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# Office of the Legal Defender - FY02 ANNUAL REPORT -

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## Lucky 7 for Office of the Legal Defender

The Office of the Legal Defender celebrated its seventh anniversary this April. Created in 1995, the Office was designed as a sister agency for the Maricopa County Public Defender's Office. This plan allowed the county to have an alternate indigent defense office that could render excellent legal defense while efficiently handling the growing number of indigent defense cases. Having the option of assigning conflict and overflow cases to another county agency permitted the county to significantly reduce the costs associated with directing these cases to private counsel.

The founding philosophy of the Office of the Legal Defender concentrated on acquiring exceptional staff and providing them with modern equipment. This

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## Ring Decision Tolls the Bell on AZ Death Penalty System

On June 24, 2002, the Death Penalty System in Arizona took a hit of seismic proportions. The United States Supreme Court decided in *Ring v. Arizona* that Arizona's laws regarding the use of judges to determine aggravating factors in death penalty cases were unconstitutional, violating the defendants' Sixth Amendment right to trial by jury.

Many defendants had been sentenced to death in Arizona after judges (not juries) found sufficient aggravating factors in each case to warrant the death penalty. Fearing the impact of this decision on the numerous death penalty cases, both on-going and past cases with defendants waiting on death row, the Arizona legislature quickly moved to enact new laws in an effort to conform Arizona's system. [NOTE: The resulting new laws have created a multitude of questions and problems for law practitioners, the courts, and defendants. The next fiscal year's report will cover how the system handled the changes.]

The Office of the Legal Defender was on alert for months before the Court's decision, anticipating possible outcomes and consequences, weighing potential requirements and various responses, and preparing to confer with defense attorneys from around the country where states had faced similar circumstances. Activity in this area was performed with an eye on being armed with appropriate research, motions, and legal strategies. Keeping at the top of the game continues to be the Office's mantra. ❖❖❖

approach quickly attracted experienced and respected attorneys and support staff. The Office opened with eight attorneys and five support staff members handling only criminal matters. Today, the Office handles both criminal matters and civil matters [juvenile dependency/severance cases], and employs 32 full-time attorneys, 8 part-time attorneys, 36 full-time support staff members, and 2 part-time support staff.

In its seven short years, the Office has become a growing influence in the indigent defense arena, serving as an authority on death penalty issues and case management, and a reference point on law office technology. ♦♦♦

**“When One Man’s Rights are Denied,  
All Men’s Rights are Diminished ”**

## Select Clients

The Office of the Legal Defender cannot take any client who walks in the door or calls for legal assistance. Clientele comes only from assignments by the Superior Court of Arizona in Maricopa County. The Office is appointed to represent the following individuals:

1. people charged with serious criminal offenses, or parents in juvenile dependency / juvenile severance actions,

AND

2. individuals who the court has determined are unable to afford a private attorney. ♦♦♦

## Words from On High

Robert S. Briney, head of the Office of the Legal Defender since its founding, brought an interesting background to his new Office. After obtaining a B.A. at Alfred University and a J.D. from the University of Arizona, followed by service in the Judge Advocate’s Office – U.S. Army, Bob Briney joined the Maricopa County Public Defender’s Office (P.D.’s) where he was a trial attorney before being named as second-in-command to the Public Defender. In addition to the practice of law, Mr. Briney taught law at Arizona State University’s College of Law, and served on the bench as a superior court Judge Pro Tem and a Justice of the Peace. His experience in criminal law coupled with his administrative and teaching background made him the ideal candidate for creating an office parallel to the P.D.’s.

Mr. Briney came with a vision for the Office – to serve indigent clients with a vanguard of experienced legal minds. He recruited only known attorneys with a minimum of five-years’ court experience. He hired an exceptional Chief Administrator with extensive background in the court system, including the Arizona Supreme Court Administrative Office. Mr. Briney followed that with the installation of the latest computer technology and the development of a superior support staff wielding years of experience in law enforcement, probation, mitigation, records, and other related fields.

