

American Board of Criminal Lawyers

THE ROUNDTABLE

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WOMAN WHO SPENT 22 YEARS ON DEATH ROW FREED

PHOENIX — An Arizona woman who spent two decades on death row in the killing of her 4-year-old son held a news conference a day after a judge formally dismissed a controversial case that relied almost entirely on the work of a detective with a long history of misconduct.

Debra Milke, 51, was convicted of murder in 1990 in the death of her son, Christopher. Authorities say Milke dressed him in his favorite outfit and told him he was going to see Santa Claus at a mall in December 1989. He was then taken to the desert near Phoenix by two men, one of whom was Milke's roommate, and shot in the back of the head.

Authorities say Milke's motive was that she didn't want the child anymore and didn't want him to live with his father. Milke has maintained her innocence and denied that she confessed to the killing. James Styers and Roger Scott, the two men who led Christopher to his death, have been on death row and have refused to testify against Milke.

While Milke sat on death row, the Arizona Supreme Court had gone so far as to issue a death warrant for her in 1997. The execution was delayed because she had yet to exhaust federal appeals. An appeals court overturned Milke's conviction in 2013, ruling that prosecutors failed to disclose a detective's history of misconduct. Her conviction was based entirely on a confession Milke gave to the now-discredited detective, Armando Saldade. Multiple rulings in other cases said the now-retired officer either lied under oath or violated suspects' rights during interrogations, according to the federal appeals court.

One of Milke's attorneys, Michael Kimerer, said Monday that he was still in disbelief that "a long, long journey with so many ups and downs" ended with his client's freedom. "She was innocent. It was all based upon a police officer that just totally lied," Kimerer said outside court. "To see her free today and totally free and exonerated, it's an unbelievable feeling — just unbelievable."

Saldade's history of conduct included a five-day suspension after he stopped a female motorist in 1973 and "took liberties" with her before agreeing to meet her later for sex. According to court documents, he questioned a suspect in 1982 who was strapped to a hospital bed and was so incoherent he didn't even know his own name.

Saldade had said he would not testify at any retrial, citing fears of potential federal charges based on the 9th Circuit's accusations of misconduct. Both county and federal authorities said they did not intend to seek charges against the detective based on the accusations, and a state appeals court later ruled that Saldade would be compelled to testify even against his will.

Milke sued the city of Phoenix, Maricopa County and numerous individuals earlier this month, alleging authorities violated her civil rights. She also contends she was denied a fair trial and was a victim of malicious prosecution.

Milke, whose mother was a German who married a U.S. Air Force military policeman in Berlin in the 1960s, has drawn strong support from citizens of that nation and Switzerland, neither of which has the death penalty.

BOOK REVIEW BY JERRY FROELICH

I just finished reading John Grisham's "Sycamore Row" and there is a passage in it where Jack Brigance, a defense attorney who is also in a "Time to Kill", and his wife have the following conversation which I believe perfectly explains why we do what we do:

Wife: "My point is that trial work is so stressful. Why do you want to do it?"

Jack: "Because I love it. It's what being a lawyer is all about. Being in the courtroom, in front of jury, is like being in the arena, or on the field. The competition is fierce. The stakes are high. The gamesmanship is intense. There will be a winner and a loser. There is a rush of adrenaline each time the jury is led in and seated."

Wife: "A lot of ego."

Jack: "A ton. You'll never meet a successful trial lawyer without an ego. It's a requirement. You gotta have the ego to want the work."

