

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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What Consecutive Sentence Presumption?

By The Honorable Robert L. Gottsfeld, Maricopa County
Superior Court

Although we hear it at times during plea negotiations, settlement conferences and sentencings, notwithstanding the seemingly mandatory statutory language in A.R.S. §13-711(A)¹ (formerly 13-708(A)), such a presumption does not exist under case law.

The statute reads:

- A. Except as otherwise provided by law, if multiple sentences of imprisonment are imposed on a person at the same time, the sentence or sentences imposed by the court *shall run consecutively* unless the court expressly directs otherwise, in which case the court shall set forth on the record the reason for its sentence. (emphasis supplied)

Interestingly the statute had previously read “shall run concurrently” which was changed to “consecutively” in 1985. Laws 1985, ch. 364, §9, eff. May 16, 1985² (when §13-708(A) became §13-711(A) effective January 1, 2009, it was merely renumbered and, in accord with all the other renumbering which occurred to the Code on that date, there was no change in the wording or any substantive change made to the statute).

It is not uncommon for courts to construe what appears to be mandatory “shall” language to mean “may”. As the Arizona Supreme Court has noted,³ in a civil context (with reasoning applicable to criminal cases) the word “shall” in a statute “usually indicates a mandatory provision, but has also been construed to indicate desirability, preference, or permission”.⁴

With respect to A.R.S. §13-708, the former “concurrent” sentence statute, *State v. Van Alcorn*⁵ held that it did not “create a ‘statutory preference’ for concurrent sentences”. Moreover that case concluded that the statute did not constrict to any degree the trial court’s discretion to impose consecutive sentences for a defendant’s crimes.

Subsequently, when §13-708 (now §13-711(A)) was amended in 1985 to provide for “consecutive” terms, the same *Van Alcorn* reasoning was applied by the court. In *State v. Fillmore*,⁶ Judge Fidel noted that the 1985 amendment did not “diminish the trial court’s discretion to impose concurrent sentences. Under both versions of the statute, a trial court must choose, among concurrent and consecutive sentences, whatever mix best fits a defendant’s crimes.”

In *Fillmore*, a consolidated ruling on an appeal and PCR, the state admitted at the PCR hearing that the prosecution was “greedy and overzealous”⁷ in calling twenty-five victims and proceeding on the 45 counts of theft, trafficking in stolen property, burglary, and operating a “chop-shop” illegal enterprise. While the trial court had ordered concurrent sentences for counts involving the same victim it imposed consecutive sentences on other counts, in part because of its reading of the consecutive sentence provision of then §13-708, which, as modified in the PCR hearing, totaled 289.75 years. The State at the PCR and on the appeal argued that 15.75 years should have been imposed for this repetitive offender who was on felony probation when the crimes were committed. Because the trial court had misread the consecutive sentence presumption, Division 1 remanded the case for resentencing.

In addition to *Fillmore*, the other case cited primarily for the view there is no consecutive sentencing presumption created by §13-708 is the 1998 Arizona Supreme Court decision in *State v. Garza*.⁸ The jury found Mr. Garza guilty of four dangerous felonies for her role in three armed robberies of different Subway sandwich shops over a period of eight days. She was convicted of three counts of armed robbery, (Counts I, III, and IV) class 2 felonies, and one count of aggravated assault (Count II), a class 3 felony. She had no prior felonies and the defense asked for *concurrent* sentences of 10.5 years for each armed robbery and 7.5 years for the aggravated assault.

The state argued that the multiple offenses consolidated for trial committed on separate occasions statute (then §13-702.02(B)(1) and (2) and now §13-704(F), (G) and (H)) governed, requiring *consecutive* sentences on two counts totaling a minimum 26.25 years⁹, which the court ordered. The trial court also determined that then §13-708 created a consecutive sentence presumption. The Court of Appeals agreed.¹⁰

The trial court believed the sentences he was forced to order were clearly excessive and he entered a special order allowing Mr. Garza to seek relief from the board of executive clemency pursuant to A.R.S. §13-603(K) (now §13-603(L)).

The Arizona Supreme Court, per Justice Feldman, citing *Fillmore*, held that then §13-708 did not use the term presumption and created no such presumption. Since the trial judge gave this alleged presumption as one of the reasons for imposing consecutive sentences, the sentences were vacated and the matter remanded for resentencing.¹¹

Fillmore’s Default Language

Van Alcorn, the first case apparently construing then §13-708, which at the time spoke of “concurrent” sentences, held that it did not “create a ‘statutory preference’.”¹² This was elaborated on in *Fillmore* by Judge Fidel to mean the statute provided “merely a default designation where the trial court failed to specify its choice.”¹³ This description of the statute has been followed in subsequent cases.¹⁴

Does this mean that in the rare case where a trial judge for some reason neglects to specify whether multiple sentences are concurrent or consecutive, the appellate court, under the present “consecutive” sentence wording, will determine the court meant consecutive sentences? Not at all.

More likely, as the cases below strongly imply, a remand to the trial court will be ordered to determine the court’s view and reasoning.

Abuse of Discretion Standard

A trial court's decision to impose consecutive sentences is reviewed for abuse of discretion. *State v. Ward*.¹⁵ Pursuant to *Ward*, an abuse of discretion exists "when the sentencing decision is arbitrary or capricious, or when the court fails to conduct an adequate investigation into the facts relevant to sentencing." According to *Garza*,¹⁶ a refusal or failure to exercise discretion constitutes an abuse of discretion. Under *Fillmore*,¹⁷ the sentence must not be outside the statutory range or otherwise contrary to the applicable law.

