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American Board of Criminal Lawyers
THE ROUNDTABLE



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POINT & COUNTERPOINT

POINT

From: Michael Pancer

Dick DeGuerin, along with counsel Brent Mayr just won a highly publicized Intoxicated Vehicular Manslaughter case in El Paso. The trial was covered by the El Paso times if you want details. It was a high pressure trial in that the Defendant was the son of close friends of Dick and could have faced 20 years in custody. Dick deserves a great deal of credit for accepting a case which in addition to the ordinary pressures of trial he was willing to take on the responsibility for people close to him. I hear the prosecutor was vicious and did not take defeat well.

COUNTERPOINT

From: Chuck Watson

Having been punched in the face by a jury after a long trial, and deliberations, yesterday, I'm glad Dick DeGuerin is still in the water with me. Well, I say water, but the pool bottom felt pretty dry when my face hit it.

Up here, they aren't quite ready for amnestic dissociation defenses in cases where there's blood on the floor, but they came in sobbing, after two full days, so I'll try again.

My defense was basically this quote, by Theodore Parker:

Look at the facts of the world. You see a continual and progressive triumph of the right. I do not pretend to understand the moral universe; the arc is a long one, my eye reaches but little ways; I cannot calculate the curve and complete the figure by the experience of sight; I can divine it by conscience. And from what I see I am sure it bends towards justice. Things refuse to be mismanaged long. Circa 1855

I won a VM case in June, but it should never have been brought. Now I have two lawsuits on that.

Thanks for keeping me company, and inspiring me, folks. See you in Atlanta, Dick.

Chuck

GARDENING TIP OF THE MONTH

(courtesy of Monroe Freedman)

"The vilest deeds like poison weeds,/Bloom well in prison-air;/It is only what is good in man/That wastes and withers there."

— Oscar Wilde, The Ballad of Reading Gaol

QUOTE OF THE MONTH:

"How can you be a grand jury judge when you're dealing with an attorney general you have significant differences with?"

— Judge Barry Feudale, after being ousted as supervising judge of grand jury, by Pennsylvania Supreme Court, on petition of current Attorney General, a Democrat, alleging the judge was too close to veteran prosecutors who had served under the former Attorney General, a Republican, now Governor

Flamboyant ABCL Fellow ROBERT "COWBOY BOB" CLARK, who claims he was yelling charge when Custer was throwing in the towel, has been enjoying a self imposed sabbatical for the past six months at a rented house with his dogs near the Mississippi line in Western Mobile County, Alabama. He spends his evenings at The Boondocks, a quaint honky-tonk near his home, regaling the patrons with stories of his trial prowess. Cowboy returned to court this week long enough to obtain a Not Guilty verdict in a murder trial.

Yes, he is being insufferable in the office and we hope he rides off into the sunset at our earliest possible convenience. **T. Jeff Deen**

From: Ian Friedman

Subject: Congrats to Roger

Well, our dear friend Roger Synenberg certainly deserves this long weekend to rest. After 4 days plus of deliberation, the jury came back with an acquittal in an Aggravated Murder trial here in Cleveland. It was a self-defense case with a former police officer shooting his nephew during a dispute. Great job Roger!! Enjoy your three day weekend.

Michael Stout was selected as chair of the newly-formed New Mexico Public Defender Commission during the Commission's first meeting in Albuquerque.

Victor Hill not guilty; will remain Clayton Sheriff

(With a little help from Drew Findling)

Clayton County Sheriff Victor Hill has been cleared of 27 felony charges that threatened to end the lawman's career with a prison cell.

With the "not guilty" verdict on all charges, Hill can have the suspension of his law enforcement certification lifted and he can put behind him what he repeatedly called a politically-motivated prosecution.

After each count was read and the jury foreman delivered "not guilty" verdicts on each charge, Hill joined his attorneys for a group hug. After being told not to react to the verdict inside the courtroom, several Hill supporters went retreated to the hallway and cheered.

