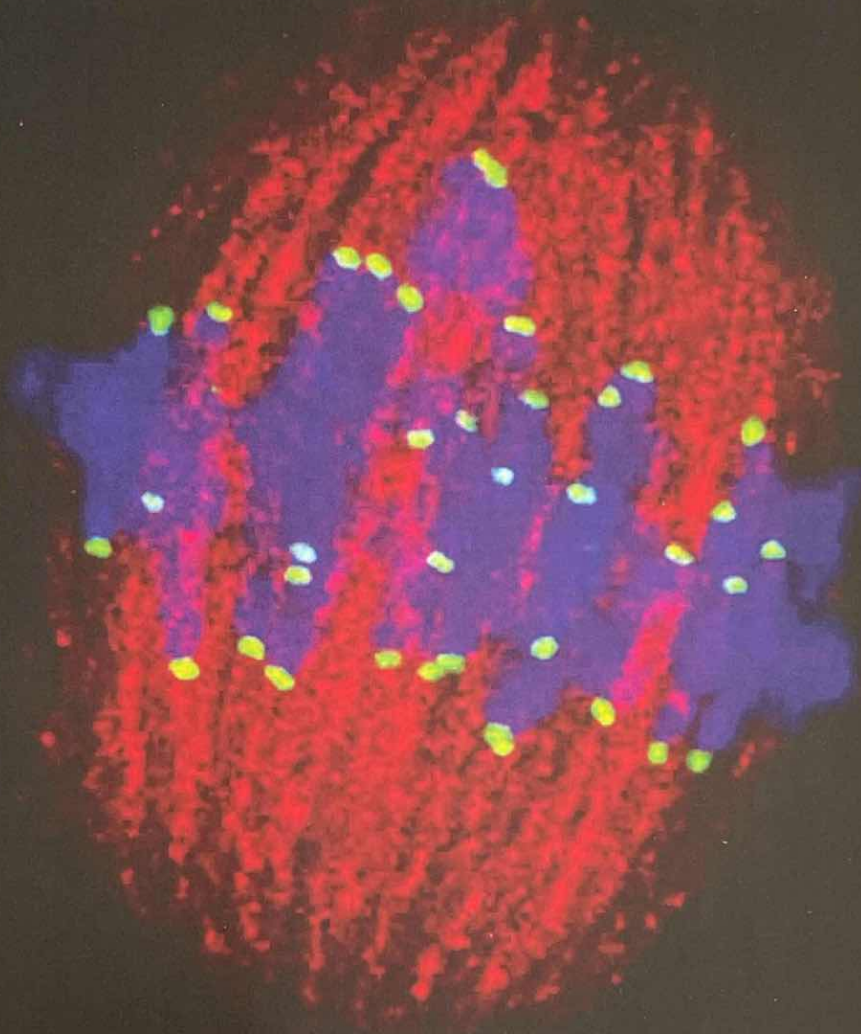


American Board of Criminal Lawyers

THE R UNDTABLE

Vol. MMXXII, No. 3

MARCH 2022



Each one of your cells contains two copies of 23 chromosomes, one inherited from each of your parents. During meiosis—the cell division process that creates our reproductive cells (eggs and sperm)—our chromosomes (in blue) pair up along a filamentous spindle (in red), pulled by their centromeres (in green) to each side of the cell, which then divides, and later divides again. Normally, we think each copy of our chromosomes has a 50-50 shot of getting into eggs

and sperm—but that's not the case. Michael Lampson, Professor of Biology, and colleagues have shown that chromosomes can cheat, improving their odds of being passed down to the next generation. They've also recently found certain proteins that act to suppress this cheating in a kind of evolutionary arms race that pits advantage against equality. The implications could shed light on when meiosis goes awry, sometimes resulting in chromosomal disorders. ☞

From: Martin Pinales

January 24, 2022

Our office just won an appeal overturning a life sentence in a child rape case. One of the sustained issues involved the trial judge withholding key exculpatory evidence. Trial counsel had requested child services records (under Pennsylvania v. Ritchie), and the trial court did the usual in camera review. Lo and behold, on appeal we got the appellate court to look at the records again and they found highly exculpatory stuff that was not turned over. In effect, we now have a clear Brady violation where the perpetrator was the trial court instead of the prosecutor. Case is remanded for new trial.

