

American Board of Criminal Lawyers

THE ROUNDTABLE

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What motivates a lawyer to defend a Tsarnaev, a Castro or a Zimmerman?

By **Abbe Smith**, Published: July 25, 2013

The trauma nurses who took care of Boston bombing suspect Dzhokhar Tsarnaev after his arrest have a straightforward explanation. "I don't get to pick and choose my patients," one told the Boston Globe. The three public defenders assigned to Tsarnaev would have been similarly constrained. But what about the two prominent defense lawyers who have offered their services? Why choose to represent a man accused of turning the Boston Marathon finish line into a war zone? Likewise, how can the lawyers representing Cleveland's Ariel Castro fight for a man who pleaded guilty on Friday to 937 counts related to the kidnapping, imprisonment and rape of three women? And what about the attorneys for the recently acquitted but still controversial George Zimmerman? Do they really believe he is completely innocent of any wrongdoing in shooting an unarmed teen?

I have been a criminal defense lawyer for more than 30 years, first as a public defender and now as a law professor running a criminal defense clinic. My clients have included a young man who gunned down his neighbor in front of her 5-year-old daughter while trying to steal her car, a man who beat a young woman to death for failing to alert drug associates that police were coming and a woman who smothered her baby for no apparent reason. These are the kinds of cases that prompt people to ask: "How can you represent those people?" All criminal defense lawyers are asked this; it's such a part of the criminal defense experience that it's simply known as "the question."

Most of us have a repertoire of stock replies about how the system can't work without good lawyers on both sides, or the harshness of punishment, or the excessive number of people — especially minorities — locked up in this country. Capital defenders such as Tsarnaev lawyer Judy Clarke tend to cite their opposition to the death penalty. But our motivations are usually personal and sometimes difficult to articulate. I often say I was inspired by "To Kill a Mockingbird." There is no more compelling figure than Atticus Finch defending a wrongly accused poor black man. Innocence, though, is not a chief driver for me. To the contrary, I often call my life's work "the guilty project." Criminal defense is, for the most part, defending the factually guilty — people who have done something wrong, though maybe not exactly what is alleged. That works for me because, as it happens, I like guilty people. I prefer people who are flawed and complicated to those who are irreproachable. As legendary American lawyer Clarence Darrow put it more than 80 years ago: "Strange as it may seem, I grew to like to defend men and women charged with crime. . . . I became vitally interested in the causes of human conduct. . . . I was dealing with life, with its hopes and fears, its aspirations and despairs."

Defense lawyers try to find the humanity in the people we represent, no matter what they may have done. We resist the phrase "those people" because it suggests too clear a line between us and them. Clarke has managed to do this with some of the most notorious criminals of the past two decades, including "Unabomber" Ted Kaczynski. "Even if it's the smallest sliver of common ground, Judy's going to be able to find that," said Kaczynski's brother, David. "There's no doubt in my mind that Judy saw my brother's humanity despite the terrible things he'd done." The people I have in mind when I say "I like guilty people" are not those who commit acts of such depravity that it's painful to read news stories about them. I mean the vast majority of my clients, who, for a variety of reasons, have committed crimes but who are not evil. I realize this may be what every defender says: My clients, no matter what they may have done, aren't wicked. They are damaged, deprived or in distress. Their crimes can be understood as the products of awful lives, or of being young, hot-headed and lacking in judgment, or of not having the mental wherewithal to know what they were doing. There is always a story. Castro lawyers Craig Weintraub and Jaye Schlachet were typical in insisting, after meeting with their client for several hours, that he isn't the "monster" he had been made out to be. If knowing our clients makes it too easy to explain how we can represent them, maybe it's better to ask whether we would represent other people's clients.

Defending Castro would be especially difficult for me. Although I have never turned down a court appointment based on the nature of the case, there are crimes I find especially abhorrent: child abductions that feature sexual abuse and hate crimes of all sorts. With its kidnapping, sexual assault and torture, Castro's is exactly the kind of case I find hard to stomach. It's distressing to read fiction about these kinds of crimes — such as Alice Sebold's "The Lovely Bones" or Emma Donoghue's "Room" — let alone grapple with the real thing.

