



American Board of Criminal Lawyers
THE ROUNDTABLE



Vol. MMXIII, No. Nine

August 2013

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- October 11 - 13, 2013

THE ANNUAL MEETING AND BLACK TIE DINNER WILL BE IN ATLANTA. AS IN VANCOUVER, WE WILL BE BASED AT THE FOUR SEASONS, A BEAUTIFUL HOTEL IN THE HEART OF THE MIDTOWN AREA. THE GEORGIA FELLOWS ARE UNITED IN OUR PLAN TO SHOW YOU A GREAT TIME AND TO SHOW OFF OUR SOUTHERN HOSPITALITY. COME IN THURSDAY AND WE WILL HAVE SOME DISTINCTLY SOUTHERN FUN. FRIDAY NIGHT WILL BE THE USUAL "HEAVY HORS D'OEUVRES" AT THE FOUR SEASONS. ATLANTA IS BECOMING RENOWNED FOR OUR CHEFS SO, FOR SATURDAY, WE WILL ARRANGE RESERVATIONS AT SOME OF THE CITY'S BEST RESTAURANTS. SUNDAY, OUR DINNER WILL BE AT THE CITY'S PREMIER SPACE, THE ATLANTA BOTANICAL GARDEN. IT IS A WONDERFUL FACILITY, CLOSE TO THE HOTEL, THAT SHOWCASES THE SKYLINE AMID A TRULY WORLD CLASS GARDEN. SO JOIN US AND PLAN TO DANCE THE NIGHT AWAY! WE ARE ALSO WORKING ON DAYTIME EVENTS THAT WILL TAKE YOU THROUGH SOME OF THE WONDERFUL AND MORE OUT OF THE WAY PARTS OF OUR GREAT CITY.



Martin Pinales and Candace Crouse Secure New Trial for Client in Federal Racketeering and Money Laundering Case

Pinales Stachler attorneys, Martin Pinales and Candace Crouse, are pleased to report that after years of litigation, the United States Court of Appeals for the Sixth Circuit agreed that the 2010 trial of their client, Russell Cletus Maricle, and seven co-defendants, was so fraught with error that it rendered their trial fundamentally unfair. Maricle's 26-year prison sentence for racketeering, money laundering, and obstruction of justice was vacated and the case remanded for a new trial. The Sixth Circuit held:

The government charged a RICO conspiracy lasting from 2002 to 2007. In its attempt to prove that defendants were part of an enterprise involved with vote buying, the government was permitted to present evidence of profuse drug dealing in the 1980s and 1990s in Clay County, even though there was no evidence that drug money was used to buy votes in the charged conspiracy. The district court also admitted evidence that witnesses had been intimidated, even though the

defendants were involved with the intimidation. The erroneous admission of this evidence caused great prejudice to defendants. With regard to direct evidence, the district court made its first error by injecting itself into the fact-finding process by making unprompted, substantive changes to the government's transcripts. These transcripts also contained glaring inaccuracies that should have been left untranscribed. Finally, the admission of hearsay accusations should have been excluded under Rule 403 because their probative value was exceptionally minimal in comparison to the danger of unfair prejudice. Given that the government was able to paint an unfair picture of defendants and offer direct prejudicial evidence that should have been excluded, we remand the case for a new trial.

We note that this conclusion is bolstered by several other factors. First, Jones's and Thompson's convictions for honest-services mail fraud (Counts 3, 5, 6, and 7) have been vacated by the district court because they did not involve a bribery or kickback scheme. Second, the district court granted post-trial motions for judgment of acquittal from Jones and Stivers, finding insufficient evidence to support their

convictions of attempted extortion (Count 4). Third, the government concedes that defendants' conspiracy to money launder (Count 2) and the related forfeiture count (Count 13) rest on an invalid theory and should be vacated, and we agree. Finally, the district court committed two

additional errors: (1) the limitation of cross-examination of Mike Bishop and (2) the failure to instruct properly the jury regarding the testimony of Agents Sagrecy and Briggs. We address both errors below so that they may be corrected on remand; however, we need not determine whether either error constitutes plain error because remand is appropriate without these additional errors.

