

LAW & MOTION

L E G A L N E W S A N D T R E N D S



MAX RAMIREZ

Sole practitioners (from left) Peter Gwosdof, Eduardo Madrid and Robert Roman took on law enforcement and won.

And Now the Revenge

A Los Angeles court awards millions to former defendants accused of child molestation

THE FIRST WAVE of child sex abuse prosecutions appears to have run its course with Raymond Buckey's second mistrial in the McMartin Preschool case. Now comes the revenge. In suing the county, the former district attorney and even a news reporter, Buckey is fol-

lowing the lead of other exonerated accused seeking compensation for having their lives destroyed by unproven charges.

Most of the suits like Buckey's have been thrown out before trial. But earlier this year, in apparently the first case of its kind, a Los Angeles judge awarded more

than \$3 million to four people who had been arrested for allegedly molesting neighborhood children. The charges were dismissed after a preliminary hearing. *Valentin v County of Los Angeles*, LA Super Ct, No. C 529739.

The judgment holding the county liable for false arrest, false imprisonment and civil rights violations seems to have surprised everyone except the plaintiffs' lawyers, who were also the defense lawyers in the criminal action. "Everyone told us we didn't have a case," says Eduardo M. Madrid of the City of Industry, who represented one of the plaintiffs. Madrid says one lawyer for the county told him when he first filed the suit, "We're bulletproof, we have immunity, you have no case, go home."

LAWYERS? WE DON'T NEED NO STINKING LAWYERS:

Nolo Press, the legal self-help publishing company that tries to make lawyers



MARY RANDOLPH

expendable, recently had to hire one.

The Berkeley company claims a New Jersey outfit has come out with a book suspiciously similar to Nolo's popular *Dog Law*.

Dog Law author Mary Randolph says that soon after her book was published, TFH Publications asked about publishing a hardbound edition for pet stores. But Randolph didn't like the company's proposal to take out unflattering references to pet shops.

Randolph later discovered that TFH Publications had produced its own book, *Dogs and the Law*. Accusations, threats and suits followed. Meanwhile, the New Jersey firm has published another book, *Cats and the Law*. The new book looks remarkably like *Dogs and the Law*, except the word "dog" has been replaced throughout with "cat." The book may be the first to point out that vicious cats might have to be muzzled.



WHAT TO DO WITH THAT SANCTIONS CHECK:

San Francisco attorney Ralph W. Bastian had a novel idea—he donated his \$3,000 check to the San Francisco Law Library.

"It's the first time in 23 years that I had to request sanctions," explains Bastian, a partner with Walkup, Shelby, Bastian, Melodia, Kelly, Escheverria & Link. "I didn't want to profit from them myself."

Bastian says the sanctions were awarded after his client's former lawyer repeatedly refused to turn over the client's file.



GET OUT OF LAW FREE:

Jack Deitsch's clever idea of using Monopoly-like "Get Out of Jail Free" cards as business cards may not have caught on with other lawyers, but it sure has gained plenty of attention. Too much attention for his taste.

The Hollywood lawyer, who began using the cards about 15 years ago, has received calls from attorneys for Parker Brothers, owners of the Monopoly game, as well as from State Bar investigators wondering about the ethics of using the card.

"It was my nighttime card," says Deitsch. "It was great to pitch at broads in saloons. But people actually thought I was a bail bondsman."

The 66-year-old attorney is tired of the hassles and says he's leaving the law entirely, partly because it's a profession of nit-pickers. Says Deitsch, "I got to the point where I said, 'I don't need the bullshit, I don't need the aggravation, I don't need the money. What do I need to be a lawyer for?'"



"It's the first inroad that is likely to have a psychological impact on other cases," says Jim Quinn, one of the lawyers representing former McMartin Preschool defendants Peggy Buckley, Virginia McMartin and Peggy Ann Buckley. "Its significance is in signaling police departments to be more careful in not jumping the gun and ruining the lives of people unmercifully."

The *Valentin* judgment is being appealed, and recent rulings indicate that the courts give great leeway to prosecutors and witnesses in child sex abuse cases. But the lawyers for the *Valentin* plaintiffs have overcome the odds before. "It was such a long haul," says Madrid.

The long haul began in 1984 when 11 children living on Planter Street in Pico Rivera told their parents they had been sexually molested by some neighbors. The children, ages three to nine, said they were tied down, photographed nude, sodomized and orally copulated. They said all this took place in the home of Jose Valentin, a sanitation worker at Oroweat Bakery, and his wife, Myrna Malave, a nurse; and in the home of law student Tim O'Keefe and his wife, Helen, a real estate appraiser.

Scared and outraged parents called authorities, who came out to Planter Street to investigate. "There was a lot of hot talk," Lieutenant Jim Moss of the sheriff's department told a reporter at the time. At least one of the parents had threatened to go after the suspects with a shotgun. "Once people realized law enforcement was taking over," said Moss, "they calmed down a lot."

The investigation began on a Tuesday; by Friday, after hearing the children's stories, sheriff's deputies had obtained search warrants. While waiting for the warrants to arrive, the deputies called Deputy District Attorney Robert Z. Corrado, who came to the street to advise them. The O'Keefes later testified that Corrado told them, "If you don't start talking, I'm going to fuck up your lives without mercy."

The suspects were arrested solely on the basis of the children's statements.