All of these cases are in agreement that if it is unclear from the record whether the trial court would have imposed the same sentences absent an erroneous interpretation of the law (such as a mistaken belief that §13-711(A) creates a presumption for consecutive sentences) the sentencing cannot stand. This applies in the situation where the court recognizes it is not bound by a rule but where the court's discretion is clearly guided by it¹⁸, as well as where the record is unclear whether the court knew it had discretion to act otherwise.¹⁹

Conclusion

The decision to impose concurrent or consecutive sentences is left to the trial court to determine in the exercise of its discretion. Neither A.R.S. §13-71(A) nor its predecessor, §13-708(A), create a presumption for consecutive (or for that matter concurrent) sentences, and do not impose any restrictions on the court's exercise of that discretion.

(Endnotes)

1. The original §13-708 construed by *Van Alcorn*, *Fillmore*, and *Garza*, *infra*, did not have an A or B section. The statute was made into sections A and B by the addition of section B by Laws 2007, Ch. 20, §1, effective 9/19/07. Section B, not considered in this article, provides for a consecutive sentence where a felony is committed while the person is under the jurisdiction of ADOC. The absence of a consecutive sentence presumption has previously been addressed in these pages. See Gottsfield and Alessi, Concurrent Sentences – Serving Jail and DOC Time at DOC – The Curse of Dicta, for The Defense, Vol. 17, Issue 1, Feb/March 2007.
2. *State v. Fillmore*, 187 Ariz. 174, 184, 927 P. 2d 1303, 1313 (App. 1996), *rev. dismissed*. See also *State v. Milburn*, 135 Ariz. 3, 658 P. 2d 803 (1983).
3. In the criminal context and although three strikes statutes use mandatory language, some courts have advised the legislature they retain the right to disregard a prior crime normally considered a three-strikes predicate and impose lesser sentences in furtherance of justice. *People v. Williams*, 17 Cal. 4th 148, 161 (1998); *People v. Superior Court (Romano)*, 13 Cal. 4th 497, 505-08 (1996). This is still an open question under Arizona's two three strikes statutes §13-706 (A) and (B). And see, Gottsfield, Arizona's Criminal Three Strikes Laws, Greater Phx. Attorney at Law, July 2011 at 8 (with Michael Rice).
4. *Arizona Downs v. Ariz. Horsemen's Foundation*, 130 Ariz. 550, 554, 637 P. 2d 1053, 1057 (1981).
5. 136 Ariz. 215, 219, 665 P. 2d 97, 101 (App. 1983).
6. 187 Ariz. 174, 184, 927 P. 2d 1303, 1313 (App. 1996), *rev. dismissed*.
7. *Id.* at 183 and 1312.
8. 192 Ariz. 171, 173, 962 P. 2d 898, 900 (1998).
9. The trial court gave presumptive sentences of 10.5 years on Count I robbery and 7.5 years on Count II aggravated assault and concurrent minimum 10.5 years on Count III armed robbery and 15.75 years on Count IV armed robbery, but consecutive to Counts I and II for a total of 26.25 years.
10. *Id.* In *Garza* the court disapproved of the earlier case of *State v. Smith*, 169 Ariz. 243, 818 P. 2d 228 (App.

1991) which, without analysis and not mentioning *Van Alcorn*, held that §13-708 created a presumption for consecutive sentences.

11. Although the Court expressed no opinion on what the new sentence should be, it noted in its opinion that the multiple crimes statute committed at different times (then §13-702.02) did not mandate consecutive sentences but only increased sentences for second and third dangerous felonies, and that minimum sentences in those ranges could have been imposed.
12. *Supra* n. 5.
13. *Supra* n. 2.
14. *Garza* at 192 Ariz. 174-175; *State v. Ward*, 200 Ariz. 387, 388, 26 P. 3d 1158, 1159 (App. 2001), *rev. den.*; *Souch v. Schaivo*, 289 F. 3d 616 (9th Cir. 2002), *cert. den.*, 537 U.S. 859 (2002). In *Schaivo*, an appeal from the denial of habeas corpus relief, the main issue was whether the use by the state trial court of the amended “consecutive” language wording of §13-708, which was not in effect when defendant committed the crimes, violated the Ex Post Facto Clause. The court said it did not. Here the state trial court had applied a presumption for consecutive sentences but also offered many other valid reasons for consecutive sentences.
15. *Supra* n. 14.
16. At 192 Ariz. 175, 962 P. 2d 902.
17. At 187 Ariz. 184, 927 P. 2d 1313.
18. *Garza*, at 192 Ariz. 174, 962 P. 2d 891.
19. *Garza*, at 192 Ariz. 176, 962 P. 2d 903.



Sponsored by Maricopa County Public Defender

Spring Trial College

April 11 & 12, 2012

The Maricopa County Public Defender's Office is sponsoring a re-designed two-day Spring Trial College. The college is intended for attorneys who have handled at least one trial and are ready to take the next steps in developing their trial skills.

The format includes large group lectures and demonstrations and small group breakout sessions focusing on individual exercises on:

- ◆ Cross-examination
- ◆ Impeachment
- ◆ Objections

This format facilitates the learning process and enables attendees to hone their trial skills while receiving constructive critiques.