For the Sixth Circuit opinion click here:

<http://www.ca6.uscourts.gov/opinions.pdf/13a0179p>

Martin Pinales and Candace Crouse specialize in federal white collar trials and appeals. They can be reached at (513) 252-2750.



Michael Hudson Ellis Sr.



ELLIS Michael Hudson Ellis, Sr. entered into eternal rest at his home, surrounded by his family on, December 20, 2012 in Kenner, Louisiana after a courageous 12 year battle with cancer. Mike was born in New Orleans on February 12, 1944. Son of the late Everett J. Ellis, Jr and Louise Patricia Pozzi Richardson. Preceded in death by his brother, Everett J. Ellis, III. Survived by his beloved wife Kelly Macheca Ellis, her son Brandon John Macheca, his children Michael Hudson Ellis, Jr. (Jennifer), Shannon Ellis Gunther (Albert William "Billy"), their mother Carol Chetta Ellis, and his father in law John R. Macheca, Sr. Mike will always be "Pops" to his grandchildren, Michael Case Ellis, Regan Andree Ellis, Bowen Christopher Ellis, Grayson Ellis Gunther, Martha Brooks Gunther, Albert William Gunther, IV and Michael Hudson Gunther. Mike was looking forward to the birth of an additional grandchild to be born within the next few months. Mike attended Spring Hill College and received his Juris Doctorate from Tulane University in 1968 and was admitted to the bar the same year and practiced law until he retired in 2011.

Mike was an assistant district attorney for the Parish of Orleans and went on to be an Assistant United States Attorney for the Eastern District of Louisiana, where he was the chief of the Criminal Division. Mike returned to the Orleans Parish District Attorney's Office as Chief of Trials in all sections of court. He was a founding partner of Chehardy, Sherman, Ellis, Murray, Recile, Stakelum and Hayes in Metairie, LA. Mike was an accomplished attorney with years of successful practice. However, his greatest pride was found with his wife, children, step-son and grandchildren. He was a proud board member of Boys Hope-Girls Hope and a former chairman of the Leukemia and Lymphoma Society's Lite the Night; as well as many other charitable organizations. He was a member of Divine Mercy Catholic Parish and was a true believer in giving back to his community and helping those in need. Relatives and friends are invited to share in a celebration of Mike's life at Holy Name of Jesus Catholic Church in New Orleans, LA on Wednesday, December 26, at 12:00 pm. Visitation will be from 10:00 to 12:00 pm with a Funeral Mass to follow. In lieu of flowers, donations may be made to Boys Hope-Girls Hope of Louisiana. To sign the family guest book please visit www.lakelawmetairie.com.

New York City **DNAinfo.com** New York

See more: Bill Wren, Cy Vance, Darlene Mealy, Mohammed Aziz, Willie Wren, Manhattan Civil Supreme Court, Manhattan Criminal Court, Central Brooklyn Community Services, Delight Throop Housing Development Fund, Delight Construction, Department of Investigation, Investigation, lawsuit, Manhattan District Attorney, Miracle Makers, Probe

Manhattan DA Probed Pay-to-Play Scheme Involving Pols, Contractor Arrested

April 11, 2013 6:57am | By Jill Colvin and James Farrell

NEW YORK CITY — For the past two years, the Manhattan District Attorney's office and city investigators conducted a pay-to-play probe of elected officials that led to at least one arrest of a contractor who tried to bribe a city councilwoman, DNAinfo.com New York has learned.

The probe — involving a cooperating witness who once held a top job in City Councilman Al Vann's office — has focused on whether officials accept campaign contributions in exchange for favors, including using their political sway to help private firms obtain lucrative city contracts.

