

*American Board of Criminal Lawyers*

THE ROUNDTABLE

Vol. MMXXII, No. 10

October 2022



**WOMAN'S  
CITIZENSHIP  
NUMBER.**

STUART DAVIS



## The St. Crispin's Day speech from Henry V (As Interpreted by Jerry Froelich)

If we are mark'd to die, be it so  
It is our country's loss; and if to live,  
The fewer members of ABCL the greater share of honor.  
God's will I pray thee, wish not one person more.  
By Jove, we do not covet,  
Nor care about cost.  
It bothers us not if others our clients seek.  
Such outward things dwell not in our desires:  
But if it be a sin to covet honor,  
Then we are the most offending souls alive.  
I wish not another from outside our group:  
God's peace! I would not lose so great an honor as it is to be in  
the ABCL  
Not one person more do I think I need  
For the best I have now  
I wish for no one who has no stomach for the fight,  
Let that person depart; they will not be missed  
And money for their departure will be put into their purse:  
We would not want to be in that person's company  
For fellowship and our fights.  
This day is called the feast of Crispin:  
He that outlives this day, and has defended the accused  
Will stand proud this day,  
And rouse at the name of Crispin.  
We that shall live this day, and see old age,  
Will yearly on the vigil tell friends,  
"To-morrow is Saint Crispin Day:"  
Then will tell of great trials and cheer ABCL members' great  
victories.  
And say, "these tales I tell are from trials I and my ABCL Fellows  
had on Crispin's day."  
Old people forget yet these trials shall not be forgotten,  
All will remember the victories of the ABCL members  
All will remember then the names of the ABCL founders.  
Names as familiar as all household words  
Nathan Cohen, Ronald Meshbesh, George Walker, Harriet  
Ross to name a few  
Be in our flowing drinks freshly remember' d these and other  
names  
And Crispin Day shall no'er go by,  
From this day to the ending of the world,  
But we of the ABCL shall be remember'd;  
We few, we happy few, we band of sisters and brothers.  
For those that fight and sweat with us  
Shall be our brothers, and our sisters,  
This day shall be to celebrate the ABCL  
This will be a day to remember all of our members, those past  
and present  
As many shall think themselves accursed, they were not with us,  
And hold their reputation cheap while we remember our  
Fellows  
And upon St Crispin's Day we remember the trials we won we  
won together.  
We friends, we ABCL sisters and brothers

**Robert Richman modestly reports a "serious" win**  
I haven't vacated the convictions of 2 innocent men or won 6  
antitrust trials in a row, but I did just convince the 8th Circuit  
that cocaine is not cocaine in Minnesota. In US v. Owen, the 8th  
held that because Minn. criminalizes cocaine and all of its  
isomers, whereas the federal Controlled Substances Act  
prohibits only the optical and geometric isomers of cocaine, the  
Minn definition is ocerbroad. As a result cocaine sales  
convictions in Minn. are not serious drug offenses for purposes  
of the Armed Career Criminal Act. Which means Mr. Owen gets  
10 years instead of a minimum of 15.

*U.S. v. Maurice Owens, CA8 #21-3870 (2022)*

## Proud Spouse Report of the Month

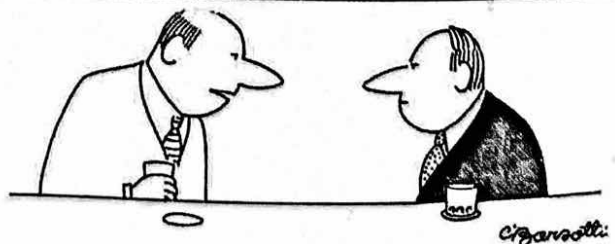
Dear Fellows,

I am very proud to share my wife's accomplishments (far better  
than sharing my own). I am attaching an article Katrina wrote  
for NACDL which is published in this month's The Champion  
(White Collar edition) on Sentencing Mitigation Videos. Many  
of you have utilized her services. I am always very reluctant to  
put forth her accomplishments to our group because it feels  
self-serving. (she really is good). So instead, I will simply share  
the article for your reading pleasure and education, and wish  
everyone good evening.

- **Michael Rosen**

A big thank you to everyone who voted (or even thought  
about voting) for us for the Legal Impact Reisman Award -  
we won! And we got to accept the international Clio  
award on the stage at the Grand Ole Opry!

