



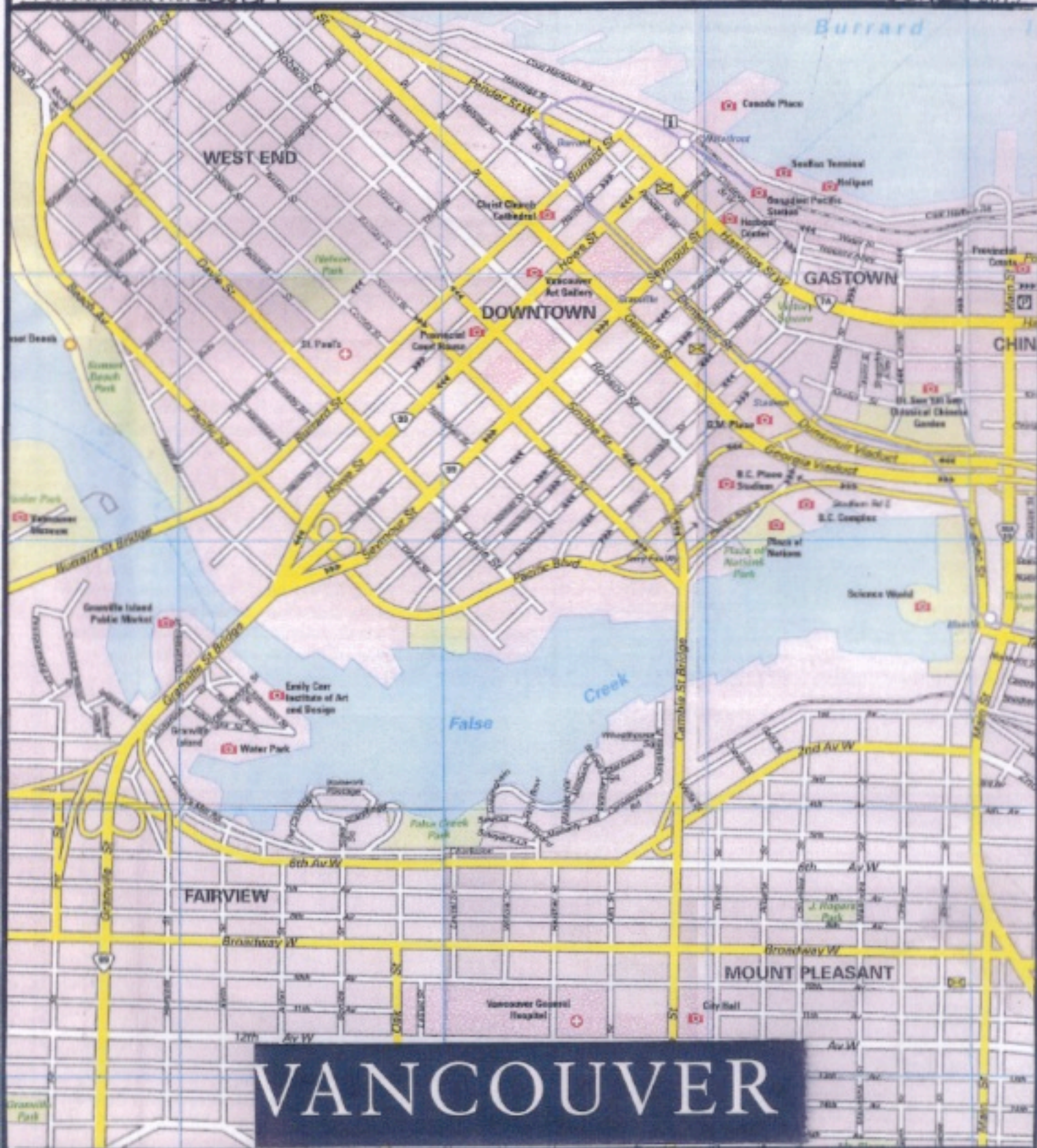
American Board of Criminal Lawyers

THE ROUNDTABLE

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Vol. MMXIII, No. Seven

June 2013



From: **Jerome J. Froelich JR**
 To: Stephen LaCheen, Esq.
 Sent: Monday, May 20, 2013 1:30 p.m.
 Subject: ABCL - RoundTable

Steve: I thought that the attached cartoon would be appropriate to be placed in the next edition of the Roundtable. I have also attached a check to show that my clients pay me every penny that is due me. Jerry



"Ladies and gentlemen, if after due consideration you find the balance of the evidence to be against my client, I still beg of you to look into your hearts and find compassion and mercy, because a verdict of guilty would make this the tenth straight case I've lost in a row."



Book Excerpt

"Being Oscar: From Mob Lawyer to Mayor of Las Vegas — Only in America" (Weinstein Books), by Philadelphia native Oscar Goodman, with former Inquirer staff writer George Anastasia, arrived in bookstores Tuesday.



'Being Oscar'

ANNOUNCING A NEW BOOK
 Edited by Abbe Smith and Monte H. Freedman

HOW CAN YOU REPRESENT THOSE PEOPLE?

