

TEXAS LAWYER



THE RIGHT CHOICE?

Despite
His Best Efforts,
Dallas Attorney
Couldn't Prevent
Client's Suicide

TOM CALLINS

sonal recognizance bond. But after he made threats on his own life, Bush held several custody hearings. At his client's behest, Mickelsen convinced Bush not to put Watson in jail, arguing his client was not a danger to society.

Now Mickelsen wonders if abiding by Watson's wishes — namely helping convince the judge to keep him out of jail — was the right thing to do.

He wonders if he had let Watson go to jail — where jail officials would watch him 24 hours a day — would he still be alive today. And Mickelsen questions if he was justified in ultimately lying to Watson in an attempt to prevent him from killing himself.

"I wonder if it's one of those things where my

efforts to be a do-gooder backfired," Mickelsen says.

Even though Mickelsen has doubts, he's satisfied that he tried his best to help Watson and he's eager to warn his fellow attorneys: "I'd like to tell the story so my brethren will think about what they'd do," Mickelson says. "I'm not sure trying hard helped."

Custody Questions

From the first time Mickelsen met with Watson about his case at his client's Denison home on March 21, the dejected client told the lawyer he'd kill himself before going to prison, Mickelsen says.

A former auto mechanic who could no longer work because of an on-the-job injury, Watson loved guns and building things — including a pipe bomb that police found at Watson's house, Mickelsen says. Watson was indicted on March 13 on a single bomb possession charge that carried a maximum 10-year federal prison sentence.

"The way he described the bomb situation is that someone

by JOHN COUNCIL

Rod Aaron Watson is dead. And now Mick Mickelsen is left to ponder if his efforts to help his client may have turned a bad situation into a deadly one.

Mickelsen, an earnest 38-year-old partner in Dallas' Broden & Mickelsen, has practiced criminal law since graduating from Georgetown University Law Center in 1990. His friends say he's passionate about the work he does for his clients.

Yet even though Mickelsen has represented countless criminal defendants in state and federal courts, he's still unsure whether he made the right choices when U.S. Magistrate Judge Don Bush of Sherman appointed him in March to represent Watson, 35, a Denison man arrested on a federal charge of possessing a pipe bomb.

After his March 18 arrest, Watson was released on a per-

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had brought a bomb over [to his house] and asked him if he could replicate it,” says Tracey Batson, an assistant U.S. attorney assigned to prosecute Watson. “And he did. He could do anything with his hands. He was a skilled mechanic.”

Watson was horrified that he was being labeled a criminal, Mickelsen says, adding he’d rather die than be treated as one. He even had a tattoo of a diamond over his heart — a place he told Mickelsen was the best spot to shoot himself and die quickly.

“I’ve had lots of clients talk suicide. But I thought this guy is very close to it,” Mickelsen says. “And I just felt like I was doing everything to keep him alive and not betray his trust.”

“He’d ask me, ‘Am I going to jail? Because if I am, I’m checking out,’” Mickelsen says. “I told him, ‘I’m going to try to keep you out.’”

Watson kept threatening to commit suicide, which led to the series of custody hearings before Bush, Batson says. On April 29, Watson told Bush that he’d starve himself to death if he was placed in custody, Mickelsen says. Bush declines to comment about the case.

Batson says she argued at the hearing that Watson should be placed in custody because he’d made suicide threats to acquaintances. To convince Bush to place Watson in custody, the prosecution had to prove Watson was a threat to the community or a flight risk. “We weren’t sure how he was going to go out,” Batson says. “We didn’t want him to take anybody with him.” But Bush disagreed with her arguments, Batson says.

At the April 29 hearing, Bush agreed not to put Watson in jail as long as a third-party custodian would watch over the defendant and make sure he complied with the conditions of release.

In a move that shocked nearly everyone in the courtroom, Mickelsen agreed to be the custodian.

“We were all stunned,” Batson says, adding that family members are usually designated as custodians, but Watson had no relatives that lived in Texas. “Even the court said it was highly unusual. But the court said if [Mickelsen] was going to accept that burden, he was going to put it on him.”

