

# American Board of Criminal Lawyers

## THE ROUNDTABLE

Vol. MMXI, No. 11

UNITED STATES DISTRICT COURT

October 2011

### Important Notice to the Bar

As of September 1, 1979, in the interests of judicial economy, for the benefit of certain elder members of the bar whose aural capabilities have become impaired through years of listening to their own rhetoric, and in order to further alienate both the press and general public from our judicial system, all judges sitting in this district will discontinue the use of oral rulings from the bench in favor of the visual judicial decision promulgation system. The basic sets of visuals comprising this system are set out below.

Counsel will be expected to understand and comply with this new system of decision promulgation on and after the effective date of this order.

Jackson Mehoff, District Judge.



MOTION  
SUSTAINED



MOTION  
DENIED



ILLEGAL  
MOTION



ILLEGAL  
DELAY



ILLEGAL  
PROCEDURE



ILLEGAL  
SUBSTANCE



MOTION FOR  
ADDITIONAL DISCOVERY  
GRANTED



MOTION FOR  
EXTENSION OF  
TIME DENIED



HEARSAY



LEADING  
THE  
WITNESS



ROUGHING  
THE  
WITNESS



LET'S RECESS



Motion for  
Directed Verdict  
Granted



Motion to  
Award Attorney's  
Fees Denied



Motion to  
Recuse  
Denied

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## Cleveland police officers cleared of charges they assaulted a handcuffed prisoner

James F. McCarty, The Plain Dealer 08/26/2011

CLEVELAND, Ohio -- A Cleveland Municipal Court judge acquitted two city police officers Friday of charges they assaulted a handcuffed suspect and other related misdemeanors.

The verdict ends eight months of controversy for officers Adonna Perez and Lyndsey Bissell, who were charged in connection with a December, 2010 incident with a suspect at the downtown police headquarters. During a bench trial before Judge Marilyn Cassidy, Perez and others testified that the suspect was hostile and warranted restraint. Cassidy studied video from a surveillance camera before reaching her verdict.

Both officers had been charged with misdemeanor counts of violating a suspect's civil rights, assault and dereliction of duty. In addition, Perez was charged with falsification, obstruction of justice and obstruction of official business.

The key pieces of evidence were the video recordings from the early morning hours of Dec. 27, 2010 that captured the officers and their prisoner in the halls of downtown police headquarters. The video had no sound, but showed Lajerica Welch stepping on Perez's foot before the officer slammed the prisoner to the concrete floor. A few minutes later, as the trio exited an elevator on the way to the booking desk, the recordings caught Welch tumbling to the floor, followed by Perez who fell on top of her.

Bissell appeared to be nothing more than an observer on both tapes, but was charged with failing to intervene on behalf of Welch during the altercations. Bissell did not testify, relying on the tapes as proof of her innocence, said defense attorney Gerald Gold.

Perez testified Monday that she felt threatened by Welch. The officer described Welch as being drunk, violent, hostile and verbally abusive when Perez and Bissell picked her up outside a nightclub in the Flats and transported her to jail.

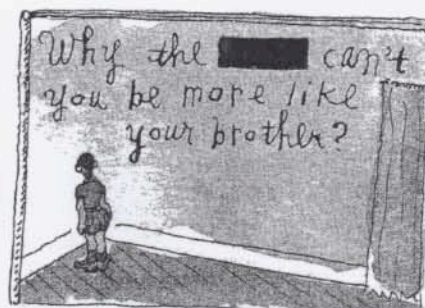
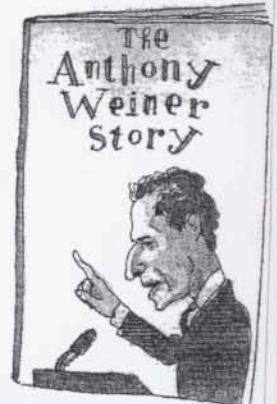
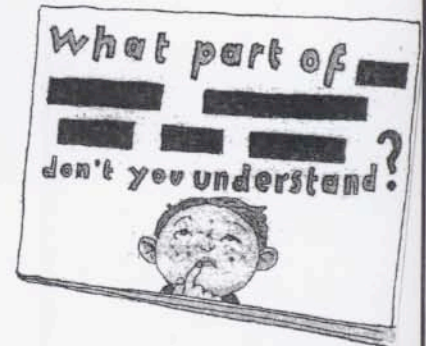
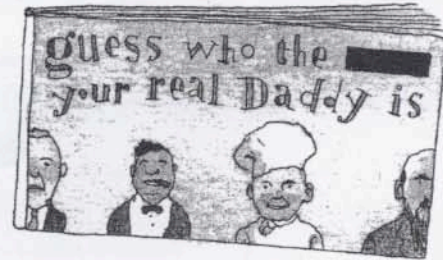
Perez said Welch resisted her attempts to secure her and that she felt she was losing control of the situation. The officer accused Welch of intentionally falling to the floor at the elevator, and pulled Perez down with her. A booking officer testified that she suspected Welch was acting and exaggerating her predicament. Her only injuries were several scrapes.

