



American Board of Criminal Lawyers THE ROUNDTABLE



Vol. MMXVII No. 4

April 2016

Form **REAL**
1040EZ

Your first name and initial

If a joint return, spouse's first name

Home address (number and street)

City, town or post office, state, and ZIP code. If you are in the United States, include the state.

Foreign country name

Income

Attach Form(s) W-2 here.

Enclose, but do not attach, any payment.

Payments, Credits, and Tax

Refund

Have it directly deposited? See instructions and fill in 11b, 11c, and 11d or Form 8888.

Amount You Owe

Third Party Designee

Sign Here

Joint return? See instructions.

Keep a copy for your records.

Paid Preparer Use Only

For Disclosure, Privacy Act, and Paperwork Reduction

OMB No. 1545-0074

social security number

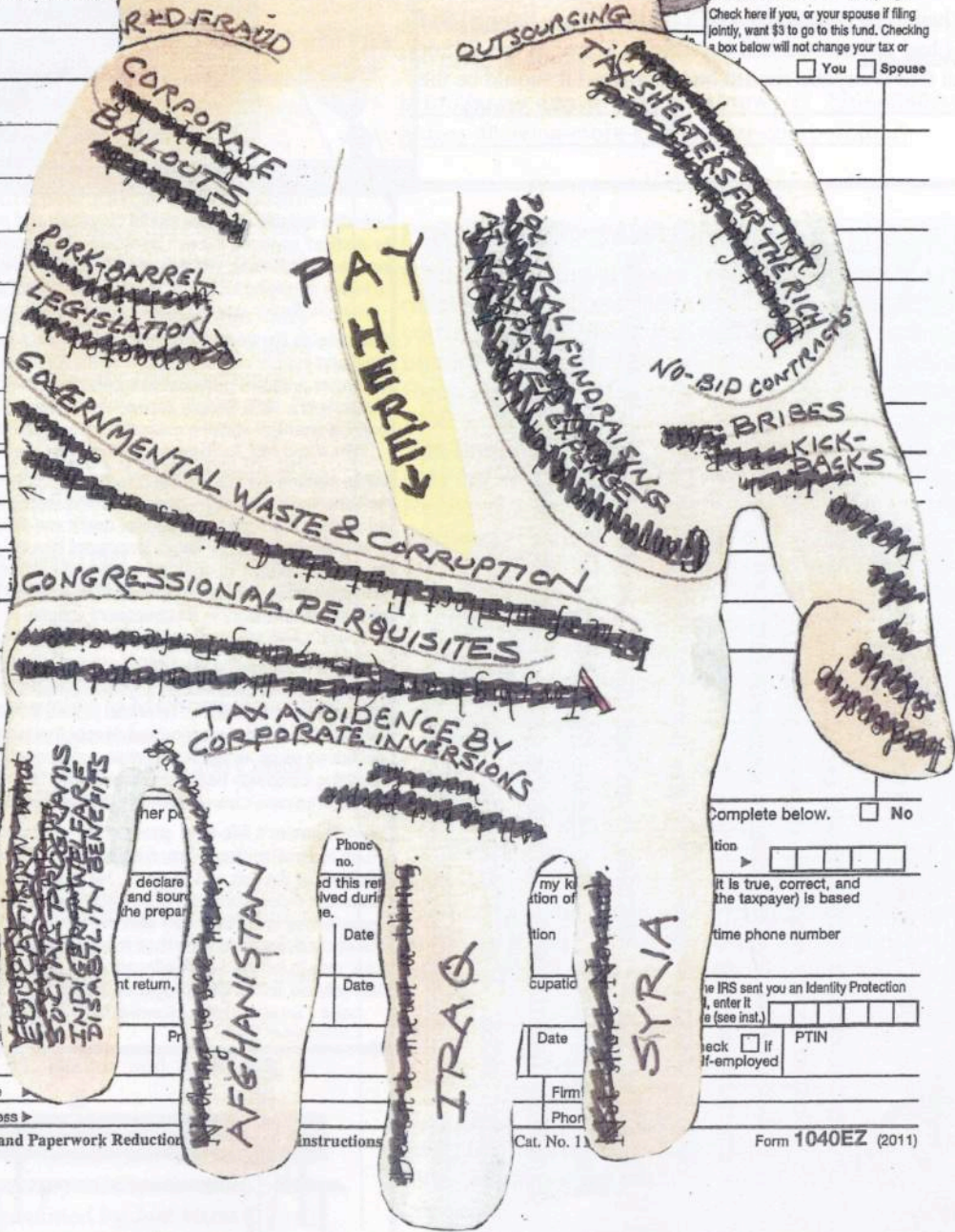
Spouse's social security number

Make sure the SSN(s) above are correct.

Presidential Election Campaign

Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or

☐ You ☐ Spouse



Complete below. ☐ No

It is true, correct, and the taxpayer is based

time phone number

the IRS sent you an Identity Protection alert, enter it (see inst.)

check ☐ if if-employed

Form 1040EZ (2011)

Dear All,

Fellow **Jay Strongwater** is too modest to brag on his daughter Emily Strongwater, so I will. Attached is an article from our local legal newspaper recounting how two of the 61 pardons President Obama issued this week were obtained by Atlanta lawyers. One was by Emily, who volunteered for the Clemency Project.

The other was by former AUSA John Lovell who campaigned after he left the government to get a commutation for a man he prosecuted. He is quoted as saying, "I like to think that we all mature and grow wiser with age," said Lovell. "Part of the maturation process for me was to realize that I no longer supported the sentence that he received."

Also in today's legal rag, a former DA, who has been an appellate judge for about a week, tore into a public defender who confessed ineffective assistance at trial. He opined as to why there shouldn't be some investigation and sanction. (What really had him pissed was that everyone recognized that the trial DA had introduced so much inadmissible evidence that the conviction had to be reversed.) ABCL Fellows **Don Samuel** and **Ed Garland** had a reasoned and persuasive Letter to the Editor pointing out that if anyone should be sanctioned it should be the DA.

