

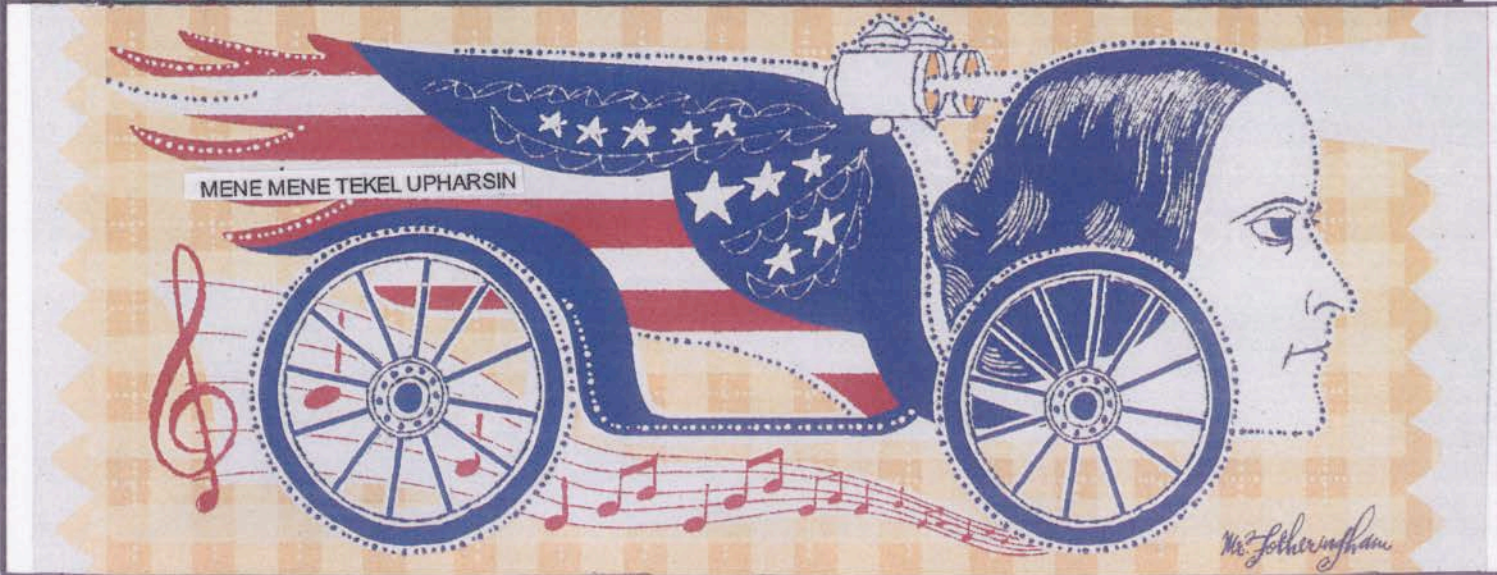
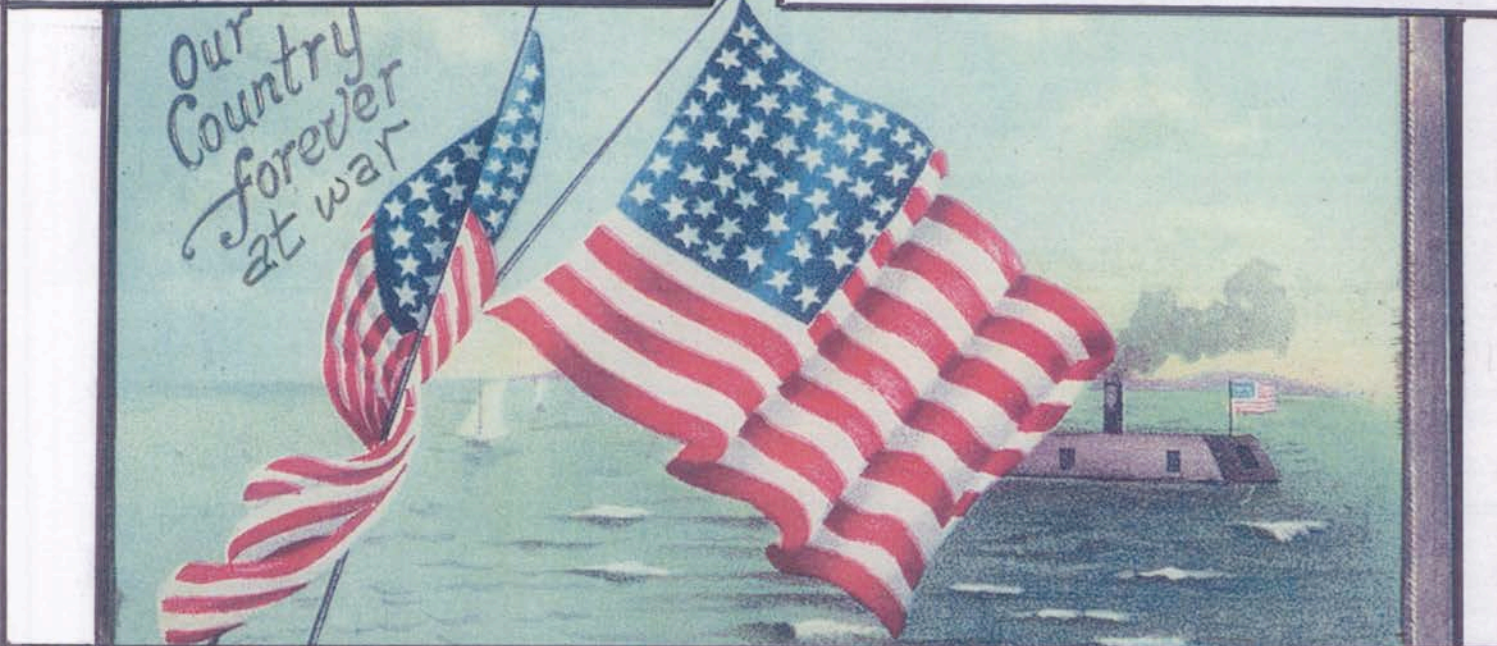
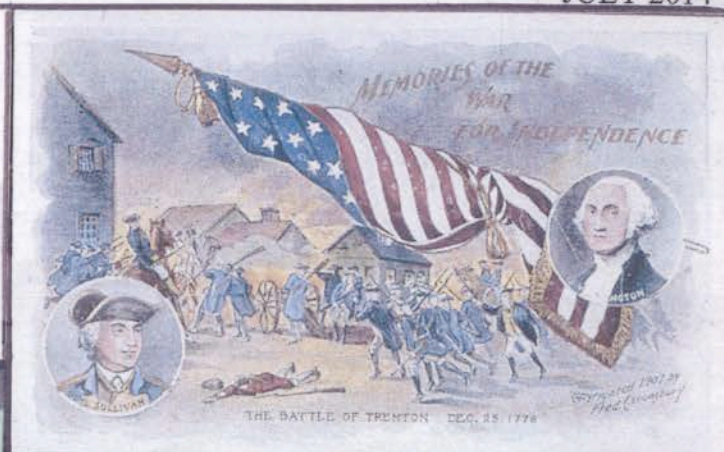


