

MUNGER, TOLLES & OLSON LLP

355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
TELEPHONE (213) 683-9100
FACSIMILE (213) 687-3702

560 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105-2907
TELEPHONE (415) 512-4000
FACSIMILE (415) 512-4077

January 4, 2010

ROBERT K. JOHNSON¹
ALAN V. FRIEDMAN¹
RONALD L. OLSON¹
RICHARD S. VOLPERT
DENNIS C. BROWN¹
ROBERT E. DENHAM
JEFFREY I. WEINBERGER
CARY B. LERMAN
CHARLES D. SIEGAL
RONALD K. MEYER
GREGORY P. STONE
BRAD O. BRIAN
BRADLEY S. PHILLIPS
GEORGE M. GARVEY
WILLIAM D. TEMKO
STEVEN L. GUISE¹
ROBERT B. KNAUSS
STEPHEN M. KRISTOVICH
JOHN W. SPIEGEL
TERRY E. SANCHEZ
STEVEN M. PERRY
MARK B. HELM
JOSEPH D. LEE
MICHAEL R. DOYEN
MICHAEL E. SOLOFF
GREGORY D. PHILLIPS
LAWRENCE C. BARTH
KATHLEEN M. MCDOWELL
GLENN D. POMERANTZ
THOMAS B. WALPER
RONALD C. HAUSMANN
PATRICK J. CAFFERTY, JR.
JAY M. FUJITANI
O'MALLEY M. MILLER
SANDRA A. SEVILLE-JONES
MARK H. EPSTEIN
HENRY WEISSMANN
KEVIN S. ALLRED
BART H. WILLIAMS
JEFFREY A. HEINTZ
JUDITH T. KITANO
KRISTIN LINSLEY MYLES
MARC T.G. DWORSKY
JEROME C. ROTH
STEPHEN D. ROSE
JEFFREY L. BLEICH
GARTH T. VINCENT
TED DANE

STUART N. SENATOR
MARTIN D. BERN
DANIEL P. COLLINS
RICHARD E. DROOYAN
ROBERT L. DELL'ANGELO
BRUCE A. ABBOTT
JONATHAN E. ALTMAN
MARY ANN TODD
MICHAEL J. O'SULLIVAN
KELLY M. KLAUS
DAVID B. GOLDMAN
BURTON A. GROSS
KEVIN S. MASUDA
HOJON HWANG
KRISTIN S. ESCALANTE
DAVID C. DINIELLI
ANDREA WEISS JEFFRIES
PETER A. DETRE
PAUL J. WATFORD
DANA S. TREISTER
CARL H. MOOR
DAVID M. ROSENZWEIG
DAVID H. FRY
LISA J. DEMSKY
MALCOLM A. HEINICKE
GREGORY J. WEINGART
TAMERLIN J. GODLEY
JAMES C. RUTTEN
J. MARTIN WILLHITE
RICHARD ST. JOHN
ROHIT K. SINGLA
LUIS LI
CAROLYN HOECKER LUEDTKE
C. DAVID LEE
MARK H. KIM
BRETT J. RODDA
SEAN ESKOVITZ
FRED A. ROWLEY, JR.
KATHERINE M. FORSTER
BLANCA FROMM YOUNG
RANDALL G. SOMMER
MARIA SEFERIAN
MANUEL F. CACHAN
ROSEMARIE T. RING
JOSEPH J. YBARRA
TODD J. ROSEN
SUSAN R. SZABO
NATALIE PAGÉS STONE

