

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

James J. Haas, Maricopa County Public Defender

Volume 19, Issue 4

May - July, 2009



*Delivering America's
Promise of Justice for All*

for The Defense

Editor: Dan Lowrance

Assistant Editors:
Jeremy Mussman
Susie Graham

Office:
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
(602) 506-7711

Copyright © 2009

Contents

Danger of Pleading Guilty to a "Non-Dangerous" Offense.....	1
Guide to Pre-Sentence Incarceration Credit.....	8
Seventh Annual APDA Conference ...	10
Johanna Boyd Selected as Gideon Fellow.....	11
Writers' Corner	12
Jury and Bench Trial Results.....	13

Danger of Pleading Guilty to a "Non-Dangerous" Offense

By Richard Parker, Defender Attorney

I. INTRODUCTION

Consider the following: The State charges an individual with committing aggravated assault with a dangerous instrument. There is an issue of fact as to whether a dangerous instrument was used in committing the offense. Defense counsel advises the individual that he must choose between going to trial, where a jury will consider the allegation of dangerousness in a separate finding, or pleading guilty, where the State offers to dismiss the allegation of dangerousness and designate the offense non-dangerous. The individual decides to plead guilty and avoid the risk of mandatory prison. A few years later the individual is again charged with committing the same offense. The State now alleges the prior conviction as a dangerous offense for sentence enhancement purposes. What result?

Until recently most defense attorneys would find the answer obvious. After all, an offense is either dangerous or non-dangerous and the terms of the plea read "non-dangerous." Recent decisions, however, are finding that when a plea designates certain offenses "non-dangerous," this designation does not actually qualify the offense as non-dangerous, but merely removes the allegation of dangerousness. The result is that the individual is effectively pleading guilty to a dangerous offense, but receiving the benefit of the non-dangerous sentence range. Should the individual commit a subsequent offense, the



State can allege the first offense as a dangerous prior. This article attempts to provide insight into the problems with this approach and offer some potential arguments and solutions to ensure our clients are not misled and their constitutional rights are not infringed.

II. FINDING AN OFFENSE DANGEROUS WHEN A DEFENDANT PLEADS GUILTY TO A “NON-DANGEROUS” OFFENSE

When the State charges a defendant with a dangerous offense, there are three ways a determination of dangerousness can be found: (1) the defendant admits the allegation of dangerousness by pleading guilty;¹ (2) the trier of fact makes a separate finding of dangerousness;² (3) the trier of fact convicts a defendant of an offense that requires a finding of dangerous as an element of the offense charged.³

The first two methods are taken from language in the sentencing statute for dangerous offenders, A.R.S. § 13-704(L) (formerly 13-604(P)). Subsection (L) provides in relevant part: “The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged in the indictment or information and admitted or found by the trier of fact.”

The third method is an expansion of the second and derived from judicial fiat. In *State v. Tresize*, a jury found the defendant guilty of armed robbery and the court enhanced the defendant’s sentence even though the jury did not make a separate finding of dangerousness as required under former § 13-604.⁴ The defendant argued that the sentence imposed was illegal because the state did not reference the enhancement statute in the indictment and the jury did not make a separate finding of dangerousness.⁵ In refuting this argument, the court reasoned that the jury’s verdict necessarily concluded that the offense was dangerous because an element of the offense charged was the use of a deadly weapon or dangerous instrument.⁶ The court held, “[t]here is no necessity that a specific factual finding be made.”⁷

While the first two methods ostensibly achieve the same result, applying the two can result in a significant disparity. Take the introductory example. When a defendant is tried for committing aggravated assault with a dangerous instrument and the State alleges the offense as dangerous, the jury presumably considers the allegation of dangerousness in a separate factual finding. The importance of considering this allegation separately is that a defendant can be convicted of the substantive offense without a finding of dangerousness. If the jury does not conclude that the offense is dangerous, the offense is considered non-dangerous for present and future purposes; otherwise the jury’s finding, and the sentencing scheme, would have little value.⁸

This same qualification, however, is not afforded a defendant who pleads guilty and waives his right to a jury trial. When the State dismisses an allegation of dangerousness and designates an offense “non-dangerous,” this should be tantamount to the separate finding of dangerousness in the trial context. Nevertheless a defendant who pleads guilty to this offense is subjected to the anomalous result that it can subsequently be considered a dangerous offense. Thus, by entering a guilty plea, the defendant is placed in the perilous position of unknowingly admitting guilt to a dangerous offense while waiving his right to a jury determination on the allegation of dangerousness.

The justification for this disparate treatment could be based on the implications of the Arizona Supreme Court’s holding in *Tresize*, which was subsequently adopted in *State v. Parker*. The *Parker* court held, “[t]he finding of the dangerous nature of the felony must be submitted to a jury for a separate finding *unless* an element of the offense charged contains an allegation and requires proof of the dangerous nature of the felony.”⁹ In so holding, the court expanded the traditional statutory purpose requiring a separate factual finding on the issue of dangerousness to include a jury’s general finding of guilt for the offense. Thus, by analogy, a defendant who pleads guilty to an inherently dangerous offense admits guilt to the dangerous nature of the offense notwithstanding the State’s stipulation to dismiss the allegation of dangerousness and classify the offense “non-dangerous.”

The application of this reasoning in the context of pleas has yet to be addressed in a published opinion. Given the magnitude of this issue and the potential adverse affect it has on countless defendants, it is imperative that we develop arguments to attack this issue. One method is to attack the validity of the plea agreement itself.

III. ARGUING AGAINST VOLUNTARILY ACCEPTING UNFORESEEABLE CONSEQUENCES

It is axiomatic that plea agreements are contracts.¹⁰ But unlike a traditional contract, entering a guilty plea requires an accused to waive various constitutional rights. In order for a waiver of a constitutional right to be valid, it must be voluntary, knowing and intelligent.¹¹ Courts addressing this issue have explained that “the defendant must be aware of [the plea’s] ramifications and must be apprised of the range of sentence that he could face and of the rights he will forfeit.” Thus, a plea is not voluntary “if the defendant does not have a proper understanding of what can happen as a result of his plea. . . .”¹² This language suggests that a defendant’s acceptance of a plea might be constitutionally invalid if the defendant is not informed of the fact that pleading guilty to a “non-dangerous” offense does not imply a finding of non-dangerous. We should make this argument.

Another argument in favor of rendering acceptance involuntary is that the term “non-dangerous” induced acceptance to the plea. Whenever a court can reasonably infer that an accused was induced by the terms of a plea, which the State later breaches, the court must find the plea involuntary.¹³ On this point, the United State Supreme Court has emphatically stated, “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement of consideration, such promise must be fulfilled.”¹⁴ Thus, in cases where the State offers to dismiss an allegation of dangerousness and treat the offense as non-dangerous, this clearly constitutes a promise that a court can reasonably infer induced acceptance. If a subsequent court determines that the defendant pled guilty to a dangerous offense in spite of contrary language that induced his acceptance, the reviewing court should find the acceptance involuntary.