Bruce Maloy

Fellows: **Pat Mika** and **Rick Bednarski** just pulled off a nail-biting victory where two parents were charged with willful neglect. The case got nasty when Pat's client asked the case workers for DHS to get familiar with themselves. Our fellows tried this case all week and the jury found both clients not guilty in ninety minutes. Huge congratulations to Pat and Rick.

John H Rion

RUSH TO JUSTICE?

TENNESSEE'S FORGOTTEN TRIAL OF THE CENTURY - SCHOOLFIELD 1958

Jerry H. Summers



Jerry H. Summers

Jerry H. Summers is a practicing attorney in Chattanooga, Tennessee. He has served as an assistant district attorney, criminal defense attorney, and personal injury and labor lawyer since he began the practice of law in 1966. He has argued cases before the United States and Tennessee Supreme Courts and has been involved in numerous landmark decisions in both civil and criminal law.

Valuable insights into the colorful character and motivations of Raulston Schoolfield. *Rush to Justice?* captures the rich backdrop of the community and times of this remarkable and complex personality. While Summers' in-depth research is obvious, he weaves the facts into a highly engaging story which reads like fiction, yet it is all too true.

Aluecke Barker, retired Chief Justice of the Tennessee Supreme Court

Remarkable life story of Raulston Schoolfield's journey and struggles for redemption in a legal and judicial career engulfed by the turbulent times of mid-twentieth century politics. Summers presents provocative research for the reader to decide if justice was done in Judge Schoolfield's 1958 Senate impeachment trial, or if he was the uncompromising victim of political enemies abusing executive and legislative powers.

Win. Ralph Hill, Jr., Senior Judge, Superior Court of the State of Georgia

While reading the story of the colorful and controversial Raulston Schoolfield, I found myself transitioning constantly - at one moment feeling admiration for Schoolfield only to have the admiration replaced by confusion, doubt and skepticism about his choices. *Rush to Justice?* tells a fascinating story about Tennessee history, politics and law. It is a story much enhanced by Jerry Summers' dogged research and his unique perspective on his beloved home town and profession. We can only hope that Jerry will have mercy on his readers and tell the rest of Schoolfield's story in a subsequent volume.