- **Mary Chartier**



*"I consider myself a passionate man, but, of course,  
a lawyer first."*

Nominating Committee report for 2023 officers/board of governors

*(Reported by John Shea)*

All, our Secretary, Chuck Watson, is out of the country and has deputized me to provide the Nominating Committee's recommended slate of Officers and Board of Governors for 2023. The Committee was comprised of me, Bill Swor, Jim Liguori, Jim Homola, Margaret Raben, Vicki Podberesky, Tommy Spina, Jim Feinberg, Hank Asbill, and prez-elect Barry Beronet. Here are the committee's nominations:

**2023 Officers:**

President: Barry Beronet  
President-Elect: Jenny Lukemeyer  
Secretary: Chuck Watson  
Treasurer: Jon Paul Rion

Vice Presidents: Blair Berk, Steve Benjamin, Brian Bieber, Mark DeVan (NEW), Larry Kazan (NEW).

**2023 Board of Governors:**

John Brink (NEW), Jeremy Delicino (NEW), Betty Layne Desportes, Cynthia Orr, Michael Pancer, Margaret Raben, Ann Roan, Randy Schaffer, Joel Sogol, Jim Voyles, Art Weiss.

Michael Stout

Thursday, October 13, 2022 1:44 PM  
Kammen Rick (Linda, Amanda, Claire)  
[ABCL-US] Wrongful Convictions Vacated x two

Dear colleagues,

Habeas work was not my everyday focus, but we have had two recent rewarding results in New Mexico state habeas cases where clients were released and convictions vacated after years of wrongful incarceration:

**1. Juvenile lifer.** Jesus was incarcerated at age sixteen in 1994 until 2022 - 28 years. He took his first adult breath outside a prison as he turned 42. He had been convicted of first degree murder on two theories and sentenced as an adult to life sentences which had been upheld on appeal and a previous writ was denied.

I was his fifth lawyer. We filed a state habeas to show he was mis-charged and that fundamental error had occurred in instructions. The petition was granted, the **convictions vacated and the client ordered immediately released.**

Wonderful to see Jesus in my office after decades behind bars. He is now working in Las Cruces and learning to use technology like cell phones and computers that did not exist 28 years ago.

**2. No physical evidence; conflict of interest.** Martin is a pecan farmworker, unsophisticated and unfamiliar with the court system. He had helped his wife care for foster children, but was charged with molesting a foster child (4 yoa) eight years after the alleged event. Martin denied the accusation; there was no physical evidence but a then teen witness testified against him. He said, she said. Conviction and thirty year sentence upheld.

There was a viable alternative suspect, but turns out the alternative suspect was also represented by Martin's trial counsel on similar charges.

I filed a petition for writ based on Ineffective assistance of counsel and the conflict of interest of trial counsel.

The writ was granted, the **Conviction Vacated** and Martin immediately released. Martin is back at the pecan farm job he held nine years ago.

**Officers 2023**

**President**

Barry W. Beronet, Pensacola, FL

**President-Elect**

Jennifer Lukemeyer, Indianapolis, IN

**Vice-Presidents**

Blair Berk, Los Angeles, CA

Steven D. Benjamin, Richmond, VA

Brian H. Bieber, Miami, FL

Mark DeVan, Cleveland, OH

Larry Kazan, Phoenix, AZ

**Secretary**

Chuck Watson, Boseman, MT

**Treasurer**

Jon Paul Rion, Dayton, OH

**Immediate Past-President**

John A. Shea, Ann Arbor, MI

*“The greatest art is artlessness.”  
- Quintilian*

**Board of Governors 2023**

John Brink, Minneapolis, MN

Jeremy Delicino, Salt Lake City, UT

Betty Layne Desportes, Richmond, VA

Cynthia Orr, San Antonio, TX

Michael Pancer, San Diego, CA

Margaret Sind Raben, Detroit, MI

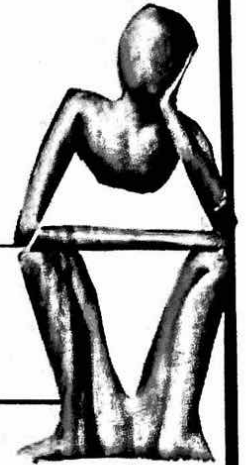
Ann Roan, Boulder, CO

Randy Schaffer, Houston, TX

Joel Sogol, Tuscaloosa, AL

James Voyles, Indianapolis, IN

Arthur Weiss, Farmington Hills, MI



**The RoundTable**

Steve LaCheen, Editor

Rita Bognanni, Staff

**Future Meetings**

March 10-12, 2023: New Orleans, LA - Four Seasons

June 23-25, 2023: Toronto, Canada - The St. Regis

October 6-9, 2023: Nashville, TN - Grand Hyatt

For those of us who want to know more about this amazing man and his remarkable life, I will try to post some links and materials. Here is the first : <https://wejf.org/eisenberg-dinner/james-gilda-shellow/> *JEB.*



