

# Office of the Legal Defender

•Serving Justice since 1995•

## ~ FY04 ANNUAL REPORT ~

### Defending More than Defendants –

#### *Constitutional Rights & Civic Commitment*

The members of the Office of the Legal Defender [OLD] of Maricopa County are driven in their devotion to general as well as legal issues. OLD staff maintain active participation in local legislation, environment programs, animal welfare interests, children's programs, and other community activities.

Some of the agencies who benefit from Legal Defender staff support are Agape House; All-Star Kids Tutoring; American Civil Liberties Union; Arizona Attorneys for Criminal Justice – Board; Arizona Capital Representation Project; Arizona Humane Society; Arizona Public Defender Association; Arizona Railway Museum – Board; Arizona-Sonora Desert Museum; Arizona State Bar Association – Criminal Practice and Procedure Committee; ASU College of Law Alumni Association – Board; Arizona Theatre Company; Audubon Society; Civil War Preservation Trust; Extreme Makeover – Phoenix Home Project; Friends of

*continued on page 2*

### Ring Reflections

Dealing with the aftereffects of the *Ring* decision (June 2002) has resulted in widespread reflection on the death penalty process in America. The United States is now the only western democracy that imposes the death penalty. Some U.S. governors of states with the death penalty are calling for reviews of their state systems as numerous death row inmates are found to have been innocent.

In 2003, Illinois Gov. George Ryan spoke at Northwestern University College of Law and stated, "Supreme Court Justice Potter Stewart has said that the imposition of the death penalty on defendants in this county is as freakish and arbitrary as who gets hit by a bolt of lightning." Later, Ryan noted, "...after affirming hundreds of death penalty decisions, Justice Blackmun came to the realization, in the twilight of his distinguished career, that the death penalty remains fraught with arbitrariness, discrimination, caprice and mistake. He expressed frustration with a 20-year struggle to develop procedural and substantive safeguards. In a now famous dissent he wrote in 1994, 'From this day forward, I no longer shall tinker with the machinery of death.'" [*Callins v. Collins*, No 93-7054, Supreme Court of the U.S., February 22, 1994.]

Such comments and the record of the criminal system add to the sense of urgency in OLD defense team members as they deal with Arizona's death penalty. They fight concerns about justice and due process in a system increasingly designed for efficiency. They stand, a client's critical courtroom component.

### INSIDE THIS REPORT:

- 2 The Whole Truth – The Rest of the Story
- 3 Mission – Vision
- 4 Goals
- 7 Clients – OLD Members
- 8 Budget -- Cases -- Dedication

◆◆◆

Animal Care & Control; Habitat for Humanity -- Costa Rica & Phoenix Projects; Heard Museum -- Montevista Club; Liberty Wildlife; Life Choices Women's Clinic; Little League; Mesa Southwest Museum; National Association of Criminal Defense Attorneys; National Association of Legal Assistants; National Defender Investigators Association; Nature Conservancy; National Wildlife Federation; Parent-Teacher Associations; Phoenix Zoo; Planned Parenthood; Public Television -- Channel 8; Red Cross; Roman Catholic Diocese of Phoenix; Diocesan Review Board; Salvation Army; Scouts of America - Boy & Girl; Save the Manatee Club; Sojourners; Sierra Club; St. Agnes School -- Board; St. Mary's Food Bank; St. Vincent de Paul; Tempe Judicial Advisory Board; Thomas J. Pappas School; United Way; and World Wildlife Fund.

By constant advocacy of myriad issues, OLD continues to be a vital voice for our world. ♦♦♦

## The Whole Truth -- *The Rest of the Story . . .*

All of the legal work done at the Office of the Legal Defender is important -- whether to the individual client or to the public in general. But people sometimes get caught up in the court process, the statistics, and the media hype, and they forget that human stories live behind it all. This annual report spotlights a few of our clients who were accused of felonies. Our hope that is in telling the full stories of these individuals, others will see the person behind the crime and will understand more of what led to that client's involvement in criminal activity. In knowing the whole story, others will be better able to recognize the appropriate treatment and disposition for each client, and in a broader sense, come away with an awareness that all stories have multiple facets that deserve review before rendering an opinion. Through knowledge come understanding and compassion.

