

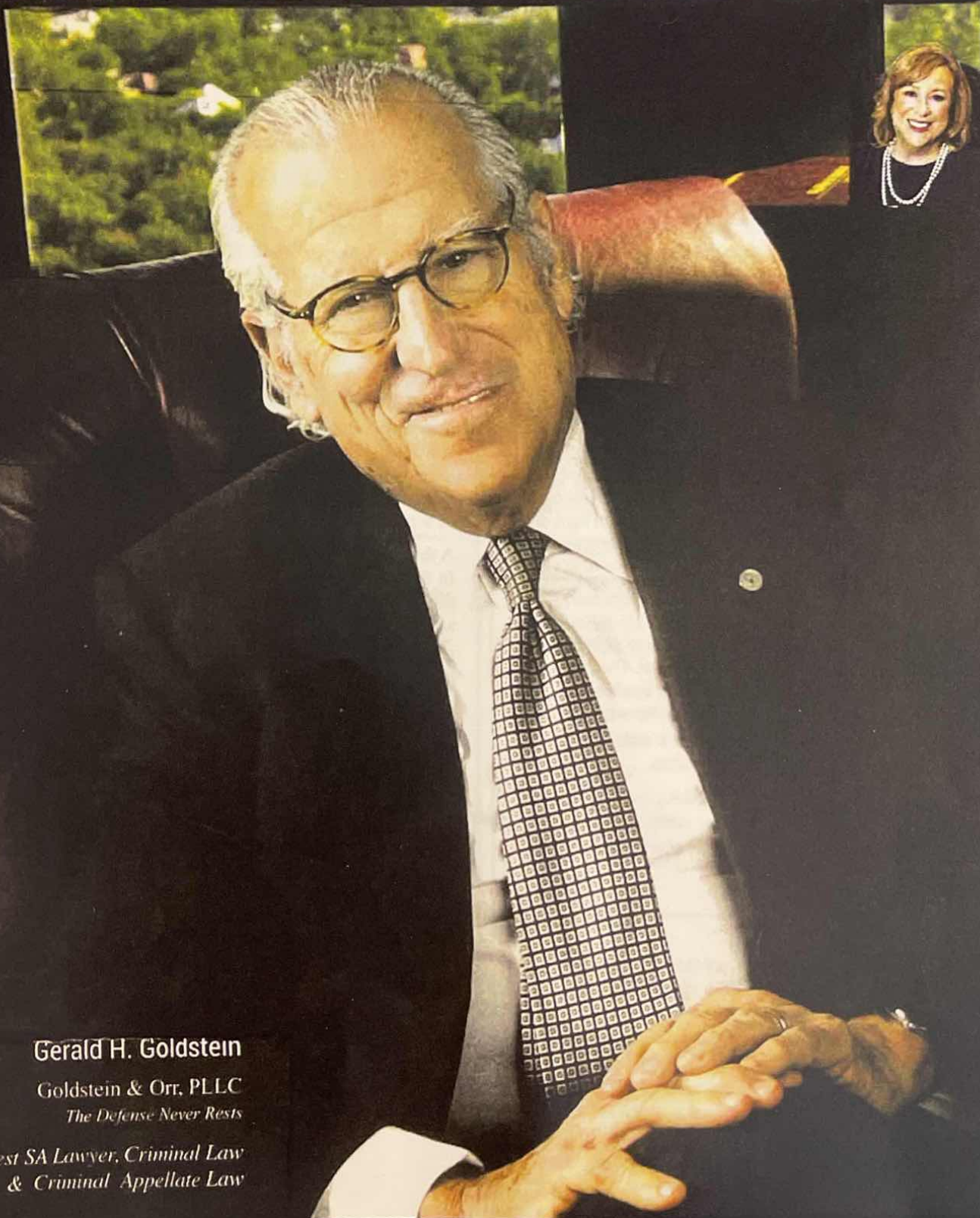
American Board of Criminal Lawyers

THE ROUNDTABLE

Vol. MMXXII, No. 7

Every day may not be good...

