

Michael Connelly:

You're listening to Killer in the Code: Solving The Black Dahlia and Zodiac Cases. I'm your host, Michael Connelly. This is Chapter 12, and today we are going to go from the trenches to the benches. And by that I mean we are going to speak with two men who have served for many years on the bench, two judges who have handled literally thousands and thousands of criminal cases between them in both federal and state courts and who you could say started out in the trenches of the justice system. That is one as a prosecutor and one as a cop.

Each's lifelong dedication to the law certainly qualifies them to study the investigation headed by Alex Baber and tell us where we would stand if the suspect Baber has identified Marvin Margolis, AKA Marvin Merrill, were still alive and able to be brought to justice. Veteran homicide investigator Rick Jackson, who is part of the Baber team, joined me for these interviews so that I could have on hand an experienced detective who countless times has worked with prosecutors and testified in front of judges. We ask these jurists to study the investigation, ask questions, and render an unbiased opinion on the case and its evidence. While Marvin Margolis died in 1993 and is beyond the reach of judgment in this life at least, we wanted to know what we have and what we would still need, if we were to take a living Marvin Margolis to trial.

Our first interview was with the Honorable Stephen S. Trott, who is a former Associate Attorney General of the United States, who left the Justice Department for a seat on the US Court of Appeals for the Ninth Circuit, which includes the entire west coast of the nation plus Hawaii and Alaska. Before all that, Trott spent 15 years as a deputy district attorney in Los Angeles County before being appointed US Attorney for the Central District of California, which includes Los Angeles. It's clear that Judge Trott has long experience filing, prosecuting, and judging criminal cases. What we were most interested in discussing with him was probable cause, which is a legal standard or threshold of evidence that must be reached for authorities to arrest and charge a suspect with a crime. There must be sufficient probable cause for a judge to then order a suspect to stand trial.

And of course the threshold is higher for a conviction. A judge or jury must find the suspect guilty beyond a reasonable doubt. So the first question put to Judge Trott after we reviewed the evidence accumulated by the Baber team was whether the evidence met the legal standard of probable cause. This is what he told us.

Judge Stephen S. Trott:

I was in that business for 23 years and this is just the easiest case I've ever seen in terms of probable cause. It's overwhelming. It's overwhelming. But let me tell you, no good prosecutor either arrests somebody or takes a case to a preliminary hearing unless and until that prosecutor believes that the evidence is sufficient to convict somebody beyond a reasonable doubt in a jury trial. And I think this case has that already. So probable cause is real simple.

Michael Connelly:

We then asked the judge what he believed were the key pieces of evidence against Marvin Margolis.

Judge Stephen S. Trott:

Well, it's a combination of things. And you start of course with Alex's ability to break the code. And I've gone over the code quite a lot up and down, and I think the code itself that zeroes in on him would be sufficient for probable cause. But you add to that the handwriting exemplars, the handwriting experts, and especially his son taking a look at the handwriting and saying, "That's my father's handwriting." I mean right there, that's already like, you have to be kidding me, that's really good. So those kinds of

things. Then the composite matches are also important, but those are the key things. I think it's the code. It's the handwriting with respect to the Zodiac. Now, if you're talking about Elizabeth Short, then it's a lot of things in addition to that. Like the sketch, for example, especially the Glasgow Smile. Of course, the question there is how much of that information might've been out in the ether that he could have drawn that picture just from stuff that he read in the newspapers or books or whatever? Because the thing is dated, as you well know, 1992, which is well after 1947. So a good defense attorney would attack that and say, well, how do you know he just didn't do this picture on the basis of what he's read in the newspapers? But the picture is also very important. But he lived with Elizabeth Short for 12 days. He lied when he was first confronted and asked about her. Then he disappeared, changed his name, hid his identity. So all these things just sort of pile up. And of course, then his personal profile suggests that he's the right type of guy. As Bill Mann told you, it's a question of how and why equals the who. And we know that if you look at his profile, he was in Okinawa as a Corpsman dealing with all kinds of bodies. And he was a pre-med student at USC.

