THE WEB PROFILE

Jay B. Gaskill, Attorney at Law

PROFILE OF A REASONABLE MIND

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Jay B. Gaskill is a well known California trial and appellate lawyer who served as the Seventh Alameda County Public Defender from 1989 to 1999, but left his "life of crime" to devote more time to his writing projects.

His first public letter was published in the ***Bulletin of the Atomic Scientists*** when he was a newly minted lawyer. It was a defense of the "reasonable" mind -- as opposed to the model of the "totally rational individual". He pointed out that the latter (citing the example of Hitler's Reich Minister Albert Speer) can often be "[some]one who has totally subordinated his 'emotional responses'". Gaskill warned that we should never allow "reason' to become "insulated from the exercise of moral judgment". The "reasonable mind" theme has informed Gaskill's writings and reflections about the human condition ever since. [Link to the letter: http://www.jaygaskill.com/boas.htm]

A Life of Crime – Gaskill's Lessons in Real Life

When his JD was awarded by Boalt Hall, Gaskill took the California State Bar examination that summer. While waiting for the results, he accepted a clerk position with a law firm in Alaska. His successful bar results were delivered by bobsled - or so it seemed. That winter, he was sworn in as a California lawyer by the Clerk of Alaska Supreme Court in Anchorage. The Clerk was a diminutive, cheerful, dignified old gent who seemed pleased to attend to this courtesy to this young California ex-pat.

Gaskill returned in mid-winter from an icy monochrome landscape to the perpetual spring of the Bay Area, where he worked a brief period for private law firm, then was hired as an Assistant Public Defender. His new boss (the fifth Alameda County Public Defender, the legendary John Nunes) was an erudite, gruff, pipe smoking libertarian-conservative, a former probation officer who had gone to law school as a second career.

In those days, the PD's office occupied a single suite an Oakland court building. The Alameda County, California Public Defenders Office was established in 1927 by then District Attorney Earl Warren. Headquartered in Oakland, ACPD is the second oldest law office of its kind. [Gaskill's concise History, "Up From the Basement" is posted at http://www.jaygaskill.com/History.htm .]

A new Assistant Public Defender was expected to begin jury trial work almost immediately. As a result, all of the staff lawyers quickly became tough minded litigators. Training at the time consisted of three elements: (1) Study. (2) Listen to your colleagues. (3) Sink or swim. So the trial lawyers trained each other, gathering after work to share room temperature whisky in paper cups. Stories of judges and cases, good and bad jokes were traded among men and women alike. Many shod and unshod feet rested on battleship gray metal desks while great clouds of tobacco smoke overpowered the ventilation system.

Jay Gaskill spent three highly rewarding decades as an Assistant Public Defender. It was an entertaining, exasperating, educational career. His long days in courthouses and jails were interwoven with a handful of years as a civil lawyer and an adjunct teaching position at Hastings College of the Law in San Francisco.

Mr. Gaskill quickly became an expert in the field of criminal trial and appellate litigation. His published articles and book chapters have been widely circulated and read among the community of California criminal trial and appellate lawyers.

In 1989, while in the middle of a six month long death penalty jury trial, Jay Gaskill was appointed by the Alameda County Board of Supervisors to serve as the county's seventh Public Defender. As the county Public Defender during the ensuing high crime decade, Mr. Gaskill supervised 120 trial lawyers in six branch offices, superintending the defense of *half a million* cases.

Mr. Gaskill's public defender career brought him into intimate, face to face contact with thousands of criminals, and into lasting, collegial relationships with judges and

prosecutors (such as former District Attorney, D. Lowell Jensen, later head of the Criminal Division of Reagan's Justice Department and Jensen's two DA successors).

Over the years, Gaskill established and maintained the respect of his defense peers and high trust relationships with law enforcement officials.

