

# American Board of Criminal Lawyers

## THE ROUNDTABLE

Vol. MMXXII, No. 10

October 2022



"Winter is an etching,  
spring a watercolor,  
summer an oil painting  
and autumn a mosaic  
of them all."



### The Editor Celebrates a Serious Milestone

Steve LaCheen is pleased to announce that as of September 26, 2022, he has outlived his Pacemaker.

### 11<sup>th</sup> Circuit grants bond pending appeal

Happy to toot our horn again. Don Samuel and I got an order from the 11<sup>th</sup> circuit yesterday granting bond pending appeal to our client in a white-collar crime case. Don said he can only think of 2 other times they've done this. As to what particular issue they picked up on, my guess is that they are going to rule our way on the failure to give a Takhalov instruction to the jury. Judge Rosenbaum was the one who wrote the order.

There are a bunch of other lawyers involved at this point. Our client – in addition to Don and myself – has 3 other lawyers from K&S working on the appeal. There are 2 other co-defendants who also have great (and numerous) representation from lawyers in Georgia, Florida, New York and D.C. (Aaron Danzig, Joey Burby; here in GA; David Markus in FL, Jenny Kramer in NY, and others)

Hopefully this is the first winning order we get in this appeal.

-Amanda R. Clark Palmer

Jay Strongwater is too modest, so I am posting his victory. Yesterday he and Atlanta attorney Jeff Brickman had a jury return not guilty verdicts after deliberating for two hours. The defendant was a lawyer for Hyundai who was charged with perjury and obstruction regarding the company submitting false documents to the EPA. The case was prosecuted by Main Justice. Hyundai plead guilty and fully cooperated with the Government during the trial. Ironically, the lawyers who represented the Company during its plea negotiations later became a District Judge and the U.S. Attorney. Wild and crazy Jay celebrated by getting a milkshake on the way home. - Bruce Maloy

### Free at Last

I am happy to report that a state collateral challenge case I have been litigating since 2011 resolved this week with my client leaving prison for freedom. She was convicted in 1990 of a form of M1 that carried a sentence of death in prison (A/K/A Life without parole). Plenty of IAC in her direct case. Plenty of proceedings and prosecutorial intransigence. Justice prevailed. The joy in her voice when she called me made my day. My week. Maybe my year. - Margaret Raben

### In and out

Rick Bednarski's 12 person jury took only 20 minutes to find his airline pilot Defendant not guilty of felony sexual assault/penetration after a 4 day trial in rural Craig, Colorado. It takes that long to elect a foreperson.

Congratulation Rick! - Tegmeier, 10/3/2022

### Judicium Interruptit

I have been in criminal antitrust trial in federal court in Ft. Myers since the day after Labor Day. The jury had started deliberations and on Friday of last week indicated it was deadlocked. The judge ordered the jury to continue its deliberations and they were scheduled to return this week. I obviously had other plans. The courthouse is now closed indefinitely and the Court today declared a mistrial.

- Barry Pollack, 9/30/2022

...

Barry is being unduly modest. This is the 3d antitrust case he's tried in the last year. **ALL 3 ended in mistrials from hung juries.** He represented one of the defendants in our Denver chicken antitrust trials. The first lasted 8 weeks before the jury hung. Then he tried it again for 7 weeks and that jury hung too. DOJ finally dismissed against his client and mine. I don't know much about the case in Florida except it involved 2 large cardiology groups, but that case lasted at least a month before it ended in the 3d mistrial.

I've never heard of a lawyer defending 3 major DOJ cases in a year, all antitrust prosecutions, and all ending in mistrials from hung juries. New record Barry? Congratulations! It's time to introduce yourself and tell your wife and family who you are! And get some much needed rest. - Teg

### Eponymous Edibles

(Fill in the blanks)

1. Sauce \_\_\_\_\_
2. Bananas \_\_\_\_\_
3. Beef \_\_\_\_\_
4. \_\_\_\_\_ Salad
5. \_\_\_\_\_ Salad
6. \_\_\_\_\_ Sandwich
7. \_\_\_\_\_ Cracker
8. \_\_\_\_\_ Roll
9. \_\_\_\_\_ Sandwich
10. \_\_\_\_\_ Pastry
11. Peach \_\_\_\_\_
12. Oysters \_\_\_\_\_
13. \_\_\_\_\_ Sandwich
14. Veal \_\_\_\_\_
15. \_\_\_\_\_ Salad



# Ex-cop gets three years for aiding Floyd's death

Thomas Lane held down George Floyd's legs as Derek Chauvin pinned him to the ground. Lane expressed anger at the end of the sentencing hearing.