Similarly, a defendant should seek relief under general principles of contract interpretation.¹⁵ Consonant with contractual principles, a plea agreement must include a meeting of the minds so that a bargained for exchange occurs. Thus, when an defendant agrees to forego his constitutional rights in exchange for stipulated terms that include designating an offense “non-dangerous,” a subsequent ruling that the offense is dangerous negates the bargained for exchange. While the court might justify this ruling by reasoning that the defendant received the benefit of a lesser sentence range for the prior offense, the critical question is whether the scope of the bargain included a legal finding that the offense is non-dangerous or only the immediate benefit of a lesser sentence range. We should argue the former.

A fourth argument is to assert that failing to advise an accused of the meaning of non-dangerous violates the defendant’s rights under the Arizona Rules of Criminal Procedure (the “Rules”). The Rules protect the voluntariness of a plea. Rule 17.2 mandates that the Court find the accused understands the nature of the charge, the nature and range of the possible sentence and the constitutional rights which the defendant foregoes.¹⁶ While Arizona courts have yet to define what constitutes “the nature of the charge,” this phrase presumably includes a court’s obligation to explain the offenses to which an accused pleads guilty with sufficient clarity to enable the accused to make an informed decision. Thus, when an accused enters a guilty plea to a non-dangerous offense, the Rules should compel the court to explain that this term is not qualifying the offense and is not equivalent to a jury determination on the issue of dangerousness. Every time a court fails to administer this advisement, an accused is at risk of entering a plea without realizing the significance of the offense to which the accused is pleading guilty.

An extension of this argument is to contend that the court is violating a defendant’s constitutional right to Due Process. A fundamental tenet of Due Process is that a defendant be placed on notice of the potential legal consequences associated with foregoing the defendant’s constitutional rights.¹⁷

By failing to explain the nature of an offense or the consequences of entering a plea to a dangerous offense, the court is arguably violating an accused's Due Process rights.

Finally, a defendant should argue that public policy demands that the defendant receive the benefit of a promise in the plea. As a general principle of criminal law, if a statutory term is susceptible to two interpretations, principles of fairness mandate that the statute be interpreted in the light most favorable to the accused. Similarly, Arizona courts have cautioned, "The terms of plea agreements must be meticulously adhered to, and appellant's reasonable expectations under the agreement should be accorded deference." When the plain meaning of the words in a plea agreement designate an offense "non-dangerous," these words should be given full effect.

Once a court determines that a defendant entered into a plea involuntarily, the court has discretion to remedy the inequity by allowing the defendant to withdraw from the plea. The standard for withdrawal, set forth in Rule 17.5, is to correct a manifest injustice. The obvious problem in applying this remedy is that most defendants will have already completed the terms of their sentence. Given the choice between sanctioning a constitutional violation and affording a defendant the benefit of a reasonable interpretation of a plea, courts should undoubtedly choose the latter. To hold otherwise would effectively condone a violation of the defendant's constitutional rights and perpetuate a manifest injustice.

IV. THE SPICER ISSUE

In *State v. Spicer*, a recent Memorandum Decision issued by Division One of the Court of Appeals, the defendant entered a guilty plea to a "non-dangerous" offense after committing aggravated assault with a dangerous instrument and was placed on probation.¹⁸ After completing the terms of probation, the defendant moved to set aside his judgment pursuant to A.R.S. § 13-907.¹⁹ The State objected on the ground that the offense was dangerous and, therefore, could not be set aside under subsection (D).²⁰ The trial court agreed and denied the motion.²¹

Unlike the introductory example, which explores the problems with alleging a prior offense as dangerous, the *Spicer* decision involves the more immediate consequences of unknowingly entering a guilty plea to a dangerous offense. If an accused waives his constitutional right to a jury trial on the premise that he was being given the opportunity to set aside his conviction, this could easily render his acceptance involuntary, at least in theory. Further, if defense counsel advises a defendant of his right to set aside a conviction based on the State's stipulation to a non-dangerous offense, the defendant could assert a claim for ineffective assistance. The above arguments would have greater effect in this situation.

Moreover, defense attorneys should consider the reasons underlying the Court of Appeal's decision to issue a memorandum decision when preparing to attack issues that will likely arise and that have not been addressed in a published opinion. A pessimistic view would be that future courts could use *Spicer* for its reasoning and extend it to encompass situations involving allegations of prior offenses that are inherently dangerous. Another potential problem is that the Court of Appeals could grant a request to publish the *Spicer* decision, thereby allowing its holding to be cited as precedent.

A more optimistic view would be that the *Spicer* court chose not to publish this opinion because its holding only pertained to situations where the defendant moves to set aside his conviction and have his rights restored pursuant A.R.S. § 13-907. This does not have the same impact on a defendant's rights as the situation where the first offense is subsequently alleged as a dangerous prior for sentence enhancement purposes. Under the latter, a defendant could be faced with a significantly harsher sentence. While this take on the *Spicer* court's decision is only speculation, it could prove useful to a defense attorney seeking to distinguish *Spicer* or minimize the potential impact of its holding. The bottom line, however, is that it leaves defense counsel in murky waters as the issue of alleging a prior dangerous develops.

V. ACCOUNTING FOR FOREIGN PRIORS

A related problem could arise when a defendant pleads guilty to an inherently dangerous offense in another state and the State attempts to allege the foreign prior as dangerous.²² In *State v. Adams*, the Court of Appeals addressed this issue.²³ The *Adams* court held that the defendant's prior conviction could be alleged as dangerous.²⁴ In that case, the defendant pled guilty to an offense that would have been considered dangerous had it been committed in Arizona²⁵, and the state agreed to dismiss the enhancement allegation.²⁶ The defendant did not dispute that the prior conviction could be used for sentence enhancement purposes but contended that it could not be considered "dangerous" because the state dismissed the enhancement allegation and the court placed him on probation.²⁷ In denying relief, the court reasoned that the enhancement provision of the California Penal Code "did not alter the essential elements of the offense to which the appellant pled guilty."²⁸

The State could attempt to argue that *Adams* allows a prior conviction to be alleged as dangerous when a defendant pleads guilty to an inherently dangerous offense, notwithstanding the foreign state's dismissal of the enhancement allegation. The arguments against this position are twofold.

First, the defendant in *Adams* did not plead guilty to a "non-dangerous" offense. As a result, the defendant in *Adams* is not in the same position as a defendant who pled guilty to a non-dangerous offense in Arizona. While designating an offense non-dangerous necessarily includes dismissing an allegation of dangerousness, the reverse might not be true. Indeed, the purpose of this article is to address this very distinction.