Wanted to let all my ABCL fellows know that we are working hard here in California to uphold the highest quality of legal practice and have been so acknowledged this year by the Los Angeles Criminal Courts Bar Association as recipients of the Jerry Geisler Award for Defense Attorneys of the Year and the Morton Herbert Service Award for outstanding community service by a member of the bar. **Vicki Podberesky**

Our 2015 Award Winners:

Jerry Geisler Memorial Award

Victor Sherman

Michael D. Nasatir

Vicki L. Podberesky

Morton Herbert Service Award

Richard G. Hirsch

A VERY conservative federal judge last week declared several key pieces of Michigan's sex offender registration requirements unconstitutional. Bill Swor was one of several volunteer ACLU attorneys who wrote the arguments that prevailed. Although the opinion declares relief for the named plaintiffs, the holdings are going to apply to nearly all of MI's burdened SO registrants. Bill's too modest to post this victory himself but he can't stop me from singing his praises. **Margaret Raben, 4/7/15**

I just learned that my dear friend and our esteemed fellow, Donald M. Re was named California trial lawyer of the year by Loyola Law School. I believe the award was started by or is in honor of California Judge Larry Fidler. Standing ovation for my man, Don!! **David Z. Chesnoff (4/19/15)**

*You will not get what you deserve.
You will get what you negotiate. 😊*

The Cracksmen's Toast.

MOTION TO SUPPRESS GRANTED

You will recall in a case we previously discussed on this website law-enforcement in Las Vegas disabled the internet access in a room occupied by a client of David Chesnoff and Tom Goldstein. When techs were called to repair the problem agents came to the room masquerading as techs. Based on that ruse they made observations that led to a search warrant for the room.

Earlier the magistrate granted the motion to suppress on extremely narrow grounds. She granted the motion based on the fact that while there was nothing wrong with the agents using the ruse they exceeded the scope of permissible entry by going into rooms where it was not necessary to repair the Internet service. While it was a victory it was not the complete victory that lawyers interested in protecting the fourth amendment hoped for and expected.

However in a ruling today the Judge overruled the magistrate and found this type of ruse was unconstitutional and in the sharply worded opinion granted the motion to suppress. Hence the suppression order was upheld but on a much more important principle.

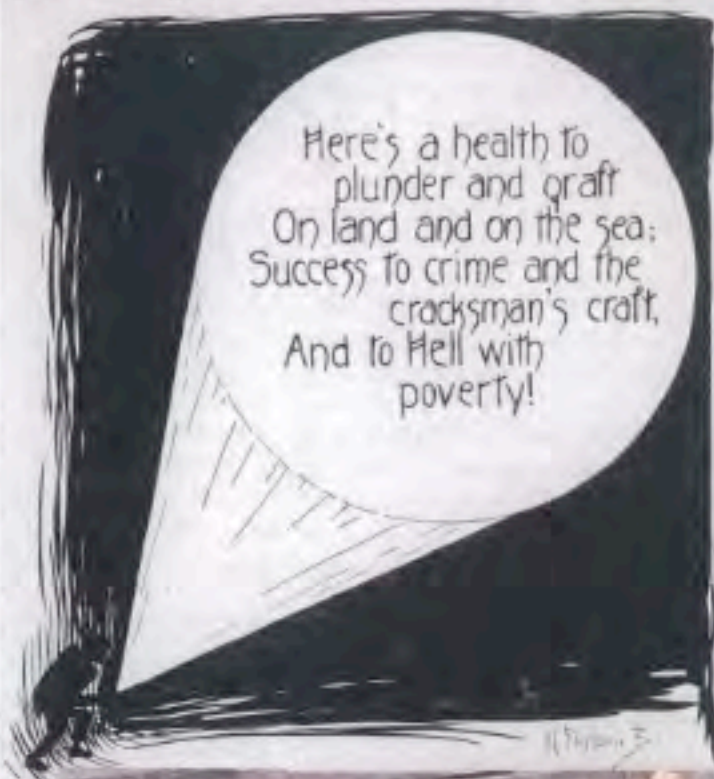
This is an important decision. The use of a ruse under any circumstances is constitutionally suspect. But the courts for the most part have turned a blind eye and extended the governments ability to justify these end runs around the fourth amendment. Hopefully this case will give the government pause before they again engage in warrantless searches.

