

American Board of Criminal Lawyers

THE ROUNDTABLE



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ABCL CONFERENCES, 2015: (Come Early~Stay Late for Each Meeting)

NEW ORLEANS, LA, February 20-22, Windsor Court Hotel, all 40 rooms are 800 sq. ft. Suites, \$350. Friday Reception on the top floor of the hotel with balconies. (Mardi Gras ends on Fat Tuesday, February 17th). Dinner Saturday Eve at August Restaurant. Meetings and breakfasts on Saturday and Sunday. Lots of revelry and fine food will abound!

NEXT MORE ABCL FUN, FELLOWSHIP AND FRIENDSHIP TO CELEBRATE



MUST... REMEMBER...

LA JOLLA, CA, June 5-7, La Valencia Hotel overlooking the ocean, 40 rooms reserved at prices from \$375 to \$415, first come first serve basis for type of room. Friday night reception, Saturday night dinner, meetings and breakfasts. Breathtaking area with many sights to see in La Jolla and San Diego.

AND FOR THE FABULOUS FINALE.....



SANTA FE, NM, October 9-11, La Posada Resort, 50 rooms reserved at \$270, contract signed for all 2015 prices for the 2015 conference! Best rooms designated for ABCL. Friday Reception, meetings and breakfasts. Saturday, elegant black tie dinner and dance. Santa Fe has shops, restaurants, galleries galore. Balloon Festival in Albuquerque, and historic Teos and Indian pueblos are nearby.



TIDBITS

Richard Tegtmeier Recognized as "Lawyer of the Year" in Best Lawyers in America® 2015 Edition

Richard Tegtmeier has been named as a 2015 Best Lawyers in America® "Lawyer of the Year" in the area of Criminal Defense Law in Denver, Colorado. We also congratulate Richard for being designated as a 2015 Best Lawyers in America® in White Collar Criminal Defense.



Richard Tegtmeier is an experienced and accomplished trial lawyer who heads the Sherman & Howard Criminal Practice Group. He specializes in complex criminal and civil litigation and has tried more than 200 cases before juries. He is respected throughout the country for his unique ability to navigate the courtroom and the complex process of a jury trial—he has the confidence required to think and act outside the box and produce the type of results that can only come from decades of success. He has been dedicated to the pursuit of criminal justice for decades and often wins the hearts of judges, juries and prosecutors alike. Congratulations, Richard!

From: Hugh E. Keefe

"As members of the Trial Practice Faculty of the Yale Law School ABCL Fellows (and spouses) Tara Knight and Hugh Keefe were notified that ABCL Honorary Fellow Christopher Sallon QC would be in New Haven from London in September to give a multi-day series of lectures at Yale on how trials are conducted in the U.K. As many of us recall, Chris gave a very entertaining talk at the Fellows' Banquet in London a few years ago. Anxious to again share that British wit, Knight & Keefe renewed their acquaintance with Chris and co-taught a class on jury selection, opening statements, and direct and cross examination under the British and American systems. The ABCL was given well-deserved recognition and Chris was wildly entertaining and informative."

From: Roger M. Synenberg

The prospective defendants in the great County of Cuyahoga County, State of Ohio have reason to celebrate. They know their cases will be handled appropriately and with a fair hand.

Jerry Gold - A former President of this fine group and about 1,000 other organizations takes the helm as Foreman of the Grand Jury. The Fellows in Cleveland may have to close their offices!!

From: Jerry Gold

"Stolen from the Garden" is a new book about a kidnapping 40 years ago in Minneapolis. The trial stars Fellows Meshbesh and Hartigan. The stuff about our pals makes an otherwise boring book much fun and brings back great memories.