When asked what he sees as the Office’s greatest accomplishments, Mr. Briney listed three: attracting highly qualified people within the limited salary range necessitated by a conservative county budget; earning the respect of the bench as evidenced by the myriad positive comments from judges regarding the quality of the Office staff, in both the criminal and juvenile divisions; and, having only one death penalty imposed in seven years and 67 death-penalty-eligible cases.

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## MISSION

THE MISSION OF THE MARICOPA COUNTY OFFICE OF THE LEGAL DEFENDER IS TO PROVIDE QUALITY LEGAL REPRESENTATION TO INDIGENT INDIVIDUALS ASSIGNED TO US BY THE COURT, THUS SAFEGUARDING THE FUNDAMENTAL LEGAL RIGHTS OF EACH MEMBER OF THE COMMUNITY.

## VISION

BY PROVIDING OUR INDIGENT CLIENTS WITH THE HIGHEST QUALITY LEGAL REPRESENTATION, THE COMMUNITY WILL BENEFIT SIGNIFICANTLY FROM OUR WORK, INCLUDING

1. SETTING A LEGAL STANDARD WITH OUR ADHERENCE TO EXCEPTIONAL, INNOVATIVE REPRESENTATION OF CLIENTS' INTERESTS BY ATTORNEYS, INVESTIGATORS, MITIGATION SPECIALISTS, AND OTHER TEAM MEMBERS, ALL WHILE OBSERVING FISCAL RESPONSIBILITIES;
2. PRESERVING THE CONSTITUTIONAL RIGHTS OF ALL CITIZENS WITH OUR DEDICATION TO PROTECTING THE RIGHTS OF THE ACCUSED;
3. ENHANCING THE CITIZENRY'S CONFIDENCE IN OUR LEGAL SYSTEM BY CONSISTENTLY DEMANDING JUST AND EQUITABLE TREATMENT FOR ALL.

## Operational Standards Rule

The Office of the Legal Defender can rival any private sector counterpart in legal knowledge, effectiveness, efficiency, and fiscal responsibility.

With the finest legal representation as the overriding goal, the Office maintains its successful operating practice of

- conducting self-assessments to confirm that established policies and procedures conform to legal, ethical, and government standards and goals;
- participating in inter-agency activities to maintain currentness and cooperation;
- updating Office members on legal issues, court matters, and governmental policy changes;
- supporting the in-house and inter-agency use of advanced technology; and
- providing training opportunities to Office members to enhance their skills.

The Office continues to impress outsiders with its technological capabilities. Their internal computer programs remain regularly updated. Digital equipment is provided to produce savings in outside processing. Staff members are encouraged to take advantage of the county's electronic programs for gathering information, communicating with other agencies, and handling routine business. Increased use of advanced technology allowed OLD to meet goals of serving clients, and subsequently the general public, in a measurable, cost-effective manner. ❖❖❖

**"The first duty  
of society is  
justice."**

## GOALS

I. DEVELOP AN EFFECTIVE REPRESENTATION FOR EACH CLIENT IN AN ETHICAL FASHION THAT PROTECTS HIS OR HER RIGHTS AND ENSURES EQUAL PROTECTION UNDER THE LAW.

II. PROVIDE THE COUNTY A COST-EFFECTIVE METHOD OF REPRESENTATION FOR INDIGENT CLIENTS WHO WOULD OTHERWISE BE REPRESENTED BY THE MARICOPA COUNTY OFFICE OF THE PUBLIC DEFENDER, THE OFFICE OF THE LEGAL ADVOCATE, OR THE OFFICE OF CONTRACT COUNSEL.

III. RETAIN AND DEVELOP ATTORNEYS AND STAFF HIGHLY REGARDED FOR THEIR RESPECTIVE SKILLS IN REPRESENTING, INVESTIGATING, OR SUPPORTING THE DEFENSE OF ASSIGNED CLIENTELE.