During those sessions, each attorney will be given an opportunity to cross-examine and impeach one of our witnesses. The witnesses are professional actors who have studied the different roles and are prepared for the attorneys. Materials will be provided. This is a very challenging part of the program and one that the attorneys and the actors love.

Dates:

Wednesday, April 11, 2012

8:30am Check in

9:00am—4:30pm (lunch on your own)

Thursday, April 12, 2012

8:30am Check in

9:00am—4:30pm (lunch on your own)

Location:

Downtown Justice Center (DTJC)

620 W. Jackson,

5th Floor Training Room

Note: DTJC is a secured building and opens at 8:00am. Please allow time to go through security.

Free Parking:

Open Visitor Lot on Madison and 5th Ave., just north of DTJC.

May qualify for up to 10.5 hours CLE

Please fill out and return the registration form; see the second page.

There is no cost to Public Defense Offices; the registration fee is \$100.00 for private/contract counsel.

MCPD Spring 2012 Trial College

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April 11 & 12, 2012

**Downtown Justice Center
620 W. Jackson, 5th Floor
Phoenix, AZ 85003**

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Registration Form

Please return form and payment (if applicable) by 3/9/12,
For Defense Community Only (No Refunds after 3/9/12)

Trial College April 11 & 12, 2012

- \$0.00, No Fee for Public Defense Offices
- \$100.00, Court-Appointed/Contract Counsel; City Public Defenders/Private

Total Cost \$ _____ \$ 15.00 Late Fee (Postmarked after March 9, 2012)

Last Name _____ First _____ MI _____

AZ State Bar # _____

Title/Office _____

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- This form must be filled out completely and legibly.
- Enclose a check or money order payable to **Maricopa County Public Defender**,

Send to: Maricopa County Public Defender, **Attn: Celeste Cogley**
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**If you have questions regarding registration or
if you need ADA Accommodation, please contact Celeste Cogley
by phone at 602-506-7711 X37569 or by email at cogleyc@mail.maricopa.gov**

Are *Brady* Materials Limited by Protective Orders?

By Kevin Heade, Maricopa County 2011-2012 Gideon Fellow Extern

During my short time externing with the Maricopa County Public Defender, I have come to appreciate the “team” atmosphere of the office. Attorneys regularly share drafts of motions, insights on judges and prosecutors, and other tactical decisions. The collective experiences and expertise of the staff benefit our clients. Attorneys and support staff rarely encounter situations where someone else in the office cannot offer helpful information or advice.

However, some judges in the Maricopa County Superior Courts have issued protective orders that limit the ability of attorneys to share vital defense information. The protective orders prohibit defense attorneys from sharing information about police officers disclosed under *Brady v. Maryland*.¹ Prosecutors are required under the Due Process Clause to disclose information material to guilt or punishment that is exculpatory or may be used for impeachment.² The duty to disclose materially exculpatory evidence lies with the prosecutor, even in instances where police withhold information from prosecutors.³ Police officers who have records of misconduct, particularly for acts of dishonesty, are subject to placement on a *Brady* List. A *Brady* List is a file containing information on police officers and other witnesses whose past misconduct or dishonesty may be used for impeachment or other exculpatory purposes at trial.

It is no secret that some police officers do not approve of the *Brady* List.⁴ Several years ago, the Maricopa County Attorney Office was engaged in a public dispute with several local police agencies about the procedures for keeping a *Brady* List.⁵ Maricopa County Superior Courts regularly issue protective orders limiting the disclosure of *Brady* information.⁶ One such protective order reads:

1. Defense counsel may not copy or disseminate the information to or discuss the information in these materials with anyone other than the defendant, members of defense counsel’s staff, or members of the defense team, either orally, in writing, or otherwise.
2. Defense counsel, members of defense counsel’s staff and the defendant are forbidden from discussing the information in the materials with any person outside the defense team.
3. Defense counsel must limit the use of the material to this defendant’s case.
4. At the termination of this defendant’s case, defense counsel must destroy all copies of these materials and shall return all of the original materials to this Court.
5. Upon receipt of the original materials from defense counsel the court will file the materials under seal.

The use of such restrictive protective orders poses significant issues for how public defenders share information. If the disclosure of *Brady* material involving police officers is subject to similar protective order restrictions, then defense attorneys will be in the dark about the integrity of the police officers on each case until the State provides its *Brady* disclosure in the specific case to which an attorney is assigned.

Similar measures have been taken in California to protect the privacy of police officer personnel files.⁷ However, courts in California are required by law to issue protective orders over disclosed police officer personnel files.⁸

Arizona law, however, does not require courts to issue protective orders for police personnel files produced in disclosure. Arizona judges have discretion to issue protective orders over disclosure upon the showing of “good cause.”⁹ The party moving for a protective order bears the burden of establishing “good cause” and that “the risk cannot be eliminated by a less substantial restriction of discovery rights.”¹⁰ However, a protective order to restrict the use of information disclosed under *Brady* may not be necessary, as Arizona Rule of Criminal Procedure 15.4(d) already requires that “[a]ny materials furnished to an attorney pursuant to this rule shall not be disclosed to the public but only to others to the extent necessary for the proper conduct of the case.”