So the idea is that he quite possibly had the capacity to sever her in two and drain her blood. You have to have somebody that has that capacity, and he certainly did, unlike many of the other suspects. You just keep going on down the list. But the key thing on the sketch to me, maybe the uncovering of the word Zodiac on the sketch, because that sort of links the two together and sort of stands out to me as something quite different. Of course, I would want to know as a trial lawyer, I'd spend a hell of a lot of time to find out whether any kind of information was out there on the web so that he could have drawn this sketch. Was the Glasgow Smile out on the web? Probably not. Rick knows this, a good police officer holds back details that only the killer could know.

That way you can sort out people who can make false confessions. I mean, I think you had 300 suspects back then, 19 confessions, and they whittled it down to 22 suspects. Well, so you want to hold back the details. So all these confessions, I had a bunch of these cases, false confessions. You'd start checking the confession and there's a lot of stuff in there that doesn't make sense or he doesn't know things that he ought to know if he were the real killer. So again, you go all over these things, but just keep going down the list. And then you get to the Phillips 66 map and you find out that she's buried in plot 66 in the cemetery up on the hill in Oakland. All of these things just sort of keep piling on layer on top of layer to suggest not only probable cause, but sufficient evidence to convince a reasonable jury beyond a reasonable doubt that this was the guy who did both.

Michael Connelly:

Let me clarify a few things here. The judge references Bill Mann. He would be William Mann, the author of "Black Dahlia: Murder, Monsters and Madness in Mid-Century Hollywood." Mann's book was published earlier this year, and we talked to him in the first season of the podcast because his own research and investigation of Elizabeth Short's murder also concluded that Marvin Margolis was the most likely suspect. And being the former prosecutor, Trott kept a keen eye out for how a defense attorney might attack the investigation. His concern was that the so-called Elizabeth sketch by Marvin Margolis, and turned over to Baber by his son, might've been informed or influenced by details of the Black Dahlia murder that were publicly known rather than from his being present at her murder. While the police did hold back many of the details of her murder in the early years of the investigation, the details and crime scene photos were indeed revealed as early as 1984 in a book called "Kenneth Angers Hollywood Babylon II."

Elizabeth Short's body and wounds are on full display in an eight-page spread titled "Nightflower's Nightmare." The photos include the so-called Glasgow Smile cut into her face. This would appear to make the word Zodiac hidden in the shading of the sketch the most important detail as it serves as a link between the Zodiac and Black Dahlia cases.

Let's go back to the interview. The investigation has accumulated an extraordinary amount of what would be called circumstantial evidence that points strongly at Marvin Margolis, a.k.a. Marvin Merrill, as the killer in both cases. Some critics, I would say misinformed critics of the investigation, seem to dismiss circumstantial evidence as inconclusive or questionable. So we asked Judge Trott to clarify what the value of circumstantial evidence is in a case as opposed to direct evidence.

Judge Stephen S. Trott:

As a matter of fact, a jury is instructed. A jury is instructed there is no difference between circumstantial evidence and direct evidence as a means of truth. It's all a question of what the circumstantial evidence means. So the law regards both as equally strong. As a matter of fact, I like circumstantial evidence better than some direct evidence. The key direct evidence of course is eyewitness identification. And we all know that eyewitness identification is very faulty, but you start lining up circumstantial evidence and all of a sudden it can be quite interesting. And as a trial lawyer, you use that sort of as an Agatha Christie approach to things. You just keep piling these circumstances on top of circumstances. And pretty soon one plus two plus three, it points to this guy. I would have a ball with this as a jury, but I'll tell you another part of the circumstantial evidence that I think is really important.

It's the elimination of all the other possible suspects. Now the Supreme Court quite a while ago said it's okay for a defense attorney to attack the integrity of investigation by showing that the police focused on one person and one person only to the exclusion of all other possible suspects. Well, as a prosecutor, that means I would have a ball because I would put the investigating officer on the stand and I'd say, all right, officer, you investigated this case for a certain period of time. How many suspects did you identify? X, 22, for example. And then I'd have a big chart with all these names and I'd go through them one by one all through the suspects. Now, why is this person a suspect? And why did you eliminate him? And why was this person? And pretty soon you'd get to the bottom and it's like Bill Mann says, last man standing.

