

PERSPECTIVES



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The Summary Jury Trial – An Effective Option?

I tried a short trial—or summary jury trial—in September. Between 9 a.m. and 5 p.m., I selected a jury, gave an



opening statement, presented evidence, cross-examined witnesses, and delivered a closing argument. And had a lunch break. Short trials, which last only a single day, are an increasingly popular alternative to the traditional multi-day trial. Would I do one again? Maybe.

There are benefits to the short trial format. The participants are done in a

single day. The jurors do not get tired, as they might in a lengthy trial. Costs are significantly lower because much of the evidence is agreed to beforehand, and witnesses can be presented in more informal ways than in a traditional trial.

But there are downsides, too. Conventional wisdom is that jurors must spend significant time hearing evidence in order to fully appreciate the gravity of the case and come to a fair award. In an accelerated short trial, that does not happen. Also, given the abbreviated presentation, a short trial only works when the majority of legal issues are not in dispute. Trying to present too much information and too many contested issues in only a few hours is ineffective. Finally, since there is no court reporter and no official record, there is no opportunity to appeal. This is a one-shot deal.

On balance, I believe that the downsides of a short trial are,

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How to Protect Yourself and Your Family from Medical Errors

In a previous issue, we noted that the healthcare industry is making significant strides to prevent death and injury from medical errors. While the industry should be applauded for doing its part, you need to do your part to protect yourself and your family.

What You Are Up Against

An estimated 90,000 Americans die each year as a result of preventable medical errors. About 7,000 patients die from medication errors alone.

Preventing Medication Errors

Ask questions. Never take a medication without first asking: "What is this drug? What does it do? What side effects should I watch for?" Your doctor will not think you

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continued on page 3

continued on page 2



Medical Errors, cont. from page 1

are rude; he'll see that you are taking responsibility for your own health and safety. Every hospital patient should have someone who is familiar with their health and medication history to ask questions and get answers.

When starting a new medication, give your pharmacist a list of every medication and dietary supplement you are taking to check for adverse interactions. Ask if the medication you are receiving is the correct treatment for your medical condition. Read the package insert and be conscious of how the medication affects you. Call your doctor or pharmacist if you have any questions about how your body is responding to the drug.



Take an active role in your healthcare to be safe and healthier.

Whenever you have an x-ray or other radiographic study, before you start any treatment, ask your doctor if she

has reviewed the actual films, and if she agrees with the radiologist's findings. Then ask her to explain the planned course of treatment.

One final note. When you meet with your doctor to discuss test results for cancer or any other serious illness, take a friend or family member with you. If the doctor advises you that you

appointment to review the results with your doctor. If there is a question about the lab results, you can ask to have the lab test repeated, or ask what the next diagnostic step will be.

Test results can be wrong. If your lab result is normal and you have a lump or other abnormality that you are concerned about, get a second opinion. If your lab results are abnormal and you don't think there is anything wrong with you, get a second opinion before you undergo any invasive treatment such as surgery, chemotherapy, or radiation therapy.

Radiographic Errors

Delay in the diagnosis of breast cancer is the most common reason for malpractice lawsuits in the United States. If you feel a lump in your breast and have a normal mammogram, promptly get a second opinion.

have a life-threatening illness, you are unlikely to remember anything he says next. It is important for you to have someone with you to ask questions and take notes, so that you can review those notes at a later time when you are in a better frame of mind.

In short: take an active role in your health care and you will be safe and healthier.

— Jim Dyer

Preventing Lab Errors

Medical laboratories—which typically analyze blood, urine, or tissue samples—make more than 2.9 million errors per year, harming more than 160,000 patients.

Know the results of any lab tests. Don't assume, if you have not heard from your doctor, that your lab results were normal. If you have not heard within a week of the test, call your doctor and ask for the results. Ask to read the lab report. Or make an

The Summary Jury Trial, cont. from page 1



in the right case, outweighed by the benefits. So how do you evaluate whether a short trial is appropriate? The key issue is how the issues and evidence will be presented to the

jury. A short trial may work if the parties can agree on a majority of facts, and if you trust your opposing counsel and can work on distilling the evidence into quickly understood summaries and if you are willing to present expert testimony by report or affidavit. That's a lot of "ifs," to be sure.

The one sure-fire short trial killer? If you do not trust your opposing counsel, a short trial will never work. Too much of the process relies on cooperation. To try a case in a day requires the lawyers to put in a great deal of time streamlining the case before picking a jury. And, in the absence of a record to hold lawyers accountable, you need to have faith that your opponent won't step over the line.

From both parties' perspective, once you agree to do a short trial, it is essential to educate the jury on this new process. Explain to them that both sides have agreed to facts and evidence in an attempt to get the information to them in the most efficient way possible. But take care to remind them that even though the case will wrap up quickly, they still have to make a very important decision that will have long-term impact on many people.

The jury in my short trial was thrilled to be done in a day. The jurors loved the jury notebooks that contained all the exhibits and a medical summary. They appreciated the trust we placed in them and the fact that we did not spend hours—or days—going over information that they could read quickly, on their own. In the end, I believe the jury came to the right decision, one that would have been the same had we taken four days to try the case.