IV. CREATE AN ENVIRONMENT IN WHICH PROFESSIONALISM AND RESPECT FOR CLIENTS AND FELLOW EMPLOYEES ARE INHERENT.

V. ENDORSE MEASURES TO PROVIDE EFFECTIVE ALTERNATIVES TO IMPRISONMENT AND INCARCERATION.

VI. MAINTAIN WORKLOADS THAT DO NOT JEOPARDIZE ANY CLIENT'S DEFENSE.

## **OLD Players**

Staff from the Office of the Legal Defender (OLD) like to contribute to the legal system in many ways. Members provide input and service to other government agencies, helping to uncover and develop more efficient ways to utilize the justice system's resources.

Representatives from the Office meet or confer

with court administration, public officials, and members of the community on Criminal Justice issues, Juvenile Dependency/Severance issues, and legislative matters.

The Office also believes in helping to develop the future participants in the court system. The Legal Defender's Office continues its relationship with the College of Law at Arizona State University and supports an externship program. The year-round program with the college immerses law students in actual casework. This arrangement gives students the invaluable benefit of hands-on legal experience while the Office gains legal research and case assistance. The Office's program has garnered a favorable reputation at the Law School and sees a regular flow of applicants for the limited number of externship positions.

### ***Legal Defenders with a Hammer [and other Tools]***

Lawyers and legal staff don't seem to get enough of helping others. Members from the Office of the Legal Defender were seen hammering at Habitat for Humanity projects on two weekends this spring. Additionally, they have been spotted involved in the following extracurricular activities and/or organizations:

- 9/11 Disaster Funds
- Arizona State University, Blue Ribbon Committee
- Arizona State University Homeless Legal Assistance Project
- Arthritis Foundation, Arizona Chapter
- Big Brothers Big Sisters of Central Arizona
- City of Phoenix Board of Adjustment
- Combined Charities Campaign
- Courthouse Experience
- Family Drug Court Committee
- KAET, TV Pledge Drive
- Lamb Family Charitable Foundation  
[Executive Director]
- Liberty Wildlife

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- Phoenix Zoo
- Red Cross Blood Drives
- Ride-Share/Transportation Program
- Salvation Army Food Drive
- Scottsdale Community College Mock Trial Team [Coach]
- State Bar of Arizona, Board of Legal Specialization, Criminal Law Advisory Committee [Chair]
- State Bar of Arizona, Criminal Jury Instructions Committee
- State Supreme Court Committee on Examinations

From the courtroom to the construction site, members of the Legal Defender's live the "service" ethos. ❖❖❖

## 5-Star Staff [aka Cast of Characters]

The Office, though small in numbers, successfully handles a large number of court cases. The entire staff breaks down as follows:

Attorneys, Criminal Division – Full-time = 24  
Part-time = 7

Attorneys, Juvenile Division – Full-time = 8  
Part-time = 1

Support Staff, Criminal Div. – Full-time = 27  
Part-time = 2

Support Staff, Juvenile Div. – Full-time = 9

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## Legal Beagles

Legal Defender attorneys come from various backgrounds and possess a range of talents, from death penalty and white-collar crime expertise to juvenile dependency and severance skills. Office attorneys are assigned, based on their levels of experience and their fields of interest, to handle cases in one of three areas: major felonies, regular felonies, and juvenile dependency and severance matters. The attorneys are respected courtroom advocates, and many are sought-after speakers and writers in their respective fields.

Attorneys in the Criminal Division routinely work on complex felony cases that require extensive knowledge of the intricacies of Arizona's court system, criminal and constitutional law, and the various rules of procedure. They confront the daily challenge of presenting ardent, creative defenses while juggling heavy caseloads and remaining mindful of the Office's budget constraints. The criminal division continues to amplify its work in the area of Murder 1/Death Penalty cases. With the *Ring* decision, decided in June of 2002 after months of anticipation and study, the Office faces new challenges to handling difficult criminal cases in an area where law is being

rewritten and precedents are being set daily.