If defense counsel is concerned that *Brady* information found in police personnel files in the discovery process will be subjected to a protective order, or that the use of such information is already restricted to the case in which it was produced, perhaps defense counsel should seek the information via a public records request.¹¹ Under Arizona law, “public records” are defined broadly, creating a presumption requiring disclosure.¹² Defendants’ rights to file public records requests are not restricted merely because they may use the information in a criminal case.¹³ However, this strategy will only produce limited results. Defendants have broader rights to *receive* exculpatory information under *Brady* than they do to such information contained in public records.¹⁴ Additionally, public records requests are limiting because the person filing would be required to file public records requests for each individual who is suspected of misconduct rather than merely waiting for mandatory disclosure of all *Brady* information.

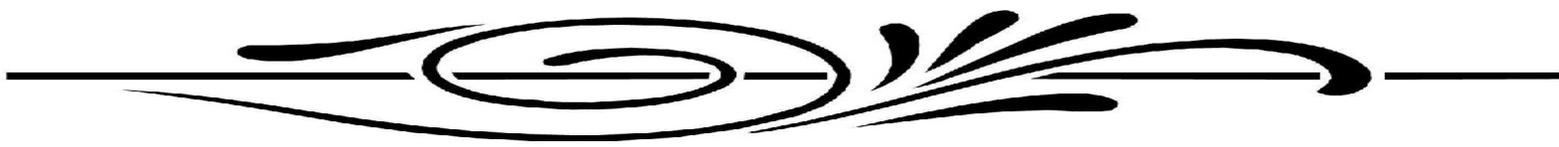
While some police agencies and unions continue to object to the inclusion of their officers on *Brady* Lists, other police agencies and prosecution officials recognize that the interests of justice are best served when *Brady* information is freely available.¹⁵ Defense counsel should convey to the courts that much of the information contained in police personnel records constitutes vital public information, whether obtained through the discovery process or via public records requests. A hearing to determine that “good cause” exists to warrant a protective order over *Brady* information should be requested. Defense counsel should explore arguing that “good cause” for a protective order is not met to protect the privacy interests of police officers because “the risk” of public disclosure is “eliminated by a less substantial restriction of discovery rights”¹⁶ under Rule 15.4(d), which prohibits disclosure of information obtained during discovery to the public.

However, Rule 15.4(d)’s limitation on disclosing such information “only to others to the extent necessary for the proper conduct of the case” may also be construed as prohibiting sharing *Brady* information throughout a public defender office via a *Brady* List. Counsel should object to this type of limitation since, as members of a law firm, defender attorneys need to confer with each other and have imputed knowledge of all office files. E.R. 1.10, Arizona Rules of Professional Conduct.

(Endnotes)

1. 373 U.S. 83, 83 S. Ct. 1194, (1963).
2. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 3387 (1985).
3. *Kyles v. Whitley*, 514 U.S. 419, 420, 115 S. Ct. 1555, 1558-59 (1995).
4. Jim Parks, “President’s Message: *Brady* (“Liar’s”) List A Most Important Issue”, AZCOPS SPEAKS, Spring 2004, at 2 (available at http://azcops.com/userfiles/newsletter_050704.pdf).
5. See *Id.* (discussing a dispute between former Maricopa County Attorney Richard Romley and a police officer in Sierra Vista); *Walters v. County of Maricopa, Ariz.*, CV 04-1920-PHX NVW, 2006 WL 2456173 (D. Ariz. Aug. 22, 2006) (involving a defamation action by Chandler Police Sergeant Dale Walters against former Maricopa County Attorney Richard Romley).
6. It is not known whether the protective orders were issued in response to prior conflicts involving the Maricopa County Attorney Office and local police departments.

7. See *Alford v. Superior Court*, 29 Cal. 4th 1033, 1043, 63 P.3d 228, 234 (2003) (discussing statutory scheme, independent of *Brady*, requiring San Diego Public Defender Office to observe mandatory protective order over police personnel discovery despite ethical concerns regarding practical limitation involving the non-dissemination of discovery to other deputies in the Public Defender Office or prohibiting the use of the same discovery by the same attorney in subsequent litigation)
8. Cal. Evid. Code § 1045(e), (West) (“The court shall, in any case or proceeding permitting the disclosure or discovery of any peace or custodial officer records requested pursuant to Section 1043, order that the records disclosed or discovered may not be used for any purpose other than a court proceeding pursuant to applicable law.”)
9. Ariz. R. Crim. P. 15.5(a)
10. Ariz. R. Crim. P. 15.5(a)(2)
11. Ariz. Rev. Stat. Ann. § 39-121
12. *Griffis v. Pinal County*, 215 Ariz. 1, 4, 156 P.3d 418, 421 (2007)
13. *Bolm v. Custodian of Records of Tucson Police Dept.*, 193 Ariz. 35, 39, 969 P.2d 200, 204 (Ct. App. 1998) (“A person’s right to public records under the Public Records Law is not conditioned on his or her showing, or a court finding, that the documents are relevant to anything. Rather, a public records request may be made in the absence or in advance of any litigation or anticipated claim. In such a situation, there is no issue, claim or defense against which to measure relevance. Thus, although relevance is an important factor in evaluating and determining the discoverability of police records in a litigation context, see Rule 26(b)(1), 26.1(a)(9), Ariz. R. Civ. P., 16 A.R.S.; *Harte*, the Public Records Law contains no relevancy requirement, and we are not inclined to judicially engraft one.”)
14. *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984) (“We hold today that the common law limitations to open disclosure are not based on any technical dichotomy which might be argued under the “public records” or “other matters” wording of A.R.S. § 39-121, but rather are based on the conflict between the public’s right to openness in government, and important public policy considerations relating to protection of either the confidentiality of information, privacy of persons or a concern about disclosure detrimental to the best interests of the state. This has been the general basis for the common law rule. The enactment of A.R.S. § 39-121.01 did not expressly limit the doctrine of *Mathews v. Pyle* and we do not believe that the current statutory scheme, which is all-inclusive in its requirements of record keeping, was intended by the legislature to overrule the balancing scheme adopted in *Mathews v. Pyle*. However, we do think that the combined effect of § 39-121 and §§ 39-121.01; 121.02 and 122 evince a clear policy favoring disclosure.”)
15. Richard Lisko, *Agency Imperative to Disclose Brady v. Maryland Material to Prosecutors*, POLICE CHIEF MAGAZINE, 78 (February 2011): 12-13. (available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=print_display&article_id=2329&issue_id=32011).
16. Ariz. R. Crim. P. 15.5(a)(2)