By Amy Forliti  
Associated Press

MINNEAPOLIS — A former Minneapolis police officer who was sentenced Wednesday to three years in prison for aiding and abetting the killing of George Floyd became angry when he erroneously thought he might have to register as a predatory offender, saying his role was "minimal" when compared with Derek Chauvin's.

"I gotta register as a predatory offender? What the [expletive] is that?" Thomas Lane, who pleaded guilty earlier this year to aiding and abetting second-degree manslaughter, said after his sentencing hearing. The hearing was held remotely via video, and Lane made the comment after the judge ended the proceeding but before the video session ended. Lane added: "That's what Chauvin has to do. If I have a minimal role, why the [expletive] do I have to do that?"

Lane's remarks were in response to the judge's instruction for Lane to register as a predatory offender "if required by law" — something that legal experts say is fairly standard language in Minnesota criminal cases, but that neither Lane nor Chauvin would be required to do. Lane's attorney, Earl Gray, told his client he would look into the matter.

Floyd, 46, died in May 2020 after Chauvin, who is white, pinned him to the ground with a knee on Floyd's neck as the Black man repeatedly said he couldn't breathe. Lane, who is white, held down Floyd's legs. J. Alexander Kueng, who is Black, knelt on Floyd's back, and Tou Thao, who is Hmong American, kept bystanders from intervening during the 9½-minute restraint.

The killing, captured on bystander video, sparked protests as part of a worldwide

reckoning over racial injustice.

Lane is serving a 2½-year federal sentence after being convicted this year of violating Floyd's civil rights, and he appeared at Wednesday's hearing via video from the low-security federal prison camp in Littleton, Colo.

As part of his plea agreement in the state case, prosecutors dropped a more serious count of aiding and abetting second-degree unintentional murder. They also said that they would seek a sentence of three years and that he could serve it at the same time as the federal one, and in federal custody.

Prosecutor Matt Frank said Wednesday that a lower sentence was appropriate because Lane played a "somewhat less culpable role" in Floyd's death, adding that "there were moments when Mr. Lane tried to change what was going on that day."

Lane had tried to de-escalate the situation and had suggested that the restraint of Floyd could be handled differently, Frank said. Evidence from other trials and court documents shows that Lane twice asked if Floyd should be rolled onto his side to ensure he could breathe. Still, Frank said, these steps "do not relieve him of all responsibility."

When Lane pleaded guilty in May, he admitted that he intentionally helped restrain Floyd in a way that he knew created an unreasonable risk and caused his death. He admitted that he heard Floyd say he couldn't breathe and that he knew Floyd had fallen silent, had no pulse, and appeared to have lost consciousness.

In accepting the plea deal Wednesday, Judge Peter Cahill told Lane: "I think it was a very wise decision for you to accept responsibility and move on with your life," as he acknowledged that Floyd's family members have not been able to move on with theirs.

Floyd's family said in a statement to the court, which was read by Frank, that the pain of Floyd's death would never go away. "Talk about move on? Wow. Really? Me and my family would love to move on, but there's just not a lot of accountability," the statement said, adding: "We will always show up for George Floyd, but never move on."

## VOIR DIRE

### "Can you read lips?"

In order to insure that your whispered comments at counsel table and your remarks in sidebars are not overheard, you need to make certain that no one on the jury is reading your lips.

Prospective jurors who have learned to read lips because of their

own hearing disabilities are likely to identify themselves in voir dire. The individual you need to be concerned about is the prospective juror who lists his or her occupation as "speech pathologist," "audiologist," "speech therapist" or an occupation that indicates he or she works with people with hearing disabilities (e.g., "teacher of the deaf").

If you ask a prospective juror with one of these occupations if he or she can read lips and you get a positive response, there is nothing more for you to do than other than 1) be certain your head is positioned in a way that prevents the person from seeing what you are saying in your private conversations and 2) bask in the appreciation of the judge and other jurors, most of whom will be silently thanking you for identifying a potential eavesdropper.



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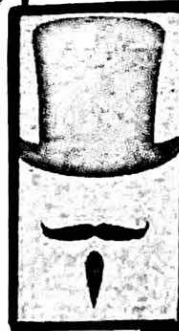
### Future Meetings

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

Winter Meeting, 2023: New Orleans, LA

Summer Meeting, 2023: Toronto, CA

Winter Meeting, 2023: Nashville, TN



"It's easier to fool people than to convince them that they have been fooled."