≈•≈•≈

NOTE: For the sake of privacy, privilege, and discretion, the names of our clients will not be used in the following case summaries. Instead, simple designations of "Client A," "Client P," etc. will serve to represent the people in each case.

Client A, a 47-year-old African-American male, stood accused of two murders that had occurred 20 years ago. Cold-case detectives using DNA testing/findings ultimately connected him to these crimes. The charged offenses involved the strangling and beating deaths of two prostitutes in a dispute about money. The Client's prior record included a 10-year sentence for the strangling death of a man whose car he had stolen. Client A was arrested in that case when he attempted to return the stolen car to the victim's home.

Through the painstaking efforts of OLD's records specialist and investigators on this

continued on page 3

**"Mitigation is the  
biography  
of mental disability.  
It is the explanation of  
what influences converged  
in the years, days, hours,  
minutes, and seconds  
leading up to the capital  
crime, and how information  
was processed in a damaged  
brain.  
It is a basis for  
compassion -**

## 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.

case, the defense team was able to obtain the Client's school records and contact old neighbors, past friends, and spouses/partners.

The team determined that the Client had been abandoned by his biological mother, who later would appear in his life for brief periods and horribly abuse him. She repeatedly told him that he was unloved and unwanted. She beat him with electrical cords and was sexually promiscuous with multiple partners in front of him. She forced him to lie after she stabbed one of her lovers in front of Client A.

Shortly after Client A's birth, his mother left him to be raised by his maternal grandparents. His grandfather was emotionally and physically abusive to both him and his grandmother. The grandfather constantly reminded Client A that he was unwanted by his mother and a burden to the family. Our Client was forced to leave the only "home" he had known and to move to Phoenix to live with an uncle who did not want him either. Soon after his arrival, our Client was forced to leave this "home" also.

From school records and talking to his childhood neighbors, the OLD defense team was able to document that Client A suffered from significant cognitive/intellectual impairment. Our Client's IQ fell just a few points above the "cutoff" for mental retardation. The team obtained information about his adaptive functioning that revealed marked impairment. Additionally, the defense team was able to demonstrate how Client A's impairment impacted his ability to solve problems, make decisions, and understand the long-term consequences of his decisions.

The OLD team's work showed [1] how the Client's abuse and abandonment dramatically damaged his psyche and unalterably influenced the choices he later made, and [2] how his range of choices, behaviors, and functioning were significantly curtailed by biological, social, and psychological influences over which he had no control. Finally, the defense team demonstrated that our Client's inability to problem-solve or "think on his feet" might have brought about the chain of events that led to his standing

## 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.

accused of two counts of capital murder.

The OLD defense team's presentation to the prosecutor led to saving our Client's life. Instead of a death sentence, he received two 25-year, consecutive sentences.

The case's Capital Mitigation Specialist reflected that these sentences allow the community to feel safe but do not involve yet another damaged, wounded human being put to death at the hands of the state. The case's conclusion leaves room for healing to occur for both the victims' families as well as our Client.

≈•≈•≈

Client N was 19 years old when he was charged with attempted theft and burglary of motor vehicle. When police arrived on the scene, the Client was going through a truck, looking for the keys and asking passers-by to help locate them. When police asked him what he was doing, our Client insisted the truck was his and that the people in a nearby McDonald's had hidden the keys from him. The actual owner of the truck stated that he did not know Client N and verified his title to the vehicle. Our Client was arrested.

When the OLD attorney first saw Client N, he already was in the psychiatric ward of the county jail. The Attorney found the Client in his jail cell, naked and smeared with feces. The facility's nurses reported that Client N engaged in compulsive masturbation. No jail staff went into his 6' x 10' cell to clean, and the Client was left by himself, locked down 24 hours a day with rapidly accumulating feces and rotten food.