During Alameda County's most difficult post-Proposition 13 budget years, Mr. Gaskill established a "public protection" alliance between the four major criminal justice county departments: The District Attorney, the Public Defender, the Sheriff and the Probation Department agreed to work together to ensure that law enforcement funding (including public defense services) would be mutually supported. Jay B. Gaskill was the only official in his unique position who, on leaving government service, was feted for his "assistance, guidance and cooperation to police services" by law enforcement (the Alameda County Chiefs of Police and Sheriff's Association). [Note his Speech to the Sheriff's Police Officer Training Class: http://www.jaygaskill.com/sheriff.html.htm .]

Mr. Gaskill remains an affiliate member of the Idaho Bar and an active member of the California Bar. He has participated as a moot Court judge at his former law school, sitting on international and constitutional law cases.

Law & Politics – Lessons in the Cultivation of a Reasonable Mind

As an undergraduate, he studied political science and English history at the University of Washington, then American history and economics at the University of Idaho. He received his JD from Boalt Hall, the U. C. Berkeley Law School.

Jay Gaskill acquired his intellectual humility the hard way. Though his core moral perspective has remained a constant, at one time or other he has passionately espoused each side of the major moral and political issues of the day.

When Mr. Gaskill was the head of the University of Idaho Young Democrats during the early LBJ period, he supported the Vietnam War. But as the moral and strategic calculus changed, the cost of victory appeared to swamp the promised benefits. Gaskill began to rethink the issue.

As a "JFK Idaho Democrat", his support for the Cold War against the burgeoning totalitarian empire of Soviet Russia and Maoist China remained unwavering. But his support for the Vietnam War ultimately withered away. It simply became too difficult for him to see the growing moral and human damage from that war as sustainable or justifiable. Eventually he concluded that the US could not afford to remain bogged down in the Southeast Asian theater while confronting the Soviet hegemony in Eastern Europe and the third world.

As a thoughtful Idaho patriot, a liberal in the tradition of Washington State's Senator Scoop Jackson, he moved to the Bay Area to attend law school during the anti-war turmoil years. When he first arrived at Boalt Hall (U.C. Berkeley's Law School) he was

introduced to some of the partisans in the growing anti-war movement. In the lower campus context, surrounded by Berkeley's over-the-top partisans of the "new left", he felt a bit like a trout out of water. He was an embedded reasonable mind, surrounded by battalions of angry, anti-patriots. But in the "New Left" culture, philosophical differences were masked, dismissed or ignored in the common cause; opposition to the Vietnam War trumped everything.

Yet a hidden pattern was emerging: Gaskill was an "old fashioned" liberal, a label that years later would pejoratively mutate to "paleo-liberal" then to the dreaded "neo-con".

While at Berkeley, Gaskill served as the head of a student group ("Citizens for Kennedy Fulbright"). It was the perfect vehicle for a responsible, pro-military, non-pacifist, anti-Marxist opponent of the Vietnam War. RFK's trial balloon presidential candidacy allowed someone to press for an exit from the war without burning stores, spitting on ROTC candidates or breaking things. The local Bobby Kennedy-for-President group was dissolved when RFK decided his presidential bid was premature. But Gaskill's political education had begun; his position had placed him in frequent, close contact with prominent antiwar activists, many of whom were stone cold, anti-American Marxists. That experience set of another round of rethinking. He had been given a window into the scary mindset of the hard left. In Berkeley, the political spectrum ran directly into the Marxist abyss. Gaskill redirected his energies to a legal career and his new family.

Years later, Gaskill read the published assessments of North Vietnamese generals that revealed how close the US had come to a military victory. And he read the other reports that exposed the staggering scope of the totalitarian carnage wrought by the communist regimes in south East Asia. Once again, he was forced to rethink a major issue.

