michelle Allen, an attorney in Group D, is leaving the office to accept a position with the Attorney General's Office. Ms. Allen was with the office for three and a half years.

Babara Spencer, a Public Defender attorney for three years, resigned this month to work in private practice. Beginning November 1, Ms. Spencer will be working as a contract attorney.

Effective November 6, **Slade Lawson** is leaving our office to join the downtown law firm of Verdecia and Hasty. Slade has been with the office for seven years.

Group C attorney, **Mark Potter**, resigned this month to relocate to California.

Effective November 18, **Jeff Reeves** will fill the open position at Mesa Juvenile made vacant because of a job sharing arrangement between Patti O'Connor and Shellie Smith.

◆ *New Support Staff*

Maria Schaffer starts November 12 as the new law clerk for Group D. Maria recently moved to Phoenix from Denver, CO. where she was employed as a Deputy State Public Defender in the Colorado State Public Defender's Office. Maria holds a Juris Doctorate from the University of Denver College of Law.

Kathleen Blake recently joined our office as the new Office Aide for Group C.

Shawn Tucker started October 21 as the new Office Aide in Group B.

Gilbert Aravalo starts as a new office aid for Group D.

Rose Marshall has been hired as the new Legal Secretary in Appeals. Rose has nine years of experience in the appeals section of the Alaska Court System. She has an AA in Business Administration and a BA in Justice Studies.

Early this month, **Carolina Daniel** began work as a Legal Secretary in Group C. Carolina is fluent in Spanish. She has worked for the Sheriff's Office for the past seven years in Records and Identification.

Camille Poe is now associated with our office as a sign language interpreter, working principally with Jamie McAlister.

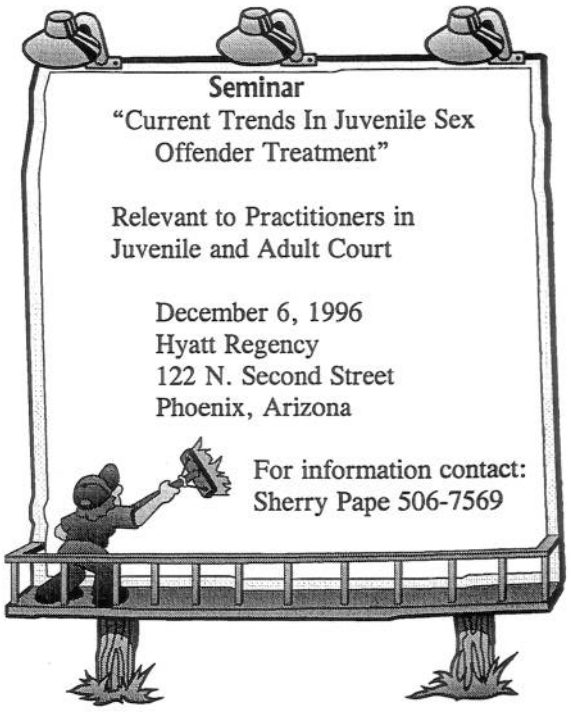
Marcia Linden begins employment as a Legal Secretary in Group D. Marcia has a BA in Poltical Science from the University of California, Santa Barbara.

Susie Tapia is the new HELP DESK individual. Susie recently moved to Arizona from Omaha, Nebraska where she held the position of Senior Micro Analyst for the Immanuel Medical Center.

◆ *Moves/Changes*

Ricardo Greth, an investigator with Group A, has returned to the office after his lengthy military leave of absence in Europe.

Oscar Lopez is leaving the office effective October 25. He is moving to California to work with his father.

Roseann Osorio, a secretary in Group A, left the office early this month.

Legal Secretary, **Lynda Turner** left our office to work for a local municipality. Lynda worked in Group C. ■