

Wednesday, January 7, 2009

Posted by at 21:51

According to your http headers you're using apache 1.3, If you're not, then ignore the rest of this message.

I also hope I understood what you want.

Assuming all the standard modules are available, the following lines placed in a file named .htaccess in the same directory as the justiceblog.htm will make requests for justiceblog.htm go to the new blog.

```
RewriteEngine On
RewriteBase /
RewriteRule ^justiceblog.htm$ /blog2/serendipity/
```

Summary: In Apache, it's possible to make any URL point to any location/file. You just have to be able to specify exactly what you want.

Another option: Since the serendipity/ part is a directory name, just make a directory named justiceblog.htm and put the php scripts that run the blog in there. You may have to edit some settings in your php scripts, but it should work. (The only thing special about .htm in apache is that if it's a regular file, and if it's the file apache is using to answer a request, then apache defaults to telling the client it's a text/html filetype, instead of the usual text/plain.)

Anonymous on Oct 19 2006, 14:40

Kudo's to Mr Katz for recognizing the the new support staff. I myself assist and its good to be thought of in a professional way than just the secretary. We all have different gifts we can contribute. Welcome ladies.

Anonymous on Oct 23 2006, 11:13

Hi mr Katz,

Glad to hear you are still practicing tai chi. It is something i have considered to get in touch with , it seems it seems to calm me down before proceeding in a rage, which gets one no where.

Cheers
Michelle

Anonymous on Nov 14 2006, 22:44

Quotes from Thomas Paine's Rights of Man on Church and State. The funny thing is his observations 220 years ago are dead on today.

"All religions are in their nature kind and benign, and united with principles of morality. They could not have made proselytes at first by professing anything that was vicious, cruel, persecuting or immoral. Like everything else, they had their beginning; and they proceed by persuasion, exhortation, and example. How then is it that they lose their native mildness and become morose and intolerant?"

By engendering the Church with the State, a sort of mule-animal, capable only of destroying and not breeding up, is produced, called the Church established by Law. It is a stranger, even from its birth, to any parent mother, on whom it is begotten, and whom in time it kicks out and destroys.

Persecution is not an original feature in any religion; but it is always the strongly-marked feature of all law-religions, or religions established by law. . . ."

Anonymous on Dec 7 2006, 15:28

Congrats on your win! Please keep on fighting the good fight.

May common sense, compassion and JUSTICE finally prevail once and for all wrt: MMJ patients.

Anonymous on Dec 17 2006, 13:12

Don't forget his contribution to the war on drugs

Jamie

Anonymous on Jan 13 2007, 02:08

Hi Thanks for reporting on MAPS' progress with medical marijuana research. I wanted to let you know that a press release issued by MAPS about the DEA ruling is located here: <http://www.maps.org/mmj/DEAlawsuit.html#favorable>.

This provides a good summary up Judge Bittner's recommendation.

Thanks again!

Anonymous on Feb 20 2007, 13:49

There seems to be an issue missing in the court's discussion -- whether the officer's question re Brown's possession of "drugs" violated the 5th amendment self-incrimination clause.

The court framed the issues to include only whether the detention was lawful. Under Terry principles, and the court's stated rationale of the "need of the officers to protect themselves from attack while they are executing the warrant," the detention for that purpose, as well as the officer's question re weapons, seems justified.

It seems to me that the officer's question re drugs may have been an unlawful interrogation even if the seizure was lawful.

I am a recently-graduated prospective lawyer, so please excuse the probably shallow observation.

Anonymous on Feb 24 2007, 13:55

I have often had a judge acquit when it became clear (during the bench trial to preserve the appeal) that the denial of suppression motion was a mistake. One time I saw the Judge reading my brief in support of suppression during the trial (he was bored). He saw the issue and acquitted. Maybe not the correct way, but the right result in the end

Anonymous on Feb 26 2007, 19:55

Chuck- As my original posting states: "Hopefully he was Mirandized, but Brown is silent on that (Cotton v. State, 386 Md. 249, cert. denied, 126 S. Ct. 212 (2005) requires such Mirandizing for such a seizure)."

Anonymous on Feb 26 2007, 20:03

Most Virginia courts I've been in would have dismissed because the officer didn't bring the actual marijuana to court.

BTW: You could have had a jury trial for the marijuana charge. All it required is a guilty finding in GDC; then you could have appealed it to Circuit Court and demanded your 7 person jury. Even contempt findings (maxed at 10 days in Virginia GDC) can be appealed. It's an absolute right under Virginia law. I've represented people in Circuit Court for both.

Anonymous on Feb 27 2007, 16:06

Jon, I think a sugar packet is more like 4g of sugar (1 tsp). The pink and blue packets are a gram of artificial sweetener each, and they're much lighter than the sugar packets.

Anonymous on Mar 2 2007, 16:23

I believe you might be able to help a very good man, Mike Rodelli, to go public with his very compelling case for the questioning of a new suspect in the Zodiac Killer case. He has been working hard on his case for over 8 years, and has followed the letter of the law the whole way, as his "suspect" is a very powerful and wealthy businessman (possibly an attorney) who has threatened to sue him if he ever reveals his name publicly. Mike has not, but has not received any help from the SFPD because of the position of this man. Please visit his site www.mikerodelli.com for the details on the legal conundrum he's in, and see if there is anything you can do to help him go forward with his case, as this may mean a very sick serial killer could finally be caught after over 35 years of injustice.

Thanks.

Anonymous on Mar 11 2007, 01:03

Regarding the above Mike Rodelli-related comment, I am not the person to assist Mr. Rodelli's efforts to convince prosecutors to pursue a prosecution. I have never prosecuted and never will. Jon

Anonymous on Mar 11 2007, 07:53

The magnitude of this cannot be overstated. The attorney general has committed a felony.

Probably several actually.

Anonymous on Mar 16 2007, 12:03

Jon, this is nothing new here in Texas. Cross-examination of any witness is not limited to the scope of the direct.

I'm not sure Virginia is even a contender for "most oppressive criminal justice system" with Texas in the race.

Mark.

Anonymous on Mar 16 2007, 22:34

Prosecutors are at much less risk than criminal defense lawyers. It is typically the defense lawyer who is the bearer of bad news (the evidence, the offer) and who can become the outlet for frustration at the system, particularly when the punishments are way out of whack for the conduct.

While fear of personal harm is hardly on the defense lawyer's mind, it is yet another reason why it is so important to maintain good client relations by visiting clients regularly and treating them and their loved ones with honesty and respect.

Prosecutors typically face little fear of reprisal. Clients often have little interaction with the prosecutors. They may not even recognize them or know their names. And even if tempted, clients and their supporters are terrified that any violence towards the prosecutor -- or even any action that could be perceived as a threat -- would result in counter-violence and prosecution.

Iâ€™d guess lots more defense lawyers have been attacked than prosecutors.

Whatâ€™s really motivating this? Prosecutors, I've found, often want to be cops. They envy their power, their swagger, their freedom to mete "justice" on the streets. Having a gun will do little to protect them, particularly in court. Statistics will show just the opposite; pull a gun in any situation and you are much more likely to be injured or killed. But strapping on a gun will make them feel cool and tough.

Remember when a federal prosecutor was killed a few years ago on the eve of a gang trial, and John Ashcroft appeared on national television, his voice dripping with rage, explaining they would hunt down the killer and seek the death penalty?

Of course, it turned out that the killing - while tragic - was not the work of the gang members but that the prosecutor was killed in a robbery while seeking anonymous sex with a prostitute. Ashcroft never mentioned the incident again.

We have enough burdens as defense lawyers. More weapons in the courtroom, prosecutor feeling emboldened by a Glock hidden in their crotch, how can this help in the administration of justice?

Anonymous on Mar 30 2007, 12:43

so rent it.

Anonymous on Apr 6 2007, 16:19

Yeah really, it is worth the \$5. EXCELLENT flick.

Anonymous on Apr 6 2007, 17:42

I read this after the Stop the Drug War review came out; it's really funny and comprehensive. I gave it to my teenage son and think it's the only book he's read this year.

Anonymous on Apr 7 2007, 08:47

To Advocates for the Rights of Pro Se Litigants -

As someone who has dedicated 18 of his 26 years of paralegal experience assisting Pro Se Litigants with their litigation needs, I am a staunch supporter of the RIGHT TO SELF-REPRESENTATION. The Sixth Amendment to the U.S. Constitution has been interpreted to provide EVERY AMERICAN with a CONSTITUTIONAL RIGHT to self-representation, if they so choose. That right should be enjoyed without fear of harassment, injustice or judicial prejudice. Furthermore, no law, regulation, or policy should exist to abridge or surreptitiously extinguish that right.

In support of the foregoing ideals, I founded a nonprofit, nonpartisan organization called PEOPLE UNITED FOR LEGAL SYSTEM EQUALITY (PULSE). The mission of PULSE is to preserve the right to self-representation, prevent prejudice and abuse against Pro Se Litigants by the Legal System, and advocate for fair and meaningful reforms that will facilitate a more favorable experience for the self-represented. PULSE intends to accomplish its agenda through grassroots mobilization, community awareness and education, public policy intervention, and providing legal assistance to select, "high impact" cases beneficial to protecting and expanding the rights of all Pro Se Litigants.

For PULSE to be effective, an active network of like-minded and vocal supporters from every state in the union must be formed. To that end, I submit for your review our PLEDGE OF SOLIDARITY. It can be accessed online at <http://www.gopetition.com/online/11773.html> or emailed as an attachment (contact me at pulse-for-justice@earthlink.net). I hope you will sign it, and respectfully request that you kindly distribute it to everyone you know who believes in JUSTICE for the self-litigant.

Contrary to the view of many judges and lawyers, those who opt to litigate their own legal matters without the aid of an attorney are not SECOND-CLASS CITIZENS, deserving of contempt and prejudice. Instead, they are BRAVE AMERICANS with an inalienable right to have their legal cause adjudicated objectively and justly. For many, being a Pro Se Litigant can be a very difficult, time-consuming, and sometimes frightening endeavor; complicated by the pressures of earning a living, tending to a family, and coping with the other day-to-day responsibilities we all have. Those who attempt it should be revered, not scorned.

Pro Se Litigants have no less of a RIGHT TO DUE PROCESS under the U.S. Constitution as those individuals who utilize an attorney. In fact, nowhere in the Fifth or Fourteenth Amendments to the Constitution does it specify that the hiring of a lawyer is a prerequisite to exercising ones due process rights. Democracy dictates that we have the right to freely choose between self-representation and hiring an attorney to handle our legal matters without suffering humiliation, prejudice or penalization. After all, once the Legal System completes its adjudication of the subject claim, and the dust settles, the claimant and the respondent are the ones who must live with the results (good or bad), and not the judge, the lawyer or anyone else associated with the System.

LETâ€™S ORGANIZE AND MOBILIZE TO TAKE BACK OUR COURTS from those certain lawyers, judges and court administrators who, in the interest of protecting the profitable LAWYER MONOPOLY, perpetuate a hostile and often abusive litigation experience calculated to discourage self-representation and make us "consumer slaves" dependent on lawyers to secure justice. STAND UP AND BE COUNTED by signing the Pledge of Solidarity! The more signatures collected, the more credibility the courts, legislatures, and the media will attribute to PULSE, its efforts to expose the injustices suffered by Pro Se Litigants, and its demands for meaningful remedies and reforms.

THANK YOU VERY MUCH FOR YOUR SUPPORT!!!

JOSEPH L. DELGADO
Founder and Executive Director
PEOPLE UNITED FOR LEGAL SYSTEM EQUALITY (PULSE)

Anonymous on Apr 12 2007, 23:39

Mr. Delgado's foregoing comment does not seem designed to reply to this blog entry. Nevertheless, his comment raises important issues concerning people's rights to represent themselves in court. I have not dealt with the issue much myself, other than when two or three public defender clients decided they wanted to defend themselves, and when some political activist clients decided that two would be represented by counsel and two on their own. These cases were in Maryland, which has caselaw strongly protecting the rights of criminal litigants to represent themselves.

Anonymous on Apr 13 2007, 09:10

Jon -

Your post says that a recent court decision means that Virginia will no longer permit warrantless searches "incident to citation," but that some other states still permit the practice.

Can you comment on how *Knowles v. Iowa*, 525 U.S. 113 (1998) affects the notion of whether or not there is a search "incident to citation" exception to the warrant rule? I'm not an attorney, so I may have unknowingly missed some critical detail as I read the decision, but I think *Knowles* ruled that a search "incident to citation" was not a valid exception to the 4th Amendment's warrant rule in traffic citation cases.

Can you elaborate on which jurisdictions, and under what circumstances, a warrantless search "incident to citation" might still jive with the 4th Amendment and local laws?

Thanks Jon! And keep up the good work - both in the courtroom and on the blog!

Anonymous on Apr 26 2007, 02:49

Thanks, Steve, for your comment and for alerting me to the need to correct and clarify my summary of *Cross v. Com.* The summary has now been corrected above, and is reprinted below:

-In Virginia, unlike in some other states, the police are generally prohibited from arresting for any misdemeanor (Va. Code Â§ 18.2-388), which prevents a search incident to a non-arrestable misdemeanor. *Moore v. Commonwealth*, 272 Va. 717 (2006). Consequently, a search finding cocaine incident to an arrest for suspended driving was unlawful, because suspended driving is a non-arrestable misdemeanor, unless, as with all misdemeanors, the defendant refuses to give his or her name and address together with a promise to return to court. Consequently, it was necessary to suppress the cocaine seized incident to the decision to arrest the defendant for driving with a suspended license. *Cross v. Com.*, _ Va. _ (April 3, 2007).

As to *Knowles v. Iowa*, 525 U.S. 113 (1998) decision you mention -- to give Underdog readers a background -- a unanimous Supreme Court reversed the defendant's conviction where there was a search incident to citation. In *Knowles*, unlike in Virginia, the police had the option to arrest the defendant, in which case the Supreme Court would have permitted a search incident to arrest. However, the police decision to issue a citation precluded any search incident to the alleged law violation.

Thanks, again, for your excellent comment. Jon

Anonymous on Apr 26 2007, 07:18

Justice Scalia writes that the exclusionary rule is not needed to enforce the "knock and announce", 1983 actions will handle any violations.

He then writes two opinions, one makes the statute of limitations for 1983 very short (time runs from arrest) and *Scott v Harris* to make the 1983 suit almost impossible to win.

Defendants lose both the criminal and civil trials.

Anonymous on May 3 2007, 21:48

Jon -

I don't know whether or not you've seen Kirby Dick's documentary, "This Film Is Not Yet Rated," about the MPAA's movie-ratings system.

(Info from IMDB here: <http://www.imdb.com/title/tt0493459/>)

(Wikipedia entry here: http://en.wikipedia.org/wiki/This_Film_Is_Not_Yet_Rated)

Getting information about the MPAA's film rating system from "This Film Is Not Yet Rated" is a little like getting information about guns in American culture from Michael Moore's "Bowling for Columbine," but it still provides a very interesting look into what Dick alleges is the arbitrary decisions made by MPAA film raters, how the raters are unrepresentative of the average American parent-with-small-children, the raters' lack of expertise in child psychology, the way raters treat violent content worse than sexual content (and within sexual content, same-sex treated worse than opposite-sex content), the unnecessary secrecy involved with the rating system and how it is designed to protect both the ratings system itself as well as films produced by major studios (at the expense of independent films). I don't know anything about the MPAA's rating system other than what I've seen in the movie, so I can't tell you whether they provide an accurate or fair take on the MPAA's rating system. That said, I absolutely recommend the film as a great look at one opinion on the MPAA's rating system, even if I don't know enough to either endorse or condemn its content.