But there's something good in every day July 2022



Gerald H. Goldstein

Goldstein & Orr, PLLC
The Defense Never Rests

2022 Best SA Lawyer, Criminal Law
& Criminal Appellate Law

Chartier & Co. Hit the Charts

Greetings Fellows!

Our law firm has been selected as a finalist for the Legal Impact Award through Clio in large part because of our work exonerating wrongfully imprisoned men and women—4 in the last 4 years—and for our work exonerating dogs off of “doggie death row”! We are the only criminal defense firm selected as a finalist. Hooray!

-MARY CHARTIER

On June 29, 2022, Harold Gurewitz reported:

We received a great win yesterday in the Michigan Supreme Court. A unanimous court reversed the lower courts' denials of defendants' demands for a preliminary examination after indictment by a “one-man grand jury” and held that the arcane statutes which permit the prosecutor to use this process only allow an appointed judge to investigate and do not authorize a judge to issue an indictment. The Chief Justice of the Court called the procedure a “Star Chamber comeback”, probably putting an end to the intermittent use of these statutes in Michigan over the last century. A concurring Justice wrote that the prosecution can't cut corners and that the “tenets of our system of criminal justice are only as strong as our commitment to abide by them.”

The prosecution in these cases includes charges against nine defendants, including former Michigan Governor Rick Snyder, related to the Flint Water Crisis. My client is a state civil servant charged with not doing her job properly. Bill Swor represents a former city emergency manager. The State AG vows to fight on.

- Harold Gurewitz

Bill Swor sur-reported as follows:

Harold is much too modest. We (individually and collectively) petitioned the Supreme Court for leave to appeal. The Supreme Court decided to hold oral argument on the applications for leave to appeal, BUT THEY ONLY WANTED TO HEAR FROM HAROLD!!!! Seriously. The rest of us were only invited as spectators. That's because Harold is so erudite.

While I represent one of the other officials, I do not do so alone. Mike Rataj also represents our client. He has done yeoman's work on this case. In fact, our client has taken to calling him instead of me. Lol!

“A Shortcut Home”

This afternoon Gerry Goldstein and I had the treat of calling our client's father to Go Pick him up from outside jail. We had gotten his capital murder case dismissed and made a deal for a time served (4 yr nine month sentence) for solicitation of murder. They tried to hold on to him, but when we threatened suit this morning the dam broke! Randy Schaffer tried the case we reversed because of his great record and we beat it on remand for a new trial! What a pleasure to say, “Papa, your boy is waiting for a ride home!”

- Cynthia Orr

Swat Watson & Son win a Big One

A little over a year ago a white eighteen year old hotel desk clerk accused Masimba Ruwo of pulling her into a room and violently raping her. I went over to the jail and talked to him a day or two later. Nobody else would talk to him because the news reports were over the top and a lynch mob attitude had developed on social media.

After hearing his story I walked directly to the prosecutor's office and told him that the man was innocent. Friday night at midnight an all white jury of eight women and four men acquitted him of aggravated rape x 2 and aggravated kidnapping after a four day trial and a couple of hours of deliberation.

Ruwo is a businessman from Boise Idaho who immigrated from Zimbabwe twenty years ago after being accepted to Brown University on a tennis scholarship.

He received an MBA and he is married to a white pharmacist. They have two little boys. He was in Bozeman on business and had a brief consensual sexual encounter with the girl which didn't go particularly well. He couldn't “bust up Miss Mayella's chifforobe”. Same old story....

The police obtained a partially false statement from Ruwo but what drove the prosecution was a statement from a SANE nurse to the effect that the medical evidence was “consistent with sexual trauma”. That wound up in a search warrant and my expert said that the statement itself constituted “unethical medical practices”. I obtained a \$2000 polygraph from Charles Honts PhD which was impeccable and that was ignored. We had a false allegation backed up by bullshit and fortunately I spent two weeks with jury questionnaires finding myself an intelligent jury of women.

A thirty year old mother of two sons wound up being foreperson. In the selection she told me that she “wouldn't let the wrong thing happen”, and she didn't. She also said that her elementary school aged boys were afraid of being falsely accused.

