



American Board of Criminal Lawyers

THE ROUNDTABLE



Vol. MMXVI No. 8

Consider the Turkey

Thanksgiving 2016



Everyone Deserves
a Holiday Meal This
Thanksgiving!



Thought you would find this interesting. Spent almost four (4) years litigating a case where two (2) banks incurred over \$1.2 Billion in bad construction loans. The net effect was the FDIC came in and took over the banks which resulted in a criminal investigation by the United States Attorney's Office in Chicago as well as the FBI. The original loss figures would have put my client in a fifteen (15) to twenty (20) year sentencing range. **Leonard Ambrose**

Carl Lietz, the newest fellow, just secured a mistrial on a copywrite infringement case. The clients were cracking security codes on thousands of Apps and offering them for free on their website. **Jay Strongwater**

Congratulations to **Jim Liguori** on his ascension to Chairship of the Delaware Criminal Justice Council Membership Committee.

Mike Monico and Co won the Derrick Rose Civil Case today (10/19/16) The jury was out four hours and posed with Derrick and the attorneys after the verdict. A brilliant job was done by all. **Richard G. Hirsch**

Fellow **John Fitzgibbons** represented an attorney who was charged with a DUI. John did some great work and established that attorneys who were on the other side of a big civil case used a female paralegal to get John's client drunk and arrested on a DUI charge. The DUI charge was dropped and the attorneys disbarred by the Florida Supreme Court, in an opinion in which the Court wrote:

"[T]he misconduct in this case is unique and essentially unprecedented, at least as documented in this Court's prior case law." **Jerry Froelich**



"Don't think of me as a crime boss. Think of me as a crime friend."

Parents rail against plea deal for doctor in overdose deaths

By Jane Musgrave - Palm Beach Post Staff Writer - Sept. 8, 2016

For nearly a decade, Jacque Lauzerique and Ken Fusco have tried to soothe the pain of losing their sons to drug overdoses with the hope that one day a West Palm Beach doctor would be punished severely for handing the young men prescriptions for hundreds of pain killers. On Thursday, their hopes were dashed when Dr. John Christensen, who once faced the death penalty in connection with the overdose deaths of two other patients, accepted a plea deal that will send him to prison for no more than five years. Facing nearly 70 charges, the 64-year-old former owner of A1A Health & Wellness Clinic on Broadway pleaded guilty to two counts of manslaughter and one count of conspiracy to traffic in oxycodone.

Towering over his attorney **Richard Lubin**, the lanky former physician told Palm Beach County Circuit Judge Dina Keever he wasn't accepting responsibility for the September 2007 overdose death of Florence Garrett, 47, of West Palm Beach, or the August 2008 death of Pawel Staniszewski, 31, of Royal Palm Beach. Rather, he said, he was pleading guilty to manslaughter because it was in his "best interest" — a way to put the long-running legal battle behind him.

While the trafficking charge carries a minimum mandatory sentence of 25 years, Assistant State Attorney John Parnifiello said the state would waive it. Instead, Parnifiello said he would ask Keever to impose a maximum five-year term when Christensen is sentenced on Dec. 6. And he could get less.

Last month, Christensen, who began his medical career as a chiropractor, pleaded guilty to conspiracy to commit health care fraud in federal court in Orlando. He admitted he allowed a Daytona Beach chiropractor to use his medical license to falsely bill Medicare for services that were never provided. That charge also carries a maximum 5-year sentence. As part of the plea deal, Panifiello said he agreed Christensen could serve the state and federal sentences at the same time. If a federal judge in Orlando on Nov. 21 sentences Christensen to less than five years, his state sentence would end early.

"Unreal," a stunned Lauzerique said when told of the complex plea deal. "It's amazing you can get away with murder."

One More Thing

Have you given any thought to how you might use your last breath? Karl Marx would tell you not to bother. "Last words are for fools who haven't said enough," he said, and then died.

"Famous Last Words," assembled by the writer and editor Claire Cock-Starkey (who acknowledges that some of her contents may be apocryphal), gathers the expiring utterances of Marx and other notables, like Elizabeth I, who said: "All my possessions for one moment of time." Goethe's mother wrote to friends who had invited her over: "I must ask to be excused, as I have to die."