Prosecutors declined comment immediately after the verdict. The jury foreman, Markeith Crabb, told Channel 2 Action News, the prosecution failed to make its case.

"A lot of evidence wasn't presented to find him guilty," said Crabb, a 32-year-old rap artist.

Had Hill been convicted of all 27 charges — including racketeering, theft by taking, making false statements and violating his oath of office — he could have been sentenced to 455 years in prison.

Hill did not speak to reporters after the verdict and he did not join his defense team for a news conference in which they called Hill's prosecution "ridiculous, despicable and unconstitutional."

The case against the 48-year-old Hill was that he used his office — the first time he held it between 2004 and 2008 — for personal gain.

Prosecutors presented evidence that Hill drove his county-issued cars on out-of-state vacations, taking with him female companions who also worked for him. He used his county issued credit card to buy gas while on the road, to buy electronics during his trip to south Florida the day after he lost his 2008 re-election bid and to pay \$140 toward the cost of renting a three-bedroom cabin in Helen in the north Georgia mountains.

He was also charged with stealing from taxpayers when he had one of his traveling companions classified as on paid administrative leave and out sick so she could continue to get her county salary while vacationing with the sheriff.

The last of the charges accused Hill of having his then-spokesman Jonathan Newton work on his autobiography during county work hours and of steering kickbacks from a publisher to Newton.

The jury, composed of a white man, an Asian man, three black women and seven black men deliberated two hours on Wednesday and then all day Thursday before they reached their decision.

U.S. attorney moves to dismiss case against Kentucky man accused of rape on cruise ship

By AMANDA NORRIS
Daily News Staff

ST. THOMAS — The United States Attorney's office has filed a motion to dismiss the sexual assault charge against Conner Layne, of Kentucky.

Layne was arrested by FBI agents in St. Thomas following an 18-year-old woman's complaint that he tried to rape her while on board the Carnival Dream.

The cruise ship docked at Havensight on June 4, but the encounter took place while the ship was in international waters earlier that day, according to court documents.

The motion requests the assault charge be dismissed "in the interest of justice without prejudice." The order to dismiss has not been granted yet.

In District Court on Wednesday, Magistrate Judge Ruth Miller said the order would be forwarded to Chief District Judge Curtis Gomez for consideration.

According to an affidavit written by FBI special agent Rafael Fernandez, the woman told Fernandez that she and Layne were having drinks in the ship's club when Layne invited her back to his room.

Once there, she had another drink and sat on the bed, and she and Layne began kissing and Layne started "touching her about the body," according to the affidavit.

Layne then forcibly "held her down, pulled up her dress, pulled down her underwear and penetrated her with his penis," the victim told Fernandez.

The woman said that because Layne was intoxicated, she was able

to push him off of her, and she ran out of the room, the affidavit states.

Layne, who was 19 at the time of his arrest, was released from custody after posting a \$10,000 unsecured appearance bond and was allowed to return home to Kentucky. He pleaded not guilty to the charge July 17.

Brian Bieber, an attorney who represents Layne, said he could not comment on the specific reasons for the dismissal.

"We are extremely pleased with the result," Bieber said. "We understand that prosecutors had several sensitive factors to consider and frankly balanced all of these in an appropriate fashion. Due to the confidential nature of the matter, commenting on specifics would be inappropriate."

— Contact Amanda Norris at 714-9104 or email anorris@dailynews.it

Our Inalienable Rights Can Never Be Recovered **(Monroe Freedman)**

The title of a Max Frankel opinion piece says it all: "Where Did Our 'Inalienable Rights' Go?" The point is that they are gone, irretrievably so. We are living in what Senator Ron Wyden has called "an always expanding, omnipresent surveillance state." The Surveillance State dragnets the lifestyles and beliefs of each of us — political views, associations, books and periodicals, friends, acquaintances, medical concerns, sexual proclivities, marital relations, and religious worship and beliefs.

