

Friday, December 1, 2006

**More on child pornography defense.**

This follows up on my November 27 blog entry on child pornography defense, with more ideas about defending such cases: - On November 30, I updated my original November 27 blog entry with further information about 18 USCS § 3509(m), which became law the middle of this year, which provides that "In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]) shall remain in the care, custody, and control of either the Government or the court." - Earlier this year, an Oklahoma federal judge mandated that in order for a child pornography charge to proceed against a defendant who allegedly accessed websites containing child pornography, the prosecutor would need to submit a proposed approach for the defense to have access to those websites without exposure to prosecution. U.S. v. Shreck, 2006 U.S. Dist. LEXIS 59724 (N.D. Okla. Feb. 8, 2006). Thanks to Lawofcriminaldefense for covering this case. - In August 2006, 445 F. Supp. 2d 152 (D. Mass. 2006), and November 2006, federal trial Judge Nancy Gertner (D. Mass.) placed substantial limits on the presentation of expert testimony about whether actual children appeared in alleged child pornography images -- and limitations on presenting the images themselves -- by requiring the prosecution to show that the images are of real people in the first place. The case is U.S. v. Frabizio, Crim. No. 03-10283 (D. Mass.). For child pornography prosecutions, the prosecution must prove that an image depicts actual children to sustain a conviction. Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002); U.S. v. Hilton, 386 F.3d 13, 18 (1st Cir. 2004). Judge Gertner's August 2006 order does an excellent job of showing how the technology now exists to make virtual images look staggeringly like real people: "A significant body of literature also indicates that digitally manufactured images may be confused with real photographs. Faculty in the Department of Computer Science at Dartmouth College, for example, have noted 'photorealistic images can be created that are nearly impossible to differentiate from photographic images.' S. Lyu and H. Farid, 'How Realistic is Photorealistic?' 53(2) IEEE Transactions on Signal Processing (2005) (available at <http://www.cs.dartmouth.edu/farid/publications>). n6 Other articles suggest that such virtual image creation can be achieved using current technology and that even 'experts cannot know whether a digital image is real or virtual.' Timothy J. Perla, Attempting to End the Cycle of Virtual Pornography Prohibitions, 83 B.U. L. Rev. 1209, 1216 (2003). See also, A.C. Popescu and H. Farid, 'Exposing Digital Forgeries by Detecting Traces of Re-Sampling,' 53(2) IEEE Transactions on Signal Processing (2005) (available at <http://www.cs.dartmouth.edu/farid/publications>) ("[D]igital images can be easily manipulated and altered. Digital forgeries, often leaving no visual clues of having been tampered with, can be indistinguishable from authentic photographs"); Caught On Camera, NEW SCIENTIST, Sept. 6, 2003 at 5 ('Warnings about the potential for faking digital images are not new. But the proliferation of cheap digital cameras and computers, together with programs for altering photos and editing video footage, is turning that potential into reality. Where once a specialist was needed to alter analogue images, even beginners can now create digital fakes good enough to fool discerning experts.'). But see Susan S. Kreston, Defeating the Virtual Defense in Child Pornography Prosecutions, 4 J. High Tech. L. 49, 62 (2004) ('Creating realistic images of people . . . continues to be very difficult, with the difference between a real picture and one created by a computer, even using today's best technology, being discernable to the human eye.'). Frabizio, 445 F. Supp. 2d at 157-58. The August 2006 Frabizio opinion includes the following three URL's showing excellent examples of manipulated images that look strikingly like real people: "<http://forums.cgsociety.org/showthread.php?t=141461>; (depicting a nude woman in the fetal position); <http://forums.cgsociety.org/showthread.php?t=361465> (showing a remarkable likeness of actress Jennifer Garner); see also <http://forums.cgsociety.org/showthread.php?t=160012>." Frabizio, 445 F. Supp. 2d at 158. Will prosecutors ever be able to meet their burden to show that alleged child pornography is not manipulated imagery? The August 2006 Frabizio opinion answers: "Whether the images in this case are real or virtual cannot be determined based on mere observation, however, even by a photographic expert. More specialized, computer-based knowledge is required to exclude the possibility that the pictures are wholly virtual." Frabizio, 445 F. Supp. 2d at 170. Thanks to Ohio lawyer Dean Boland for blogging on this case. - On November 27, 2006, the Ninth Circuit provided clarification of the meaning of "possession" of child pornography on one's computer: "Where a defendant lacks knowledge about the cache files, and concomitantly lacks access to and control over those files, it is not proper to charge him with possession and control of the child pornography images located in those files, without some other indication of dominion and control over the images." U.S. v. Kuchinski, No. 05-30607 (9th Cir. 2006). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 30, 2006

### **U.S. government apologizes to Brandon Mayfield after wrongly connecting him to fingerprints that were not his.**

Federal law enforcement bungled pathetically by fingering Brandon Mayfield with someone else's fingerprints in the investigation of the Madrid bombing, arresting him, jailing him, and, he says, even threatening him with capital punishment. Brandon Mayfield fought back with a vengeance, as he should have, ultimately obtaining this week a \$2 million settlement and an apology from the federal government. If given a choice between turning the clock back and receiving the \$2 million settlement, turning the clock back would win hands down. One of Mr. Mayfield's lawyers is Gerry Spence -- who founded the Trial Lawyers College that I attended in 1995 -- who characterized Mr. Mayfield's gross mistreatment as "a rape the government has committed on its citizens." Mr. Mayfield, who is a lawyer, took the right approach by going full guns to reverse the injustice he suffered. However, for every Brandon Mayfield, probably many more who suffer gross injustices do not seek or find the right avenue to reverse those injustices.

Posted by Jon Katz in Criminal Defense at 10:00

### **Why fly U.S. Air?**

On November 22, 2006, six Muslim religious leaders were removed from a U.S. Airways flight -- apparently at the direction of the pilot -- and detained and questioned by federal agents for lengths of time up to five to six hours. A U.S. Airways ticketing agent refused to book them on another flight. Here are two of the imams' versions of events from Democracy Now. This all sounds like an ejection and detention for Flying While Muslim. The New York Times reports that "a US Airways spokesman, said the airline was investigating the episode. But he said the crew had acted in accordance with the company's policy for removing passengers, though he declined to give specifics on the policy." Until U.S. Airways rights this wrong, I recommend flying other airlines. This is not to say that discriminatory profiling and police abuse does not happen with other airlines. However, the combination of the unfair ejection together with the unlawful and lengthy detention and questioning by police cannot simply be ignored. Jon Katz.