Odds are that the rest of us won't have the cheerful equanimity of the essayist William Hazlitt: "I have led a happy life." Or of the poet Gerard Manley Hopkins: "I am so happy, I am so happy. I loved my life." But could we aim for the elegance of the French general Maurice de Saxe? "The dream has been short, but it has been beautiful."

FORMER IVY LEAGUE ATHLETE SUSPENDED FOR ALLEGED SEXUAL ASSAULT WINS IMPORTANT - AND SURPRISING - COURT VICTORY

Can a male student held responsible by a university for an alleged sexual assault successfully make the case that his fate was the result of sex discrimination against him? Many have tried and many have failed. Indeed, some have been all but laughed out of court.

But now the Second Circuit U.S. Court of Appeals has opened the door to just such a scenario. Reversing a U.S. District Court decision, the panel ruled Friday that a former athlete's suit against Columbia University, which suspended him for a year for "sexual assault: nonconsensual sexual intercourse," may go forward based on his claim that university officials acted with anti-male bias, in violation of Title IX, the federal education law that bars discrimination by schools receiving federal funds.

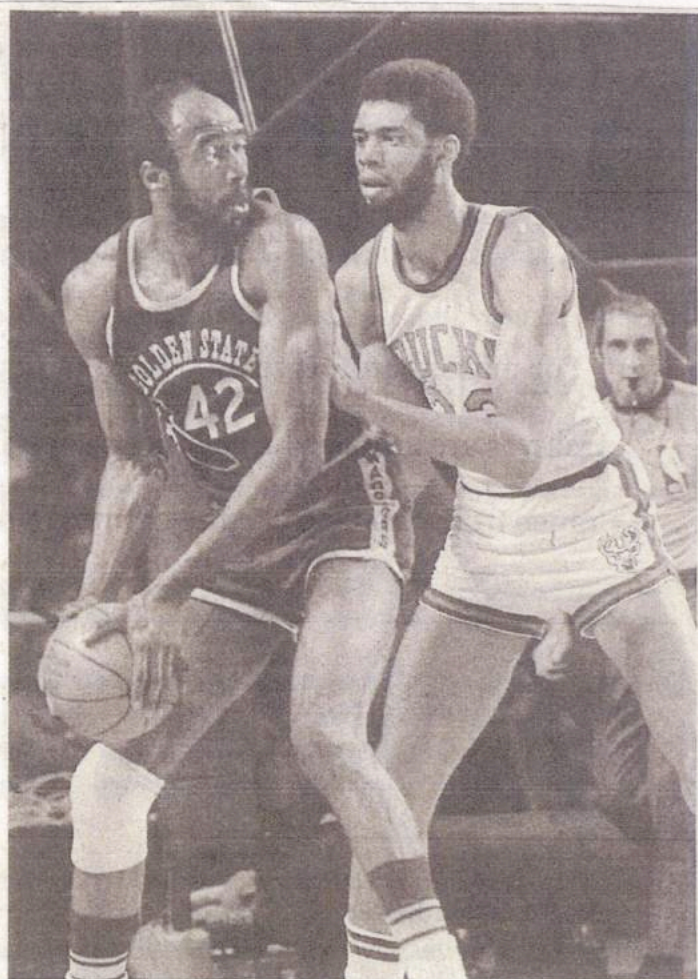
It's not a decision on the merits — the court did not say the student was a victim of gender bias. It simply ruled that he made a sufficiently plausible case that he may now go forward with a claim the district court judge in the case called "overwrought" and tossed out. This surprising ruling could have major repercussions in other cases, most prominently the suit brought by former Yale University basketball player Jack Montague, who was expelled from Yale just shy of graduation for sexual misconduct. Montague is making the same argument, among others, in the same circuit.

"The courts are beginning to realize that they should not give the back of their hands to these kinds of cases," Montague's lawyer, **Max Stern**, told the Post. Will the ruling help his client's claim? "Yes."



**HEY,
YOU
WITH
THE
THREE
HANDS,

THAT'S
A FOUL!**



ASSOCIATED PRESS

Thurmond (42) and Kareem Abdul-Jabbar, who called Thurmond "the toughest center for me to play against," in 1973.

