



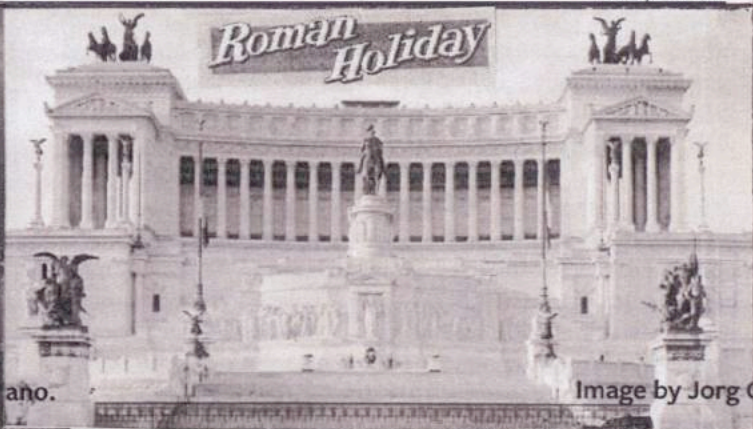
# American Board of Criminal Lawyers

## THE ROUNDTABLE



Vol. MMXVI, No. 5

May 2016



...rita or the Mouth of Truth) in P

Rome's ruins

Colosseum by star5-123





## **MASTER CLASS** (Free, but no CLE)

### **The Problem:**

Middle school girl accused teacher/coach of making salacious comment to her a few days after breaking up with her football player boy friend

### **The "Deen's" Answer:**

(Closing argument, late Friday afternoon version)

"I have a wife. I have a daughter. I have five sisters. It angers and offends me for a man make an improper comment to one of them or improperly touch any of them. And we hear about teachers these days. They are in a position of trust. It infuriates me to think that a teacher in such a position would say or do something of a sexual nature towards a child under his care. I have five sisters. I can remember being in seventh grade and hearing my fifth, ninth, and 10th grade sisters complaining about boys. Certain guys would think they were gods gift to women. Certain boys are arrogant .Certain boys were conceited. Certain boys would say or do bad things to girls. I would get mad. I would confront the boys. I was lucky I didn't get my ass kicked. A few weeks later, my sisters would be talking or dating these horrible boys. I have five sisters. Girls of middle school age make shit up etc etc blah blah blah "

**The Result: N.G.! (Again!!).**

**- Jeff Deen**

Dear all,

Here's a guy who had months of foolish hell who we were able to help.

**- Michael Stout**

### Doña Ana County jail director to return to work Monday

LAS CRUCES - All criminal charges have been dropped against Christopher Barela, who will return to work Monday as the director of the Doña Ana County Detention Center, more than four months after he was arrested on suspicion of mispending thousands

Check out this story on lcsun-news.com: <http://lcsun.co/1S1Nvys>

When the Defendant's best friend was a week late in bringing home the Defendant's wife, the Defendant killed him. The Defendant was indicted for Murder with a gun specification requiring a mandatory sentence of 18 years to life. As the jury waited this morning, **Jon Paul Rion** settled the case for Reckless Homicide with an 11 month sentence deferred until this summer and is expungable. The Defendant had greeted the decedent at the front door. The Defendant had a gun in each pocket. The decedent was shot in the eye. Oddly, the Defendant's wife wanted the Defendant to get life. She will lead next year's sinner's parade. This offer was too good to pass up.

**- John H. Rion**

## **OP-ED**

### **The Advocate Speaks:**

*Miranda v. Arizona*, 384 U.S. 436 (1966) was decided on June 13, 1966. Two years after it was decided, the Nixon administration proposed and Congress passed the Omnibus Crime Control Act of 1968, 18 U.S.C. §3501, which sought to legislatively overrun the Constitutional principles laid down in *Miranda*. The United States Court of Appeals for the Fourth Circuit in Richmond, Virginia, a rogue Court, determined that Congress had the prerogative to legislatively supersede *Miranda* by providing that the legal issue of the voluntariness of a statement could be determined by trial courts in the absence of the warnings provided for in *Miranda*.

In writing for the majority, Chief Justice Rehnquist in *Dickerson v. United States*, 530 U.S. 428 (2000) determined that Congress did not have the authority "to legislatively supersede the Supreme Court's decisions interpreting and applying the Constitution" and "Congress retains the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution."