Anonymous on May 4 2007, 11:03

Jon - This *Thornton* case, fundamentally about searches of a vehicle incident to an occupant's arrest, reminds me of a question I've long had about vehicle searches. Legend has it that in certain cases, the trunk of a vehicle is a Constitutionally safer place for one's private items than is a car's passenger compartment. For instance, *New York v. Belton*, 453 U.S. 454 (1981), held that a search incident to arrest of a vehicle occupant could extend to the passenger compartment of the vehicle, but not the trunk. Another case, *Michigan v. Long*, 463 U.S. 1032 (1983), held that police may conduct the equivalent of a "Terry patdown" of the passenger compartment (not the trunk) if the police have reasonable suspicion to believe that weapons are in the car. (Quick question: are there any other cases in which a search of the passenger compartment would be Constitutionally justified, where under the same circumstances, a search of the trunk would not?) But suppose I drive a station wagon, or an SUV, or a hatchback, in which the "trunk" is not isolated from the passenger compartment? I also used to drive a motorcycle [Honda CBR600, image here:

<http://www.motorcycles.org/images/Honda-CBR600RR.jpg>], in which the only storage area on the bike was an extremely small compartment under the seat, big enough for only the owner's manual, which could only be accessed by removing the bike's seat. So my question is, for these vehicle types, do their various "trunk-like" storage areas count as a trunk when it comes to a protective patdown of the passenger compartment under Michigan v. Long? Or a search of the passenger compartment incident to the arrest of an occupant? Or in any other case where a search of the passenger compartment is Constitutionally justified, but a search of the trunk is not? Is the law unclear on these points? Thanks Jon!

Anonymous on May 4 2007, 17:50

Thanks for your very good comments to Underdog Blog, Steve, When the feeling moves you, please reveal your ID, either here or by private e-mail.

Check back the week of May 7 for a blog posting on the line between searching a passenger compartment versus the trunk incident to arrest.

Meanwhile, Thornton's green light for a passenger compartment search pursuant to a lawful arrest stems from the Supreme Court's Chimel case permitting a search of the area within the arrestee's lunge and grasp; Thornton says it's setting down a black-letter ruling so that police need not do in-depth Fourth Amendment analysis about where they may or may not search incident to arrest.

The Supreme Court in Thornton extended the lunge and grasp area search to the area (and beyond, to the car the defendant walks away from) that the arrestee would be able to lunge and grasp to IF not in handcuffs nor in police custody. Courts seem concerned that friends of the arrestee might lunge and grasp to obtain contraband even if the arrestee is unable to do so.

The Supreme Court's Carroll doctrine (Carroll v. U.S., 267 U.S. 132 (1925)) narrows the circumstances under which a warrant is needed to search a vehicle for probable cause, on the basis that a house does not go anywhere pending obtaining a search warrant, but the car can be driven away. Therefore, under Carroll, a dog's positive alert to drugs in a trunk would not require a search warrant under Supreme Court caselaw; however, some state courts might view their constitutions as providing more protection than that.

About driving a motorcycle or stationwagon: Under the Chimel lunge and grasp approach, arguably the police have freer reign to search the rear of the stationwagon but not the locked trunk of a sedan incident to arrest, because a locked trunk's contents are not within the lunge and grasp, but the wagon's contents and the motorcycle's contents are more accessible.

Have a great weekend. Jon

Anonymous on May 4 2007, 18:54

Jon, two questions: first, can you comment on how Glover v. Commonwealth compares to Michigan v. Long, 463 U.S. 1032 (1983), (where the U.S. Supreme Court upheld a "Terry"-style "frisk" of a car's passenger compartment but rendered no judgment on a subsequent search of the trunk), and how Virginia "passenger compartment weapons frisks" under Glover might differ from a similar frisk under Long? And the second question: does (and if it does, how does) the U.S. Supreme Court's ruling in Pennsylvania v. Labron, 518 U.S. 938 (1996) affect the Carroll doctrine's applicability to car trunks, and how does Labron differ from the Turner case you mention above? Thanks for your help, Jon! As many of us have noticed, the law is complex; but the help you give us readers in understanding the law does not go unappreciated.

Anonymous on May 11 2007, 15:56

I'm honored to be added!

Anonymous on May 23 2007, 06:52

Hi, Steve- Thanks for your thoughtful comment. Ordinarily, I prefer to keep my blog entries general, so I will pass on providing the detailed response sought in your comment. Have a great week. Jon

Anonymous on May 29 2007, 06:35

I will leave my public defender job in 2 weeks to "go it alone" as a solo. Many people repeat the "cash upfront" mantra, but a person told me the other day that if he followed this rule he'd be broke right now. He said he prefers being busy to being alone in his office so he takes cases for a few hundred down, hoping to get the rest later. He hopes to wean himself out of this practice and "graduate" to Foonberg's rule one day.

Is he making a mistake?

Anonymous on Jun 4 2007, 13:59

Hi David- All the best on your career transition.

Our law firm sticks closely to requiring that we not work on a negative balance. Taking part of a flat fee and never being paid the rest amounts to working on a negative balance. Setting a flat fee and learning that more should have been charged amounts to having been paid fully and is a learning experience for the next time setting fees.

In some circumstances -- most of them in the non-litigation area -- a lawyer can cleanly withdraw from a case once a negative balance is reached and not replenished upon request; under such circumstances, the lawyer more easily can provide a payment plan.

Criminal cases tend to move too quickly -- with judges in my jurisdiction ordinarily requiring a lawyer to stay in the case even when the client is behind on payments -- to give as much room for deferred payments.

For misdemeanors, I rarely give a payment plan. Exceptions include when I know the client or a friend or relative have a reliable funding source that will be focused on me; when I want to help someone out whether or not I will be paid my balance; or when I think the work merits low bono work and to risk not receiving all payments.

For major felonies, many people cannot afford a private lawyer without payment plans. For me to give a payment plan for major felonies, I consider whether I have a payment guarantee from a person with sufficient finances and whether the paying person receives a reliable and sufficient steady paycheck with which to pay me. I do not want collateral, because I do not want to take payment action against the collateral.

In general, though, I prefer a client to go to financing sources (e.g., credit cards, lenders, family, friends, and employers) rather than having our law firm be the financing source.

A possible alternative you can use to requiring all cash up front is to assure that, overall, you are receiving as much dollar or non-dollar value in return for the work you do. This is what justifies doing pro bono and low bono work, for instance, because of the value you are able to give to society and equal access to justice for taking such cases. There is also value in obtaining experience, being known around the courthouse as a quality lawyer, or in knowing there's a good chance the client will stay current with a payment plan.

We have avoided suing clients for funds owed for services rendered and for advancing client expenses. In any event, because we generally obtain cash up front, we have a very small universe of non-paying clients in the first place.

At least two colleagues have told me they take payment plans and sue clients when they stop paying. One colleague left me with the impression that he routinely sues. The other one said he hires a lawyer to sue only when he obtains a favorable outcome, including an acquittal, dismissal, inactivation of the prosecution, or probation before judgment. Another lawyer gave me an example of a house of worship involved in making very modest, yet reliably paid, monthly payments for a felony.

As I think Foonberg has written, I prefer to be focusing on my client, and not whether the client is behind on payments, nor whether we are covering our accounts receivables sufficiently to pay our staff, rent and other operating expenses.

For criminal case, unfortunately, it is not easy enough to refuse payment plans or a reduced fee with the knowledge that the indigent are required to receive paid indigent defense counsel. Many defendants who do not qualify for court-appointed counsel are still too poor to pay for qualified counsel, or else will suffer severe financial hardship to do so.

Consequently, I prefer erring on the side of billing a client too much rather than too little for my services, always leaving me free to refund any apparent overpayment by the time my client's case concludes. Similarly, with small exceptions, I prefer to let a potential client go to one of the legions of lawyers who take payment plans if the person is unable or unwilling to pay up front.

Take care. Jon
Anonymous on Jun 4 2007, 19:57

Great post. I've had the same experience as most of my clients loosen up and seem to like it if I drop a "f-bomb" or two. The challenge is to train myself to avoid saying it when something unexpected happens and I'm in the car with my ten year old though.

I interviewed for a federal public defender job in Wyoming once and they had a list of 3 rules on the wall. The last one, which said "no swearing," was crossed out and the receptionist told me they figured out you couldn't run a public defender's office with that rule, so they "repealed" it.

Also, in the book "Chasing Ghosts" he opens by forewarning that profanity just goes with combat. I guess there is something about going into combat or going into jail that makes swearing not only tolerable but even therapeutic.
Anonymous on Jun 22 2007, 16:56

Thanks dtarrell, for your comment. On the one hand, I don't look for four-letter words to replace a varied vocabulary. On the other hand, sometime nothing conveys my meaning like a choice four-letter word. Have a great week. Jon
Anonymous on Jun 24 2007, 21:36

Love your blog, and will link.

Beyond that . . .

Thanks for stopping by and commenting at my blog . . .

I always dreamed about eventually heading out to Wyoming for the trial lawyer's college and crawling into the skin. I worked for a short time for a guy in Maine who went, and found the experience invaluable . . .

Won't be trying any cases anytime soon, however, for reasons of which I am sure you're well aware . . .

I miss the MCDAAs listserv and all the good back 'n' forth . . .

I miss fighting the good fight, as well, but I guess I am being directed towards a new way to go about it . . .

Finally, I have learned Cheng Man Ching's 37-posture form, and practice it many times daily . . . good stuff, this tai chi . . .

Can't wait to get back to running and surfing, though . . .

Namaste, my friend . . .

July 1, 2007 10:44 AM
Delete

Anonymous on Jul 1 2007, 10:58

I think July 4th is an excellent day to remind folks of the Flex Your Rights organization (<http://www.flexyourrights.org/>). Many people and organizations, including the ones you mention, carry on the important work in support of civil liberties through both legislation and litigation. FYR takes a neglected, but equally important approach: teaching the laypeople among us (myself included) about our rights, what they mean, and how to exercise them. Especially today, it is important to note that these are the same rights that our Founders sought to preserve for us when they signed the Declaration of Independence over 230 years ago.

If anyone hasn't taken the time to view FYR's "BUSTED: A Citizen's Guide to Surviving Police Encounters" video (runs about 45 minutes), they should do so today, of all days. Jon, in fact, keeps a link to the YouTube version of this video in the margin of this blog. The address is <http://www.youtube.com/watch?v=yqMjMPIXzdA>

Anonymous on Jul 4 2007, 07:32

Thanks, Steve- Far be it from me intentionally to relegate Flex Your Rights to Professor and Mary Ann status ("The movie star, and the rest, here on 'Gilligan's Island'").

I re-recommend donating generously to *Flex Your Rights*, at <http://flexyourrights.org> .

Anonymous on Jul 4 2007, 08:52

Thanks, Shaman, for your message, and for linking to Underdog.

Everyone, I recommend reading OceanShaman's blog, at <http://www.oceanshaman.blogspot.com> . It is a one of a kind and very beneficial blog in many important respects.

Jon

Anonymous on Jul 5 2007, 12:11

just stopping by... and taking in the blogs.

Anonymous on Jul 7 2007, 03:09

Oceanshaman here. I now work for a company called Royal Plus, Inc. (see www.royalplus.com) as their Director of Human Resources, Collections, & Risk Management. In so doing, I am putting my legal education and training to work, but in a context where I am not practicing law . . .

Anonymous on Jul 9 2007, 12:38

Man, Jon, you are truly prolific . . . Where do you find the time?

I enjoy it, though. Keep it up . . .

Anonymous on Jul 13 2007, 23:00

Thanks for your message, Shaman-

Your blog also is very active and very unique, which are two of the reasons I link to it.

I post around one blog entry daily, and rarely less than that. Several of my blog entries are written days before they are published, in which case I program them to be uploaded to the Internet at a later date. This way, I can go days without writing a new blog entry, and still have new daily entries available to readers.

I tend to write my blog entries quickly, from a long list of topics that are the most important to me. One reason for my quickness in writing most of my blog entries is that many of the matters I discuss have been in my head for a long time. Also, instead of doing a detailed outline for my blog entries, I tend to assemble and open a few URL's with relevant information or linking for the blog entry, and to fit references to the URL one by one to the blog entry.

If I were not writing down my ideas on my blog, I'd be writing them down for myself anyway. My teachers have taught me to share my knowledge with other like-minded people, and not to squirrel away my knowledge and ideas

Have a great weekend. Jon

Anonymous on Jul 15 2007, 00:43

From the ESPN piece: "'Look, I'm a vegetarian for ethical purposes,' said Katz, the Maryland-based defense attorney. 'I don't want anyone misusing dogs. It's just that we should let the jury trial take its course and then make judgments when the jury is all done.'"

Couldn't have said it better myself.

Anonymous on Jul 22 2007, 14:39

Thanks, Steve- I address this issue further here: <http://markskatz.com/FederalDefense.htm> . Take care. Jon

Anonymous on Jul 22 2007, 20:04

I love how I always get a fresh perspective from you, Jon. I was flattered to hang out with you in western maryland, and I agree-- getting hung up on judges and company in such a scenic spot is to live a stymied life. Much wisdom in this "nature" attitude!! Also, camping would have been great,too. Your presence was very calming. I have learned alot about life from this experience-- my best

and maybe I'll bump into you at the Washington march on Sept. 15--- oreo
Anonymous on Jul 30 2007, 00:12

I'm not a lawyer, but I do have a high school diploma. In high school, I learned about logical fallacies. It's been a few years, but I'm pretty sure that to claim, "The defendant has previously committed a sex crime, so he must be guilty of the current sex crime charges as well," qualifies as a fallacy. Certainly, some will say that a rule like the one the Maryland court rejected would only allow evidence of past sex offense convictions to suggest a propensity for committing sex crimes, rather than as absolute proof of the defendant's guilt. But let's be realistic - if a jury hears, "He's done it before," the jury thinks, "He's done it again." Further, consider how such a rule would treat Genarlow Wilson, who, as a 17-year old college-bound high school football player with 3.2 GPA and a bright future, was convicted of aggravated child molestation for receiving consensual oral sex from a 15-year-old girl. (See <http://sports.espn.go.com/espn/eticket/story?page=Wilson> and <http://www.cnn.com/2007/US/06/11/teen.sex.case/index.html>) Should his consensual sexual experimentation in high school be evidence of guilt if he were indicted for another sex offense? And what about people who have been previously, but wrongfully, convicted of sex crimes they did not commit? Should we imprison these defendants because of the poor judgment of the decision-maker in their previous sex offense case? Make no mistake: sex crimes are heinous offenses, and we must do what we can to prevent them. But kudos to the Maryland court for rejecting this rule as the wrong way to accomplish that goal.