*The RoundTable*  
Steve LaCheen, Editor  
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*“He’s a brilliant attorney, but he can’t stand to lose a case.”*



# James M. Shellow, criminal defense lawyer and masterful cross-examiner, dies at 95

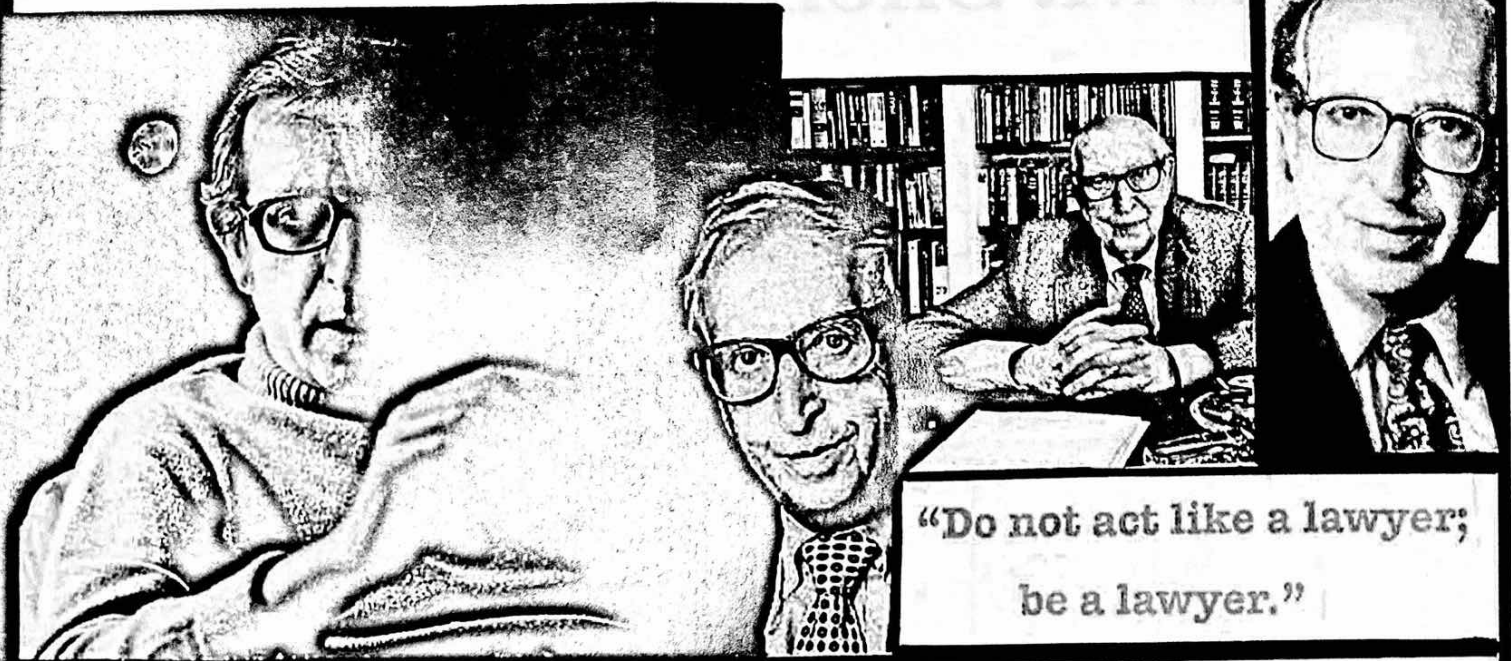
James M. Shellow, a criminal defense lawyer renowned for his sharp cross-examinations and the pleasure he took in being a highly sought-after legal ace, including expensive wine and crisp \$100 bills, died Oct. 29 at his home in Milwaukee. He was 95. The cause was covid-19, said his daughter Jill R. Shellow.