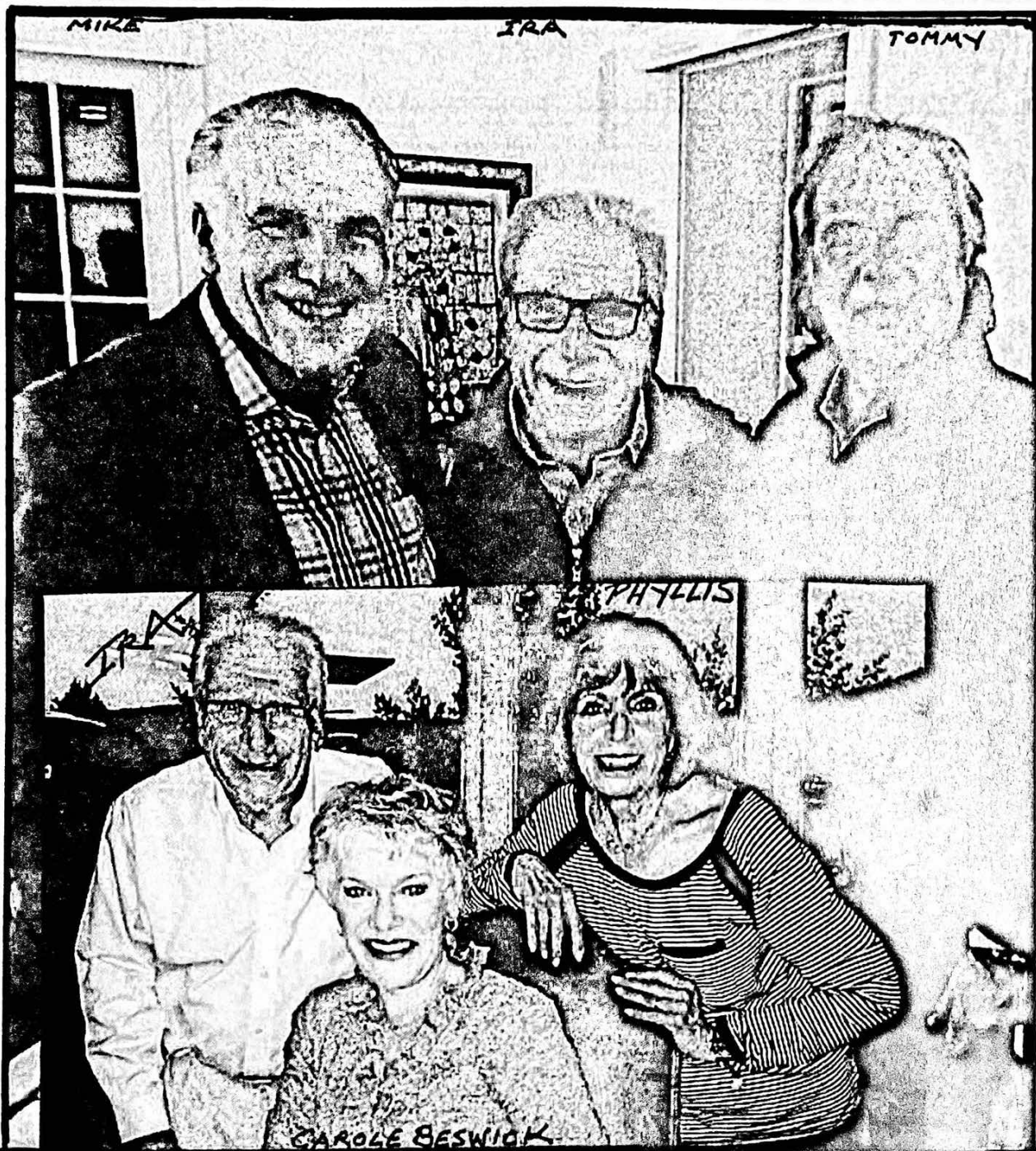
- Mark Twain



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## IRA LONDON OBITUARY

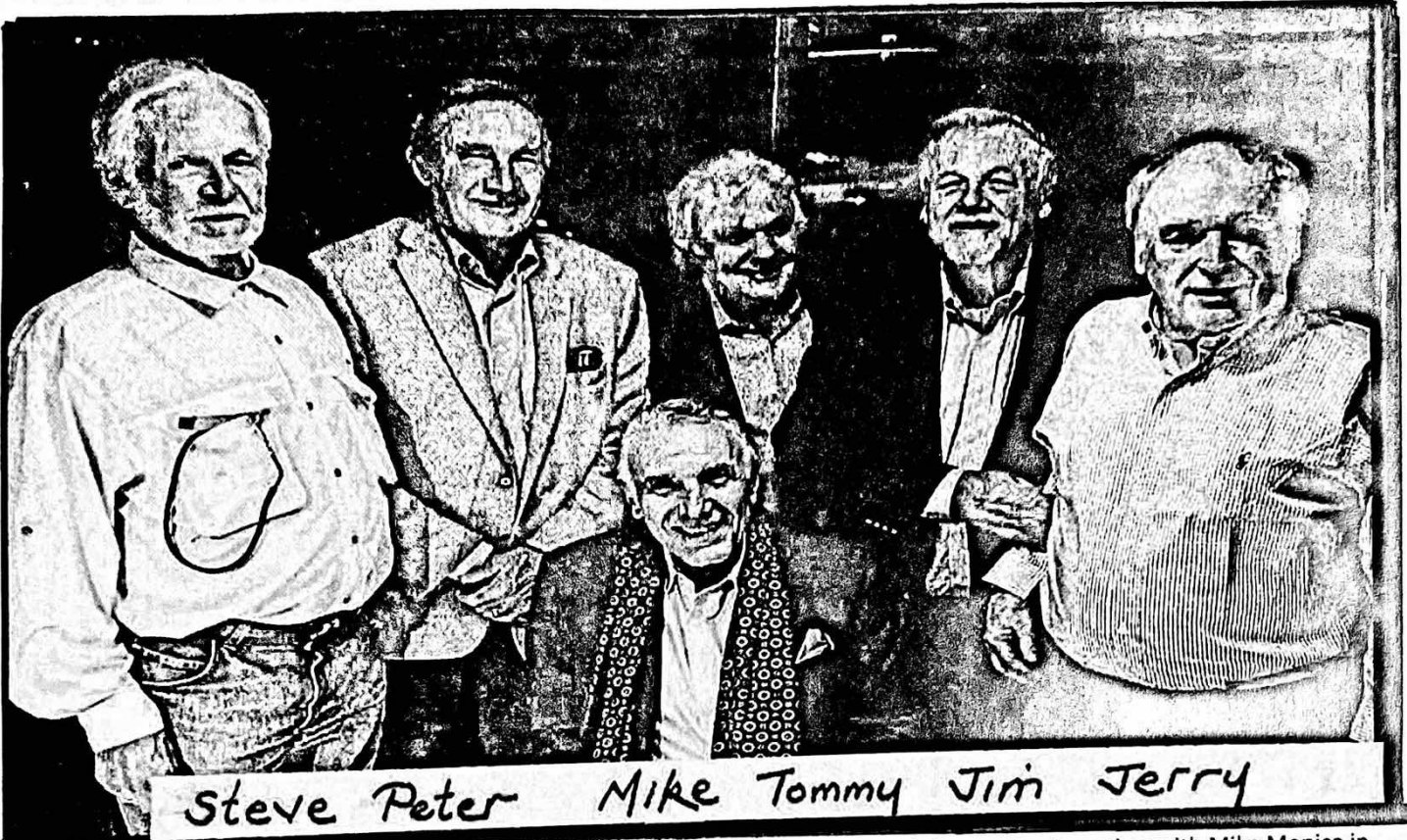
**L**ONDON--Ira D., age 91, born in New York City on July 9, 1931, died peacefully on October 2, 2022. He lived a glorious life married to his love, Phyllis (of blessed memory), for over 60 years. Ira was a distinguished criminal defense attorney. He served as President of both the American Board of Criminal Lawyers and the National Association of Criminal Defense Lawyers. His core belief that everyone deserves a fair trial inspired many. Ira loved tennis, fashion, jazz and football. He was a devoted and loving father to his children, Roberta Silverstein, Elyssa London (of blessed memory) and Suzanne and Jeff Corbin, grandchildren, Max and his wife Rachel, Samantha, Lauren, Michaela, Jessica, Emma, Alexandra and Gregory, and great-grandchildren, Chase and Luke. We will miss him dearly.



## SALTER AND THE BOYS WERE BACK IN TOWN

FOR THE "ROUNDTABLE"

IRA LONDON'S passing last night resonates deeply with us all. It also underscores importance of our recent trip to Chicago to see and support Mike Monico. - Steve Salter



On Thursday September 29th, a few of us Fellows travel from our different parts of the country to gather with Mike Monico in Chicago. Jim Ligouri, Peter Wold, Jerry Froelich, Tommy Spina and I. Hank Asbill had come in earlier in the day but had to leave before joining for dinner.

We cut up a bit at the place Mike is staying while he continues receiving dialysis and medical assistance in preparation and hopeful and anticipation of a kidney donor.

We all went to dinner at a nearby Italian steakhouse called "StefaniPrime." The food was excellent; the company was much better. We had some fun reflections and projections. The picture is a fair representation of our aging attendees.



*"If my client is guilty of anything, it's loving tax evasion too much"*

Answers:  
Alfredo  
Foster  
Wellington  
Caesar  
Cobb  
Dagwood  
Graham  
Kaiser  
Monte Cristo  
Napoleon  
Melba  
Rockefeller  
Reuben  
Oscar  
Waldorf