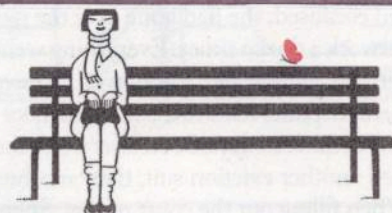
Penny White, University of Tennessee law professor and former Tennessee Supreme Court Justice

Provides a full-bodied view of Raulston Schoolfield, a talented trial lawyer whose controversial behavior confounded several members of the legal community. But perhaps most interesting is the delicate, balanced picture that attorney Jerry Summers paints of the state Senate and the connections and events that lead to Schoolfield's impeachment. Was it politics as usual, or the appropriate punishment for a judicial figure accused of bribery and extorting campaign help from racketeers? The reader has all the necessary tools to decide.

Zack Peterson, Courts Reporter, Chattanooga Times-Free Press

Jerry Summer's life-long passion for - and commitment to the law - shines through in *Rush to Justice*. Summers, a legendary trial lawyer, defends the poor and innocent and challenges the rich and powerful. He has witnessed true political corruption but also has defended those who were falsely accused. In short, Jerry Summers possesses the unique experiences to tell this story with knowledge and passion. The amazing tale of Judge Raulston Schoolfield, who rose to become one of the most controversial judges in Tennessee, only to fall hard amid allegations of unethical and illegal conduct, should be taught in law schools and in CLE programs across the South. When do we get Part II?

Mark Curriden, Dallas Morning News legal writer and co-author of award winning book, Contempt of Court



Steve: One of the perks of being the new President of ABCL they name things after you. Jerry

Froelich (crater)

From Wikipedia, the free encyclopedia

Froelich is a lunar impact crater on the far side of the Moon. It is located in the northern regions, just beyond the north-northwestern limb. Only a few kilometers separate this formation from the crater Lovelace to the north. Farther to the south is the crater Merrill, and to the southeast along the limb is the larger Brianchon.

This crater has a circular, symmetrical shape but the rim is worn and does not project very far above the surface. The inner walls are generally featureless, except for small craterlets along the eastern and southern sides. The interior floor has a low ridge in the northeastern quadrant and a small central rise.

FLORIDA DOCTOR ACCUSED OF BILKING MEDICARE ACQUITTED

Law360, Miami (March 8, 2016, 9:36 PM ET) -- A Florida federal jury has acquitted an anesthesiologist accused of participating in a scheme to bilk Medicare out of millions of dollars for procedures that were never performed.

A jury in the Middle District of Florida on Friday found Dr. Adel Kallini of Pompano Beach not guilty of conspiracy to commit health care fraud and wire fraud after the defense argued Kallini had never intended to commit a crime and had relied on the advice of his attorney. (U.S. v. Kallini, #8:15-cr-00196).

Kallini had agreed to allow alleged co-conspirators Gregory J. Sylvestri and Leonard Austin, who managed shell company BioScan through which they laundered fraud proceeds, to use his Medicare provider number to bill for services rendered by other doctors, according to Kallini's attorney **Brian Bieber** of GrayRobinson PA. But Sylvestri and Austin used the number to bill for procedures that were never performed.

"Essentially Dr. Kallini believed his conduct was legal based upon his lawyer drafting a contract outlining the business arrangement," Bieber said.

Bieber, who called acquittals "extremely rare in federal health care fraud cases," said Kallini's lawyer drafted the contract and later realized that he may have advised his client to do something illegal, so he backdated letters addressed to Kallini that were never sent. Bieber said he was able to show the jury discrepancies in the letters by examining altered fonts. "I believe that may have been the nail in the coffin for the government's fraud theory of prosecution," Bieber said.

A representative for the U.S. Attorney's Office could not immediately be reached for comment Tuesday.

Kallini was accused of helping Sylvestri and Austin with their scheme to fraudulently bill Medicare between June 2013 and February 2014.