Judges have been known to apply Yiddish labels to each other on occasion. The most famous example was Justice Robert Thompson's classic footnote in *California v. Arno*, 153 Cal.R. 624 (2979). Presented with a kvetching dissent, Justice Thompson spelled out his response in unusual form. The first letter of each sentence forms the word "Schmuck"

"We feel compelled by the nature of the attack in the dissenting Opinion to spell out a response:

- "1. Some answer is required to defense charge.
- "2. Certainly we do not endorse 'victimless crime.
- "3. How that question is involved escapes us.
- "4. Moreover, the constitutional issue is significant.
- "5. Ultimately it must be addressed in light of precedent.
- "6. Certainly the course of precedent is clear.
- "7. Knowing that our result is compelled.

"See Funk & Wagnall's The New Cassell's German Dict. fne. 408, in conjunction with fne 6 of dis. opn. of Douglas J. "in *Ginsberg v. New York*, (1967) 390 U.S. 629, 655-6.)"

Dear Fellows:

I write in tribute to our brother, **Mike Kimerer**, who had an amazing achievement last week, and who is undoubtedly too modest to tell you about it himself. On Thursday, his long-time client, Jake Wideman, after 30 years in, was voted parole from his life sentence by the Arizona parole board.

Those of you who have had any experience with the Arizona "criminal justice" system know, without knowing more, how miraculous this is. In fact, the odds were steeper than you could imagine.

When Jake was 16 years old, he and a small group of boys went on an end-of-summer cross-country trip sponsored and run by the upscale Maine summer camp owned by his mother's family. Jake, who is African-American, was an all-A student and basketball star at his high school in Wyoming, without a blemish on his record and an outstanding future ahead of him. His father is John Wideman, the highly-regarded author. After visiting Yellowstone, the group stopped at a hotel in Flagstaff for the night. In the middle of the night, for reasons no one -- Jake included -- has ever been able to explain, Jake got out of bed and plunged the knife he had purchased as a Yellowstone souvenir into his roommate, who was a friend, killing him.

Jake soon found himself, as a juvenile, facing the death penalty. Bad enough to be a capital defendant in Arizona; worse, the victim's family was wealthy, connected, totally unforgiving and, to this day, on the warpath.

I first met Mike shortly after he took on the case. At the outset of the prosecution, while Jake was still in juvenile court, he was released into the custody of treatment facilities in Massachusetts, where his parents had moved over the summer. My then partner, Patty Garin, was tasked with setting up a series of psychiatric and medical evaluations and coordinating the project with Mike. But, although something was obviously wrong, none of the experts could put a finger on it.

After being transferred to adult court in Flagstaff, and to adult jail, one day during the pretrial period, with Mike in Phoenix and Jake's parents in Massachusetts, the Flagstaff DA presented a one-time only plea offer, open for 24 hours only: plead to life or face the death penalty. Mike had to advise his client on the phone. Jake pled, and at 17 years old and truly vulnerable, went off to experience the worst Arizona had to offer.

Mike will tell you, I am sure, that no case he has ever had has affected him as deeply as this one. He never quit. Over the years, Mike stayed involved, dealing with prison issues, Jack's mental health needs, acting as a lifeline and friend for his client, doing whatever needed to be done to help him survive.

After 25 years, Jake became eligible for parole. By now a lot had been learned about the juvenile brain and about Jake's brain in particular. A new expert, reviewing the old MRI's, was able to determine that Jake had Temporal Lobe Syndrome, a condition that likely precipitated the crime and was now treatable with medication. And, in the meantime, Jake had compiled a superlative record in prison. Advocating for parole, Mike tag-teamed with Patty, she acting as the lawyer and he as star witness, a role in which he could even more powerfully, and personally, demolish the arguments of the opposition.

I, for one, thought that this was a hopeless enterprise. The board said no, and did so over and over. But Mike, Patty, Jake and his family kept pushing back, every year. It took seven hearings, and two appeals. Here is what Patty wrote about Mike's contribution:

He was my star witness at each of the seven hearings and he has taken unbelievable harassment from the Kane family during the last 30 years. (This year they filed a nine page single spaced letter describing him as lying, unethical, dishonest, cruel, trying to free a sociopath, etc.) When the decision was announced, he went out in his car and cried.

