



American Board of Criminal Lawyers

THE ROUNDTABLE

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December 13, 2013

Stephen Robert LaCheon
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Dear Steve:

I recently talked to Walter Garaski and when I asked him how he was feeling, he said "87 and I am approaching Heaven".

I wrote a little ditty, enclosed herewith, that I thought you might use in your next newsletter.

I plan to be at the October meeting in San Francisco.

Very truly yours,

John H. Rion
William Gallup

Ode to a Founding Father

Lawyers at 87 don't live in the past.
Their flag is still flying; it's not at half-mast.
They are ready and willing for another trial.
Just the thought of it brings a smile.

One of those lawyers way out in the West,
Has a reputation of being one of the best.
He was recently trying a case of replevin,
And he looked and acted like he was 47.

"Walter", the judge ventured to inquire,
"When do you think you are going to retire?"
"I don't think of it", Walter replied.
"There are too many cases left to be tried".

Walter is one who gets better with age,
He is simply turning another page.
He plans to be around for a very long time.
Who else would defend those charged with crime?

When the ABCL has its next meeting,
Walter will be one of those it is greeting.
Lawyers, like the law, live forever.
When asked about retirement, they all say "never"!



13-596 Parenteau v. United States

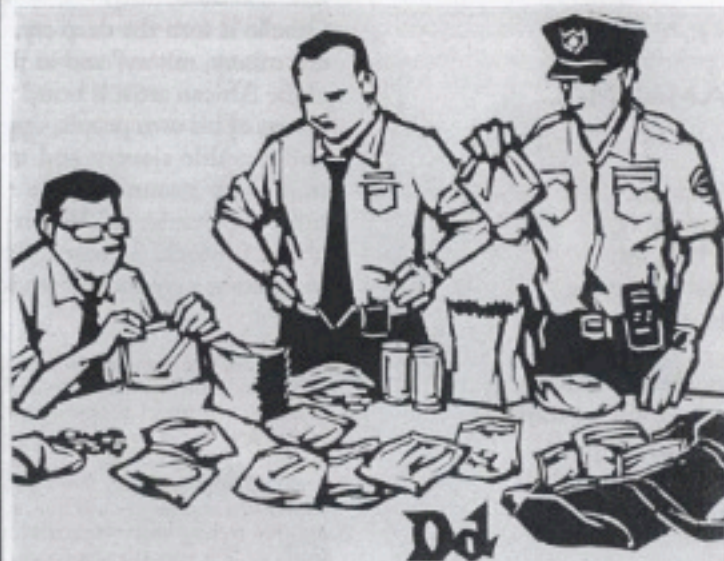
Due process.

Ruling below (6th Cir. 2013 BL 171116):

The defendant argues that his due process rights were violated when the district court denied him a continuance at various times during the trial, including after he invoked his right to represent himself. At the time the defendant elected to proceed pro se, the district court had already granted a number of continuances that caused the trial to start 19 months after the issuance of the original indictment. The district court did not abuse its discretion with regard to the management of this trial. On the contrary, it went to great lengths to accommodate the defendant.

Question(s) Presented: Is it unconstitutional to hold a pro se defendant to a different standard than a represented defendant at trial, requiring that defendant to proceed to trial in circumstances in which no licensed attorney could possibly provide effective representation, which in effect limits that defendant's appellate rights?

Petition for certiorari filed 9/24/13, by John H. Rion and Rion, Rion & Rion, L.P.A., Inc., both of Dayton, Ohio.



Blair Berk Profile

BY ASHLEY M. LONDON

When Hollywood's A-list talents find themselves in legal predicaments or embroiled in litigation with aggressive paparazzi, they call powerhouse Los Angeles-based defense attorney and North Carolina native Blair Berk for help.

"Once a Tar Heel, always a Tar Heel," says Berk, in her subtle lilting accent. "We love coming home. It's startling how much things are changing in North Carolina, and we are proud of it."

Although she won't admit it, Berk is as popular and well-known as the celebrity clients she represents. A partner at Tarlow & Berk, PC, her office is located off the iconic Sunset Strip in Los Angeles, California. She appears in articles and has been featured in publications as varied as *The New York Times*, *The Washington Post*, *Variety*, *Larry King Live*, *CNN*, and even *TMZ*.

"I spend most of my time trying to limit the amount of press in my cases because my view is that less is more," Berk says. "A lot of focus on the criminal lawyer compromises the lawyer's ability to be great in the courtroom because people stop listening to the merits of your argument and focus too much on seeing you on TV."

Limiting press exposure isn't a case of Berk sticking her head in the sand, however. She is on the phone every day with reporters

across the country speaking on background to clarify, but not to go on the record for attribution. Berk says she is dismayed at the enormous amount of laziness and the bad reporting from many news outlets today.

Berk says a story must be accurate because it can have an enormous impact in the court of public opinion, which is very important to Berk's clients.