I got a lot of help from Eric Davis from Houston and Steve Lacheen's daughter Alex helped me with motions. Herman opened after my jury selection and I did medical, the client and closing to tie up what I did in voir dire.

Herman came up with something from the literature relating to “the perfect victim”, which was right on point and well worth looking at.

Went the way it was supposed to and it's going to get into our incumbent prosecutor's reelection attempt. He has been in there for thirty eight years.... I had to “physically” leverage my client out of that deal last week and I hope that we can use it to get the “physically” get this fucking prosecutor unelected!

Thanks for letting me vent!

Cordially, Chuck Watson



THE METRICUS REVIEW

Jury Research Newsletter

Volume 8 Number 3

March 1996

Color in Court

The Research

Are you worried about the choice of colors in your exhibits? If the primary color is blue, worry no more.

According to the 1995 Pantone/Roper Consumer Color Preference Study -- a nationwide survey of men and women 18 years of age or older -- more Americans favor blue than any other color. The researchers attribute its popularity to "a quest for calm."

After blue, Americans are most likely to select green as their favorite color. The researchers say that, as the environment has become a concern for more and more people, green has risen in popularity.

"As the environment has become a concern for more and more people, green has risen in popularity."

Next in popularity is royal purple, followed closely by red. While red is the color most likely to be identified as exciting, purple -- which combines the cool calm of blue with the excitement of red -- is described by the researchers as "a complex and intriguing shade of mixed messages."

What It Means

Blue tie? Blue scarf? Blue bars on your exhibits? It can't hurt.

On the other hand, if you are representing a friend of the environment -- the Audubon Society, for example, or perhaps a recycler -- charts filled with green might, to mix a metaphor, underscore your client's halo.

Finally, if your client is accused of fraud or breach of contract and your key witness is a salesman, you might discourage him from wearing a purple tie.

NOTE: If you are considering a color-based strategy for jury selection, see the Voir Dire column titled "What is your favorite color?" in Volume 7 Number 5 of The Metricus Review (May, 1995). For a more substantive discussion of dressing for court, see "Courtroom Attire" in Volume 5 Number 9 (October, 1993). □

Spotting Deceit

The Research

How well are jurors able to detect the act of lying?

Research reported in The Journal of Social Psychology examined what signals people use to identify deceptive behavior.

Specifically, the researchers investigated whether our perceptions of whether a person is lying or not are affected by variations in the person's 1) nonverbal behavior (e.g., speech patterns, fidgeting and voice pitch), 2) social characteristics (e.g., introversion or expressiveness, self-conscious-

ness in public) and 3) physical characteristics (e.g., gender, clothing).

As part of the study, a group of twenty individuals completed a questionnaire that assessed their social characteristics and their levels of introversion, expressiveness, social anxiety and self-consciousness in public. Each of the individuals was then interviewed by two policemen, and the interviews were videotaped.

In the interview with the first policeman, each individual concealed a set of headphones in his or her pocket and lied to the policeman when asked if he or she had them. In the interview with the second policeman, the individual did not conceal a set of headphones and responded truthfully when asked if he or she had them.

The videotaped interviews were then divided into two sets. Each set contained ten interviews with people lying about the fact that they were carrying a set of headphones and ten interviews with people truthfully denying possession of the headphones.

At this point, ninety-one detectives -- detectives whose police force experience averaged seventeen years -- viewed one of the two sets. After watching each interview, each detective indicated 1) whether he or she thought the person was lying or telling the truth and 2) how confident he or she was in his or her decision.

In reviewing the results, the researchers found that the detectives -- although very confident in almost all of their decisions -- correctly assessed whether a person was lying or telling the truth only 49% of the time.