While testifying at the preliminary hearing two months later, the

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Revenge

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prosecution's key witness, an eight-year-old boy, started crying and admitted he "had made it all up" about Jose Valentin. "That often happens to young children on the stand," says Kevin C. Brazile, the deputy county counsel who represented Los Angeles County in the civil suit. "These kids still stand by their stories today that they were molested."

With the children's testimony discredited, Municipal Court Judge Patricia J. Hofstetter said she was "left with the choice only of dismissing the case."

At a lunch following the dismissal, the defense lawyers and their clients toasted a bittersweet victory. Both couples had sold their homes and borrowed money to pay bail. Collectively the defendants had spent more than three months in jail.

Helen O'Keefe was fired from her job, although she got it back after the preliminary hearing. All four former defendants continue to suffer psychologically. Myrna Malave is on psychiatric disability, says her attorney, Robert Roman of Norwalk. "She doesn't drive the streets because she's afraid of the police," Roman says. "She's afraid this could happen again."

"To say they were humiliated is an understatement," adds Peter M. Gwosdof of Anaheim, Helen O'Keefe's attorney. "Most of them had never even had a traffic ticket, let alone seen the inside of a jail."

Although none of the attorneys had any experience in civil rights litigation and all were sole practitioners, they decided to sue. Their complaint named 60 defendants, including the county, sheriff's deputies, the alleged victims and their parents, Corrado and deputy DA Brian Wooldridge, who prosecuted the case. The parents' insurers settled before trial for their policy limits, but the government defendants were confident they were immune.

"The county kept telling us that they were going to beat us on a summary

judgment and that we didn't have a case," says Madrid.

The lawyers, who were awarded about \$2 million in attorneys fees, credit tactical decisions for their success. The first was waiving a jury. In child molestation cases, jurors "might think where there's smoke, there's fire," says Morton Minikes of Los Angeles, who represented Tim O'Keefe. Minikes says a judge is less likely to be swayed by the emotional nature of the charges.

Although Judge J. Kimball Walker quickly dismissed the claims for malicious prosecution, citing the nearly absolute immunity afforded prosecutors, he was open to many of the plaintiffs' novel arguments. For example, he did not recognize Corrado's claim of immunity for the civil rights and false arrest causes of action. The plaintiffs argued that Corrado's conduct was outside his normal prosecutorial duties. "He acted more as a police officer than an advocate for the state by going out to the houses, interviewing the kids and directing traffic for the officers," says Minikes. "Therefore he was no longer protected by absolute immunity."

The U.S. Supreme Court during the upcoming term will consider the scope of prosecutorial immunity. One issue before the court is whether a prosecutor is immune for legal advice given to police officers during an investigation. *Burns v Reed*, No. 89-1715.



Raymond Buckley sued his accusers after his second mistrial.

Corrado, now in private practice in Fullerton, insists he never ordered the arrests of the suspects and denies threatening to destroy the O'Keefes' lives. "I'm not a bad guy. I never said that," he maintains. "They have it confused with another time when Pete Gwosdof and I yelled at each other." In his 1985 deposition, however, Corrado admitted, "I might have muttered it under my breath." Judge Walker called

the threat "oppressive conduct" and ordered Corrado to pay \$60,000 in punitive damages.

To impose liability for the arresting officers' conduct, the plaintiffs needed to show the arrests had been made without probable cause. Rather than discuss the statements of the children or the legal

advice provided by Corrado, the plaintiffs' attorneys say they decided to stick with the criteria established by the leading case in the area. According to *People v Ramey* (1976) 16 C3d 263, an officer can enter a home to make a warrantless arrest only under exigent circumstances. The plaintiffs' case was based on proving there were no exigent circumstances.

They called all the sheriff's deputy defendants as adverse witnesses. "We took the teeth out of the lion's mouth by examining their witnesses first," says Madrid. "That's one thing they weren't expecting."

Each deputy was asked if he or she was familiar with *Ramey*, explains Madrid, and all said yes. "Since each deputy admitted no one was trying to flee and no evidence or property was in danger of being destroyed, we established that these guys knew the law but still didn't follow it," Madrid says. "That's how we got them on illegal entry."

Despite the verdict, county counsel Brazile says, "The judge doesn't know the law on probable cause, which is why I think we have a very good shot on the appeal." He is relying in part on the citizen-victim informant doctrine, which says that statements from an alleged victim that a crime has occurred provide probable cause for an arrest. "It may not be enough for a conviction, but it sure is sufficient for an arrest," Brazile says. In a recent molestation case, the Fourth District Court of Appeal said the uncorroborated testimony of a four-year-old is enough for a conviction. *People v Harlan*, 90 Daily Journal DAR 8359.

Other cases indicate that the California judiciary is sympathetic to the prosecution in child molestation cases. The state Supreme Court recently upheld some child sex abuse convictions even though no specific dates were given for the offenses. *People v Jones*, 90 Daily Journal DAR 7663. And the Second District Court of Appeal applied a prosecutor's absolute immunity to a social worker investigating alleged child molestation. *Alicia T. v County of Los Angeles*, 90 Daily Journal DAR 8303.

But Madrid, who has met with the lawyers handling the McMartin civil suits and others, remains optimistic. "Sure, immunity isn't easy to get around, but I see it as a hurdle that can be overcome," he says. "It's like the unpopular guy who wants to take out the prom queen and everybody says, 'Forget it.' He'll never find out if he doesn't ask."

—MARY A. FISCHER