Berk is the daughter of prominent North Carolina attorneys Steven Bernholz and Dorothy Cochran Bernholz. Her father is a well-known criminal defense practitioner and her mother founded the University of North Carolina's Student Legal Services Program. Both are still in practice today.

"As a criminal defense lawyer, you basically represent people who trip and fall down," says Berk. "Most of my clients trip and fall on occasion like everyone else, but the difference is that everyone is staring at my clients when it happens—and they secretly enjoy watching them fall."

Berk politely, but firmly, declines to reveal the names of her clients, saying that they rely on her to maintain a high level of discretion. But public record reveals that she has been connected with the representation of celebrities such as John "Ozzy" Osbourne, Lindsay Lohan, Kanye West, Mel Gibson, Keifer Sutherland, Gerard Butler, and Reese Witherspoon.

The Harvard Law graduate specializes in

representing individuals and companies in the entertainment industry, including those facing criminal prosecution or indirectly involved in criminal matters. Berk has represented clients in a broad range of cases including alleged conspiracies, sexual assault, drug possession, homicide, stalking, RICO, regulatory and health care fraud, and money laundering. Berk graduated *summa cum laude* from Boston University with a Bachelor of Arts and a Masters Degree in Political Theory, and was selected as a member of Phi Beta Kappa, prior to attending Harvard and studying under respected Professors Laurence Tribe and Alan Dershowitz.

"In the criminal justice system, there is an urban myth that celebrities are treated more favorably when the truth is that they are treated less favorably," Berk says. "Prosecutors, judges, and law enforcement are so terrified that someone will accuse them of favoritism. My role is at least to try to get us back to a level playing field before we start the case."

She candidly reports that her practice is seeing a lot more cases involving high-profile clients due to the increase in intrusive contact by members of the paparazzi as well as an increase in stalking cases as the personal lives of her clients are more easily accessible to the public through magazines or other media sources. Berk also handles plenty of fabricated cases where dishonest people are simply seeking to make a quick buck off of a celebrity case.

"It's no longer worth very much to take a photo of a famous person smiling while coming out of a movie theater, so more and more paparazzi are provoking incidents by putting their hands on someone's child, for example," Berk says. "It is not enough to say, well, they wanted to be famous so this is what you get. I don't think bringing danger



to someone's family or physical dangers to themselves is part of that social contract. That's not a fair bargain."

Berk received the gifts of critical thinking and a love for the law at an early age from both of her parents. Dinner table discussions were never run-of-the-mill chats involving day-to-day activities.

"We loved our advocacy—me for students' rights and Steve for the presumption of innocence in defending his criminal practice clients—so we brought our issues home for family discussions," says Ms. Bernholz, who knew her daughter was destined to become an attorney at age four when she first bested her dad in a logical argument.

Berk says she knew from an early age that she was going to grow up to be a criminal defense attorney just like her dad, even though it was a challenging prospect and not a lot of encouragement was offered to a woman who wanted to pursue a criminal defense career. Berk says she draws on the strengths shown by both parents. Her dad always displayed a strong loyalty to his clients—whether they were rich or poor, powerful or powerless. Berk says her mother really cared about finding creative alternatives to solving problems and instilled in her a deep respect for the constitution and civil liberties.

"It's pretty profound to watch someone help another human being and actually protect their liberty so they can go home to their family," Berk says. "I saw how both of my parents in their own legal practices made such a difference and how life changing that can be."

Berk says she had to resist incredible pressure placed on her by her peers and mentors in order to pursue her dream. It was almost expected that as a Harvard grad she would become a federal prosecutor or go into investment banking or mergers and acquisitions at a white collar firm in New York City. While Berk's parents encouraged her to pursue something she was passionate about, Berk jokes that they would have preferred that she become a jazz pianist.

"I was told that the last thing I should consider would be to join a small law firm and become a criminal defense attorney, that it would be career suicide for an Ivy League attorney, and that I would never achieve anything," Berk says. "I think a lot of attorneys missed out on a higher quality of life because they were forced into expected slots

that had nothing to do with what interested them."

Berk defied all expectations when she eschewed working at any of the tony New York law firms she had apprenticed with during law school, and left the now-dissolved Los Angeles criminal defense firm Wyman, Bautzer, Kuchel & Silbert, to join forces with her current partner Barry Tarlow. Tarlow, who made a name for himself defending racketeering and RICO cases, took Berk under his wing and never expected her to carry his bags for the rest of her career. He encouraged her to develop her own practice and identity as an attorney.

"Criminal defense historically has consisted of a bunch of cowboys, or cowboy stereotypes," Berk says. "Lots of lone guns for hire who are such egomaniacs themselves that they can't tolerate other competitors. While Barry is a legendary lawyer, he has no ego when it comes to mentoring."