MONIKA S. WIENER
LYNN HEALEY SCADUTO
ERIC J. LORENZINI
KATHERINE K. HUANG
LINDSAY D. MCASKILL
KATE K. ANDERSON
ALISON J. MARKOVITZ
SUSAN TRAUB BOYD
JENNIFER L. POLSE
BRIAN R. HOCHLEUTNER
GRANT A. DAVIS-DENNY
JASON RANTANEN
REBECCA GOSE LYNCH
JONATHAN H. BLAVIN
KAREN J. EPHRAIM
MICHELLE T. FRIEDLAND
LIKA C. MIYAKE
MELINDA EADES LEMOINE
ANDREW W. SONG
YOHANCE C. EDWARDS
JULIE D. CANTOR
SETH GOLDMAN
FADIA RAPEEDIE AHOURY
JOSHUA P. GROBAN
VICTORIA L. BOESCH
HALYN J. CHEN
BRAD SCHNEIDER
GENEVIEVE A. COX
MIRIAM KIM
MISTY M. SANFORD
BRIAN P. DUFF
AIMEE FEINBERG
JOEL D. WHITLEY
KATHARINE L. HALL
KATHERINE KU
KIMBERLY A. CHI
SHOSHANA E. BANNETT
TINA CHAROENPONG
LEE S. TAYLOR
DEREK J. KAUFMAN
KIMBERLY D. ENCINAS
MARCUS J. SPIEGEL
GABRIEL P. SANCHEZ
BETHANY C. WOODARD
PAULA R. LEVY
DAVID C. YANG
WILLIAM E. CANO
HENRY E. ORREN
WESLEY SHIH
JACOB S. KRELIKAMP
PAUL J. KATZ
JONATHAN M. WEISS
ELISABETH J. NEUBAUER
ERIC P. TUTTLE
HEATHER E. TAKAHASHI
KRISTINA L. WILSON
KEVIN A. GOLDMAN
ROBYN KALI BACON
BERNARD A. ESKANDARI
JENNY M. JIANG
KEITH R.D. HAMILTON, II
SORAYA C. KELLY
PATRICK ANDERSON
JEFFREY Y. WU
YUVAL MILLER
MARK R. CONRAD
ZACHARY A. BRAY
M. LANCE JASPER
ALISSA BRANHAM
ADAM R. LAWTON
PETER C. RENN
RACHEL L. STEIN
AVI BRAZ
PUNEET K. SANDHU
IAN J. MILLER
MARINA A. TORRES
JEREMY S. KROGER
DAVID S. HAN
DAVID C. LACHMAN
JENNY H. HONG
CUAUHTEMOC ORTEGA
GUY A. RUB
AARON SEJI LOWENSTEIN
DANIEL N. ELIZONDO
LAURA D. SMOLOWE
MELISSA CAMACHO-CHEUNG
RICHARD D. ESBENSHADE¹
ALLISON B. STEIN
PETER R. TAFT
SUSAN E. NASH
OF COUNSEL
E. LEROY TOLLES
(1922-2008)

¹A PROFESSIONAL CORPORATION

BY E-MAIL AND FEDERAL EXPRESS

WRITER'S DIRECT LINE
(213) 683-9205
(213) 683-4005 FAX
Luis.Li@mto.com

Bill Hughes, Esq.
Supervising Deputy County Attorney
Yavapai County Attorney's Office
255 East Gurley Street
Prescott, AZ 86301

Re: James Arthur Ray

Dear Bill:

Thank you for the continued opportunity to discuss this case with you.¹ We greatly appreciate your willingness to engage in a dialogue about this matter and hope that you too find it useful.

Recent media stories motivate this letter. While we recognize that your office does not – and will not – base any charging decision on media concerns, we believe that recent media reports have been so filled with inaccuracies and poisonous innuendo that we must

¹ As with our letter of December 1, 2009, this letter is a protected confidential communication pursuant to Ariz. Evid. Code §§ 408, 410 and Ariz. R. of Crim. P. 17.4(f). Likewise, this letter does not purport to present what every witness would say about every fact or event. Rather, it describes what we believe the key evidence would show based on an assessment of that evidence and the inferences to be drawn from the evidence.

Bill Hughes, Esq.

January 4, 2010

Page 2

respond. Like your office, we do not wish to try this case in the media, and thus choose to address our comments directly to you.

Mr. Ray's Legal Medical Treatments Are Irrelevant to this Case.² Recent reports suggesting that Mr. Ray's use of certain medication somehow contributed to the three deaths at issue in this case are irresponsible and ill-founded. Normally, such character assassination would not merit a response but the media's effort to tie the tragedy to Mr. Ray's medical treatments are so reckless that we are compelled to react.

Over the last decade, Mr. Ray has spent over 200 days a year on the road teaching his courses. This is a demanding schedule and it began to take its toll. Years ago, Mr. Ray sought out responsible medical help and he got it. These doctors and medical professionals diagnosed him as having a hormone deficiency.

Most recently, Mr. Ray has been treated by Dr. Andre Berger, a respected medical professional. See <http://www.rejuvalife.md/about-doctor-berger.php>. Dr. Berger prescribed these medications for good and sound medical reasons and are part of a treatment plan. The medications are prescribed in extremely low dosages to deal with the hormone deficiency and any potential side effects related to the medication. Dr. Berger carefully monitors these small dosages, along with Mr. Ray's medical condition, on a regular basis. Mr. Ray took the medication, as prescribed, every Sunday and did not take any of the medication on the day of the incident (Thursday). Mr. Ray has never reacted adversely to these medications, and there is absolutely no scientific evidence that such low dosages can produce the adverse effects speculated upon in the media accounts.