"When I was a criminal defense lawyer I was asked 'The Question' so many times I got sick of it. It takes an essay to fully answer, and this book has fifteen brilliant ones. Some of the essays are laugh-out-loud funny, others deeply moving. Read them all and you'll understand why everyone—guilty or innocent, you or me—is entitled to a good lawyer."

—John Grisham



Palgrave MacMillan, publishers. On bookshelves August, 2013

Jerome J. Froelich, Jr.
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"You're charged with possession of drugs.
Just sit here and try to look straight."

Accused Gun Runner Gets No Jail

New York, New York. In February, 2012 Lamel Sims, 30 (Docket No. 12cr.00375 [LTS]) was arrested and charged in the Southern District of New York federal court with conspiracy to deal in firearms without a license. The firearms were obtained in North Carolina and brought to New York without serial numbers. Mr. Sims pled guilty and was sentenced in April, 2013 by the Hon. Laura Taylor Swain to six (6) months in a halfway house.

While Mr. Sims' Guidelines showed a projected sentence of more than three (3) years he was able to demonstrate several mitigating circumstances including the demise of his mother from cancer while he struggled to support her with medical care. He also was the sole caretaker for a cousin with autism. While Mr. Sims did not receive a so called 5K1.1 letter written for cooperating defendants he was able, alternatively, to show his good faith in mitigation by and through therapy as well as other mitigating circumstances under 18 U.S.C. § 3553. **Thomas E. Liotti** and Drummond Smith, Mr. Sim's attorneys, stated: "We are very pleased with this outcome. It goes to show you what can be done with a remorseful defendant, a great judge, an honest prosecutor, clinical intervention and caring defense advocates."

Cases Recently Filed

12-1239 Doe v. United States

Subpoenas and summonses—Privileged communications.

Ruling below (*In re Grand Jury*, 3d Cir., 705 F.3d 133, 81 U.S.L.W. 859, 91 CrL 258):

The crime-fraud exception to the attorney-client privilege applies when there is a reasonable basis to suspect that the privilege holder was committing or intending to commit a crime or fraud and that the attorney-client communications or attorney work product were used in furtherance of the alleged crime or fraud. This court lacks appellate jurisdiction over a privilege holder's appeal from a disclosure order when the privilege holder has not disobeyed the order and been held in contempt. Although the materials in question are in the possession of a third party, that party is holding them at the behest of the privilege holder. If the privilege holder wants immediate appellate review, it can take possession of the documents, defy the disclosure order, and appeal any resulting contempt sanctions.

Question(s) Presented: (1) May the crime-fraud exception to the attorney-client privilege be established in a grand jury proceeding by an evidentiary standard that requires no more than a "reasonable basis to suspect" that the privilege holder was committing a crime or fraud? (2) May a privilege holder be prevented from appealing an order compelling disclosure of privileged information held by a third party in a grand jury proceeding by simply including both the privilege holder and the third-party custodian in the compulsion order, and does the doctrine of *Perlman v. United States*, 247 U.S. 7 (1918), retain vitality following the decision in *Mohawk Industries Inc. v. Carpenter*, 558 U.S. 100, 78 U.S.L.W. 4019, 86 CrL 283 (2009)?

Petition for certiorari filed 4/11/13, by **Stephen Robert Lacheen**, and Lacheen, Wittels Greenberg LLP, and Ian M. Comisky, Matthew D. Lee, Stephanie C. Chomentowski, and Blank Rome LLP, all of Philadelphia, Pa.

WORDS OF WISDOM from VIN DIESEL

Don't wait for the
Perfect moment
take the moment and
make it perfect



Not Guilty Verdicts in Real Estate Fraud Case

Mineola, New York. Alfred Gary of New Jersey and thirteen other defendants were indicted by a Nassau Grand Jury in February, 2011 on charges of Enterprise Corruption; Conspiracy; Scheme to Defraud; Money Laundering and Falsifying Business Records. The indictment, consisting of 109 Counts and 91 pages charged top counts of B felonies punishable by up to 25 years in jail. By October, 2011 all of the defendants including two attorneys, pled guilty except for Mr. Gary. The defendants pled guilty to being a part of a massive real estate and mortgage scheme to defraud involving properties in Westbury; Freeport; West Hempstead and other Long Island communities. The object of the conspiracy was for the defendants to defraud banks and homeowners by submitting phony loan applications, absconding with mortgage proceeds. Millions were alleged to have been stolen and most of the properties involved resulted in foreclosures accounting for losses to banks of approximately two million dollars. The properties were located in minority neighborhoods including New Cassel and Freeport.

In October, 2011 on the day scheduled for trial, Mr. Gary hired Thomas F. Liotti of Garden City. The trial judge recused himself and adjourned the trial to early March, 2012. The case was re-assigned to the Hon. Norman St. George, a Nassau County, County Court Judge and Acting Supreme Court Justice. The defendant waived a jury trial.

The District Attorney's Office by A.D.A. Marshall Trager, Chief of their Economic Crimes Bureau and A.D.A. Abigail Margulies alleged that the trial would last three or more months with 50 witnesses and hundreds of exhibits for the District Attorney alone. The defense and prosecution then agreed to a Stipulation of Facts, Witnesses and Exhibits. The D.A. produced four witnesses and the defense produced three including the defendant himself.