Second, different states classify crimes and sentencing enhancements differently. The *Adams* court recognized in its holding that other jurisdictions may not use a separate "dangerousness" finding, instead choosing to codify the dangerous component directly in the elements of the charge.²⁹ By allowing the State to allege a foreign prior as dangerous without a separate factual finding on the dangerous nature of the offense, the State is essentially eradicating the distinction between dangerous and non-dangerous offenses established by the Arizona Legislature. If one need only look at the elements of an offense to determine whether an offense is dangerous, then a separate designation for dangerous offenses with a separate sentence range would be superfluous.

VI. CONSIDERATIONS FOR MINIMIZING CONSTITUTIONAL VIOLATIONS

There are two practical considerations that could effectively resolve this issue. First, language can be included in the plea that apprises the accused of the future consequences of pleading guilty to an inherently dangerous offense.

Second, when a court accepts a guilty plea, counsel for both sides put the factual basis for the offense on the record. Accordingly, if an accused pleads guilty to an offense that could be considered dangerous, it is essential that defense counsel make every effort to keep out information that could later be used to support an allegation that the prior conviction is dangerous. In the absence of any reference to a dangerous instrument or deadly weapon, the State might still attempt to use the prior conviction to enhance a sentence based on the inherently dangerous nature of the offense but this argument has not been addressed on the appellate level.

At a minimum, it is incumbent on us to explain to our clients the potential future consequences of pleading guilty to a "non-dangerous" offense.

(Endnotes)

1. A.R.S. § 13-704(L) (2009).
2. § 13-704(L).
3. *See State v. Tresize*, 127 Ariz. 571 (1980).
4. *Id.* at 572.

5. *Id.* at 574.
6. *Id.* If an element of an offense is the use or exhibition of a deadly weapon or dangerous instrument, the offense is considered “inherently dangerous.” However, it is important to note that whenever a defendant is accused of committing armed robbery, the offense might not be considered inherently dangerous. The armed robbery statute, A.R.S. § 1904, was amended after the *Tresize* holding to include simulated deadly weapons. As a result, the *Tresize* court’s holding is limited to situations where an essential element of the offense charged requires proof of the dangerous nature of the felony. See *State v. Joyner*, 215 Ariz. 134, 138 (App. Div. 2, 2007) (“[A]rmed robbery, as defined in § 13-1904, does not necessarily establish [the defendant] used a deadly weapon or dangerous instrument because armed robbery may be committed with a simulated deadly weapon-and a ‘simulated deadly weapon’ may be neither deadly nor dangerous.”).
7. *Id.*
8. “We presume the legislature did not intend to write a statute that contains a void, meaningless, or futile provision.” *State v. Pitts*, 178 Ariz. 405, 407 (1994).
9. *State v. Parker*, 128 Ariz. 97, 98 (1981) (emphasis added).
10. *Demarce v. Willrich*, 203 Ariz. 502, 506 (App. Div. 1, 2002).
11. *U.S. v. Younger*, 398 F.3d 1179, 1185 (2005).
12. *Id.* at 329-30 (internal citations omitted).
13. *State v. Chavez*, 130 Ariz. 438, 439 (1981) (quoting *State v. Limpus*, 128 Ariz. 371, 374 (App. Div. 1, 1981)).
14. *Santobello v. New York*, 404 U.S. 257, 262 (1971).
15. “Plea agreements are contracts’ and as such, may be ‘subject to contract interpretation.’” *Demarce*, 203 Ariz. at 506 (quoting *Coy v. Fields*, 200 Ariz. 442, 445 (App. Div. 2, 2001)).
16. Rule 17.2, Ariz. R. Crim. P.
17. *U.S. v. Harriss*, 347 U.S. 612 (1954).
18. *State v. Spicer*, 2009 WL 325442, at *1 (Ariz. App. Div. 1, Feb. 10, 2009) (memorandum decision). (Memorandum decisions do not create legal precedent and may not be cited except as authorized by Ariz. R. Supreme Court 111(c) and Ariz. R. Crim. P., Rule 31.24). *Spicer* is referenced in this article solely for the purpose of providing insight into how courts may be addressing the issue of prior dangerous offenses.
19. *Id.*
20. *Id.*
21. *Id.*
22. Note: this Article does not provide a full discussion on foreign priors but focuses on the more narrow topic of what occurs once a foreign prior is established. This section of the Article suggests some arguments against allowing the State to allege a foreign prior as “dangerous” when a defendant pleads guilty to a prior that satisfies the requirements for a foreign prior under A.R.S § 13-703(M) (former 13-604(N)) and *State v. Crawford*, 214 Ariz. 129 (2007) (holding that there must be strict conformity between the elements of the foreign felony and the elements of the Arizona felony before the prior can be used to enhance a defendant’s sentence).
23. *State v. Adams*, 155 Ariz. 117 (App. Div. 1, 1987).
24. *Id.* at 123.
25. The defendant in *Adams* pled guilty to assault with a deadly weapon, which constitutes the crime of aggravated assault in Arizona. See *Adams*, 155 Ariz. at 123.
26. *Id.* at 122-23.
27. *Id.*
28. *Id.* at 123.
29. *Id.*



Sponsored by Maricopa County Public Defender

New Attorney Training: Case Management and Trial Skills

.....

Trial Skills - August 10-14, 2009

This week-long training will help develop key aspects, including Batson Challenge, Voir Dire, Objections, Structuring Cross-Examination and more...



Case Management Skills - October 13-16, 2009

The Case Management Skills sessions include Overview of the Criminal Code, Sentencing Charts, Firearms Familiarization, Conducting Witness Interviews, Search & Seizure and more...

For a complete agenda or to register, please contact Celeste Cogley by phone at 602-506-7711 x37569 or via email at cogleyc@mail.maricopga.gov Please register by July 21st for Trial Skills and by Sept. 25th for CM Skills.

There is no fee for Public Defenders, Legal Defenders or Legal Advocate attorneys. Please inquire for registration fees for Private or Contract Counsel.

Training will be held:
Downtown Justice Center
Maricopa County Public Defender
620 W. Jackson, 5th Floor Training Room
Phoenix, Arizona 85003



Guide to Pre-Sentence Incarceration Credit

By Brian Sloan, Defender Attorney

GUIDE TO PRE-SENTENCE INCARCERATION CREDIT – §13-712(B) (Formerly §13-709(B))

The statute on Pre-Sentence Incarceration Credit (PSIC) has been renumbered as of January 1, 2009. All case law on the subject, so far, refers to the old statute. The text of both statutes remains unchanged.

Arizona Revised Statute §13-712(B) (*Formerly § 13-709(B)*) states:

All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.