Will I agree to a short trial again? Depends on the case. Depends on the other attorneys involved. Depends on the facts and the evidence. But it is always an intriguing possibility.

—Dev Sethi

Insurance Companies Expect Huge Profits This Year

The insurance industry anticipates making a record-setting \$60 billion in profits this year. That's significantly better than the \$43 billion it made last year. How are the carriers doing it? By charging drastically higher property insurance premiums in the Atlantic and Gulf Coast hurricane states. By increasing profits in auto, general liability, and workers compensation insurance. By seeing fewer homeowner claims in non-hurricane states. By smart investing. And by the fortuitous lack of hurricanes and other natural disasters in 2006.

The bulk of these methods translate into a single area: higher underwriting profits. This past October, the New York Times reported that "insurers are expecting profits on their fundamental business of collecting premiums and paying claims—underwriting—to jump from a loss of \$5.9 billion last year to a profit of \$27 billion this year." In the past, insurers have lost money on underwriting and looked instead to investment gains for their profits. This year's profits, in contrast, reflect the gap between higher premiums and lower claims payouts.

Insurance companies have not stopped raising prices since 2001, and as a result their bottom line has grown by leaps and bounds. Check this out: an underwriting loss of \$52.6 billion in 2001 shrank to \$4.9 billion in 2003, swelled to a profit of \$4.3 billion in 2004, dropped to the 2005 loss of \$5.9 billion, and this year rocketed to the projected \$27 billion profit. Given this year's shocking profits, we'll be watching closely to see whether the industry adjusts its prices to give its customers any relief or just keeps on squeezing consumers.

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—Erica McCallum

Choosing the Right College at the Right Price

“Mom and Dad, can I go to Harvard? It says on their website it only costs \$43,655 a year.” Mom gasps and drops to the couch. Dad, always the pragmatist, responds glibly, “You’d hate the cold winters there. How about Pima Community College? You could continue to live at home, and tuition is only \$46 a credit hour!”

With one son a recent graduate of the University of Arizona, another a senior at the University of Colorado, and a 13-year old daughter eyeing the East Coast, let me share with you my top five tips for choosing the right college, at the right price, for your kids.



1. Making the Grade. If you want to attend a more prestigious school, grades and SAT scores are critical. A “D” average student isn’t going to get into an Ivy League school, plain and simple. The college registrar can tell you what the average and low GPA and SAT scores were for last year’s admissions. Call and ask them.

2. Paying the Freight. While checking on admission standards, find out the costs of tuition, books, and room and board. How much can you afford and how much is your child willing to take on in debt? There is a lot to be said for the low cost and less drastic transition that a local public community college offers. Similarly, even with the rising tuition at Arizona universities, the cost for in-state residents is significantly less than attending out of state virtually anywhere. Investigate early what scholarships and other financial aid is available at the schools you are

considering and how, and when, to apply for that support.

3. Whattaya Wanna Be When You Grow Up? My youngest son knew when he was a junior in high school that he wanted to be an engineer. His case for attending Colorado was strengthened by the fact that 17 astronauts have graduated from their engineering program. Schools have a reputation for particular courses of study. Northern Arizona University has Hotel Management and Forestry. Arizona State is known for Aerospace Engineering and Journalism. And the University of Arizona has excellent programs in the Sciences and Liberal Arts, as well as a nationally recognized program for college students with Attention Deficit Disorder.

4. Narrow the Field. Applying to multiple schools is time-consuming and costly. Try to narrow your

choices to fewer than 10, including two “safety nets”—schools where you are certain to be accepted—and two “reaches.” Study their websites and visit the schools, preferably a scheduled orientation visit, during a time when school is in session.

5. The Early Bird and the Worm. Apply early, in the fall of your child’s senior year if you can. Some schools offer early admission and even if they don’t, the sooner you apply, the sooner you are likely to learn if you have been accepted and the earlier you can start applying for financial aid. Early acceptance means you’re likely to secure the best dorm, and can enroll in pre-orientation programs that ease the transition and often give you a jump on pre-registering for classes.

— Ted Schmidt

An excellent resource for teens and their parents considering college is at http://www.quintcareers.com/teen_college.html, where everything from career assessment tests, financial aid resources, finding the right school, and the latest on the SAT can be found.

Or try a resource like the Big Book of Colleges 2007 that lists every college in the country, with details on their courses, student body, faculty, acceptance ratios, SAT scores... everything.



Some Thoughts on Instant Replay in NCAA Football



I played football for the University of Arizona, and, for more than 30 years, I was a football official (the guy in the black and white stripes) in Tucson at the high school level, in the Western Athletic Conference, and in

the PAC-10. My last game was the 2005 Fiesta Bowl. I mention all this so that you know my comments on instant replay come from the head as well as the heart.