Ironically, Justices Scalia and Thomas dissented from the *Dickerson* ruling. Similar reasoning seems to apply in the case of resistance to President Obama's nominee for the Supreme Court. While the Constitution provides that the President shall nominate and that nominees shall be confirmed on the advice and consent of the Senate, the Republicans take the position, just as the Fourth Circuit did in *Dickerson*, that they have the power to supersede the Constitution. The President must then bring on an emergency application for *mandamus* in the Supreme Court to compel Congress to abide by the Constitution. *Miranda*, in more than its words, tells us that rogue Courts and a misguided Congress cannot override the Constitution.

**- Tom Liotti**

Fellows:

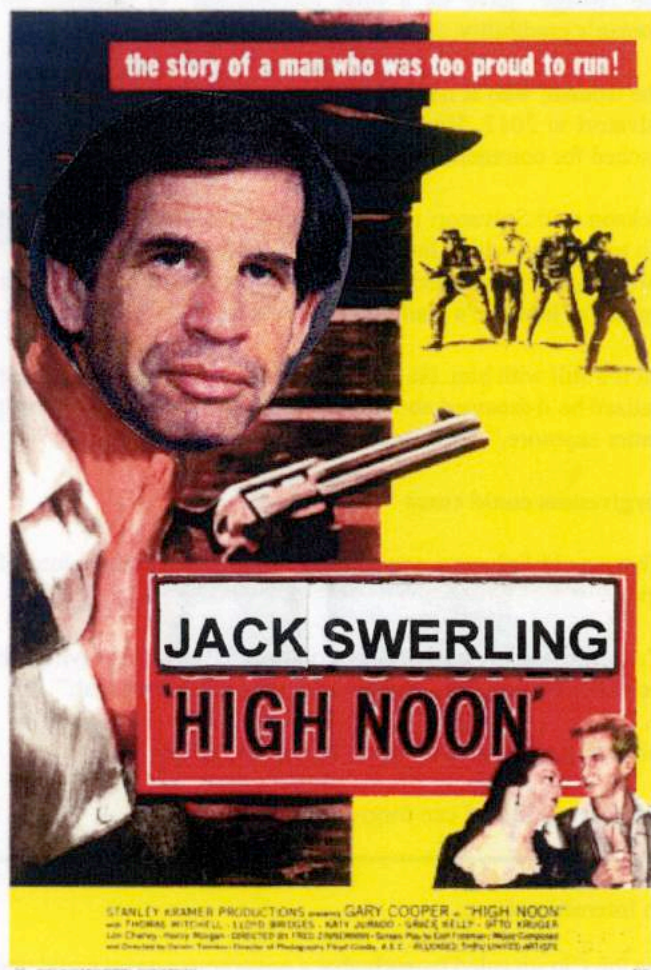
I just came across the below quote my father gave me after a particularly tough loss I suffered in a football game. It came with a note that "this applies to life". I think it applies to all Fellows of the ABCL.

"The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again, who knows the great enthusiasms, the great devotions, and spends himself in a worthy cause; who at the best; knows the triumph of high achievement; and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat."

**- Jerry Froelich**







On Apr 26, 2016, at 10:22 AM, '[Jack B Swerling](#)' via ABCL-US wrote:

I too wish to report a not guilty verdict in a murder trial I had in Jasper County, South Carolina last week?. But there's more to share than that. First of all Jasper County is near the Georgia border and about 2 1/2 from Columbia, so I had to stay there in a motel. Jasper County is similar to let's say Dodge City. Lots of weapons and shootouts.

Now in SC, a necessary accessory (just like a pen and pad) is a pistol. I forgot to bring mine with me?. There were all kinds of threats about a key witness getting killed so there were some 30 or so state and county law enforcement officers in and near the Courthouse. (my staff and I were escorted to and from our cars each day). My clients mother was arrested in the courtroom because my client called her from the jail (yes - a recorded conversation) and told her to have a close friend pick up a key witness each day and keep him from attending the trial. Things were so heated that the Chief Deputy told me I should have a gun, but I told him I left it at home. He called one of his friends who owns a gunshop and had him stay open till I could get there and purchase a gun.

So that's how I spent last week. Welcome to my world!

PS- I survived the week and got to hear those two sweet words.

**Mack Martin's** Murder trial. Sounds like a win to me.

Congratulations to Mack. Street crime trials are exhausting.

**Frank Jackson**

News report (4/19/2016)

Today, at approximately 12:30 p.m, the jury filed into the deliberation room to determine a verdict in the case of Ethan Johnson Spruill.

In the closing remarks of the defense and the prosecution, the jury was left with several things to consider.

