



American Board of Criminal Lawyers



THE ROUNDTABLE

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OCTOBER 2014



ABCL

WEEKEND



Polysyllabic Ostentation



Fustian Braggadocio



Orotund Pontification



Soporific Verbosity



Adjectival Superfluity



Unctuous Obsequiousness

OVER-RULED?

IN TODAY'S ABCL PERSONALITY IS OUT OF BOUNDS. AN ESSAY BY WILL LEITCH.

NEWLY FORMED MARSHALL PROJECT DETAILS NEW EVIDENCE OF PROSECUTORIAL MISCONDUCT RESULTING IN LIKELY WRONGFUL 2004 TEXAS EXECUTION

Formal Grievance Filing Urges Discipline for Prosecutor John Jackson, Who New Evidence Shows, Took Extraordinary Steps to Help Jailhouse Informant Johnny Webb, Who Now Claims He Was Recruited, Instructed on How to Testify and Promised a Deal by Jackson.

A formal Grievance has been filed by the Marshall Project Criminal Justice Group, with the State Bar of Texas, urging Chief Disciplinary Counsel to find that there is 'just cause' to charge former prosecutor, now Judge, John Jackson, for violating numerous criminal and ethical violations, including tampering with governmental records and concealing evidence in the arson murder conviction of Cameron Todd Willingham, who was executed in 2004. Among the lawyers representing Willingham's family are Gerry Goldstein, Cynthia Orr, and Barry Scheck.



A glass of wine

To my friends who enjoy a glass of wine and those who don't and are always seen with a bottle of water in their hand:

As Ben Franklin said:

In wine there is wisdom,
In beer there is freedom,
In water there is bacteria.

In a number of carefully controlled trials, scientists have demonstrated that if we drink 1 liter of water each day, at the end of the year we would have absorbed more than 1 kilo of Escherichia coli, (E. Coli) - bacteria found in feces. In other words, we are consuming 1 kilo of poop annually.

However,
We do NOT run that risk when drinking wine & beer (or rum, whiskey or other liquor) because alcohol has to go through a purification process of boiling, filtering and fermenting.

Remember:
Water = Poop,
Wine = Health
Therefore, it's better to drink wine and talk stupid, than to drink water and be full of Shit.

There is no need to thank me for this valuable information:
I'm doing it as a public service

Two Utah Ex-Attorneys General Arrested

By JOEL MILLMAN (7/16/14)

Two former Utah attorneys general face a combined 23 counts of bribery, tampering with evidence and obstructing justice.

Local police and FBI agents on Tuesday arrested John Swallow 51 years old, and Mark Shurtleff, 56, after a two-year investigation into corruption in the office of the state's top law enforcement agency.

"This has been a complex, nuanced, large investigation. There are multiple leads that are being continued to be investigated," Salt Lake County District Attorney Sim Gill said at a news conference after the arrests. "The investigation is still active."

Messrs. Swallow and Shurtleff, both Republicans, were arrested on bribery charges related to what officials characterized as cozy relationships with businessmen. They were each released on \$250,000 bail after several hours in cus-



McCAUGHEY

tody. If convicted of the most serious charges, each man could be sentenced to a maximum of 15 years in state prison, the Associated Press said.

Officials allege that Messrs. Swallow and Shurtleff accepted gifts, including stays in luxury

hotels, the use of private planes and thousands of dollars in cash or campaign contributions. The pair are accused of trying to cover up their activities by destroying emails and lying to investigators.

Mr. Shurtleff, Mr. Swallow's

predecessor as state attorney general, has denied wrongdoing. Mr. Shurtleff's attorney, Max D. Wheeler, didn't return calls seeking comment.

The Salt Lake Tribune quoted Mr. Wheeler complaining to a Utah radio host about alleged unethical tactics by prosecutors, including leaks to the press, which he said undermines his client's right to a fair trial.

Mr. Swallow took office in January 2013, and resigned less than a year later. Regarded as one of the state's more conservative Republicans, he previously served in the state House and mounted an unsuccessful campaign for U.S. Congress.

Mr. Swallow's attorney, Stephen McCaughey, didn't respond to a request for comment. The AP quoted him as indicating his client maintains his innocence.

"This is a sad day for Utah," Republican Gov. Gary Herbert said in a statement Tuesday. "The entire situation...is a black eye for our state."

Local lawyer challenge could alter DUI fees statewide

(August 22, 2014)
BY TODD SOUTH
STAFF WRITER

A seasoned local attorney has challenged how the state's top law enforcement agency collects fees on DUI convictions, alleging bias and constitutional rights violations.

Jerry Summers argued to Hamilton County Criminal Court Judges Rebecca Stern, Don Poole and Barry Steelman on Friday that a \$250 fee, what Summers calls a "bounty," paid by defendants convicted of DUI charges, creates a "conflict of interest" because the money goes straight to the Tennessee Bureau of Investigation.