Major conferences started using instant replay in the fall of 2005. Two replay officials can now review plays, from different angles, in slow motion, in the quiet of the press box on every play. Each head coach has the right to ask for one video review per game by throwing a red flag after the play. The replay officials review plays to attempt to correct a significant mistake.

Replay helps the on-the-field officials get it right more often than not, and usually does not delay the game inordinately. The biggest problem I see with the replay concept is that in college games, unlike the NFL, there are not nearly as many cameras and camera angles to use in analysis. Even NFL officials, with many more angles available to them, still cannot definitively evaluate every play. Even when fans and coaches have clearly seen that a call was wrong, unless that is demonstrated by replay, the call on the field cannot be changed.

Unfortunate situations still occur, like the Oklahoma at Oregon game this fall, where the Pac-10 suspended the officiating crew and instant replay officials for making two mistakes on calls late in the game. However, the reality is that replay officials are also human, and in that game, they did not have the benefit of all of the angles to overturn the calls made on the field. If we are going to use instant replay for college games, then to ensure a correct result, the replay officials must have the best equipment available to them, and be properly trained to use it.

Most often, however, instant replay works,

meaning they get it right. The effective use of replay changed the outcome—correctly—of the recent Arizona-California game. Cal's apparently game-winning touchdown was properly tossed after replay officials saw that the receiver had stepped out of bounds.

That's an example of instant replay working exactly as it should work—to correct a wrong call, to make the right call, and to produce the right outcome.

Rules and procedures change all the time. But the effort is always to make the game as fair, as competitive, and as safe as possible. And I am all for that.

—Bob Beal

Dev Sethi, Our Own "Up & Comer"

Inside Tucson Business has named Dev Sethi a Tucson "Up & Comer." His work as a trial lawyer has won him the respect of Tucson's business community. Dev is tireless in giving back to his community. In addition to his work as a trial lawyer, he is an adjunct professor at his alma mater, the University of Arizona James E. Rogers College of Law, and a member of the Dean's Advisory Board to the University of Arizona College of Fine Arts, and the Indian Cultural Center. He also serves as president of the Arizona Minority Bar Association, where he mentors minority lawyers and promotes diversity on the Pima County bench.

The Up & Comers reception on October 12, 2006 was a Sethi family affair. Dev's wife, sister, niece and parents were there to show their support. Dev took the opportunity to dedicate the award to his father, Gulshan Sethi, the man who set the standards that Dev strives to follow.



A Hero Among Us

On August 1, **Police Officer Kati Rhea** and her partner responded to a fire in a downtown apartment building in Lexington, Kentucky. When they arrived, an elderly man was standing outside the building crying that his wife was trapped inside. Kati ran to the rear of the building and found the woman, unable to move. Kati carried her to safety, and then returned to find another gentleman standing on the second floor landing, too terrified to leave. He refused to budge, so Kati pulled him down the stairs just as the second floor collapsed. Kati and her partner were able to get all of the residents out of the ten-unit building without any injuries. The building was completely destroyed by the fire.



The City of Lexington awarded Kati Rhea the Medal of Honor, the highest commendation a police officer can receive. She also received commendations from the Lexington Fire Department and the National Association of Fire Chiefs for her heroic measures.

Kati is the 24-year old daughter of our paralegal **Sher Rhea**. Mom's words upon learning of her daughter's heroism? "I'm very proud of you, but please don't do it again."

Erica Keeps Moving



Erica McCallum recently competed in the Carondelet "Get Moving Tucson" 10-mile race. This run started at St. Joseph's Hospital and extended across Tucson, ending at St. Mary's Hospital. Erica was met at the finish line by her impressed teens, who made no promises to join her next year. Proceeds from the event fund the Carondelet Health Network wellness and fitness programs, free services provided to our community by the hospitals.

Welcome to Our New Paralegal

Paige N. Kirkhus-Horner recently moved to Tucson from Seattle, Washington, where she was a litigation paralegal for Graham & Dunn, P.C. Paige earned her B.A. in Organizational Management from Northwest University in 2000, and her Paralegal Associate of Technical Arts Degree from Edmonds Community College in 1990. She has 15 years of litigation experience, including product liability, insurance defense, personal injury and commercial litigation. Paige joins her husband, KGUN-TV news reporter Mark Horner, who started at the station last January. Paige and Mark were married over the summer and are enjoying their life together in Arizona.



Our Top Tucson Lawyers



Ted Schmidt



Burt Kinerk

Ted Schmidt and **Burt Kinerk** have been honored with inclusion in the 2006 edition of *The Best Lawyers in America*, the preeminent rating and referral guide for the legal profession in the United States. Thousands of the nation's top lawyers were asked to evaluate their fellow attorneys. Based upon this survey and the votes of their peers, attorneys in 52 specialties, representing all 50 states, are selected. Ted was recognized as one of the top personal injury litigators, and Burt was honored in the area of entertainment law.

Ted was also recently appointed President of the Southern Arizona Chapter of the National Football Foundation and Collegiate Hall of Fame.

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If you would like to be added or removed from our mailing list, please contact Bea Flesher at (520) 545-1674 or bflesher@kbsds.com.

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