The briefs submitted by David and Tom were compelling and the hearing transcript on the motion to suppress demonstrated that the agents purposely did not tell the magistrate that they had disabled the internet access.

It is almost shocking the US attorneys office decided to condone the agents' conduct. Of course I said almost. Because I think we are all beyond being shocked.

Congratulations to David and Tom.

Michael Pancer (4/17/15)



NEXT QUESTION

BY PAUL RUDNICK

At every Passover Seder, the youngest child asks the Four Questions, including "Why is this night different from all other nights?" and "On all other nights, we eat either sitting or reclining, but why on this night do we recline?" In order to make this year's Seders more user-friendly, the United Council on Reform Judaism has suggested adding the following bonus questions:

1. Is the fact that Gwyneth Paltrow is only half Jewish really a blessing in disguise?
2. Was there anyone in the Talmud named Madison?
3. If Lucky Charms were a Jewish cereal, would the box have a picture of Rahm Emanuel?
4. In a Jewish family, isn't "tiger mother" just another term for "amateur"?
5. If Harry Potter were Jewish, wouldn't he have gone to a better school?
6. Why does Kindle sound like a Yiddish word for an especially adorable grandchild?
7. If your daughter married a chiropractor, would you even bother telling anyone?
8. If your daughter were a chiropractor, would you always add the words "to the stars"?
9. When Elena Kagan was sworn in as a Supreme Court Justice, did her mother murmur, "Maybe she'll meet someone"?
10. Why do even Gentile hipsters dress like Yentl?
11. When that computer beat those two human contestants on "Jeopardy!," did Alex Trebek comment, "Well, of course—it's Jewish"?
12. If there were a reality show called "Jersey Shul," in which the entire cast was made up of Orthodox Jews, would they spend all their time working out, tanning, and waiting for the Messiah?
13. If, for the sake of world peace, Passover and Easter could be combined,

would Jesus be resurrected and announce, "I came back for the buffet"?

14. Are the Zuckerbergs now thrilled that Mark never went outside and got some fresh air?

15. If a Jewish astronaut had been the first man on the moon, would he have said, "That's one small step for a man, and there's parking"?



16. Every time Jerry Seinfeld appears as a guest on Jon Stewart's show, does a Jewish angel sigh happily and feel a little bloated?

17. When you proudly tell your family that your beloved daughter is a lesbian rabbi, is there any way to stop Aunt Henny from exclaiming, "But she's so pretty!"?

18. If Moses' mother met Jesus' mother and said, "My son received the Ten Commandments," would Jesus' mother then say, "Well, my son sacrificed himself for the sins of all humankind"? And then would Moses' mother take a long pause and say, "But at least Moses calls"?

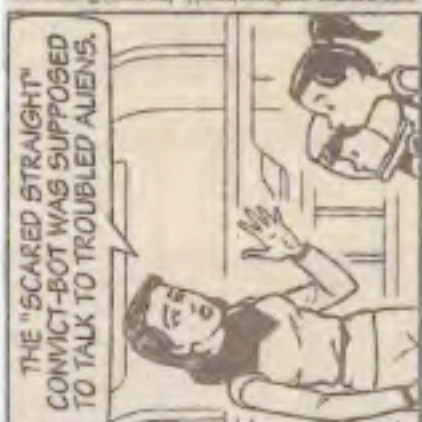
19. In hardcore Jewish pornography, after the sex, does the woman always say, "Now picture that in Aruba"? ♦



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BUDY

RUBIN

SHEVITZ NATHAN
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All Charges Against Hannah Overton Dismissed

I am happy to report that this afternoon a judge in Corpus Christi Texas dismissed all charges against Hannah Overton, the young Texas Mother of 5, who some 8 years ago was convicted of capital murder and sentenced to life without parole for allegedly salt poisoning her 4-year-old foster child she and her husband were in the process of adopting. As usual, my partner, Cynthia Orr did all the heavy lifting, doggedly fighting 7 years of appeals, weeks of habeas hearings, judge recusals, and recent days of pretrial hearings in preparation for retrial.