These and many other experiences have taught him that core morality is fundamental, but most ideology is provisional. He also learned that the dominant media tends to hew closely to an agreed narrative, delaying the release of "off-narrative" information until the continuity in policy (and the reputations of reporters) can be preserved. He resolved ***always*** to examine the "other side". The result was a commitment to authentic dialogue, and the realization that such an exchange of views is the exception in an ideology-driven culture, not the rule. He realized that a reasonable mind thrives only under certain conditions. It needs a dialogue held together by a common moral framework and a commitment to intellectual honesty and the art of authentic listening.

This is why reasonable minds are so rare.

Exploring the Human Condition

While remaining an active member of the California Bar, Jay B. Gaskill absorbed the lessons learned during his "life of crime" and began to apply them to his long deferred vocation: writing about the human condition. His articles, letters, and opinion pieces have

run in publications diverse as *The Oakland Tribune*, *The Economist*, *The San Francisco Chronicle* and the journal *First Things*, among others.

Gaskill's primary web site, "**The Policy Think Site**" (http://www.jaygaskill.com/) is a virtual encyclopedia of his views, articles and observations on the human condition. The **PTS** continues to attract wide attention (about 250,000 hits to date) without an advertising or promotion. Three blogs are currently hosted by Mr. Gaskill's Site:

- The **Dot 2 Dot** Blog – connecting the dots in Politics, Policy and Culture
  http://www.jaygaskill.com/dot2dot/

- **411 Renaissance**
  http://www.jaygaskill.com/411/

- **The Out*Lawyer's Blog**
  http://jaygaskill.com/outlawyer/

- **The I 2 I / Bridge to Being Blog**
  http://jaygaskill.com/i2i/

Mr. Gaskill's year long commentary on the **Scott Peterson** case (http://www.jaygaskill.com/peterson.htm) far exceeded 40,000 reads and a number of favorable comments from the working press. His running commentary of the Dyleski "Goth" murder case (http://jaygaskill.com/Vitalehorowitzdeath.htm) attracted a similar following. Mr. Gaskill's published opinion pieces in support of the death penalty (to the dismay of some of his former defense colleagues and some friends among the clergy) have been cited by law enforcement researchers and corroborated by recent studies.

When Gaskill followed the **Hans Reiser** case (an Oakland computer guru who was convicted of murdering his wife when no corpse had been recovered) his commentary came to the attention of CBS 48 Hours. [http://jaygaskill.com/ReiserPostscript.htm]

As a result, Gaskill's expert commentary was carried on a national CBS 48 Hours television episode. An excerpt - "Here's the best possible defense: she's dead and somebody else did it. It's Oakland. They have a homicide every second day," says Jay Gaskill, a veteran trial lawyer following the case closely on his blog. Gaskill says DuBois' argument that Nina ran off to Russia makes no sense at all." http://www.cbsnews.com/2100-18559_162-4145099.html?pageNum=6

Following his departure from county service, Mr. Gaskill had published several Op Ed pieces in support of the death penalty. This was a reluctant reversal of a long held position based on the accumulation of evidence. Dismay from former defense colleagues and friends among the clergy has resulted. He would say it was one of the penalties of having a reasonable mind. Recent studies cited by the Brookings Institution and the AEI now support his conclusion that the death penalty, however uncomfortable it makes some

of us, saves lives by deterring a significant subset of all killings. One of Gaskill's articles is posted at http://www.jaygaskill.com/InjectionDeterrence.htm , and the referenced study is posted at http://jaygaskill.com/AEIBrookingsDeathPenalty.pdf.

His own six month defense of a high publicity death penalty case is chronicled (with names changed) at http://jaygaskill.com/MurderAndRedemption.htm.

Themes and Passions

Gaskill's personal passions and avocations are diverse. He has played the French horn in an amateur orchestra and still annoys his neighbors when he pulls out his instrument for a short "practice" session. He listens with equal joy to the music of Phillip Glass and Ira Gershwin, Dave Brubeck and J. S. Bach; Merle Haggard and Gustav Mahler; Hector Berlioz and Johnny Cash.

