

for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

James J. Haas, Maricopa County Public Defender

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*Delivering America's
Promise of Justice for All*

for The Defense

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Witness Disclosure Requirements: How Far Do They Go?

By Brandon Finsterwalder, Gideon Fellow, Defender Law Clerk

Issues involving the disclosure of witnesses are often the source of frustration for attorneys. This article presents several scenarios involving pretrial discovery and discusses some of the legal issues arising out of Rule 15, Ariz. Rules of Criminal Procedure.¹

Disclosure of Recordings of Impeachment Witnesses

In the first scenario, defense counsel files a notice of witnesses pursuant to Rule 15. In that motion, defense counsel notices “state witnesses for purposes of impeachment.” Is the state entitled to recordings/transcripts of interviews of state witnesses conducted by defense counsel? What if defense counsel files an amended notice of witnesses that does not include the “state witnesses” line? Further, what if the motion notices “each and every person listed by the State” without mentioning impeachment?

In this situation, prosecutors have argued that by listing state witnesses in the defense motion, those witnesses became defense witnesses as well. As a result, prosecutors argue that the state is entitled to recordings/transcripts of interviews with those witnesses.

This issue has previously come before the Court of Appeals, in *Osborne v. Superior Court*.² In *Osborne*, defense counsel filed a notice of witnesses that included noticing “each and every person called by the state.”³ The defense then interviewed several of the state’s listed witnesses without the state being present.⁴ After the state requested recordings of these interviews with state witnesses pursuant to Rule 15.2(c)(1), the defense filed an amended notice deleting the line referencing state witnesses.⁵

The prosecutor in *Osborne* was seeking copies of the statements of **all** witnesses, including copies of interviews conducted by defense counsel of state witnesses. The state even sought disclosure for the state’s own witnesses who were removed from the amended notice filed by defense counsel.⁶ The prosecutor argued that all of the state witnesses qualified, for purpose of discovery, as “defense witnesses” since they were listed in defense counsel’s original Rule 15 notice of witnesses. Defense counsel

explained he intended to use the statements only for purposes of impeachment and therefore disclosure was not required.⁷

The trial court ordered the defense to turn over these statements.⁸ The Court of Appeals, however, reversed this decision, finding defense counsel was only required to disclose statements of its own witnesses. As to state witnesses, the Court held that the state is only entitled to review statements used for impeachment at the time they are used.⁹

The Court of Appeals continued to extensively discuss the case, and vacated much of the trial court's order, stating "with respect **to all of the statements**, [the prosecutor] will have the opportunity to review them and make her objections... when they are used by petitioner to impeach the state's witness."¹⁰ This language by Court of Appeals demonstrates that the statements made by state witnesses – the witnesses that had been deleted on the amended notice by the defense – to defense counsel, are not subject to disclosure to the state. The opinion additionally points out that there is no undue hardship on the prosecutor because the witnesses are the state's own witnesses, and the state can easily conduct its own interviews to obtain any necessary information.¹¹

The lesson of *Osborne* is to be careful about who you list in your Rule 15 motions. If you only plan to use the statements of state witnesses for impeachment, there is no requirement to notice them.

Forced Disclosure of Work Product in Capital Cases

In a capital case, is the defense required to turn over summaries of statements made by specific defense witnesses or notes taken by a mitigation specialist or investigator during interviews?

This issue has recently arisen in several capital cases, as prosecutors are attempting to gain greater access to the notes of capital defense teams. Note that this scenario does not apply to recorded statements or statements written by the witness; rather, it is limited to the notes taken during an unrecorded interview.

A troubling development in some of these capital cases has been judges ordering these notes and summaries to be turned over to the state. It is erroneous for a trial judge to give such an order, and doing so violates the work product privilege.

Rule 15.4(a)(1)(iii) of the Arizona Rules of Criminal Procedure defines a statement as "a writing containing a verbatim record or a summary of a person's oral communications." As noted above, Rule 15.2(c)(1) requires the defense to disclose witnesses it intends to call "together with their relevant written or recorded statements." The trial court judges who have given such orders use the interpretation of these two rules as evidence that the summaries/notes at issue in this scenario qualify as "statements" and are therefore subject to disclosure rules.

This is an incorrect interpretation of the rules for several reasons. Most prominently is the language of Rule 15.4(b)(1), which states that disclosure is **not** required of "legal research or of records, correspondence, reports or memoranda" which contain opinions, theories or conclusions of "defense counsel or defense counsel's legal or investigative staff." Notes of interviews conducted by a mitigation specialist or investigator should fall under this exception to the disclosure rule. The United States Supreme Court has expressly stated that the work product privilege extends to investigators and mitigation specialists,¹² and the Arizona Supreme Court agrees.¹³

The work product rule protects reports and other investigation memoranda prepared by mitigation specialists or investigators when the same document would be protected work product if the attorney had produced it.¹⁴ Work product immunity is a bar against attorneys discovering the "mental impressions, conclusions, opinions and legal theories concerning a case" of opposing counsel.¹⁵ In the types of cases at issue here, the witnesses can be – and generally are – interviewed

by both sides. When the information sought is available to both parties, the work product rule is broadly applied.¹⁶ That application covers the statements at issue in this scenario and ensures the statements fall under the work product rule.