Anonymous on Aug 2 2007, 19:21

Thanks, Steve. Please get the word out to your friends to oppose legislation anywhere that lets in prior sex crimes evidence. Jon
Anonymous on Aug 3 2007, 06:53

Seeking peace, balance, and serenity regardless of conditions is a full-time job . . .
Anonymous on Aug 5 2007, 13:13

Thanks, shaman, for your feedback - I hope you have continued peace, balance and serenity, yourself, since arriving to pick up your son from the wilderness program. Jon
Anonymous on Aug 5 2007, 20:31

And what is to keep the prosecutor from just sending the officer down to file a warrant for assault and battery?

Other than not wanting to waste more time on this, of course.
Anonymous on Aug 10 2007, 08:45

Hi, Ken Lammers of CrimLaw blog - I very much hope you are far from Lammers the Hammer as a criminal defense lawyer-turned-prosecutor, and that you are spreading the gospel of justice, sensitivity, and caring to fellow prosecutors and to cops. I'd love to see you blog about how you deal with and feel about cops and civilian prosecution witnesses who try to urinate on the truth and justice.

Your comment is well put. Fortunately, during the interim between the dismissal of a criminal case, filing of any new substitute criminal charge, service of the new summons on the defendant, and the new trial date, the sides have a chance to consider whether a disposition other than guilt should be reached. Also, sometimes double jeopardy, speedy trial rights, or both come to the rescue. Take care. Jon

Anonymous on Aug 10 2007, 13:23

Great post, Jon. Thank you for this . . .
Anonymous on Aug 22 2007, 22:22

Hi, Shaman- Thanks, as always, for your feedback. I hope all goes well. Jon
Anonymous on Aug 23 2007, 19:36

Hi Jon...I'm glad you blogged about this ridiculous abuse of the 1st amendment by the d.c. mucky- mucks. A.n.s.w.e.r. certainly was in the right when they postered about the upcoming march. But yes, I think that the fine will be dropped upon the jurisdiction issue, and if not upon the pasting method argument. It seems to me, after reading the regulations, that a.n.s.w.e.r. used the proper adhesive, and complied with the weather- proof method. The water- based paste is certainly not damaging to the structure provided it is removed with the right solvent. Even clear tape(which is frequently used) can leave residue, but D.C. has allowed clear tape for years. It sounds to me that once again the city mucks are grasping at straws and a.n.s.w.e.r. will happily prevail. I look forward to the march, and I might even tape up a few signs too!!

Anonymous on Aug 25 2007, 16:57

Thanks, John, for your comment.

If Mayor Fenty does not want to come across as just another hack mayor, he'll be wise to personally push for strong demonstrator rights in the District of Columbia.
Anonymous on Aug 26 2007, 21:55

One misconception and one oversight.

Misconception: The Indians lived in peace and harmony before we arrived. Fact: A close study of history will reveal countless, nearly endless bloody conflicts between tribes.

Oversight: Nowhere, ever, does the "steet" side of "legal" crime enter the picture--of any discussion of crime, its components,

causes, and severities.

Anonymous on Sep 1 2007, 00:14

Also important to note: the Seminole Tribe of Florida supports Florida State University's use of the Seminole mascot and symbols as part of its athletics program and overall University identity. See this New York Times article, Florida State Can Keep Its Seminoles: <http://www.nytimes.com/2005/08/24/sports/24mascot.html>

Anonymous on Sep 4 2007, 01:08

Our current system is an "adversary system." It is the Government versus some "Human Being." Competition for ideas and the ability to express the defendant's story and to persuade either the prosecutor, the Judge, and/or the jury is fundamental. There is too much of a tendency for people to think our system is an "inquisitorial" system or that our system does not involve the expression of competing ideas. To defend a fellow human being against the power government, requires work to fully express that human being's story and to get out that and defend him or her as a zealous advocate and as I like to call myself --- a "warrior." While plea bargaining and compromising and negotiating skills are necessary, it is important to me to negotiate from a position of "strength." If you want some good asian philosophy recommendations, then read "The Art of War" by Sun Tzu.

Anonymous on Sep 11 2007, 22:45

Thanks, Glen, for your reply.

I do not think that your reply is inconsistent with my original posting.

Practicing t'ai chi as a martial art and in litigation can pack devastating damage. Ben Lo, who is quoted in my blog entry, was talking not about proceeding without strength, but about using our opponent's energy to our advantage, so as to conserve our own fighting energy as much as possible.

As one example of how devastating a fighter Ben can be, five years ago, I asked him to demonstrate how t'ai chi could be used to deflect a full-force punch to the face or abdomen. He had a student try to punch him; Ben responded by quickly grabbing the attacker's forearm in Ben's forearms, and turning Ben's body to enable him easily to severely injure the attacker, had Ben wanted. The attacker was put in such pain that he told me to volunteer next time I want Ben's demonstration.

For me, t'ai chi provides an important calming effect on me, for me to avoid any first instinct of yelling expletives at my opponent, which would be particularly ineffective in front of a judge or jury.

I know about Sun Tzu, and recommend reading him. However, I certainly don't like Sun Tzu's absence of apparent concern for the injustices of war. Thanks, again. Jon

Anonymous on Sep 11 2007, 22:58

Every time I hear a new development in the Senator Craig "scandal," I'm always amazed at how some police department actually assigned officers to patrol airport bathrooms to look for foot-tapping and stall divider-touching.

Anonymous on Sep 18 2007, 01:40

The Rumsfeld video is great. Great find.

Anonymous on Sep 19 2007, 12:45

Thanks, Steve, for your comment. If only the cops would keep their foot tapping observations to theater tapdance performances.

Anonymous on Sep 20 2007, 17:01

I disagree with the story about tasting strawberries. To me, it seems like the guy should be thinking about life. He should look for crevices in the rocks to grab onto and/or he should prepare to fight, fight, fight !!! A lawyer who is thinking about how good the strawberries are instead of how to win his case is not being a true warrior and not being the best advocate for his client. The art of advocacy is in some sense the art of war. Zen philosophy tends to cause the advocate to lose his incentive to fight the good battle. If you want to read good asian philosophy, take a look at "The Art of War by Sun Tzu. Under chapter one, "Laying Plans," Sun Tzu says:

"All warfare is based on deception. Hence, when able to attack, we must seem unable; when using our forces, we must seem inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near. Hold out baits to entice the enemy. Feign disorder, and crush him. If he is secure at all points, be prepared for him. If he is in superior strength, evade him. If your opponent is of choleric temper, seek to irritate him. Pretend to be weak, that he may grow arrogant. If he is taking his ease, give him no rest. If his forces are united, separate them. Attack him where he is unprepared, appear where you are not expected."

Yours in the Defense of Fellow Human Beings,

Glen R. Graham, Tulsa, Oklahoma

Anonymous on Sep 21 2007, 23:21

Jon,

"There is no instance of a country having benefited from prolonged warfare.

"It is only one who is thoroughly acquainted with the evils of war that can thoroughly understand the profitable way of carrying it on."

Anonymous on Sep 22 2007, 20:09

Dear Glen- It is curious that before you posted your comment to my blog, you posted the same comment to Mark Bennett's blog at

<http://www.bennettandbennett.com/blog/2007/09/anger-and-fear.html> and received replies there that generally pan your comment. I join with those commenters.

I also am left scratching my head why your comments addresses Zen, when my posting says nothing of Zen. Mark Bennett can call the two tiger story a Zen story all he wants, but I learned it as a story told by t'ai chi master Cheng Man Ch'ing, one of the most effective and devastating martial arts fighters I have ever known about.

You already promoted Sun Tzu in commenting on my September 5 blog entry. Based on my reply there, my reply here, and my view that the man and the two tigers approach does not preclude applying Sun Tzu's advice (and vice versa), I get the feeling that any discussion between you and me on the matter has been exhausted by now.

Anonymous on Sep 22 2007, 22:05

Thanks, Scott, for your message. The credit for finding this video link goes to my brother lawyer Marc Randazza. Thanks. Jon

Anonymous on Sep 22 2007, 22:22

I must respectfully decline the credit for uploading it. I merely found it and linked to it on my blog to compare Rumsfeld's behavior to Kerry's.

Nevertheless, I am honored to be thanked, and send back your good thoughts ten fold.

Anonymous on Sep 23 2007, 14:18

Thank you for your thoughts regarding the need to compensate foreign-language interpreters justly.

I recently started a legal blog

Translation for Lawyers to educate the legal community about the role of legal translators and court interpreters in the practice of law.

Posts like yours help raise awareness about the role of professional court interpreters.

Once court administrators start hearing and reading similar messages with greater frequency, they may arrive at the conclusion that the long-term benefits of having access to top-notch professional court interpreters far outweigh the short-term gains, brought on by their haisty cost-cutting measures.

Best regards,

Nina

<http://www.translationforlawyers.com>

<http://www.languagealliance.com>

Anonymous on Sep 26 2007, 17:56

Governing by force is the only kind of government there is. Every law in this country is ultimately backed up by men with guns.

The difference between our country and Burma is that they use force indiscriminately to serve the needs of the rulers and we (on a good day) use force to enforce laws for the good of the people.

Anonymous on Sep 28 2007, 10:54

Hi, Windy- Thanks for your posting.

<http://markskatz.com/justiceblog/archives/717-Why-do-we-have-criminal-laws.html> talks more about my feelings about overcontrolling governments. Take care. Jon

Anonymous on Sep 30 2007, 23:07

Looks like GW's student newspaper, the GW Hatchet, wrote about the case. It quotes GW Law Professor and 4th Amendment scholar Orin Kerr as saying, "I'm not sure the Court got it right..." The article can be found at

<http://media.www.gwhatchet.com/media/storage/paper332/news/2007/10/08/News/Former.Gw.Student.Fights.Drug.Charges-3017649.shtml>

Anonymous on Oct 8 2007, 10:06

I think that some police departments are too ready to use tasers thinking that it is okay because it is "non-deadly" force. However, it is extremely painful and some people go into heart attacks or suffer severe reactions to such tasing. Some police departments do not require the officer to shout I will taser you if you fail to comply. If the officer was required to give at least one warning before using the taser, I believe that most people would comply with the officers request. Some police departments actually authorize the use of a taser or pepper spray to enforce any officers request for compliance (even when arguably the use of force to gain compliance would not be proper). There are too few limitations on the use of tasers and officers are too ready to use it since it is considered "non-deadly force."

Anonymous on Oct 10 2007, 21:27

Thanks, Stever, for the update. When I was at GW Law School, the Hatchet's writing and editorial approach often struck me as unnecessarily sophomoric. I'm happy the newspaper got a comment from Orin Kerr on this story.

My favorite feature of the Hatchett was the Moonbaby comic strip, written and illustrated by Shawn Belshwender (sp?), who illustrates News of the Weird (at least in the Washington City Paper).

Anonymous on Oct 11 2007, 07:21

Hi, Glen- Thanks for your comment. This Wake Forest study will only embolden police departments to permit taser use, and cops to use tasers, unless and until enough people insist that their police stop doing so.

Anonymous on Oct 11 2007, 07:24

I use bluehost.com. I like them; cheap, lots of space and very professional. Not had any issues yet.

I use WordPress to blog. I think that is what b2 turned into. Love it.

Anonymous on Oct 16 2007, 20:39

Jon,

With respect to Second Amendment rights, I couldn't agree more. I am not a "gun nut." I don't even like the things. I might even be convinced to support a constitutional change to the Second Amendment (depending on what it was going to be changed to, etc.).

Nevertheless, you can not "worship at the altar of the First Amendment" (as we both do) without respecting the sanctity of the Second.

I hate what the NRA does. I hate the candidates they support, and I hate the fact that they seem to be interested in protecting the Second Amendment, but do not seem to care about what happens to the rest of the Constitution. Nevertheless, I joined the NRA not long after joining the ACLU.

You can't pick and choose your support for the Constitution. I like that you recognize that.

Anonymous on Oct 19 2007, 17:29

<http://oklahomacriminaldefense.blogspot.com/2006/08/oklahoma-youthful-offender-boot-camps.html>

I wrote about a similiar concept of the general public's positive perceptions of "prison boot camps" despite many problems with the same.

Like survival courses --- they are perceived as popular because the cost little money

They don't help the drug addict get treatment, and they don't help a person get the necessary job skills to get a good job. They don't teach you how to read. They don't address mental problems. They make the public feel good and cost little money and give the impression that some new program is going to "help" the inmate despite statistics showing otherwise.

The antiquated boot camp ideas came from southern states like Georgia, Alabama, Florida, Texas, Arkansas, Okalahoma, Mississippi. (Hint: racial over-tones)

"What we 'ave 'ere is a FAILURE TO CUMMINICATE !!!"

They make the meaner, meaner, and the tougher, tougher.

Boot camps were banned in Florida on June 1, 2005 through legislation signed by Florida Governor Jeb Bush after 14-year-old Martin Lee Anderson was murdered by drill instructors who forcibly inserted ammonia tablets into his nose. Anderson attended Bay County Boot Camp in Panama City, Florida. After the mid-1990s, the number of boot camps declined. By 2000, nearly one-third of State prison boot camps had closed--only 51 camps remained. (See: NIJ study below.) The average daily population in State boot camps also dropped more than 30 percent.

The National Institute of Justice conducted a 10 year long study of boot camps and their report dated 2003 is available at the web site: <http://www.ojp.usdoj.gov/nij> or: www.ncjrs.gov/pdffiles1/nij/197018.pdf

The National Institute of Justice (NIJ) sponsored an analysis of research conducted over a 10-year period beginning in the late 1980s. This analysis concluded that [See above link for the report dated (2003)] - it concluded: Mixed Results: Participants reported positive short-term changes in attitudes and behaviors; they also had better problem-solving and coping skills.

With few exceptions, these positive changes did not lead to reduced recidivism. NIJ evaluation studies consistently showed that boot camps did not reduce recidivism regardless of whether the camps were for adults or juveniles or whether they were first-generation programs with a heavy military emphasis or later programs with more emphasis on treatment.

In Canada and Europe many see US society as highly militarised for which the military style boot camps are just another example. After having shed a very militaristic past, Europeans tend to be quite wary of military influence in civil society. As well, the tactics employed in most boot camps are considered to infringe on the human rights of the affected and to be rather totalitarian. Therefore in Canada participation in boot camp programmes are voluntary, so as to avoid any challenges under the Canadian Charter of Rights and Freedoms under which treatment at boot camps could be seen as an infringement on a youth's right to not be subject to cruel and unusual punishment and to ensure security of person. Canada started a boot camp project for non-violent juveniles with subtle but distinct differences from the American models. The first one was opened in 1997 in Ontario. Unlike in the US system it is not possible to trade or shorten a jail sentence with a significantly shorter boot camp programme. Canadian boot camps do not have the time frame of 90 to 180 days and they are restricted to juveniles up to the age of 17 and not yet open for female offenders. The judges do not directly possess the authority to send a youth to a boot camp. They may impose a sentence of secure or open custody. The latter is defined as, "a community residential centre, group home, child care institution or forest or wilderness camp . . .". Once an open custody sentence is granted, a correctional official decides whether a sentence is served in a boot camp programme. But the ultimate decision rests with the young person and the decision is made purely on the merits of the programme because the time served remains the same.

The Canadian system is too young to show any comparable results but research has been done among US boot camps with different emphasises, e. g. more on drug treatment or education than solely on military drill. According to the findings treatment has a slightly positive impact on the reduction of recidivism over strict discipline.