I don't envy the lawyers representing Tsarnaev. He is young — I can understand why those nurses were instinctively kind to him — but there is overwhelming evidence that he killed, maimed and terrorized innocent people in the place where he grew up. I would want to say to him: "What the hell were you thinking?" But good defense lawyers resist the urge to pile on; it isn't a useful way to form a relationship. Still, there's something about cases in which everyone is calling for blood that makes it easier to fight for people like Tsarnaev and Castro. Maybe there's a contrarian streak in all good criminal lawyers. . . . I confess that I gravitate more to Trayvon Martin — the young black man unfairly targeted — than neighborhood-watch volunteer Zimmerman. But that doesn't mean I couldn't have defended Zimmerman.

Prominent criminal lawyer Edward Bennett Williams once noted that he took on difficult cases for unpopular clients "not because of my own wishes, but because of the unwritten law that I might not refuse." That unwritten law still motivates criminal lawyers, along with the knowledge that none of us would want to be defined by the very worst thing we ever did.

We represent "those people" because we can always find aspects of them that represent us.

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TIDBITS

As reported by **Bruce Maloy**:

Agne Krutules, a lawyer at Maloy Jenkins Parker, won a big victory in the 11th Circuit today. Her client was deemed a 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.



"For me, crime pays for what Medicare doesn't cover."

Supreme Court October 2012 Term Performance of the Circuit Courts

Circuit	Cases	Affirmed	Reversed or Vacated	Affirmed/ Reversed in Part	% Reversed or Vacated
First	1	0	1	0	100
Second	10	4	6	0	60
Third	7	1	6	0	83.3
Fourth	5	2	3	0	60
Fifth	7	1	6	0	85.7
Sixth	3	0	3	0	100
Seventh	4	2	2	0	50
Eighth	2	1	1	0	50
Ninth	13	2	11	0	84.6
Tenth	2	2	0	0	0
Eleventh	6	1	5	0	83.3
D.C.	3	1	2	0	66.7
Federal	4	2	1	1	25

(courtesy of Mr. Jordon)

Five enter Norwalk High School's Wall of Honor

NORWALK, CT -- The Norwalk High School Alumni Association is now in its 20th year and at its 19th annual Wall of Honor dinner October 6, 2013 installed its 101st member, including the latest inductees Attorney **Joel Hirschhorn**, Class of 1960.

"Some 100 relatives, friends and admirers alternately applauded their accomplishments and laughed at their witticisms as each accepted their plaques with humility after a chicken dinner and a reception at which they had the chance to observe the august company in which they are now a community. For arrayed around the glassed-in sun room of the inn were large collages highlighting their lives and the lives of all previous honorees.

"Attorney Joel Hirschhorn, one of the nation's top trial lawyers, flew up the night before, but had to return before the dinner was over due to the pressure of a major trial he's conducting in Miami. Before he left, he delivered a 10-minute address during the reception in which he expressed humility for being included in such an assemblage of earlier honorees and spoke endearingly of several teachers for whom he retains vivid memory."



"Then bring a cooler gun west town."

(courtesy of Joel Hirschhorn)



"You gotta hand it to Mario—he's a survivor."

After nearly 24 years in custody, Debra Milke will step back into the real world, probably today, until the murder charge against her is settled one way or another. But the prosecution has hurdles to overcome before taking Milke back to trial. A judge must decide whether a contested confession can be admitted into evidence. And the Phoenix detective who allegedly obtained the confession has to agree to testify.

Maricopa County Superior Court Judge Rosa Mroz ruled Thursday morning that Milke, 49, can be released on a secured bond of \$250,000, pending her retrial. Sheriff Joe Arpaio issued a statement Thursday afternoon saying that Milke would likely be released some time today, and that she was refusing all requests for interviews on the advice of her attorneys.

At a court hearing Aug. 30, Milke's attorneys, Mike Kimerer and Lori Voepel, told the court that Milke's supporters would be able to put up bond money and had provided a house for her to live in as the legal process plays out.

Milke has a strong following of people who believe she is innocent, especially in Europe, where she has family.

Kimerer said that Milke was stunned and ecstatic to learn she would be released, and that she broke down in tears. "I'm so overwhelmed by this, I don't know how to react to it," Kimerer said she told him.

Milke's ex-husband, Arizona Milke, the father of the murdered child, said, "She's going to get something she's wanted for a long time."