As stated by the ABA Guidelines For the Appointment and Performance of Defense Counsel in Death Penalty Cases, capital defense lawyers are required to conduct a “thorough and independent investigation” to obtain all available mitigating evidence.¹⁷ The United States Supreme Court has stated that these guidelines are the established standard for defense counsel in capital cases.¹⁸ The Guidelines are the standard used in Arizona.¹⁹ Defense attorneys in capital cases are required to seek and obtain these mitigation records in order to comply with the guidelines. A defense investigation is not “independent” if judges order the notes compiled in the investigation to be turned over to the state under Rule 15.2(c)(1).

If Rule 15.2(c)(1) is interpreted by judges as requiring disclosure of the summaries and notes, attorneys and their agents face a chilling effect on defense team communication. Witness lists for a capital defense case are often extensive and frequently have witnesses in a variety of different locations. As the courts and the Guidelines have indicated, the work of the attorneys, investigator and mitigation specialist are of vital importance in providing effective assistance of counsel in capital cases. A trial court order to turn over notes of all defense interviews leaves the members of the defense team with two options: either continue taking detailed notes and have the work product privilege sacrificed, or use a more bare-bones approach to taking notes during these interviews. Not taking complete and detailed notes is detrimental to the defendant’s case as these notes are the basis for the interviewing member to relay important information to the rest of the defense team.

Additionally, the appeal of a capital sentence is a monumental undertaking involving a very voluminous record. Another potential issue created by these orders by the trial court is the creation of an incomplete record due to the chilling effect the orders have on capital defense teams. The effect would be the appellate courts not having all of the necessary information available while evaluating the merits of the appeal.

Such trial court orders do not pass constitutional muster as it impairs the defense team’s ability to communicate and develop mitigation to present to the jury.²⁰ As noted above, the defense must conduct a “thorough and independent investigation.”²¹ An investigation is not “thorough” if defense attorneys face roadblocks from being able to, as a defense team, fully discuss and prepare for trial due to these trial court orders.

In summary, such orders by the trial court are unconstitutional as they violate work product privilege, and the only way to prevent that violation from occurring is to take incomplete notes. The result of which is a hindrance on defense team communication, and ultimately, the inability to put forth a complete defense.

Is the Prosecutor Barring a State Witness From Talking To You?

Is the defense required to arrange state witness interviews through the prosecution, and may the prosecutor prevent a state witness from speaking with defense attorneys outside of the prosecutor’s presence?

The County Attorney’s Office frequently attempts to give the impression that defense counsel is not allowed to interview a state witness without a prosecutor present unless the prosecutor consents. In a recent case I worked on, the deputy county attorney filed a motion to compel which contained the statement “the state never would have allowed the defense to interview the police officer had it known the defense would not turn over the tape of the interview.” Not surprisingly, there was no authority shown to support the state’s alleged right to make this decision.

Arizona case law has established that only the witness, and not the state, has the power to prevent defense counsel from interviewing a state witness outside the presence of a prosecutor. In *Mota v. Buchanan*,²² the trial court ordered that a witness be made available to the defense for a pretrial interview and that the interview take place in the presence of the prosecutor.²³ The Court of Appeals upheld the order for the interview, but reversed the order that the interview take place in the prosecutor's presence, stating, "the decision as to whether the interview be private is neither for the prosecutor nor the defense counsel but rests with the witness."²⁴

A witness may refuse to be interviewed privately by defense counsel, but the *Mota* court stated that "the prosecution has no right to interfere with or prevent a defendant's access to a witness."²⁵ The decision of whether or not to answer questions asked by defense counsel lies solely with the witness. If the witness will not cooperate with defense counsel, the court may require the witness to appear at an oral disposition.²⁶

*** Special thanks to Jeff Roth, Becky Kirchler, Jeremy Mussman, Larry Blieden, Joel Brown and Garrett Simpson for their assistance with this article.

(Endnotes)

1. Rule 15.1(b)(1) requires the state to turn over to the defense the names of all persons the prosecutor intends to call as witnesses along with their relevant or recorded statements; Rule 15.2(c)(1) covers the other side of the case, requiring disclosure of defense witnesses together with relevant written or recorded statements to the prosecution.
2. *Osborne v. Superior Court*, 157 Ariz. 2 (App. 1988).
3. *Id.* at 4.
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.* at 5.
8. *Id.* at 4.
9. *Id.* at 5.
10. *Id.* at 6 (emphasis added).
11. *Id.*
12. *United States v. Nobles*, 422 U.S. 225, 238-39 (1975).
13. *State ex rel. Corbin v. Ybarra*, 161 Ariz. 188, 192 (1989) ("protection afforded trial preparation material must apply not only to attorneys but to their agents as well").
14. *Id.*
15. *Emergency Car Dynamics v. Superior Court*, 188 Ariz. 32, 33 (App. 1997).
16. *Id.*
17. American Bar Association Guidelines for the Appointment and performance of Defense Counsel in Death Penalty Cases, Section 10.7 (2003).
18. *Wiggins v. Smith*, 539 U.S. 510, 524 (2003).
19. Arizona R.Cr.P. 6.8(b)(1)(iii). (Attorneys shall be familiar with and guided by the performance standards in the guidelines).
20. *Abdul-Kabir v. Quarterman*, 127 S.Ct. 1654, 1674-1675 (2007).
21. See Note 17, *supra*.
22. *Mota v. Buchanan*, 26 Ariz. 246, 248 (App. 1976).
23. *Id.* at 251.
24. *Id.*
25. *Id.* at 250.
26. *State ex rel. McDougall v. Municipal Court of City of Phoenix*, 155 Ariz. 186, 190 (App. 1987).



Save the Dates...