As a result of the probe, investigators busted a Bangladeshi-born contractor who has been a major donor to local politicians for trying to give \$5,000 in cash to Brooklyn City Councilwoman Darlene Mealy in exchange for her help in securing a contract with the Department of Housing Preservation and Development.

Mealy, a Democrat who represents Bedford-Stuyvesant, has not been accused of any wrongdoing and denied to DNAinfo any knowledge of the investigation.

The contractor, Mohammed Aziz, pleaded guilty on Dec. 11, 2012, to a misdemeanor charge of criminal facilitation. He got no jail time but agreed to pay a \$1,000 fine, according to court records.

Aziz, 55, was caught on a tape recording on Sept. 23, 2011, giving the cooperating witness, identified by sources as Bill Wren, the cash at the corner of South Street and Malden Lane in lower Manhattan, according to the criminal complaint.

A former deputy chief of staff for Vann who now runs Bedford-Stuyvesant-based nonprofits with HPD contracts, Wren pretended to act as a middleman for Mealy and claimed she would write a letter of support for a contract that Aziz's firm, Delight Construction Corp., was bidding on, according to the complaint and sources.

The Manhattan DA's Office and the city's Department of Investigation declined to comment on the case and wouldn't say whether the probe has concluded and if other arrests were made.

Thomas F. Liotti, Aziz's lawyer, told DNAinfo that his client provided information to the DA's office after getting caught and was instructed to keep quiet about the investigation.

Aziz claims his English is limited and that he didn't know he was doing anything wrong when he handed the \$5,000 to Wren. Despite Aziz's guilty plea, the lawsuit describes the case against him as "borderline entrapment."

Liotti, Aziz's lawyer, said his client simply thought he would get a letter of support to bolster his contract bid.

"Sometimes these letters from public officials, I gather, make a difference on bidding on contracts," Liotti said.

SCHMUCKS FOR SCHMUCK

NEW YORK—Saying he could no longer stand idly by while a vital part of American culture is lost forever, activist and Broadway producer Mel Brooks has founded a private nonprofit organization dedicated to preserving the word "schmuck."

An emotional Brooks stopped short of kvetching at a schmuck fundraiser Monday.

"Schmuck is dying," a sober Brooks said during a 2,000-person rally held in his hometown of Williamsburg, Brooklyn Monday. "For many of us, saying 'schmuck' is a way of life. Yet when I walk down the street and see people behaving in foolish, pathetic, or otherwise schmucky ways, I hear only the words 'prick' and 'douche bag.' I just shake my head and think, 'I don't want to live in a world like this.'"

The nonprofit, Schmucks For Schmuck, has compiled schmuck-related data from the past 80 years and conducted its own independent research on contemporary "schmuck" usage. According to Brooks, the statistics are frightening: Utterances of the word "schmuck" have declined every year since its peak in 1951, and in 2006, the word was spoken a mere 28 times—17 of these times by Brooks himself. The study indicates that today, when faced with a situation in which one can use a targeted or self-deprecating insult to convey a general feeling of disgust, people are 50 times more likely to use the word "jerk" than "schmuck," 100 times more likely to use "dick," and 15,000 times more likely to use "fucking asshole."

Perhaps more startling, only 23 percent of men know what schmuck means, and only 1.2 percent of these men are under the age of 78. If such trends continue, Brooks estimates that by 2011, such lesser-used terms as "imbecile," "dummy," "schlub," and "contemptible ne'er-do-well" will all surpass schmuck, which is projected to completely disappear by the year 2020 or whenever Brooks dies.

"We must save this word!" Brooks said to thunderous applause as those in attendance began chanting "Schmuck! Schmuck! Schmuck!" "How will we be able to charmingly describe someone who acts in an inappropriate manner? Especially given the tragic loss of the word 'schmegeggy' in 2001. So I urge you: Tonight, when you get home, please, call up your family, your friends, your loved ones, and tell them they're a bunch of schmucks."

Hundreds turned out at a Boca Raton, FL demonstration to show their support for the dying word.

