



Opinions in the magazine are those of the authors and not necessarily those of the State Bar of Arizona, its Board of Governors, the Editorial Board or staff. The magazine provides an open forum for readers. Send your own viewpoint or letter to Tim.Eigo@staff.azbar.org.

Changing the Rules

Over the years, I have been fortunate to be involved in many rule and statutory changes that I believe have made for better administration of justice in our courts. In this column, I revisit four that have yet to make it. Some have come close; others have received little support. But I'm still trying.

It seems crazy that if a defendant creates an especially violent crime scene he is rewarded by the rules of evidence.

Self-Defense

Remove the mandatory prison sentence for cases of self-defense. If you use a dangerous weapon in the commission of a felony in Arizona, you will go to prison for a minimum of five years. I support this mandatory sentence but feel it is unduly harsh in many cases in which the defendant claims self-defense.

We live in the West, where a person's right to protect himself and others with a weapon is ingrained in our history. The law recognizes this right. In real life, however, whether someone could have retreated or if they used too much force or just the right amount is often a very close call. Reasonable minds can differ, and reasonable juries might reach different results. Therefore, if there is enough evidence of self-defense to get the instruction to the jury, I believe the mandatory should drop and the sentencing be left totally in the discretion of the judge.

The legislature this year has tried to address the problem by shifting the burden of proof to the prosecution once self-defense has been raised. I think this is an improvement, but there really is no need for first-time offenders who defended themselves in a close case to go to prison for five years. This is yet another situation where we should let judges be judges.

Admitting Prior Felony Record

Rule 403 should be amended so that evidence of a defendant's prior felony record would come in regardless of its prejudicial impact. Currently, judges weigh the probative value of a person's prior conviction with the prejudicial effect and generally exclude convictions for the same or similar offenses. To me, this defies common sense and keeps from the jury the one thing they would want to know the most. If the defendant is charged with kidnapping and he has been convicted of kidnapping before, it will be extremely prejudicial to him when the jury learns of this prior conviction. That's because it should be prejudicial to him!

We worry that juries will think it is probable that he committed the second kidnapping just because he committed the first. That's because it IS more probable that he did this kidnapping if he has done the same thing before. To allow him to sit there and act like he would never dream of doing such

a heinous thing is ridiculous. The priors should come in.

Crime Scene Photos

Similarly, the rules generally result in the preclusion of crime scene photos and the like if they are too gruesome or, again, if the probative value is outweighed by the prejudicial effect. I believe there should be no such weighing process, and **the photos and similar evidence should be admitted if proper foundation is established.**

It seems crazy that if a defendant creates an especially violent crime scene he is rewarded by the rules of evidence. The scene of a crime or accident is alleged to have been caused by the defendant. It is prejudicial in the same way that a fingerprint or confession is prejudicial: It reflects badly on him because that is what he did. It should come in.

Admission Upon Graduation

Finally, the least popular of my proposals with the bar has been my contention that students who graduate from the law schools at Arizona State and U of A should not have to take the bar exam to be admitted to practice law in Arizona.

I think that the law schools should and do produce graduates who are adequately trained to practice law. If that's not the case, then we should re-examine what is going on at the law schools. The bar exam should be reserved for those coming from out of state, where we have no control over what is taught at the law schools.

When I proposed this in the nineties, I received overwhelming support from students at the law schools and virtually none anywhere else. The common sentiment was: "I went through it, so why shouldn't they?"

I guess you could say that concerning all of these proposed changes in how we do things. But sometimes just because we've always done it that way isn't really a good reason to keep doing it that way. Sometimes we benefit from stepping back and seeing if common sense doesn't dictate that it is time for a change. **AW**



Grant Woods is a trial lawyer in Phoenix emphasizing complex litigation, plaintiff's personal injury, and government relations. He was Arizona Attorney General from 1991-1999.