“Custody,” in regards to PSIC, begins when the defendant is booked into a facility. A defendant is entitled to an entire day’s credit regardless of the actual number of hours spent in custody on that first day.¹

PSIC, pursuant to statute, is mandatory, and the sentencing court has no discretion in the matter.² The rationale behind PSIC is the denial of equal protection for the poor unable to make bail.³

The trial court’s failure to grant full credit for PSIC constitutes fundamental error.⁴ However, PSIC calculation errors can be corrected without a remand to the trial court.⁵ If a PSIC error benefits the defendant, the error cannot be corrected unless the State appeals or cross-appeals.⁶

CONSECUTIVE SENTENCES – All pre-sentence incarceration time must be credited to some sentence. However, “once this requirement has been satisfied through the granting of a presentence incarceration credit, there is no additional constitutional purpose to be served by granting a second or “double credit” against a later consecutive sentence.”⁷ “Presentence incarceration time may be applied only once, and once applied, may not be applied again.”⁸

For example: If a defendant is convicted of two crimes, and the defendant has 130 days pre-sentence incarceration credit, that 130 days credit can apply to one sentence, but not both. Or, the court could divide the credit between the two sentences, for example 65 days credit for each of the two convictions. However, in no event may the credit be applied twice.⁹

This does NOT mean that a defendant is not entitled to pre-sentence incarceration credit on more than one sentence.¹⁰ This only means that the credit cannot be counted twice.

CONCURRENT SENTENCES – All pre-sentence incarceration time must be credited to all sentences.¹¹

ASSISTANCE FOR PSIC CALCULATION – The probation department’s calculation of PSIC is not always reliable. Do the calculations yourself. A useful program can be found at TimeAndDate.com/date/duration.html

PRISON and PRISON AS A TERM OF PROBATION – Prison as a term of probation and prison sentences are treated the same, and the defendant is entitled to all PSIC.¹²

JAIL and JAIL AS A TERM OF PROBATION – Mandatory PSIC applies to prison sentences, not jail sentences.¹³ Jail sentences and jail as a term of probation sentences are not *entitled* to PSIC.¹⁴ However, the court “possesses considerable discretion in awarding credit.”¹⁵ Furthermore, pursuant to §13-901(F), if the jail sentence for an offense, collectively, reaches one year or the maximum sentence allowed by law, whichever is shorter, then PSIC must be given.¹⁶

PROBATION VIOLATIONS, HAVING ALREADY SERVED JAIL AS A TERM OF PROBATION

– Time spent incarcerated in jail, as a term of probation, does not need to be credited towards a jail sentence which is imposed pursuant to a probation violation.¹⁷ However, time spent in jail as a term of probation must be credited to a prison sentence imposed pursuant to a probation violation.¹⁸

PROBATION VIOLATIONS, HAVING ALREADY SERVED PRISON AS A TERM OF PROBATION

– Time spent incarcerated in prison, as a term of probation, must be credited towards any prison sentence which is imposed pursuant to a probation violation.¹⁹ For example, if someone is sentenced to serve four months DOC as a term of probation, and later violates probation, they must be credited with those four months towards the full prison term.

RESENTENCING AFTER REMAND – If a case is reversed on appeal, or remanded to the court for resentencing, upon reconviction and/or resentencing, the defendant must be given credit for all incarceration time (pre-sentence and post-sentence) previously served.²⁰

ACCIDENTAL RELEASE – A prisoner who is erroneously released from prison prior to serving consecutive sentence is entitled to credit for their time at liberty.²¹

INCARCERATION FOR WARRANT – Time spent in-custody, in-state, or out-of-state, solely on a warrant for an Arizona offense, is entitled to PSIC.²² However, a defendant, in-custody, in-state or out-of-state, who has pending charges elsewhere, or is serving a sentence elsewhere, is not *entitled* to PSIC.²³

FLAT TIME SENTENCE – A sentence requiring “flat time” – serving every day of a sentence – does not preclude PSIC.²⁴

BE CAREFUL HOW PLEAS ARE WRITTEN – A defendant is entitled to credit for time “actually spent in custody pursuant to an offense.” PSIC is not transferable to a different sentence. When dealing with multiple plea agreements, it is often in the defendant’s best interest to have the plea with the earliest commission date contain the sentence for the greater amount of time. However, this is not always the case. Ultimately, it is important to make sure the plea agreement with the longest sentence is for the charge with the most PSIC.

1. *State v. Carnegie*, 174 Ariz. 452, 454 (App. 1993)
2. *State v. Ritch*, 160 Ariz. 495, 497 (App. 1989) (citing *State v. Williams*, 128 Ariz. 415, 416 (App. 1981))
3. *State v. Sodders*, 130 Ariz. 23, 29 (App. 1981) (citing *State v. Salazar*, 24 Ariz.App. 472, 476 (1975))
4. *Ritch*, 160 Ariz. at 498
5. *State v. Stevens*, 173 Ariz. 494, 496 (App. 1992)
6. *State v. Kinslow*, 165 Ariz. 503, 507 (1990).
7. *State v. Cuen*, 158 Ariz. 86, 88 (App. 1998) (referring to *State v. Salazar*, 24 Ariz. App. 472, 476 (1975))
8. *State v. Wallis*, 132 Ariz. 445, 447 (1982) (overruled as applied to concurrent sentences, See *State v. Cruz-Mata*, 138 Ariz. 370, 376 (1983))
9. *Wallis*, 132 Ariz. at 447
10. See *State v. Gulbrandson*, 184 Ariz. 46, 56 (1995); *State v. Meraz*, 2007 WL 5187910 (Ariz. App.) (Memo Decision)
11. *Cruz-Mata*, 138 Ariz. at 375
12. *State v. Mathieu*, 165 Ariz. 20, 25 (App. 2000)
13. *State v. Brodie*, 127 Ariz. 150, 151 (App. 1980)
14. *Id.*
15. *State v. Schumann*, 173 Ariz. 642, 644 (App. 1993)
16. *State v. Nihiser*, 191 Ariz. 199 (App. 1997) (specially concurring opinion)
17. *State v. Fuentes*, 113 Ariz. 285 (1976) (Affirming *State v. Fuentes*, 26 Ariz.App. 444, 449 (1976)); See also *Brodie*, *supra* and *Mathieu*, *supra*
18. *Brodie*, 127 Ariz. at 151; §13-903(F)
19. *State v. Fragozo*, 197 Ariz. 220 (App. 2000); *State v. O'Connor*, 2007 WL 5187911 (App. 2007) (Memo Decision)
20. *State v. Johnson*, 105 Ariz. 21 (1969)
21. *Schwichtenberg v. State*, 190 Ariz. 574 (1997)
22. *State v. Mahler*, 128 Ariz. 429, 430 (1981)
23. *State v. Horrisberger*, 133 Ariz. 569, 570 (App. 1982); *State v. McClure*, 189 Ariz. 55, 57 (App. 1987)
24. *State v. Clements*, 161 Ariz. 123, 125 (App. 1989)

Seventh Annual APDA Conference

By Jim Haas, Maricopa County Public Defender



The Seventh Annual Arizona Public Defender Association Statewide Conference was held June 17 to 19 at the Tempe Mission Palms Hotel. Once again, over 1200 people attended. The faculty included more than 200 presenters. The conference offered 135 classes over three days, and a total of 18 CLE hours. APDA took over the entire Mission Palms hotel and most of the nearby Courtyard Marriott hotel.