Posted by Jon Katz in Jon's news & views at 03:00

### **Senator Dodd to submit bill protecting habeas corpus in Military Commissions Act.**

TalkLeft covers the story here. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, November 29, 2006

### **The public safety exception to Miranda.**

This follows up on my September 8 blog entry about the exceptions to the Miranda rule. In 1984, the United States Supreme Court held that Miranda does not preclude police -- for public safety purposes -- from asking a non-Mirandized arrestee the location of a weapon, from introducing into evidence the arrestee's response to said questions, and then introducing into evidence the arrestee's Mirandized statement that follows. *New York v. Quarles*, 467 U.S. 649 (1984). Quarles says: "We hold that on these facts there is a 'public safety' exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved. In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on post hoc findings at a suppression hearing concerning the subjective motivation of the arresting officer. Undoubtedly most police officers, if placed in Officer Kraft's position, would act out of a host of different, instinctive, and largely unverifiable motives -- their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect." Similar approaches have been rejected in other contexts. See *Rhode Island v. Innis*, supra, at 301 (officer's subjective intent to incriminate not determinative of whether "interrogation" occurred); *United States v. Mendenhall*, 446 U.S. 544, 554, and n. 6 (1980) (opinion of Stewart, J.) (officer's subjective intent to detain not determinative of whether a 'seizure' occurred within the meaning of the Fourth Amendment); *United States v. Robinson*, 414 U.S. 218, 236, and n. 7 (1973) (officer's subjective fear not determinative of necessity for 'search incident to arrest' exception to the Fourth Amendment warrant requirement)." *Quarles*, 467 U.S. at 655-56. Quarles is just another police tool to blur the line between non-Mirandized information that is admissible at trial versus information that requires Miranda warnings to be admissible at trial. It becomes psychologically harder to assert one's Miranda rights after already having answered police questions before being Mirandized including when the police go into divide and conquer mode, asking questions of a suspect in the presence of the suspect's friends who urge the suspect to "cooperate". Buffered by this Quarles decision, it is apparently common for police, without first giving Miranda warnings, to ask arrestees and occupants of cars stopped for traffic and other violations whether anybody has any drugs, weapons or bombs. Police have further support for asking a litany of non-Mirandized questions of motor vehicle occupants by the Supreme Court's holding that "a routine traffic stop is not a custodial stop requiring the protections of Miranda." *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 187 (2004) (citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984)). Praised be the dissenters in *Quarles*, although only one of them -- Justice Stevens -- is left on the court. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, November 28, 2006

### **More news coverage of Sean Bell killing.**

About Sean Bell's killing over the weekend by police, New York Mayor Michael R. Bloomberg said: "It sounds to me like excessive force was used." This story is being widely covered in the news, as it should be.

Posted by Jon Katz in Criminal Defense at 02:00

### **What is cocaine base?**

The 100-to-1 crack to powder cocaine disparity in federal sentencing actually arises from statutory language (e.g., 21 USC § 841(b)(1)(A)(iii)) distinguishing "cocaine base" from powder cocaine. What, then, is the difference between cocaine base and powder cocaine? The statutory language is ambiguous; some federal courts have equated cocaine base interchangeably with crack, and others have looked at the smokability of the substance, as discussed further below. Cocaine base and powder cocaine are pharmacologically indistinguishable from each other. *U.S. v. Brisbane*, 367 F.3d 910, 911 (D.C. Cir. 2004), cert. denied, 543 U.S. 938 (2004); *U.S. v. Gunter*, 462 F.3d 237, 240 (3d Cir. 2006). Cocaine "is usually processed for importation into the United States by dissolving the cocaine base in hydrochloric acid and water to create a salt: cocaine hydrochloride, C<sub>17</sub>H<sub>22</sub>C<sub>1</sub>NO<sub>4</sub> (powder cocaine). Powder cocaine may then be converted back to its base form by cooking it with baking soda and water... In numerous trials before this Court, the Government's forensic chemists have testified that powder and crack cocaine are the same chemical substance, just in a different form." *U.S. v. Hamilton*, 428 F. Supp. 2d 1253, 1257 (M.D. Fl. 2006). The generally more conservative Fourth Circuit treats cocaine base and crack interchangeably. *U.S. v. Ramos*, 462 F.3d 329, 434 n2 (4th Cir. 2006). The District of Columbia Circuit, however, has ruled that a conviction for cocaine base -- rather than for powder cocaine -- requires proof that the cocaine base is smokable. *U.S. v. Brisbane*, 367 F.3d at 914. I agree with the many people who have attacked the unfairness of the federal 100-to-1 crack to powder cocaine sentencing disparity, which hits minority criminal defendants disproportionately hard. Some so-called tough-on-crime advocates have suggested closing this sentencing gap by increasing the penalties for powder cocaine. I say that the entire drug enforcement system must be completely overhauled to focus more on a harm reduction approach that includes marijuana legalization, a heavy reduction of penalties, the elimination of mandatory minimum sentencing, and the end of sentencing guidelines that are anything but completely voluntary. Jon Katz.

Posted by Jon Katz in Drugs at 01:00

### **Hearings planned on crack and powder cocaine sentencing disparities.**

Now that the Democrats have taken control of both chambers of Congress, Rep. Robert Scott, D-Va. -- who chairs the House subcommittee on crime, terrorism and homeland security -- plans hearings on the crack and powder cocaine sentencing disparities that he has previously criticized. More on the issue is here. Jon Katz.

Posted by Jon Katz in Drugs at 00:00

Monday, November 27, 2006

### **Violence begets violence: Contagious shooting.**

On November 25, 2006, New York police shot and killed Sean Bell in a hail of bullets that injured his two passengers. Mr. Bell and his passengers were unarmed. The New York police commissioner claims that Mr. Bell's car struck the leg of an undercover police officer, and twice struck an undercover vehicle. The bigger picture will likely take awhile to unfold. This New York Times opinion piece says: "It is known in police parlance as 'contagious shooting' -- gunfire that spreads among officers who believe that they, or their colleagues, are facing a threat. It spreads like germs, like laughter, or fear. An officer fires, so his colleagues do, too." As in the rest of life, police-suspect confrontations are often shrouded in shades of gray, rather than in clearcut sides of good and evil. Because police are issued weapons, handcuffs and the power of arrest, such power -- like any power -- is at risk for abuse. This state of affairs calls for a heavy focus on sufficient funds and resources for skilled and successful hiring, retaining, training, constant retraining, supervising, monitoring, evaluating, and firing of police. However, even with such an approach, the risk of abuse of police power remains high until the criminal justice system is substantially overhauled to legalize such activities as marijuana, prostitution, and gambling; to heavily decriminalize drugs; to eliminate mandatory minimum sentencing; to substantially reform the draconian sentencing system and penalties at the state and federal level; to reduce prison and jail populations; to reduce the number of people detained pretrial; to give more teeth to the Fourth, Fifth, Sixth and Eighth Amendments to the Constitution; and the list goes on. Jon Katz.