American Board of Criminal Lawyers THE ROUNDTABLE

He got in my face,
so I shot him.

Vol. MMIV, No. 8

JULY 2014



Verzi Insanity Case

I am not celebrating a great victory, but my client is very happy. I am reporting back to thank everyone for all of your valuable help and advice on a fascinating case....the 17 yr old who stabbed his father 150 times....found psychotic at the time of the offense; was incompetent to assist for approximately 8 months; steroids, 3 Baker Acts, etc. (8 hour confession suppressed).

A no contest plea to manslaughter, 6 yrs in (out in 2) and 3 yrs probation. Deflating when you have such a fascinating case to try, yet the possible long term mental hospital stay or worse, a loss and a 20 + year sentence drove the results.

The Round Table input was so important and helpful. The Fellowship is always very special, but the minds, the experience and input--beyond invaluable. Enjoy Aspen....and again, Many many thanks to all.

Michael J. Rosen

May 25, 2014

COURT OF COMMON PLEAS



BUCKS COUNTY
SEVENTH JUDICIAL DISTRICT
DOYLESTOWN, PENNSYLVANIA
18901
(215) 348-6000

Stephen R. LaCheen, Esquire
LaCHEEN, WITTELS & GREENBERG
1429 Walnut Street, Suite 1301
Philadelphia, PA 19102-3204

Dear Steve,

It has been a long time since we last communicated. I read Michael Dumas' article in The Round Table about a woman being acquitted after she admitted to taking meth in a vehicle accident and the fact that she was a certified nursing assistant brought back some memories.

