

Thursday, July 24. 2008

Joining forces with like-minded lawyers - Never being alone.

When I joined the National Association of Criminal Defense Lawyers seventeen years ago, I was drawn to the group's slogan "Never Be Alone." On the one hand, the phrase sounded abstract, having joined the NACDL when I was still at a 25-lawyer Washington, D.C., law firm primarily representing financial institutions and transportation companies. On the other hand, before being hired by the Maryland Public Defender's Office made it unnecessary, I was making alternative plans to hang my own shingle and to include court-appointed criminal cases; the prospect of opening a solo law firm just two years out of law school did raise the real specter of being alone in my own office. In any event, one of the most important things a lawyer can do is to find allies and kindred spirits, not only because there is strength in numbers, but also because the successful practice of law demands exchanging ideas, brainstorming, and moral and time support with kindred lawyers. Of course, when a lawyer asks help or advice from another lawyer, the asking lawyer is showing his or her vulnerability, whether it be that the lawyer has not figured out the question on his or her own, that s/he does not have other established people to turn to first, and/or that the lawyer has dragged his or her feet longer than prudent for seeking the help. However, dust swept under the carpet is still there, and all lawyers have dust to resolve of one type or another. As I embark with the opening of my solo law firm Jon Katz, P.C. this coming Monday (when my new office buildout, wiring and moving will be complete -- my new Silver Spring address will be posted on this blog) I think again of the benefit of not feeling alone by putting aside ego and any trepidation to call upon kindred lawyers and non-lawyers for help and brainstorming, and to give the same in return much more than has been received. I am blessed to be in a new building with another lawyer I already collaborate with, and numerous others I look forward to interacting with. One of the biggest challenges facing a solo and small firm practitioner is the oppression of seemingly inflexible court calendaring in some places. Unless a lawyer only works in the same courthouse at all times, tensions are bound to happen when Judge A sees that the lawyer has frequently conflicting court dates in numerous other courts. In a big law firm, the problem often is resolved by having a substitute lawyer at the very least take over in seeking a postponement if the primary lawyer is booked up to even do that. Fortunately, I have always been able to resolve court calendaring conflicts, but sometimes through great toil (e.g., when a weaselly opposing counsel set a motions hearing in a court that does not require clearing the date with opposing counsel, and that has no automatic mechanism to request a date change in writing) and at the expense of paying another lawyer to appear for me at a procedural court date that becomes unchangeable. One reason I have been able to resolve calendaring conflicts is to avoid taking new clients who are so close to their trial date that the court may very well deny a continuance (or to have a colleague at the ready, with my client's consent, to take the case or to co-counsel, in the event I cannot get a continuance - but that only works for misdemeanors that can be handled without needing to meet a slew of procedural and case-specific deadlines), and to be straightforward with the client not only about the chances that I can change the court date, but also about any disadvantage for doing so (e.g., whether it is better to keep the current court date to preserve speedy trial rights and evidentiary issues, and whether rescheduling a preliminary hearing will make it more likely that an indictment will take place first and preclude the preliminary hearing). The most important time for lawyers to come to each others' support -- even when the lawyer in need is someone the other lawyer ordinarily might avoid even having lunch with -- is when judges and opponents intentionally or unintentionally come down hard and unfairly on the lawyer for doing nothing other than following the lawyer's ethical obligation to zealously represent the client. The stories are many about judges who show upset that a "clearly guilty" defendant gets acquitted by a jury, who get irritated at lawyers who do not simply "move along" the docket, who are intolerant of any challenges to the judge's authority (e.g., in response to a lawyer telling a defendant at sentencing not to answer a particular question from the judge), and the list goes on. Judges and opponents need to know that when they unfairly shoot towards a lawyer, the lawyer has a strike force of lawyers ready to defend the lawyer in such ways as entering an appearance to defend or to co-counsel with the lawyer and packing the courtroom when the judge sets a contempt or other hearing questioning the lawyer's reasonable and ethically zealous actions. Fortunately, such groups as the NACDL have lawyer strike forces that include some of the best of the best criminal defense lawyers giving their time and advocacy for free for what would otherwise amount to big dollar figures. Of course, lawyers receiving such task force benefits should give back many times over, through similar help to other lawyers, and, when the lawyer has it, extra donations to the lawyers' group and some nice favors and gifts to the representing lawyer. As the years pass, I have a stronger network of allied and kindred lawyers and non-lawyers whom I can call and who will make the time for me even if that means their getting to sleep later that night. This sharing is particularly true among graduates of the Trial Lawyers College, even for those who never have met one another before; the connection perhaps is fostered all the more by having shared several weeks miles from the nearest paved road, showering and brushing teeth among the stink of the adjacent toilet stalls, and, most importantly, having committed to clearing court calendars for so many weeks to become better lawyers and better people. It is probably a similar connection to what frat members feel, aside from episodes of drinking mass quantities of beer and being obnoxious, although many drink beer and act like hyenas at the Trial Lawyers College, too, at least after hours. When a

Trial Lawyers College grad calls me or I call them, invariably it is an instant human-to-human conversation, skipping the lawyer-to-lawyer-ese. Lawyers: Before you end today, won't you reach out to at least one other kindred lawyer, whether it be as small a gesture as wishing him or her well on tomorrow's trial, or offering empathy over a trial loss or brainstorming or other support on a pending matter. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

You may want to take the time to discuss the scheduling matter with other criminal defense attorneys. It is a hard schedule to keep, especially if the distance between court houses on a given day is great. However, citizens need qualified and effective criminal defense attorneys, because law enforcement is ever-imposing its will on the people.
Anonymous on Jul 24 2008, 12:09

Thanks for this. I just received a phone call from an F Warrior Board member, reaching out to welcome me and tell me I'm not alone, so the timing was perfect.
Anonymous on Jul 24 2008, 13:33

Thanks, JT and DT, for your comments.

DT- Was this a delayed phone call to you, since I understand you attended the Trial Lawyers College earlier than this year?

Have a great weekend. Jon
Anonymous on Aug 1 2008, 12:23