Sylvestri and Austin pled guilty in October 2014 to submitting more than \$12 million in fraudulent claims to Medicare through three purported health clinics: Cornerstone Health Specialists of Lakeland, Summit Health Specialists PL of Tampa and Coastal Health Specialists LLC in Lakeland and Melbourne.

They submitted claims from illegal kickback arrangements and claims for radiology, audiology, neurology and cardiology services that were never performed, according to prosecutors. Some of the services billed had been purportedly provided to deceased patients. They used BioScan to conceal and disburse the fraud proceeds, according to prosecutors.

Kallini is represented by **Brian H. Bieber** and Alexander G. Strassman of GrayRobinson PA.

The government is represented by Christopher J. Hunter and Holly L. Gershow of the U.S. Attorney's Office for the Middle District of Florida. (Submitted by **Joel Hirschhorn**)

To ABCL Fellows:

I have been involved in a very interesting case in federal court in Tampa, Florida. My client received a target letter from the United States Attorney. I met with the United States Attorney. As a result my client was granted immunity. He cooperated with the government and as a result two DEA agents, one active and one retired, have pled guilty. I've attached hereto the facts set forth in the plea agreement of the retired agent Sam Murad. My client is the BP referred to in the facts. I think you will find the case very interesting. **Jerry Froelich**

Folks: Gotta brag on my wife, Ann Roan, who continues to fight the good fight to keep juveniles in Colorado from being shackled (legs/hands/waist) while appearing in juvenile court. After negotiating with all the judicial districts in Colorado for the past year, the legislature will once again take up a bill to try to provide meaningful relief for the kids. First committee hearing scheduled for tomorrow in the legislature. Good article quoting Ann in today's Denver Post. The pictures of the kids are worth the price of admission. **Jim Jenkins**

http://www.denverpost.com/news/ci_29666080/colorado-judges-allowing-more-kids-appear-court-without

Practice Tip from **Alan Ellis**

If the sentencing judge is reluctant to direct the probation officer to make corrections to the final Presentence Report, you can accomplish the same thing (sometimes even better) by asking him or her to issue a Statement of Reasons with the findings. This will be transmitted to the BOP along with the Judgment and the Presentence Report. The Bureau rarely sees Statements of Reasons and when they do, they pay close attention to them. The Statement of Reasons trumps the Presentence Report in the eyes of the Bureau of Prisons. For example, if the Presentence Report states that your client has "an occasional glass of wine with dinner," it will not make him eligible for the RDAP program. A Statement of Reasons indicating that he was drinking heavily within 12 months prior to his arrest will make him eligible, all other things being equal.

Dear Fellows,

Fresno Fellow **Anthony Capozzi** has been elected chairperson of the California Commission on Judicial Performance, an independent state agency that is responsible for investigating complaints of judicial misconduct and disciplining judges. Tony is a dear friend and neighbor, and I congratulate him on this highly honored position in the legal community.

My best to all, **Jim Homola**

Jeff Deen has done it again- another acquitter late yesterday afternoon! Sex case accusing teacher of sexual crime in school/a little on video-these cases are so difficult, BUT Jeff is a damn magician! **Steve Salter**

Dear ABCL: I'm not that new to ABCL ... but I just figured out how to email you all ... about two things.

First, my daughter and I released a "CD" of original songs called Give Me Mercy to benefit the Equal Justice Initiative (all proceeds go there and to Special Olympics"). I am trying to figure out how to send you a couple of songs about men freed from death row in Texas. You can buy the CD by the truck load at CDBaby.com or even itunes.

Second, I'm happy to report the end of the BP Deepwater Horizon criminal oil spill/manslaughter litigation – with a dismissal of all felony manslaughter counts and an acquittal at trial on the misdemeanor (negligent) Clean Water Act count in New Orleans federal court last month. I represented the BP rig supervisor whose been fighting the case for five years, bless his courage and bless BP for paying the bills.

I have to add a shout-out to ABCL Fellow **Robert Hirschhorn**, plus two other points from our trial of the misunderstood, scapegoated, lowly BP engineer on the Deepwater Horizon.