Office Honors Irene Esqueda and Christopher Johns With Annual Awards at Holiday Celebration

By Jim Haas, Public Defender

At the office holiday party on December 13, 2011, the office presented its two annual awards, the Bingle Dizon Commitment to Excellence and Joseph P. Shaw Awards.

The Dizon Award was created in 2001 to honor a longtime and beloved secretary with our office known for her extraordinary commitment to excellent work and her dedication to our office. The recipient of this award is selected by a committee composed of attorneys and support staff representing all parts of our office.

The 2011 Dizon Award was presented to Legal Secretary Irene Esqueda.

Irene was nominated by four different office members. The enthusiasm of the nominations was very obvious. One said that she is “unfailingly cheerful, hardworking and thoughtful. She goes out of her way to help her attorneys provide the best possible representation for our clients. She is always eager to learn new things and never shies away from assignments.”

Another nomination said “She at all times is very professional in all areas, an extremely hard worker, always positive thinking and has a smile on her face, and has very high work ethic and standards. Her attorneys can always count on her to do whatever they give her plus.”

The nominations also note Irene’s contributions to group events, including organizing and decorating, but especially cooking, each one commenting that she is an amazing cook. So, to paraphrase the old adage, the way to a group’s heart is through its stomach.

The Shaw Award was created in 1995 to honor a remarkable attorney who spent 20 years in our office, starting at the age of 65. Joe was known for his integrity, professionalism, generosity, and dedication to our office. The Shaw Award is given each year to an attorney, selected by the same committee that chooses the Dizon Award, who best demonstrates Joe Shaw’s many qualities.

The 2011 Shaw Award was presented to Appeals Attorney Christopher Johns.

The award could have been given to Christopher for any number of reasons. He has been with the office for more than 23 years and has served as a trial attorney, appellate attorney and training director. He has handled numerous significant cases that have helped to shape Arizona criminal law and procedure.

Christopher transformed our office’s poorly organized and inadequate training program into one of the best in the nation, putting into place ideas and protocols for training and seminars that are still used today.



For years, Christopher has given voice to the concerns of our clients and our profession as a prolific writer, speaker and teacher whose opinion was sought out by media of all kinds.

But the primary focus of the nomination for this award was Christopher's key role in the development of our office newsletter, *for The Defense*, which celebrated its 20th anniversary in 2011.

Christopher founded the newsletter in 1991 and served as its editor for its first five years. Most people probably don't realize how difficult it is to obtain articles for a monthly training publication. Christopher kept the newsletter alive in its early days through his relationships with attorneys and judges and by producing articles himself. And he produced a lot of articles – the author index shows that he contributed over 70 articles to the newsletter, far and away the most of any contributor.

The newsletter has been a point of pride for the office for 20 years. It is widely distributed in Arizona and beyond and is kept in the libraries of the Arizona Supreme Court, Arizona Courts of Appeal, Maricopa County Superior Court, and ASU and U of A law schools. It has been used for research by attorneys and judges around the state. It is a remarkable achievement, and Christopher deserves a great deal of credit for creating it and keeping it going in its formative years.

I cannot think of a better way to celebrate the 20th anniversary of the newsletter than to honor the person most responsible for its creation and survival, Christopher Johns.

Our office is one of the best public defense offices in the country, largely because of the incredible talent and dedication of these individuals, and many others. Congratulations to Irene and Christopher.



Jury and Bench Trial Results

September 2011 – November 2011

Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
Group 1					
9/13/2011	Smith <i>Sain</i> <i>Baker</i>	Gottsfield	2010-165805-001 Sexual Conduct With Minor, F2	1	Jury Trial-Mistrial (Hung Jury) - New Trial Set
9/22/2011	Hartley <i>Christiansen</i>	Warner	2011-102910-001 Unlaw Flight From Law Enf Veh, F5	1	Jury Trial-Guilty As Charged
9/27/2011	Hann Rock	Bergin	2010-135141-001 Marijuana-Possess/Use, F6 Drug Paraphernalia-Possess/Use, F6	1 1	Jury Trial-Mistrial (Hung Jury) - New Trial Set
10/19/2011	Mullins <i>Hales</i> <i>Ing</i> <i>Christiansen</i>	Lynch	2010-137600-001 Aggravated Assault, F6	1	Court Trial-Guilty Lesser/Fewer
10/27/2011	Adwell	Warner	2011-113406-001 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Not Guilty
11/21/2011	Hann	Hoffman	2010-135141-001 Drug Paraphernalia-Possess/Use, F6 Marijuana-Possess/Use, F6	1 1	Jury Trial-Guilty As Charged
11/21/2011	Hann Rock	Hoffman	2010-157675-001 Marijuana Violation, F4 Use Elec Commun Drug Transact, F4 Drug Paraphernalia Violation, F6	1 1 1	Jury Trial-Guilty As Charged
Group 2					
10/7/2011	Beam <i>Munoz</i> <i>Ing</i>	Brotherton	2011-103822-001 Burglary 3rd Degree, F4	1	Jury Trial-Guilty As Charged
10/14/2011	Covil <i>Munoz</i> <i>Browne</i>	Cohen	2010-156727-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2011 – November 2011