SEVENTH ANNUAL APDA CONFERENCE

**TEMPE MISSION PALMS RESORT
& CONFERENCE CENTER
60 EAST FIFTH STREET, TEMPE, 85281**

WEDNESDAY, JUNE 17, 2009

Pre-Conference: 8:45 am - Noon

Conference: 1:30 pm - 5:00 pm

THURSDAY, JUNE 18, 2009

Conference: 9:00 am - 5:00 pm

Awards Luncheon: Noon - 1:15 pm

FRIDAY, JUNE 19, 2009

Conference: 9:00 am - 12:15 pm

Post-Conference 1:30 pm - 4:45 pm

Can You Dump Onto Clients As They Have Dumped Onto You?

By Jeremy Mussman, Deputy Director, and Derron Woodford, Private Attorney

Editors' Note: This article originally ran in *for The Defense* in August, 1999 - Volume 9, Issue 8

Being a deputy public defender certainly has its ups and downs. A surefire way of getting your morning off to a lousy start is getting dumped on by a client during morning calendar. Most of us have been there -- you go over to court for your 8:30 hearing. Your client is in custody. You've met with him a number of times. He wants the case to go away and is convinced that you're working for the prosecutor. You've spent a lot of time with him, both during jail visits and telephone conversations, trying to explain the ins and outs of his case, including the pros and cons of his plea agreement. He glares at you most of the time, but, eventually, he appears to understand the gravity of the situation, and is coming to grips with the need to listen to your advice. That is, until you're standing in open court arguing a routine motion on his behalf in front of all of your colleagues. That's when he chooses to tell the judge that you only visited him once and during that visit told him that he was guilty and you didn't plan on doing any work for him. In addition, if the defendant was planning ahead, you'll find out from the judge that the defendant also filed a pro per motion for new counsel in which he details all of the sins he maintains you have committed against him.



Of course, you know that everything the defendant is alleging is false -- you've visited him in person in the jail numerous times, taken half a dozen phone calls from him, delivered information to him via jail mail, and diligently worked on his case. So, what do you do when the judge turns to you and says, "Defense counsel, do you wish to respond?" The first thing to do is probably the most difficult -- to remember that you are there to zealously represent your client. In fact, you are probably the only "dog he can kick" in order to vent his frustrations. We're not saying it's fair but, then again, *you are* the attorney. *He is* your client. Even though he might be acting like it at the time, he is not your adversary. In fact, chances are that he will continue to appear before this judge. In addition, it's likely that this is the judge who will be sentencing him, with you standing by his side. Consequently, the far sighted approach to this situation would be to avoid "dumping on your client as he has dumped onto you." That means, even though it's tempting, you don't whip out your caselog and start listing the numerous times that you visited him in the jail. You don't prove to the judge that your client is lying. Rather, as discussed below, case law, ethics opinions, and the rules of ethics indicate that you are limited to making a "proportionate and restrained response" to the extent that any response is even necessary.

Arizona Ethics Rule 1.6 restrains a lawyer's response to a client's disparaging statements. The rule states, in part:

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (d) or ER 3.3(a)(2).

Part (d), in turn, states:

A lawyer may reveal such information to the extent the lawyer reasonably believes necessary to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceedings concerning the lawyer's representation of the client.

In a situation where the client is disparaging the lawyer in open court, it could be argued that subsection (d) would allow a lawyer to respond to the defendant's allegations by revealing confidential information under the language "... or to respond to allegations in any proceedings concerning the lawyer's representation of the client." A.R.S. Sup. Ct. Rule, E.R. 1.6. However the commentary after the rule limits the exception to very narrow circumstances, stating that the typical application of subsection (d) is when there is a formal charge by a third party that the lawyer is an accomplice in a crime in which the lawyer's client is involved. The comment gives the example of a situation in which a person has claimed that the lawyer and the lawyer's client working together have defrauded a third person. In our situation, the client has not made a formal charge; he has simply told the judge that he is unhappy with his court appointed lawyer.

Given the limitation of 1.6(d) by the comment, how should the lawyer respond in our example? Ethics committee opinions suggest that a lawyer may respond to informal allegations of misconduct by revealing confidential information. In Arizona Bar Opinion 93-02 the committee points out that Section 116 of Tentative Drafts Nos. 2 and 3 of the proposed Restatement of the Law Third, the Law Governing Lawyers, state:

A lawyer may use or disclose confidential client information to the extent that the lawyer reasonably believes necessary in order to defend the lawyer against a charge by any person that the lawyer or a person for whose conduct the lawyer is responsible acted wrongfully during the course of representing a client.

Az. Op. 93-02 (March 17, 1993) at page 4.

Comment (f) to section 116 reads, in part:

Normally, it is sound professional practice for a lawyer not to use or reveal confidential client information except in response to a formal client charge of wrongdoing with a tribunal or similar agency. When, however, a client has made public charges of wrongdoing, a lawyer is warranted under this Section in making a *proportionate and restrained response* in order to protect the reputation of the lawyer.

Az. Op. 93-02 (March 17, 1993) at page 5 (emphasis added). In our situation, the client is making a public charge of wrongdoing -- he is in open court claiming that the lawyer is doing nothing to help his case. Hence, under tentative section 116, the lawyer can respond to the allegations in a manner that is *reasonably necessary* to defend himself against the allegations. Any such response, however, must be proportionate and restrained. The opinion states, "*We emphasize that our conclusion should not imply that an attorney may simply open his or her file in response to any such derogatory allegations.*" *Id.*, at page 5 (emphasis added).