Posted by Jon Katz in Criminal Defense at 11:10

### **Defending child pornography cases.**

Child pornography prosecutions have been rampant for many years, both for possession and distribution of child pornography, and for alleged violations of 18 U.S.C. § 2257 recordkeeping provisions. The United States Supreme Court generally limits child pornography prosecutions to images of actual minors, rather than to adults who look like minors. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002). By now, such prosecutions run from images of teenagers to images of the youngest of the young. Following are a few non-exhaustive pointers for defending such cases. Through my criminal defense of such cases, I have seen many sexual images of minors. My stomach has been turned and my emotions severely tested many times, as a result. If that is the reaction of a criminal defense lawyer zealously committed to the effective defense of every criminal defendant, then jurors inevitably will be even less understanding of the circumstances that bring defendants to child pornography, if indeed they are guilty. What leads people to become involved with child pornography, aside from any profit motive? A forensic psychologist with whom I have worked offers a few possibilities. For one thing, an adult who was sexually abused as a minor may have the mentality of a minor in many respects, but still is a sexual being in an adult's body, who may consequently relate sexually with minors. He also says that sex is not a spectator sport, and that sexually explicit visual material can become boring quickly, and lead the viewer to engage in such risky behavior as viewing child pornography. As I blogged on November 16, to view child pornography online -- at least under Pennsylvania law -- is not automatically the same as criminal possession of such material. For child pornography cases involving computers, it is important to seek a court-ordered duplicate of all seized computer harddrives, which is critical so that the defendant's computer forensics expert may run a full evaluation in the expert's own lab or colleagues' lab; the evaluation can take many hours and the tools can be very cumbersome and heavy to drag to a police office (where the police may be watching the computer expert's actions). A good case to review for drafting a motion and proposed order for such material is *U.S. v. Hill*, 322 F. Supp. 2d 1081 (C.D. Cal. 2004), *aff'd*, *U.S. v. Hill*, 2006 U.S. App. LEXIS 20584 (9th Cir. 2006). It is important to avoid computer forensic experts who will not guarantee that they will not call the police if they find any child pornography images on the defendant's harddrive that the police did not already find. Although Virginia law, as a for instance, empowers judges to order hard drive duplications to be provided to defense counsel -- Va. Code Ann. § 19.2-270.1:1 -- federal law does not allow such material to be removed from government property. 18 USCS § 3509(m). 18 USCS § 3509(m) provides as follows: "(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]) shall remain in the care, custody, and control of either the Government or the court. (2) (A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title [18 USCS § 2256]), so long as the Government makes the property or material reasonably available to the defendant. (B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant

may seek to qualify to furnish expert testimony at trial." Two technology experts testified this month in Virginia federal trial court that the foregoing restriction in 18 USCS § 3509(m) would make it too expensive to transport their equipment to a government facility. Attorney Louis Sirkin -- who is a class act and a fellow member of the First Amendment Lawyers Association -- testified that the new restrictions will make it harder to find an expert witness for the case. This Virginia federal case is U.S. v. Knellinger, Crim. No. 3:06-cr-00126 (E.D. Va., Richmond Div.). This issue is discussed further here, starting at page 10. If convicted, the defendant is probably in better shape for judge and jury sentencing when such factors as the following exist: Limited scienter; models as close to 17 as possible; images that are as mild as possible; images that don't incite jurors' prejudices (e.g., about homosexuality and other prejudices). I don't agree with the prejudices, but they are out there. Sometimes at least two or more experts are needed for such a case (a computer expert, a visual media expert, a pediatrician, and expert second opinions). Key defenses to consider for such cases include: - Whether the image is of an actual minor. - See Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002). - If the images might be of post-pubescent people, there is all the more reason to consider challenging the age of the models, including such arguments as distortion (which can arise when transferring from film medium to digital medium), the need for and quality of pediatric expertise for the prosecution and defense (to opine whether the image is of a minor), and whether the image was obtained from a source claiming to be in compliance with 18 U.S.C. § 2257. - Whether the images got on the computer by someone else's doing (e.g. directly on the subject computer, or by a trojan horse or other Internet invasion). Jon Katz. ip

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, November 26, 2006

### **In Virginia, what sentencing evidence may a defendant present to the jury?**

In Virginia, if the jury enters a guilty verdict, then the jury will be presented with evidence for rendering a sentencing recommendation. The relevant code section, Va. Code Â§Â§ 19.2-295.1Â provides the following general guidelines for the evidence that may be addressed at sentencing: Â - The prosecutorÂ shall present the defendant's prior criminal convictions, including adult convictions and juvenile convictions and adjudications of delinquency. The prosecutor, at this phase, may not present evidence of the sentence imposed. Gillespie v. Com., Va. Rec. No. 06-0034 (Nov. 2006).Â - After the prosecutor has introduced evidence of prior convictions, or if no such evidence is introduced, the defendant may introduce relevant, admissible evidence related to punishment. Â - Nothing shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal.Â Concerning the evidence that the defense may present at trial, the Virginia Supreme Court has said: Â "We perceive no sound reason why the factors that may be considered by a jury in capital murder cases should not likewise be available for consideration by a jury in noncapital cases under Â§Â§ 19.2-295.1. The goal of having an informed jury assess appropriate punishment should be no less essential merely because a noncapital offense is involved.Â "But this is not a one-way street extending only in the defendant's direction. The statute also permits the Commonwealth to introduceÂ 'relevant, admissible evidence in rebuttal' to that offered by the defendant." Commonwealth v. Shifflett, 257 Va. 34, 510 S.E.2d 232 (1999). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

### **Legal immunity for people who repost defamatory material.**

Eugene Volokh has posted this blog entry concerning the extent of legal immunity for people who repost defamatory material.

Posted by Jon Katz in First Amendment at 00:00

Friday, November 24, 2006

**A website cannot be sued just anywhere.**

Kudos to fellow First Amendment Lawyers Association member Marc John Randazza and his law firm, for obtaining a dismissal of a defamation lawsuit against a website, for failure to establish personal jurisdiction against the website. The case is *Lexington Homes v. Peter Siskind*, 51-2004-CA-01018-WS (Fl. Cir. Ct. Pinellas/Pasco County, No. 51-2004-CA-01018-WS (Nov. 2, 2005)). In *Lexington Homes*, the plaintiff alleged defamation by the owner of a website that invited gripes about the plaintiff. The court found that even though some of the gripes came from Florida residents, and even though the Plaintiff was located in Florida, that was not enough by itself to bring the defendant under the jurisdiction of a Florida court, where the defendant was not shown to have any further contacts with Florida nor shown to have profited financially from the website. Thanks to Mark's firm for posting a link to the case at its website, [firstamendment.com](http://firstamendment.com). Thanks to MediaLaw blog for posting the written dismissal order here. On a related note, our law firm successfully obtained a dismissal earlier this year of a defamation lawsuit over an e-mail posted to a martial arts e-mail listserv, where the plaintiff failed to show jurisdiction under Maryland's long-arm statute. That case is *Dring v. Sullivan*, 423 F. Supp. 2d 540 (D.Md. 2006) and is discussed on our website here. Jon Katz.

Posted by Jon Katz in First Amendment at 00:00

Thursday, November 23, 2006

### **NPR airs tapes of Guantanamo enemy combatant hearings.**

On November 21, 2006, online and on the radio waves, NPR aired FOIA-obtained audio recordings of Guantanamo hearings to review enemy combatant classifications. The inmates need not participate, but sometimes do, despite their lawyers' advice not to, seeing how irresistible it can be for an inmate anywhere to open his or her mouth before a tribunal -- like this one -- that does not permit the presence of defense attorneys. This same NPR webpage is chock full of additional riveting information and links to news and views about the Bush administration's continued flagrant violations of human rights in the name of war here and abroad. The site includes this very revealing story about the military's termination of Charles D. Swift, who courageously and skilfully defended Salim Hamdan. I blogged about Charles Swift's plight here. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