FROM THE FRONT LINES

From: Don Samuel

I just completed a trial representing the president of the southern branch of the Outlaw Motorcycle Club. He learned that the head of one of the local clubhouses was a federal informant. He sent a half dozen members of the OMC to the clubhouse to shut it down and remove all members' patches and vests and "out" the informant. He was indicted for obstructing a grand jury investigation in violation of § 1512(c)(2). There was no doubt that he learned that the head of the clubhouse was, in fact, an informant and no doubt that that was the reason he closed the clubhouse and "outed" the clubhouse boss. There was also no doubt that there had been, in fact, a two-year grand jury investigation into the activities of the Outlaws which had returned several sealed indictments for drug and firearms violations. There was little evidence, however, that my client shut down the clubhouse and outed the snitch with the specific intent to obstruct a grand jury (as opposed to simply hating informants and not wanting them in the club or anywhere near the club). At the close of the government's case, the U.S. District Judge granted a judgment of acquittal on all counts, finding that there was no evidence of a corrupt intent to obstruct the grand jury proceedings. As their patches say, "Outlaws Forever; Forever Outlaws."

From: Jerry Froelich

Jay Strongwater a member of ABCL made an opening statement in a large drug case in federal court in Atlanta. The Court took a break and when the judge returned to the bench, the government dismissed its case against Jay's client. How's that for an opening statement !!

From: Pat Mika (ABCL President 2014)

I am pleased to report that **Jon Paul Rion** recently won a major suppression hearing where he destroyed the CI. At the conclusion of Jon Paul's cross examination, the court found the snitch's testimony wholly incredible and suppressed the fruits of the poisonous tree that would most likely have resulted in his client's conviction. Congratulations on yet another victory! We look forward to hearing the details at the Roundtable.

From: James Voyles

Just finished representing NASCR driver Tony Stewart in the Grand Jury investigation in NY. Worked with a great local counsel John Speranza of Rochester New York. He was recommended to me by Ira. We got a No Bill from them after a day and a half of testimony.

Welcome New Members

Margaret Sind Raben

333 W. Fort Street, Suite 1400, Detroit, MI 48226

Randolph Tucker Richardson, III

300 W. Short Street, Lexington, KY 40509

Front Line Report from Gerry Goldstein:

Hannah Overton Reversal (9/18/14)

7 years ago, Hannah Overton, a mother of 5 young children, was convicted of "salt poisoning" her young son and sentenced to life without parole. Yesterday, in a 7 to 2 opinion, the Texas Court of Criminal Appeals reversed Hannah's conviction on an IDC claim, noting that the conviction was essentially based upon junk science. Some of you may recall my previous discussion at one of our meetings of our cross-examination of Hannah's prosecutor regarding our *Brady* claim (regarding the child's critical vomitus hidden from the defense), which is detailed in the Court's opinion below. Sometimes cross-examination is like tenderly tiptoeing through a mine field. Other times it seems that a witnesses has been sent by a benevolent agent from the William Morris agency. Check it out.

"At the habeas hearing, the lead prosecutor conceded that, during this 2007 trial, she was an alcoholic who was also taking prescription diet pills that affected her memory. She was later fired by the District Attorney (who had been the second-chair prosecutor during this trial) for unrelated ethical violations. During the habeas hearing, the prosecutor repeated seventy-two times that she did not recall or did not know the answers to questions concerning the investigation or trial of applicant. She could not remember documents that she had written during the trial and did not recognize her handwriting; she did not remember writing the e-mails that came from her e-mail address, nor receiving other e-mails at that address; she could not remember if she saw any vomit when she previewed the evidence with one of applicant's counsel before trial, and she did not remember asking the police to have it tested.

The second-chair prosecutor (later appointed as the District Attorney by the Governor) testified that the lead prosecutor told her that "she would do anything it would take to get an advantage over the Defense," including sending a "spy" to applicant's church group to learn the defense strategy. The second-chair prosecutor testified that the lead prosecutor was not ethical and was "not truthful." She said that the lead prosecutor told her that no vomit samples had been saved as evidence. She said that she was "concerned with the fact that [the lead prosecutor] was violating the Court's orders."

When confronted with various court documents and exhibits that purportedly contained her signature and initials and referred to A.B.'s vomit that was recovered at the Urgent Care Center, the lead prosecutor could not "remember," "recall," or "identify" anything, even though she had explicitly requested that this vomit be tested." (emphasis supplied) *State v. Overton*, __ S.W.3d __ (Tex.Cr.App. September 17, 2014).