1. With Hirschhorn's help, we got a 12 page jury questionnaire three weeks before trial and then *individual* voir dire at trial. The American College of Trial Lawyers Journal is going to include a piece publicizing Judge Duval's procedure called "Voir Dire Fit for the Framers" suggesting the positive impact of voir dire for any case (not just a high publicity one). Of course, Robt Hirschhorn picked a great jury.

2. US District Judge Stanwood Duval told the government that "Brady" at the trial court level is not measured by whether it will change the verdict but only whether it's arguably favorable, quoting Judge Friedman's great opinion in *Safavian* in DC. In response, the government said that there was "no Brady" ... but "out of caution" it gave us every "302" months before trial (over 800 302s). (We also learned that for one key witness, the government stopped making 302s ... which was sneaky except for the fact that we were talking with him as well.) A growing number of judges are issuing similar orders that the "materiality" standard of Brady is different at trial than appeal, which of course is right.

3. Finally, when our co-defendant pled guilty and testified "for" the government, we chose not to cross examine him with his plea and cooperation deal, because he would give us a lot of good testimony, and we didn't want guilt by association. *And Judge Duval ruled that the govt could not offer is plea and cooperation agreement if we chose not to impeach him with it.* That was a big ruling.

But mainly I wanted to give kudos to Hirschhorn. Like the old AMEX commercial, I "don't leave home without [him]."

Hope to see you soon, **David Gerger**

1 INTERSTATE 45 (2:55) 2 CONROE 1990 (3:56)
3 GRANDMA DIGS HIM (2:56) 4 PSALM OF LIFE (2:28)
5 ANTHONY GRAVES (2:48) 6 CAMDEN (3:11)
7 GIMME MERCY (2:44) 8 ELLIOT (3:11) 9 PIPELINE (2:28)
© 2015 David Gerger. All rights reserved. All proceeds will be donated to charity.



David Gerger, a white-collar crime defense attorney in Houston, is raising money for charity by selling an album of songs he wrote and recorded with his daughter Ria, a student at Middlebury College in Vermont.

"Give Me Mercy," by Ria & David, features songs that Gerger wrote about Houston, clients, justice and his family. The proceeds of sales of the music benefit the Equal Justice Initiative in Montgomery, Alabama, and Texas Special Olympics, he said.

Gerger, managing partner of the Quinn Emanuel Urquhart & Sullivan office in Houston, said he wrote most of the songs during the summer of 2014, and recorded some that summer with his daughter, who was home from college recovering from ankle surgery. They finished recording the

songs during the summer of 2015, and the album was released in late December. It's not Gerger's first foray into music. When in high school at The Kinkaid School in Houston, Gerger said he played bass guitar in a band called Midstream. He's not performed professionally since then, but his hobby is playing classical guitar, and he has written music over the years. He played guitar on "Give Me Mercy." As for Ria Gerger, Gerger said she is not a trained singer, but the album was something for the two of them to do together. "It's not even a hobby of hers but she just has a nice voice," Gerger said. Gerger wrote two of the songs on the album for his nieces when they got married, including "Grandma Digs Him." One song, "Psalm of Life," is a tribute to Gerger's father, and another, "Elliot" is in remembrance of Ria's younger brother, who died as an infant. In that song, Gerger and his daughter sing that they "measure time by your touch" when remembering Elliot. Two songs are about two men freed from death row in Texas and another is about the never ending construction on I-45. "Camden" is about a Federal Corrupt Practices Act bribery trial in New Jersey in 2015. "Give Me Mercy" honors Gerger's client Andy Fastow, the former Enron Corp. chief financial officer who pleaded guilty to two criminal charges and was sentenced in 2006 to six years in prison.

In that song, Gerger and his daughter sing: "Give me mercy, not justice, though justice is all I deserve ... mercy is a delicious word." Gerger said sales of the album, available for purchase and download, have yet to take off. He said he's not had time to publicize it because he's been busy this year preparing for a trial this month in New Orleans. He represents the BP engineer on the Deepwater Horizon who is criminally charged with negligence in connection with the rig accident. Gerger said he plans to write and record a song about that trial, too.