So, what is a reasonably necessary proportionate and restrained response? Obviously, that's subject to a number of different interpretations. The bottom line is that you and your client have very little to gain from you "dumping" back on him after he has dumped upon you. In this type of

situation, the safest and most professional practice is to say nothing and, if asked, tell the judge the information is privileged, thereby letting the judge determine the appropriate course of action. By giving this response, the lawyer has upheld the duty to represent the client's interests.

In Arizona Bar Opinion 95-02, while discussing a lawyer's right to divulge non-confidential information, the committee stated, "But if other information is protected by the duty of confidentiality, counsel will have to tell the court that any additional information is privileged and let the court make further inquiry or rulings as the court deems appropriate." Az. Op. 95-02 (Feb. 1, 1995) at page 5. Under the adversary system, a lawyer is to act as a zealous advocate to uphold the client's rights. Az. Op. 98-01 (Jan. 1998) at page 5. With this in mind, the ethical obligation of a lawyer to hold inviolate confidential information of the client facilitates the full development of facts essential to zealous representation of the client. E.R. 1.6., *Comment*. Consequently, confidentiality facilitates full and frank discussions of all information the client may have. E.R. 1.6., *Comment*.

If, on the other hand, the lawyer chooses to divulge confidential information to rebut the client's allegations, the lawyer is no longer working as an advocate for the client. The court dealt with this issue in *U.S. v. Gonzalez*, 113 F.3d 1026, 1029 (9th Cir. 1997), stating that when the court invited the lawyer to contradict his client and to undermine his veracity, the client was left to "fend for himself, without representation by counsel..."

In conclusion, the best way to avoid these situations is through client centered representation of clients -- do the jail visits, take their phone calls, and show them, through your actual work product, that you are working on their behalf. If, despite doing all of this, a client still pulls this kind of stunt on you in open court and directly disparages your professional reputation through false allegations, *do not* respond in like kind. Do not demonstrate to the court that your client is a liar in an effort to protect your reputation. To do so would, in actuality, be shooting yourself in the foot. Disclosing confidential information and informing the court that your client is a liar harms, rather than helps, your reputation. If you have proven yourself to be a competent, hard-working defense attorney, then the court should put the allegations in the proper context. If the court insists on a response, a non-defensive restrained and proportionate response should be given, with an effort to avoid disclosing any confidential information regarding the attorney/client relationship and to minimize the damage to your client.



Eligibility Requirements for Half Time Early Release if Detained for Deportation

By Brian Sloan, Defender Attorney

A.R.S. § 41-1604.14

Arizona Revised Statutes Annotated [Currentness](#)

Title 41. State Government [\(Refs & Annos\)](#)

▣ [Chapter 11](#). State Department of Corrections [\(Refs & Annos\)](#)

▣ [Article 1](#). Organization of State Department of Corrections [\(Refs & Annos\)](#)

▣ **§ 41-1604.14. Release of prisoners with detainers; eligibility; revocation of release**

A. Notwithstanding any law to the contrary, the director may release a prisoner to the custody and control of the United States immigration and customs enforcement if all of the following requirements are satisfied:

1. The department receives an order of deportation for the prisoner from the United States immigration and naturalization service.
2. The prisoner has served at least one-half of the sentence imposed by the court.
3. The prisoner was convicted of a class 3, 4, 5 or 6 felony offense.
4. The prisoner was not convicted of an offense under title 13, chapter 11 [*Homicide*].
5. The prisoner was not convicted of a sexual offense pursuant to [§ 13-1404](#) [*Sex Abuse*] [13-1405](#) [*Sexual Conduct with a Minor*], [13-1406](#) [*Sexual Assault*], or [13-1410](#) [*Child Molestation*].
6. The prisoner was not sentenced pursuant to § 13-[703](#) [*Repetitive Offense (sentenced with a prior)*], § 13-[704, subsection A, B, C](#), D or E [*Dangerous offense*], [§ 13-706, subsection A](#) [*3rd Strike Life Sentence*], or [§ 13-708, subsection D](#) [*Committed While on Pre-Trial Release or Escape from Pre-Conviction Custody*].



B. If a prisoner who is released pursuant to this section returns illegally to the United States, on notification from any federal or state law enforcement agency that the prisoner is in custody, the director shall revoke the prisoner's release. The prisoner shall not be eligible for parole, community supervision or any other release from confinement until the remainder of the sentence of imprisonment is served, except pursuant to [§ 31-233, subsection A](#) or [B](#) [*Prison Work, Medical Research, Delinquency Prevention, Community Betterment, Compassionate Leave, Medical Treatment, Disaster Aid, State Emergencies*].

Everyone is Invited!
Veterans Helping Veterans

Date: Saturday, May 9, 2009

Time: 10:00 am

Madison Street Veterans Association (MSVA) Dedication Ceremony/ Open House



Join us for a celebration of MSVA moving into our newly remodeled Veterans Outreach Center, 233 South 11th Ave., Phoenix (northwest corner of Andre House building)

Madison Street Veterans Association is a grassroots, peer driven organization of homeless and formerly homeless veterans. Our members are former soldiers, sailors, marines and airmen who have served our flag and nation. Our organization develops the civic leadership to support housing, transportation, employment and community for all veterans.

Location: One block south of Jefferson on 11th Ave., between downtown Phoenix and the Arizona State Capitol. Parking at Human Services Campus parking lot, 1125 W. Jackson St, Phoenix AZ 85007.