Public Defender's Office – Trial Division

Closed Date*	Attorney Investigator Paralegal Mitigation	Judge	CR Number and Charge(s)	Counts	Result
10/14/2011	Walker	Lynch	2011-005879-001 Narcotic Drug Violation, F4 Drug Paraphernalia Violation, F6	1 1	Jury Trial-Guilty As Charged
10/27/2011	Godley	Contes	2011-115023-001 Burglary 3rd Degree, F4	1	Jury Trial-Guilty As Charged
11/29/2011	Turley	Flores	2010-165628-001 Money Laundering, F3 Drug Paraphernalia Violation, F6 Marijuana Violation, F2, Conspiracy to Commit Misconduct Involving Weapons, F4	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
Group 3					
9/20/2011	Gilbert Thompson	Miller	2010-167889-001 Marijuana Violation, F6 Drug Paraphernalia Violation, F6	1 1	Court Trial-Not Guilty
9/21/2011	Gilbert Thompson Delrio	Cohen	2011-107837-001 Aggravated Assault, F5 Resisting Arrest, F6	1 1	Jury Trial-Guilty As Charged
11/2/2011	Quesada Salvato	Bassett	2010-155739-001 Burglary 2nd Degree, F3	1	Jury Trial-Guilty As Charged
11/4/2011	Gronski Verdugo Farley	Bergin	2010-163235-001 Resisting Arrest, F6	1	Jury Trial-Guilty As Charged
11/8/2011	Parker Salvato Farley	Svoboda	2009-159007-001 Drug Paraphernalia Violation, F6 Marijuana Violation, F6	1 1	Court Trial-Guilty Lesser/Fewer
11/10/2011	Parker Salvato Farley	Starr	2011-122736-001 Agg Aslt-Deadly Wpn/Dang Inst, F3	1	Jury Trial-Guilty Lesser/Fewer

*Defined as the date the defendant was sentenced or case was dismissed.

Jury and Bench Trial Results

September 2011 – November 2011

Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
11/14/2011	Banihashemi Strumpf <i>Salvato Shaw</i>	Warner	2010-139645-001 Aggravated Assault, F3 Murder 2nd Degree, F1, Attempt to Commit	1 1	Court Trial-Guilty But Insane
11/14/2011	Gilbert <i>Thompson</i>	Brotherton	2010-155596-001 Disorderly Conduct, M1 Resisting Arrest, F6	1 1	Jury Trial-Guilty Lesser/Fewer
11/21/2011	Abramson <i>Thompson Farley</i>	Thumma	2009-153247-001 Trafficking in Stolen Property, F3	1	Jury Trial-Guilty As Charged
Group 4					
9/7/2011	Roach <i>Meginnis Verdugo Kunz</i>	Brodman	2010-008116-001 Sexual Abuse, F5 Sexual Conduct With Minor, F2	3 1	Jury Trial-Guilty Lesser/Fewer
9/7/2011	Wallace <i>Meginnis Kunz</i>	Cohen	2011-102754-001 Theft-Means of Transportation, F3 Lic Plate Veh Use-Info Viol, M2	1 1	Jury Trial-Not Guilty-Directed Verdict
9/16/2011	Finsterwalder <i>Flannagan</i>	Bergin	2011-103066-001 Resisting Arrest, F6 Marijuana Violation, F6	1 1	Jury Trial-Guilty As Charged
10/18/2011	Kalman <i>Flannagan Curtis</i>	O'Connor	2011-103051-001 Sexual Assault, F2 Burglary 2nd Degree, F3 Kidnap, F2	4 1 1	Jury Trial-Mistrial (Hung Jury) - New Trial Set
11/7/2011	Finsterwalder <i>Flannagan</i>	Martin	2011-102266-001 Agg Aslt-Adult on Minor, F6 Agg Aslt - Temp Disfigurement, F4	1 1	Jury Trial-Mistrial (Hung Jury) - New Trial Set
11/14/2011	Engle <i>Kunz Shaw</i>	Kreamer	2010-145260-001 Escape 2nd Degree, F5 Theft, F6	1 1	Jury Trial-Guilty Lesser/Fewer