And all of a sudden it's Marvin Merrill, who you track back to Marvin Margolis. So circumstantial evidence, to go back to your original question, is killer. So circumstantial evidence, I loved it. I absolutely loved it.

Then your final argument, you begin to put all those pieces together and it fits like a hand in a glove perfectly. Not to use an OJ example, but this glove fits. And if it fits, guess what? I tried cases in state and federal court for a long time. I loved it. I think it's fascinating. And I'd love to have a case like this. To me, the cases like this loaded with circumstantial evidence, they're just wonderful, wonderful cases. I'd rather have that than a case with only five eyewitnesses. Those are a mess. But lots of circumstantial evidence, it's great. And jurors love this stuff. As I said, I present it to them like they're solving the case. That's the way I put it together. So they're solving the case and it works. It just works.

Michael Connelly:

We asked the judge where the weaknesses were in the cases and the evidence we could present. I particularly wanted to know if as a prosecutor, he would split the cases into two trials because the Dahlia case, by virtue of it being a provable fact that Margolis knew the victim, was the stronger of the two with a better chance of conviction.

Judge Stephen S. Trott:

Here's what you do as a prosecutor. You cannot become a really good prosecutor unless you are also already a good defense attorney because it's just like football. You can't just play offense, you have to play defense. And so what I used to do is after I would put my case together and say, all right, here's the

evidence that I'm going to put in, the arguments that I'm going to make to prove my case. Then I would step back and say, all right, now I know what the case looks like. And then I would hire myself as the defense attorney. And I would say, now I'm going to take a look at this guy's case and see how I'm going to take it apart. And I would immediately identify all the vulnerabilities in the evidence in the case and then would figure out which vulnerabilities to attack and how.

And the only way you learn that, you don't get that in law school. You have to try a whole lot of cases against really good defense attorneys. And then you begin to develop your own second sense of looking at evidence from two ways. You say, what does this prove and what are its vulnerabilities at the same time? And so in the code, for example, you've got Alex. Now, Alex is going to be a handful because as you know and you've discussed on the podcast, he's got a bit of a personality and everybody under the sun has attacked him. If I were the defense attorney, I would attack Alex like crazy. Because if you can crack Alex, then you can raise a doubt to this whole code thing. And so I would talk to Giorgio and Henry and Wisniewski, and I would learn almost the code thing as well as Alex did, although I realize that's impossible.

But then I would ask them, all right, if you were hired to take the stand in this case and say this is baloney, both method and result, what would you attack? And I'm looking for the vulnerabilities. Now, I don't see any so far. I haven't talked to them, but Giorgio and Henry and Wisniewski did a tremendous job in looking at these things. So I think the code is going to hold up. And if the code holds up and if Alex... And I think I could make Alex hold up. I think that I can make a jury like Alex a lot. This whole business about being incited to get into this game in the first place by Sherlock Holmes and Alan Turing, that's good stuff. Now, before you could put Alex on on something like this though, you'd have to have him qualified as an expert under what we call the Daubert rule.

And that could be a problem because he doesn't have any background. He's a self-taught guy. So I would have a hearing beforehand in court, preliminary to the actual trial itself, to have him qualify as an expert. And I would use Giorgio, Henry and Wisniewski to qualify him as an expert to set him up. But I'd also get a really good sense of how he would play as a witness under those circumstances too. So I think the Zodiac case is strong because that code looks to me like it's really strong. And I don't see anything yet where anybody with any qualifications has come forward and questioned either the method or the result. And as Rick and Mitzi have pointed out, the fact that he's a little distant, well, that's not all unusual. I mean, you're not going to go kill people in your backyard. You're going to go a little bit from your house.