Attorneys in the Juvenile Division, who represent parents in dependency/severance cases, deal with similar caseload and budget concerns while meeting the special challenges of the juvenile system's civil courts. These attorneys strive to protect the parents' rights and preserve the integrity of Arizona families. The delicate issues in dependency and severance cases require a sensitive approach to family situations in addition to a wide-ranging knowledge of the laws covering not only dependency and severance, but also divorce, child support, guardianship, and paternity matters. ❖❖❖

## **Supporting Cast**

### ***From the Streets = Investigation***

Investigators come to the Office of the Legal Defender with extensive and varied experience, and play a critical part in the defense team's representation of indigent clients. The investigators, selected because of their law-enforcement backgrounds, are able to meld past expertise with a defense perspective to create a hybrid investigation. They help the attorneys by locating and interviewing potential witnesses, obtaining and evaluating physical and documentary evidence, and assisting in the development of defense strategies and case theories. Additionally, investigators maintain contact with clients, other agencies, and interested parties – often becoming an invaluable liaison. The investigators present oral and/or written investigative reports. In certain cases, Office investigators are uniquely qualified to provide critical information at the trial level, and are called upon by Deputy Legal Defenders to testify in court. By providing continual investigative service and serving as on-site references, the investigators have proven themselves to be an indispensable line of defense.

### ***Another Right Hand = Mitigation /Client Services Division***

The Mitigation/Client Services Division provides another right hand for defense attorneys. This Division primarily assists attorneys with the preparation of death penalty cases for trial and mitigation hearings. In addition, assistance is provided for developing case strategies, selecting jurors for trials, and formulating sentencing plans on other felony cases. Client Services staff regularly obtain relevant social history records; interview clients and interested parties; serve as liaison to outside agencies; provide clients with general information about the court process; and assess information on community resources. This division is able to assist attorneys in determining how to appropriately resolve cases in a cost-effective manner while maintaining the highest level of quality representation.

### ***A Unique Team = Juvenile Dependency /Severance Division***

The Juvenile Dependency/Severance Division was specifically designed by the Office to utilize a new team concept. The Division's Case Preparation Managers (CPMs) are organized to assist the attorneys in the representation of parents in dependency and severance actions by maintaining contact with and drawing information from the clients, court programs, state agencies, and other pertinent interested parties. By providing a base of current information and helping develop case strategies, the CPMs free their attorneys to concentrate on legal issues, court hearings, and trial work.

### ***Searching & Researching = Paralegals***

The Legal Assistants (paralegals) assist attorneys in legal research and trial preparation. In the area of legal research, the Legal Assistants serve as the WESTLAW researchers and in-house instructors for the entire Office. During the trial preparation phase of a case, Legal Assistants may assist in a variety of ways, including working on discovery, organizing evidence, preparing summaries and trial materials, and helping with jury selection.

### ***Behind the Scenes: Administration /Information Technology /Records***

While not as visible as other staff divisions, this group provides critical support to the other members of the Office by covering the behind-the-scenes functions that move the casework. The often-unsung work of the Records staff ensures that vital information is current and easily accessible. The Information Technology staff works toward the smooth delivery of electronic devices, programs, and communications so that the important work flows unimpeded. And, Office Administration strives to maintain a true course in attaining Office goals, to meet personnel needs, and to keep resources up-to-date and available, while minimizing spending to conform to budget mandates. ❖❖❖

# Budget Goals Met, Yet Again

Once again the Office of the Legal Defender succeeded in meeting its annual budgetary goals and saving the county money in several areas. FY02 funding for the Office was provided by the Maricopa County Board of Supervisors as follows:

## FY01-02

\$4,065,750 for the Criminal Division,  
and  
\$ 932,183 for the Juvenile Division.

In using the budgeted monies, the Office maintained a balance between representing the rights of individuals accused of criminal or negligent behavior and showing fiscal responsibility in the application of public funds. The Office-staff expended considerable time on the business side of operating this law firm. Working closely with county finance and budget departments, the Office helped to ensure the refinement of accounting procedures and coordination of records. Much of this work was accomplished through the timesaving

Intranet, allowing rapid exchange of information, confirmation of data, and updating of records.