The judge ordered that Milke post a secured bond, which requires that the entire amount be put up as assurance that the defendant does not abscond; or, if contracted through a bondsman, it would require putting up collateral one and a half times the amount of the bond, in addition to paying a fee. Milke must wear a monitoring device and adhere to a curfew.

Debra Milke and two accomplices, James Styers, the suspected shooter, and Roger Scott, were sent to Arizona death row for the December 1989 murder of Milke's 4-year-old son, Christopher. They told the boy that they were taking him to see Santa Claus at the mall and instead took him to the desert and shot him in the head.

But in March, the 9th U.S. Circuit Court of Appeals threw out her conviction and death sentence, because the prosecution had failed to turn over evidence about the Phoenix police detective who claimed that Milke confessed. Milke denied confessing; the detective, Armando Saldate, had not recorded the confession and there were no witnesses to confirm it took place.

Prosecutor Vince Imbordino asked the court to ignore the 9th Circuit decision. Mroz said she would not. Mroz noted that the withheld evidence "casts serious doubt on the validity of the defendant's alleged confession." "The existing information does not make it 'plain and clear' ... that the defendant committed the crimes," Mroz wrote. "The court finds that the proof is not evident or presumption great that the defendant committed the crimes charged in the indictment."

Whether the confession comes into evidence will be argued on Sept. 23. The court appointed attorney Larry Debus to represent Saldate in that hearing. Debus told The Arizona Republic that he has just begun evaluating the case and does not yet know what advice he will give to Saldate.

But Saldate is under great pressure in the case. The chief judge of the 9th Circuit asked the U.S. Attorney General's Office to investigate the Milke case for civil-rights violations. The 9th Circuit ruling also noted that Saldate was found by courts to have lied in various court cases, and if his future testimony varies from those findings, he runs the risk of committing perjury.

If Saldate invokes his Fifth Amendment rights and refuses to answer questions, the confession probably would not be allowed.

When the case was first returned to Maricopa County for retrial, prosecutors were hopeful that Milke's alleged accomplice, Scott, would testify against her. Scott confessed to taking part in the murder in 1989, but did not testify in Milke's first trial. Last week, Imbordino stated in open court that Scott would probably not testify in the retrial either.

Without Saldate and without Scott, the prosecution has a weak case.

According to the 9th Circuit, Milke had to be taken to trial within 90 days of the completion of a U.S. District Court order transferring her to the jurisdiction of the Maricopa County Attorneys Office, which is Oct. 7. If Milke's trial did not start by that date, the 9th Circuit said, she would have to be released from custody during her trial.

On Thursday, the Arizona Attorney General's Office filed a motion in U.S. District Court on behalf of the Maricopa County attorney to have the trial deadline pushed back, a request that may have been rendered moot by Mroz's ruling.

Miami Herald

Posted on Fri, Sep. 13, 2013

Happy ending to Broward lottery scam

BY JAY WEAVER

jweaver@MiamiHerald.com

Here's a lottery scam with a happy ending.

In February of last year, a retired Seattle man sent \$20,000 in a FedEx package to an address in Broward County, with the hope of collecting millions in winnings.

But federal agents, working with the Broward Sheriff's Office, seized the cash at Fort Lauderdale International Airport. The feds suspected the money was from drug-trafficking profits because the 200 \$100 bills were wrapped in rubber bands, not in bank wrappers. A narcotics-sniffing dog named Boomer had alerted agents to the package, "indicating the currency was in recent close contact with illegal narcotics," a federal complaint said.

In April 2012, the Seattle man, David L. Uhlman, told the Drug Enforcement Administration that the cash belonged to him and he had no involvement in drug trafficking. No way, agents responded. So federal prosecutors went to court to take it from him.

And Uhlman got a lawyer. This week, Miami attorney Jeffrey Weiner pulled off no small feat: He persuaded the U.S. attorney's office to return the cash to his client. Prosecutors also agreed to pay him \$5,000 in attorney's fees. U.S. District Judge William Dimitrouleas signed the order Wednesday.

"I told them if they didn't return the money and pay the legal fees, that we were ready for trial," Weiner said Friday. "They agreed to do the right thing."