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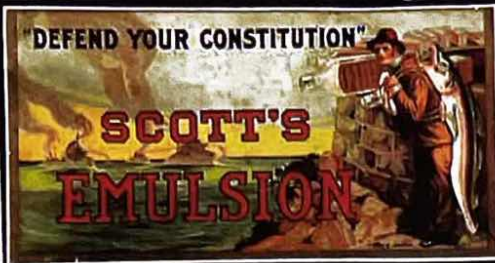
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The RoundTable

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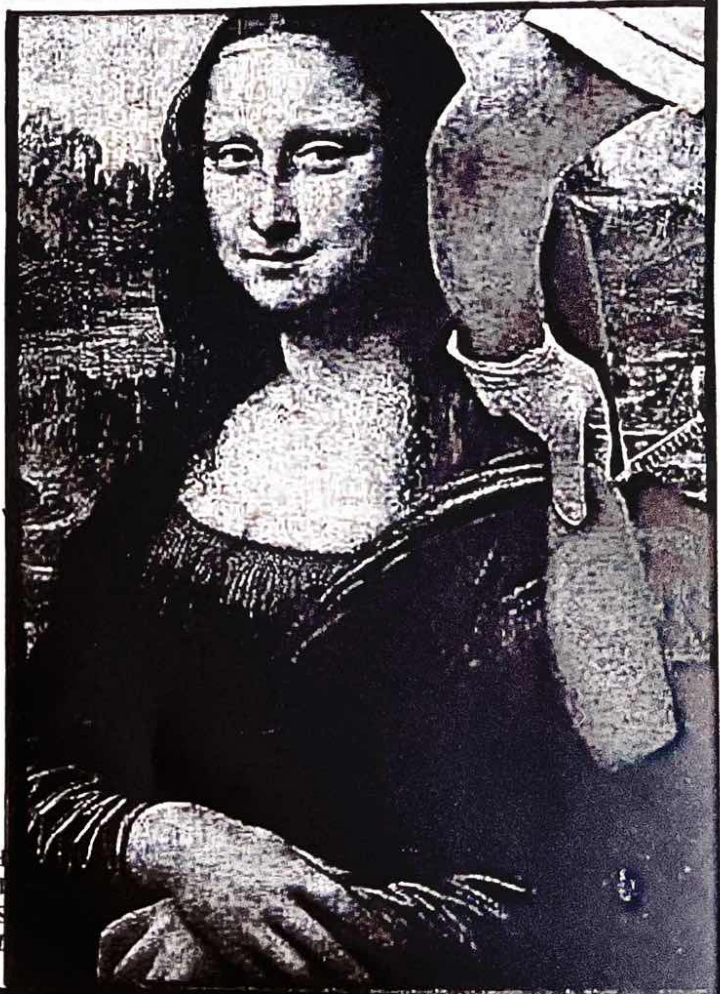
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Future Meetings

July 15-17, 2022: Traverse City, MI - Delamar

October 7-10, 2022: Detroit, MI - Cadillac Hotel



The RoundTable
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Amanda Congratulates the Team

Happy to toot my own horn – and for my partner **Don Samuel** and colleague **Bruce Harvey** for getting a new trial for our client, Tex McIver. It was a high-profile murder case that we tried for several weeks back in 2018. We won in the sense that the jury did not convict our client of malice murder but lost because they still convicted him of felony murder. (I guess they thought he meant to shoot his wife but not to kill her???)

In any event, today, in a unanimous and lengthy opinion, the Georgia Supreme Court ruled that he gets a new trial because the jury didn't get instructed on a lesser-included offense.

This was a case we never should have lost and I was extremely bitter about it. That makes today's victory so so sweet. I am very proud to get to try cases with the great Don Samuel and great Bruce Harvey – and can't wait to try this one again!

- **Amanda R. Clark Palmer**

Another crazy victory at trial

All, I very recently learned that Fellow **Art Weiss**, representing D-1 in a seven-week federal health care fraud trial (EDMI), walked his client on all 17 counts a week ago. Three co-defendants also were acquitted—all told, over 50 counts of acquittal, zero for conviction. This was an alleged pill-mill case against 6 defendants. Two pled and cooperated. The defense was appropriate medication for pain management, in support of which three experts on interventional pain management testified to rebut the Government's lone expert and the two cooperating co-Ds.