However, altogether there are no research findings in favour of boot camps in light of any of the initial intentions. Recidivism rates in the US among former prison inmates and boot camp participants are roughly the same. Yet, the effects of boot camps are controversially disputed, some surveys claiming lower re-offence rates, others showing no change as compared to persons serving normal time. Surveys also show different results concerning the reduction of costs. Critics add, that the emphasis on authority can only result in frustration, resentment, anger, short temper, a low self-esteem and aggression rather than respect. According to a report in the New York Times there have been 30 known deaths of youths in US boot camps since 1980.

Anonymous on Oct 24 2007, 01:35

Thanks, Glen, for your message. The incarceration industry is highly profitable for those earning their paycheck from it and for corporations running private prisons and supplying publicly-owned incarceration facilities. That means plenty of people are going to oppose reforming the incarceration system on the basis of their income alone.

Anonymous on Oct 26 2007, 05:56

Thanks, Marc, for your comment. I'm happy to be a bird of a feather with you.

Anonymous on Oct 26 2007, 05:57

Thanks, Gideon. I continue to be on the lookout for sitehosts with redundant servers. Any sitehost can lose its connection for up to hours due to power outages, or due to the Internet hub they use, as opposed to any factors better within their control. Because our law firm's email addresses use our website domain root, any time our site is down, we cannot receive email sent to those e-addresses, either. I understand that redundant servers -- at least if connected to a different hub -- can greatly minimize such problems for sitehost customers. Have a great weekend. Jon

Redundant servers

Anonymous on Oct 26 2007, 06:02

This blog is right on time. There's been 16 "harvest fests" in new york state recently of which I've attended a few...Lots of opportunity to tell about the great underdog blog, and its amazing how many "festies" don't know the first thing about smokers rights...I try to light a candle.

"Dawn is breaking everywhere,light a candle curse the glare,draw the curtains, I don't care, cuz, its all right' -- grateful dead tune

Anonymous on Oct 30 2007, 11:30

Mr. Katz,

I was brought to your web site from your comments being included in the Google News comments system.

You have an unenviable task, working to maintain the rights of a group that most civil liberties supporters would not touch. The Westboro Baptist Church stands for nothing with which I would wish to be associated, but this case transcends that. Truly free speech means protecting everything, regardless of content. Here in this country, the extreme ends of the spectrum includes this vile kind of proselytizing or pornography, but elsewhere that can be the teachings of Buddhist monks and exposing the truth about a government's actions. True freedom requires equality and any righteousness we claim as a "free society" is founded in that equality. Your efforts better represent what America stands for than so much of what is done in the name of this country.

While I cannot wish your clients well, I appreciate your efforts on their behalf.

Anonymous on Nov 3 2007, 09:05

Jamie Spencer, over at Austin Criminal Defense Laywer, asked the same question:

<http://blog.austindefense.com/2007/11/articles/other-blogs/what-would-lawyers-do-wwld/>

Anonymous on Nov 7 2007, 02:01

You're familiar with the New York Court of Appeals decision?

<http://www.contra.org/lifestyles/naturist/topfree7.html>

Anonymous on Nov 9 2007, 02:29

Thanks, Pete, particularly seeing that I thought I had heard about the Santorelli case you list, but apparently used the wrong Lexis search phrases, which left me empty-handed.

The citation for the Santorelli case you list is *People v. Santorelli*, 80 N.Y.2d 875, 600 N.E.2d 232 (1992).

A Shepard's analysis of the case indicates that no courts outside New York have decided to follow Santorelli. Here are the results of my Shepard's search:

CITING DECISIONS (9 citing decisions)

NEW YORK SUPREME COURT APP. DIV.

3. Cited in Dissenting Opinion at:

Hernandez v. Robles, 26 A.D.3d 98, 805 N.Y.S.2d 354, 2005 N.Y. App. Div. LEXIS 13892, 2005 NY Slip Op 9436 (N.Y. App. Div. 1st Dep't 2005)

26 A.D.3d 98 p.145

805 N.Y.S.2d 354 p.390

2005 NY Slip Op 9436

OTHER NEW YORK DECISIONS

4. Cited by:

Seymour v. Holcomb, 7 Misc. 3d 530, 790 N.Y.S.2d 858, 2005 N.Y. Misc. LEXIS 313, 2005 NY Slip Op 25070 (2005) LexisNexis Headnotes HN1

7 Misc. 3d 530 p.534
790 N.Y.S.2d 858 p.863
2005 NY Slip Op 25070
2ND CIRCUIT - COURT OF APPEALS

5. Distinguished by:

Tunick v. Safir, 209 F.3d 67, 2000 U.S. App. LEXIS 5048 (2d Cir. N.Y. 2000) LexisNexis Headnotes HN2

209 F.3d 67 p.71
2ND CIRCUIT - U.S. DISTRICT COURTS

6. Cited by:

Galonsky v. Williams, 1997 U.S. Dist. LEXIS 19570 (S.D.N.Y. Dec. 9, 1997)

10TH CIRCUIT - U.S. DISTRICT COURTS

7. Cited by:

Moore v. Coffeyville, 1993 U.S. Dist. LEXIS 9705 (D. Kan. June 16, 1993)

ARIZONA COURT OF APPEALS

8. Cited by:

City of Tucson v. Wolfe, 185 Ariz. 563, 917 P.2d 706, 1995 Ariz. App. LEXIS 163, 195 Ariz. Adv. Rep. 54, 115 No. 33 Ariz. Bus. Gaz. 25 (Ariz. Ct. App. 1995)

185 Ariz. 563 p.566
917 P.2d 706 p.709
MASSACHUSETTS SUPREME JUDICIAL COURT

9. Cited in Dissenting Opinion at:

Cote-Whitacre v. Dep't of Pub. Health, 446 Mass. 350, 844 N.E.2d 623, 2006 Mass. LEXIS 110 (2006)

446 Mass. 350 p.411
844 N.E.2d 623 p.671

10. Cited by:

Commonwealth v. Arthur, 420 Mass. 535, 650 N.E.2d 787, 1995 Mass. LEXIS 281 (1995)

420 Mass. 535 p.540
650 N.E.2d 787 p.790
NEW JERSEY SUPERIOR COURT, APPELLATE DIVISION

11. Distinguished by:

State v. Vogt, 341 N.J. Super. 407, 775 A.2d 551, 2001 N.J. Super. LEXIS 262 (App.Div. 2001)

341 N.J. Super. 407 p.419
775 A.2d 551 p.558
ANNOTATED STATUTES (6 Citing Statutes)

12. NY CLS Const Art I, @ 8

13. NY CLS Const Art I, @ 11

14. NY CLS CPL @ 470.35

15. NY CLS PRHPL @ 27.01

16. NY CLS PRHPL @ 27.03

17. NY CLS Penal @ 245.01

LAW REVIEWS AND PERIODICALS (14 Citing References)

18. STATE CONSTITUTIONAL COMMENTARY: HIGH COURT STUDY: NEW YORK'S COURT OF APPEALS: VITO J. TITONE: STALWART OR CURMUDGEON?, 59 Alb. L. Rev. 1803 (1996)

59 Alb. L. Rev. 1803 p.1803

19. Article: Introduction: Professionalism in the Balance?, 49 Ark. L. Rev. 671 (1997)

20. NOTE/COMMENT: NAKED BEFORE THE LAW: REALITY PORN AND THE CAPACITY TO CONTRACT, 11 Cardozo Women's L.J. 353 (2005)

21. ARTICLE: The Bona Fide Body: Title VII's Last Bastion of Intentional Sex Discrimination +, 12 Colum. J. Gender & L. 77 (2003)

22. WOMEN'S BODY IMAGE AND THE LAW, 43 Duke L.J. 113 (1993)

23. ARTICLE: MORAL NUISANCES, 50 Emory L.J. 265 (2001)

50 Emory L.J. 265 p.265

24. ESSAY: A Short Essay on the Baring of Breasts, 23 Harv. Women's L.J. 219 (2000)

25. ARTICLE: THE CASE FOR LEGAL RECOGNITION OF SAME-SEX MARRIAGE, 8 J.L. & Pol'y 61 (1999)

26. ARTICLE: FREEDOM OF DRESS: STATE AND PRIVATE REGULATION OF CLOTHING, HAIRSTYLE, JEWELRY, MAKEUP, TATTOOS, AND PIERCING, 66 Md. L. Rev. 11 (2006)

66 Md. L. Rev. 11 p.11

27. ARTICLE: NEW YORK'S CHIEF JUDGE KAYE: HER SEPARATE OPINIONS BODE WELL FOR RENEWED STATE CONSTITUTIONALISM AT THE COURT OF APPEALS, 67 Temp. L. Rev. 1163 (1994)

28. ARTICLE: FORBIDDING FEMALE TOPLESSNESS: WHY "REAL DIFFERENCE" JURISPRUDENCE LACKS "SUPPORT" AND WHAT CAN BE DONE ABOUT IT, 36 U. Tol. L. Rev. 273 (2005)

36 U. Tol. L. Rev. 273 p.273

29. ARTICLE: RES IPSA LOQUITUR (HUMOR) OGLING RECENT BARE BREAST CASES: PROHIBITIONS IN SEARCH OF A RATIONALE?, 23 Westchester B. J. 65 (1996)

30. ARTICLE: NONVERBAL COMMUNICATION AND THE FREEDOM OF "SPEECH"., 1993 Wis. L. Rev. 1525 (1993)

1993 Wis. L. Rev. 1525 p.1585

31. NOTES: Stereotyping and Difference: Planned Parenthood v. Casey and the Future of Sex Discrimination Law., 104 Yale L.J. 1875 (1995)

ALR ANNOTATIONS (1 Citing Annotation)

32. Regulation of exposure of female, but not male, breasts, 67 A.L.R.5th 431, secs. 2(b), 4(a), 12(a), 12(b)

TREATISE CITATIONS (2 Citing Sources)

33. 1-2 NY CLS Desk Ed. Gilbert's Criminal Practice Annual @ 245.01

34. 7-77 New York Criminal Practice @ 77.09

Anonymous on Nov 9 2007, 05:42

Thanks, Steve, as always for your comments. I learned after posting my blog entry that numerous other people have been using the Henry VI reference concerning Musharraf's suppression of lawyers and judges in Pakistan. Thanks for letting me know that Jamie and I have overlapped questions about what motivates so many Pakistani lawyers to risk arrest by demonstrating against Musharraf's repression.

Anonymous on Nov 9 2007, 05:59

Thanks, Jared, for taking the time to write, and for your support of the First Amendment.

In the midst of huge numbers of people cheering this verdict, I am happy that many others are voicing their opinion that the First Amendment gets damaged by permitting this verdict to stand. Thanks. Jon

Anonymous on Nov 9 2007, 06:03

Hi, John- Thanks for this and all of your comments, and for spreading the word about our blog.

Curiously, when I was in high school, marijuana smoking was so commonplace that some people seemed uncomfortable when I was unwilling to share pot with them (my concerns went beyond the extent to which I was willing to break the law to smoke pot, to concerns about purity of the product (during high school, I think most of the stuff was imported) and any violence used by the importers and distributors to get the product to market.

My view then was, and remains, for people to do their own thing. However, some people get very uncomfortable smoking pot or drinking alcohol when in the company of sober people who simply believe in letting people do their own thing.

Anonymous on Nov 9 2007, 06:10

That was when the New York Court of Appeals, with then Chief Judge Sol Wachtler, was at the height of its independence.

Unfortunately, the potential of Santorelli has never been met in New York, much to Herald Price Fahringer's dismay.

Anonymous on Nov 9 2007, 12:47

Thanks, Scott- What would it take for Santorelli to reach its potential short of the return of Chief Judge Wachtler? Have a great weekend. Jon

Anonymous on Nov 9 2007, 17:47

After Judge Wachtler fell from grace, the New York Court of Appeals abandoned its independent constitutional jurisprudence and fell in line with the increasingly conservative federal courts. The more expansive state constitutional protections began to simply fade away and New York gradually fell into line, as when it adopted the rule of Whren (one of the worst decisions ever).

There was a time when New York was a leader in constitutional jurisprudence, refusing to be told what its Constitution means. Alas, those days are nothing but a fond memory.

Anonymous on Nov 10 2007, 05:47

Florida is indeed the state that has a few sex offenders living under a bridge:
<http://www.cnn.com/2007/LAW/04/05/bridge.sex.offenders/index.html>
Anonymous on Nov 27 2007, 23:41

Thanks, Steve, as always, for your comments. Have a great rest of the week. Jon
Anonymous on Nov 28 2007, 05:40

Ah, ha ha ha!! Hilarious..I can see Hon. Restaino struttin' around his court like a manic peacock: " O. K. you people, wanna bug me--
mer all goin to jail!"....I'm glad for the commission on judicial conduct, hope he learns his lesson!
Anonymous on Dec 5 2007, 19:24

Jon, you've got great eyes regarding the creative brochure my team at LexisNexis created--and you extended the problem usefully:
What do we do to make our questions, exhibits, witnesses, have more Velcro power in a juror's multi-tasking mind? When a juror's
mind run at 400-600 words per minutes, and we are speaking to them at about 180, there 's a LOT OF ROOM for thinking about food,
anxieties, whose picking up the kids, medical appointments, the pain of sitting, bathroom breaks, and gift-buying dilemmas.

I've got a new article, scheduled for Spring 2008, coming out in the ABA mag CRIMINAL JUSTICE, entitled "Juiced jurors: Why some
trial jurors are not competent to do the job" that puts additional concerns about juror LISTENING on the table. On the day when sports
is about to learn which baseball heros have been JUICED, I raise the issue of, "How many medications are your jurors on?"
[Complete list of meds, effects, conditions for which they are taken and what motions to file to find out in PRACTICAL JURY
DYNAMICS2.]
Anonymous on Dec 13 2007, 12:01

Lorien has appealed to the Ohio Supreme Court. The docket, complete with the briefs that have been filed, is at
<http://tinyurl.com/27kh2t> .

Of course, the odds are pretty small that they will take the case.
Anonymous on Dec 13 2007, 17:26

Thanks, Maxtlatl, for your excellent update. Jon
Anonymous on Dec 13 2007, 18:08

Thanks, SunWolf, for your feedback.

I, myself, once was on a mock jury. I was exhausted from lack of sleep. I did not want to zone out; the mock trial lawyers were people
I cared about. Still my exhaustion interfered. This was just a three or four hour exercise. Imagine what happens with jurors serving
multiple days.

Thanks, again, SunWolf. Jon
Anonymous on Dec 13 2007, 18:11

Hi, John- Your comments always liven up this blog with your insights and humor. I hope all is well. Jon
Anonymous on Dec 13 2007, 18:21

Although Ned Beatty reminds me of an attorney I once knew, I find his character, Arthur Jensen, fascinating yet chilling. I agree, a
government should be answerable, but when I hear of stuff like biometrics, I'm reminded of Big Brother, cointelpro, and civil rights
abuse. In the 60's , William Sheldon, a psychologist, took 4000 nude photos of Yale students and attempted to profile them on their
body types-only later to be debunked. The F.B.I.'s biometric program is a fancy version of that, which I believe should be debunked
and discredited too. It is up to a people to hold their lawmakers accountable, and demand an end to this racial profiling. We can make
a difference!
Anonymous on Dec 26 2007, 21:11

This was excellent and inspiring . . .

Thank you . . .

May your every day be a holy day . . .

Every moment a holy moment . . .