Eventually, on the Legal Defender's

motion, the court found Client N incompetent and ordered him restored to competency. Because of lack of funds and space in the Arizona State Hospital, our Client remained in the same fetid jail conditions for approximately six months. When he finally was moved and medicated, he quickly was restored to normalcy. After Client N's case was resolved, he returned to his mother and family, who had been concerned and supportive throughout the process -- all anyone wanted was some help.

By chance, the defense attorney ran into Client N walking Downtown about three years later. The Client was married, had a young son, and was working to support his family. He was clean and happy, a productive member of our community.



Client C was charged with one count of capital homicide and a count of attempted homicide. He was accused of killing a woman (reportedly a drug addict and prostitute) and shooting her male acquaintance (also reportedly a drug user). The female victim was the mother of three children, one of whom was an 11-month-old infant who was present in the home at the time of the offense. Client C was addicted to methamphetamine and had a lengthy history of property and drug offenses, but not violent crimes. Interviews with witnesses revealed that our Client was sleep deprived and acutely intoxicated during the week before the offenses. Additionally, the victims had reported observing him behaving in a bizarre and paranoid manner days before the offenses.

OLD's mitigation investigation found that Client C essentially was born and raised to be a

drug addict. His mother and father both suffered from drug addiction. During the Client's gestation, he was exposed to his mother's use of marijuana on a daily basis. After his birth, our Client was breast fed while his mother used marijuana and heroin. When our Client was still a small child, his father died of a heroin overdose. Aside from Client C's exposure to drugs, he was raised in impoverished conditions and moved frequently with his family from rural community to rural community. He witnessed his mother being physically abused by his step-father. By the age of 5, Client C was regularly smoking marijuana with his mother and learning to cultivate the crop. In early adolescence, he began using methamphetamine and cocaine. He had easy access these drugs in his home and community. At the age of 13, Client C was sent to live with his former step-father because his mother felt his behavior was out of control. Client C was skipping school, disappearing for days at a time with older friends, and engaging in bizarre behaviors while under the influence of drugs.

Records collected by OLD's Client Services staff found that Client C was placed in a psychiatric facility in his 20's for being acutely psychotic while under the influence of methamphetamine. He was paranoid and delusional, believing evil was residing within him. Throughout his adulthood, Client C continued to exhibit psychotic symptoms when under the influence of drugs. His behavior consistently was encouraged and reinforced by his family and a drug-infested community.

The OLD's defense team retained an addiction expert who was able to observe Client C while he was acutely intoxicated and psychotic in the jail. After this assessment, the Client's competency to proceed with trial was questioned. When the court ordered that our Client be restored to competency, the defense team litigated so that our Client would receive mental health services in the state hospital where he could be monitored 24 hours a day and be

removed from an environment where drugs were so easily accessible to him. The county's restoration-to-competency program fought having our Client placed at the state hospital. The program wanted to provide services within the jail, the same environment where he could continue to access illegal drugs. Eventually, the defense was successful in having Client C committed to the state hospital.

After Client C was found restored to competency, the OLD defense team provided the state with an informational packet that included mitigation interviews with supporting documents and information from the addiction expert. The state agreed to drop the death penalty and our Client entered a guilt plea to the offenses with sentencing to be determined by the court. For the sentencing, the defense provided the court with mitigation interviews, records, a report by the addiction expert, and lay witnesses' testimony of Client C's life-long battle with addiction. The court sentenced Client C to natural life on the first charge, with a consecutive sentence of 21 years on the second.

≈•≈•≈

Client P was charged with two counts of capital homicide following the deaths of two infant boys over a 10-month period. The mothers of the children, girlfriends of the Client, were charged with abuse. An investigation of Client P's co-defendants revealed that one of them had an extensive history of aggression and violence, and that the police believed that the mother of one of the infants may have been involved in the child's death. A thorough collection of records on Client P by OLD's Client Services staff revealed a wholly tragic life. He was born to chemically addicted parents and diagnosed in early infancy as a "failure to thrive child." He was neglected severely as an infant and eventually was removed from his

mother's care, at which time he was seriously ill and required a surgical procedure to remove boils from his skin. He was placed with a foster family where he bonded with his foster parents. Sadly, he was sexually abused by a foster brother.