At the time, Mickelsen says he believed that keeping Watson out of jail and in his custody was a better option than taking the chance that Watson would commit suicide if he went to jail.

“I thought my only choice to prevent him from killing himself was to take him in my custody,” Mickelsen says.

Mickelsen says for two-and-a-half days he fulfilled his duties as custodian by watching out for Watson. During the day Watson sometimes sat in Mickelsen’s office while the lawyer worked. At night, Watson stayed at a hotel near Mickelsen’s Dallas home.

Mickelsen also took Watson to meet with a court-appointed psychologist for a mental evaluation, helped him fill out paperwork and made sure Watson showed up for appointments with various federal probation officials. The psychologist found that Watson was “deeply depressed,” but the depression was not clinical. Instead it was based on his physical injuries and limitations, Mickelsen says. The psychologist believed that Watson would improve with medical care and counseling, Mickelsen says.

Mickelsen says he eventually convinced Watson to plead

guilty on May 1 to the pipe bomb charge, telling his client he had a good chance of probation because he did not have a previous criminal record.

Still Watson wasn’t convinced, Mickelsen says. “Rod was always questioning me, saying, ‘Are you bullshitting me?’”

After accepting Watson’s plea, Bush appointed three other custodians to monitor Watson including a neighbor, a friend and a police officer. Bush also ruled that Watson could stay in his own home, but had to be accompanied by a custodian if he left the home, Mickelsen says.

Mickelsen says it was difficult to get Watson treatment, other than the initial meeting with the court-appointed psychologist, because arranging transportation with one of the custodians was difficult and scheduling the appointments wasn’t easy.

“He’d get an appointment with a doctor, but they’d say he had to go to counseling that day,” Mickelsen says, referring to Watson’s bond conditions. “I don’t think he ever actually got to an appointment, other than the [initial] evaluation, because of conflicts in getting appointments. Sometimes people who need social services the most are the least competent to get it.”

But when Watson went to the Sherman federal building for a meeting with federal agents, Bush ran into Watson outside, Mickelsen says. Mickelsen says he had told Watson to wait in the lobby, but Watson went outside to smoke a cigarette. The judge, apparently concerned that Watson wasn’t with a custodian while outside, called a custody hearing for May 20, Mickelsen says. But Watson didn’t show up.

Mickelsen says he went to Watson’s home in Denison where he lived alone. Watson didn’t answer the door. Mickelsen called police fearing Watson was inside the house and may have slit his wrists. As a condition of his bond, Watson was not supposed to have access to guns.

After police arrived, they entered Watson’s home and found him with a gun pointed at himself, Mickelsen says. Mickelsen stayed outside and spoke to his client through a window. Watson told Mickelsen he wanted written assurance that he would not go to prison before he’d agree to put the gun down and surrender, Mickelsen says.

Mickelsen says police crafted a bogus letter from the U.S. Attorney’s Office promising that prosecutors wouldn’t send him to prison. Mickelsen signed the fake letter, knowing it wasn’t the truth. The U.S. Attorney’s Office had no involvement in crafting the letter, Batson says.

“I lied to my client,” Mickelsen says of the letter — a heat-of-the-moment decision he made with the police. “The ethic out there was to tell him anything so he would put down the gun.”

“I was afraid he would see through it,” Mickelsen says. “He’d think I was the most horrible betrayer.”

But the letter didn’t work.

“I was advised by law enforcement that Watson never read the letter,” Batson says. “But he was advised of the general contents of the letter.”

Minutes after Watson was advised about the letter by police, he shot himself, Mickelsen says.

“It was so deflating. I thought he was coming out,” Mickelsen says. “We thought the letter worked.”

The Dallas County Medical Examiner’s Office ruled

Watson's death a suicide by a contact gunshot wound to the chest.

A Denison police spokesman, Sgt. Mike Eppler, declines to comment about the suicide because it is under investigation by the Texas Rangers.

A.P. Davidson, the Texas Ranger assigned to the case, declines to comment, as does Joe Patterson, a Bureau of Alcohol, Tobacco and Firearms agent assigned to Watson's case.