Zack Simmons, Cleveland County Assistant District Attorney, said the state of Oklahoma proved without a reasonable doubt, Spruill murdered Aaron McCray on February 15, 2014.

"(Sпруил) made no attempt to leave (McCray and Grantham's) apartment," Simmons said. "Malice aforethought, the intent, happened time and time again with each pull of the trigger."

Sпруил's attorney, **Mack Martin**, disagreed with Simmons.

"The court instructions say the burden to prove beyond a reasonable doubt that my client, Ethan Spruill, didn't act in self defense, is on the state," Martin said. "I'm telling you right now, they haven't."

Cleveland County Assistant District Attorney John Peevehouse requested the jury convict Spruill of first degree murder, without the possibility of parole.

Peevehouse asked the jury to consider corroboration in regards to the evidence and witness testimonies in determining the verdict.

\*\*\*\*\*

A jury found Ethan Johnson Spruill guilty of first degree manslaughter after he shot and killed Aaron McCray Jr. at the Cherry Stone Apartments on February 15, 2014.

While Cleveland County Assistant District Attorneys' Zack Simmons and John Peevehouse recommended Spruill be charged with first degree murder without the possibility of parole, the jury felt the prosecution did not prove beyond a reasonable doubt that the murder was premeditated or that Spruill did not act in self defense.

The courtroom was split: on one side, there was Spruill's family and friends. On the other, McCray and Grantham's supporters. As the verdict was announced, both sides expressed dismay.

With the verdict, the question of whether Spruill acted in self-defense or with ill intent is still unresolved. Spruill claimed that he walked down to McCray's apartment intending to confront him and "proceeded to regrettably say things I shouldn't have," he testified. "Suddenly, the door opened and I saw two hands go right for my throat. The next thing I know, I was on my back." Witnesses recounted Spruill and McCray arguing shortly before they fought. McCray was shot several times in the struggle.

Tuesday's verdict was the conclusion of a more than week-long trial. Spruill will reside in the custody of the Cleveland County Sheriff's Department until his sentencing, which is set for June 22 at 1:30 p.m. The jury recommended a sentence of 23 years.



Thirty minutes ago I got two Not Guilty verdicts in Sexual Assault cases. My client was a prominent Christian Disc Jockey in Dallas. Had hung jury in both cases in a trial in 2014. This is the most satisfying verdict I've had in years. Wanted to share it with sister and brother Fellows.

- **Frank Jackson**

### **Dallas DJ not guilty in rape, indecency with a child case**

A Dallas DJ acquitted of sexual assault and indecency with a child said Monday that authorities should have investigated the case more thoroughly before he was charged. It's been a rough almost six years," Anthony Salvatori said. "The grace of God and my family have gotten me through."

Salvatori was accused of raping a 14-year-old girl in 1999 when he worked at KHKS-FM (106.1). At the time, he was known as Tony Marino but now goes by Tony Lopez as an afternoon disc jockey for Christian radio station KLTY-FM (94.9).

A Dallas County jury found him not guilty Friday.

"There are victims out there, and there are bad people," Salvatori said Monday. But "no man wants to be falsely accused."

The Dallas County district attorney's office declined to comment Monday.

This was Salvatori's second trial. A judge declared a mistrial in May 2014 after the jury deadlocked in favor of acquittal on both charges. He was found not guilty Friday. He faced between two and 20 years in prison if he had been convicted.

A woman came forward in 2010 to accuse Salvatori of sexual assault that she said happened in 1999. Testimony showed that Salvatori was working at "KISS FM" in 1999 when a girl called the radio station trying to win 'N Sync concert tickets. When she didn't win, Salvatori invited her to come to the station. They later went to his apartment, where he raped her, she testified.

Salvatori testified that he thought she was 18 when they met. In a police-recorded phone conversation between Salvatori and the woman, he denied raping her but admitted that there was "heavy petting" between them.

He testified during the first trial that to him the term meant nothing more than kissing and hugging. He also said he rubbed his hands on the girl's back and shoulders. Salvatori testified at the first trial that he met the teenager in the parking lot of the radio station after he got off work. "She began to hug and kiss me," Salvatori said at the first trial. "I kissed her back."

### **First trial vs. second**

Defense attorney **Frank Jackson** said he can't pinpoint one thing that swayed the jury. Jackson said the woman changed part of her story about how she got to the radio station.

In the first trial, she told jurors that her cousin's boyfriend drove her to the station, Jackson said. Last week, she testified that Salvatori picked her up and they went to dinner.

The change "gave us a little ammunition" to question the woman's credibility, Jackson said.