Despite early relinquishment of parental rights by his parents, Client P was not placed for adoption until he was seven years old. At that time our Client was removed from foster care, the only family he had ever known, and placed with an adopting family. The adoption records reflect the new family's desire and fitness to adopt Client P. An evaluation of the adoption's effect on the Client and comments on his feelings about the adoption were absent from the records. By the age of eight he was having difficulty in school and manifesting behavioral problems. Client P was diagnosed as learning disabled and began treatment for psychiatric disorders. From that point on, throughout his childhood and adolescence, the Client was almost constantly institutionalized in psychiatric facilities and youth programs. He received numerous mental health diagnoses and medications. At times he suffered from seizures and Lupus.

Client P continued to receive psychiatric treatment from the Department of Corrections and community mental health services as he became an adult and up to the time of the offenses in this case. He developed problems with substance abuse, and attempted to self-medicate the delusions and hallucinations stemming from his mental illness. As part of plea

*People are always speculating: why am I as I am? To understand ... any person, his whole life, from birth, must be reviewed. All our experiences fuse into our personalities. Everything that ever happened to us is an ingredient.*

## Select Clients

The Office of the Legal Defender clientele comes only from assignments by the Superior Court of Arizona. 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.

◆◆◆

## OLD Members

The Office staff roster for FY04 consisted of the following:

Attorneys, Criminal Division  
 Full-time 32  
 Part-time 9

Attorneys, Juvenile Division  
 Full-time 14  
 Part-time 0

Support Staff, Criminal Div.  
 Full-time 36  
 Part-time 4

Support Staff, Juvenile Div.  
 Full-time 14  
 Part-time 1

In addition to serving our Clients, the Office also believes in helping in the development of future participants in the legal system, and so it maintains its externship program through the College of Law at Arizona State University. The year-round program immerses law students in actual casework, giving students invaluable benefit of hands-on legal experience while the Office gains legal research and casework 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.

This FY, three externs worked with us. In the summer of 2003, Amber Abbas worked in our Criminal Division under the supervision of OLD attorneys Richard Miller and Mark Tallen. They then oversaw the work of fall extern Kyrsten Sinema, and 2004 spring extern Melissa Shaeffer.

◆◆◆

*"The law is equal before all of us; but we are not all equal before the law."*

**George Bernard Shaw**

## FY04 Budget

In FY04, the Maricopa County Board of Supervisors provided the Office of the Legal Defender the following funding:

### FY03-04

\$4,304,877 for the Criminal Division,  
\$1,139,962 for the Juvenile Division,  
and  
\$ 467,485 for the Admin/IT Division.

These monies served the county in the handling of the following cases [Note: the categories listed for these statistics parallel the county's MfR standards for the fiscal year].

### CASES:

12	Misdemeanor Assignments
392	Probation Violation Assignments
25	Witness Representation Assgnmnts.
4,596	Felony Assignments Other than First Degree Murder
8	First Degree Murder Assignments
905	Parental Representation Assignments [JD/JS/Grndshp]
739	Dependency Recertifications,

A standard review of the Office at the close of FY04 found that the Office fulfilled the following:

- a respected law firm,
- a reputation for legal leadership,
- a fiscally responsible department, and
- a community asset.

◆◆◆

**Office of the Legal Defender  
-Maricopa County-  
222 North Central Avenue  
Suite 8100  
Phoenix, Arizona 85004-2237**

**Phone: 602-506-8800**

**Robert S. Briney  
Legal Defender**

**Max Bessler  
Chief Administrator**

**Georgia Bohm  
Editor**

**Fax 602-506-8862**

**Dedicated to the Guardians of Freedom ~  
wherever they are found.**