Namaste
Anonymous on Dec 29 2007, 09:56

Hi, Shaman- Thanks for your encouraging words.

1995 was the first time I saw Ben Lo present a lengthier video of his teacher Cheng Man Ching doing t'ai chi. It was amazing. Then
came YouTube versions of Cheng Man Ching and other Chinese boxing masters.

To order DVD's and books by and featuring Professor Cheng, check out some of the following:

- Two films made by Professor Cheng (I don't know if it's on VHS or DVD): <http://scheele.org/lee/cmvideo.html> .

- DVD of Professor Cheng doing t'ai chi and sword:
<http://softanswertaiichi.com/cmc-tai-chi-form/cmc-37-form-postures-tutorial-dvd.html> .

- Wuwei T'ai Chi's site has a great list of Professor Cheng's material: http://www.wuweitaichi.com/book_video.htm .

Have a great week. Jon
Anonymous on Jan 1 2008, 19:58

Thanks, John, for your comment. As you say, we must all make our lawmakers accountable. Have a great week. Jon
Anonymous on Jan 1 2008, 21:05

I think it's wonderful that you've been added to Super Lawyers. No matter what anyone says.
Anonymous on Jan 3 2008, 16:18

Scott- I see you are Martindale-Hubbell AV-rated. How do you feel about having that rating, as opposed to asking M-H to remove your listing (which you're entitled to do)?

Interestingly, even though M-H seems much more rigorous than Super Lawyers in listing lawyers (and even has three different rankings), I still see plenty of lawyers with BV ratings who probably outshine plenty of AV-rated lawyers.

M-H started me off with a BV rating, and I contacted them awhile afterwards suggesting reconsideration for an AV rating. I don't know if it was mere coincidence that I received the AV rating within around five to six months. If it's not a mere coincidence, then M-H is listening quite a bit to rated lawyers' views on their own ratings.

Although M-H sells its directories to any purchaser, it would seem, particularly since M-H is available online for free, that M-H's main income comes from lawyers paying for detailed listings in the directory, and from AV-rated lawyers (like our firm) paying to be in its Bar Register of pre-eminent lawyers (why are they pre-eminent if they have to pay for the distinction?).

Have a great weekend. Jon
Anonymous on Jan 4 2008, 12:09

I highly recommend Robert A. Caro's "Master of the Senate," the most recent in Caro's series, "The Years of Lyndon Johnson." Caro is a master storyteller who can turn the driest of parliamentary procedures into a riveting battle in which LBJ's future, civil rights for southern blacks, and all of America's future, are at stake. Caro's book uses LBJ's time in the Senate to illustrate broader points about the accumulation and the exercise of political power. Fantastic book, and I recommend it along with rest of the 3-volume "Years of Lyndon Johnson" series.
Anonymous on Jan 6 2008, 14:55

Congratulations! You are in Blawg Review #142

http://susancartierliebel.typepad.com/build_a_solo_practice/2008/01/blawg-review-14.html
Anonymous on Jan 14 2008, 11:20

Get ready to make one yourself...It's a pain but I have a few I have made over the years using the OPML that blogrolling use to supply...

Looks like you have some blogroll in place so you must have fixed it eh?
Anonymous on Feb 9 2008, 09:25

Thanks, ZuDfunck, for your comment. I visited your website and blogroll. What software do you use for your current blogroll; is it self-contained in your blog software?

I'm happy to have you as an Underdog reader. How did you bump into our blog? Jon
Anonymous on Feb 10 2008, 03:50

Too fearful to reveal my name because of the backwards nature of U.S. drug policy. (The land of the free . . . Free what?) The Amy Winehouse situation makes us look like a nation of ignorants.
Anonymous on Feb 10 2008, 18:04

Uh, Jon, did you happen to read Randazza's Terms and Conditions page?

<http://randazzacontact.wordpress.com/>

I didn't read the whole thing, but I'm a little afraid think that by visiting his blog I may have given him naming rights to my first-born child...
Anonymous on Feb 11 2008, 08:35

Hi, WindyPundit- Thanks for alerting me to Marc's Terms & Cond's. I didn't read them before, and I do disagree with how restrictive and formal they sound. Marc's firm includes representation of online companies, so he may be coming at it from that angle, but I still disagree.

Marc is ever the joker, and I enjoy how his terms and conditions prohibit use of material from the site by those from

Liberty/Regent/Ava Maria Universities; KKK and nazi members; Scott Bergthold (an anti-adult entertainment crusader <http://www.adultbusinesslaw.com>); and several other categories of folks for whom he is not fond.

Have a great week. Jon
Anonymous on Feb 11 2008, 09:49

Windy,

I don't think that you have to give me your child... the terms are rather soft.

Naturally, they are full of necessary legalese, but the bottom line is that they are there to show how to resolve disputes that you may have with my blawg, how to resolve copyright or defamation claims, etc.

I'd say that you should have an attorney take a look at your terms of use. They would benefit from being significantly beefed up.

For starters, you might not want to confess to trademark and copyright infringement in your introductory paragraph. :)

-MJR
Anonymous on Feb 11 2008, 10:00

Thanks, anonymous, for your reply. It is my honor to reveal my name loudly and clearly when standing up for sensible legal reform, knowing that some stay anonymous out of not being paranoid at all that sometimes there is backlash for doing otherwise. Have a great week. Jon
Anonymous on Feb 11 2008, 12:53

TouchÃ©.
Anonymous on Feb 11 2008, 15:36

If not illegal aliens, then what would your preferred term be?

Alien is the term applied to all citizens of another country who live in the United States. Illegal alien is logically the term applied to people who are living here illegally.

Undocumented worker is a term that I've often heard, but this term obfuscates the reality which is that the person in question resides in the country illegally. Undocumented carries with it the connotation of a paperwork error that could be corrected, rather than a legal determination of whether a person is entitled to live and work in the US.

Note, I'm not defending our immigration laws. They are confusing at best, do not display the virtue of mercy (making them in my mind unjust as justice must always make allowance for mercy in order for justice to remain just - hence the need for judicial discretion), and admit far too few people.

Your thoughts?
Anonymous on Feb 13 2008, 07:27

Thanks, Adrian, for commenting.

The best I can answer your question is with my earlier posting on the topic at <http://markskatz.com/justiceblog/archives/486-People-are-humans,-not-aliens..html> . Ciao for now. Jon
Anonymous on Feb 13 2008, 18:09

Great post Jon.
Anonymous on Feb 17 2008, 01:04

The loss of one man is a loss for all men. Save one man and you save the world one person at a time. My sympathies for the families and friends of those who lost their lives so needlessly.

We are left asking ourselves if this man understood the nature and quality of what he was doing or if he had the ability to distinguish right from wrong.

The hope is that a psychological autopsy would be performed and perhaps some psychological insight would be uncovered.

Ariel Troncoso
Anonymous on Feb 22 2008, 18:02

Good "scanner" article, although it could've been broken up into 3 articles very easily. Keep up the good work. Would love to see more.
Anonymous on Feb 23 2008, 09:46

If I'm reading this stuff right, it wasn't the site's host that carried out the Judge's order, it was the company that managed the domain name. The hosting service for Wikileaks is a company called PRQ, and they're located in Sweden, so I don't think they have to obey a U.S. judge. I try to explain the technology a bit here:

http://www.windypundit.com/archives/2008/02/the_difference_between_a_websi.html

Anonymous on Feb 24 2008, 21:48

An updated version of the docket, with links to documents is available from Justia:

http://dockets.justia.com/docket/court-candce/case_no-3:2008cv00824/case_id-200125/
Anonymous on Feb 25 2008, 04:00

My brother, motorcycles are not as dangerous as you may think. Certainly they are more dangerous than cars. However, I have found that the joy far outweighs the risks.

If you get the itch, do take the safety course. And, never forget that everyone in a car is trying to kill you. Naturally, they are not, but if you ride with that attitude, you'll be safe.

I have loved returning to a two-wheeled existence. My motorcycle gets me through traffic faster, reduces my carbon footprint (45 mpg) and allows me to spend just that much more time smelling my surroundings on the way to work.

Well, if you decide to ride... definitely feel free to call on me for any advice.

Anonymous on Feb 25 2008, 17:30

Let us always remember what Zippy himself would have said, "let us not besmirch the legend of engelbert humperdink!"

Anonymous on Mar 10 2008, 10:57

Re your statement, "Curiously, Zappa's testimony indicates no opposition to a government requirement to reveal music lyrics in printed form, so long as they could be on a separate sheet (e.g., so as not to take away from the album/CD cover art and design) possibly printed at government expense." Yes. People who own lyrics and other such copyrighted material should not be forced to publish just as MacDonalds should not be forced to make hamburgers free. The idea was that the lyrics could be available (and curiously, most of FZ's are printed on his actual albums) in record stores at the government's expense if necessary, but certainly, the copyright owners should be paid for the publishing. I would also like to point out some of the other points you missed as to the reasons why the wives were listed - being members, unlike their husbands (who, not curiously, were on the Senate committee charged with hearing the bill for the special blank tape tax - eventually passed for the special benefit of the private industry known as Record Companies and brought to you by the U.S. government), of the PMRC for one.

Anonymous on Mar 12 2008, 23:56

refusing to voluntarily surrender your rights opens you up to harassment by an organization of well-armed men with a history of steroid abuse. on the other hand, if you make an obsequious show of compliance when the man demands you stand out on your porch in the cold dead of night in your underwear, you are much less likely to be targeted again in the future.

this has worked well for me in the past, so I don't see how the voluntary surrender of rights is anything other than rational

fighting for justice is a life's work. some of us would rather do other things with our lives, so are willing to sacrifice justice

Anonymous on Mar 24 2008, 06:23

Thanks, frijoles junior (which sounds like Spanglish for "junior beans") for posting your comment, with which I strongly disagree.

Anytime the cops force somebody to stand outside in their underwear sounds like a good basis for a civil rights lawsuit against the cops, and grounds for the offending cops to be fired. It sounds like too infrequent an occurrence for such a scenario to defer a person to assert his or her rights to refuse searches and to remain silent.

The first scene of the Busted video <http://www.youtube.com/watch?v=yqMjMPIXzdA> shows how asserting one's constitutional rights actually can tend to make cops go elsewhere in search of suspects who are more easy targets for giving up their rights to remain silent and to refuse to consent to searches.

No matter how unpleasant may be harassing-feeling encounters with cops, that pales in comparison to getting convicted after hearing a judge rule that the defendant has no right to suppress his or her statements or any searches, upon a finding that both were consensual.

Those, like you, willing to sacrifice justice, get the injustice they deserve. I hope that the rest of us will rally to an opposite path than your waiving your Constitutional rights.

Jon Katz

Anonymous on Mar 24 2008, 07:22

I once had a lawyer tell me that one day he estimated how many times he'd given the advice to refuse to speak with the police until you first speak with your attorney - close to 10,000 times since he'd began practicing criminal law.

While the title of your post suggests that you're "only" at 1000, I'm glad to see you're making an effort to catch up with him!

Anonymous on Mar 24 2008, 15:53

I love the FlexYourRights folks for doing what they do, but knowing your rights is not enough. The real trick is to exercise them when it counts.

I've sure been reading about, and blogging about, these kinds of issues for a long time, so I think I know my rights. But could I assert them in the face of a high-pressure police encounter? I'd like to think so, but so many people don't. Even expert police interrogators, when investigated by their own department, will crumble under the pressure.

How does a person learn these things so that they get them right the first time they ever try?
Anonymous on Mar 24 2008, 16:41

Thanks, Steve, for your comment, and for the humor attached to it. Clearly, the only way sufficiently to spread the word about people's rights to remain silent and to decline searches is for as many people as possible to spread the word.

It's as simple as starting by spreading the Busted video's URL <http://www.youtube.com/watch?v=yqMjMPiXzdA> and URLs and printouts to such well-done rights lists as ours <http://markskatz.com/TOP10.pdf> , plus talking to people one-on-one and in groups. It's a good message for t-shirts and bumper stickers, too.

The 1000 reference in my blog title only refers to my non-clients. Will you join me in this message-spreading crusade?
Anonymous on Mar 24 2008, 17:40

Thanks, WP, as always, for your comments. FYR's Busted video is an important starting point to building the practical confidence to decline police searches and interviews.

I think that Busted, though, involves too much chat by the suspects. I think it's better to go into a Gandhian state of peaceful-passive resistance where silence and "no" are mantras to help spread calmness and confidence throughout one's being each time the silence and no are intoned. For instance, nowhere is it written that when stopped for speeding or at a field sobriety checkpoint that you need to reply in any way to the officer's "how are you" other than with silence.

An acquaintance with little experience with cops successfully followed the Busted roadmap. If he could do it, so can you, and everyone else.
Anonymous on Mar 24 2008, 18:16

Please keep up the great work. I'd love to see this thing take off to the extent that it freezes the system. Add in jury nullification and we have the tools to take this thing apart - to smash it apart. I've often wondered what would happen if some sort of strike were successfully called in which nobody pled guilty and everyone demanded a jury trial. Wouldn't we have them by their little stormtrooper cajones then?
Anonymous on Mar 25 2008, 00:13

Excellent!! I'd rather be ambiguous than perfectly clear and incarcerated! I've personally experienced(or seen) all of the above examples of coercion. One time in a Bridgeport ct. jail, I heard the night jailer threaten to leave a prisoner in the cold outside pre-entry.(This was in January). On a positive note, I have seen suspects hold out for days till the lawyer arrived (I disagree with paragraph #6!!) Usually they were older and legally wiser. Thanks for the discussion of miranda rights, Jon --it does take a bit of ghandi, or intestinal fortitude, to demand your rights in the worst conditions. I salute and respect those who kept quiet and stayed tough!!
Anonymous on Mar 30 2008, 03:52

We have to remember we have young girls to raise in this country! There are alot of yong girls who have bad family lives adn run away and get pimped out by men. We can not forget about that, so with "money" we think this is going to bring in we should be working very hard on fixing that problem! No wonder this country is the way it is. The STD and Aids % compared to other countries is crazy! Get it together people! What are we gonna legalize heroin because alot of people do it and we can make money off of it! Please give me a break!
Anonymous on Apr 1 2008, 09:20

Wow, I love the way your mind works. I too am very interested in the issues of the Native Americans. Terribly unfair.

It does mean, though, that I have not yet identified any type of client or type of crime that I would not defend to the hilt,

And, this, among other statements.

Thanks for sharing.

Anonymous on Apr 4 2008, 16:49

I did a factory case where they claimed "plain smell." I was going to challenge that aspect, but thought better when the brought 200 pounds into the courtroom.

The smell was overwhelming.

Anonymous on Apr 9 2008, 19:14

Fantastic post, Jon. Better than mine on the story.

I disagree with only one statement. Fortunately, China's human rights situation is not as bad as Nazi Germany's..

I'm willing to be corrected, but it seems to me that far more people have died and been enslaved by China than nazi Germany.

Although I like the theory of China's "one child" policy, forced abortions seem to be beyond even what the nazis could think up. Dissenters are whisked away to Chinese gulags. Victims of the Chinese "justice system" are executed, and their families are billed for the bullet used to kill their family member. Torture is common place in Chinese prison camps, and genocide is a national policy. And so on and so on.

I honestly believe that China is the most terrifying regime in all of modern history. I will agree that North Korea and perhaps Burma

are worse. But, the scale and volume of Chinese atrocities coupled with the fact that they've managed to wrap their tentacles around the world's testicles makes me far more concerned about China than I would be about Germany, even if they raised Hitler from the dead.