The surveillance network consists of numerous government agencies, among others, the National Security Agency, the CIA, the FBI, the Drug Enforcement Agency, the United States Postal Service, and state law enforcement. It also includes private international corporations, like the government contractor, Booz, Allen, Hamilton, where Edward Snowden worked and obtained the secret documents that he released. Moreover, foreign governments, having first expressed shock that such things were going on, have been shown to have been complicit in it.

The Surveillance State's dragnets can never be removed or even restricted, and those "inalienable rights" can never be recovered. The dragnets are protected by secrecy, lies, blackmail, financial and political extortion, torture, defamation, prosecutions, imprisonment without due process, and a lack of any effective safeguards. In a congressional hearing, when Senator Ron Wyden asked the NSA director whether the agency was collecting data on Americans' phone calls, the NSA chief falsely denied it. After his lie had been exposed, he admitted it, with no apparent embarrassment.

When Edward Snowden released the documents that revealed the existence of the problem, President Obama said that he was pleased that a healthy debate had started. He then promptly smeared and hounded Snowden for having started the debate. In addition, the government tried to obtain the death penalty and, in the alternative, 136 years in prison, to punish another whistle-blower, Pfc. Bradley Manning. The leak by Manning was investigated by a Defense Intelligence Agency task force led by General Robert A. Carr. When asked by Manning's lawyer whether he was aware of anyone harmed by Manning's leak, the General named only an Afghan national killed by the Taliban. Under questioning, he acknowledged that the Afghan's name had not been in any of Manning's documents. While waiting 16 weeks for his trial to begin, Manning was stripped of his clothes and held in solitary confinement. And N.Y. Times reporter James Risen has been threatened with jail for refusing to reveal the sources for his exposés of the surveillance.

Some members of Congress have complained that the surveillance network has violated legislation intended to restrict their activities. Without recognizing the irony, they have proposed new legislation to accomplish the same thing. One proposal is to broaden the backgrounds of the judges on

the Foreign Intelligence Surveillance Court; another is to allow an adversary, with clearance from the government, to argue against the government's requests for permission to conduct electronic surveillance. But the FISC has been, and will remain, a useless check on the executive, just as the legislature has proven to be. In 2012, the government made 1,789 requests to the FISC. All were approved, except one that the government withdrew. But no one outside the executive department knows whether the government is making requests in all cases or whether it would obey the FISC if permission were denied.

The executive branch's lies extend to arguments before the Supreme Court. When human rights groups, lawyers, and reporters sought to challenge a law permitting secrecy about surveillance, Solicitor General Donald Verilli Jr. argued that they lacked standing to sue because they could not show harm to themselves from the program. In response to a question from the bench, Verilli assured the Court that if the government should ever use information gathered under the program in a criminal prosecution, the government would have to disclose its intention to use the information in advance of doing so, and the defendant would then have standing to challenge the program. Justice Samuel Alito, in a 5-4 opinion for the Court, expressly adopted that assurance to justify dismissal of the suit.

Thereafter, Senator Dianne Feinstein stated that information from surveillance had subsequently been used in two separate federal prosecutions. In fact, however, in both those cases, the government has successfully refused to reveal the information to the defendant.

Drones have been used overseas for surveillance and even to kill American citizens without any semblance of due process. Drones are also proliferating within the United States for surveillance by federal and state law enforcement agencies. Technologically advanced drones can now be shrunk to the size of a quarter, with infrared cameras, sensors that can spot movement, and automatic license-plate readers. Drones with astonishing accuracy and speed, capable of real-time video, have been reduced to the size of a hummingbird. Biometric identifiers can be equipped with software that can identify fingerprints, iris scans, voice data, and face-recognition photos. And Attorney General Eric Holder has said in a letter to Senator Rand Paul: "It is possible, I suppose, to imagine an extraordinary circumstance in which it would be necessary and appropriate under the Constitution and applicable laws of the United States for the President to authorize the military to use lethal force within the territory of the United States."

We live in a Surveillance State in a Surveillance World. It is ever-expanding and omnipresent. It can never be removed or restricted, and our Constitution, with its Bill of Rights and separation of powers, has been lost forever.