Cross-examining the lead prosecutor in Hannah's conviction "reminded me of what my Mentor and Patron Saint, Maury Maverick, Jr., once told me about the practice of criminal defense. He said: "Being a criminal defense attorney is like the hen pecking around in the chicken yard. Every 100 pecks or so, she comes up with a kernel of corn. The other 99 she ends up with a beak full of shit!" This day was one of those kernels of corn! Keep the faith!

SUPREME COURT

THE IDIOPATHIC RIDICULOPATHY CONSORTIUM

14-188 *Collyard v. United States*

Guilty pleas.

Ruling below (8th Cir. 554 F. App'x 541):

The district court did not abuse its discretion in denying the defendant's motion to withdraw his guilty plea. In this circuit, a guilty plea may be withdrawn before sentencing if the defendant demonstrates a fair and just reason for the withdrawal. The defendant could not do so here, where he claimed that his guilty plea was involuntary due to his use of hydrocodone and that the district court abused its discretion in concluding that he was competent and not under the influence but he failed to present evidence that he was actually under the influence when he entered his plea.

Question(s) Presented: Did the court below erroneously equate the voluntariness of a guilty plea, which the Fifth Amendment's due process clause requires, with the lower "fair and just" standard for plea withdrawal provided in Fed. R. Crim. P. 11?

Petition for certiorari filed 8/14/14, by William J. Mauzy and Casey T. Rundquist, both of Minneapolis, Minn.

14-189 *Esquenazi v. United States*

Bribery.

Ruling below (11th Cir. 752 F.3d 912, 95 Cr. 240):

A commercial business qualifies as an "instrumentality" of a foreign government under the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1 et seq., because it is controlled by the state and performs a public service the controlling government treats as its own. There was no merger of the defendant's money-laundering charges with underlying offenses that generated the proceeds to be laundered, either in the indictment or as a result of the evidence adduced at trial.

Question(s) Presented: (1) Does the Eleventh Circuit's definition of "instrumentality" under the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2, as "an entity controlled by the government of a foreign country that performs a function the controlling government treats as its own" fail to satisfy the constitutional requirement of adequate notice of what specific conduct violates the FCPA, and is it erroneously derived from commentary to an unrelated treaty that postdates the FCPA's enactment? (2) Did the Eleventh Circuit err by concluding that the defendants' FCPA convictions did not merge with their convictions for violating the Act on the Laundering of Monetary Instruments, 18 U.S.C. § 1956, where both were based on the same payments made by third-party intermediaries to the alleged foreign officials employed by Haiti Teleco?

Petition for certiorari filed 8/14/14, by Michael A. Sink, T. Markus Funk and Perkins Cole LLP, all of Denver, Colo., Michael J. Rosen, of Miami, Fla., Christopher M. Kise and Foley & Lardner, LLP, both of Tallahassee, Fla., and David W. Simon, James F. Cirincione, Lauren L. Vallente and Foley & Lardner, LLP, all of Milwaukee,

Jury finds Helena man not guilty of rape

By WHITNEY BERMES, Chronicle Staff Writer

Posted: Friday, August 22, 2014 2:04 pm

After a five-day trial, a Helena man was found not guilty of raping a Bozeman woman in 2012.

After deliberating less than two hours, a 10-woman, two-man jury said 32-year-old Jared Robert Kuntz was not guilty of counts of felony sexual intercourse without consent.

However, the jury did find Kuntz guilty of misdemeanor unlawful transactions with a minor.

Kuntz, wearing a white button-up shirt and black slacks and seated between his two attorneys, quietly cried and smiled immediately after the clerk read the verdict.

Gallatin County District Judge Mike Salvagni sentenced Kuntz to six months in jail on the misdemeanor, but gave Kuntz credit for time served. He also ordered Kuntz to pay \$180 in fees. He was immediately released from jail, where he had been since March 27, 2013.

Kuntz's trial began Monday with jury selection and opening arguments from attorneys. Testimony was presented to jurors Tuesday, Wednesday and Thursday.