At the start of trial on March 14, 2012, the D.A.'s Office sought to amend the falsifying of business records charges which the defense then said would change the theory of the case. Judge St. George denied the amendment and dismissed the falsifying Business Records charge and a pattern act under the Enterprise Corruption charge. The defendant was then left with 9 Counts plus eight additional pattern acts.

The trial began on March 14 and concluded on March 27, 2012 after 7 1/2 days of trial. A day was lost on the People's Motion to amend and the Court did not sit on March 23, 2012. Judge St. George found the defendant not guilty on eight of the nine remaining counts. Mr. Gary was convicted of Conspiracy in the Fourth Degree, a Class E Felony. Judge St. George set a date of May 11th for motions to set aside the verdict or sentencing. Mr. Gary was an exotic car dealer who sold cars to the defendant in the real estate fraud. The money for the purchase of the cars came from illegal activities but Mr. Gary was not shown to be involved in the real estate or mortgage business. He had no knowledge or intent involving the underlying real estate scheme or that monies paid to him for cars were the product of any illegal activity. He was acquitted of money laundering and enterprise corruption. It is Mr. Liotti's contention that Mr. Gary was wrongfully charged in multiple conspiracies and that the verdict is repugnant. Mr. Gary said that he lost his business because of the adverse publicity in the case. He stated: "I am grateful to my lawyer, Mr. Liotti and to Judge St. George, a brilliant and fair judge."

Mr. Liotti said: "Since the verdict was not set aside, Mr. Gary has appealed the one Count of Conspiracy in the 4th degree of which he was convicted. I had a sense from the moment I came into the case that it was built on a house of cards, with no evidence of knowledge or intent on my client's part. It is another example of prosecutors going too far. Life experience, trial experience, preparation and favorable facts all contributed to our win. Sometimes with a little luck and an honest judge, justice can prevail. I thank Judge St. George but I also know that not guilty verdicts could not have happened if the evidence did not support it. I've had over one hundred criminal law trials and appeals in state and federal courts. I would put Judge St. George up against anyone. He is a star and if given the opportunity, he has the capacity to become one of the country's great ones, a true legend as a jurist. I'm talking Thurgood Marshall, Bill Brennan, Jack Weinstein, Learned Hand great. He's a giant fish, maybe the biggest in a large judicial pond."

On August 22, 2012 Mr. Gary was sentenced to five years probation and no jail or fine. He stipulated to an amount of restitution of \$139,000.00 in the unlikely event that his anticipated appeal is not successful. Mr. Gary will be represented by pre-eminent New York City appellate counsel, Herald Price Fahringer, recommended to Mr. Gary by Mr. Liotti. Mr. Liotti is also involved in the appeal as the attorney of record. Mr. Gary's briefs have been fully submitted to the Appellate Division, Second Judicial Department and he is awaiting an oral argument date.

Mr. Liotti concluded: "Mr. Gary has a very good case and he is now represented by the best of the best, Herald Price Fahringer. I am very hopeful that he will be fully vindicated."

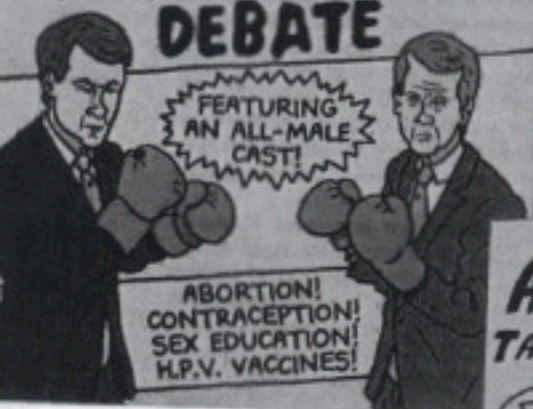


THE HUNGRY GAMES



FISTICUFFS OF THE UNINFORMED

THE REPRODUCTION DEBATE



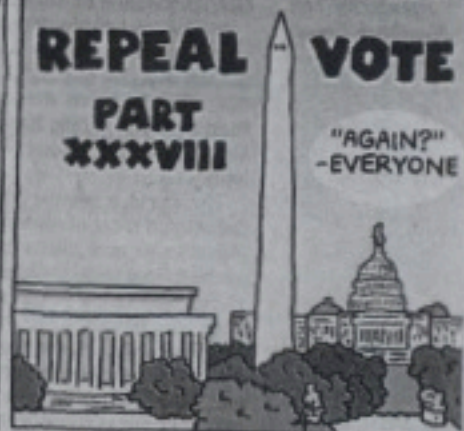
APPLE'S INCOME AND THE TAX-DODGING ADVENTURE



THE HOUSE G.O.P. PRESENTS: OBAMACARE REPEAL VOTE

PART
XXXVIII

"AGAIN?"
-EVERYONE



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Future Meetings

June 14-16, 2013: Vancouver, BC

October 10-13, 2013: Atlanta, GA

The RoundTable

Steve LaCheen

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Philadelphia, PA 19102