These monies served the county in the handling of the following:

### CASES:

8	Misdemeanor Assignments
267	Probation Violation Assignments
19	Witness Representation Assgmnmts.
3,988	Regular Felony Assignments
105	Major Felony Assignments
603	Dependency Assignments
758	Dependency Recertifications, and
91	Severance Assignments.

### TRIALS:

54 Criminal

### APPEALS:

8 Juvenile Dependency/Severance.

A review of the Office at the close of FY02 found the Office a fiscally responsible department, a community asset, and a respected law firm with a reputation for leadership in cutting-edge legal issues. ❖❖❖

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Mr. Briney reflected on the many changes in indigent defense work since he started the Office seven years ago. According to the Legal Defender, the change in the county's position on funding for indigent defense has had an important impact on the justice system. He also noted that the court's shift to a fast-track system for cases has significantly reduced the time for case preparation while increasing the difficulty in providing effective assistance of counsel to clients. And last, Mr. Briney opined that the

addition of Juvenile Dependency and Severance representation has greatly expanded the legal arena for not only the Office of the Legal Defender, but for other offices as well.

In discussing the Office's relationship with the private bar in Arizona, Mr. Briney stated, "We've been particularly pleased that prestigious private law firms have chosen to work with us on a number of high-profile cases. We feel that working with the private bar has not only benefited our clients, but has been a mutually

rewarding experience for the Office and private counsel."

Summing up his part in the Office's work and growth, Mr. Briney commented, "My job is to take competent people and encourage self-motivation, initiative, and creativity in them, all within the county structure."

How does he relax after dealing with heavy legal issues all day? Mr. Briney, once known for his prowess on the tennis courts before injuries sidelined him, mused that he now looks to golf or shuffleboard as his next diversion. ❖❖❖

## From the Arena

Major felony attorneys deal with distinctive pressures and legal issues – the death penalty being the most momentous. While their goals as indigent defense attorneys are the same, their insights and methodology vary.

Rick Miller, a major felony attorney with the Office of the Legal Defender (OLD) since 1995, noted, “As one of several attorneys handling death penalty cases, I anticipate that the U.S. Supreme Court’s decision, *Ring v. Arizona*, will have a major impact on the way we prepare to defend the lives of our indigent clients.

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***“ . . . a dramatic change in the way we process cases, and should not be underestimated.”***

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Before *Ring*, much of the costs associated with defending capital defendants was deferred until after the defendant was convicted of 1<sup>st</sup> Degree Murder. With the new statute, which Arizona adopted after *Ring*, all mitigation, which essentially means creating a life story with documents, family, friends, and experts, must be done before the

verdict. This is a dramatic change in the way we process cases, and should not be underestimated.”

John Canby, an OLD major felony attorney for the last four-and-a-half years, reflected, “The clients are both the best and worst thing about this job. They are the best because there is nothing more satisfying than helping someone who really badly needs your help. They are the worst thing about this job because there is nothing more frustrating than not being able to help someone who really needs your help. There is a lot of misery in this work and there is often

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***“ . . . – and innocent clients are charged more often than we should be comfortable with.”***

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nothing we can do to make it better. On the other hand, sometimes we are in the position of helping someone get a second chance and sometimes the clients even turn around their lives based on that second chance. Of course occasionally we get the ultimate payoff, an acquittal of an innocent client. – and innocent clients are charged more often than we should be comfortable with.” ❖❖❖

**Dedicated to the  
Guardians of Freedom**

—  
**wherever they  
are found.**

**Office of the Legal Defender**  
-Maricopa County-  
222 North Central Avenue,  
Suite 910  
Phoenix, Arizona 85004-2237  
602-506-8800  
Fax 602-506-8862

**Robert S. Briney**  
**Legal Defender**

Max Bessler  
Chief Administrator

Georgia A. Bohm  
Editor