Anonymous on Apr 17 2008, 08:19

Thanks, Scott, for your comment. Most unburnt marijuana cases involve less marijuana than in your case, in which case I think it's important to read Dr. Doty's article http://www.norml.org/pdf_files/brief_bank/marijuanaodorstudy.pdf, and to look into retaining the services of an expert of his ability level.

Anonymous on Apr 21 2008, 08:42

Thanks, Marc, for your comments. Fortunately the torch relay protests are bringing China's abysmal human rights situation to the attention of more people. One of the most effective ways to vote against China's human rights violations is to buy fewer goods made in China. Unfortunately, such a boycott will also harm plenty of innocent Chinese people. Jon

Anonymous on Apr 21 2008, 08:46

Thanks, John, for your comment. Silence remains golden. Jon

Anonymous on Apr 21 2008, 08:49

Currently, I have been reading and using, "Relentless Criminal Cross Examination" by Kevin J. Mahoney, (2008 - James Publishing). Mr. Mahoney, gives actual examples which you can use to cross-examine the witness relentlessly. He offices in Cambridge, Massachusetts, and has won 36 of his last 38 trials according to his bio. I also, absolutely cannot praise enough, Mr. John A. Tarantino, ideas about cross-examination is the few books of his that I own (wish I had more of them) --- I have his "Defending Drunk Drivers" series (James Publishing) and I have his "Litigating Neck and Back Injuries" book (James Publishing). I have used Mr. Tarantino's ideas repeatedly since I got his first book about 1992. His ideas about cross examining the arresting officer has come in handy for me. I owe a lot to other people's ideas. Thanks for all the ideas including you Mr. Jon Katz --- outstanding.

Yours in the Law & For the Defense,

Glen R. Graham, Attorney, Tulsa, Oklahoma
<http://www.oklahomacriminaldefense.blogspot.com>

Anonymous on Apr 21 2008, 21:01

Happy Birthday, Underdog, and congratulations Jon.

Anonymous on Apr 21 2008, 21:13

Are undocumented parents liable to deportation procedures if found guilty for truancy charges against their children in the public school system in Maryland?

Anonymous on Apr 24 2008, 09:58

Many factors need to be considered about the extent to which various convictions will create immigration problems, and are beyond the scope of my doing so here. That question is properly answered by consultation with a qualified immigration lawyer. As you might imagine, such prosecutions do not seem common, and I have not needed to look up your question yet. Jon

Anonymous on Apr 25 2008, 07:14

I've already said everything I need to say about the prosecution of Ms. Palfrey.

As for the journalism, it sounds like the reporter needed to get original material for the story, but he couldn't get an interview with anyone closer to the case. I don't know if that's inauthentic, but it's a sign of desperation. The next step would have been man-on-the-street interviews.

The walking-away bit sounds like the cameraman was getting a bit of B-roll, which is filler used to patch together the video portion of the segment while people talk over it. I'm sure the video editor insists on it. Without B-roll to cut with, the edited segment won't have smooth transitions between scenes.

Anonymous on May 2 2008, 17:20

Right on, Jon!

Just one point I'd emphasize: Anyone who is concerned about the needless suffering of animals, but is unsure about their ability to handle a commitment to vegetarianism, shouldn't feel as though the only two alternatives are (1) immediate elimination of all animal products from their life, or (2) doing nothing.

Not everyone can handle such a drastic, immediate change, but that doesn't mean you can't do anything to reduce animal suffering! Try cutting your meat consumption in half, or by a third, or limit the types of animal products you consume, or only eat meat when out at friends' homes or at a restaurant while keeping your home meatless.

You stand a better chance of successfully following through on a more modest reduction than on a full-scale, immediate withdrawal; plus, taking limited action will reduce needless animal suffering more so than no action at all. Eventually, you can make further cuts in your meat consumption, towards total elimination. Ethical vegetarianism is about reducing needless suffering, not about holier-than-thou perfectionism - so slipping up from time to time can be forgiven, too.

Anonymous on May 4 2008, 08:22

Thanks, Steve, for your message, and for supporting reducing the eating of meat. Jon

Anonymous on May 4 2008, 21:28

Dear Windy- Thanks for your comment. Have you done reporting or camera work for interviews? Thanks. Jon
Anonymous on May 4 2008, 21:36

In answer to your question, I'm a sometime volunteer community reporter for the Chi-Town Daily News. I mostly do writing, with a little photography, but I've had some training in video news gathering, and I've been reading up on it in preparation for some possible video blogging.
Anonymous on May 5 2008, 15:15

From the NYTimes article about Mildred Loving:
"...Mrs. Loving and her husband, Richard, were in bed in their modest house in Central Point in the early morning of July 11, 1958...when the county sheriff and two deputies, acting on an anonymous tip, burst into their bedroom and shined flashlights in their eyes. A threatening voice demanded, 'Who is this woman youâ€™re sleeping with?' Mrs. Loving answered, 'Iâ€™m his wife.'"

Do you think she knew, at the time, that saying "I'm his wife," could be incriminating? It seems that, quite literally, anything you say can and will be used against you. While the Lovings eventually received justice from the Supreme Court years later, I imagine that not everyone can catch such a lucky break. Better just to ask for an attorney and remain silent until one arrives - even if all you want to say is something as simple as, "I'm his wife."
Anonymous on May 6 2008, 12:59

As for the Obama aside; there is also GW Bush's snort of cocaine. It's everyone; no longer a matter of morals or ideology. Just a simple moral slide of the US.
Anonymous on May 16 2008, 09:41

Jon,
Agree with you on everything. One aspect to consider with the more potent pot today, the high seems to last longer, a lot longer, than in the 60's 70's and early 80's. I would speculate that's also why it has become better and more effective medicine. Thanks for fighting the good fight.
J
Anonymous on May 22 2008, 13:45

Jon, I agree with everything except the idea that stronger means less will provide the same high. It will deliver a similar high, but not the same high. The reason is that there are several hundred known cannabinoids and different strains of pot have varying amounts of these. Some of the potent strains today are remarkably different than the strains of the 70's. Some are "mellow", some are "speedy" depending on the varying amounts of different cannabinoids. Each strain has its own personality, so to speak. Cannabinoids should be isolated and studied. Some strains lack a psychic effect; they give a "body high". As Grinspoon points out, these would probably be classified as schedule 4, thus lessening their criminality. Perhaps in the future there could be a legal hybrid, although like most fans, I would prefer all marijuana de- criminalised. As Bob Marley sang: legalise it!
Anonymous on May 23 2008, 00:37

Hells yes, legalize it, its medicinal natural herb. tobacco and alcohol kills but does pot? look at the statistics politicians just dont wanna face facts and truths.
Anonymous on May 26 2008, 16:55

The assumptions by law enforcement can be helpfup to them in uncovering evidence for their cases, but ignoring the Constitution in order to do so is abhorant. Criminals, ex-convicts or the accused have rights, and even if this hampers police efforts, the rights of the accused are sacred and should be guarded.
Anonymous on May 30 2008, 11:34

Hey Jon, Great article, my friend. glad to see you're doing so well. gerry never fails to amaze me. That was a magical summer at the ranch, wasn't it?

All the best. Mike Bush
Anonymous on Jun 5 2008, 10:38

Hello old friend. I just wanted to post a note that I am back on the blog list and while I have changed the name of my new blog I am still here in the PD's office grinding every day.

If you find a moment I would appreciate if you post a blog letting people know I am back. Its been about six months since I lost my original blog and I dont have all the links to the like minded people I used to read.

On another note, I will be attending Gerry Spence's Trial Lawyers College next month. SO while there will be a lag in postings. i will return in August with new and exciting insight.

rem
Anonymous on Jun 13 2008, 00:56

I have used some version of Palm (desktop and handheld) since 1999, culminating in the Treo 755p just prior to my purchasing a Blackberry Curve 3 weeks ago. I was very hesitant to change from Palm, but I had a few problems with my Treo, which caused me to purchase the Blackberry. I am very pleased. There were no problems transferring my contacts, etc. from Palm Desktop to Outlook, and the Blackberry synchronized with no problem. The only adjustment I had to make was to recategorize telephone numbers saved in Palm as "Main Number" to "Business" in Outlook so the number would be displayed on the handheld. Otherwise, the email

capabilities of the Blackberry are far beyond the Treo, as I would have to "sign in" to get email on the Treo, where I don't have to do so on the Blackberry. Much user friendly, since I can respond to emails when I have a break in the action in court or elsewhere, rather than return to my laptop. I believe that I am the fellow NACDL member who recommended the Blackberry to Jon, so I am very happy that he is satisfied. I didn't want to be responsible for a costly mistake. (Jon, the blog rocks!)

Anonymous on Jun 13 2008, 19:11

Let me know how you like the Curve. When the new iPhone comes out in July, I'm going to have to make the same decision. I'm leaning iPhone right now, but any input is appreciated.

Anonymous on Jun 16 2008, 19:47

How much time can someone spend if they were caught with 1 gram of coke in D.C. i know is differnt in all states but what the avearge in dc for 1 gram

Anonymous on Jun 25 2008, 01:14

I'm a vegetarian too but mainly for environmental reasons - about 10x more grain is required to produce the same amount of calories through livestock as through direct grain consumption

Anonymous on Jun 25 2008, 15:55

Hi, Jack (your listed homepage address doesn't work):

The maximum penalty in D.C. for simple possession of cocaine is 180 days in jail. D.C. Code Â§ 48-904.01(d) .

Distribution, possession with intent to distribute and manufacturing carries up to thirty years. For cocaine, even as small as 1 gram can be sufficient to convict for possession with intent to distribute, depending on the surrounding circumstances. D.C. Code Â§ 48-904.01(a)(2)(A).

Take care. Jon

Anonymous on Jun 25 2008, 21:33

Thanks, Shalini, for your message. Interesting that an AVVO staffmember has taken time from the regular business day to write.

I wrote on this topic recently here <http://tinyurl.com/5xgvpf> .

Take care. Jon

Anonymous on Jun 25 2008, 21:39

Thanks, Josh and Gideon, for your replies.

I am happy with the BlackBerry EXCEPT for the following:

1. It's not as versatile as a PalmPilot. I had to pay \$70 to download Word and Excel software.
2. The BlackBerry's mouse equivalent needs to stay away from dust and gunk. Mine already is not moving smoothly after just two weeks. I'm still within warranty if Verizon won't fix it (which apparently requires careful cleaning with a dab of alcohol).

Thanks. Jon

Anonymous on Jun 25 2008, 21:57

Hi, Mike- Good hearing from you. I hope all's well. Yes, the time at the Trial Lawyers College was a watershed for me, as I detail at <http://markskatz.com/ticart.htm> .

Anonymous on Jun 25 2008, 22:01

Bad Links!

You got me interested in this story though, I guess it's time to Google it!

Anonymous on Jun 27 2008, 15:53

Jon, If I ever spot you doing ta'i chi in a park, terminal, etc. I will join you without hesitation.

Anonymous on Jun 27 2008, 20:42

I would have thought the title was inspired by Leslie Gore's 1966 hit, "It's my part and I'll cry if I want to."

<http://www.youtube.com/watch?v=XsYJyVEUaC4>

Anonymous on Jun 30 2008, 05:43

Thanks, Steve, as always for your support. Too much of the criminal justice system is more surreal today than ever. Jon

Anonymous on Jun 30 2008, 18:46

Scott- Leslie Gore's song annoys me almost as much as Phil Collins's singing brings me the queasy feeling of waking up the morning after drinking too much beer, as I explain further here

<http://markskatz.com/justiceblog/archives/683-Of-Rocky,-Joe-Jackson,-and-Muzak.html> .

My day was made all the more annoying by your reminding me of this song I have successfully repressed from my mind for so many years. Enjoy your week, nevertheless. Jon
Anonymous on Jun 30 2008, 19:35

The Queen of Teenage Heartbreak holds a dear place to me, listening as my older sister played her and Bobby Vinton (before he took on the Polish Prince persona), singing Blue Velvet, Blue on Blue and Mr. Lonely.

Sorry to spoil a lovely summer day.
Anonymous on Jul 1 2008, 12:44

Jon: You forgot to say "Sir." (Wink).
I love the busted video and insist on all of my young clients watching it. One of them told me he told his friend about it, and when the cop asked to search his car, he said, No thank you, sir. And they did not get the marijane in his car.
Last time I was in Washington, D.C., I was shocked by the security there. I felt like I was in Greece during the junta. So, congrats on your act of courage. Anna
Anonymous on Jul 2 2008, 00:52

I am impressed by the decision and subsequent response as well.

Although, i understand the alarming numbers behind gun violence.

They justices should not be altering the constitution to extremes!
Anonymous on Jul 2 2008, 18:40

I agree with you 100%. When many clients tell the circumstances that led to an arrest, they tell the facts as it happened. Many do not know the constitutional significance of the facts they tell. However, the officer has learned just enough law to be able to draft a report in an attempt to guard against a constitutional challenge. I say this to say, when a judge is determining who to believe, that judge should remember that its the officer who understands the legal significance of what he/she says and thus has the ability to lie about the facts to survive a suppression motion.
Anonymous on Jul 3 2008, 19:30

www.MurderTheDeathPenalty.US
Anonymous on Jul 8 2008, 02:23

I've been thinking about this, and I don't think "random sampling" makes sense of the Williams decision. My explanation got kind of long, so I blogged it:

http://www.windypundit.com/archives/2008/07/a_sampling_of_evidence.html
Anonymous on Jul 8 2008, 22:25

There must be a more sensible approach to drug laws in this nation and in each state. They don't stem the tide of drug use, as they're promised to do, and the unfairly punish individuals so that political figures can claim they're tough on crime.
Anonymous on Jul 10 2008, 12:05

I agree with windypundit.com, Mark Druagh, that in the Williams case it was improper to allow the chemist to testify as to what other pills were based upon a single test of only one pill and that statistically this is not longical and I am working on blogging on this myself at a later date.

Sincerely,
Glen R. Graham, Attorney
<http://www.tulsacriminaldefenses.com/>
Anonymous on Jul 10 2008, 19:19

Thanks, Marc, for your comment.

Considering your background as a former prosecutor and judge, did you get a sense of how the cops you have dealt with think of gun control and the Second Amendment?

Thanks .Jon
Anonymous on Jul 10 2008, 20:46

Thanks, Flester, for your comment.

I wonder if some judges or their law clerks are reading this blog, to get the defense perspective on cops who lie, and their motivations for doing so.

I take it that some prosecutors read this blog, at least to get some insight into the opposition.

Thanks again. Jon
Anonymous on Jul 10 2008, 20:51

Hi, Anna- Thanks for visiting and commenting.

"Busted" rocks. You'll see that the first comment here is from Steve Silverman of "Busted"/Flex Your Rights. Thanks again. Jon
Anonymous on Jul 10 2008, 20:59

Thanks, Windy, JT and Glen for your comments. It's nice to have Windy's non-lawyer perspective. Often the non-lawyers can persuade other non-lawyers to the side of civil liberties more than lawyers can, in the court of public opinion.