Contact: Scott Wyatt, 602-254-5752
Email: ilistentoyou2009@yahoo.com

MSVA

Featured Speakers:

- ◆ Congressman Harry Mitchell
- ◆ Col. Joey Strickland, Arizona Dept. of Veterans' Services
- ◆ Amy Schwabenlender, Valley of the Sun United Way
- ◆ David Smith, Maricopa County

Everyone is Invited!

MSVA Speakers:
John Liebl
Rick Tomlinson
Bruce Roberts

Diversity Council

By Norma Munoz, Diversity Coordinator/Training Facilitator

BLACK HERITAGE MONTH CELEBRATION – February 24, 2009

The Maricopa County Public Defender Diversity Council celebrated its first Black Heritage Month on February 24, 2009 in the Public Defender's Training Room.

There was a beautiful display of Black leaders and Civil Rights champions along with pictures and memorabilia. In addition, there was a memorable documentary featured about the Ragsdale family who worked tirelessly during the Civil Rights movement in Phoenix. In collaboration with the Maricopa County Black Heritage Month celebration, the EBC was played live so that all employees could take part in celebrating Diversity and enjoy the County's program and entertainment. Speakers at the County event included our own Jay Andrews and Judge Larry Grant, a former supervisor with our office. The Maricopa County Public Defender Diversity Council provided snacks, refreshments, door prizes and a drawing.



CESAR CHAVEZ BIRTHDAY CELEBRATION - March 26, 2009

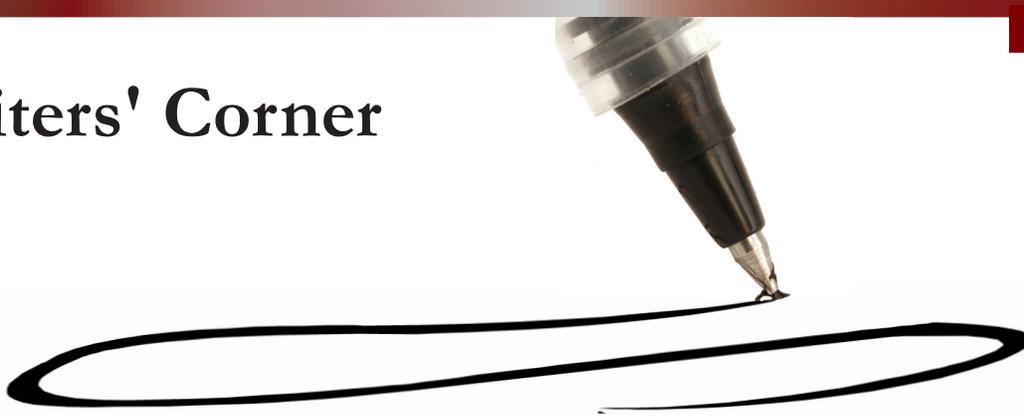


The Maricopa County Public Defender Diversity Council celebrated its first Cesar Chavez Birthday Celebration on March 26, 2009 in the Public Defender's Training Room.

The event featured a display of Cesar Chavez' Legacy and a chronology of his life. A memorable documentary, "The Life and Legacy of Cesar Estrada Chavez," was shown chronicling his efforts on behalf of farm workers toiling in the vegetable and fruit fields in squalid conditions. In addition to the documentary, the Mesa Diversity Council members provided a PowerPoint presentation of Cesar Chavez. There was standing room only in the Training Room for the guest speakers, Francisca Montoya, Executive Director of the Cesar Chavez Foundation, and Delia Torres, Educational Consultant for the Foundation. Snacks, refreshments, drawings and door prizes were again provided by the Maricopa County Public Defender Diversity Council.

The Public Defender Diversity Council is committed to celebrating diversity and promoting inclusion for the employees of the Public Defender's Office. If you are interested in joining the Diversity Council and taking part in planning activities, please contact Norma Munoz, Celeste Cogley or any of the council members.

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.

Flotsam Phrases

Flotsam Phrases take up space without adding meaning. For example, if it's clear that you're expressing an opinion, avoid "In my opinion" or "It seems to me that." Other examples are "in terms of," "on a . . . basis," "in the first instance," "the fact of the matter," and "the fact that." Some of these phrases may be useful in speech, but we have enough written words without mere space-fillers:

evidence, v.t.; evince.

These words are often inferior to "show," "express," or "indicate." Properly, to "evidence" something is to serve as proof of its truth, existence, or occurrence. Justifiable uses of this verb are typically in the passive voice -- e.g.: "The highway environs southbound are fairly litter-free. The inescapable conclusion, evidenced by the clutter of takeout coffee containers, is that sloppy folk on their way to work in the morning drain their cups, roll down the windows of their vehicles and heave out the empty containers." Peter M. Knapp, "Slobs Littering Route 3 Ought to Clean Up Their Act," *Patriot Ledger* (Quincy, Mass.), 28 Sept. 1996, at 19.

In other situations, a different verb would be preferable -- e.g.: "The cakes are much in demand, as evidenced [read 'demonstrated'] by the crowds at several local Asian markets last weekend." Gail Tirone Finley, "Mooncakes Ready for Big Chinese Fest," *Houston Chron.*, 26 Sept. 1996, City §, at 1.

"Evince" properly means "to show, exhibit, make manifest," but it can usually be replaced to good advantage -- e.g.: "Bad as things were, though, the crowd seemed quite content with the situation -- which itself is testament to the kind of charisma Pearl Jam evinces [read 'displays'] in concert." J.D. Considine, "Bad Gets Lost in a Crowd," *Baltimore Sun*, 26 Sept. 1996, at E1.