### **The limits of criminal discovery in Virginia.**

Sadly, Virginia law does not guarantee enough discovery to criminal defendants: "There is no general constitutional right to discovery in a criminal case, even where a capital offense is charged. *Strickler v. Commonwealth*, 241 Va. 482, 490-91, ... cert. denied, 502 U.S. 944 (1991). While a defendant has the right to exculpatory evidence in the Commonwealth's possession upon request, *Stover v. Commonwealth*, 211 Va. 789, 795 (1971), Rule 3A:11 defines the other discovery available to the accused in a felony case. See *Hackman v. Commonwealth*, 220 Va. 710, 713, 261 S.E. 2d 555, 558 (1980) (decided under previous Rule 3A:14). Under Rule 3A:11, a felony defendant is entitled to his own 'written or recorded statements' made to law enforcement personnel, certain written reports in the possession of the Commonwealth, and 'tangible objects . . . within the possession, custody, or control of the Commonwealth' which 'may be material to the preparation of [the] defense.' Rule 3A:11(b). The Rule specifically does not authorize discovery of 'statements made by Commonwealth witnesses or prospective . . . witnesses to agents of the Commonwealth . . . in connection with the investigation or prosecution of the case.' Rule 3A:11(b)(2)." *Juniper v. Commonwealth*, 271 Va. 362 (2006). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, November 22, 2006

### **Carol and David Keeffe murdered.**

On the Trial Lawyers College listserv yesterday came news of the passing of David Keeffe, who had attended one or more TLC programs, and his wife, Carol. The news reports that they were shot dead. I never met David. The news accounts show David and Carol were very caring people. He litigated civil and criminal cases, including murder defense. It seems the police investigation includes whether the killer(s)' motive was related to any legal work David had done. Whether or not that was the motive, in recent times alone there have been numerous incidents of lawyers and judges murdered by disgruntled litigation parties. Lawyers and judges must not let such risks interfere with their fulfilling their obligations to justice to the hilt. Criminal defense lawyers must not let the horror of murder prevent them from defending alleged murderers; even if the defendant is guilty -- which often a lawyer does not know for sure -- to refuse to defend an alleged murderer serves to create a criminal justice system lopsided in favor of the legalized murder of capital punishment, and in favor of the prosecution, which must have the burden of proving alleged crimes beyond a reasonable doubt. I send my deep condolences to David and Carol's family. Jon Katz.

Posted by Jon Katz at 03:00

### **Michael Richards: Meet Mel Gibson, Andrew Young, and George Allen.**

Here is a video of Michael Richards' recent tirade where he repeatedly says the N-word after being heckled during his stand-up routine. Here is an account of Richards' televised discussion of the incident with David Letterman. Attached below is my August 20 blog entry about the importance of knowing others' views and comments on race relations and other issues of prejudice. Michael Richards, as Kramer, was one of my favorites. I had no clue that he would say such words. Often we do not know what feelings and opinions truly lie within others, until they explode or put down their guard in some other fashion. Bigotry has obsessed me throughout my life. Racial and religious hatred and insensitivity have fueled countless massacres, lynchings, social misery, and the list goes on. I have gone through the portals over the years of being stunned, upset and frozen at hearing racist talk and not knowing how to react; then ranting and raving at the speaker of racist words; and, finally, dealing with it on a case-by-case basis, anywhere from calmly telling the person I think his or her words are dehumanizing or uncalled for, to going into more detail, including asking the speaker what s/he meant, to seeing if there's any way to turn around the person. I am inspired by how a local labor organizer and social justice activist handled one particular racist incident quite awhile ago. He and his wife had just moved to a new Maryland town bordering Washington, DC, when one day some neighborhood children rode their bikes past the house calling out "white N's, white N's" to the man's interracial children. Instead of losing his cool at the children, which would have been my first inclination before I heard this story fourteen years ago, this man started talking to the children. He told them he coached a track team, and invited them to join the team. They joined the team, and eventually were fully enamored with him. This coach caught these children early, who perhaps were parroting back the words of their parents, but who ultimately turned their backs on such ugly words and thoughts. Lawyers -- including criminal defense lawyers -- need to be fully aware of issues of racism, including racism among jurors, judges, prosecutors, police, jailers, and lawyers' clients. Martin Luther King, Jr., talked of seeing the promised land where racism has been substantially eliminated, but we have a long way to go; too long. Jon Katz. August 20, 2006 George Allen: Meet Andrew Young and Mel Gibson / Update on macaca-gate. We need to know public figures' views and comments on race relations and other issues of prejudice, so that we may make informed decisions at the polls and in our purchasing habits. Without going into further depth on my recent blogs on this issue (see here and here), this has been quite the month for public figures to stick their feet in their mouths on such issues. Now added to this list is Andrew Young, who spoke such a blunder that I wonder whether he applied to work for Wal-Mart as a plant of those opposing this corporate giant. ABC News's website reports: "Young told the Los Angeles Sentinel, a black community newspaper, that those small shops 'are the people who have been overcharging us, selling us stale bread and bad meat and wilted vegetables. They've ripped off our communities enough. First it was Jews, then it was Koreans and now it's Arabs. Very few black folks own these stores.'" "Wal-Mart Watch circulated and publicized Young's comments. By Thursday night, Young had apologized and resigned as chairman of Working Families for Wal-Mart. And Walmart began to distance itself from the man it thought would help it, saying in a statement that "Young's comments do not represent our feelings. We were outraged." See <http://abcnews.go.com/US/story?id=2331545&page=1>. Before this month, I did not know Senator Allen or Andrew Young had questionable views on race relations, and had not concluded from The Passion of Christ that Mel Gibson had anti-Jewish prejudices. People will draw their own conclusions of their recent comments, as they should. In any event, if people are going to hold such views, I much prefer that I know where they stand (and where I stand) than for it to be otherwise. Finally, regarding George Allen's macaca-gate, Wise County, Virginia, Commonwealth's Attorney Chad

Dotson blogs in favor of George Allen, and claims that this picture of Mr. Sidarth shows a Mohawk haircut. However, this Washington Post picture looks quite different. Neither source provides the date that either photo was taken. Jon Katz.Â

Posted by Jon Katz in Jon's news & views at 02:00

Tuesday, November 21, 2006

**Beware hearsay from deceased witnesses / Defendants may impeach their witnesses who turn hostile.**

Here is a short description of three important recent Virginia Supreme Court decisions: *Â* - A decedent's oral discussion is inadmissible at a criminal trial if it does not fall squarely within a hearsay exception. In this case, it was reversible error to admit such evidence. *Hodges v. Com.* *Â* *Â* - The issuance of a criminal summons does not permit a police search. *Moore v. Virginia.* *Â* - A criminal defendant is permitted to impeach a defense witness who turns hostile on the witness stand. The failure of the trial court to grant this right was reversible error. *Dupress v. Com.* Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, November 20, 2006