And this business where he shows up at the payphone within a line of sight from where she used to live, that's kind of tricky too. And this plot 66 with a Phillips 66 map with a Zodiac sign on it, I mean, this is really good circumstantial evidence stuff. And see, I would have all of these stuff recreated in front of a jury. In other words, the jury would watch how somebody would take that map and superimpose the Zodiac with a small circle and the radians and the inches, and I would bring it alive. And I present this case as an Agatha Christie who done it. And I'd be asking the jury to solve it with me along. And I think it's just really good evidence for that kind of thing. So I'm equally strong about both cases.

When you're looking at a donut, my grandmother used to say, evaluating a donut, don't just look at the hole, H-O-L-E. Don't look at what's not there. Look at what's there. And that's what's going to tell you whether it's a good donut or not. And so then you pile all this stuff, these little things that might be missing here or there, they're irrelevant. The fact that he lives far away, all these kinds of things, the stuff that's not there I think is absolutely irrelevant. Mitzi and Rick are right about that. But yeah, it all just piles on and there's nothing that comes in there and says, no, this is not the guy.

Michael Connelly:

Little known fact about Stephen Trott. He may be the only ex-prosecutor and federal judge who has a number one hit record on his resume. It's true. Before he went off to Harvard Law School as a young man, he was in a folk group called The Highwaymen, and they had a number one hit with the song "Michael Row Your Boat Ashore."

All right, we still have more for you from the bench. Rick Jackson and I also spoke to retired California Superior Court Judge Arthur Wick, who presided in Sonoma County in Northern California. But he started his career in the law as a Los Angeles County Sheriff's Deputy, serving for seven years and going to law school at night before starting his career as an attorney and eventually being appointed to the bench by Governor Arnold Schwarzenegger. He now is retired and has come full circle. He's a volunteer consultant on the cold case team with the Sonoma County Sheriff's Department. When Rick and I talked to him, he was working on the unsolved murders of seven young women in the early '70s by an unknown serial killer. These occurred at the same time that the Zodiac killer held the nearby Bay Area in the grip of fear because of his random killings, as well as the taunting and threatening letters and ciphers he sent to local newspapers.

As a superior court judge, Wick handled nearly 20,000 cases in a long career, most of them criminal. He also was a judge who local investigators came to with search warrants. He signed off on them or didn't based on probable cause. We asked him the same thing we asked Judge Trott. Has the Alex Baber and team's investigation gathered enough probable cause to warrant the arrest, search and prosecution of Marvin Margolis, were he still alive?

Judge Arthur Wick:

You're way past probable cause standard. As an example, could you get a search warrant for his belongings or his son's belonging? Unquestionably. In fact, you'd get a search warrant that would withstand scrutiny at the appellate level. There's no doubt in my mind. And then the question becomes, of course, you go to a preliminary hearing. Now mind you, we don't have a defense here, but I've reviewed, I have watched your podcast three times in its entirety thus far to make certain that I have some command of the fact and facts. And I believe you would be able to file a complaint, as it's called. In California, you would be able to file a complaint, go forward on a preliminary hearing and produce enough evidence. Now I'm kind of limiting any comments for the moment, Michael, to Black Dahlia case. I think it goes beyond that, but let's be very specific about what we're discussing.

And so you file a complaint that lists first degree murder charge against your prime suspect, listing his known aliases. And whether it's Merrill or Margolis, I think you surpass that. You reach that bar rather easily. He's going to be held to answer as to the charge in the complaint. And I'm going to permit you to file information charging an individual with a very serious felony offense that is likely to have several enhancements attached to it. Lying in wait comes to mind. And I'm not the suggester of death penalty, et cetera, but you have a rather serious matter here. Obviously well planned, well-thought-out. So you're talking first degree murder case possibly with death sentence attached there to, that enhancement and others. And then you go forward on the information. And as I mentioned to Detective Jackson along the way, after the information is filed, you automatically receive a motion for a 998 that says, please throw the case out. I have no qualms about that since I heard the preliminary hearing. It might have to go to another judge for the determination, but that's not a difficult issue. And the enhancements can be attacked. I think you're going to have several enhancements that will withstand scrutiny. You get then to the murder case, jury's picked, you start presenting evidence and the question always becomes, okay, now the prosecution has finished. Have you reached the level necessary to submit the case to a jury? I think you've probably surpassed that level. You have a serious... I mean, I'm going to be blunt here for a second. I don't see holes in the arguments that I've seen thus far. I have not been presented with credible evidence that would allow someone to argue someone else did it.