Sometimes, as H.W. Fowler noted, "evince" is misused for "evoke," "get," "receive," or some other everyday term -- e.g.: "Plans for NATO enlargement still receive majority support from the German public and elites. But a heightened German role, or the absorption of costs for an extension east, evinces [read 'gets' or 'receives'] less support." Daniel Nelson, "Germany Faces Dilemma," *Defense News*, 8 July 1996, at 21.

Jury and Bench Trial Results

January / February 2009

Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1						
1/5 - 1/7	Farney	Harrison	Clarke	CR08-007168-001DT Attempted Robbery, F5	Not Guilty	Jury
1/12 - 1/14	Mullins Leigh	Barton	Rapp	CR08-130160-001DT PODD, F4	Guilty	Jury
1/12 - 1/15	Turner Brazinskas Leigh	Foster	Humm	CR07-009143-001DT Agg. Assault, F6 Resisting Arrest, F6	Not Guilty of Agg. Assault; Guilty of Resisting Arrest	Jury
1/13 - 1/15	Friddle Brazinskas Leigh	Duncan	Vaitkus	CR08-005777-001DT Sale or Trans. of Dangerous Drugs, F2	Guilty	Jury
1/13 - 1/20	Fischer Brazinskas	Passamonte	Rudnick	CR08-006893-001DT Arson of an Occ. Struct., F2 Fraud. Ins. Claims, F5 12 cts. Endangerment, F6	Guilty - trial held in absentia.	Jury
1/22 - 1/26	Hann Leigh	Gaines	Rademacher	CR06-009997-001DT TOMOT, F3	Guilty	Jury
1/22 - 1/28	Turner Rankin Ralston	Barton	Mayer	CR08-006781-001DT Burg. 3rd Deg., F4 Poss. Burg. Tools, F6	Guilty	Jury
1/27 - 1/29	Hann Leigh	Holding	Jencsok	CR08-101775-001DT TOMOT, F3 PODD, F4 PODP, F6	Not Guilty	Jury
1/27 - 1/30	Baker Rankin Ralston	Lynch	White	CR06-129219-001DT TOMOT, F3	Guilty	Jury
2/2 - 2/11	Fischer Brazinskas Curtis Del Rio	Hoffman	Duffy	CR06-162531-001DT 24 cts. Agg. Assault, F2D Agg. Assault, F3D 2 cts. Endangerment, F6D 6 cts. MIW, F4	Guilty	Bench
2/9 - 2/12	Hann Rock Leigh	Harrison	Gilla Whitney	CR08-159259-001DT 2 cts. Agg. Assault, F3D Unlawful Imprisonment, F6	Guilty	Jury
2/11	Foundas / Rosales Brazinskas Leigh	Lynch	Crowley	CR08-006887-001DT POM, M1	Guilty	Bench
2/12 - 2/18	Fischer	Hoffman	Swanstrom	CR08-141427-002DT Burglary 3rd Deg., F4	Guilty	Jury

Jury and Bench Trial Results

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Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 1 (Continued)						
2/24 - 2/27	Agnick Schreck Sain Curtis	Holding	Vartkus	CR08-006821-001DT PODD for sale, F2 PODP, F6	Not Guilty of PODD for sale; Guilty of lesser included PODD, F4 and PODP, F6	Jury
Group 2						
1/5 - 1/6	Steinfeld Urista Reilly	Lynch	Heiner	CR08-142895-001DT Agg. Assault, M1 Resist Arrest, M1	Guilty both counts	Bench
1/21 - 1/23	Steinfeld	Hoffman	Heiner	CR08-006553-001 DT Burglary 3rd, F4	Guilty	Jury
1/22 - 1/29	Teel Souther	Roberts	Starr	CR08-152002-001 2 cts. MIW, F4 POM, F6 PODP, F6	Guilty on 3 counts Hung on 1 ct. MIW	Jury
1/26 - 1/28	Baker	Whitten	Robinson	CR08-145962-001DT Att. TOMOT, F4	Not guilty	Jury
2/2 - 2/11	Rosell Abramson Souther Delrio	Gaines (mistrial and admin return) Welty final	Eidemanis	CR06-171111-002DT Agg. Assault, F3D	Guilty	Jury (re-trial)
2/11 - 2/25	Mestaz Reilly Springer	Davis	Pollak	CR08-151770-001DT Agg. Assault, F3D	Not Guilty	Jury
Group 3						
1/13 - 1/21	Clemency O'Farrell Browne	Cahill	Goddard	CR08-006195-001DT Att. First Deg. Murder, F2D Agg. Assault, F2D MIW, F4	Guilty on all counts	Jury
1/27 - 1/29	Tivorsak Schreck Flannagan	Passamonte	Caputo	CR07-125490-002DT Criminal Trespass, F6	Guilty	Jury
1/20 - 2/3	Kirchler Andrews O'Farrell Williams/Curtis	Lee	Lynch	CR07-163929-001DT Murder 1st Deg., F1	Convicted of Murder 2nd Deg.	Jury
1/28 - 2/3	Cooper O'Farrell Williams	Blomo	Susser	CR08-102145-001DT Fraud Schemes, F2 Theft, F2	Guilty on both	Jury
2/3	Naegle O'Farrell	Lee	Keer	CR08-148990-001DT Agg. Assault, M1	Guilty	Bench