In 1993, I represented Mary Jo Castrantas in a homicide by vehicle while DUI charge, along with three other homicide by vehicle charges relating to her driving, involuntary manslaughter, reckless endangerment and DUI. At trial, it was my suspicion that if I revealed anything to the prosecutor or, more importantly, to his affiant police officer, it would be "investigated" and found to be not true. Therefore, I did a few things. First, in choosing the jurors, I chose a conservative looking young man from the upper part of Bucks County, who was then studying for the bar exam (meaning he was studying torts and causation), which was revealed in his questionnaire but not questioned by the DA and, certainly not, by me. Next, I reserved my opening by telling the jury almost everything about my case and then saying that I was going to delay the opening until my case began. Since the DA had not a clue about what my defense would be, or why I had the best accident reconstructionist (who had been a cop for thirty years prior), he presented an intense ordinary case with all the gory details about Defendant's son dying in the crash caused by his mother, etc., etc.

We then opened and told the jury our defense was that the accident happened just as the Commonwealth said, but the only difference would be what actually caused the accident, which also injured four women returning to Trenton, New Jersey from a Jehovah Witness ministry service.

Our accident reconstructionist testified that there were no citations issued for the defendant committing any traffic violations before the accident. We tied that "theory" into the case with the Defendant testifying that she only veered when her four-year-old son moved to grab a tray of cookies. The cookies had been placed on the dashboard and this young boy tried to get at them on the way to grandmom's house, so it was a tug right out of Norman Rockwell. Of course, I knew that she was facing a mandatory three (and most likely, three-and-a-half) to seven year sentence if she were convicted on just that one charge. We got lucky and, sure enough, juror number 4 (the law student) turned out to be the foreperson and it was a not guilty all around except for the DUI and endangering the welfare of a child. Judge Rufe was pretty annoyed with the verdict and gave her eight-and-a-half to twenty-three months in county.

All right, buddy, if you think it's comparable, then print it. Otherwise, just tuck it away where "all other things Cepparulo" go. It's good to write to you, even if we don't see each other.

Take care, Steve and say hi to Helen and all the ABCL fellows!

Lovingly,


Albert J. Cepparulo

WHY OLDER MEN DON'T GET HIRED

Job Interview:

Human Resources Manager: "What is your greatest weakness?"

Older Man: "Honesty."

Human Resources Manager: "I don't think honesty is a weakness."

Older Man: "I don't really give a fuck what you think."

Flash! Breaking News "Side Bar"

Herewith an excerpted quote from an article titled "Rebel Without a Pause," in the December 1995 issue of *Georgia Magazine* submitted by our Western Regional "stringer" **Chuck Watson**, who, for some reason thought that a December 1995 article about Fellow **Bruce Harvey** was something that needed to be (re)broadcast. Editor's Guess: "Rebel" needs publicity like Wyoming Chuck needs someone to teach him a Southern drawl.

Bruce Harvey
is Atlanta's
preeminent
long-haired,
left-handed,
anti-establishment
liberal lawyer.
He's defended a long
list of high-profile
nasties, and it's a
dead heat as to what
he's known best for:
his legal acumen
or the ponytail.

By Steve Walburn



Power of 50

Civil Rights Act President Johnson signs the Civil Rights Act on July 2 after the U.S. Senate passes the landmark legislation, which prohibits discrimination in public places, education and employment on the basis of race, color, religion, national origin or sex.



Malcolm X announces on June 28 the creation of the Organization of Afro American Unity, to win freedom for blacks "by any means necessary."

GO TO aarp.org/bulletin or download our iPad app at aarp.org/mobile for more photos and stories.

MISSING CALL FBI

THE FBI IS SEEKING INFORMATION CONCERNING THE DISAPPEARANCE AT PHILADELPHIA, MISSISSIPPI, OF THESE THREE INDIVIDUALS ON JUNE 21, 1964. EXTENSIVE INVESTIGATION IS BEING CONDUCTED TO LOCATE GOODMAN, CHANEY, AND SCHWERNER, WHO ARE DESCRIBED AS FOLLOWS:



ANDREW GOODMAN
DOB: 10/10/38
SEX: Male
RACE: Caucasian
HT: 5'10"
WT: 150 lbs
HAIR: Dark brown
EYES: Brown
TEETH: Natural
SCARS AND TATTOOS: None

JAMES RAY CHANEY
DOB: 10/10/38
SEX: Male
RACE: Caucasian
HT: 5'10"
WT: 150 lbs
HAIR: Dark brown
EYES: Brown
TEETH: Natural
SCARS AND TATTOOS: None

MICHAEL SCHWERNER
DOB: 10/10/38
SEX: Male
RACE: Caucasian
HT: 5'10"
WT: 150 lbs
HAIR: Dark brown
EYES: Brown
TEETH: Natural
SCARS AND TATTOOS: None

SHOULD YOU HAVE OR KNOW WHERE ANY OF THESE INDIVIDUALS ARE, REQUESTED TO NOTIFY THE FBI AT THE FOLLOWING TELEPHONE NUMBER IS 11



Violence Three civil rights workers—Michael Schwerner, Andrew Goodman and James Chaney—disappear on June 21 after investigating a church burning near Philadelphia, Miss., triggering a massive FBI investigation. Their bodies were found two months later, buried in an earthen dam.