"I've never told anyone this before," Brooks added, choking back tears, "but my father was a schmuck."

The foundation has already raised more than \$20 million, thanks to donations from supporters such as Jackie Mason, Albert Brooks, the Schtupp Institute, Sen. Russ Feingold (D-WI), and the Henny Youngman Endowment for the Preservation of Schmekel. The money will go toward projects aimed at reintegrating "schmuck" into the English lexicon, including billboards and flyers plastered with the word "schmuck," the upcoming 5K Schlep for Schmuck Awareness, and a new Mel Brooks film.

"The world cannot afford to lose this valuable and versatile word," Brooks told reporters during a charity auction in Manhattan's Upper West Side Tuesday, where attendees bid for the chance to have a private lunch with Brooks and repeatedly call him a schmuck. "You can be a poor schmuck, a lazy schmuck, a dumb schmuck, or just a plain old schmuck. A group of people can be collectively referred to as schmucks. You can call someone a schmuck, and you can be called a schmuck. You can even call yourself a schmuck."

"Plus, it's just so fun to say," Brooks added. "Schmuck."

Many of the foundation's volunteers say they share Brooks' passion for the word "schmuck," as well as his outrage that it is slowly disappearing from everyday use. They claim that if they do not act now, the trend could create a snowball effect.

"Today it's schmuck, tomorrow it might be toochis," said SFS volunteer Harry Steinbergmann, 82. "What's next, schlemiel? Putz? Schlimazel?" Steinbergmann went on to classify this scenario as farcockteh.

NEW THINK

THE **WALZING** IDEAS THAT SHAPE OUR WORLD • EDITED BY JASON CHEN

ON LANGUAGE

GLOSSARY

Ammon Shea helps navigate a patois.



MANSPLAIN

To condescendingly explain (a man to a woman).

"Mansplain" is a word of decidedly recent coinage (often applied to subjects like sports or politics), which is not to say the concept it describes is a new one. The word has been used in blogs since 2008, although it was not until late in 2010 that it first appeared in a book or newspaper, when Canada's *The Globe and Mail* used it in an article titled "Putting the 'Men' in Menstrual."



PREPPER

A person concerned about incipient forms of disaster and whose level of preparedness is extremely high.

Ranging from people who stash extra food to others who create underground shelters, "preppers" have been subject to much attention and derision in recent years (some of it due to the television show *Doomsday Preppers*). The group has its own rich tradition of jargon: **TEOTWAWKI** (the end of the world as we know it) and **WROL** (without rule of law) are just two examples.



-OTUS

A suffix, in wide use, appended to various initials and serving to indicate "of the United States."

"Of the United States" may not seem like such an unruly mouthful, but variants of the shortened version, such as "POTUS" and "SCOTUS," have been in use since the 19th century. Recently, new "-OTUS" forms have sprung up, primarily on Twitter. They are "COTUS" and "TOTUS," with the initial acronym letters referring to "Constitution" and "teleprompter," respectively. These are often used largely in an opprobrious fashion when referring to President Obama.



PAY FENCE

An Internet paywall that is easily penetrated.

"Pay fence" is a recent variation of "paywall" (in use since at least 2003), which denotes something that cannot be opened unless one pays. There is a trend with words to attach an affix that is less drastic as the concept changes; thus, "pay fence" refers to Internet content that is behind a fairly porous and ineffective paywall—it can be accessed but only with a certain degree of effort. One imagines that if this trend continues, we will have variants along the lines of "pay hedge" and "pay curb."



#TBT

A Twitter hashtag that is an abbreviation of "throwback Thursday" and used to designate photographs that were taken in the past.

#TBT is yet another of those prickly little initialisms that Twitter spawns of which it is unclear whether the intended use is to help young people navigate the content of the site or to annoy older people who do not understand what it means. It should not be confused with #OOME (one of my followers) or #TCOT (top conservatives on Twitter).

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