His Guides to Orchestral Music are published on the Web at these links:
http://www.jaygaskill.com/epicmusic.htm
http://www.jaygaskill.com/MusicII.htm
http://www.jaygaskill.com/JoyfulSymphonicFirsts.htm
http://www.jaygaskill.com/MusicIVSoundsOfGlory.htm

He is equally enthralled by the fiction of Phillip K, Dick and Fyodor Dostoevsky; Earnest Hemmingway and Robert Heinlein; Ray Bradbury and John Mortimer; Douglas Adams and Tony Hillerman. He loves humor and philosophy equally; science and science fiction interchangeably; Manhattan and the western wilderness irresistibly.

He is a student of crime and punishment, good and evil, terrorism, war, and peace, theology and ethics, politics and policy.

He is able to see a common thread running though the heroic creative assertion ethos of Ayn Rand, and the life affirming compassion ethos of Albert Schweitzer; an underlying common moral sense in the robust, practical humanism of Eric Hoffer and that of Dietrich Bonhoeffer; and he detects a common spiritual sensibility operating in the lives of Carl Sagan and Thomas Jefferson.

As he wrote his readers on January 2, 2012 ◄

2012 is a year of major transitions, some of which will not be immediately apparent to the casual observer and many clueless policy makers.
Three major economies will begin tectonic shifts. America will set the stage for its reemergence as the world's exemplar of progress:

Europe will begin the painful shift away from its incoherent blend of highly productive, self-sustaining economies linked at the aorta to unsustainably underproductive, dependency economies. The new European model, whether the euro survives as a

unitary currency, in a two tier form or not at all, will have one key feature: The failing entitlement models will be decoupled and made more accountable for their own misallocation of resources. There is just not enough free-floating altruism in all of Europe for the highly productive economies to voluntarily carry the entitlement load of the highly unproductive ones. The governing institutions of the EU cannot operate as an uber-government over the strong objections of its members. The forms of governance may remain, but the reality of an EU super-state will not gel in its present form.

China will be forced by internal pressures to move from what is essentially a slave labor, subsidized-production economy to something closer to the current American one – a credit-fueled consumption model. The pressures to increase wages and to relax restrictions on consumption cannot long be resisted in China, especially when its sovereign lending represents unspent money-in-the-bank that can be used to ease the conditions of Chinese labor. An important caution: China's model, a mix of police state executions, wealthy, oppressive party elites, de-facto local autonomy for high tech areas, masses of rural poor trying to migrate to cites, and the collapse of communism as a unifying moral paradigm, cannot be sustained. Chinese communist party leaders do not sleep well these days.

The USA will be forced by external circumstances to abandon its decades-long credit-driven consumption binge in favor of the more sober investment-driven production model. In the short and midterm this means "work harder, consume less". In the long term, America's success will be, once again, the exemplar that leads the world into a better place

The common thread in all these shifts is the breakdown of the command economy model (whether socialist, communist, mercantilist, or crony-capitalist) and the collapse of the various liberal subsidized-idleness models. As a result, what we now think of as liberalism and conservatism will change. All in all, I am cautiously optimistic. Let me introduce my optimism with two recently published letters of mine. After that, I will connect the dots.

Among my favorite sources of information and analysis, I particularly enjoy two intelligent conservative-leaning publications, **First Things**[i], which reflects an interreligious, catholic-centered perspective, and **Commentary**[ii], that exemplifies a Jewish point of view. Both are driven by a shared concern for the advancement of human dignity in the context of our common moral heritage, the ongoing struggle for human freedom, and a belief in American exceptionalism.

And both have recently published letters from me – one defending ***Ayn Rand*** from an ideological/religious attack (in the form of a movie review), and one containing my take on a **Symposium *on America's future***.

First, from the journal,

First Things:

> *First Things is published by The Institute on Religion and Public Life, an interreligious, nonpartisan research and education institute whose purpose is to advance a religiously informed public philosophy for the ordering of society.*

…my letter as published in the **August/September 2011** issue….