Nelson Mandela is sentenced to life in prison on June 12 for committing sabotage against the South African apartheid government. He is sent to Robben Island, a former leper colony off the coast of Cape Town.

1964

Freedom Summer

Fifty years ago this month, the civil rights movement exploded into America's consciousness. As the U.S. Senate wrestled with historic legislation addressing segregation and discrimination, events in the South, across the nation and around the world grabbed headlines and demanded attention. **By Carol Kaufmann**



Organizers James Farmer (above) was national director of the Congress of Racial Equality (CORE) in June 1964. Civil rights leader Julian Bond (left) stands next to a bus full of young people taking part in a CORE training session aimed at registering voters in Mississippi.

REQUIEM FOR A HEAVYWEIGHT

Jacob Hennenberg, father of Fellow **Michael Hennenberg**, passed away May 22, 2014. He was a lovely and gentle man, a holocaust survivor, who was loved by all. The whole Jewish Community knew and loved him. Mr. Hennenberg dedicated his life to his family's well-being and was determined to not allow the Shoah to be forgotten. He wrote and lectured extensively at area schools, colleges and civic organizations. On his 76th birthday, he read to his family for the first time the following poem he had written. Many of his works, such as his poetry, writings and art work are posted on his website, www.jacobhennenberg.com.

Jacob's Poem

MY EYES HAVE SEEN

by Jacob Hennenberg

*On September First
Nineteen Thirty Nine
Our lives had changed
Including mine.
We thought the storm would pass
And go away
It became obvious that it would stay.
With pain and hurt
I had to leave my home
And leave my family
There all alone.
I wound up in a place
Of blood and tears
In deep disillusionment
And with great fears.
Numbers, numbers, numbers
Went through my mind
I must stay alive
Not fall too far behind.
People had sad faces
They all looked the same
Their eyes were half closed
And no one had a name.
I dreamed of sunny places
And wind blew through my hair
I tried to talk about my dream
But no one seemed to care.*

*This was long ago
To my surprise
I tried to find my world
But smoke got in my eyes.
Then the sun came out
And the sky was very clear
The day of liberation was finally here.
Getting rid of our fears
Pain and despair
Realizing someone somewhere
Really did care.
Starting life anew
With great expectations
Creating a family
And new generations.
We overcame the problems
That life was bringing.
For me and my family
The birds again are singing.
I am thankful to this country
For opening the gate
And for giving me the opportunity
To fight prejudice and hate
In my lifetime
My eyes have seen
The worst and the best of human beings.*

18:1 Ratio Rejected, Quantities of Crack, Powder Cocaine Treated Equal for Sentence

United States v. Gardner, 07 Cr. 1229 (May 20)

Defendants were convicted of offenses involving at least 3.6 kilograms of "crack cocaine." At issue at resentencing—following vacatur and remand by the Second Circuit in light of *Dorsey v. United States*—was application of a U.S. Sentencing Guidelines provision by which the weight of cocaine involved in any offense involving "crack" cocaine is multiplied by a factor of 18. Discussing the history and rationale behind the 18:1 ratio (from 1986 to 2007 the ratio was 100:1), the court declined application, finding the multiplier unsupported by fact, law or policy. Absent the 18:1 ratio's application the applicable Guidelines range would be roughly half of the prison term recommended under the ratio. The court found the claim that crack cocaine is more addictive than powder cocaine conjectural and unsupported by serious scientific study. Nor did the government offer scientific evidence for its claim that crack cocaine is "associated" with violence. The court observed that in the great majority of cases involving both forms of cocaine, there was no violence. Thus, the court applied a 1:1 ratio, treating the quantity of crack cocaine attributed to defendants' convictions as the equivalent quantity of powder cocaine under the Sentencing Guidelines.



Judge
Jed Rakoff
Southern District

UNITED STATES COURT OF APPEALS

From: "Lawrence S. Goldman" <ls@goldmanjohnson.com>
To: <abcl-us@googlegroups.com>
Sent: Wednesday, May 28, 2014 10:26 PM
Attach: a5V9TTMS1waktDes-CES-Second-Circuit-Reversal-1.pdf
Subject: [ABCL-US] 2d Circuit reversal, opinion by Judge Rakoff
The ubiquitous **Judge Rakoff** authored an opinion while sitting by designation reversing an asbestos conviction because of prosecutorial misconduct and other trial defects.