This is not an illegal and secret performance-enhancing treatment plan such as those used by professional athletes. All treatments were approved by a doctor who openly discusses the advantages of hormone treatment. See <http://www.rejuvalife.md/hormone-replacement-therapy.php>. Mr. Ray even discusses such treatment plans in his most recent book, *Harmonic Wealth*: "If you start working with hormone-related supplements . . . I strongly recommend you do so under the guidance of a well-educated doctor in this field – emphasis on well-educated." *Id.* at 249; see also *id.* at 271 ("Every six months I work with a doctor who checks my blood, my hormones, my adrenals and everything else. He's a longevity or antiaging doctor.").

The doctors who have speculated on the relationship between the tragedy at issue in this case and Mr. Ray's treatments know none of this. They have never met Mr. Ray. They have never examined Mr. Ray's medical records. They have never tested Mr. Ray. They do not know what dosages have been prescribed. They do not know when the medication was to be taken or how often. They do not know in what combinations. That they disagree with the

² We are still attempting to determine all the facts about how the media learned of Mr. Ray's private medical condition and treatment. We reserve all rights in this regard.

Bill Hughes, Esq.

January 4, 2010

Page 3

benefits is irrelevant. These doctors lack any foundation to make any of the claims the reports imply.

We therefore urge you to reject the media's efforts to manufacture a link between the Sedona tragedy and Mr. Ray's medical condition.

Mr. Ray's Comments About Death Have Been Taken Out of Context. The media has made much about certain comments Mr. Ray may have made relating to death. Several stories have implied that Mr. Ray had some sort of God complex about death. This innuendo is malicious and false.

It is difficult to respond to each comment point-by-point because the context is never provided. But on the most basic level, even a brief perusing of Mr. Ray's work demonstrates that he does not subscribe to a philosophy that celebrates death. His most recent book, *Harmonic Wealth*, barely mentions it, and then only in a metaphoric sense. Mr. Ray instead consistently focuses on asking his readers to decide to improve their lives and then take action in concert with that intention. Part of this process involves ridding oneself of limiting factors, behaviors and beliefs.

Sometimes, as with many religions, this concept has been expressed metaphorically as letting these things "die" and being "reborn." That this is a common spiritual metaphor cannot be disputed. The New Testament contains numerous references to "death" and "rebirth." See e.g. 1 Corinthians 15:31; John 3:3; Romans 6:3-4. Other spiritual traditions contain similar ideas. None of these mainstream traditions mean for these ideas to be taken literally. All of these mainstream traditions discuss rebirth as a concept of letting the past go in order to reach for greater spirituality.³

During the Retreat, Mr. Ray's students worked very hard at this process. They spent countless hours examining painful experiences, childhood issues, and limiting beliefs. They wrote about these issues in journals which they then burnt minutes before the sweat lodge ceremony. This was meant as an obvious metaphor, an exercise to let the past "die" before entering the sweat lodge and to emerge cleansed and "reborn." The invitation to burn the journals might have been expressed as letting the past "die" but not a single witness will testify that it was understood literally as a deathwish.

The claim that Mr. Ray told a participant that "it's a good day to die" and that the statement should be taken literally is thus completely absurd. Yet the media has implied just that claim. Mr. Mercer's statement, found in the search warrant, has been parroted by numerous outlets, both in print and on television, without any context. These stories also fail to report that Mr. Mercer built the lodge, not Mr. Ray. At the time the Mercers were interviewed by the

³ In discussing this at this level of generality, we do not mean to conflate all religions or to disrespect any of their teachings. We only mean to point out the common metaphor of "death" and "rebirth" as a way to greater spirituality.

Bill Hughes, Esq.

January 4, 2010

Page 4

police, no one knew whether a design or construction flaw caused the deaths. If there were something inherently dangerous about the sweat lodge's construction, Mr. Mercer bears the legal responsibility, not Mr. Ray. That Mr. Mercer may have had a motive to shift blame also has gone unreported. In any event, it seems highly unlikely that, if pressed, Mr. Mercer would suggest that the comment "it's a good day to die" was intended – or interpreted – literally.