Jerry Summers argues the money creates a conflict of interest at TBI

If any of the three local Criminal Court judges who heard his case agree, it could fundamentally alter how the TBI funds its alcohol testing.

In the hearing, local prosecutor Kate Lavery called Summers' theory a "terrible accusation" that implies forensic scientists at the TBI laboratory have intentionally falsified lab results to help the agency get the \$250 fee.

Summers told the judges he would "not impugn the integrity of a statewide agency unless I've got proof."

Steelman cut in, asking if Summers had any data supporting impropriety.

"I mean, I haven't heard any," Steelman said. Summers said data wasn't required; the mere "appearance of impropriety" was enough to trigger possible constitutional due process problems.

Summers asked the court to dismiss charges against his 23 clients facing DUI charges. Short

DUI

Continued from C1

of a dismissal, he asked that juries be given special instruction on the potential "conflict of interest" in future trials.

He said a true remedy would be for the fee to be sent to the state Legislature's general fund, which would remove appearances of bias or impropriety since the money would be collected and distributed by a third party.

To support his theory and allegations, Summers pointed out that earlier this year, TBI Director Mark Gwyn testified to the Tennessee state Senate Judiciary Committee that the fee was raised from \$100 to \$250 in 2010 to avoid layoffs and other cutbacks at the forensic testing division of the TBI crime lab.

Summers showed that from 2009 through 2012 the agency reaped a \$1.6 million profit from the testing, all of which went straight to the agency. There was no increase in testing costs.

The test costs between \$100 and \$150, according to court documents.

Summers and co-counsel Ben McGowan told the judges about the separate

case of Dale Edward Ferrell, who was charged with vehicular homicide and DUI in the fatal March 16, 2013, crash that killed Knoxville architect Edward Bankston. His trial was the "genesis" of 2,800 retests of DUI blood samples by an Indiana laboratory.

Ferrell's charges were later dismissed when errors showed that his reported 0.24 blood-alcohol level was inaccurate.

A review resulted in the firing of then-TBI special agent Kyle Bayer. All of his tests were retested at the out-of-state lab.

Steelman asked how many of the 2,800 came back with errors. A report by the TBI earlier this year, when 2,000 had been tested, showed that none but Ferrell's had.

Summers disputed this, claiming that some of the tests had differences of 0.01 or more. Different levels of punishment are triggered at levels of 0.08, the legal alcohol limit for driving, at 0.15 and at 0.21, Summers noted.

The judges are expected to rule on Summers' request by the third week of September.

Contact staff writer Todd South at tsouth@timesfreepress.com or 423-757-6347. Follow him on Twitter @tsouthCTFP.



STEVE SALTER

"The handle on your recliner does not qualify as an exercise machine."

MIAMI BEACH

Ex-NFL star won't face charges

BY DAVID OVALLE
dovalle@timesfreepress.com

Former NFL star Darren Sharper won't face a rape charge in Miami-Dade after prosecutors concluded they could not prove the case.

The ex-Pro Bowl safety still faces sexual battery charges in Los Angeles and Arizona, and there are police probes underway in New Orleans and Las Vegas.

Police and prosecutors in those states believe the former defensive back would spike the drinks of women in nightclubs with drugs, then sexually assault his incapacitated victims.

His lawyers have said the sex

with the women was consensual. In the Miami Beach case, the evidence was far from clear cut.

According to a police report, a 22-year-old woman admitted she did not report the alleged attack until after seeing a television report about Sharper's arrest in another state.

She told police she met Sharper at the Mokai night club on South Beach, then went with friends to his condo. Groggy, she passed out on his bed — then found him atop her in the

morning, she told police.

The woman said she reported the incident to "clear her conscience" and did not say she wanted to sue, according to a final memo from prosecutors.

But prosecutors, while noting they had no reason to doubt her credibility, noted that it was only her word against Sharper's. There was no physical evidence and detectives could never find her friends to back up her version of events.

She also gave inconsistent details about what happened that night and the delay in reporting would give ammunition to defense attorneys seeking to under-

mine her credibility, the state said.

Sharper's defense attorney, Brian Bieber, criticized police, saying officers failed to initially disclose the woman's behavior at the police station when she reported the episode, including repeatedly texting with a male friend, who sat by her side while she recounted the allegations.

"The allegations were clearly fabricated from the very beginning," Bieber said.

Sharper, 38, is a five-time Pro Bowl selection who played for Green Bay, Minnesota and the New Orleans during a 13-year career. He won a Super Bowl with the Saints.