(Argued: June 14, 2013)

Decided: May 28, 2014)

Docket Nos. 11-4872(Lead), 11-4875(Con), 11-4877(Con), 11-4974(Con),
11-4976(Con), 11-4968(XAP), 11-4969(XAP), 11-4972(XAP)

UNITED STATES OF AMERICA,

Appellee-Cross-Appellant,

—v.—

CERTIFIED ENVIRONMENTAL SERVICES, INC., NICOLE COPELAND, ELISA DUNN,

Rakoff vs. The Racket

Is it the job of federal judges to help the Securities and Exchange Commission get good press? That's one of the questions surrounding a Wednesday decision from the U.S. Court of Appeals for the Second Circuit. A unanimous three-judge panel rejected district Judge **Jed Rakoff's** refusal to endorse a 2011 SEC settlement with Citigroup. The appellate judges sent the case back to Judge Rakoff to review it again.

The SEC charged Citi with negligence in creating a 2007 collateralized debt obligation. The \$1 billion deal allowed large institutions to bet one way or another on the housing market. Citi took a short position and the SEC claimed the bank failed to adequately disclose this fact. Without admitting or denying guilt, Citi agreed to write a check and sin no more.

This is similar to a case the SEC settled with Goldman Sachs in 2010. But Judge Rakoff noticed that Goldman's \$535 million penalty was more than five times as large as Citi's \$95 million. The SEC never explained why.

This is one of the reasons Judge Rakoff refused to rubber-stamp the Citi settlement. As he explained in 2011, the SEC and Citi don't need a federal judge to bless whatever agreements they cook up. But if the SEC wants a federal court to exercise its power, he argued that the agency must demonstrate that a deal is fair, reasonable, adequate and in the public interest.

The appellate judges ruled that Judge Rakoff had abused his discretion and failed to give appropriate deference to the experts at the SEC. The appeals court added that it's not Judge Rakoff's job to determine if a settlement is adequate, but merely to ensure that it's free of corruption and procedurally proper, with clear terms that address the claims at issue.

Despite the ruling, we think Judge Rakoff's 2011 argument holds up well: "Purely private parties can settle a case without ever agreeing

on the facts, for all that is required is that a plaintiff dismiss his complaint. But when a public agency asks a court to become its partner in enforcement by imposing wide-ranging injunctive remedies on a defendant, enforced by the formidable judicial power of contempt, the court, and the public, need some knowledge of what the underlying facts are."

He also whacked "the S.E.C.'s long-standing policy—hallowed by history, but not by reason—of allowing defendants to enter into Consent Judgments without admitting or denying the underlying allegations." This resulted in much wailing from Wall Street and the SEC that a ruling in Judge Rakoff's favor would force all such cases to trial.

That would be fine by us. But the truth is that a win for Judge Rakoff would not have ended settlements, because the SEC can strike deals without ever going to a judge. And if SEC lawyers wish to avoid the courts but still involve a judge, they can bring cases to the administrative law judges conveniently located inside the commission's own building.

The problem for SEC lawyers is that it would be hard to get reporters excited about such cases. In a media and political environment that demands banker scalps, no government official wants to intone, "We're taking this case all the way to an administrative proceeding."

Judge Rakoff surely understands this. In 2011 he wondered "what the S.E.C. is getting from this settlement other than a quick headline." At the time, he seemed to be wondering whether Citi was getting off with a mild penalty. But since then a jury found that a Citi banker on the deal hadn't broken any laws.

Trials do a public service, informing the public and clarifying what is legal and what is not. But apparently nobody outside Judge Rakoff's chambers wants that, if we are to believe the unanimous opinion of appellate judges, regulators and big banks.

The courts, the SEC
and big banks
all like settlements.

Wednesday, Jun. 4, 2014

BREAKING NEWS: 2nd Circ. Vacates Rakoff Decision Nixing SEC-Citigroup 'No-Admit' Pact

The Second Circuit on Wednesday vacated New York Judge **Jed Rakoff's** controversial 2011 decision to reject a settlement between the U.S. Securities and Exchange Commission and Citigroup Inc. in which the bank neither admitted nor denied wrongdoing, saying the judge had "abused" his discretion.

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The RoundTable

Steve LaCheen, Editor

Rita Bognanni, Staff



Future Meetings

October 10-12, 2014: San Francisco, CA

February 20-22, 2015: New Orleans, LA

June 5-7, 2015: LaJolla, CA

October 9-11, 2015: Sante Fe, NM

The RoundTable

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