### **Cop says he routinely pats down people.**

Recently I had a disturbing -- yet revealing -- conversation with a police officer who charged my client with possessing marijuana. This case was in Virginia, where my client faced up to thirty days in jail for the marijuana possession charge. As I waited for our case to be called for trial, the arresting officer agreed to speak with me so long as the prosecutor was present. He proceeded to tell me that he stopped my client for speeding. He said he patted down my client down for his own safety, which he said he routinely does. Yow! The Supreme Court limits patdowns to situations where a police officer has reasonable, articulable suspicion to believe that the patdown will find contraband, ordinarily a weapon. This police officer was running afoul of this Terry decision. Before I spoke with the cop and before the drug chemist arrived by my subpoena (Virginia law provides for the drug certificate of analysis to be admissible in evidence if the chemist is not subpoenaed to testify), the prosecutor refused my suggestion of a deferred disposition for marijuana (to dismiss the case in six months or a year, without any finding of guilt upon satisfaction of agreed conditions for the dismissal, but to permit the defendant to be found guilty and sentenced without necessitating a trial in the event of a violation of the dismissal conditions). Shortly after the cop left the room after telling me about his inclination to pat down people, the prosecutor offered a deferred disposition for drug paraphernalia. To this day, I do not know whether it had anything to do with what the police officer told me about the incident. On the other hand, this underlined how preparing a case to go to trial makes it more likely to settle, while preparing a case to settle makes it more likely to go to trial. As an aside, as the police officer left the meeting room, he said "Thank you for being polite." I responded with my mini-achievement, "I can do it" (meaning being polite with my adversary). Another prosecutor chimed in "On the road to recovery." I caught up with the cop as he left the courthouse, and asked him how he thought his routine patdown approach jibed with the Supreme Court's Terry decision. He told me he knew about Terry. He said that lawyers previously attacked his routine patting-down policy in court, and claimed that none had been successful in gaining any ground about that approach. He spoke of one factor being his age of forty and the need to check more spry eighteen-year-olds for weapons. For my case, I could have advised my client to go to trial, but I expected that the officer would have thrown in some specifics for having reasonable and articulable suspicion that my client was armed (which he was not), which included his alleged significant nervousness, and the nighttime roadside location. Suppressing this patdown -- which was followed by my client's allegedly fessing up that the hard object in his pocket was a pot pipe -- was no shoe-in. I give credit to the cop for at least being willing to talk over our differences about patdown searches. As my political opponent Dick Thornburgh e-mailed to me earlier this year after I bumped into him on the street and e-mailed him about this blog entry I posted about him, it is preferable to disagree agreeably. However, with this cop, I'll feel more agreeable with him if he would start adhering to the Terry decision. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, November 19, 2006

### **UCLA police assault student multiple times with taser.**

The attached video from November 14, 2006, shows police in hyper-control and brutality mode -- tasing multiple times a UCLA student accused of nothing worse than being in the UCLA library without identification to permit him to be there and not leaving when asked by a university employee. Then the police tase him again when -- shocked and in pain over the first tase -- the gentleman does not leave the library quickly enough to the liking of the police. The university admits the student was tased multiple times. Adding insult to injury, the victim of this police brutality was arrested and cited by campus police for resisting and obstructing a police officer. Thanks to TalkLeft for covering this story. News about this brutality incident is [here](#) and [here](#). An additional video, and news story, is [here](#). Here is an interview with the student's lawyer. Here is an account from UCLA campus television. As of this time, the university has nothing but a lame response, rather than at least setting forth immediate orders severely curbing tasing, and to better hire, train, monitor, and fire campus police. My previous blog entry on tasing is [here](#). Amnesty International's exceptions about tasing are [here](#), [here](#) and [here](#). Here is a recent overview of taser dangers in [In These Times](#). Here is a purported account by the student whom a police officer threatened with tasing after he asked for the officer's badge number. Here is a UCLA campus newspaper overview of the UCLA police history with obtaining and using tasers. Everyone, please shine a bright light on police brutality and other police abuses. If this police behavior is taking place at a highly-ranked university, it likely is happening in many other places, too. Use your cellphones, videocameras and audio recorders to record police transgressions. (Know before you record; Eugene Volokh reports [here](#) about some states' unjust criminal laws regarding such recording). Report police abuse to the press, the American Civil Liberties Union and to all other organizations working to right such wrongs. Let the victims of the brutality know that you are an available witness. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, November 17, 2006

### **Arrested passenger says he was feeling sick, not sexy.**

For those fearful of flying, hopefully they will not need to add fear of arrest to the list. In September, federal authorities arrested a couple after they allegedly engaged in very frisky sexual activity on a Southwest Airlines flight. The man's lawyer says he was feeling sick, not sexy, so had his head on his girlfriend's lap. The couple allegedly intimidated one or more flight crew members after being told to stop their activity. Now, they have been indicted and accused of violating 49 U.S.C. § 46504, which carries up to twenty years imprisonment, and provides as follows: "An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life." For the law enforcement version of events, see the Complaint here. The indictment is here. The case is U.S. v. Carl Warren Persing, et al., Crim. No. 5:06-cr-00261-F (E.D. NC). Even if the allegations against the defendants are true, it is very troubling that the potential maximum prison sentence is so high, twenty years. Also, if the crew and passengers were from a more sexually liberal background and/or had a better sense of humor, I imagine the whole situation might have been handled more gracefully by everyone, without any confrontation. (E.g.: Flight attendant: "We'll be delighted to get you a hotel room when we land, but please wait til then." Passenger: "I'm feeling ill, which is why my head is on my girlfriend's lap." End of story; everyone saves face, and a confrontation is averted.) I was about to say that I will think twice before flying Southwest Airlines, but do not know if the other airlines will be any better in this regard. Jon Katz.

Posted by Jon Katz in Criminal Defense at 02:00

### **Thanks go a long way.**

In reply to recent thanks that I gave one of my mentors, he said: "Say as little as possible is the best response" to praise. I will let the following message from a client speak for itself, then, other than to say that I do not share all of my client's hyperbole about Virginia; I do feel that the justice system throughout the nation needs to be heavily reformed, to increase enlightenment by all in the criminal justice system (including police, prosecutors, judges, juries and jailers), and to decriminalize and legalize many offenses (including drugs, prostitution, and gambling) and to create a fairer sentencing system (including the elimination of mandatory minimum sentences and any general allegiance against departing below sentencing guidelines): Jon, This testimonial serves as not only a heartfelt thank you for your outstanding legal representation, but as a call to others facing the harshness and unfairness of our legal system. To anyone in the unfortunate position of possession of marijuana, there is no one else you should consider for representation than Jon Katz. The state of Virginia and law enforcement is bordering a third world nation in attitude and enforcement of the most minor of offenses, including simple possession. That state's law enforcement's giddiness over any arrest for anything strikes unimaginable fear in even the most grounded and strong individuals. Not only did I witness your brilliance in working the courts, prosecutors, judges, and state troopers, but it served as an inspiration, a call to activism, a call to not simply survive within the system, but to change it. Your courage, fearlessness, and commitment to the little guy serves as the last bastion of goodness in a legal system gone awry. You are a rare find, a legal warrior, a philosophical giant among those with no other agenda than power over others. I will act as a reference anytime and would march into a verbal, legal, or any battle with you shoulder to shoulder, with confidence. My eternal gratitude, (From a criminal defense client).