Read more: <http://www.texaslawyer.com/id=1202749126347/Houston-Lawyer-Daughter-Record-Charity-Album#ixzz3zgDpJ4Jt>



We Found a new doctor for you- We love him

Q: Doctor, I've heard that cardiovascular exercise can prolong life. Is this true?

A: Heart only good for so many beats, and that it... Don't waste on exercise. Everything wear out eventually. Speeding wear out heart not make you live longer; it like saying you extend life of

car by driving faster. Want to live longer? Take nap.

Q: Should I reduce my alcohol intake?

A: Oh no. Wine made from fruit. Brandy distilled wine, that mean they take water out of fruity bit so you get even more of goodness that way. Beer also made of grain. Bottom up!

Q: How can I calculate my body/fat ratio?

A: Well, if you have body and you have fat, your ratio one to one. If you have two body, your ratio two to one. Q: What are some of the advantages of participating in a regular exercise program? A: Can't think of single one, sorry. My philosophy: No pain...good!

Q: Aren't fried foods bad for you?

A: YOU NOT LISTENING! Food fried in vegetable oil. How getting more vegetable be bad?

Q: Will sit-ups help prevent me from getting a little soft around the middle?

A: Oh no! When you exercise muscle, it get bigger. You should only be doing sit-up if you want bigger stomach.

Q: Is chocolate bad for me? A: You crazy?!? HEL-LO-O!! Cocoa bean! Another vegetable! It best feel-good food around!

Q: Is swimming good for your figure?

A: If swimming good for figure, explain whale to me.

Q: Is getting in shape important for my lifestyle?

A: Hey! 'Round' is shape! Well... I hope this has cleared up any misconceptions you may have had about food and diets.

And remember: Life should NOT be a journey to the grave with the intention of arriving safely in an attractive and well-preserved body, but rather to skid in sideways - Chianti in one hand- a Cannoli in the other - body thoroughly used up, totally worn out and screaming "WOO-HOO, what a ride!!"

AND.....

For those of you who watch what you eat, here's the final word on nutrition and health. It's a relief to know the truth after all those conflicting nutritional studies.

1. The Japanese eat very little fat and suffer fewer heart attacks than Americans.
2. The Mexicans eat a lot of fat and suffer fewer heart attacks than Americans.
3. The Chinese drink very little red wine and suffer fewer heart attacks than Americans.
4. The Italians drink a lot of red wine and suffer fewer heart attacks than Americans...
5. The Germans drink a lot of beer and eat lots of sausages and fats and suffer fewer heart attacks than Americans.

CONCLUSION: Eat and drink what you like. Speaking English is apparently what kills you

Judge drops charge against midwife

Two other felony charges still in play in boy's death.

By Sarah Oleson
2/16/2010
SOKESON@NEWS-LEADER.COM

A charge of involuntary manslaughter against a midwife in connection with the death of a baby has been dismissed, but she still faces two other felony charges in Greene County.

Elaine Diamond, 53, was charged after the October 2009 death of Raheem Gardner. He died after his mother, Amanda Gardner, labored at her Springfield home for more than 48 hours. Authorities said Diamond failed to provide proper medical

attention as a midwife.

Following a hearing Thursday, Associate Circuit Judge Mark Fitzsimmons wrote that prosecutors presented no evidence that Diamond's conduct met the definition for involuntary manslaughter, which would have been "a gross deviation from the standard of care."

Diamond's attorney, Dee Wampler, said she got a fair hearing from Fitzsimmons.

"I certainly commend the judge for listening to the evidence," Wampler said.

Senior Assistant Prosecutor Ami



Diamond

Past stories: For previous coverage, click on this story at News-Leader.com



Miller said she was disappointed. "We believe there was probable cause to believe that she killed the baby," Miller said.

Diamond, of Schell City, still faces felony charges of endangering the welfare of a child and unauthorized practice of medicine or surgery. She is scheduled to appear in court on those charges at 8:30 a.m. Friday.

If convicted of both charges, Diamond faces up to 14 years in prison.

