

IN CAMERA: HOLLYWOOD SCANDALS, LEGAL TRUTHS

EPISODE 5: BUSBY BERKELEY – A PERFECTLY CHOREOGRAPHED DEFENSE

Show Notes, Resources & Citations

EPISODE SUMMARY

Busby Berkeley was Hollywood's most celebrated dance director of the 1930s, famous for his overhead kaleidoscope shots and geometric chorus formations.

On the night of September 8, 1935, Berkeley left a party in Pacific Palisades, drove south on Roosevelt Highway (now Pacific Coast Highway) while heavily intoxicated, crossed into oncoming traffic, and caused a three-car collision that ultimately killed three people: Ada von Briesen, Dorothea Charmion "Peggy" Daley, and William von Briesen.

Warner Bros. immediately retained Jerry Giesler – Hollywood's most formidable criminal defense attorney – to defend Berkeley. Charged initially with manslaughter and then elevated to second-degree murder, Berkeley faced three trials spanning two years.

Giesler's defense strategy was that a blown front tire caused the crash, not intoxication. Through exhaustive pre-trial witness preparation, relentless exploitation of the prosecution's high evidentiary burden, and the inherent implausibility of the implied malice theory in 1935, Giesler secured acquittals across two hung juries and a final not-guilty verdict.

This episode examines Giesler's tire defense, the reasons and possible consequences of overcharging a case, and why – had California's *Watson* admonition existed in 1935 – the outcome may have been different.

KEY FIGURES

Busby Berkeley (1895–1976)

Born Berkeley William Enos in Los Angeles, California, Berkeley came from a theatrical family. While serving in World War I, he discovered a talent for coordinating large groups into precise formations. He later became one of Broadway's most sought-after choreographers, and in 1930 was brought to Hollywood by producer Samuel Goldwyn. His films – including *42nd Street*, *Footlight Parade*, and the *Gold Diggers* movies – redefined the Hollywood musical through his signature overhead kaleidoscope shots and geometric dancer formations. By September 1935, he was at the peak of his career. Following his 1937 acquittal, Berkeley returned to work immediately and eventually moved to MGM, where he directed Mickey Rooney and Judy Garland musicals. He died on March 14, 1976, in Palm Springs, California.

Jerry Giesler (1886–1962)

Born Harold Lee Giesler in Wilton Junction, Iowa, Giesler was admitted to the California bar in 1910 and built his practice in Los Angeles. He became the most celebrated criminal defense attorney in Hollywood history, representing clients including Errol Flynn, Charlie Chaplin, Marilyn Monroe, Bugsy Siegel, Lana Turner, and Cheryl Crane. Giesler was a master strategist and keen observer of jury psychology. His reputation was such that "Get me Giesler!" became the standard distress call whenever a celebrity faced serious criminal exposure. He died on January 1, 1962, in Beverly Hills, California. His autobiography, *The Jerry Giesler Story* (co-authored with Pete Martin, Simon & Schuster, 1960), remains a primary source on his methods.

Ada von Briesen (– 1935)

Ada von Briesen was one of three victims killed because of the September 1935 crash. She was related to William von Briesen – possibly a sister or in-law. Beyond her name in charging documents and contemporary newspaper coverage, she is largely absent from the historical record.

Dorothea Charmion "Peggy" Daley (– 1935)

Known as Peggy Daley, Dorothea Charmion Daley was another victim who died within days of the crash. She has been described in some sources as a relative of the von Briesen family. Like Ada von Briesen, she has remained a footnote in the historical record.

William von Briesen (- 1935)

William von Briesen was the third fatality. He succumbed to his injuries approximately one month after the crash. He was survived by his wife, Manon von Briesen, and his sister, Laura von Briesen. Laura von Briesen later won a \$30,000 civil judgment against Berkeley for injuries she sustained in the collision.

LEGAL CONCEPTS DISCUSSED

Second-Degree Murder / Implied Malice

Second-degree murder requires "malice aforethought" – in the DUI context, "implied malice" means the defendant's conduct showed a conscious disregard for human life so extreme that it is legally equivalent to malicious intent. The prosecution argued that Berkeley's decision to drink heavily and then drive on a dangerous highway demonstrated implied malice. The challenge in 1935 was that California had no established doctrine connecting DUI fatalities to implied malice, making the theory difficult to prove without a prior DUI conviction or other evidence that the defendant specifically appreciated the risk.

Vehicular Manslaughter

Manslaughter covers deaths caused by negligent or reckless conduct – a failure of attention and due care, not conscience. It does not require malice. The episode argues that had the prosecution stuck with manslaughter charges, the evidence of recklessness – erratic driving, multiple witnesses smelling alcohol, three deaths, five serious injuries – may well have been sufficient for a conviction. The upgrade to second-degree murder raised the evidentiary bar above what the prosecution could clear.

Overcharging

Overcharging occurs when prosecutors file charges seemingly more serious than the provable facts will support – sometimes to intimidate defendants into early pleas, to create negotiating room, or to project aggressiveness. It carries strategic risk: juries may perceive it as prosecutorial overreach and become more sympathetic to the defense. Giesler was able to exploit the second-degree murder charge's high malice standard precisely because the prosecution had overreached.