Welch testified that she did nothing to deserve the violent treatment by Perez. She denied using abusive language or ever being disrespectful toward police officers -- claims that five officers sought to refute, testifying that their encounters with Welch had found her to be belligerent, verbally abusive and uncooperative.

The trial of Perez and Bissell marked one the latest case in a series of brutality accusations made against Cleveland police officers. Federal agents are investigating accusations that four officers assaulted a Cleveland Heights man who police said led them on a New Year's Day chase.

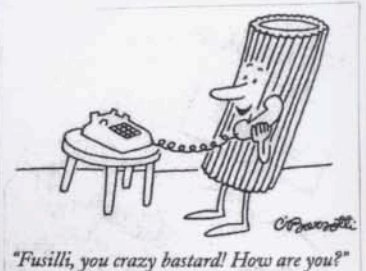
## Not Suitable For Kids Books

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"Fusilli, you crazy bastard! How are you?"



## **CITY DISMISSES CASE AGAINST HOOTERS WAITRESS**

A criminal case against a Hooters waitress that raised questions about the integrity of an investigation by Colorado Springs police was dismissed Wednesday at the request of the City Attorney's Office.

**Pat Mika**, a Springs lawyer who represented waitress Illysa Medina, reiterated his call for a full-scale investigation of the detectives who accused Medina of serving a visibly intoxicated patron on June 23. But Mika said he didn't have a "great deal of confidence" that an investigation would occur based on comments that police Chief Richard Myers made to The Gazette.

"This is a good old fashioned whitewashing," Mika said.

But a police spokesman said the detectives did nothing wrong. "We have no reason to believe that our officers misrepresented what occurred," Sgt. Steve Noblitt said Wednesday. "There was certainly probable cause to make an arrest here," he added.

Detectives with the Metro Vice, Narcotics and Intelligence Division reported that Medina had served a patron at Hooters at The Citadel mall who staggered and used table chairs for balance. But a surveillance videotape cast doubt on the detectives' assertions. Last week, the City Attorney's Office dismissed a separate but related complaint against the restaurant after Hooters produced the video.

Vince Linden, who represented Hooters in front of the city's liquor board, said the video revealed that the patron "never staggered, never used tables and chairs for assistance." "What if I didn't have that tape? How in the world would you even defend yourself from these allegations?" Linden asked last week.

But Noblitt said the video, which the Police Department released to the news media Wednesday, gives a "robotic appearance" because every second is about one frame. "This is not a video of the event," he said. "It's snapshots strung together."

The case against Medina took another twist when the video also revealed that detectives drank beer despite assurances to a Municipal Court judge that they didn't drink alcohol during their investigation at Hooters.

Noblitt said city prosecutor Elliot Fladen made a mistake. "The detectives were clear that in this case, they had been drinking," Noblitt said.

Fladen could not be reached for comment, but in an interview Monday, Fladen said his statements in court and the information he provided in court filings were based on several conversations with the detectives. That's what he told the judge earlier this month, too.

"I spoke with Detective (Jeff) True on multiple occasions regarding this motion," Fladen said. Myers, the police chief, said the discrepancy was rooted in a misunderstanding.