Again, as usual, Cynthia let me carry her briefcase, allowing me to get credit for all her hard work, and even allowed me to cross-examine Hannah's evil persecutor (recall, she's the one who answered 72 successive questions with "I don't remember" or "I don't recall." She even refused to recognize her own signature and handwritten notes).

In any event, today, the new District Attorney moved, and our new Judge dismissed all charges against Hannah, who is now back at home with her husband and 5 children (she was nursing the youngest when sent off to prison 8 years ago). Gerry Goldstein 4/9/15

Record \$21,568,712 FTCA med mal judgment in NH!

I have to brag (although it ain't braggin' if it's true!) on my law partners Jamal Alsaffar, Tom Jacob and our local counsel Larry Vogelman, who just won the highest judgment in the history of New Hampshire for a very deserving veteran Michael Farley, in the amount of \$21,568,710 in an FTCA med mal case. It was a failure to timely diagnose and treat a stroke which resulted tragically in locked-in syndrome. Pretrial offer was zero. So proud of our excellent trial team.

Mika's HUGE Victory

Stop the presses! Hold the news! Pat Mika just won a case that was unwinnable. The facts presented were that a High School Teacher molested one of his students and was charged with the felony of sexual assault by a person in a position of trust. There were six hours of video confession from our former President's client. There were countless numbers of vulgar text messages from his client to the student. The case was tried in four and half days. The Judge let in three hours of video interviews of the student followed by a ½ day of her testimony. In spite of a Judge, who was soundly told off, by former President Mika for his bias and in spite of a true bully as a Prosecutor, the jury handed Mr. Mika his two favorite words "Not Guilty"! Clearly, the case was won by his overwhelming charm and his skillful cross examination. Needless, to say he chose not to put his client on the stand rather, he did the heavy lifting himself. All praise and honor to the Mr. Pat Mika, congratulations! Enjoy the weekend. This is thrilling!

John Rion (4/17/15)

SIGNING OFF

My dear brothers and sisters –

I will be temporarily (I hope) signing off the listserve and not reading any posts as I have accepted an appointment as a special prosecutor to investigate the first Albuquerque case where a police shooting of a homeless camper, James Boyd, was caught on helmet camera.

Our local DA filed an information against a SWAT officer and a ROP officer earlier this year. Defense counsel moved to recuse her and the office. Motion granted about 2 weeks ago.

No other prosecutor in the state, including the Attorney General, would touch the case – ostensibly because of lack of resources, but more likely because of the political heat. Because of this, I was pressed into service.

I chose not to take the case on an hourly basis but for the same \$5,400 flat fee contract public defenders get paid in this state for defending first degree murder cases.

Before my exit, if anyone feels comfortable doing so, would appreciate any recommendations (sent to my private e-mail below) for the world's best experts in the following:

--shooting scene reconstruction

--police training on dealing with subject with a knife

--ballistics expert (locals have been unable to link fatal fragment from hollow point bullet to the gun of one of the 2 officers involved)

I hope this decision to return to prosecution for just this one case does not permanently bar me from your fellowship and good company.

If so, let me know. If not, I will sign back on when this is over.

Your friend, Bandi McGinn (4/17/15)

You've been wondering if you have spent your time wisely. A man that is young in years may be old in hours if he has lost no time. If you feel old then you know you have not wasted any time. If you feel young then do not waste the day before you now. Remember a day is a fortune and an estate if you lose a day you lose life it self. Do not worry about the time experience each new day a wave which has passed cannot be called back, nor can an hour which has gone be returned. Your time will come by and by, there are great things in store for you. Swift speedy time will bring new and interesting things this month, feathered with flying hours. Be careful over the years not to let it dissolve the beauty of the hour.

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Future Meetings

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The RoundTable
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