Reasonable Doubt

The prosecution bore the burden of proving every element of second-degree murder beyond a reasonable doubt. Giesler's tire defense did not require him to prove a blowout occurred – only to provide a plausible alternative explanation for the incident. On a notoriously dangerous stretch of coastal highway at night, mechanical failure was plausible enough to create doubt. That is all the standard requires.

The Watson Admonition (People v. Watson, 1981)

People v. Watson, 30 Cal.3d 290 (1981), is the California Supreme Court decision that established the implied malice doctrine for DUI. Following *Watson*, California courts are required to advise every DUI defendant on the record that driving under the influence is dangerous to human life – and that a future DUI fatality could support a murder charge. The defendant must acknowledge this warning in writing. This "Watson admonition" dramatically strengthens implied malice cases by establishing the defendant's prior awareness of the risk. In 1935, no such doctrine existed, and Berkeley had no prior DUI conviction, leaving the prosecution without its most powerful tool for proving malice.

Pre-Trial Witness Contact / Witness Preparation

Giesler's investigators visited the Pacific Palisades fire station repeatedly over the course of the pretrial period, building relationships with hostile first responders until – in Giesler's words – they "loosened up." This practice, while ethically requiring careful management, is not illegal. Defense attorneys are permitted to investigate witnesses and build rapport. It illustrates the principle that preparation outside the courtroom can be as consequential as argument inside it.

SOURCES & FURTHER READING

Books

Spivak, Jeffrey. "Buzz: The Life and Art of Busby Berkeley." University Press of Kentucky, 2011. The definitive biography of Berkeley, drawn from personal letters, studio memoranda, court records, and Berkeley's own unpublished memoirs. Chapter 7 ("The Cancerous Tire") covers the crash and trials in detail.

Giesler, Jerry, and Pete Martin. "The Jerry Giesler Story." Simon and Schuster, 1960. Giesler's autobiography, covering his courtroom philosophy, jury psychology, and his own account of major cases including Berkeley.

Thomas, Tony, and Jim Terry, with Busby Berkeley. "The Busby Berkeley Book." New York Graphic Society, 1973. A comprehensive survey of Berkeley's films and career, co-authored with Berkeley himself.

Archival & News Sources

Los Angeles Times. Coverage of the Berkeley trials, 1935-1937. Archived at the UCLA Library Special Collections, Charles E. Young Research Library, Los Angeles Times Photographic Archive.

Calisphere / UCLA Library Special Collections. Los Angeles Daily News Negatives collection. Photographs and documents related to the Berkeley crash and trials, including images of Berkeley on a stretcher, Giesler in court, and the von Briesen family members. Available at: calisphere.org

People v. Watson, 30 Cal.3d 290 (1981). California Supreme Court. Full text available via Justia.com and [FindLaw](http://FindLaw.com).

Online Resources

Wikipedia – Busby Berkeley: en.wikipedia.org/wiki/Busby_Berkeley – Overview of career and biography with citations.

Wikipedia – Jerry Giesler: en.wikipedia.org/wiki/Jerry_Giesler – Career summary and client list.

Calisphere (UCLA Digital Collections): calisphere.org – Search "Busby Berkeley" for contemporaneous photographs from the crash and trials.

Justia – *People v. Watson* (1981): law.justia.com/cases/california/supreme-court/3d/30/290.html – Full text of the California Supreme Court opinion establishing the implied malice doctrine for DUI murder.

Shouse Law Group — Watson Murder Overview:
shouselaw.com/ca/dui/laws/dui-murder/ — Plain-language
explanation of the Watson admonition and its application in
modern California DUI prosecutions.

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Library Special Collections. Public domain.

Berkeley dance arrangement (overhead formation): Warner Bros.
Pictures production still. Public domain.

42nd Street poster (1933): Warner Bros. Pictures. Public domain.

Deadman's Curve / Roosevelt Highway: Los Angeles Times
Photographic Archive, UCLA Library Special Collections. Public
domain.

Von Briesen and Daley (crash victims): Los Angeles Daily News,
1935, UCLA Library Special Collections. Public domain.

Berkeley and mother (Gertrude Berkeley): Los Angeles Daily News,
UCLA Library Special Collections. Public domain.

Jerry Giesler portrait: Los Angeles Daily News, UCLA Library
Special Collections. Public domain.

Judge/jury at crash site: Los Angeles Times Photographic
Archive, UCLA Library Special Collections. Public domain.

Berkeley on stretcher entering court: Los Angeles Daily News, 1935, UCLA Library Special Collections. Public domain.

Giesler and Berkeley on stretcher: Los Angeles Daily News, 1935, UCLA Library Special Collections. Public domain.

Berkeley at trial (Trial Two, 1936): Los Angeles Daily News, UCLA Library Special Collections. Public domain.

Berkeley on crane camera: Warner Bros. production still. Public domain.

Babes in Arms poster (1939): Metro-Goldwyn-Mayer. Public domain (U.S. copyright not renewed).

HOST NOTE

Adriana Collado is a federal criminal defense attorney with over 20 years of experience and is the founder of Collado Law, LLC. She is not providing legal advice. The legal analysis in this episode is offered for educational and historical discussion purposes only.

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