Prosecutors argued that Kuntz drugged and raped an 18-year-old woman while she was unconscious. But Kuntz's defense attorney said the two had consensual sex and that the woman was not unconscious.

Gallatin County Chief Deputy Attorney Eric Kitzmiller said on Dec. 29, 2012, Kuntz, who was 30 years old at the time but told the woman he was 24, exchanged phone numbers with the woman while she was at work then later met her at the movie theater for a date.

Prior to going into the movie theater, the two drank alcohol in Kuntz's vehicle in the parking lot, Kitzmiller argued, and the woman also drank from a Pepsi bottle that Kuntz did not drink from, one that he suspected contained date rape drugs.

After going into the theater, the woman got sick a short time later and she and Kuntz left, Kitzmiller said, and it was about that time that the woman began to black out.

The woman has no memory of the next few hours, but did vaguely remember going through the Taco Bell drive-through then recalled waking up on a couch with Kuntz lying on top of her, Kitzmiller said.

After waking up on a couch in a Holly Drive home wearing only her bra, the woman got dressed, stumbled to a neighboring garage, started the truck inside and tried to drive away before the homeowner found her and called police, Kitzmiller said.

During his closing arguments to the jury on Friday morning, Kitzmiller said Kuntz's statements in the case, both with police and during his testimony at his trial, were "filled and riddled with inconsistencies." But the woman's claims are corroborated by other witnesses, like law enforcement and hospital staff.

"Her story has not changed," Kitzmiller said.

And going into the date, the woman had no intentions of having sexual relations with Kuntz, Kitzmiller said.

"She did not want to have sex. She just wanted to go out, have a fun time at the movies and go home before it got too late," Kitzmiller said.

Defense attorney [Chuck Watson](#), however, said the woman has falsely accused Kuntz of rape to get out of a burglary charge.

The woman was arrested after being found in the neighboring garage and was held on suspicion of burglary. So she developed a motive to fabricate the rape in order to get out of that charge, Watson said.

"There's an agenda being executed in this case and it's a big agenda," Watson said. "In this culture, rape is in the water. Everybody's drinking it."

Watson told the jury to "not underestimate the maturity" of the woman, who was 18 at the time, while describing his client as immature and thoughtless.

"(The woman) wanted something, too, and she got it," Watson said.

While the woman's blood alcohol content was found to be 0.115 the night of the alleged rape, a blood test showed no drugs in her system.

"This is a false allegation of a drug-fueled sexual assault," Watson said.

Following the verdict, Kitzmiller said he believed the state had a compelling case, but that the jury likely had issues with the credibility of witnesses due to the fact that both Kuntz and the woman were intoxicated.

"I'm disappointed in the verdict," Kitzmiller said.

Watson said his team was "humbled, but not proud" of the verdict.

"A lot of mistakes were made, including by (Kuntz)," Watson said. "My client is sorry so many people got ground up in this."

Kuntz, who worked as a disc jockey under the name DJ Krave, has prior convictions for felony burglary and misdemeanor criminal mischief out of Missoula County.

Whitney Bermes can be reached at wbermes@dailychronicle.com or 502-264-6148. Follow her on Twitter at [@wbermes](#).

As reported by **Richard Lubin**:

Fellow **Frank Jackson** just got a not guilty verdict on a "campus rape case"! Congratulations Frank. I've been following this. Not an easy case under any circumstances, but especially in this environment. Here is the story:

Star-Telegram

Former TCU student acquitted on sexual assault charge

Posted Monday, Sep. 22, 2014

By Mitch Mitchell

mitchmitchell@star-telegram.com

FORT WORTH — A former TCU student was found not guilty on Monday of raping a woman at a party on campus in 2012, a verdict praised by the defense attorney but denounced by a women's advocate who said the outcome of the case would "send victims right back into a code of silence."

Joseph Robert Dowd, 21, testified that his accuser, a TCU student, kissed him and helped him put on a condom before they had consensual sex while their friends were downstairs at a party on the night of Dec. 6, 2012.