Bobby Lee Cook

One of America's most feared and revered trial lawyers lives in Summerville

By Dirk NeSmith

If the aluminum foil was crumpled and applied just right to the rabbit ears—pointing toward Savannah—Perry Mason appeared in frosted, black and white shades, courtesy of the CBS affiliate, WTOG. I can still hear the *insanefakecamp, insanefakecamp* of the theme song that warned us to scramble for a seat in front of our 21-inch Majestic TV.

Missing Perry championing prosecutor Hamilton Burger, week after week, would have been as weird as Mother not putting pot roast, potatoes and carrots on the Sunday lunch table. Perry and pot roast were two staples in our small funeral-home apartment. Those weekly episodes got me hooked on courtroom drama. No wonder kids like me wanted to be a trial attorney. I really toyed with that notion, but that's another story.

In 1986, CBS introduced Ben Matlock. And when Andy Griffith, a.k.a. Matlock, lawyered in his seersucker suit, you could count on Big Dirk to be kicked back in his Lazy Boy and watching the Atlanta lawyer pull tricks out of his briefcase, Perry Mason-style. About that time, I heard the inspiration for the television series lived in Northwest Georgia. I made a note: One day, meet Bobby Lee Cook.

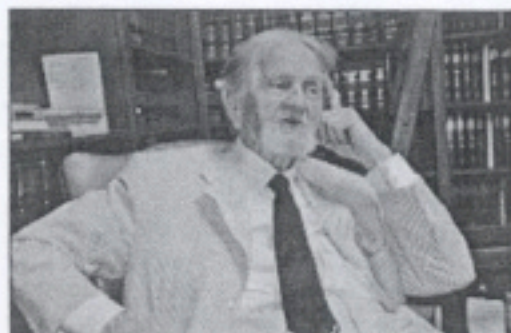
Calendar got crowded, but on July 12th, I was able to check that to-do off my list. Larry Walker and I embarked on our Legends Tour, visiting one-time DOT commissioner Ben Lance, former Gov. Zell Miller and First Lady Shirley Miller, with a stop in Summerville sandwiched between. Larry, a Houston County attorney, had collaborated with Bobby Lee before, so he set up our appointment.

We arrived at 9899 Commerce Street 15 minutes early and walked through a wrought-iron gate, into a garden, leading to the front door of Cook & Connelly. Bobby Lee was waiting, in his seersucker suit. His office is not typical of what you'd find behind a small-town lawyer's shingle. Bobby Lee was gracious as he allowed us—mostly me—to walk around peering at the high, arched ceilings, the art, the fireplace in his office and the books—thousands of books.

Eventually, we settled into the firm's library. Bobby Lee stroked his goatee as we absorbed the setting. The dome of the round room was about 20 feet from the carpeted floor. Over the circular conference table hung an eclectic chandelier with round light bulbs. An oak ladder with wheels could be used to access the 16-high shelves that wrapped around the room. I did the math—4,800 books, minimum. Larry asked, "Bobby Lee, have you read them all?" Our host chuckled, "Most of them. But our young lawyers just get their answers from computers."

For the next 75 minutes, the 86-year-old entertained us with his globetrotting courtroom jaunts from Vietnam to Germany. He's won cases in 40 states and numerous foreign countries. Like Perry Mason and Ben Matlock, Bobby Lee is famous for surprise tactics that more often than not let his clients walk free. If you called the roll of America's most feared and revered trial lawyers, the senior partner in Cook & Connelly would probably be on the list.

Faming that reputation did not come easily for the most famous citizen among Summerville's 4,500 residents. Bobby Lee has scrapped one case at a time, winning over 90 percent of 300-plus murder trials.