"The officers were answering a question about 'Had they been drinking to the point of intoxication in order to catch this waitress?' and their response was, 'No, no, no, no. It's nothing

like that. We were watching this other person drink,'" Myers said Monday.

Mika, the waitress's attorney, said he believes the City Attorney's Office is being made a scapegoat. He called city prosecutors professional and dedicated to their work.

"I have not had any bad experiences with any of these young men and women that work in this department," he said. "I can only think that somehow they are being hung out a little bit."

Mika had harsh words for Myers and VNI. "This was no mistake. This was not based on any kind of confusion, any kind of misunderstanding," he said. "It's very clear the VNI people deliberately misrepresented information that they gathered that day. We believe that the responses by the chief of police and the supervising detective in that office is political doublespeak. This is a great example of whitewashing a bad investigation."

Medina, a petite woman who looked relieved after the hearing, declined to be interviewed. But Mika said she has endured emotional trauma and distress as a result of the misdemeanor charge.

"We have a group of detectives or VNI officers that conducted themselves, in my opinion, in an improper manner and they took a young lady, a 19-year-old woman who has a small child that she's taking care of, and put her through the ringer," he said.

Fellows,

Two months ago to the day I did not know if there was going to be a next day. It was definatley a terribly difficult time that caused me to dig down to places not previously visited. I am thrilled to report that I walked back into the office today and got back to business. This is several months ahead of the doctors predictions.

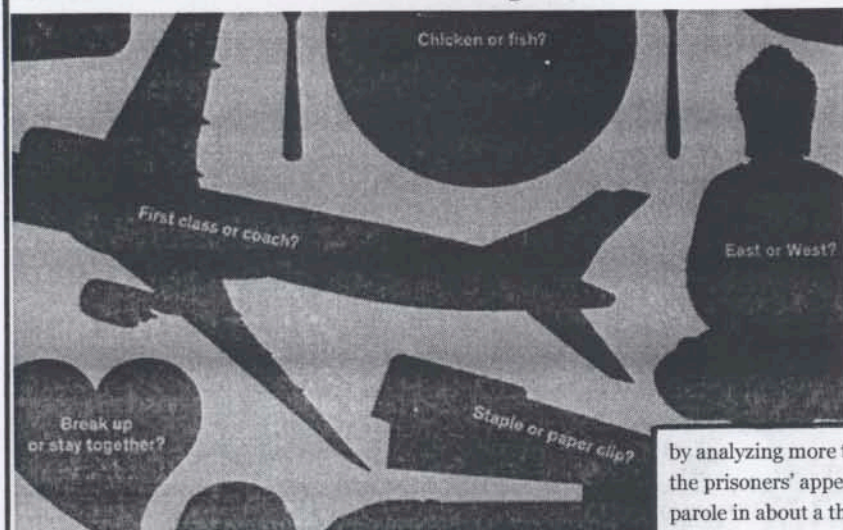
The point of this email is not just to share the good news. It is intended more just to thank so many of you for the continued support throughout this ordeal. Fellows began calling, visiting, and sending gifts from day one. As a new Fellow it was rather overwhelming and made me feel that I was such a part of this wonderful group. My family who was at my bedside were also very touched by the showing of support. I cannot put into words how grateful I am to you folks. It was a time where I really needed to hear words of encouragement and the ABCL came to my aid. The kind gestures helped to carry me and for that I say THANK YOU.

I am humbled and honored to be an ABCL Fellow and call each of you my friend. Please know that I will be there for anyone of you should an unfortunate circumstance also arise. Knock on wood. I am excited to catch-up in DC.

Thank you again. **Ian Friedman**



## Do You Suffer From Decision Fatigue?



By JOHN TIERNEY  
Published: August 17, 2011

Three men doing time in Israeli prisons recently appeared before a parole board consisting of a judge, a criminologist and a social worker. The three prisoners had completed at least two-thirds of their sentences, but the parole board granted freedom to only one of them. Guess which one:

## FUN FACT

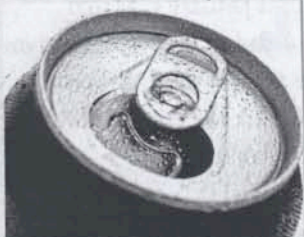
The roots of the word *attorney* go back to the Indo-European, meaning "to turn." The later Latin *attorn* meant "to turn over to another." The earliest attorneys, then, were not necessarily lawyers, but anyone designated to take the place of another in a transaction.