The conference began with a presentation by Dr. Henry Lee, the world's most famous and accomplished forensic investigator. Dr. Lee has assisted in most of the high-profile forensic investigations of the last quarter-century, and his presentation included compelling insights into several of them. Dr. Lee followed his opening plenary session with another 90 minutes in a breakout session with a smaller group of people (only 350 or so).

At the awards luncheon, staff and attorneys from public defender offices and programs around the state were recognized for their accomplishments and dedication to indigent representation over the past year. The honorees were:

- Outstanding Rural Administrative Professional – **Jane Karges**, Office Manager of the Navajo County Public Defender's Office
- Outstanding Urban Administrative Professional – **Jim Evans**, Investigative Aide, Maricopa County Public Defender's Office
- Outstanding Rural Paraprofessional – **Heidi O'Connor**, Paralegal, and **David Douglas**, Mohave County Public Defender's Office
- Outstanding Urban Paraprofessional – **Rose Rubio**, Mitigation Assistant, Maricopa County Legal Defender's Office
- Outstanding Performance/Contribution – **Col. Billy Little**, Capital Attorney, Maricopa County Public Defender's Office
- Outstanding Performance/Contribution – **Joy Fischer Williams**, Law Clerk, Pima County Legal Defender's Office
- "Rising Star" Award – **Fanny Steinlage** and **Joshua Steinlage**, Coconino County Public Defender's Office
- Outstanding Rural Attorney – **Bruce Griffin**, Coconino County Legal Defender's Office
- Outstanding Urban Attorney – **Tim Agan**, Maricopa County Legal Advocate's Office
- Lifetime Achievement Award – **Brian Metcalf**, Pima County Public Defender's Office
- Gideon Award – **Cliff Gerard**, Contract Counsel, City of Phoenix Public Defender

In addition to the awards, third year ASU law student **Johanna Boyd** was recognized as the winner of the second annual Gideon Fellowship.

The Eighth Annual APDA Statewide Conference is already scheduled for June 9 – 11, 2010. Mark your calendars!

Johanna Boyd Selected as Gideon Fellow

By Jim Haas, Maricopa County Public Defender

The selection of third year ASU law student Johanna Boyd as the second Gideon Fellow was announced at the June 18th APDA Conference Awards Luncheon.

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

The Fellowship is another step forward in our ongoing effort to improve the quality of court-appointed representation by recruiting the best and brightest future lawyers to the practice of indigent defense.

The Gideon Fellow spends a year working with public defenders in various types of cases. In the summer, the Fellow practices in our office's ASU Public Defender clinical program, representing clients in misdemeanor and lower-level felony cases; in the fall semester, the Fellow represents clients in more serious felony cases, in our office; and in the spring semester, the Fellow works with the Capital Habeas Division of the Federal Defender's Office. The Fellow thus gains a broad base of experience, working closely with experienced mentors on increasingly serious and complex cases throughout the year.



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.

After going through this process, Johanna Boyd was selected as the Gideon Fellow. She has already begun work in the Public Defender Clinic.

Johanna will graduate from ASU Law School in May 2010. She earned her undergraduate degree from the University of Arizona in English Literature, with a pre-law minor, in 2007. Johanna demonstrated her expressed dedication to representing underprivileged people by working as a legal assistant for an immigration attorney for five summers, and by working as an intern for the Adams County Public Defender's Office in Brighton, Colorado, in the summer of 2008. Johanna's application for the fellowship eloquently outlined her admiration for the public defender attorneys with whom she worked and expressed her strong desire to join them in representing those she described as "disenfranchised" and "marginalized."

The office is proud and delighted to welcome Johanna as the Gideon Fellow and to wish her the best in this new adventure.

Writers' Corner



Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including *A Dictionary of Modern Legal Usage*, *The Winning Brief*, *A Dictionary of Modern American Usage*, and *Legal Writing in Plain English*. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at www.us.oup.com/us/apps/totd/usage. Garner's *Modern American Usage* can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

Names (1).

Today: Capitalization.

There are many complex rules governing the capitalization of names -- too many to cover here. But a few especially important ones merit mention.

First, names that are proper nouns -- such as names of people, places, books, articles, and the like -- are capitalized {President Ronald Reagan} {Atlanta, Georgia} {Gone with the Wind}. That's the rule that everybody knows.

Second, when a name such as "Hockaday School" is reduced to a shortened form (School) after the first reference, even the common noun "school" is capitalized because it's a short-form proper noun.

And third, when a name for some idiosyncratic reason isn't usually capitalized {k.d. lang}, the first letter must be capitalized when it begins a sentence {K.d. lang sang a few of her hit songs}. (Some editors would write her name "K.D. Lang" regardless of her preference for lowercase. The same is true of E.E. Cummings.)

For a full coverage of the many complexities of capitalizing names, see *The Chicago Manual of Style*.



Jury and Bench Trial Results

March/April/May 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
2/18 - 3/3	Rodak Rock Sain Leigh	Harrison	Micflikier	CR08-141957-001DT TOMOT, F3 Unlawful Flight, F5	Not Guilty of TOMOT; Guilty of Unlawful Flight	Jury
2/23 - 3/4	Reece Rankin Leigh	McMurdie	Weinberg	CR08-105585-001DT Murder 2nd Deg., F1D	Guilty	Jury
3/3 - 3/10	Fischer Brazinskas Curtis	Gaines	Wicht	CR08-006027-002DT Att. Commit 1st Deg. Murder, F2D or the Alternative, Agg. Assault, F3D	Guilty of Attempted 2nd Deg. Murder.	Jury
3/5 - 3/9	Farney	Myers	Fowler	CR08-157556-001DT MIW, F4	Guilty	Jury
3/19 - 3/26	Baker Brazinskas Curtis	Lynch	Gilla	CR08-163046-001DT Burglary 1°, F2D (DV) Agg. Assault, F3D (DV)	Not Guilty on all charges.	Jury
3/23 - 3/25	Traher Brazinskas Curtis	Gaines	Prichard	CR08-150056-001DT Armed Robbery, F2	Not Guilty of Armed Robbery, F2; Not Guilty of Lesser Included Robbery, F4; Guilty of Theft, M1	Jury
3/25 - 3/31	Farrell Rankin Sain Curtis	Whitton	Simmons	CR08-132947-001DT Att. to Commit Murder 2 Deg., F2D Agg. Assault, F3D Endangerment, F6D MIW, M1	Not Guilty of Att. Murder 2nd Deg.; Guilty of all other charges.	Jury
3/30 - 4/2	Bradley Covil Rankin	Blomo	Kuwata	CR07-166766-001DT POND, F4 POM, F6	Not Guilty of POND; Guilty of POM	Jury
4/1 - 4/2	Traher Curtis	Gaines	Crowley	CR08-163601-001DT Shoplifting, F6	Guilty - partially in absentia	Jury
4/2 - 4/9	Agnick Rock Ames Ralston	Garcia	Wu	CR08-126280-001DT 4 cts. Public Sexual Indecency to a Minor, F5	Directed Verdict - 3 cts.; Guilty - 1 ct.	Jury
4/9 - 4/10	Mullins Leigh	Buttrick	Reamer	CR07-126018-001DT TOMOT, F3 POM, F6	Not Guilty of TOMOT; Guilty of POM	Jury