Good News for a change - even if a little late

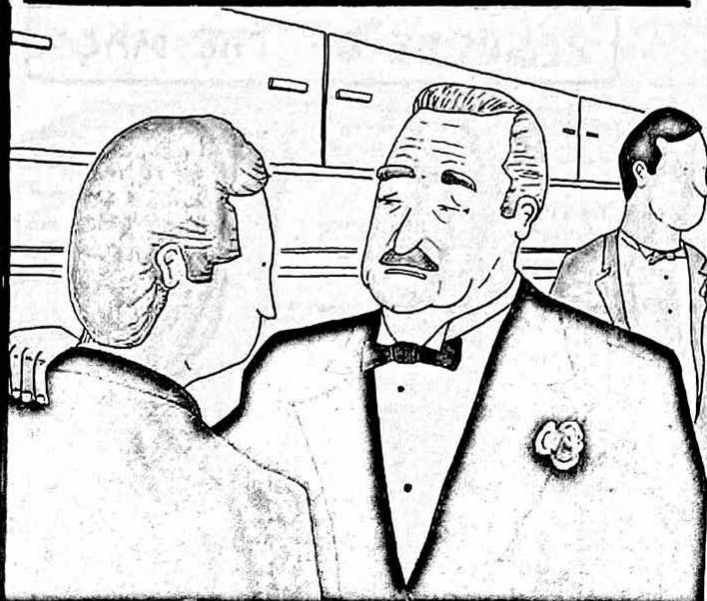
Fellow **Josh Treem** was acquitted of the federal obstruction charges brought against him as a result of his representation of fellow attorney Ken Ravenell. The charges arose from a jailhouse interview Josh and his investigator had with a government witness. The witness was wired by the government, and Josh's advocacy with the witness lead to a search of his firm's offices and seizure of client files. The litigation surrounding the search & seizure was reviewed by the 4th Circuit, which was not happy with the US Attorney's office.

- William Swor

Spina mas fina spins a walk

Just watched **Tommy Spina** argue at sentencing here in Fort Lauderdale. He did it all, I was simply local counsel. Masterful job. Read the room PERFECTLY. Government asked for 2 years in. I will skip all the specifics of Tommy's effective lawyering and get to the point of this email. 3 words. Credit time served. Remarkable result in front of a very difficult Judge. Client literally in tears. Literally. Client at the airport with Tommy now, and has to buy a plane ticket back to Alabama (yes - we told him about the Judge's reputation on sentencing AND taking defendants in immediately).

- Brian Bieber



"I'm gonna make him an offer he could refuse but won't because he's afraid of conflict."

Pretrial detention too easily abused; public safety tools exist
(Thursday, February 10, 2022)

BY MICHAEL STOUT

In 2020 there was universal condemnation of the jailing of an innocent 17-year-old, Gisell Estrada. The Journal called it a "terrible injustice" and called on the mayor to publicly apologize. Gisell's story continues as the ACLU has sued, citing her "Kafkaesque nightmare." The indignation is righteous, but it is a low bar to condemn the jailing of a conspicuously innocent person. Many others are jailed for months before being exonerated, often due to the lack of diligence of those who insisted they be jailed in the first place. Not every accused has a clear Facebook defense or the ability to fight early in the process with an excellent defender as Gisell did. The same folks who told the court Gisell was a danger to the community now urge policymakers to require an accused to prove she is not a danger and should be freed pending trial. This is unhelpful, not to mention un-American.

Cries for harsh treatment as a response to crime are nothing new. We are a society addicted to incarceration as the simple answer to every wrong, numb to "perp walks," orange jumpsuits and even political cries of "Lock her up!" But now we seek our fix even earlier, before conviction, as we attempt to predict future behavior. The late Justice Charles Daniels mockingly suggested that just to be safe we lock everyone up at birth. As the ACLU points out, jail before trial, even for short periods, damages the person and the system. It harms the ability to have a fair trial and damages the physical and mental health of the defendant as well as his ability to make a living.

No one would argue that incarceration is never appropriate — even sometimes before trial. But jail is a tool often abused as leverage to pressure defendants to plead guilty to gain their release because pleading not guilty will keep them in jail. This is backward. It is made worse by a grand jury system that permits unreliable evidence to push a case forward, rationalizing incarceration and delaying a serious evaluation of the case. Combine a weak indictment with a shifting burden to an accused and you have a fundamentally flawed system.

A perfect pretrial system is only an aspiration. But to be clear, our problem is not one of underincarceration. Our problem is with a lack of equal justice, lack of accountability and ineffective treatment. We cannot easily jail folks before trial for the same reason Super Bowl trophies aren't handed out at halftime. We don't yet know the result. For those defendants who are proved dangerous and must be incarcerated before trial, there are plenty of tools to do so. For centuries judges have kept defendants from being released under whatever rules were in place at the time.

New wording about arcane legal presumptions will not change that. But it would eliminate one more right, causing some folks to be jailed unnecessarily. Soon we need to reevaluate our relationship to incarceration more broadly, including for the "clearly guilty." For now, prosecutor, if you believe an accused should be held before trial, take your evidence to an impartial court and make your case. Do your job. That's the American way.



STATE OF CONNECTICUT

GOVERNOR NED LAMONT

February 25, 2022

TO THE HONORABLE GENERAL ASSEMBLY:

Pursuant to Article Twenty-Fifth of the Amendments to the Constitution of the State and Sect 51-44a(h) and 51-165 of the Connecticut General Statutes, I have the honor to nominate for appointment by you TARA L. KNIGHT of New Haven to be a Judge of the Superior Court, to serve for a term of eight years from the date of confirmation by you in succession to the Honc Douglas C. Mintz, who retired.