"I've been reading First Things for more than a decade now, and David Bentley Hart's takedown of Ayn Rand ("The Trouble with Ayn Rand," May) stands out, but not in an admirable way. Many conservative Christians, among them Roman Catholics, will be offended at such a vitriolic attack on a famous conservative humanist author, and I use the term vitriolic advisedly ("just a little spiteful," in Hart's confession).

"I grant you that Rand, an autodidact Russian émigré (the daughter of a commercial family whose property was confiscated by the Soviets, and an anticommunist intellectual who fell in love with America) was indeed an atheist. But unlike Phillip Pullman, she did not attack or brutally caricature the Church, and unlike Nietzsche, whom she actively disliked, she did not attack Christianity.

"Taken as a whole, Ayn Rand's creative output is a celebration of life and human creative powers. I suspect that she is on David Hart's personal Index *Librorum Prohibitorum* because she embraced "greed" over self-immolative sacrifice. Rand's passion for creative freedom as a moral imperative was a specific commitment that transcended "mere" greed and belies the parodic attempts to marginalize an original, serious ethic, relevant to the modern human condition and, at least to this believer, something that represents a valued addition to the larger Christian worldview.

"Ayn Rand's fiction and philosophy is not Christian by any stretch, but it is an expression of life-affirming, anti-tyrannical humanism. God forbid there would be a movie of one of Eric Hoffer's books."

Second, in the magazine, **Commentary:**

> *From its founding in November 1945, COMMENTARY has been "an act of affirmation." It remains an expression of belief in the United States, perhaps most of all in America's central role in the preservation and advance of Western civilization and, most immediately, the continuing existence of the Jewish people.*

…as published in **the January 2012 issue…**

"From reading COMMENTARY'S [November] symposium on America's future, it became clear to me that short term and long term optimism are easier to achieve than that pesky midterm variety. Humanity's long-term optimism has a venerable history, based on the enduring affirmation of human life. Our species' moral compass points us there.

"The 960 Jewish warriors and loved ones who stood against the Romans at the fortress on Masada two millennia ago - refusing to surrender, killing themselves rather than giving the attackers the satisfaction of victory - were realistic optimists. Their optimism was not unlike that of the struggling immigrant parents who work themselves into bone deep weariness day and night so their children will have better futures. It is the same as the optimism of the inventor, the creative artist, and all others who understand that in the sacrifices and rewards of their personal creative struggles, it is actually possible for a few to lift up the lives of the many who will come after them.

"The reasonable optimism of the entrepreneur with a potentially valuable innovation is grounded in the creative experience, in contrast with the unreasonable optimism of the obsessive gambler. It is the optimism of those who understand that setbacks and failures are built into the processes of creation. It is the essential optimism of all of us who believe in the future.

"It seems that, early in the 21st century, the utopian liberal game has run its course. But the power of post-modern liberalism in all its forms, within the academy and the larger intelligentsia, is robust. That power has flowed from the prevalent credibility of the "leveling" ideologies as the primary agent of ameliorative change. This was cemented by the historical association of conservatives with the repressive right wing defenders of kings, tyrants, royalty and other malefactors of unearned privilege.

"Short term optimism flows from the reasonable prediction that there will be a conservative surge – "fire truck" conservatives are typically brought to power when the excesses of liberalism become too painful. The pending sovereign debt crisis will inflict pain sufficient to discredit liberalism in all its forms for some years to come.

"But midterm optimism is another matter. What happens after the fire is extinguished? What sort of enduring political and intellectual leadership will emerge from the ashes? The answers to these and the related questions critically depend on two things: one, whether the coming crisis will be widely recognized as the result of fundamental contradictions within "liberalism"; and two, whether a new conservatism can address the future with a simple, powerful

philosophy that unites its core precepts with a theory of human progress. If the answer to the second question is yes, then so will be the answer to the first.

"Conservative intellectuals like John Podhoretz have their work cut out for them, even before the new garments are ordered."