Jury and Bench Trial Results

March/April/May 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1 (Continued)						
4/9 - 4/14	Fritz Rock Leigh	Gaines	Marquoit	CR08-150429-001DT Forgery, F4	Not Guilty	Jury
4/20 - 4/21	Agnick Sain Ralston	Gaines	Micflikier	CR08-155106-001DT TOMOT, F3	Guilty	Jury
4/20 - 4/22	Turner Leigh	Barton	Beaver	CR08-005300-003DT POM f/s, F2	Guilty	Jury
4/23 - 4/27	Fischer	Hoffman	Pokrass	CR08-176260-001DT Agg. Assault, F6 Resist Arrest, F6 Threaten Intimidate, M1	Not Guilty of Agg. Assault; Guilty of other two charges.	Jury
4/28 - 5/4	Traher Curtis	Hoffman	Heath	CR08-175898-001DT Agg. Assault, F3D 2 cts. Endangerment, F6D	Guilty of Agg. Assault; F3D Not Guilty of two cts. Endangerment;	Jury
5/4 - 5/5	Traher	Burke	Heath	CR08-119422-001DT Criminal Damage, F4	Guilty	Jury
5/7 - 5/11	Martin / Rock Ralston	Svoboda	Baek	CR08-007047-001DT POM, M1	Guilty	Bench
5/11 - 5/13	Hann Sain Leigh	Barton	Halstenrud	CR08-164943-001DT PODD f/s, F2	Hung Jury	Jury
5/21 - 5/28	Whalin Sain Ralston	Passamonte	Mayer	CR09-100654-001DT Burg. 2 Deg., F3	Not Guilty	Jury
Group 2						
3/18 - 3/24	Rempe	Hannah	Swanstrom	CR08-169590-001DT TOMOT, F3 Poss. Burg. Tools, F6	Not Guilty	Jury
3/24 - 3/26	Jakobe Springer	Kemp	Letellier	CR08-145635-001DT Agg. Domestic Violence, F5	Guilty	Jury
3/25 - 3/31	Potter	Mangum	Reamer	CR08-136643-001DT TOMOT, F3	Guilty	Jury
3/5 - 3/11	Teel	Blomo	Walker	CR08-164960-001 DT Robbery, F4	Guilty	Jury
3/23 - 3/24	Teel Urista	Anderson	Savage	CR08-169717-001 DT 2 cts. Agg. Assault, F6 1 ct. Assault, M1	Directed Verdict on 1 Count, Guilty Counts 1 and 3 (Misdemeanors)	Bench
3/31 - 4/2	Colon	Kemp	Heiner	CR08-160051-001DT Agg. Assault, F3D	Guilty	Jury

Jury and Bench Trial Results

March/April/May 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 2 (Continued)						
4/9 - 4/15	Tomlinson Reilly Springer	Ditsworth	Heiner	CR07-169942-001DT MIW, F4	Hung Jury	Jury
4/16	Steinfeld	Foreman	Savage	CR08-166328-001DT Agg. Assault, M1	Not Guilty	Bench
4/20 - 4/21	Banihashemi Taradash	Holding	Pokrass	CR08-173385-001DT Agg. Assault, F6	Not Guilty	Jury
4/23 - 4/28	Banihashemi Taradash	Holding	Walker	CR08-156154-001DT PODD, F4	Guilty	Jury
4/27	Ramos Reilly	Whitten	Eicker Miller	CR08-163858-001DT Agg. Assault, F6	Not Guilty	Bench
4/29 - 5/5	Abramson Taradash Romani	Anderson	Gattuso	CR08-160996-001DT MIW, F4	Hung Jury (2nd time)	Jury
5/26 - 5/27	Ramos Taradash	Hoffman	Otis	CR08-144145-001DT POM, F6	Guilty	Jury
Group 3						
2/18 - 3/4	Clemency Browne	Verdin	Rubalcaba	CR07-005255-001DT Murder 2nd Deg., F1D Agg. Assault, F3D MIW, F4	Guilty	Jury
3/11 - 3/17	Kalman Muñoz Browne	Myers	Strange	CR08-162583-001DT Armed Robbery, F2D	Guilty, Dangerous	Jury
3/12 - 3/19	Cooper O'Farrell Williams Browne	Gaines	Losicco	CR07-182113-001DT POM for Sale, F2 PODP, F6	Guilty	Jury
3/26	Blackwell Muñoz Browne	Jones	Carper	CR08-142900-001DT POM, M1	Guilty	Bench
3/25 - 3/30	Becker Flannagan Kunz	Hannah	Luder	CR08-169705-001DT Burglary 2nd Deg., F4 POND, F4	Guilty	Jury
4/01-4/06	Tivorsak Flannagan	Foster	Ogus	CR08-155707-001DT 3 cts. Forgery, F4	Not Guilty	Jury
4/02-4/13	Harrison Munoz Browne	Hannah	Cohen	CR08-168925-001DT 6 cts. Sexual Conduct w/ Minor., F2	Guilty on all but 1 ct. DCAC	Jury