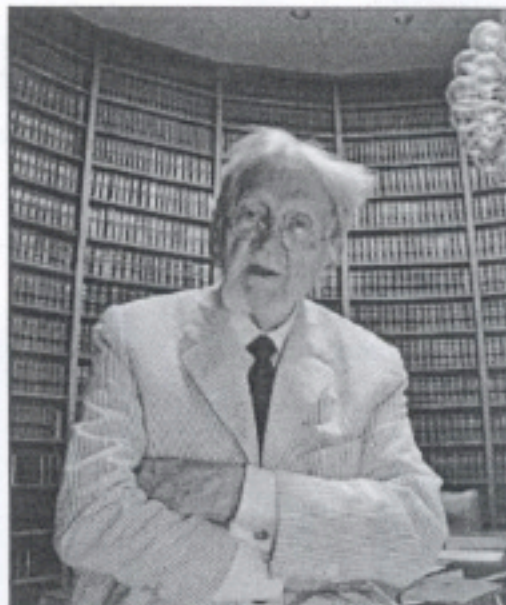
"If you can railroad a bad man to prison, you can railroad a good man," said Bobby Lee Cook in an article in the *American Bar Association Journal*. Like Ben Matlock of the late 1980s and early 1990s TV series, Summerville's Bobby Lee Cook prefers seersucker suits in the summer. Popular belief is that Cook was the inspiration behind CBS's creation of Matlock.

The Rockefellers and Carnegies were his clients, too, when they clashed with the federal government over Cumberland Island holdings. Guess who won.

Fame and fortune rewarded Bobby Lee with a chauffeur-driven Rolls Royce to take him to his Sea Island home, but he's just as apt to take on a pro bono case to slug out his client's right to a fair trial. (Google Bobby Lee Cook, and read Mark Curriden's "If you can railroad a bad man to prison, you can railroad a good man." It's in the *American Bar Association Journal*.)

Before Larry and I departed for Young Harris to visit with the Millers, I had to ask, "I've always heard that the Matlock series was patterned after you. Is that right?" With gold, wire-rimmed reading glasses perched on the tip of his nose, Bobby Lee closed his eyes and fingered the whiskers on his chin. He waited a minute and then leaned forward, so that I could see the mischief dance in his robin egg blue eyes. With a devilish smile, the legendary lawyer said, "Well, they did use a lot of my cases."

dirksmith@calnewspapers.com



The Cook & Connelly law library has 4,800-plus volumes. When Larry Walker asked Bobby Lee Cook, "Have you read all of those books?" The famous trial lawyer, who is 86, said, "Most of them. But our young lawyers just get their answers from computers."



Bobby Lee Cook, left, earned his law degree from Vanderbilt University and hung out his shingle in his hometown of Summerville. On July 12th, Larry Walker, right, and I visited with one of America's most famous trial lawyers. Cook has won roughly 90 percent of 300-plus murder cases. His skills are legendary, drawing clients from 40 states and across the globe.

The Nominating Committee has met and tenders the following Nominees for our Annual Meeting.

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Vice President (to replace Rion) Blair Berk
Board of governors (to replace Berk) Hugh Keefe

From: "Bruce Maloy"

Her client was deemed a big victory in the 11th Circuit. Agne Krutules, a lawyer at Maloy Jenkins Parker, won a big victory in the 11th Circuit career offender at 21 because he had a prior drug conviction and had been convicted of having consensual sex with a 14 year old when he was 18. That doubled his sentence. The issue Agne won was being able to raise this change in the law on a 2255. Spencer had lost on this point in the District Court and on direct appeal. Later the U.S. Supreme court ruled that teens having sex wasn't a crime of violence. Congratulations to Agne. She was appointed by the 11th Circuit on this case. This was her very first oral argument.

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The RoundTable

Steve LaCheen, Editor

Rita Bognanni, Staff



Future Meetings

October 10-13, 2013: Atlanta, GA

February 7-8, 2014: Key West, FL

June 12-15, 2014: Aspen, CO

October 10-12, 2014: San Francisco, CA

The RoundTable

Steve LaCheen

1429 Walnut Street, Suite 1301

Philadelphia, PA 19102