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Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 3 (Continued)						
2/3 - 2/4	Alexander Flannagan <i>Browne</i>	Hannah	Garcia	CR09-154647-001 DT TOMT, F3	Not Guilty	Jury
2/6 - 2/4	Kirchler O'Farrell <i>Curtis</i>	Hannah	Telles	CR08-006151-001DT 3 cts. Sexual Assault, F2 2 cts. Kidnap, F2 Sexual Conduct w/Minor, F2 Sexual Abuse, F3	Sexual Conduct w/ Minor DCAC-Guilty Sexual Abuse DCAC- Guilty Kidnap DCAC-Guilty Kidnap-Guilty	Jury
2/25 - 2/26	Harrison Muñoz <i>Browne</i>	Lynch	Keer	CR08-140343-003DT Armed Robbery, F2	Not Guilty	Jury
Group 4						
12/1 - 12/8	Houck	Sanders	Clark	CR07-177865-001SE Agg. Assault, F3D Resist Arrest, F6	Guilty	Jury
1/7 - 1/9	Whitney	Abrams	Brenneman	CR08-121925-001SE POND, F4 PODP, F6	Guilty	Jury
1/8	Braaksma	Frankel	Green	TR08-139799-001CH DOSL due to DUI, M1	Guilty	Bench
1/9	Braaksma	Parker (Pro Tem)	Grabowski	TR08-136781-001SM 3 cts. DUI, M1	Guilty	Jury
1/12 - 1/13	Peterson	Arellano	Maggi	CR08-048344-001SE Unlawful Flight, F5 POM, F6	Unlawful Flight-Guilty POM-Dismissed due to Supression Motion	Jury
1/12 - 1/21	Lockard	Ronan	Swanstrom	CR08-132669-001SE Unlawful Use of Means of Transp., F6	Guilty	Jury
1/12 - 1/26	Corbitt	Sanders	McDermott	CR07-117883-001SE Agg. DUI, F4 Disorderly Conduct, F6 Disorderly Conduct, F6D	Guilty	Jury
1/15 - 1/21	Fluharty	Spencer	Letellier	CR07-177079-001SE Agg. Assault, F6 Assault-Intent/Reckless/ Injure, M1	Agg. Assault-Not Guilty Assault - Guilty	Jury
1/26	Braaksma	Rogers	Daley	TR08-103843-001WT DOSL due to DUI, M1	Guilty	Bench
1/26 - 1/28	Dehner	Ronan	Kelly	CR08-114306-001SE Theft, F3	Not Guilty	Jury

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Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
Group 4 (Continued)						
1/27 - 1/29	Whitney	Arellano	Blum	CR08-109158-001SE Burg. 2nd Deg., F3	Guilty	Jury
2/3 - 2/9	Antonson	Ronan	Blum	CR08-152193-001SE 2 cts. Burg. 3rd Deg., F4	Guilty	Jury
2/10 - 2/12	Sitver	Arellano	Blum	CR08-157571-001SE MIW, F4 Theft, F6	MIW - Guilty Theft - Not Guilty	Jury
2/17	Llewellyn	Chiles	Reedy	TR08-149792-001EM DOSL due to DUI, M1	Guilty	Bench
2/20	Llewellyn	Chiles	Reedy	TR08-128991-001EM 2 cts. DUI, M1	Guilty on both	Jury
Vehicular						
1/5 - 1/7	Sloan Carrillo	Svoboda	Adel	CR07-182117-001 DT 2 cts. Agg DUI, F4	Guilty	Jury
1/20 - 1/22	Sloan	Passamonte	Martinez	CR08-136224-001 DT 2 cts. Agg DUI, F4	Guilty	Jury
1/28 - 1/30	Sloan	Svoboda	Reed	CR05-129003-002 DT 2 cts. Agg DUI, F4	Guilty	Jury
1/12	Black	Getzwiller	Komreada	JC08-131349-001 Assault, M3	Directed Verdict	Jury
2/9 - 2/18	Taylor	Kemp	McGregor	CR07-008373-001 DT Agg. Assault, F3D	Guilty	Jury
2/11 - 2/13	Califano	Svoboda	McDermott	CR08-138439-001 DT 2 cts. Agg. DUI, F4	Guilty	Jury
Juveniles in Adult Court						
1/7 - 1/15	Traher Ortiz	Ditsworth	Gallagher Wade	CR08-006720-001DT Murder 1st Deg., F1D	Guilty	Jury



Jury and Bench Trial Results

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Legal Defender's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
10/29 - 1/15	Jones Napper Otero Hill Apple Williams Garcia-Rodriguez Teter	Duncan	Lynch	CR98-004885A DT Murder, 1st degree, F1	Guilty	Jury
12/1 - 12/31	Tallan Reidy DeSantiago Bollinger	Hannah	Charbel	CR07-030908-001 DT Murder, 1st degree, F1 Burglary, 2nd degree, F2 2 cts Kidnapping, F2	Not Guilty	Jury
1/8	Bushor	Ishikawa	AG	JD507108 Severance Trial	Severance Granted	Bench
1/9	Bushor	Ishikawa	AG	JD507100 Severance Trial	Severance Granted	Bench
1/9 - 1/16	Garfinkel	Norris	Overhold	JD15161 Severance Trial	Severance Granted	Bench
1/12 - 1/23	Garfinkel	Norris	Overhold	JD17163 Dependency Trial	Dependency Found	Bench
1/27 -1/29	Wilhite	Harrison	Prichard	CR07-160726-001 DT Kidnap, F2 Agg. Robbery, F3	Not Guilty	Jury
1/28	Sanders	Sinclair	AG	JD17072 Dependency Trial	Dependency Dismissed (on 3 of 4 children)	Bench
1/12 - 2/19	van Doren	Brnovich	Borea	JS506847 Severance Trial	Severance Granted	Bench
1/13 - 1/14	Allen	Welty	Micflikier	CR07-166866-002 SE Theft Means Trans, F3	Not Guilty	Jury
2/2	Ripa	Gama	AG	JS15682 Severance Trial	Severance Granted	Bench
2/2	Sanders	Davis	AG	JS15825 Severance Trial	Severance Granted	Bench
2/9	Sanders	Davis	AG	JD17279 Dependency Trial	Dependency Dismissed	Bench
2/10	Ripa	Gama	AG	JS15781 Severance Trial	Severance Granted	Bench
2/11	Garfinkel	Norris	Myer	JD16801 Dependency Trial	Dependency Dismissed	Bench