Jury and Bench Trial Results

March/April/May 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3 (Continued)						
4/09-4/15	Kalman Munoz Browne	Verdin	Carper Diekelman	CR08-007867-001DT Agg. Assault, F5	Not Guilty	Jury
4/23-4/29	Mata Ortiz	Mahoney	Arino	CR08-165030-001DT Agg. Assault, F3D and Directed Verdict	Not Guilty	Jury
5/11 - 5/12	Tivorsak	Mahoney	Mandigo	CR06-144873-002DT 2 cts. Theft of Crdt. Crd, F5	Ct. 1 - Not Guilty Ct. 2 - Guilty	Jury trial in absentia
5/19 - 5/21	Tivorsak Flannagan	Gaines	Diekleman	CR08-009186-001DT Burg. 2nd Deg., F3 Traffic. Stln. Prop., F2	Burg. - Not Guilty Traffic. Stln. Prop - Dismissed day of trial	Jury
Group 4						
2/18 - 3/11	Corbitt	Sanders	Duffy	CR07-174172-001SE Murder 1st Deg., F1D	Guilty	Jury
3/2 - 3/10	Crocker Lockard Salvato Coward	Contes	Basta	CR07-031293-001SE Agg. Assault, F3D Armed Robbery, F2D	Not Guilty	Jury
3/2 - 3/4	Houck	Myers	Wicht	CR07-181726-001DT MIW, F4 POM, F6	MIW - Not Guilty POM - Guilty	Jury
3/9 - 3/12	Whitney Thompson	Arellano	Harames	CR07-170563-001SE POM, F2 PODP, F6	Guilty	Jury
3/9 - 3/13	Quesada	Ronan	Bell	CR08-100707-001SE H&R w/Death/Injury, F5 DUI, M1	Guilty on both counts	Jury
3/13	Barnes	Rogers	Daly	TR08-138032-001WT DUI-Liquor/Drugs/Vapors, M1 DUI w/BAC of .08 or more, M1	Guilty	Jury
3/13	Braaksma	Ore	Darmody	TR08-155215-001TP DUI, M1	Not Guilty	Jury
3/18 - 3/24	Sheperd	Contes	Linn	CR07-134222-001SE MIW, F4	Guilty	Jury
3/20	Braaksma	Parker (Pro Tem)	Reedy	TR08-127843-001WT DUI, M1 DUI w/BAC of .08 or more, M1	Guilty	Jury
3/30 - 4/1	Sitver Baker	Arellano	Hymas	CR08-150393-001SE 2 cts. Resist. Arrest, F6 Agg. Assault, F6	Resisting Arrest - Guilty Agg. Assault-Not Guilty	Jury

Jury and Bench Trial Results

March/April/May 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
3/31 - 4/2	Corbitt	Svoboda	Rodriguez	CR06-169800-001SE Agg. Assault, F6 DUI-Liquor/Drugs/Vapors. M1 DUI/Drugs/Metabolite, M1 POM, F6	Agg. Assault-Not Guilty DUI - Not Guilty DUI/Drugs/Met.-Guilty POM - Guilty	Jury
4/6 - 4/7	Whitney	Arellano	Lauer	CR08-141703-001SE POND, F4	Not Guilty	Jury
4/6 - 4/8	Dehner Thompson	Ronan	Bartz	CR08-155343-001SE Resist Arrest, F6 PODP, F6 Threat-Intimidate, M1	Guilty	Jury
4/8	Rolstead	Contes	Lauer	CR07-109451-001SE POM, M1 PODP, M1	Guilty	Bench
5/1	Braaksma	Rogers	Daly	TR07-170850-001WT DUI Liquors/Drugs/Vapors, M1 DUI Drugs/Metabolite, M1	DUI Liquors - Not Guilty DUI Drugs/Met - Guilty	Jury
5/4 - 5/6	Dehner	Ronan	Hymas	CR07-031487-001SE Burg.3rd Deg., F4 Theft, F6	Not Guilty both counts	Jury
5/13	Braaksma	Parker	Harris	TR09-100777-001SM Drive w/Lic Susp due to DUI, M1	Guilty	Bench
5/18 - 5/20	Sheperd	Myers	Rademacher	CR07-151546-002SE Att. Burg. 2nd Deg., F4 Burg. 3rd Deg., F4 Burg. Possess Tools, F6	Att. Burg. 2nd Deg.- Not Guilty Burg. 3rd Deg.- Mistrial Burg. Possess Tools - Not Guilty	Jury
Vehicular						
3/19 - 3/26	Black	Svoboda	Hagerman	CR08-156954-001 DT 2 cts. Agg DUI, F4	Guilty	Jury
3/16 - 4/2	Carson Whitehead Ryon Renning	Sanders	McGregor	CR07-128986-001 SE Manslaughter, F2D Agg Assault, F3D Hit & Run w/Death/Injury, F3 Unlaw Flight, F5 4 cts. Endangerment, F6D	Not Guilty on all counts except Hit & Run w/ Death/Injury, F3	Jury
Juveniles in Adult Court						
4/14 - 4/22	Duncan Charlton	Gottsfeld	Strange	CR08-031097-001 DT Agg Assault, F3 Att. 1st Deg Murder, F1	Not Guilty on all counts	Jury

Jury and Bench Trial Results

March/April/May 2009

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
2/25 - 2/26	Woods	Gottsfeld	Verdura	CR08-156519-001DT Narcotic Drug Violation, F4	Guilty	Jury
2/23 - 3/2	Garner	Newell	Eidemanis	CR06-007096-001DT Discharge of Firearm at Structure, F2D Agg. Assault, F3D Endangerment, F6D Unlawful Discharge of Firearm, F6	Not Guilty: Discharge of Firearm at Structure; Endangerment, F6 Guilty: Agg. Assault; Endangerment, M1; Unlawful Discharge of Firearm	Jury
2/23 - 3/4	Ivy	Arellano	Clark	CR07-177435-001SE Agg. Assault, F3D	Not Guilty	Jury
3/5	Ross	Brodman	AG	JD14753 Severance Trial	Severance Granted	Bench
3/5 - 3/18	Jolly	Spencer	Sponsel	CR08-137251-001DT 2 Cts, Agg. Assault, F5 Agg. Assault, F6 Resisting Arrest, F6 Assisting Criminal Street Gang, F3 3 Cts, Threat-Intimidate, F3	Not Guilty: Agg. Assault, F6; Assisting Criminal Street Gang; Threat- Intimidate Guilty: Agg. Assault, F5; Resisting Arrest	Jury
3/10 - 3/11	Storrs	Lynch	Ogus	CR08-139975-001DT Criminal Trespass, M1 Marijuana Violation, F6	Not Guilty: Criminal Trespass Guilty: Marijuana Violation	Bench
3/10 - 3/12	Lee	French	Reamer	CR08-152478-001DT Theft Means of Transportation, F3 Burglary 3rd Degree, F4	Guilty	Jury
3/11	Garner	Harrison	Caputo	CR08-159378-001DT Animal Cruelty, F6	Not Guilty	Bench
3/16 - 3/17	Ivy	Abrams	Bhatia	CR2008-105055-001DT PODD, F4 PODP, F6	Guilty	Jury
3/16 - 3/18	Lee	Hoffman	Voyles	CR2008-155938-002DT Agg. Robbery, F3	Guilty: Theft, M1	Jury
3/16 - 3/18	Rothschild	O'Connor	Herman	CR2008-127820-001DT Agg. Assault, F4	Not Guilty: Agg. Assault Guilty: Assault, M1	Jury
1/6 - 4/16	Cleary Tallan Horrall Rubio	Klein	Clayton	CR92-005731(A) Retrial: 2 Cts Murder, 1st Degree, F1 4 Cts Sexual Assault, F2 Kidnap, F2 Remand for resentence: Murder, 1st Degree, F1	Guilty on all retrials Sentence: 2 Death Penalty, 1 Life Sentence	Jury