Posted by Jon Katz in Criminal Defense at 01:00

Thursday, November 16, 2006

### **Finding inspiration for great work.**

Often when finding the story, persuasion, and arguments for a client's case, I step back to clear my head. Sometimes I will do t'ai chi outdoors, spend some time with my family, listen to some great music, or experience other great art. I recently learned from the liner notes of John Coltrane's masterpiece *A Love Supreme* that while seeking inspiration for creating, Picasso swept the studio, Beethoven paid the bills, and John Coltrane went to a little-used area of his new house to end up with *A Love Supreme*. When he emerged with his new composition, as his widow Alice Coltrane tells it: "It was like Moses coming down from the mountain, it was so beautiful. He walked down and there was that joy, that peace in his face, tranquility. So I said, 'Tell me everything, we didn't see you really for four or five days.' ... He said, 'This is the first time that I have received all of the music for what I want to record, in a suite. This is the first time I have everything, everything ready.'" Trane poured his heart and soul into *A Love Supreme*, which can be heard in part here. The year was 1964, and this was his tribute to the deity. *A Love Supreme* hit a wildly popular chord far beyond jazz fans at a time when so many sought spiritual solace in a time of so much turmoil. Sadly, John Coltrane died just three years later, in 1967 at age forty, from liver cancer. When asked by a veteran lawyer at the Maryland Public Defender's Office why I had left private corporate law practice in 1991 to defend indigent criminal defendants, I told him it was where my heart was. He warned me about what can happen when a person wears his heart on his sleeve. It's often painful. However, I do not know where else to wear it nor how else to perform as well. I pour my heart and soul into defending my clients. They deserve nothing less. Jon Katz.

Posted by Jon Katz in Persuasion at 01:00

### **To view is not to possess.**

Here is a valuable Pennsylvania Superior Court case (*Pennsylvania v. Diodoro*, 2006 PA Super 308, No. 1889 EDA 2005). After surveying results in other federal and state courts, the Pennsylvania Superior Court concludes that the crime of possessing child pornography from an online source (as opposed to a statute prohibiting the mere viewing of child pornography) requires that the defendant know that the image is actually being saved to the computer. Because the prosecutor did not meet its burden to prove this element of the crime, the Superior Court dismissed the prosecution against the defendant. Congratulations to the defendant and his lawyers. Thanks to the First Amendment Lawyers Association member who posted this case to the website. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, November 15, 2006

### **Police tasing; police dogs.**

Here are some videos of police activity with tasers and dogs. The first video -- which may need to be opened by logging into YouTube and agreeing to see potentially "inappropriate" content -- may have an axe to grind about police, but nevertheless appears to show real and deeply disturbing footage of police in Pittsburgh shooting an arrestee with a taser, telling demonstrators to leave the area, and intimidating them with police dogs. The second video shows a Baltimore City police dog interacting with its handler. The third and fourth videos show police members suffering from taser testing, with viewers laughing about the situation. The police are supposed to be working for the public, and not the other way around. We need access to such videos to decide for ourselves how we feel about such police activity, policies, and behavior. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

### **May D.C.'s anti-runner law go down in flames.**

Recently a preliminary injunction motion was filed against the District of Columbia's law prohibiting ambulance chasing by personal injury lawyers. As much as I disdain ambulance chasing, I believe the anti-runner law violates the First Amendment, for the reasons presented in my attached February 28, 2006, letter against the legislation. May D.C.'s anti-runner law go down in flames. February 28, 2006 Honorable Phil Mendelson Chairperson Committee on the Judiciary Council of the District of Columbia 1350 Pennsylvania Avenue, NW Washington, DC 20004 Tel: 202-724-8064 Fax: 202-724-8099 PMendelson@dccouncil.us Re: Bill 16-208 (the "White Collar Insurance Fraud Prosecution Enhancement Amendment Act of 2005") Dear Chairperson Mendelson: Having carefully reviewed and analyzed the latest version of Bill 16-208 (the Bill), I urge the deletion of all provisions prohibiting contact with injury victims, and prohibiting and penalizing the use of runners who solicit clients for lawyers (collectively, anti-solicitation provisions). By way of introduction, I am a trial lawyer focusing on criminal defense, First Amendment defense, and Constitutional defense. I have no financial stake in this legislation, I disapprove of the use of runners in injury cases, and have never used them. I have litigated many injury cases on behalf of victims, have never been on the opposite side (other than libel defense), and have never represented any insurance company. I represent no client concerning the Bill. For many years, I have been a member of the Trial Lawyers Association of the District of Columbia (TLA-DC). Because the TLA-DC has been supporting Bill 16-208, I find it particularly important to voice my opposition to the Bill's anti-solicitation provisions, because the TLA-DC does not speak in my name whatsoever in this instance. When lawyers obtain clients through runners who rush to accident scenes and hospitals, or by doing so themselves, they help perpetuate the stereotype of the lawyer ambulance chaser. I fully disapprove of such practices. However, society is rife with distasteful expressive practices that are not prohibited by law -- and should not be so prohibited -- from pushy door-to-door solicitors to leafleters supporting offensive causes to Muzak. There is insufficient justification for the Bill to prohibit solicitation by runners and lawyers. Lawyers opposing runners and in-person solicitations should not be seeking legislative intervention; propping up a profession's image does not belong with the government. Moreover, before further fattening the D.C. Code, let us remember that remedies already exist against such related actions as disruption at hospitals and harassment. See, e.g., D.C. Code §§ 22-1314.02 (penalizing harassment and disruption at medical facilities) and 22-404 (penalizing harassment and stalking). Traditionally, lawyer solicitation has been regulated through codes of attorney professional conduct, and enforced by bar counsels. *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978). Regulation through this route has enabled the traditional sanctions for lawyers' professional conduct violations; e.g. warnings, probation, suspension, and disbarment. Moreover, this route enables a more careful case-by-case evaluation to assure adherence to the courts' many pronouncements on First Amendment protections for lawyer solicitation than does the Bill's scheme of applying fines for prohibited solicitation. For enforcement of lawyers' alleged violations of professional conduct rules in the District of Columbia, the Bar Counsel's lawyers ordinarily step in, to help protect all sides' rights. However, the Bill provides for fines for lawyer solicitations without injecting the safeguard of Bar Counsel involvement. This places the accused lawyer in a particularly difficult situation. A mere accusation of a solicitation does not automatically mean the solicitation has taken place (particularly when it is unclear whether a runner is actually acting at the bidding of a particular lawyer). Ideally, a lawyer would fully contest false accusations of violating the anti-solicitation provisions. However, doing so takes money to hire a lawyer, lest the lawyer parrots back the warning that a person who represents oneself in court has a fool for a client. On the other hand, for the lawyer not to vigorously contest such accusations -- even if the immediate sanction is not more than a \$1000 fine -- brings the risk of being branded as one