JT and Glen: Seeing that you're criminal defense lawyers, please fill me in whether you or other lawyers at your firm prosecuted in the past. If so, how did you feel about prosecuting drug cases, and all other cases for that matter? Thanks. Jon
Anonymous on Jul 10 2008, 20:59

Hi ,
Thanks to all of you .I like the thoughts
you have posted ... but am more agree with JT .
Hope for the best ...

Thanks .

Lorra .
Anonymous on Jul 14 2008, 11:26

This is the unfortunate state of things in politics today. Many judges and elected officials don't find it opportunistic to assist drug addicts, the homeless or the less fortunate, preferring to throw them in jail for petty crimes and send them down a path of destruction. This is a sad state of affairs, especially in urban areas like Los Angeles where people are in need of political figures who care more about people than jail population.
Anonymous on Jul 14 2008, 11:52

Jon:

Why NOT encourage clients to leave a positive review? If you do great work, your clients will WANT to tell other potential clients about it and I can't think of a better place than Avvo for them to spill the beans.

Here's the reality: Lawyers get a bad rap. We solve so many problems for our communities, and yet the lawyer jokes persist. Avvo gives all lawyers a platform to showcase all of the problems they solve - all that they do well. Whether you direct people to Avvo or they find it on their own, it is all in the name of getting the credit you deserve!

If you would like to give me a list of your clients, I will be happy to call them on your behalf. :-)

Be well.

Mark
CEO
www.avvo.com
Anonymous on Jul 16 2008, 12:59

Mark Britton's level of marketing aggression -- at least as expressed in his above comments -- to existing legal clients is not my cup of tea. A lawyer would be foolhardy to hand him a list of their clients; attorney-client privilege and a client's privacy expectations are sacred.
Anonymous on Jul 16 2008, 23:45

Uh . . . Jon . . . the client list comment was supposed to be a joke. That's why there is a smiley face after it. Where's your sense of humor?!
Anonymous on Jul 17 2008, 12:02

Lawyers are more than smart. If they are not working that means they are more dangerous because they are consternating on what to reply to win the case.

peter
Addiction Recovery Missouri
Anonymous on Jul 17 2008, 12:57

the Zappa tribute show is ultimately a collaborative affair. It takes stellar musicians to handle the hairpin turns on wild instrumentals such as "G-Spot Tornado" without going off the road. The big ensemble drummer Joe Travers, vibraphonist-percussionist Billy Hulting, multi-instrumentalist Scheila Gonzalez, guitarist Jamie Kime and bassist Pete Griffin were more than able.
Anonymous on Jul 24 2008, 01:55

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

Jon:

I can understand your position, but I respectfully disagree with most of your position. I understand the frustrating experiences we all have with the State's lawyers from time to time, but I think ad hominem attacks and the categorical labeling of them as "persecutors" and the "opposition" do violence to the force of your position as well as the profession to which we all belong.

I agree there is a problem. Too often, prosecutors seem to take the position that their officer is always truthful and correct and your guy is a scumbag. We know this, we've felt it and so have our clients. Too often, young prosecutors seem to see themselves as "the good guy" and us as the bad ones. Your position is simply the converse of that.

The problem is, well, let's call it Identity Representation. I see this in civil cases alot when lawyers take on the persona and (yes, in some cases) sins of their clients. It's an easy trap to fall into; does not the meaning of zealous representation compel us to do so? I have been in cases where I am being yelled at by another attorney for my client's infidelity! Apparently, that attorney assumed I should be penitent and responsible for those "sins of the flesh"; the fact is that I am not my client and I would want neither his marriage nor his problems. I'm paid to deal with them and help my client as well and ethically as possible. You may say that, if I approach a matter in this way, that I'm not as passionate an advocate. You may be right, but I can go home and not harbor hate for complete strangers at the end of the day; moreover, I come from a straightlaced, Catholic family, so reason is much more my strong suit!

I am not omniscient, nor omnipresent. I meet a client, much like a prosecutor meets an officer. I do not know them from Adam, do not have any way of knowing if I have a common bond or could trust them. (BEFORE YOU GO HIKING WITH THIS PERSON, ANSWER, "WOULD I LEAVE MY CHILD ALONE IN THE CARE OF THIS PERSON?"). I know that my epistemic position is limited, but I'm open to learning and exploring the facts (or the shadows of them). I am not accused of a crime, nor will I face jail time, though I sympathize and feel strongly that this is most likely not warranted. Would that all prosecutors engage in a similar epistimological exploration.

No one person has a monopoly on the truth, and throwing labels at the other only can work to further the rift between the two sides. I think meeting these people in a non-legal setting and realizing that we share many common values is an important thing for our sanity and our clients. This reminds me of the story of the Christmas cease fire in WWI where the Germans and British met and exchanged token gifts. After you understand that the other side has hopes, dreams, wives, husbands, etc., I think we can better work together toward more just conclusions and, selfishly, leave the hateful, spiteful baggage behind us.

Just my 2 cents,

Bill

Anonymous on Jul 25 2008, 09:39

Thanks, Bill, for you in-depth comment. I will take it to heart.

You've probably heard me say "persecutors" many times in person, but the word is not in this blog entry. I first heard it from a rather mainstream and good-natured federal public defender who is popular on the CLE circuit and always seems to say the word in place of "prosecutors".

Another very good natured and excellent criminal defense lawyer told me of his romantic interest in a prosecutor, but that he resolved to hold off until she was no longer a prosecutor, if the possibility were still there. I guess aside from the conflict of interest there, he spoke of how that would not look good to his clients.

I am ready to treat each prosecutor on his or her own merits. Contrast that to one of the best and most likeable local criminal defense lawyers, who feels that he gets screwed over by too many prosecutors (e.g., saying, "they withhold discovery that they are obliged to turn over") that he said he refuses to get together with them socially.

I believe very much in separating the sin from the sinner. However, I think that even the most well-meaning prosecutor cannot avoid causing unjust misery to criminal defendants from time to time. So, if I attended this happy hour, would I just be quiet and pretend I did not have all these concerns? I do not see the point in going if I were to remain silent on it.

Have a great weekend, Jon

Anonymous on Jul 25 2008, 12:20

having a drink with prosecutor not a problem if ur friends

but this organized drink club sounds a bit bizarre

we go to parties and socialize together(pros and def attys) but we all know each other from working in the courtroom

but i dont party with clients either

there is no rule-just do what u feel comfortable with!

Anonymous on Jul 27 2008, 07:40

Congratulation Jon. Best of luck to you and Jay as you continue to fight the good fight.

Anonymous on Jul 28 2008, 06:13

I agree with Bill - realizing we have common values is essential. I'm a public defender, and much of my job is negotiating plea agreements on behalf of my (often quite guilty) clients.

When I'm in those negotiations, I'm most often appealing to the DA's internal sense of fairness and proportionality. The more that they know they can trust my values, the better off my clients are.

Also, all I can ask of DAs is that they treat my clients as human beings - with families and feelings, rights and regrets. It's only fair that I remember DAs are human beings as well, and treat them accordingly.
Anonymous on Jul 28 2008, 08:22

Congrats on going out on your own! It sounds like your niches have grown to be very different and therefore it likely will serve you both to have sole practices. Good luck!
Anonymous on Jul 29 2008, 23:25

I'm a state's attorney who's recently out of law school, and I tend to agree with Jon. There's nothing wrong with having a drink with opposing counsel, but I wouldn't pay for them just as I wouldn't expect that they would pay for me. (Unless of course we're friends from before litigation started and we talk no business.) Since I deal mostly with civil cases and white collar crime, not having defendants there isn't an issue because if anything, it'd probably just confirm my initial impression that they're rich and sleazy - something that if it was in court a defense lawyer could control for and minimize to a jury, but all bets are off in a bar. Even if you want a client there to humanize them, you can't be sure what they're going to say, especially when liquored up. Having said that, I do think that for defense lawyers, there is a benefit to socializing with prosecutors. In college, my friend's mom defended me in traffic court and got 6 points reduced to 2 - she was longtime friends with both the municipal prosecutor and local police chief.
Anonymous on Jul 30 2008, 10:26

Congrats on launching your own practice. Don't forget to update your Avvo profile with the new office info.
Anonymous on Jul 31 2008, 13:46

Thanks, Scott, Laurie, and Shalini for your good wishes.

In the process of completing my move last Saturday, I cleared out the vast majority of ten years of accumulated clutter. The feng shui flows nicely at my new office at with my new practice.

Have a great weekend. Jon
Anonymous on Aug 1 2008, 12:20

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

This is very poetic and even more revealing when playing with a toddler.

When you take a moment to realize everyone you represent or interact with was once as innocent as a 2 year old it certainly gives you pause.

Terrific post.
Anonymous on Aug 4 2008, 21:47

Thanks, Susan, for your supportive comment, and the image of the two-year-old. Take care. Jon
Anonymous on Aug 7 2008, 07:03

Because FedEx Express was involved in tracking and discovering the package of marijuana, and because they may have been complicit in the raid itself, what liability does FedEx Express shoulder in this terrible tragedy? If they assisted the police in any way, for instance supplying the police with a FedEx vehicle and allowing a police decoy to deliver the package in FedEx uniform (especially with a fake FedEx ID), I would think that FedEx could be sued for millions. The question of the ID is important too. Nowadays, the ID's for FedEx are issued under the authority of the Department of Homeland Security. What was Homeland Security's role in this incident?

From now on, I will view any FedEx truck, or UPS truck for that matter, as suspect unless I personally know the driver. The bottom line is that if you are not expecting a package and one arrives from an unknown driver, get ready for the doors to get kicked in. I thought that you could trust FedEx.
Anonymous on Aug 11 2008, 00:10

John

I appreciate your peaceful approach to the law. Having just returned from the ranch I am making a conscious effort to clear my mind and listen. This has been a roller coaster experience for me but through mediums such as your blog, Gerry's and Mark's, I find encouragement and solace.

remy
Anonymous on Aug 14 2008, 00:22

Wow! what a wonderful story!

I really enjoyed reading your story and thank you for positive energy along with inspirations!

Anonymous on Aug 18 2008, 00:35

Thanks for this link, Jon. I had some local defense attorneys give comments at posted it on our local courts blog in Wichita, KS. It's generating quite a discussion.

Anonymous on Aug 22 2008, 12:45

Jon,

Just wanted to stop by and thank you for doing what you do. From your blog to your practice you are an inspiration for us all.

Remy

Anonymous on Aug 24 2008, 19:55

Demonstrators hands are no cleaner when they seek deliberately to block convention attendees' free passage or assembly, thus obstructing first amendment protected activities of convention attendees. When, as was done at the Republican Convention, demonstrators throw objects at delegates they engage in criminal assault (and battery if the person is hit) and should be treated as such. We need zero tolerance for criminal conduct whether by law enforcers or demonstrators.

Anonymous on Sep 1 2008, 22:07

The content of this site is awesome .

Anonymous on Sep 2 2008, 00:08

Now the leaders and Minneapolis/St. Paul government and law enforcement have their chance to show if they will do any better than the Democrats and Denver authorities to protect demonstrators' rights, during the Republican National Convention.

Anonymous on Sep 3 2008, 02:17

Thanks for including my blog in your list of favorites. And thanks for introducing me to a few blogs I can see I'm going to be spending some time with over coffee this morning!

Anonymous on Sep 9 2008, 05:40

It is interesting to discuss racial biases and prejudice in general. The structural prejudice of the system is also interesting. Unconscious or subconscious prejudice or biases usually continue for generations or centuries. I find it interesting that Maryland had sit-ins and racial bigotry just like the southern states. I thought the North was proud of its superiority in regard to supposedly being leaders in the civil rights movement.

Martin had a dream that some day people would not be judged by the color of their skin. Has that dream come close to being realized --- or are we getting closer to the dream ?

People claim not to be prejudiced and then when you ask them on jury voir dire --- questions about how many minority friends they have ---- where they live --- how often they socialize with other people ---- they results sometimes indicate a separated society --- where people publicly deny being prejudiced but privately lack any real social contacts with other cultures. People who publicly deny prejudice but have no friends who are minorities and no contacts with other cultures. A separate but equal doctrine in practice while publicly claiming not to be prejudiced. A subconscious feeling of prejudice while consciously claiming to be egalitarian. Fascinating.

Jon, Fight the Good Fight, Keep Up the Good Work. Love your blog.
Yours in the Defense of Fellow Human Beings,
Glen R. Graham, Tulsa Criminal Lawyer, Tulsa, OK <http://www.glenrgraham.com>

Anonymous on Sep 16 2008, 23:32

Jon,

I'd like to invite you to an exhibit about the early life and career of Justice Marshall, which is being unveiled at 5:30 p.m. Friday, Sept. 19, at the Thurgood Marshall Law Library at the University of Maryland School of Law, 500 W. Baltimore St. in Baltimore. Justice Marshall's widow, Cecilia, will be there to do the honors. Professor Larry Gibson will also be available to discuss his research into the early career of the pioneering jurist, including his surprising findings that dispel many rumors and untruths.

Anonymous on Sep 17 2008, 09:27

Hi Jon, I'm a disabled person, pro per in a civil lawsuit in Los Angeles. The bigot opposing counsel has called me "crazy" "delusional" 100 times in pleadings and demanded that the court discriminate and dismiss my case, although it's valid. I'm filing sanctions motion and need cases and cites about attorney bigotry in court. Do you have any? Thanks, Laura

Anonymous on Sep 20 2008, 03:32

Can a police officer be sued for lying under oath?

Anonymous on Sep 21 2008, 03:48

Comments can be a blessing or a curse. So many great thoughts come from commenters, and the conversations that we look for, beyond one person's POV, can be informative, enjoyable and fascinating.

But the ton of crap that comes along for the ride can be a nightmare. Between the constant spam, the blatantly offensive comments and the truly stupid ones, it can be a burden.

I read your posts everyday Jon, even though I may not comment, and appreciate the thought and effort that you put in, as well as the interesting subjects and thoughtful commentary. Please know that while I may not add to the conversation as I should, your work is

appreciated.

Anonymous on Sep 22 2008, 05:39

Thanks for this post. It was extremely helpful. As a 1L considering the basics of being an attorney, we need more posts like this which explain the administrative stuff.

Explaining case law and rules established in a jurisdiction are all well and good, but this was really helpful.

Keep up the good fight, I read your blog every day.

Anonymous on Sep 25 2008, 19:46

Thanks goodness the prosecution deciding to kick out the flatulent charges. The last thing we need are more frivolous lawsuits.

Anonymous on Sep 26 2008, 17:51

Ouch... the way I presented that makes me seem heartless (and I know you didn't intend to amplify that).

I didn't know him very well. I certainly wouldn't avoid a friend in need in favor of associating with happy people. (Many of my closest friends are miserable curmudgeons). I guess what I mean was that I sensed the negative energy attached to him when I met him, and chose to avoid that while never wishing him anything but the best.

Anonymous on Sep 29 2008, 08:14

I agree completely with your assessment of the drunk driving laws in Maryland. If you recall, just three years ago D.C residents and visitors were in an uproar over the no tolerance policy the DC Council had exhibited over driving under the influence. There were numerous cases of people who were arrested after blowing a .01, and the DC Council finally voted to "relax" the law by allowing .05. I'm not sure if Mayor Williams ever signed that bill into law. I know he didn't really like the way it was written so quickly.

Anyway, great post as usual Mr. Katz. Thanks for the continuous info.