Jury and Bench Trial Results

March/April/May 2009

Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
1/14 - 4/29	Gaunt	Holt	AG	JD17075 Dependency Trial	Dependency Granted	Bench
3/30 - 4/7	Woods Warner	Davis	Gattuso	CR07-150711-001DT Theft, F3	Not Guilty	Jury
4/1	Ross	McClennen	AG	JD16223 Severance Trial	Severance Granted	Bench
4/15 - 4/16	Garner	Holding	Heung	CR08-115605-001DT Theft, F3	Guilty	Jury
4/15	Ross	McClennen	AG	JD14414 Dependency Trial	Dependency Granted	Bench
4/16	Gaunt	Holt	AG	JD15905 Severance Trial	Severance Granted	Bench
4/16	Kolbe	Akers	AG	JD507396 Severance Trial	Severance Granted	Bench
4/24	Bushor	Ishikawa	AG	JD506738 Severance Trial	Severance Granted	Bench
4/26	Ross	McClennen	AG	JD15881 Severance Trial	Severance Granted	Bench
5/1 - 5/13	Gaunt	Holt	AG	JD16277 Severance Trial	Severance Granted	Bench
5/4 - 5/6	Collins	Davis	Robinson	CR08-164185-001DT Theft Means Trans., F3 2 cts Poss. Burglary Tools, F6	Guilty	Jury
5/12	Sanders	Bergin	AG	JD15844 Severance Trial	Seveance Granted	Bench
5/26 -5/27	Garner	Blomo	Sammons	CR08-166674-001DT PODD, F2	Guilty	Jury

Jury and Bench Trial Results

March/April/May 2009

Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
3/9 - 3/10	Glow	Roberts	Luder	CR08-164700 Ct. 1 Burglary, F3 Ct. 2 Poss. Of Burglary Tools, F6 Ct. 3 PODD, F4	Guilty on All Counts	Jury
3/9 - 3/18	Reinhardt Rood Coquelet	Barton	Murphy	CR08-136601-001 Ct. 1-2nd Deg. Murder, F1 Ct. 2-2nd Deg. Murder, F1	Not Guilty on Both	Jury
9/4/08 - 3/30	Everett Agan Mullavey Thomas	Steinle	Imbordino Reckart	CR06-012721-001; CR06-048493-002; CR07-006031-001; CR08-006364-001; CR08-007313-001; Consolidated Cases; 87 Counts; 8 cts. Murder, F1	2 Not Guilty; 6 Death Sentences; 2 Life Sentences; 450 Years total for other charges	Jury
3/16	Rich	Davis	AG-Bell	JD15867 Termination of Parental Rights	Granted	Bench
3/26 - 4/2	Schmich Mullavey Coquelet	Spencer	Munoz	CR07-150827-001 Ct. 1 and 2 Sex. Cond w/Minor, F2; Molestation of Child, F2	Not Guilty All Counts	Bench
3/23 - 4/9	Glow Rose Brauer Stapley	Gottsfeld	Sponsel	CR08-006618-001; Ct.1-Threaten & Intimidate To Promote Gang, F3; Ct. 2-Promote Gang, F3	Ct. 1 Misdemeanor T & I Lesser; Ct. 2 Guilty (Promoting Gang Enhancement Not Found)	Jury
3/23 - 4/9	Garcia Jones Hayes Brauer	Welty	Weinberg	CR07-144541-001-DT 1st Deg. Murder, F1	Not Guilty 1st Deg.; F1; Guilty Lesser 2nd Deg.-F1	Jury
4/21	Owsley Marrero	Gama	Hunter	JD17188 Dependency	Under Advisement	Bench
4/16	Kenyon Mudryi	Holt	Harris	JD15905 Severance	Severance Found	Bench
4/23 - 4/27	Pena-Lynch Whiteside Rood	Lynch	Garcia	CR08-048845-001-DT TMOT, F3	Mistrial	Jury
4/28 - 4/30	Pena-Lynch Whiteside Rood	Lynch	Garcia	CR08-048845-001-DT TMOT, F3	Not Guilty	Jury
4/13 - 4/22	Christian Christiansen	Owens	Villareal- Rex (AG); M's - Czop F's-McGuire	JD507645 - Dependency	Under Advisement	Bench
4/30	Smith Contreras	Norris	AG-Meyer	JD16067 - Severance	Severance Granted	Bench

Jury and Bench Trial Results

March/April/May 2009

Legal Advocate's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
5/18 - 5/12	Roskosz	Mahoney	Horn	CR08-151932-001; Armed Robbery-F2	Guilty	Jury
5/7	Owsley Marrero	Sinclair	Sandler	JD17798	Dependency found	Bench
3/16 - 5/14	Owsley Marrero	Gama	Bell	JD13059	CPC Denied	Bench
5/8	Smith Christensen		Campbell	JD17680	Child not found dependent and DX Dismissed	Bench

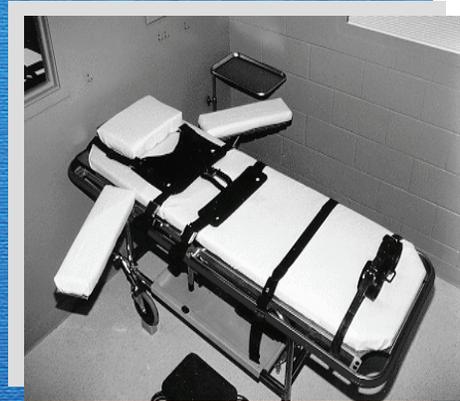


SAVE THE DATE!

Death Penalty 2009 Annual Conference

December 3 & 4, 2009

This seminar is designed to meet the Arizona Supreme Court C.L.E. requirements for criminal defense attorneys engaged in death penalty litigation under Rule 6.8, AZ Revised Criminal Procedures.



Location TBD
Phoenix, AZ

If you have questions,
please contact Celeste
Cogley by phone at 602-506-
7711 X37569 or by email at
cogleyc@mail.maricopa.gov



Maricopa County
Public Defender's Office
620 West Jackson, Ste. 4015
Phoenix, AZ 85003
Tel: 602 506 7711
Fax: 602 506 8377
pdinfo@mail.maricopa.gov

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.