Jury and Bench Trial Results

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Legal Defender's Office (Continued)

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
2/17 - 2/20	Sinclair McReynolds	Barton	Mayer	CR08-006781-002DT Burglary 3rd Degree, F4 Burlary Tools Possession, F6	Guilty	Jury
2/18 - 2/20	Rothschild	Whitten	Meyerand	CR08-159301-002DT Dischrg Firearm in City Limit, F6D False Report to Law Enforce, M1	Guilty	Jury
2/18 - 2/20	Wilhite	Rayes	Leiter	CR07-008824-001DT Burlary 3rd Degree, F4	Not Guilty: Burglary 3rd Degree Guilty: Trespassing	Jury
2/19	Bushor	Ishikawa	AG	JS507187 Severance Trial	Severance Granted	Bench
2/20	McGuire	Udall	AG	JD507626 Dependency Trial	Dependency Found	Bench
2/27	Woods	Kemp	Miller	CR2008-140767-001DT POM, M1	Guilty	Bench

Jury and Bench Trial Results

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Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
1/12 - 1/20	Rose Mullavey Brauer Hayes Rood Coquelet	Hannah	Flynn	CR06-009313-001 DT Theft, F3 Attempted Theft, F3 Forgery, F4	Not Guilty on All Counts	Jury
1/28	Youngblood Gutierrez	Anderson	Arroyo	JD15930 - Severance	Under Advisement	Bench
1/15 - 1/16	Whiteside Pena-Lynch Brauer	Gaines	Garcia	CR08-150932-001 DT TMOT, F3	Guilty	Jury
1/9 & 1/16	Russell	Norris	Overholt	JD15161 - Termination	Parental Rights Terminated	Bench
1/26	Timmes	Keppel	Haran	JD507017 - Dependency	Dependency Granted	Bench

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Legal Advocate's Office (Continued)

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
1/28 - 1/29	Beren Brauer	Kemp	Sammons	CR06-144451-001 DT POND, F4	Guilty	Jury
1/21	Smith Christiansen	Gama	AG-Bell	JD17411 - Dependency	Dependency Granted	Bench
1/15	Stubbs Contreras	Hoag	Welch- Rowland	JD 506523 - Dependency	Dependency Granted	Bench
12/29 - 1/6	Glow Rood	Lee		CR08-006618-001 DT CT. 1 - Resist Arrest Gang Promo, 6F Ct. 2 Agg. Asst on Officer Gang, 6F Ct. 3 - Threaten and Intimid Gang, 3F Ct. 4 Gang Promo, 3F	Guilty on Ct. 1 but hung on Gang Allegation; Ct. 2 Guilty but hung on Gang Allegation; Ct 3 Hung; Count 4 Hung	Jury
1/27 & 2/5	Timmes	Hoag	Welch- Rowland	JD506665 - Severance	Under Advisement	Bench
2/4 - 2/11	Whiteside Rood Hayes	Duncan	Henderson Leckrone	CR08-048394-001 DT Agg Asst.-Dang, F3	Not Guilty	Jury Trial
2/24 - 2/26	Whiteside Rose	Duncan	Henderson Humm	CR08-115414-001 DT MIW, F4 POND, F4	Guilty on Both Counts	Jury Trial
2/23 - 2/25	Glow Hayes Lopez Rood	Hoffman	White	CR06-166483-001 DT Unlaw Use of Means of Trans	Not Guilty	Jury Trial
2/9	Owsley Marrero	Thumma	Oeize	JD16264 - Severance	Under Advisement	Bench
2/10	Christian Christiansen	Hoag	AG/Welch- Rowland F's Atty - Zubriggen	JD 504030R - Dependency	Dependency Found	Bench
2/11	Christian Christiansen	Udall	AG-Antosz M's Atty - Czop	JD507002 - Severance	Severance Granted	Bench
2-4 - 2-6	Reinhardt	Blomo	Prichard	CR08-048937-001 DT; 2 Cts. Armed Robbery Dang.	Guilty	Jury
1-20 to 2-2	Reinhardt, Brauer, Coquelet	Duncan	Lee	CR08-007464-001 DT; Ct. 1 Att. Molestation of Child DCAC-F3; Ct. 2 Sex. Abuse DCAC-F3; Ct. 3 Indecent Exposure-F6; Cts. 4, 5 Sex. Conduct W/Minor DCAC- F2; Ct. 6 Sex. Abuse DCAC- F3; Cts. 7, 8, 9 Sex. Conduct W/Minor-F6	Cts. 1, 2, 3 - Not Guilty - Cts. 4 thru 9 Guilty	Jury

Trial Skills College

We wish to express our thanks to all the faculty and attendees who made the 13th Annual Trial Skills College a great success. Over 40 people representing 5 public defenders offices participated in the 3-day college which featured nationally recognized speakers Terry MacCarthy and Josh Karton.



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for The Defense

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