The woman, who is not being identified, filed a lawsuit against Salvatori in 2012. Her attorney in the civil case could not be reached for comment.

Jackson said Salvatori is "doing great." "He still has the civil suit to contend with," Jackson said. "But he's got his life back." Salvatori said his children and wife have been "steadfast" in their support of him. He's glad the criminal trial ended for their sake.

But it's still with him. He said he woke up Monday morning and realized he'd dreamed about his testimony. "I realized it doesn't matter anymore," Salvatori said.

### **Forgiveness could come**

What would Salvatori say to the woman who accused him of rape?

"I'm searching my heart," Salvatori said. "I've been praying for her since day one. She may or may not want to hear that."

Salvatori said he doesn't want to hold onto anger.

"I'm sure, in time, I can forgive her," he said.

### **An Interesting Case:**

The 9th Circuit ruled recently that a government agent could not search through the digital data of a probationer's mobile phone just because the probationer had signed a right to search and waiver of 4th Amendment Rights as a condition of probation. *United State v. Lorn*, 2016 BL 64094 (03/03/2016)

- **Jerry Froelich**

**Barry Pollack** and I just finished a two week bribery, conspiracy and honest services fraud trial in the EDVA. 4 defendants and 8 counts against each of them. Not guilty across the board.

- **Preston Burton**

Fellow **Victor Sherman** has reversed his arch-nemesis, Judge Manuel Real, with a blistering opinion from the Ninth Circuit. It's amazing how many times this judge has been reversed and that he is still continuing to sit and abuse.

- **Richard G. Hirsch**



Bob and Ray have gone to a far, far  
funnier place, but their work will live  
forever on CD, cassette, and iTunes at  
**BobandRay.com/ny2**



# Fresno attorney Anthony Capozzi elected chair of California judicial commission

(4/3/2016)

Capozzi is a former assistant U.S. attorney

He was appointed to commission in 2010

Commission oversees California's judges, justices

BY PABLO LOPEZ  
plopez@fresnobee.com

Fresno attorney Anthony P. Capozzi has been elected chairperson of the Commission on Judicial Performance, an independent state agency that is responsible for investigating complaints of judicial misconduct and



Anthony Capozzi

disciplining judges.

Capozzi, who operates his own law firm, was elected March 23. Justice

Ignazio J. Ruvolo, an appellate judge in San Francisco, was elected vice

chairperson.

The commission, based in San Francisco, is composed of three judges, two lawyers, and six public members. It has jurisdiction over all of California's Superior Court judges, and the state's appellate and Supreme Court justices.

Capozzi has a bachelor's degree in philosophy from the State University of New York in Buffalo and a law degree from the University of Toledo's College of Law. He served as a law clerk to the Honorable Omer Poos, a U.S. District Court judge

for the Southern District of Illinois, from 1970 to 1973. From 1973 to 1979, he was a supervising assistant U.S. attorney in Fresno.

Since 1979, Capozzi's private practice in Fresno has focused mainly on criminal defense law.

Capozzi was initially appointed to the judicial performance commission by Gov. Arnold Schwarzenegger on April 6, 2010. He was reappointed by Gov. Jerry Brown on Dec. 23, 2013. His term ends Feb. 28, 2017.

His resume includes president of the Fresno

County Bar Association and the Federal Bar Association, San Joaquin Valley chapter; lawyer representative and co-chair of the Ninth Circuit Judicial Conference; co-chair of the Bench Bar Coalition; elected member of the Board of Governors, State Bar of California, 2000 to 2003; president of the State Bar of California, 2003 to 2004; member of the Access and Fairness Commission, 2004 to 2005; and member of the Judicial Council of the State of California, 2005 to 2010.



*"Louie, you apply for a loan while Rocco heads in through this door and files for bankruptcy."*

Sorry to brag on my wife again, but last night ABCL Fellow Ann Roan was awarded the Outstanding Juvenile Defender of the Year by the Colorado Juvenile Defender Center. She was honored for her work over the past three years to revamp juvenile representation by the 400-lawyer Colorado State Public Defender, her leadership in the effort to halt shackling of juvenile defendants, and her efforts under *Miller* on behalf of juveniles sentenced to die in prison under LWOP sentences.

A bonus at the event was that her award was presented by newly minted Denver Fellow Kevin McGreevy (who plans to be in Austin in October for his inaugural ABCL trip, along with his lovely wife Fran).

Jim Jenkins



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**Future Meetings**

May 26-31, 2016: Rome, Italy  
October 7 - 9, 2016: Austin, Texas

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Justice for  
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