—David Feldman, *Who Put the Butter in Butterfly*

## FRONTIERS IN RESEARCH

## Soda, Salt, and Increased Stroke Risk

People who reported drinking diet soda every day had a 48 percent higher risk of vascular events than those who reported no soda drinking, according to research presented at the American Stroke Association's International Stroke Conference 2011. "If our results are confirmed with future studies, then it would suggest that diet soda may not be the optimal substitute for sugar-sweetened beverages for protection against vascular outcomes," said the study's lead author, Hannah Gardener, a Miller School of Medicine epidemiologist. Gardener and colleagues also found that people who consumed more than 4,000 milligrams of sodium per day had more than double the risk of stroke compared to those consuming fewer than 1,500 mg per day.



Case 1 (heard at 8:50 a.m.): An Arab Israeli serving a 30-month sentence for fraud.

Case 2 (heard at 3:10 p.m.): A Jewish Israeli serving a 16-month sentence for assault.

Case 3 (heard at 4:25 p.m.): An Arab Israeli serving a 30-month sentence for fraud.

There was a pattern to the parole board's decisions, but it wasn't related to the men's ethnic backgrounds, crimes or sentences. It was all about timing, as researchers discovered

by analyzing more than 1,100 decisions over the course of a year. Judges, who would hear the prisoners' appeals and then get advice from the other members of the board, approved parole in about a third of the cases, but the probability of being paroled fluctuated wildly throughout the day. Prisoners who appeared early in the morning received parole about 70 percent of the time, while those who appeared late in the day were paroled less than 10 percent of the time.

The odds favored the prisoner who appeared at 8:50 a.m. — and he did in fact receive parole. But even though the other Arab Israeli prisoner was serving the same sentence for the same crime — fraud — the odds were against him when he appeared (on a different day) at 4:25 in the afternoon. He was denied parole, as was the Jewish Israeli prisoner at 3:10 p.m., whose sentence was shorter than that of the man who was released. They were just asking for parole at the wrong time of day.

There was nothing malicious or even unusual about the judges' behavior, which was reported earlier this year by Jonathan Levav of Stanford and Shai Danziger of Ben-Gurion University. The judges' erratic judgment was due to the occupational hazard of being, as George W. Bush once put it, "the decider." The mental work of ruling on case after case, whatever the individual merits, wore them down. This sort of decision fatigue can make quarterbacks prone to dubious choices late in the game and C.F.O.'s prone to disastrous dalliances late in the evening. It routinely warps the judgment of everyone, executive and nonexecutive, rich and poor — in fact, it can take a special toll on the poor. Yet few people are even aware of it, and researchers are only beginning to understand why it happens and how to counteract it.

Decision fatigue helps explain why ordinarily sensible people get angry at colleagues and families, splurge on clothes, buy junk food at the supermarket and can't resist the dealer's offer to rustproof their new car. No matter how rational and high-minded you try to be, you can't make decision after decision without paying a biological price. It's different from ordinary physical fatigue — you're not consciously aware of being tired — but you're low on mental energy. The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts, usually in either of two very different ways. One shortcut is to become reckless: to act impulsively instead of expending the energy to first think through the consequences. (Sure, tweet that photo! What could go wrong?) The other shortcut is the ultimate energy saver: do nothing. Instead of agonizing over decisions, avoid any choice. Ducking a decision often creates bigger problems in the long run, but for the moment, it eases the mental strain. You start to resist any change, any potentially risky move — like releasing a prisoner who might commit a crime. So the fatigued judge on a parole board takes the easy way out, and the prisoner keeps doing time.

**Decision fatigue** is the newest discovery involving a phenomenon called ego depletion, a term coined by the social psychologist Roy F. Baumeister in homage to a Freudian hypothesis. Freud speculated that the self, or ego, depended on mental activities involving the transfer of energy. He was vague about the details, though, and quite wrong about some of them (like his idea that artists "sublimate" sexual energy into their work, which would imply that adultery should be especially rare at artists' colonies). Freud's energy model of the self was generally ignored until the end of the century, when Baumeister began studying mental discipline in a series of experiments, first at Case Western and then at Florida State University.