- **John Shea**

Jury Hangs, Defendant Skates

So... As long as we are bragging about our officemates, **Mike Rataj** just finished a federal prison murder jury trial. At one point it was death penalty case. The entire incident was recorded on fairly high definition video. After 4 1/2 days of deliberation the jury was unable to return a verdict and the judge declared a mistrial. Not exactly a win, but then it wasn't a conviction either. Great job, Mike!

- **Bill Swor**



Morris "dancing" pays off

Just tried one with six flippers. Was semi successful. (We won the kidnaping with a death counts and lost the controlled substance count) I didn't repeat the entire cross for each. The first one went well so I just established that the other 5 were in the same boat with some differences that I pointed out. The key points to the cross were:

1. Cooperation is a business deal. Each side tries to negotiate for what they want. (This was appropriate for the witness since he was the Gulf Cartel's chief negotiator for deals with rival cartels.
2. What each side stood to gain. (He and his family would probably be killed if they were sent back to Mexico so that was part of the negotiation)
3. The benefit he received. Not just the 5K but not being prosecuted for a bunch of horrendous things he had done for the cartel. And only half ass prosecuted for the things he was charged with. (relevant conduct in his offense of conviction limited by agreement)
4. How the 5k1.1 process works
5. The negotiations are ongoing. No one ever told him how much he needed to cooperate or when he had cooperated enough to get what he wanted. His performance at trial would be evaluated by the government in its decision about whether to let his family and him remain in the US. His sentencing had been put off pending his testimony in our trial. He had been interviewed numerous times by the government and added new details each time including at trial. So this was his continuing negotiation.
6. Definition of substantial performance. Requires assistance in the prosecution of another.
7. Opportunity to communicate with the other snitches. (The government did us a favor by housing them all in the same facility before our trial. Two were actually roommates for about a week.)

- **Gerry Morris**



1960's & 50's Hits Renamed

Some of the artists of the 60's & 50's are revising their hits with new lyrics to accommodate aging baby boomers who can remember doing the "Limbo" as if it were yesterday. They include:

Bobby Darin ---

Splish, Splash, I Was Havin' A Flash



The Temptations ---

Papa's Got A Kidney Stone



Roberta Flack ---

The First Time Ever I Forgot Your Face



Procol Harum ---

A Whiter Shade Of Hair



Herman's Hermits ---

Mrs. Brown, You've Got a Lovely Walker



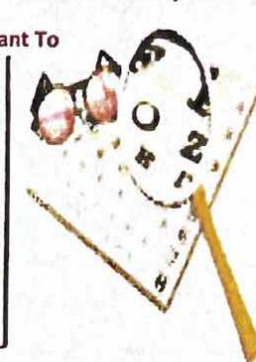
Leslie Gore ---

It's My Procedure, and I'll Cry If I Want To



Johnny Nash ---

I Can't See Clearly Now



Leo Sayer ---

You Make Me Feel Like Napping



Ringo Starr ---

I Get By With A Little Help From Depends



Abba ---

Paul Simon ---

Fifty Ways To Lose Your Liver

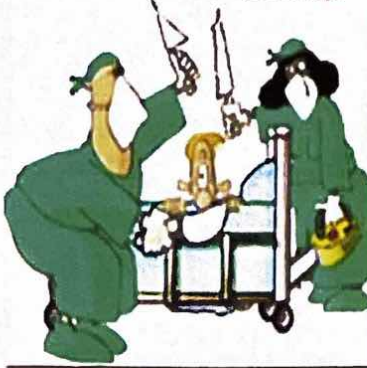


Denture Queen



The Bee Gees ---

How Can You Mend A Broken Hip?



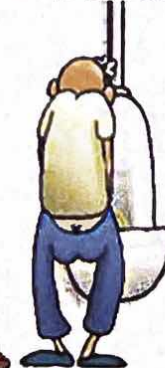
Helen Reddy ---

I Am Woman; Hear Me Snore



The Commodores ---

Once, Twice, Three Times To The Bathroom



Willie Nelson ---

On the Commode Again