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA - SOUTHERN DIVISION

UNITED STATES OF AMERICA
V.
FREEMAN EUGENE JOCKISH

CASE NO. CR 14-00025

MOTION FOR THE MILK OF HUMAN KINDNESS *

1. Defendant is scheduled to be sentenced at 1:00 PM on Tuesday, July 15, 2014.
2. Defendant is 70 years old and in poor health.
3. Defendant has been incarcerated in the Baldwin County Jail since April 17, 2014. Other than his wife, defendant has had few visitors.
4. Defendant's punishment range is 10 years to life imprisonment.
5. It is the custom and practice of the U.S. Marshall's Service to bring prisoners into the courtroom shortly before the sentence hearing begins. The prisoner is allowed to have no contact with any spectators in the courtroom. After the sentence is pronounced, the U.S. Marshals immediately whisk the inmate back to the penal facility from whence he came. Security concerns are often cited as the reason for the disallowance of human contact and for the defendant's speedy exit from the courtroom.
6. Mr. Jockish will have like long friends and relatives present in the courtroom, many of whom are of advanced age with health problems of their own. They are hard working individuals with no history or inclination to disrupt a judicial proceeding. The sentence hearing will be the last opportunity for these people to have contact with Mr. Jockish.
7. Defendant, by and through his undersigned counsel, requests a brief period of time either before or after sentencing for the defendant to have some type of interaction with his elderly companions.
8. The undersigned counsel submits that the aforementioned individuals will not be a security risk because of their advanced ages and infirmities.

Wherefore premises considered, defendant prays that this Honorable Court will grant this request for human contact before being incarcerated for the rest of his life and not be like Macbeth's Mary completely hard without the milk of human kindness.

T. JEFFERSON DEEN, III

Attorney for Defendant, Freeman Eugene Jockisch
Post Office Box 2705, Mobile, Alabama 36601

*Ed. Note: Elsewhere known as
Writ of Rachmunes

WTF? It's 2 Wacky 2 Facts! Almost all of the surgical grade botox used in the world is produced in a single factory in Ireland. Δ Cows eat only grass, but have over 2.5 times as many taste buds as humans. Δ Before the Renaissance, over 3/4 of all books in the world were Chinese. Δ About 200,000 academic articles are published each year in English. Each article has an average of 5 readers. Δ A barnacle's penis can be up to 20 times the length of its body. Δ The average toilet seat is cleaner than the average toothbrush. Δ The English word for the pleasant, earthy smell following Spring rain is petrichor, which comes from Greek, and means roughly "the fluid that flows



through the veins of stone gods." Δ The muscles that close a crocodile's jaws are equivalent to the strength of a truck falling from a cliff, and the muscles that open them are weaker than a common rubber band. Δ In the event of a plane crash, 69% of people in the rear survive, as opposed to 49% in the front. Δ 20% of US citizens claim they have a severe food allergy. 2% do. Δ 40% of bottled water sold in the US is tap water. Δ There are nearly twice as many deaths attributed to vending machines as there are to sharks annually. Δ The inventor of the "best if sold by" concept was Ralph Capone-- Al's older brother. Δ

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June 27, 2014

Stephen Robert LaCheen, Esq.
1429 Walnut Street, 13th Floor
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Re: American Board of Criminal Lawyers

Dear Mr. LaCheen:

Thank you for your generous letter of June 23, 2014. I was indeed honored to be selected to join your organization. I am enclosing both a brief resume and an actual story that seems humorous to me.

Again, thanks for your welcome.



Richard M. Kerger

Richard M. Kerger

For nearly 40 years, Richard M. Kerger has been a lawyer practicing primarily in Toledo, Ohio but handling cases across the country. He handled the post-conviction work for a Ku Klux Klan member in Alabama. He represented former Congressman James Traficant on appeal. He obtained the acquittal of a Sheriff facing Justice Department lawyers trying to convict or covering up an inmate's death in the jail. He served as a member of the Board of Governors of the Ohio State Bar Association and was Chairman of the Life Member Committee of the Sixth Circuit Court of Appeals. He has been selected as a Fellow in the American College of Trial Lawyers, American Board of Trial Advocates, and International Society of Barristers and is a Senior Counsel in the College of Master Advocates and Barristers.

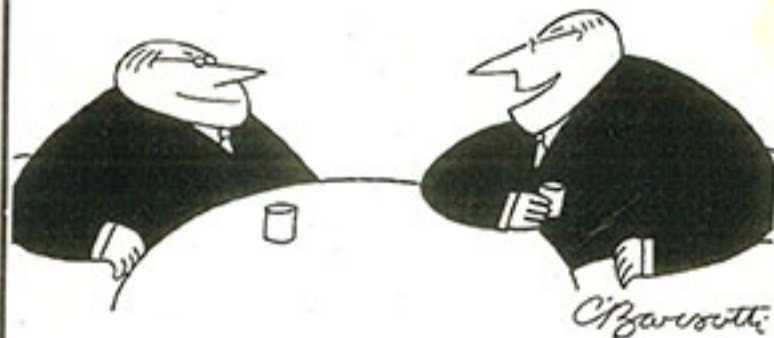
He is a member of the firm of Kerger & Hartman, LLC spending roughly half his time on White Collar criminal cases and the balance in a wide variety of civil matters, including service as liaison counsel for indirect purchasers in a multi-district class action antitrust case.