Similarly, to the extent that Mr. Ray described the intense heat of the sweat lodge by telling participants that "you are not going to die, you might think you are, but you're not going to die," these words were never meant to be taken literally. And no witness can truthfully say they understood such words to be literal.

JRI Had Medical Personnel Present at the Retreat. One witness, Melinda Martin, apparently believes that Mr. Ray "did not have anyone on staff to render medical aid," and that no arrangements were made for "any medical personnel to assist with any injuries or emergencies." Search Warrant Affidavit of Detective Russ Diskin at 9. Ms. Martin currently seeks a money settlement from JRI and has told her story to CNN and ABC. Her story – perhaps motivated by her current claim – is demonstrably false.

As we have previously discussed with you, after the single incident in 2005 in which a participant required medical attention, JRI took extensive safety precautions. These precautions included stationing a registered nurse (along with other personnel) outside the tent to handle emergencies. Staff members were trained in CPR at company expense – including Ms. Martin. The idea that there was no medical personnel present is therefore incorrect.

JRI set up a care station with water, electrolytes, lemons, oranges and watermelon; it had buckets of water and hoses available to cool people off; it conducted the ceremony in the daylight; and it shortened the number of rounds in the sweat lodge ceremony. Mr. Ray and JRI took additional precautions throughout the Retreat, constantly reminding people to prepare for the activities by hydrating. Prior to the sweat lodge, Mr. Ray informed Retreat participants that it would be very hot and very intense. No witness can credibly dispute these facts.

These precautions have been more than sufficient to care for sweat lodge participants in the past and exceed the care available in traditional lodges. Neither Mr. Ray nor JRI had any reason to think that more was required. Their past efforts make clear that, if Mr. Ray or JRI believed anything more was needed, they would have done it. Again, no witness can credibly dispute this.

Finally, the idea that Mr. Ray callously sat by knowing that people were dying is a vile falsehood. The state's own search warrant makes clear that the moment Mr. Ray and the JRI team learned of the emergency situation, 911 was immediately called, and the team took action. Team members (including Ms. Martin) and participants administered CPR, held IVs for paramedics, and did what they could to stabilize the emergency. Mr. Ray was part of this effort. The evidence would show that Mr. Ray comforted the victims and assisted in whatever way he

Bill Hughes, Esq.

January 4, 2010

Page 5

could. The search warrant itself indicates that at one point, a participant who was an MD asked Mr. Ray to look for an Automatic External Defibrillator to help those participants who had gone into cardiac arrest. Mr. Ray, according to the warrant, left to look for one. No witness credibly disputes this.

In short, whatever the media reports claim, before, during and after the sweat lodge ceremony, the circumstances do not support charges of criminally negligent homicide.

* * * * *

The media, as you know, often looks for the most sensational and simplistic way to describe a complex event. People with complicated motives pop out of the woodwork for their "15 minutes" of fame, and the media happily puts a microphone before them. This is particularly true where the story involves a provocative public figure like Mr. Ray, and this has been particularly true in this case.

We know that you will not consider the media reports in your decision-making process. Nothing in the reports have added any facts you did not already know. Nor do the reports alter any of the legal standards. They have only added innuendo, speculation and sensation.

We continue to believe that the three deaths were not the result of criminal conduct. Mr. Ray and his team relied on Angel Valley to provide a safe environment, warned people of the risks, did not force people to participate, did not prevent them from leaving, and did everything they could to prepare for any problems and to assist when problems arose. In these circumstances, criminal charges are unwarranted.

Finally, Mr. Ray cared deeply about the Retreat's participants. Many had worked with him before. They were his friends. Ms. Neuman had attended Mr. Ray's programs for approximately 7 years. She believed in his work so much that she volunteered to help at the Retreat. The idea perpetrated by the media that Mr. Ray was somehow intentionally callous about the victims of this tragedy is profoundly wrong and hurtful.

MUNGER, TOLLES & OLSON LLP

Bill Hughes, Esq.

January 4, 2010

Page 6

We look forward to discussing these matters with you further.

Respectfully submitted,

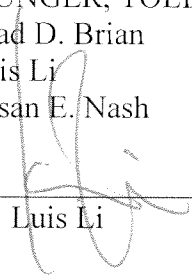
MUNGER, TOLLES & OLSON LLP

Brad D. Brian

Luis Li

Susan E. Nash

By


Luis Li