# Bevilacqua lawyer has seen lots

The former Phila. archbishop is just the latest high-profile client for Brian McMonagle.

By Chris Mondics  
INQUIRER STAFF WRITER

He's one of a small band of criminal-defense lawyers who have made careers representing high-profile clients who find themselves in the crosshairs of government prosecutors.

Brian McMonagle, arguably has seen it all.

His firm has represented rap artists, athletes, politicians, and police officers accused of crimes. He had a piece of the defense in prosecutions stemming from the investigation of former State Sen. Vincent J. Fumo when he represented a low-ranking political figure caught up in the scandal. Before that, he won an acquittal of John Christmas, a former City Hall official, in the federal probe of the Street administration.

Now, McMonagle is representing Cardinal Anthony J. Bevilacqua as the District Attorney's Office seeks to question the former leader of the Archdiocese of Philadelphia about how he handled allegations of sexual abuse by priests. One of Bevilacqua's top assistants has been charged with endangerment in connec-



CHARLES FOX / Staff Photographer

**Brian McMonagle** near a sketch in his office that shows him in 1989 as a prosecutor at a Nicodemo Scarfo trial.

tion with placing priests in positions where they were able to abuse young parishioners.

He also handled the defense of former Pennsylvania House Speaker John Perzel, who pleaded guilty Aug. 31 to charges of using taxpayer funds to finance computer programs to aid Republican election efforts.

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## COURTS

# Self-defense claim clears man

■ A man accused of killing is cleared in what is believed to be the first case tossed out under the Stand Your Ground Law.

BY DAVID OVALLE  
dovalle@miamiherald.com

A Hialeah man was justified in fatally shooting a man during a confrontation at an apartment in April, a Miami-Dade judge ruled Friday.

Judge Rosa Rodriguez's ruling is believed to be the first murder case to be tossed out by a Miami-Dade court under the state's controversial 2005 Stand Your Ground law.

The law eliminated a citizen's duty to retreat in the face of grave danger and al-

so bestowed immunity to that citizen. But the vaguely-worded law threw courts across the state into confusion as law enforcement said it would give criminals cover to commit murder.

In December, the Florida Supreme Court ruled that judges should be the ones to decide on immunity claims before trial. Rodriguez did just that Friday, clearing Alexander Lopez-Lima, 18, of a charge of second-degree murder.

He claimed that Andres Perez and Ricardo Jimeno, both acquaintances, came to his apartment in the 2400 block of West 76th Street to smoke marijuana.

Defense lawyer Jeffrey Weiner said the two men

tried to rob him, beating him savagely, fracturing his nose and causing "significant injuries." The two attackers ran from the apartment but could not get out of the complex, he said, returning to the apartment to again attack Lopez-Lima.

"It was then, and only then, fearing what would happen next, that the defendant acted in his own defense," Weiner wrote in court filings.

Lopez-Lima shot Jimeno once, underneath the chin, at close range.

"This case is a horrible tragedy for everyone concerned. The judge, however, clearly followed the law," Weiner said on Friday.

Hialeah police and prosecutors say Lopez-Lima

gave five vastly different versions of events to detectives and on the stand at a hearing earlier this month. After Lopez-Lima killed Jimeno, he also planted a gun next to the dead man and planted marijuana on his chest.

Miami-Dade prosecutors believe Lopez-Lima lost a fistfight with Perez and simply shot his pal Jimeno out of spite. In his first statement to police, Lopez-Lima expressed regret — that he didn't kill Perez.

"I know Ricardo had the best heart out of all of them," Lopez-Lima said in a statement. "I wish [it] could have been Andrew, to tell you the truth, 'cause I know how [he] is."



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## The RoundTable

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## Future Meetings

October 14-15, 2011: Ritz Carlton, Washington, DC

February 10-12, 2012: Atlantis Hotel, Nassau

June 22-24, 2012: Broadmoor Resort, Colorado Springs, CO

October 4-6, 2012: St. Regis, Dana Point, CA

## The RoundTable

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