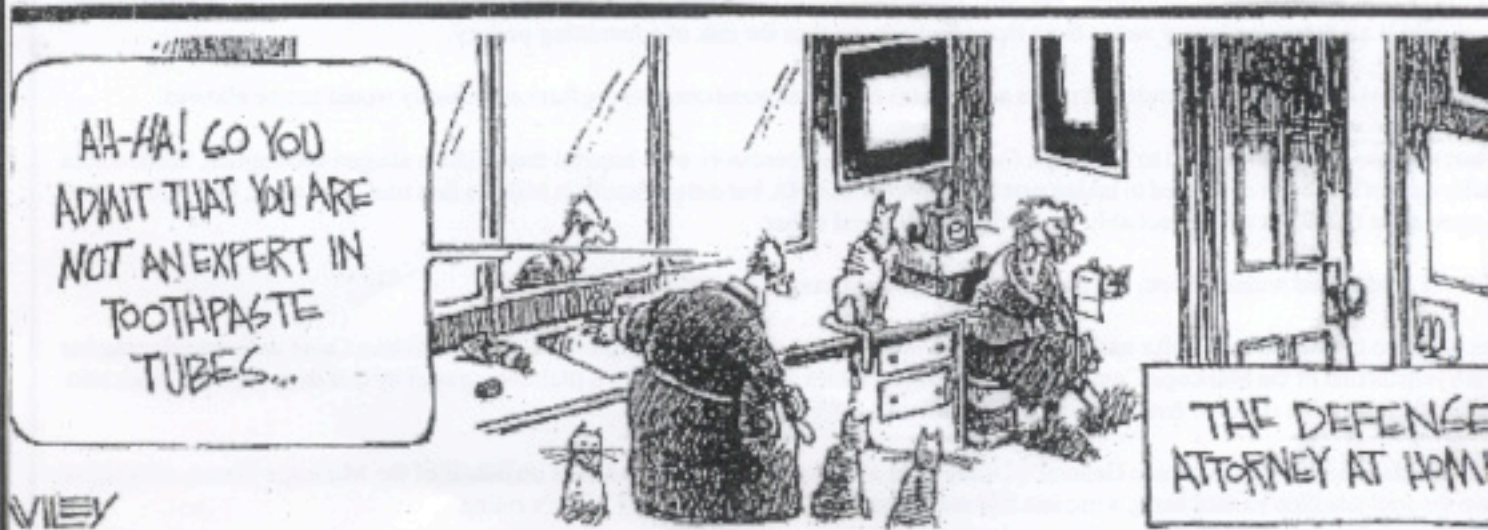
ANY ETHNICITY - NATIONWIDE SEARCH
Atlanta-based, attractive
and open-minded Ivy
League-educated Indian
Bengali lady seeks
confident and intellectual

curious gentleman (40-50) - Nationwide

She would consider relocating for the right man.

Our client's lifestyle reflects her health-conscious, family-oriented and community-service-oriented priorities.

She enjoys working out, spending time with friends and family, walking her dog, hiking, photography, and travel. Her wide-ranging taste in music spans from classical to hip-hop to opera.



Ex-House Leader Tom DeLay's Money-Laundering Verdicts Tossed

Laurel Calkins, ©2013 Bloomberg News September 19, 2013

Tom DeLay, the former Republican congressman from Texas and one of the most powerful leaders of the U.S. House in modern times, won a reversal of his conviction for money laundering from a state appeals court in Austin. The evidence against DeLay, who was convicted of mishandling campaign funds in a 2002 election, was insufficient to support the guilty verdict, State Appellate Justice Melissa Godwin said today in a split decision by a three-judge panel of the Texas criminal appellate court.