who runs afoul of the law. The anti-solicitation provisions are content-based restraints on speech, and violate the First Amendment. *Florida Bar v. Went for It*, 515 U.S. 618 (1995)[1]; *Ficker v. Curran*, 119 F.3d 1150 (4th Cir. 2002). The First Amendment exists not to protect speech that people like, but to protect distasteful speech, so that the free speech rights of all of us will be protected. It is not enough to ask whether the courts might uphold the Bill against a First Amendment challenge. Merely because a court upholds a statute does not automatically make the statute right. See, e.g., *Dred Scott*, 60 U.S. 393 (1857) (upholding slavery and the "right" of slaves' owners to treat them as chattels) and *Plessy v. Ferguson*, 163 U.S. 537 (1896) (permitting racial segregation). The trends in the courts' First Amendment jurisprudence will make it harder than ever for the anti-solicitation provisions to hold up in court against a First Amendment challenge. Governing Supreme Court case law does not permit anti-lawyer-solicitation laws absent legislative reliance on a study establishing the likelihood of significant harm of such solicitations. *Florida Bar v. Went for It*, 515 U.S. 618 (1995) (requiring data showing harm of lawyer solicitation before permitting an anti-solicitation scheme); *Ficker v. Curran*, 119 F.3d 1150 (overturning lawyer solicitation limits, where such a harm study was not used in passing the bill, and where the Maryland Attorney General reported -- before the bill's passage -- that it did not appear that such harm to consumers was likely); *Los Angeles v. Alameda Books*, 535 U.S. 425 (2002) (confirming the critical role of harm studies as a hurdle to passing content-based speech limits). A successful First Amendment challenge against the Bill's anti-solicitation provisions will expose the District government to substantial attorney's fees for the prevailing party. 42 U.S.C. § 1988(b); *National Black Police Ass'n v. District of Columbia Bd. of Elections & Ethics*, 168 F.3d 525, 528 (D.C. Cir. 1999). Fiscal responsibility calls for treading carefully before voting on such a bill. For all the foregoing reasons, I respectfully urge the deletion from Bill 16-208 of all provisions prohibiting contact with injury victims and prohibiting the use of runners who solicit clients for lawyers. If I can be of further assistance on this matter, I will be delighted to do so. Respectfully, Jonathan L. Katz cc: City Council Members[1] The next time the Supreme Court considers restrictions on lawyer solicitations, it may well provide even greater First Amendment protections against such restrictions. For instance, four of the nine justices in the *Florida Bar v. Went for It* case, 515 U.S. 618 (1995), joined a scathing dissent against the majority. Those four dissenters remain on the Supreme Court, whereas only three justices from the majority in *Went for It* remain on the court. Jon Katz.

Posted by Jon Katz in First Amendment at 00:30

### **Jury awards \$7 million to Illinois' Supreme Court Chief Justice**

The Courier News reports: "A Kane County jury has awarded \$7 million to Illinois Supreme Court Chief Justice Bob Thomas in finding in favor of the jurist in his libel suit against the Kane County Chronicle newspaper. Thomas had asked for between \$8.5 million and \$16 million for the emotional damage and loss of reputation he said he sustained after the publication of columns written by columnist Bill Page in 2003 accusing Thomas of trading one of his votes for a political favor." If the defendant reaches the Illinois Supreme Court on appeal, I surmise the chief justice will recuse himself. Possibly some other state Supreme Court justices will recuse, too, perhaps to the point that substitute judges will be needed to decide the appeal. From where will the substitute judges come? My absolute opposition to libel laws is detailed here. Thanks to the Media Law Resource Center for posting an alert to this case. Jon Katz.

Posted by Jon Katz in First Amendment at 00:00

Tuesday, November 14, 2006

**Two lawyers inspired me to practice t'ai chi.**

This week, I added the yin-yang symbol to the top-right of this blog, together with a link to my article on practicing law by incorporating t'ai chi, the peaceful path, and lessons from the Trial Lawyers College. Yin Yang. The yin yang symbol is an important expression of t'ai chi, and the phrase is part of the five main principles of practicing t'ai chi, which principles are simple, yet profound, particularly when applied throughout the day in all physical, verbal, thinking, and psychological matters. Those principles are maintaining the harmony and balance of yin and yang, relaxing and sinking the body into the ground, keeping the body upright, making the waist the commander of any turning of the body, and keeping the wrists softly unbent. I came to t'ai chi finally in 1994, not by any new age desire, but because t'ai chi appeared to be beneficial to providing the extra strength, harmony, and calm that I sought during my daily courtroom battles. In 1991, I first met late trial lawyer Victor Crawford -- who helped inspire me to learn t'ai chi -- at a criminal defense lawyers' meeting. I somehow learned that he was a practitioner, and asked him questions about it from time to time. Three years later, I asked Vic his advice for learning t'ai chi. Vic sent me some brochures about classes given by Ellen and Len Kennedy, (who became my teachers) and some other local instructors. He attached a note foreseeing amazing doors that were about to be opened through learning t'ai chi; what an understatement. I started going to the free Saturday morning t'ai chi practice sessions at Glen Echo Park, and then signed up for lessons there with Ellen and Len Kennedy, who are great teachers and who are former students of Robert Smith, who was t'ai chi superstar master Cheng Man Ching's first western student. My t'ai chi teacher Len Kennedy also is a lawyer, who believes so much in t'ai chi that for years he has taken time to teach t'ai chi weekly in addition to the intense hours he likely puts in currently as Sprint general counsel, and previously as a big law firm partner. I visited Vic Crawford about a year after starting to study t'ai chi, and told him I was unsure how much time to devote to going to t'ai chi classes. He urged me forward, and talked about the amazing energy and other benefits that come from practicing t'ai chi. I have witnessed such energy and strength firsthand when Len Kennedy has invited me forward to demonstrate various t'ai chi moves; with little energy, he'd bump me along a linear path. At the time, Vic was suffering from cancer that would claim his life less than two years after I started studying t'ai chi. He spoke of understanding his body independently from his doctors. Vic was no new ager practicing t'ai chi. He was a brash lawyer, and a lobbyist first for the tobacco industry and then against it as he battled cancer following his own years of smoking. This was the inspiration I needed to follow the t'ai chi path. How does t'ai chi help me as a lawyer? It helps give me the necessary strength to engage in effective and fearless battle. T'ai chi teaches that we must be relaxed and harmonized no matter how dangerous, threatening, or stressful the situation that we find ourselves in. Permitting tension is to become weaker and to block off essential channels of strength, energy, and creativity. The more I put t'ai chi into practice, the more I realize that these principles work and are essential. To be fearless, I take inspiration from t'ai chi master Cheng Man Ching, who spoke of overcoming our fears in terms of imagining that we are practicing t'ai chi while balanced atop a narrow pointed cliff. To not eliminate one's fears while atop the cliff is to guarantee certain death. Eliminating fear also calls for keeping and tempering the fearlessness of a child filled with wonder, and living in the moment, as wonderfully detailed in the following story of the man and the two tigers: A man is chased in the wilderness by two tigers, only to be forced off a cliff, hanging for life from a vine. One tiger waits above and the other waits below for a human meal. Two field mice gnaw away at the vine. The man sees a wild strawberry growing from the side of a cliff, reaches for it, tastes it, and -- with his life hanging in the balance -- thinks of how delicious the strawberry tastes. Practicing t'ai chi in the courtroom reminds me of a scene from a World War II movie where an American soldier, hidden from view, guns down enemy soldier after enemy soldier, calmly chomping on his cigar at every step of the way. As much as we must be sensitive about any violence, had this soldier lost his calm to anger, fear or yelling, he would have been a dead duck. His calmness, together with his shooting skill, gave him strength. The peaceful, harmonious, and t'ai chi path is beneficial both for lawyering and for living. Achieving on this path is a never-ending process. Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Monday, November 13, 2006

**Video: Los Angeles police punching arrestee.**

Â This is a homemade video, apparently depicting Los Angeles police arresting a man in August 2006. I shudder at what some or many police do under the cover of darkness if this is what some of them are willing to do in broad daylight in front of members of the public. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, November 12, 2006