The story couldn't be better told than by Mike himself in his most recent letter to the parole board, which I have attached. His letter discloses everything you need to know about his commitment, perseverance, courage, eloquence, and just plain humanity. Mike's thirty year representation of this then boy, now 46 years old, shows us everything a criminal defense lawyer should aspire to be.

(Submitted by) **Max D. Stern**

USA Postage Stamp Honors Unsung Rescuer of Jews from the Nazis



Who was Hiram Bingham and why is he getting a stamp? Just an interesting piece of evidence of the curious behavior of the Roosevelt administration toward the Jews during WWII.

Former Secretary of State Colin Powell gave a posthumous award for "constructive dissent" to Hiram (or Harry) Bingham, IV. For over fifty years, the State Department resisted any attempt to honor Bingham. For them he was an insubordinate member of the US diplomatic service, a dangerous maverick who was eventually demoted. Now, after his death, he has been officially recognized as a hero.

Bingham came from an illustrious family. His father (on whom the fictional character Indiana Jones was based) was the archeologist who unearthed the Inca City of Machu Picchu, Peru, in 1911. Harry entered the US diplomatic service and, in 1939, was posted to Marseilles, France, as American Vice-Consul.

The USA was then neutral and, not wishing to annoy Marshal Petain's puppet Vichy regime and because of rampant anti-Semitism of certain State Department officials, including Assistant Secretary of State Breckenridge Long, illegally (and without the knowledge of President Roosevelt) ordered its representatives and consuls in Europe, including Marseilles, Lisbon, Zurich et al, not to grant visas to any Jews. Bingham found this policy immoral and, risking his career, did all in his power to undermine it.

In defiance of his bosses in Washington, he granted over 2,500 USA visas to Jewish and other refugees, including the artists Marc Chagall and Max Ernst and the family of the writer Thomas Mann. He also sheltered Jews in his Marseilles home, and obtained forged identity papers to help Jews in their dangerous journeys across Europe.

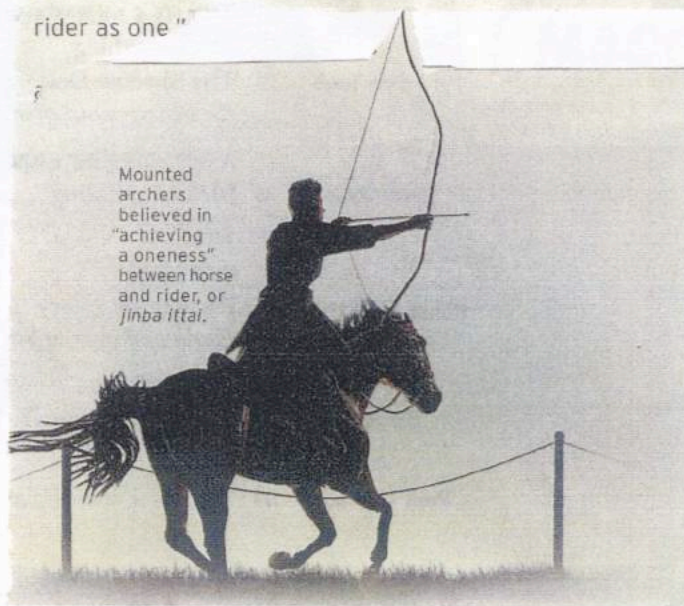
He worked with the French underground to smuggle Jews out of France into Franco's Spain or across the Mediterranean and even contributed to their expenses out of his own pocket. In 1941, Washington lost patience with him. He was sent to Argentina, where later he continued to annoy his superiors by reporting on the movements of Nazi war criminals. Eventually, he was forced out of the American diplomatic service completely.

Bingham died almost penniless in 1988. Little was known of his extraordinary activities until his son found some letters in his belongings after his death. He has now been honored by many groups and organizations including the United Nations and the State of Israel.

courtesy of Joel Hirschhorn



During the Kamakura period in Japan, mounted archers believed that the key to mastering their skill was to "achieve a oneness" between horse and rider. In Japanese, this is known as *jinba ittai*, (jin-ba ee-tie) or "horse and rider as one"



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gobble gobble

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Future Meetings

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June 23-25, 2017: Montreal, Quebec

October 6-9, 2017: Greenbrier, WV