Tarlow still practices with Berk along with three other associates. But don't try to Google Tarlow & Berk, PC. The firm is aggressively anti-marketing and doesn't even maintain a website. Although she has been in practice now for 20 years, Berk prefers to fly under the radar. Even after decades in the business, Berk says she remains astounded that there aren't more women in the criminal defense bar even as women have made great inroads into the ranks of prosecutors and judges.

"In some respects, it is the last vestige of a glass ceiling for women in the law," she says. "Ironically, I benefit from how few women there are in this area of practice because we are still a little bit of a novelty."

What separates Berk from the boys is simple—she knows she doesn't have to act like a man. Berk believes she can bring her own graciousness and charm to the table without forfeiting the position of her clients. At the end of the day, Berk says she wants her clients to feel they had the best advocacy possible and an advocate who protected them in every way possible.

A typical day begins with Berk spending the morning in hearings or court proceedings, then she meets with clients and conducts case meetings in the afternoon. At night, she returns home to her husband, Daniel Berk, and their 12-year-old daughter Blythe. There's no magic formula for balancing a high-power career and a family, Berk says. Both she and her husband knew they

wanted to have a child and made that a priority, so they figure out how to make it work.

"She's the most fabulous kid on earth," Berk says of her daughter, the pride palpable in her voice. "I feel like I've had the great fortune of having a husband who is a true partner, and who has respected my professional aspiration as much as I have respected his."

If Blythe has an interest in the law, Berk says she will help foster it as her parents did. But right now, Blythe is thinking she will be an eye surgeon for half the year and for the other half of the year she will be a dog musher for a professional dog sledding team. Berk suspects that these career choices will change many times before her daughter finally finds her calling.

"One of the gifts my parents gave to me and my brother was encouraging us to find the things that excited us," Berk says. "My husband and I want the same for Blythe. There are no expectations."

Today, Berk's parents are enormously proud of their daughter's success—even if that means living a continent away from their beloved granddaughter. They understand their daughter's need to establish a professional identity and reputation apart from their own. But they might still bear a slight grudge that Berk didn't attend Chapel Hill for law school.

When asked what he is most proud of in reference to the daughter who followed closely in his footsteps, Mr. Bernholz says, "Her steadfast adherence to ethical standards and the rules of professional conduct, considering the demands from, and notoriety of, her extremely high profile clients."

As for Berk, she says she'll always miss her North Carolina home and visits as much as possible.

"I miss it keenly during UNC basketball games," she says. "I miss my family and everything from summer thunderstorms to summer tomatoes. My parents are terrific people and terrific lawyers and have really influenced what I do and how I do it." ■

Ms. London is a member of the faculty at Charlotte School of Law and a former professional journalist. She is a 2011 graduate of Charlotte School of Law and practiced with the federal judiciary in Washington, DC, Legal Aid of North Carolina, and established her own law firm before finding her passion in legal education.

Renowned Miami lawyer Richard Sharpstein found dead in his Miami Beach condo

BY JAY WEAVER AND DAVID OVALLE

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Richard Sharpstein

Miami criminal defense attorney Richard Sharpstein, a quick-witted showman who represented everyone from cocaine cowboys to troubled cops during a long and colorful career, was found dead in his Miami Beach condo Tuesday morning.

News of Sharpstein's death — a possible suicide — left the South Florida legal community in shock.

Many colleagues expressed bewilderment because Sharpstein always seemed so eternally upbeat and at 63 remained at the top of his game. Just last week, he was honored as one of South Florida's top attorneys.

Miami-Dade State Attorney Katherine Fernandez Rundle, who once worked alongside Sharpstein when he was a young prosecutor, summed up his larger-than-life persona.

"No one that I know, even if they tried, could ever say an unkind word about Richard," Fernandez

Rundle said. "His razor-sharp mind and silver tongue created a terrific sense of humor, which could charm courtrooms and enliven the dullest of conversations.

"Richard was the consummate gentleman and the type of lawyer I would wish every assistant state attorney to be: ethical, dogged in their pursuit of justice, but reasonable and compassionate."

From: Bruce Maloy

I just came from Richard Sharpstein's funeral service. Huge crowd, lots of glowing recollections, and the cantor sang Richard's favorite song, Johnny Cash's "I'll walk the line". I've never been to a funeral that was a sing-a-long. As the Rabbi said, "today is not the day we ask 'why?' Today is the day we ask 'how can we heal this hole in our hearts?'" ABCL was well represented. Thanks to the Florida Fellows for looking out for us out-of-towners. One theme that came across was that Richard took time to learn the name of everyone he encountered, from the powerful to the homeless, he remembered them and with genuine concern asked how they were getting along. Not a bad trait for the rest of us to strive to emulate. Richard wanted donations to be made to the Temple for a fund to aid the disenfranchised

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The RoundTable

Steve LaCheen, Editor

Rita Bognanni, Staff



Future Meetings

February 7-8, 2014: Key West, FL

June 12-15, 2014: Aspen, CO

October 10-12, 2014: San Francisco, CA

The RoundTable

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