Certain themes recur in all his writing,

…fiction and non-fiction: the faux conflict between spiritual and material reality; the real tension between naïve idealism and moral realism; the ineluctable struggle between courage and fear; the conflict between moral integrity and ambivalent timidity; and the recurring fracture between self confident heroism and its detractors. His fiction works are peopled with likeable heroes and recognizable villains whose struggles touch or are disturbed by these same themes.

Published Fiction:

The Stranded Ones http://www.amazon.com/The-Stranded-Ones-ebook/dp/B002YQ2IN0 and http://www.barnesandnoble.com/w/the-stranded-ones-jay-b-gaskill/1020032064

The Lost Souls Coffee Shop http://www.barnesandnoble.com/w/lost-souls-coffee-shop-jay-b-gaskill/1020032808 and http://www.amazon.com/Lost-Souls-Coffee-Shop-ebook/dp/B0035LCA8Q

Gaskill has completed two other thrillers and is working on a number of other fiction and non-fiction books.

Mr. Gaskill believes that a dialogic underlies all progress that has ever been made in advancing the scientific, spiritual, creative and political aspects of the human condition, and that, like Martin Buber, he believes that we humans are not the only participants in this discussion. He has enjoyed sponsoring and facilitating discussion forums that bring reasonable minds into conversation from a wide variety of perspectives.

C O N T A C T

Even when traveling, Jay B. Gaskill can be contacted directly via email (law@jaygaskill.com **or outlawyer.gaskill@gmail.com) or by cell phone. He always answers his regular mail.**

Jay B. Gaskill's law office address and land line telephone number are listed with the California State Bar. http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

APPENDIX

A LEGAL CAREER CONCISELY OUTLINED

Education

University of Washington
University of Idaho (BA)
University of California Law Schools:
San Francisco (Hastings College of the Law)
Berkeley (Boalt Hall) 1965-67 (JD)

Admitted to the California Bar

Associate with a civil law firm in Walnut Creek CA.

Admitted to the Idaho Bar

Partner with an Idaho law firm.

Appointed Assistant Public Defender, Alameda County California

Adjunct law professor, Hastings College of the Law, San Francisco

Appointed Seventh Alameda County Public Defender 1989 - 1999.

Author of ten articles and training resource publications published for California lawyers by the California Public Defender Association and as -

Credited Consultant on the book Appeals and Writs in Criminal Cases published by Continuing Education of the Bar

Author for the book California Juvenile Court Practice, published by Continuing Education of the Bar in 1981 (chapter 3, "Pretrial Preparation and Attorney's Role').

Author for the book California Criminal Law Procedure and Practice, published by Continuing Education of the Bar (Chapter 40, "Writs in California State Courts," Chapter 49, "Representing Witnesses"). **Author** of chapter 37, "Felony Sentencing," in the supplement to that book.

Author and grader of portions of the Criminal Law Legal Specialization Examination.

Lecturer: Lectured on criminal law, advanced criminal procedure, and litigation topics for the California Public Defender's Association (CPDA) and California Attorneys for Criminal Justice CACJ)

Appearances: an Advanced Trial Advocacy Seminar conducted by the CPDA in Santa Clara, a second Trial Advocacy Course in Redding; a program by CPDA in

Sacramento in 1981; a Statewide Criminal Law Seminar conducted in Los Angeles by CACJ,a lecture at the CPDA annual convention; a CPDA sponsored workshop in Los Angles; a CPDA sponsored program in Advanced Criminal Procedure at Palm Springs, a CPDA Felony Sentencing Workshop and a CPDA sponsored lecture on Prosecutorial Misconduct.

Police Instructor Taught sergeant trainees at the Oakland Police Academy in lineup law.

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[i] **First Things** is edited by RR Reno. Link: http://www.firstthings.com/

[ii] **Commentary** is edited by John Podhoretz. Link: http://www.commentarymagazine.com/