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11/29/2011	Katz <i>Meginnis</i> <i>Kunz</i>	Hoffman	2011-105867-001 Aggravated Assault, F3	3	Jury Trial-Guilty Lesser/Fewer
Group 5					
9/8/2011	Jackson <i>Thompson</i>	Bassett	2010-131274-001 Dangerous Drug Violation, F2	1	Jury Trial-Guilty As Charged
9/12/2011	Ditsworth <i>Thompson</i> <i>Ralston</i>	Garcia	2010-008098-001 Assault-Intent/Reckless/Injure, M1 Aggravated Assault, F4	1 1	Jury Trial-Guilty As Charged
9/29/2011	Jackson Garcia <i>Romani</i> <i>Ralston</i>	Harrison	2010-117481-001 Sexual Conduct With Minor, F2 Sexual Conduct With Minor, F3, Attempt to Commit Child Prostitution, F2 Lure Minor for Sex Exploit, F3 Assault-Intent/Reckless/Injure, M1 Public Sexual Indecency, F5 Molestation of Child, F2	7 1 1 1 1 1 2	Jury Trial-Mistrial (Hung Jury) - New Trial Set
9/29/2011	Glass-Hess <i>O'Farrell</i> <i>Romani</i>	Brotherton	2011-115672-001 Theft-Control Property, F6 Misconduct Involving Weapons, F4	1 1	Jury Trial-Guilty Lesser/Fewer
10/27/2011	Glass-Hess <i>Romani</i>	Brotherton	2011-007432-001 Aggravated Assault, F3 Criminal Trespass 3rd Deg, M3	1 1	Jury Trial-Guilty Lesser/Fewer
11/1/2011	Baker	Brotherton	2011-105725-001 Aggravated Assault, F3	1	Jury Trial-Guilty As Charged
Group 6					
9/8/2011	McCarthy <i>Souther</i>	Bassett	2010-157188-001 Misconduct Involving Weapons, F4	1	Jury Trial-Guilty As Charged

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9/20/2011	Johnson <i>Flannagan</i> <i>Kunz</i> <i>Johnson</i>	McMurdie	2009-006785-001 Murder 2nd Degree, F1 Manslaughter, F2	2 1	Jury Trial-Guilty As Charged
10/5/2011	Fritz <i>Godinez</i>	Flores	2011-125287-001 Aggravated Assault, F5	2	Jury Trial-Not Guilty
10/7/2011	Ramos <i>Souther</i> <i>Farrell</i>	Miles	2011-115385-001 Criminal Damage, M2 Burglary 2nd Degree, F4, Attempt to Commit	1 1	Jury Trial-Guilty As Charged
10/24/2011	Kirchler <i>Souther</i>	Brodman	2011-005994-001 Threat-Intimidate, M1 Disorderly Conduct, F6 Obstruct Crim Invest/Prosec, F5 Aggravated Assault, F3	1 1 1 1	Jury Trial-Guilty Lesser/Fewer
10/27/2011	Chiang <i>Godinez</i>	Contes	2010-162294-001 Aggravated Assault, F4	1	Jury Trial-Guilty As Charged
11/15/2011	Steinfeld <i>Godinez</i> <i>Springer</i>	Bassett	2011-117395-001 Misconduct Involving Weapons, F4	1	Jury Trial-Guilty As Charged
Capital					
10/7/2011	Falduto <i>Brunansky</i> <i>Handgis</i> <i>Postlewaite</i>	Gottsfeld	2010-149647-001 Murder 1st Degree, F1 Burglary 1st Degree, F2	1 1	Jury Trial-Guilty Lesser/Fewer
Criminal Mental Health					
10/20/2011	Wray	Bassett	2010-158483-001 False Rept Fire/Bomb/Emergency, F6 False Rept Fire/Bomb/Emergency, M1	1 1	Court Trial-Guilty But Insane

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RCC					
9/14/2011	Braaksma	Goodman	2010-157788-001 Assault-Intent/Reckless/Injure, M1	1	Court Trial-Guilty As Charged
9/16/2011	Morris	Anderson	2010-167191-001 DUI W/Bac of .08 or More, M1 DUI-Liquor/Drugs/Vapors/Combo, M1	1 1	Jury Trial-Not Guilty
9/26/2011	Brown	Dodge	2010-160620-001 Assault-Intent/Reckless/Injure, M1	1	Court Trial-Guilty As Charged
10/13/2011	Brown <i>Jarrell</i>	Dodge	2011-114095-001 Assault-Intent/Reckless/Injure, M1	1	Court Trial-Guilty As Charged
Vehicular					
10/4/2011	Shah	Svoboda	2009-158620-001 Agg DUI-Lic Susp/Rev for DUI, F4	2	Jury Trial-Guilty As Charged
10/4/2011	Brink	Svoboda	2010-151901-001 Agg DUI-Lic Susp/Rev for DUI, F4	2	Jury Trial-Guilty As Charged
10/12/2011	Rosell Aguirre <i>O'Farrell</i> <i>Thompson</i> <i>Falle</i>	Martin	2010-007907-001 Aggravated Assault, F3 Theft, F2 Theft-Means of Transportation, F3 Armed Robbery, F2 Assist Criminal Syndicate, F4	3 3 1 4 1	Jury Trial-Not Guilty
10/12/2011	Rosell	Martin	2011-006163-001 Misconduct Involving Weapons, F4	2	Jury Trial-Not Guilty
10/18/2011	Gosselin <i>Godinez</i> <i>Renning</i>	Harrison	2011-116897-001 Robbery, F5, Attempt to Commit	1	Jury Trial-Guilty As Charged

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Public Defender's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(s)	Counts	Result
11/9/2011	Colon <i>Thompson</i> <i>Farley</i>	Bassett	2010-006541-001 Agg Aslt-Deadly Wpn/Dang Inst, F3 Burglary 1st Degree, F2 Sexual Assault, F2 Kidnap-Death/Inj/Sex/Aid Fel, F2 Threat-Intim w/Inj-Dmge Prop, M1 Sexual Abuse, F5	3 1 2 1 1 1	Jury Trial-Guilty As Charged
11/15/2011	Gosselin	Starr	2011-103193-001 Dangerous Drug Violation, F4	1	Jury Trial-Guilty As Charged