Jim helped found the National College for Criminal Defense – whose purpose is to improve the quality of American trial advocacy, especially with regard to the performance of court-appointed counsel – and joined as a Fellow in 1975. In 1986, he joined the University of Virginia’s Trial Advocacy Institute as well as the Western Institute of Trial Advocacy. His knowledge of drug chemistry and his skill in cross-examining drug analysts were so effective that he wrote a book on the topic, *The Cross Examination of an Analyst in a Drug Prosecution* (<https://members.nacdl.org/online-store/merchandise-details/?action=view&id=e6d6bbd7-ec5f-eb11-8fed-0003ff455a80>)(2d ed. 2021). In 2009, the U.S. Supreme Court cited one of Jim’s articles as evidence of the crucial flaws in the testing process that cross-examination can expose, when the Court held in *Melendez-Diaz v. Massachusetts* that, for Sixth Amendment confrontation purposes, drug analysts must testify to their own work.

Jim shared his love for championing justice with his family. A year after Jim entered law school in 1958, his wife, Gilda Shellow, entered law school. Together, they formed a formidable husband-and-wife duo in the criminal defense and civil rights arenas until her passing in 2005. In the late 1960s, they worked with inner city leaders to establish a legal services program, Freedom Through Equality, which became the forerunner to Legal Action of Wisconsin, for which they both served as board members. Their daughter Robin (who died in February 2021) made a mark as an attorney in Wisconsin’s state and federal courthouses, while their daughter Jill carries on the family’s legal legacy as an NACDL member in New York where, among other work, she defends federal death penalty cases.

## Nation's Criminal Defense Bar Remembers Past President Jim Shellow



Shellow's influence goes far beyond the technical. His success and mark on the law included two cases going to the Supreme Court concerning rules-of-evidence questions<sup>25</sup> and two cases to the Supreme Court concerning the First Amendment.<sup>26</sup> Jim Walrath (who worked with Shellow for years) recalls Shellow's prescience on where the law was headed: "He warned early on about how judicial activism would unfairly extend the reach of criminal laws. In the Supreme Court he opposed arguments that federal obscenity law convictions could be sustained through broad construction of the statutes: 'I submit that's legislation, that's not adjudication.'"

Shellow's arguments were not ignored. During one of those Supreme Court arguments, as Shellow was seated listening to the opposing side and waiting for his rebuttal, a Supreme Court page approached and handed him a note. It read: "Your argument is a testament to Shorewood High School's greatness." It was signed by then-Associate Justice Rehnquist. After reading the note, Shellow nodded to Rehnquist and slid it in his pocket.

Shellow also had a deep and unwavering commitment to justice and fighting for oppressed persons. In the 1960s he went to Mississippi to represent the Freedom Riders and brought his signature style to those courtrooms. After charges were dismissed for one of his clients, gunshots were fired into the house where Shellow was staying.<sup>27</sup>

Shellow represented individuals charged with crimes in connection with protesting the Vietnam War, including one of the Sterling Hall bombers, and he represented people who fought segregation, including Father James Groppi.<sup>28</sup> He still has a copy of the *Milwaukee Journal* headline announcing that the Court ordered Groppi's immediate release from custody: "Justice Marshall Issues Order High Court Frees Groppi."<sup>29</sup> And in the mid-1970s, when hundreds of Native Americans were arrested in connection with the occupation of Wounded Knee, he and attorney Albert Krieger flew to South Dakota and organized the defense.<sup>30</sup> They hunkered down for several months and took the cases to trial, pro bono. Eventually charges were dropped for all but two of the clients.

Shellow was also committed to improving the practice of criminal defense across the country. With Krieger, Shellow organized the first board of directors for the National Criminal Defense College. They had the idea of bringing the best attorneys in the country together with newer attorneys to learn the craft. For two weeks, attorney-students learned how to build trust with a client, as well as how to conduct voir dire, opening, direct examination, cross-examination, and closing. Shellow and others worked many hours every day teaching the students. The students learned by doing, which meant bringing in actors as witnesses and people off the street as potential jurors. Shellow, Krieger, and other teachers also made sure that the program was affordable – criminal defense is not lucrative, especially at the beginning. They endowed scholarships and underwrote the staff's salary. It was a marvelous gift and thousands of students have graduated from the program since.

Lawyers who worked with Shellow said two aspects of his practice stood out the most: his cross-examination skills and his command of the rules of evidence. He was a true master of cross-examination – once cross-examining a witness for seven days. In another trial, the witness broke down and agreed that if he served on the jury he too wouldn't believe his testimony. James Walrath recalled that Shellow would sometimes finish his cross-examinations of government experts – after they had admitted the inexactitude of their findings – by dismissively asking, "So, you hold that opinion simply because it's good enough for government work?"

He was a phenomenon! Hated injustice.  
Loved life. — Joe Beeler