Michael Connelly:

Judge Wick also sought to clarify the importance of circumstantial evidence.

Judge Arthur Wick:

People mischaracterize the value of circumstantial evidence, and it's argued in almost every single case I've ever handled. And Michael, that's not only at the trial court level, that's at the appellate court level. Because the classic argument by the criminal defense attorney is that's only circumstantial evidence. Yeah. Well, let's go to the law. Read CALCRIM 223. Circumstantial evidence doesn't mean it's below direct evidence. It means it is on the same level as direct evidence and the fact finder where the court, meaning the judge, or the jury, gets to decide how much weight you give it.

Michael Connelly:

Judge Wick agreed with Judge Trott that a key part of the case is the elimination of the other suspects by both the original investigation dating back to 1947, as well as the present team's work on the case. Investigative tunnel vision is a trap that often pays dividends for the defense at trial.

Judge Arthur Wick:

But one thing I find very persuasive, Michael, at this stage is, and I would even put this in a search warrant if I was asked for a search warrant, there may be 20 other suspects or what did he say? 24 or something like that. Those suspects have been eliminated for a variety of reasons. That's critically important, not only to the beginning stages of a case, but to the final stages when the defense is standing there before the jury arguing insufficiency of evidence. Somebody else did this. Well, you don't get to make that argument unless there's credible evidence to that. That's always the claim. It wasn't me. Yeah, it doesn't carry a lot of weight. And by the way, you don't just get to make that statement in front of the jury.

Defendant can, he can take the stand, risk cross-examination, all of those issues that come with that. But the defense doesn't just get to stand up and say, well, what about anybody else who could have committed a crime? I need credible, reliable, legally sufficient evidence that's been admitted, reviewed and possibly admitted in court, and I have yet to see something that suggests your team is on the wrong path.

Michael Connelly:

When it came to the Zodiac case, the judge was more circumspect about the evidence. The case against Margolis/Merrill largely balances on the identification of the suspect through the code breaking by Alex Baber and the confirmation from experts in the field of cryptanalytics. Judge Wick said Alex Baber would need to explain his work and make clear how he identified Marvin Merrill as the Zodiac.

Judge Arthur Wick:

I concur with the fact that you would present him as a lay witness, so to speak. But once you lay a foundation, even a layperson can become an expert in a given topic. And I believe you've probably laid enough foundation that he would be qualified as an expert. Let them attack his credibility. So be it. We're talking about qualifications and what he's done to cross over from Black Dahlia to Zodiac is no less than astonishing. The work that your team has done and what you have uncovered is monumental. Then the crossover is easy. The question becomes how many of the cases do you have a direct link to? And that's where it gets difficult now. You don't just say, well, he's going to be charged with five murders.

You're going to have to be very particular as to how you get there. So Michael, there are strong crossovers, great indicators. Could he be charged in some of those cases? Perhaps yes.

Michael Connelly:

I talked about this with Rick Jackson and Mitzi Roberts, another veteran homicide investigator on the Baber team. They agreed that while the Zodiac killer is credited with five murders in the Bay Area, each case would be evaluated individually in terms of charges because each of the cases will have a different level and quality of evidence. They said that in serial killer cases in particular, it is not unusual for prosecutors to zero in on the cases with the strongest evidence while leaving others unprosecuted. Before retiring as Los Angeles Police Department cold case detectives, Roberts and Jackson were at one point on the cross country trail of Sam Little, a serial killer who was later classified by the FBI as the most prolific on record in the United States.