The woman testified that Dowd held her by the throat and raped her.

The jury deliberated for seven hours over two days. The maximum sentence on the charge is 20 years in prison.

"I'm totally delighted," Dowd's attorney, Frank Jackson, said after the verdict was read.

"The boy has had his life restored to him after two years. Authorities should be very cautious about sexual assault allegations on college campuses now. I know it's perhaps the politically correct thing to do, but if we're not careful a lot of lives can be destroyed."

Prosecutor Kimberly D'Avignon called on "future victims not to let this verdict stop you from reporting a rape."

"We would like to thank TCU because they did everything right. Other colleges could learn from their example," D'Avignon said. "Jane Smith also did the right thing and we want to thank her for her courage."

"Jane Smith" was the pseudonym used by the Star-Telegram to identify the woman. The newspaper typically does not identify accusers in sexual assault cases.

"Even the president recognizes what an uphill battle victims of acquaintance rape face on college campuses," D'Avignon said.

In January, the White House released a report stating that one in five female college students are assaulted and only one in eight students who have been sexually assaulted will report it. President Obama said young people need to muster the courage to say when they have been sexually assaulted even though the social pressure to remain quiet can be intense.

On Friday, Obama launched the It's On Us initiative which enlisted movie, television and sports stars to encourage everyone to work to end sexual assaults on college campuses.

Mary Lee Hafley, chief executive officer of SafeHaven of Tarrant County, which works with victims of domestic violence, said sexual assault victims typically feel ashamed, embarrassed, blame themselves and worry that people will not believe them. Verdicts such as this one reinforce those beliefs, Hafley said Monday.

"All those fears that were rolling through her head roll through every victims' head, and in her case it came true," Hafley said. "This unfortunate verdict is sending victims right back into a code of silence."

Men must stand beside the victims of sexual assault and call out the perpetrators, Hafley said. Until that happens, nothing will change, she said.

Background of case

Smith and Dowd were drinking with about 10 other students at an impromptu party at the Phi Gamma Delta fraternity at TCU the week before finals, according to testimony last week in state District Judge Ruben Gonzalez's court.

Dowd was a member of the fraternity and was also a resident assistant for the house, and his room was larger than others. It had a couch area, while most of the other rooms have space for a just bed.

The party started in his room but most partygoers eventually moved to a common area where a poker game was in progress, according to testimony. Eventually, Smith and Dowd were alone in his room. Several of Smith's sorority sisters left cellphones and other items in the room.

Smith was described as kind of a "touchy-feely" person in testimony by Dowd's fraternity brothers. They said they saw Smith sitting on Dowd's lap most of the time they were in his room.

Smith testified that when they were alone, Dowd threw her on the bed and put his hand on her throat as he pulled off her shoes, jeans and panties. He picked her up and put her face down on a couch where he continued to rape her, Smith said.

Dowd's sorority sisters testified that Smith was crying when she left his room and one of them confronted him.

TCU had 11 reports of forcible sexual offenses in 2012, according to the school's annual Security and Fire Safety Report. Nine were acquaintance rapes and two were forced fondling.



THE VENT

A great place
if something
upsets you.



On the Opinion Page
of today's paper.

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The RoundTable

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Future Meetings

February 20-22, 2015: New Orleans, LA

June 5-7, 2015: LaJolla, CA

October 9-11, 2015: Sante Fe, NM



The RoundTable

Steve LaCheen

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PITY THE NATION

(After Khalil Gibran)

Pity the nation whose people are sheep
And whose shepherds mislead them
Pity the nation whose leaders are liars
Whose sages are silenced
And whose bigots haunt the airwaves
Pity the nation that raises not its voice
Except to praise conquerors
And acclaim the bully as hero
And aims to rule the world
By force and by torture
Pity the nation that knows
No other language but its own
And no other culture but its own
Pity the nation whose breath is money
And sleeps the sleep of the too well fed
Pity the nation Oh pity the people
Who allow their rights to erode
And their freedoms to be washed away
My country, tears of thee
Sweet land of liberty!

Lawrence Ferlinghetti