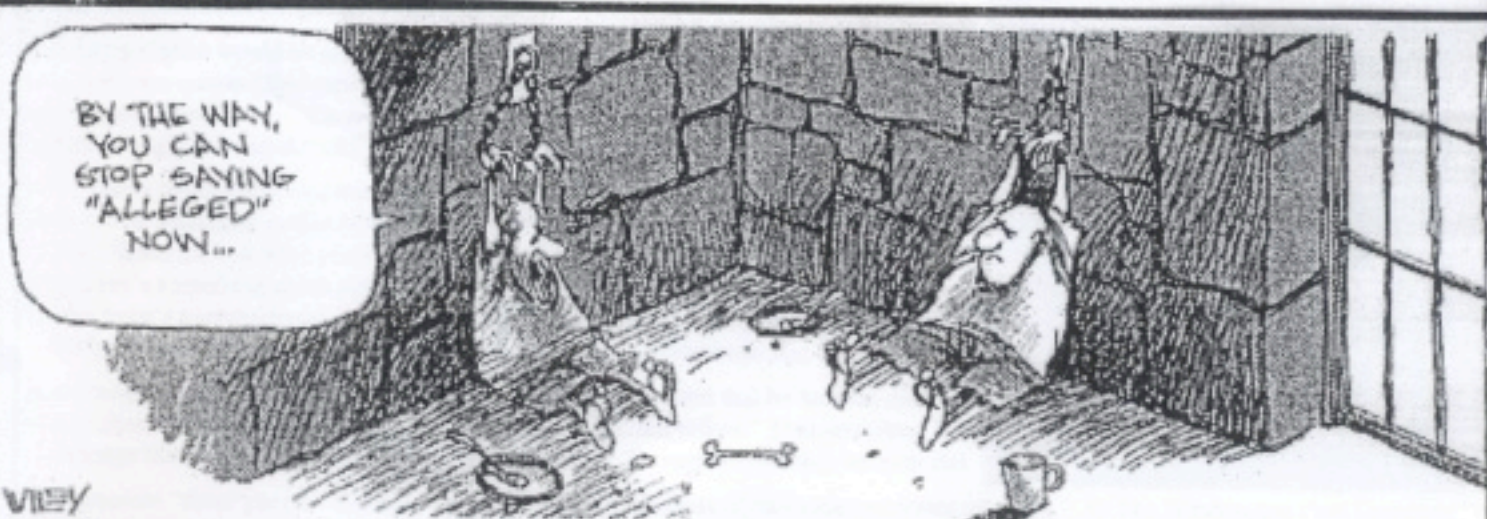
"This is an outrageous criminalization of politics and I'm so glad they wrote the ruling" the way they did, DeLay said today in the Capitol in Washington. He added that he raised and spent more than \$12 million on legal fees.

DeLay, 66, from the Houston suburb of Sugar Land, was convicted in 2010 of money laundering tied to campaign-finance laws that require corporate and individual donations to be kept separate and used only for approved purposes. DeLay, a former exterminator whose political nickname was The Hammer, stepped down as house majority leader when he was indicted in 2005. He dropped his re-election bid and resigned from Congress after winning his party's primary in 2006. Political opponents accused DeLay of illegally routing corporate donations to candidates for the Texas Legislature in an effort to stack the chamber with Republicans who would draw new boundaries for U.S. congressional districts.

Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, said in a statement that "during his time in Congress, no one did more to undermine federal and state campaign finance laws than Tom DeLay." "It is a sad day for all Americans when Tom DeLay -- one of the most corrupt politicians to ever walk the halls of the Capitol -- once again slithers away," Sloan said.

Dick DeGuerin, DeLay's trial attorney, said in reaction to the ruling that "someone finally listened to what we've been saying all along. All the transactions were legal, and you can't add up a bunch of legal transactions to get an unlawful one." DeLay has been working on "conservative grassroots issues" and lobbying politicians from his office in Washington while his case was on appeal, DeGuerin said "Even though we won, eight years after we said this wasn't a crime, this destroyed Tom's political career and his future. How does he ever get his reputation back?" DeGuerin said.

DeLay was sentenced to three years in prison, which the trial judge reduced to 10 years of community supervision. On reviewing DeLay's convictions, the appeals court said Texas failed to prove the campaign contributions he directed to specific candidates were illegally obtained, as required under money-laundering statutes. Jurors were confused by that point during DeLay's trial, Godwin said in the ruling, and they twice asked the judge for clarification on the law. The judge refused to provide further guidance, she said. "The jury should not have been placed in the uncomfortable position of trying to decide what the law is, which is not their job," Godwin said in the ruling. The jurors' questions "point to the lack of evidence showing that the funds involved in the transaction were the proceeds of criminal activity." The case is DeLay v. Texas, 03-11-00087, Texas Court of Appeals, Third District.



BY THE WAY,
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NOW...

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Future Meetings

October 10-13, 2013: Atlanta, GA

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IS
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The RoundTable

Steve LaCheen

1429 Walnut Street, Suite 1301

Philadelphia, PA 19102