Anonymous on Sep 29 2008, 10:05

David Wasserman was my attorney in the high profile case against me back a few years ago...he and Larry Walters both...David was an exceptional man, leader, and patriot for all americans. I just learned of his suicide this morning from a Las Vegas friend, and must say it's very heartbreaking. If not for this man and his strong beliefs in the first ammendment, I would most likely have served time for my adult website in Polk County. I owe David ALOT, and will never forget the bold statement he made for me, and with me...we worked as a team and that is exactly how I will remember David. I can't find funeral arrangements anywhere - If you have them, could you please forward them.

Sincerely

Tammy Robinson

Polk County Florida Vs. Tammy Robinson Case.

Anonymous on Sep 30 2008, 09:40

Thanks, Tammy, for your message, which replies to my blog entry from the day before I posted this one. I have answered Tammy's inquiry by private email.

Anonymous on Oct 1 2008, 19:21

Thanks, Ravi, for your message. I write here on DC and low alcohol tolerance by the humorless drinking and driving enforcers:

<http://katzjustice.com/CRIMINALblog.htm#7>

Anonymous on Oct 1 2008, 19:25

Thanks, Marc, for your comment. FYI to Underdog readers, Marc works with Larry Walters, who is a former law partner of David Wasserman.

Anonymous on Oct 1 2008, 19:27

Thanks, Ravi, for your message. Because learning good client relations is so important, it can be very beneficial for law students to start doing so through clinical programs and other programs that bring them in direct contact with good criminal defense lawyers. Then, they will be somewhat inoculated to such behavior as I have described here.

Anonymous on Oct 1 2008, 19:31

Thanks, Scott, for your comment.

Fortunately, my comment spam blocker does a good job at keeping spam to a trickle.

When my blog first started, it was on regular webpublishing software and I did not have comment capacity. When I got blog software two years ago, I was not sure what to expect with comments. Fortunately, I've not needed to delete more than two comments the entire time I've had this blog. Keep on blogging. Jon

Anonymous on Oct 1 2008, 20:13

Seems as though you're very quick to judge. Some people who say things like she said to you are talking from an experiential background you can't know. That doesn't make her perspective correct. Rather than storming off, why not ask her why she said that. Perhaps in the abstract she hold that opinion, which you term bigoted. Maybe in talking with you about her experiences, you could show her that her generalizations are not supported. That would seem to be the more Zen approach.

Anonymous on Oct 3 2008, 16:29

Jon,

Sadly but true many people take advantage of their own. When I was a younger I remember discussing fees with a Latino Attorney I was looking to hire and when I was going over the retainer his contingent fee was the standard third, but his Spanish retainer agreement was set at forty.

I asked him why it was more for our own people and he replied, "Its a fee for translation costs." However we are not the only culprits, this was a standard practice I have found among many of Spanish speaking service providers.

Courts abuse us because we don't know any better. Not that we are simpleminded, but because where my family came from, there was no enforcement of law, their was no regulation of government.

So when my people come here and get profiled by the police, neglected by the State and have an option of paying a mono lingual English speaking attorney who is going to half ass my case or hire a bi lingual attorney who is shafting me because there is no one else to go to, we usually will take the shaft because we can at least understand the person giving it to us.

And this is part of the reason I stay in Mississippi...

rem

>;0)

Anonymous on Oct 4 2008, 14:02

Thanks, RG and Remy for your comments-

RG- My posting already acknowledges that my storming out of the airport store in 2000 was not in sync with my t'ai chi life. As to the courthouse employee's comment last week out in the open on the first floor of the courthouse, I was stunned and irritated by her comment (and that she would say this for anybody passing to hear), and she had to be on her way. There was no opportunity for further discussion, and I will see what happens if there is such opportunity in the future.

Remy- Are you saying you stay in Mississippi to be the proverbial preacher among the heathen, because you think the place has reversed its reputation from the 1960's of being a violently and virulently racist place, because you jest, or because of other reasons?

Thanks, both, for commenting. Jon

Anonymous on Oct 5 2008, 08:00

Some statutes read that the burden is on the prosecutor to produce the report five (5) days before hearing or trial even without a request by the defense. Congratulations on a win. Here's a warrior's victory yell -- ooh-rah --- good job! Keep on blogging ---

Sincerely,

Glen R. Graham

Tulsa Criminal Attorney

Anonymous on Oct 10 2008, 17:57

Thanks, Glen, for your reply and kind words. In this instance, the prosecutor timely served a copy of the certificate of drug analysis. This means the prosecutor had plenty of time to know the chemist's name and location, to have subpoenaed the chemist, but did not. Have a great week. Jon

Anonymous on Oct 14 2008, 07:49

I think cops should only use this when a life is on the line not because a un-armed person is not acting the way the cops wants...to trigger happy

Anonymous on Oct 22 2008, 15:02

Great point!

For additional information on the role of court interpreters and legal translation services in the practice of law visit my legal translation blog Translation for Lawyers, located at <http://www.translationforlawyers.com>.

Best regards,

Nina

<http://www.languagealliance.com>

<http://www.translationforlawyers.com>

Anonymous on Oct 22 2008, 21:15

Someone is disrespecting me? The nerve!

Seriously, though, thanks for bringing this to our attention - I would have had no idea.

Anonymous on Oct 29 2008, 08:58

Quibble on Hibbel. Hibbel does not empower police to demand identification or require a person to identify themselves to police. Nor does Hibbel emtitle police to search or arrest those who fail to identify themselves. Hibbel said it does not violate the Fourth Amendment for a jurisdiction to enact a law requiring suspects to identify themselves to police, failure to do so then resulting in arrest. D.C. has no such law, and therefore, Hibbel does not empower police to enforce such a (so far) non-existent requirement.

Anonymous on Oct 30 2008, 19:17

Thanks, Kirby, for your comment.

Read literally, Hiibel should not apply absent a specific statute criminalizing not identifying oneself when asked by the cop. A question arises about whether trial judges -- let alone cops -- will misread Hiibel too broadly and allow convictions under such laws as disorderly conduct for failure to obey a "lawful" police order, merely for not identifying oneself.

I have not needed yet to research whether DC, VA and MD (Metro goes to all three jurisdictions, and possibly to federal facilities, which then might implicate federal laws on identifying oneself, too) have such a law as that involved in Hiibel. You say D.C. has no such law; I do not know if you make that conclusion merely by not seeing any D.C. law listed in Hiibel, which list is not necessarily exhaustive and now is a few years old.

Thanks, again, for your comment. Jon

Anonymous on Oct 31 2008, 00:01

"vote early and often"

Hey man, it's the only way we know how!

Anonymous on Nov 4 2008, 01:35

Despite the awfulness of HUAC, it's important to remember that there really was a Communist plot to take over Hollywood. Joseph Stalin had ordered his spies to infiltrate Hollywood, which he naturally saw as the greatest propaganda machine in the world, and some people in Hollywood were willing to help him.

Most of the action took place in the fight to control the important Hollywood labor unions, where the Communists were beaten back by regular American labor organizers, i.e. liberal Democrats.

The Communists had a few successes. Except during World War II---when the Russians were our allies---they never got Hollywood to produce pro-Communist propaganda, but they did manage quell some anti-communist works. Dalton Trumbo was a bigshot in the Communist Party USA, and he's taken credit for stopping a number of anti-communist movies from being produced. It was wrong for the government to go after him, but he's not a hero of free speech.

For the most part, of course, the Communists failed to take over Hollywood, although HUAC had nothing to do with that. Heck, during its early days as an anti-Nazi organization it was headed by a guy who later turned out to be on the Soviet payroll. It was a crazy time.

Anonymous on Nov 17 2008, 02:10

Thanks, Windy, for your comment.

Plenty of people who attract the work of civil libertarians are not themselves devotees of civil liberties for all. I don't have info. on Trumbo to draw my own conclusions of his devotion or not to civil liberties.

HUAC's work invited false accusations of communist activity, including with the pressure to name names or to face a contempt of Congress prosecution. McCarthy was a professional practitioner of multiple untruths at best and lies at worst

I think it is unconstitutional to outlaw Communist activity. It's a different story to outlaw the use of force to overthrow government. (Of course, it's an activity used overseas by the U.S. government repeatedly.)

Thanks again for commenting. Jon

Anonymous on Nov 17 2008, 15:58

I agree that the tighter economy should result in smarter approaches to handling criminal cases and possibly more alternative courts such as drug courts, mental health courts, and maybe some new "veteran's courts" to assist returning Iraqi war veterans.

Your post has some good ideas for potential jury arguments or arguments for mitigation in non-violent offenses. With over 2.3 million people incarcerated, America should consider alternatives to incarceration.

Yours in the Defense of Fellow Human Beings,

Glen R. Graham, Tulsa Criminal Defense Attorney, Tulsa, Oklahoma

Anonymous on Nov 17 2008, 21:14

We at <http://www.lawyersnattorneys.com/DUI-Lawyers/USA-DUI-Lawyers/index.php> believe that it is a great post.

Anonymous on Nov 18 2008, 12:22

Thanks for the insight, Jon. I am fascinated with Crawford and decisions following it. Not to mention that it is nice to have a ruling that protects our client's rights. Not many of those around.

Anonymous on Nov 21 2008, 09:11

Hilarious clip here Jon....I wonder what would happen if an attorney gathered these characters together and had them all sit in court during a pot possession trial? This could be an interesting defense I posit!

Anonymous on Nov 23 2008, 14:35

Thanks for your comment. The linked "Up in Smoke" segment is among the best movie scenes I ever have seen. Jon

Anonymous on Nov 24 2008, 07:19

Thanks, Cheryl, for your comment. Hopefully Obama will pick judicial candidates who will produce opinions that truly protect everyone's Constitutional rights.

Anonymous on Nov 24 2008, 08:07

There is definitely a reason that everyone has the right to a lawyer and trial. It doesn't matter who you are, you deserve a trial because anyone could be lying.

Anonymous on Nov 25 2008, 19:34

They're the same design, aren't they? If the question is whether, on the front page, you should have a) some graphic image of no apparent significance (the red metal ball is bigger, but the two are in balance?); or b) a photo of you and substantial text, then my enthusiastic vote is for the second option.

Anonymous on Nov 28 2008, 09:21

Seriously the laws regarding drunk driving should get strict. These drunken people should know what they are doing. They are risking their life as well as others life. They should be hanged.

Anonymous on Dec 2 2008, 11:19

Nope, I really am an insomniac. Well, either that or I am on a schedule from another planet. I usually sleep one really long night per week, and then about four hours a night the other days of the week... and that was before the baby!

Anonymous on Dec 4 2008, 10:10

Excellent post, Jon. The developing caselaw on guidelines "advisory" applications post Booker, Gall and Kimbrough, is exceptionally important, especially as to conspiracies, and the subject of Turner is one that every federal practitioner should be aware of.

Thanks for enlightening me.

Anonymous on Dec 12 2008, 05:25

Keep in mind that I am a lawyer in Florida (not Deep South, but something close to it) when reading this.

I believe racism is pervasive in the criminal justice system. I believe it starts in the legislature and ends with jurors and judges (really w/for profit prisons but that's another issue). Our system has laws, especially drug laws, created originally out of racism and of fear of black men being w/white women. This racism continues to this day w/the disparity in penalties for soft cocaine and crack rock and has led to the incarceration of an entire generation of young black men for non-violent drug offenses. Next, the enforcement of these laws by police involves racism. Most drugs are done in the suburbs but most drug users are arrested in urban areas. Police patrol the so called high crime areas (i.e. black neighborhood) more frequently and often violate that community's rights with their "consensual encounters." They enforce bicycle and jaywalking laws in order to get pc to stop and harass black teenagers. Then when those kids are brought to court the racism of prosecutors and court personnel is brought to light. I did a stint as a juvenile public defender and it was amazing to see the disparity in decisions on whether to prosecute cases and pre-trial conditions imposed by judges for black and white kids. There was almost an assumption by my judge that the parents of white kids will supervise them while the black kids needed state supervision because they "obviously aren't getting it at home." Next came time for sentencing, and those same presumptions took hold. It was not uncommon for the judge to send my black kids to "programs" when the department of juvenile justice recommended probation. That NEVER happened to any of my kids. I could go on for days discussing the problems with eye-witness identification, juror bias and police harassment but instead I will just end with a personal story that exemplifies how a lot of these things start:

One of best friends (20 year old black kid) and I (18 year old white kid) were riding around in my car waiting for his girlfriend to get off of work so we could pick her up. This is not uncommon as I am from a relatively small town and there wasn't a lot going on at the time. This was an almost exclusively black area of town and was heavily patrolled. As I am driving a cop comes behind me and begins to follow us. We keep going as normal, make a left turn at a light and then a right turn at another street. Then the cop turns his lights on and pulls us over. Waits for another officer to arrive and approach my vehicle. One cop comes to the driver's side door and the other to the passenger door where my friend was sitting. I give the officer all of the paperwork and ask why I am being pulled over. They tell me because I was driving in a circle. I ask how two turns equals a circle and when that became illegal (I always have been quite a smartass). He then tells my friend to exit the vehicle and threaten to pull him out of the window if he doesn't acquiesce. Keep in mind I am driving! He does exit the car and then the cops questioned us separately and among other things, tell me that the only reason I could be in that neighborhood is to "buy dope or pussy" and that they believed my friend was my drug dealer. They could not and did not believe that we were friends even when they did eventually let us go. They couldn't fathom the possibility. They questioned why I was so far from my address and did not do the same to my friend even though he lived further away than I did. I guess they figured "black, it's a black neighborhood, makes sense." Eventually they decide they have to let us go and they said something that has always stuck with me. They turned to us and said "Lee, we don't wanna see you around here anymore. Mike, we'll be seeing you around."

This is not the most egregious example that I could give of racism by police that I have witnessed. I have seen several violent incidents but the cops were just so forth coming about their attitudes on race in the above example.

Anonymous on Dec 12 2008, 12:57

well i went pro se in a 3-5 du.i in hall county ga. it was a jury trial and i was acquitted on 2 counts. i was under 21 when i got the d.u.i so they had me on an underage d.u.i and a less safe d.u.i. i blew a .117 and i walked out a free man. the trial lasted 2 days and the jury deliberated for 6 hours. go to myfoxtatlanta.com...type in hall co man...then go to 21 year old represents himself and watch. also how can i get into law school???

Anonymous on Dec 15 2008, 02:19

Mr. Katz - As a law student member of the NLG I have been interested in your love/hate relationship with the Guild. I was glad to see you weigh in on the listserv and I hope that your words are noticed. Thank you for your voice, it is needed.

Anonymous on Dec 17 2008, 18:21

Jon, you would be a super lawyer regardless of whether any of these silly lists existed. It's your skill and empathy that makes you so, not some glossy marketing rag.

Anonymous on Dec 19 2008, 12:50

I do hope that waiting tables will make me a better lawyer, as I've waited on plenty. I'm a 39 year old English teacher and I'm set to take the LSAT in February. In facing this monumental career change I am often duly terrified (most notably after reading One L), but then I think it can't possibly be that much worse than facing an angry table of twelve with underdone steaks or my daily dose of 80 tenth graders.

At any rate, I have just recently discovered your blog and I wanted to tell you how much I enjoy reading it. I'm a vegan as well, and I am planning on going into Environmental Law. Thank you for all that you do to make the world a better place.

Anonymous on Dec 29 2008, 09:03