What to Do?

Mickelsen questions whether he should have signed the letter. He wonders now if he should have taken Watson into his own custody full time. He says he's taken plenty of continuing legal education ethics courses, but this scenario never came up.

"Unfortunately, there wasn't an ethics hotline that would have been easy for me to call," Mickelsen says.

Chuck Herring, a partner in Austin's Herring & Irwin and a legal ethics expert, says State Bar of Texas ethics rules aren't designed to help lawyers in Mickelsen's situation.

"We don't have ethical rules that tell you what to do in every imaginable setting where a client is unstable or is threatening suicide — that is beyond our ethical rules," Herring says. "That depends on the moral compass of the lawyer. And sometimes, it's just luck. It sounds like the lawyer was trying to do the best that he could."

Herring won't speculate as to what Mickelsen should have done — that wouldn't be fair, he says.

"Not having been in that lawyer's shoes and to judge this in hindsight, I wouldn't begin to say whether he acted properly or improperly," Herring says. "This lawyer was in an exceedingly difficult situation. It sounds like this lawyer tried to do the right thing in the moral sense."

Veteran criminal-defense lawyer Dick DeGuerin, a partner in Houston's DeGuerin, Dickson & Hennessy, says he's had six clients commit suicide in his 36 years of practice. That's not counting Branch Davidian leader David Koresh, who died after a standoff with federal agents at his Waco compound in 1993. DeGuerin represented Koresh during the standoff and attempted to negotiate his surrender. The government maintains the Branch Davidians killed themselves; the surviving Branch Davidians allege government agents started the fire that killed 73 people. Eighteen other Branch Davidians died from gunshot wounds.

DeGuerin thinks he's prevented a number of his clients' suicides, usually by explaining that it's "a coward's way out." But sometimes if a client has made up his or her mind to commit suicide, there's no reasoning with that person, he says.

"Can you do more to prevent it?" DeGuerin asks. "I don't know what else you can do but handcuff them to a radiator and put them in a straight jacket."

DeGuerin says a lawyer's decision to lie in an attempt to

prevent a client's suicide is a tough call.

"I've told people to be honest with their clients. They don't like being lied to. I think it's far easier for people to know what kind of trouble they're in and plan for it," DeGuerin says. "But I also think I have an obligation to prevent someone from killing themselves."

Dr. Mary Alice Conroy, director of clinical training for the Forensic Clinical Psychology Program at Sam Houston State University and a former forensic psychologist with the Federal Bureau of Prisons, says lawyers always should take their clients' suicide threats seriously.

She says any client who makes such a threat should be evaluated by a medical professional. And sometimes, in a criminal case, jail might be the best place for a suicidal defendant.

"The suicide rate in the federal [prison] system is fairly low," Conroy says. "Sometimes, regardless of their [client's] threat, a jail is a relatively safe place to be."

Veteran criminal-defense lawyer Jack Strickland says he's taken clients for medical evaluations when they've threatened suicide.

"I know that might appear as a ploy on the lawyer's part, that he's trying to create a [not guilty by reason of insanity] defense out of whole cloth," says Strickland, a Fort Worth solo. "But I think as a lawyer, you have a duty to make sure the person gets some treatment."

Strickland hopes Mickelsen doesn't beat himself up over his decisions in Watson's case. But he warns that lawyers should not get too personally involved in their cases.

"His instincts were right. You can't blame him for wanting to be more than a paper-pusher that washes his hands at 5 o'clock," Strickland says of Mickelsen. "But it's just a no-win situation."

Karo Johnson, a criminal-defense lawyer who knows Mickelsen, says he's not surprised by Mickelsen's actions in Watson's case.

"He did it because he cares, and he actually wants to help people," says Johnson, a Dallas solo.

"On one hand, I'm proud of him for having passion," Johnson says. "But on the other hand, he got blinded by his passion."

Mickelsen says he's not sure where to draw the line regarding his personal involvement in Watson's or any other client's case.

"It's a distinction that I don't understand, how you don't get personally involved," Mickelsen says. "I'm a human being."

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