While he may be credited with nearly 90 murders, including at least a dozen in Los Angeles, he was convicted of only three murders as prosecutors in Los Angeles chose the cases they believed were the strongest in terms of evidence and likely conviction. Once Little was found guilty in those cases by a jury, he confessed to the other murders before dying in prison of COVID. This is Mitzi Roberts followed by Rick Jackson.

Mitzi Roberts:

In the case with Sam Little, we had those three very strong DNA hits, but we also had evidence that he had engaged in similar activity for decades. And we had identified prior victims and cases that we wanted to investigate further. But with the prior victims, they hadn't been charged cases or in some cases they had been charged and didn't go further in court. And then it's a real strategic plan there because they're not the strongest cases and you don't want them to taint your case, but you also want to bring in that evidence. That's how we decided strategically to do it in Sam Little in order to protect the three really solid cases we had.

Rick Jackson:

Juries start looking at evidence and they see strong cases and then they see weaker cases. And sometimes a juror or multiple jurors or a full jury will start to look at a prosecutor by like they're trying to pull something over them as a jury. And it could have a detrimental effect on decisions sometimes, trying to sneak cases by them, if you will.

Michael Connelly:

Judge Wick was clearly suggesting that sort of strategy in the approach to the Zodiac cases. Pick the one with the strongest ties to Margolis/Merrill to get the best result at trial.

Judge Arthur Wick:

I would continue the investigation as outlined. Keep going down that road.

Michael Connelly:

Baber and company are doing just that. I don't think we could conclude this discussion and episode without addressing one more thing. Granted that Marvin Margolis/Merrill is dead, and this has been an exercise in speculation of whether he could be charged were he's still alive. While these judges easily say the answer is yes, the question of whether a jury would convict him is not as much a given. The star

witness in any trial would have to be Alex Baber, and it would be a question as to whether 12 jurors would like him and believe him. Baber is on the autism spectrum and what makes him a good investigator also works against him sometimes in terms of personality. He freely admits he speaks bluntly, quickly, and sometimes lacks social filters. He doesn't sugarcoat anything, and that sometimes is perceived as arrogance.

It's very clear in this investigation that those who don't like the message want to kill the messenger, to use the figure of speech. And the messenger here is clearly Alex Baber. He has become a lightning rod for unfounded attacks and accusations. He no doubt strikes the nerve and we asked Judge Trott if he would even put him on the witness stand in trial. And if so, how he would handle his biggest witness also being perhaps his biggest vulnerability.

Judge Stephen S. Trott:

I think I could make a jury really like Alex because I would start at the very beginning, his interest in this thing, and I would take him through all of his mistakes and his blind alleys and his errors and his picking people that weren't the right guy. I'd take him through all of that. And the jury would begin to see how intense he was at getting to the right answer. And all of a sudden he comes out at the end, but is it just Alex Baber? Hell no. It's Georgio, Henry and Wisniewski, the top code maker, the top code breaker at the National Security Agency. Holy cow.

Michael Connelly:

I asked Baber if he would be up to the task of testifying about the findings of his investigation.

Alex Baber:

So this has never have been about me. It was always about Elizabeth and the other victims and seeing justice for them. It's a profound tragedy that their killer actually left this life without ever being identified. And whether people like me or not, Michael, it doesn't matter. It's irrelevant to my work. I'm not interested in appeasing internet trolls or critics that don't read into our evidence or take the time to. With that being said, I think that if I ever was given an opportunity, I would take the stand in an instance, raise my hand, take an oath, and testify to the evidence we've uncovered. And I think if we do that in a public court of opinion and people are willing to see what we have and keep their eyes on the prize, I think that we have an opportunity to show the people exactly how deep this investigation went and how we're advancing it further than anybody else has ever advanced it.

Michael Connelly:

You have been listening to Chapter 12 of Killer In The Code: Solving The Black Dahlia and Zodiac Cases. This episode was written and produced by me, Michael Connelly. It was edited by Terrill Lee Lankford, with music and post-production services provided by Mark Henry Phillips. We'll be back soon with Chapter 13. Thank you for listening.