Jury and Bench Trial Results

September 2011 – November 2011

Legal Advocate's Office – Trial Division

Closed Date*	Attorney <i>Investigator</i> <i>Paralegal</i> <i>Mitigation</i>	Judge	CR Number and Charge(S)	Counts	Result
10/7/2011	Burns Agan <i>Gadberry</i>	Brnovich	2008-130121-001 Murder 1st Degree, F1	1	Jury Trial-Guilty As Charged
10/25/2011	Tucker	Miles	2010-164050-001 Trafficking in Stolen Property, F3	3	Court Trial-Guilty As Charged
10/27/2011	Whiteside	Lynch	2011-005920-001 Burglary 1st Degree, F2 2011-005920-001 Aggravated Assault, F3	1 1	Jury Trial-Guilty Lesser/Fewer
11/17/2011	Orozco	Passamonte	2010-157027-001 Kidnap, F2 Aggravated Assault, F3 Misconduct Involving Weapons, F4 Disorderly Conduct, F6 Assault-Intent/Reckless/Injure, M1	1 3 1 1 1	Jury Trial-Guilty Lesser/Fewer
11/18/2011	Zabor	Flores	2010-166526-001 Molestation of Child, F2	2	Jury Trial-Guilty Lesser/Fewer

Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
9/13/2011	Owsley <i>Marrero</i>	Hicks	JD12173 Dependency	Dependency Found	Bench
9/1/2011	Smith <i>Contreras</i>	Anderson	JD17627 Terminate Parental Rights	Termination Denied	Bench
9/22/2011	Smith <i>Contreras</i>	Genry-Lewis	JD19869 Terminate Parental Rights	Termination Granted	Bench
9/8/2011	Timmes <i>Gill</i>	Abrams	JD509253 Dependency	Dependency Found	Bench
9/23/2011	Timmes <i>Gill</i>	Abrams	JD509275 Dependency	Dependency Found	Bench

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Jury and Bench Trial Results

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Legal Advocate's Office – Dependency

Last Day of Trial	Attorney <i>CWS</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
9/21/2011	Konkel <i>Nations</i>	Anderson	JD16092 Severance	Severance Granted	Bench
9/21/2011	Todd <i>Stocker</i>	Ishikawa	JD598247 Severance	Severance Granted	Bench
10/11/2011	Youngblood <i>Armbrust</i>	Gentry- Lewis	JD18293 Severance	Severance Granted	Bench
10/26/2011	Youngblood <i>Armbrust</i>	Coury	JD17920 Severance	Severance Granted	Bench
10/27/2011	Youngblood <i>Armbrust</i>	Adelman	JD19891 Severance	Severance Granted	Bench
10/19/2011	Smith <i>Contreras</i>	Anderson	JD20409 Dependency	Dependency Granted	Bench
10/13/2011	Timmes <i>Gill</i>	Abrams	JD507623 Severance	Severance Granted	Bench
10/21/2011	Timmes <i>Gill</i>	Udall	JD509266 Dependency	Dependency Granted	Bench
10/31/2011	Timmes <i>Gill</i>	Abrams	JD509221 Dependency	Dependency Dismissed	Bench
9/27/2011	Hatfield <i>Peters</i>	Sinclair	JD14186 Severance Trial	Severance Granted	Bench
10/4/2011	Hatfield <i>Peters</i>	Hicks	JD20351 Dependency	Dependency Granted	Bench
11/21/2011	Timmes <i>Gill</i>	Thompson	JD507773 Severance	Severance Granted	Bench
11/29/2011	Timmes <i>Gill</i>	Thompson	JD507090 Severance	Severance Granted	Bench
11/4/2011	Kenyon <i>Indovino</i>	Adelman	JD19093 Severance	Severance Granted	Bench
11/15/2011	Kenyon <i>Jenkins</i>	Coury	JD14197 Severance	Severance Granted	Bench
11/4/2011	Rich <i>Toczek</i>	McNally	JD18168 Termination of Parental Rights	Termination Granted	Bench

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9/22/2011	Lane	Pineda	2009-125324-002 Narcotic Drug Violation, F2	1	Jury Trial-Guilty As Charged
9/30/2011	Jolly Bevilacqua <i>De Santiago</i> <i>Hill</i> <i>Bowen</i> <i>Prusak</i> <i>Fehnel</i>	Thumma	2010-005795-001 Murder 1st Degree, F1 Fraudulent Schemes/Artifices, F2 Theft-Means Of Transportation, F3 Misconduct Involving Weapons, F4	1 1 1 1	Jury Trial-Guilty As Charged
11/29/2011	Shipman	O'Connor	2010-120784-001 Aggravated Assault, F4	1	Jury Trial-Guilty As Charged
11/29/2011	Storrs Hill	Contes	2010-161934-001 Aggravated Assault, F3 Misconduct Involving Weapons, F4	1 1	Jury Trial-Guilty As Charged

Legal Defender's Office – Dependency

Last Day of Trial	Attorney <i>Case Manager</i>	Judge	Case Number and Type	Result	Bench Or Jury Trial
4/20/2011	Ross	Sinclair	JD17708 Severance Trial	Severance Granted	Jury
10/25/2011	Sandler	Gentry-Lewis	JD15966 Severance Trial	Severance Granted	Bench



Save the Dates...



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