You can lead a horse to water...

I routinely advise clients that when they talk on telephones at the jail, their conversations are being monitored and can and will be used against them. Either I am giving this advice poorly or my clients are incredibly forgetful as this snippet of a conversation that actually took place suggests.

My client was speaking over the jail phone with his mother. They had gone over the merits of the charges which had him in the jail, he asking her to do a number of things which were highly inappropriate. As they were concluding the conversation, Mom told him "Oh, and we took care of that thing."

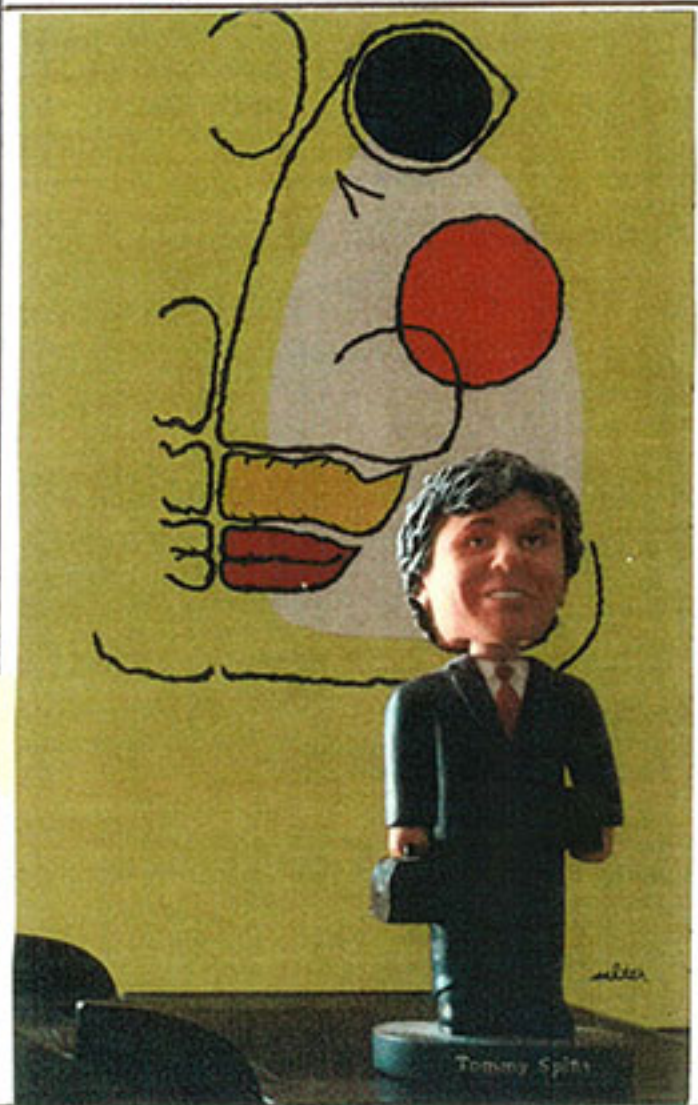
"What thing?" came back my client. "You know, the thing," responded Mom. "No, I don't. What do you mean when you say the thing?" came back my client. "You know, we got rid of the G-U-N," Mom concluded, apparently assuming those listening would be unable to crack her code!



"I need to relax? Oh, you'd love that, wouldn't you?"



"Good trial." "Good trial." "Good trial."



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THE DOCTOR
WOULD LIKE A
STOOL SAMPLE,
A URINE SAMPLE,
AND A SPERM
SAMPLE.



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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

WHAT DID
SHE SAY?

THEY WANT
YOUR
UNDERWEAR



The RoundTable
Steve LaCheen
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Change Viewpoints



6 Long ago, a curious plague struck a village. When afflicted, its victims went into a deathlike coma, and most died within a day. The problem was that the villagers couldn't tell if a victim was dead or alive. After discovering that someone had been buried alive, an alarmed town council convened. The majority—hoping to save lives—voted to put food and water in every coffin. Another group proposed a cheaper solution: implant a stake in every coffin lid directly over the victim's heart. When closed, all doubts about the victim's condition would vanish. What differentiated the solutions were the questions used to find them. Whereas the first group asked, "What if we bury somebody *alive*?" the second group asked, "How can we make sure everyone we bury is *dead*?" Remember: the second assault on the same problem should come from a totally different direction. How can you change your viewpoint?