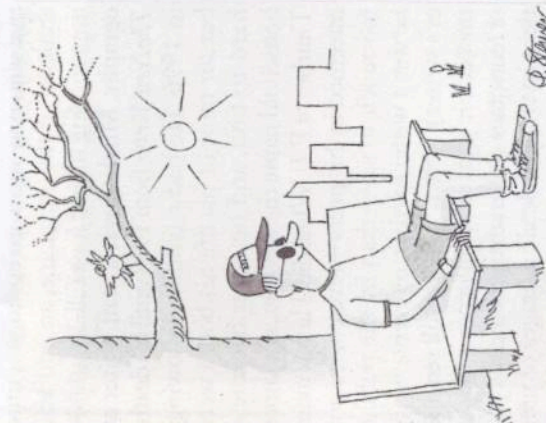
"Hopefully, those two counts

will get the justice for the parents and the community that we need," said Miller.

Raheem was born Oct. 26, 2009 in a vehicle outside St. John's Hospital with the umbilical cord wrapped around his neck, 17 minutes after he had stopped breathing.

He suffered brain damage and died Oct. 30.

Diamond is not credentialed by the two groups that review certified professional midwives under Missouri law, the North American Registry of Midwives and the American Midwifery Certification Board. Certified professional midwives are not overseen by any regulatory body in Missouri.



SPRING TRAINING

Peter Steiner, Published April 4, 1988

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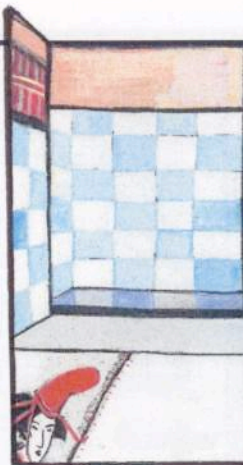
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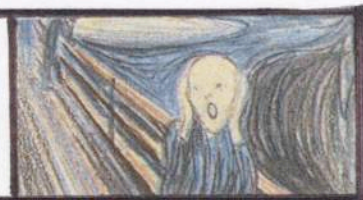


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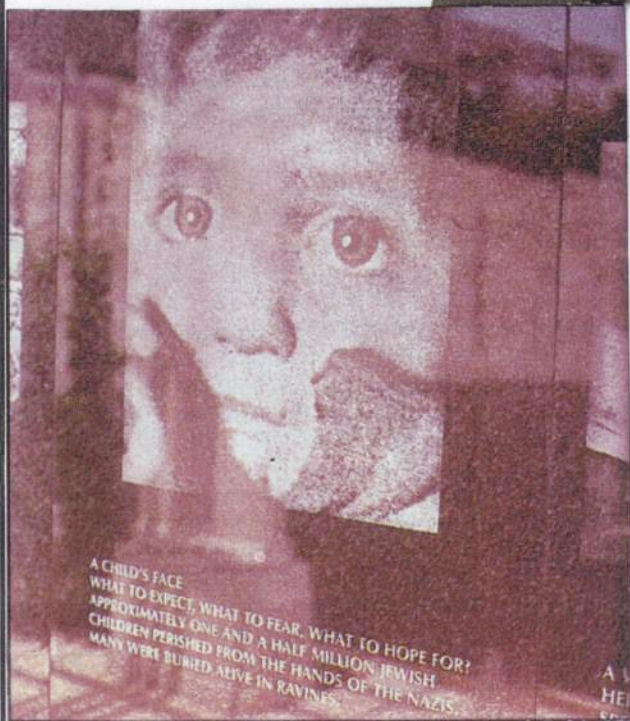
The RoundTable

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Future Meetings

May 26-31, 2016: Rome, Italy
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A CHILD'S FACE
WHAT TO EXPECT, WHAT TO FEAR, WHAT TO HOPE FOR?
APPROXIMATELY ONE AND A HALF MILLION JEWISH
CHILDREN PERISHED FROM THE HANDS OF THE NAZIS.
MANY WERE BURIED ALIVE IN RAVINES.

Never Shall We Forget ...