Sincerely,

Ned Lamont
Governor

HONORING THE ACCOMPLISHMENT OF WOMEN



WOMEN'S HISTORY MONTH

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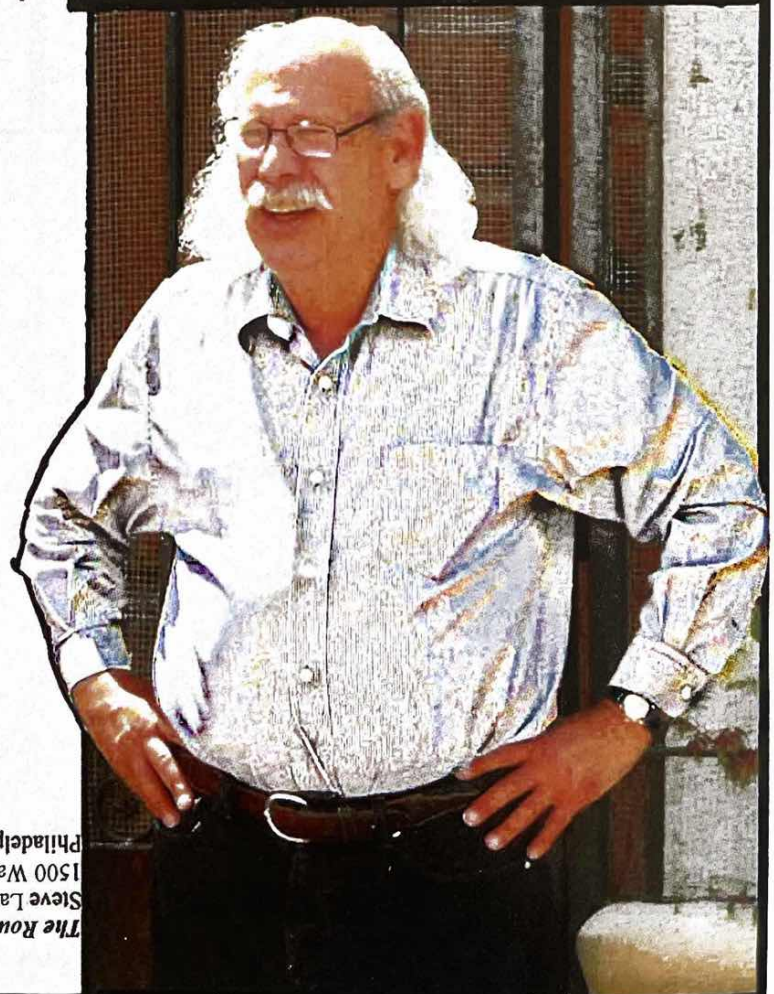


Future Meetings

March 18-20, 2022: Las Vegas, NV - Four Seasons

July 15-17, 2022: Traverse City, MI - Delamar

October 7-10, 2022: Detroit, MI - Cadillac Hotel



The RoundTable
Steve LaCheen, Editor
1500 Walnut Street, Suite 1205
Philadelphia, PA 19102



The NCDC Community Mourns the Passing and Celebrates the Incredible Contributions of Faculty Emeritus, Robert Fogelnest - Feb 10, 2022]

Robert Fogelnest, known to his friends as "Bob" or "Fogie", died at his home in San Miguel Allende Mexico on February 6, 2022. Robert had lived in San Miguel since his retirement in 2009. During his career, Bob was one of the premier criminal defense lawyers on the East Coast and had both a national and international practice. He represented defendants in both state and Federal court and was one of the defense lawyers in the famed "Pizza Connection" trial, one of the nation's first so-called mega-trials.

Robert was active in NACDL and served as the President of that organization in 1995-1996. He was a frequent lecturer and taught at both the National Criminal Defense College and the Trial Lawyer's College. He was a member of the American Board of Criminal Defense Lawyers.

Until he suffered a stroke two years ago, Bob was active in the San Miguel community and was a frequent and excellent Karaoke singer. In San Miguel he had a diverse group of friends in both the expat and Mexican communities.

To be with Bob was to be with a force. He could be hysterically funny, profoundly profane, gently mean and wonderfully gentle. He rarely minced words and you knew where he stood on every issue. whether it was dinner, the theatre or politics- you knew what he liked or disliked.

And while he could be incredibly caustic, his inherent kindness was apparent to the many friends he had in both the expat and Mexican communities in San Miguel de Allende, Mexico.

His death, from a recently diagnosed cancer was incredibly sudden. He died peacefully in the care of his long-time caregiver, Dayna and her husband Oscar, who were part of his large loving Mexican family. Also with him when he died was his cat, "Lefty."

Because my wife and I spend a fair amount of time in San Miguel, it was our pleasure to renew our friendship with Bob and he brightened our time here immeasurably. I am both devastated by his death and joyful that his passing was painless. He will be greatly missed in this community. **-Rick Kammen**