### **When the judge mis-instructs the jury, appeal.**

In general, it is best to appeal any felony conviction. However, added caution is needed for appeals that lead automatically to de novo trials, because the Constitution does not prevent the original sentence from limiting any sentence at a de novo trial. *Alabama v. Smith*, 490 U.S. 794 (1989). For a conviction on a retrial after an appeal on the trial record, the trial judge is prohibited from using vindictiveness in resentencing the defendant. *North Carolina v. Pearce*, 395 U.S. 711 (1969); *Alabama v. Smith*, 490 U.S. 794. Sometimes appeals are won on bad jury instructions. While it is best for a lawyer to persuade the judge at the outset to instruct the jury as beneficially as possible for the client, that does not always work. Recently, the District of Columbia's highest court reversed a handgun conviction where the trial judge egregiously overstepped the judge's bounds in addressing a juror who qualified the juror's vote for guilty. The case is *Headspeth v. U.S.*, D.C. Ct. App. No. 05-CF-16 (2005). Kudos to the Headspeth jury for showing this defendant so much concern. Fortunately for criminal defendants and for justice, the District of Columbia has a significant percentage of jurors who do not presume the honesty of police -- which no juror is permitted to do in the first place. Due to the resulting number of acquittals in the District of Columbia from fair jurors, in the early 1990's the City Council and mayor cynically reduced the maximum possible penalty of a whole host of misdemeanors to 180 days to prevent jury trials, after having increased from 91 days to 181 days the potential incarceration penalty that would permit a jury trial. Fortunately, the District of Columbia Court of Appeals has construed D.C. law -- D.C. Code § 16-705 -- to require a jury trial for any offense permitting six months or more of incarceration, as opposed to 180 days of incarceration. *Turner v. Bayly*, 673 A.2d 596 (D.C. 1996). In federal court, however, a six-month potential penalty ordinarily does not provide the right to a jury trial. *Lewis v. U.S.*, 518 U.S. 322, 326 (1996). Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, November 10, 2006

**Mikes in the courtroom: Check, check.**

In a society where a person can barely go anywhere outside the home without being picked up on camera, some courts are using microphones to playback oral argument to the public. For instance, the Supreme Court provides same-day oral argument transcripts. The Supreme Court releases audiotapes of oral arguments annually to the National Archives, and on occasion releases audiotaped arguments the same day; some are available online at the Oyez page. The District of Columbia Court of Appeals provides real-time listening to oral arguments, but apparently does not archive them yet. Cameras and microphones ordinarily affect behavior when people know they are present. How do they affect lawyer behavior? When witnesses know that their testimony will be recorded and replayed to the public, I wonder if some of them will find a way not to appear in court. Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:00

Thursday, November 9, 2006

### **Maryland high court opinion effectively encourages unconstitutional police stops.**

After fifteen years of representing criminal defendants, I have seen too many instances of illegal and discriminatory police stops, including for driving/walking while black (or any other minority, particularly young male minorities). This is one of several factors that reduces my faith in the criminal justice system. Enter Ernest James Myers, a black gentleman who in Pennsylvania was unlawfully stopped -- under Pennsylvania law, at least -- for allegedly speeding. This unlawful stop led to the discovery that he had an open warrant for his arrest, and a search incident to his arrest that led to evidence used to support a warrant to search his home in Maryland. Consequently, Mr. Myers was convicted of felony theft in Washington County, Maryland, and slammed with a ten-year prison sentence. On appeal, unfortunately, Maryland's highest court ruled that the intervening discovery of Mr. Myers's open arrest warrant was sufficient to override the taint of his unlawful traffic stop. As a result, the court refused to exclude from his trial the evidence obtained from the search of Mr. Myers and his car that followed the discovery of his open warrant, as well as the search of his home on the search warrant issued in reliance on the evidence found on Mr. Myers and in his car after his arrest on his open warrant. The case is *Myers v. Maryland*, No. 132, Sept. Term 2005, \_\_\_ Md. \_\_ (2006). Also in *Myers*, unfortunately, the Court of Appeals stated that had the stop of Mr. Myers taken place in Maryland, the police officer's "mental impression of Myers's speed, under the circumstances, might have been adequate probable cause or, at a minimum, reasonable suspicion that Myers was traveling in excess of the posted speed" to have provided a sufficient basis to stop Mr. Myers's car. I do not think it is too much to ask that a speeding stop require a showing that the stop was based on the use of a properly calibrated laser, radar or speedometer operated by a properly-trained police officer. Already, it is easy enough for a police officer to lie that a traffic stop is based on a suspicion of speeding;. This *Myers* decision will provide police with another reason to unlawfully stop and arrest people, in a fishing expedition to see whether they have open arrest warrants. If we are not to live in a police state, this situation must change. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, November 8, 2006

### **To blog or not to blog: How to build a blog and website.**

The free speech fanatic I am, I fully support everyone's access to the Internet, no matter the content or quality of the communications being bandied about. Consequently, I share the following practical tips and tricks to lawyers and non-lawyers alike for launching and running a quality website and blog, with reference to the development of our own website and blog. Having a quality presence on the Internet helps diminish the pre-Internet dominance of media and information giants. We launched our in-depth website in 1999. In 2003, YNOT News published my basic webmastering article. Much has rapidly changed since then with the Internet, including changes in my recommended sitehost and reasonably-priced quality webdesigner (I recommend Daytona Networks); I also add that geocities.com is a less expensive all-in-one website option (but also less visually-pleasing and advertising-infested). One of the most important developments is the explosion in the number, breadth and depth of blogs, including our Underdog Blog (or Underdawg Blawg, as my law partner Jay Marks has called it). Launching a blog seemed a natural follow-up to our website. In order to maintain a focus on inserting an interesting and useful blog entry each day, I zeroed in on legal issues -- mostly involving criminal defense and persuasion -- that I would have written about no matter what, whether to my legal research file, to a lawyers' listserv, or to our website. Our blog started with the same web publishing software that we use for our website. The upside of this was maintaining the same domain name for our website and blog, which makes for easier google searches to our website (using "site:markskatz.com [phrase or word]" and keeping our site statistics software attached to one domain name. It soon became clear, though, that blog software would be a simpler, more powerful, and more user-friendly approach. Our sitehost Daytona Networks set up test versions of BBlog and Serendipity, and I settled on the Serendipity blog package. Here is a good article to help select downloadable blog software beyond the self-contained blogspot and typepad variety. Our blog software took more effort to launch and run than blogspot, but my previous experience using html language and doing webpublishing made the transition smoother. Other ideas for blog software can be obtained by visiting the blogs listed in our blogroll. Some features that I like about our blog software include that the software does not present the visitor with cookies, uses our Internet domain name, prevents changes to the blog software program without our approval, and enables each blogger to have an individual account. Serendipity also has a good bulletin board for users to share ideas and to troubleshoot. Any good blog software will give the blog a dynamic look and feel that goes beyond the static nature of a non-blog informational website. Once your blog is launched, several approaches are available for making the blog known to the public. Technorati.com is a common approach, as well as announcing the blog to an appropriate blog category on dmoz.org (which eventually, sometimes months down the line, links into the google category directory), to google.com, and to google's blog directory. Legal blogs can also be listed on blawg.org. Eventually, blogs will link to other quality blogs. A good way to get your blog noticed by other bloggers is to list good blogs on your blogroll. We use blogrolling.com software to add to our blogroll, rather than using a brute force method to add such links. Our blogroll lists blogs that I review frequently or occasionally. I am less discriminating about listing blogs of prosecutors and police, because there are few of them, and it is important to know the opposition. Judges' blogs also are limited in number. If a blog does not regularly upload entries, I am less likely to link to it. To make ours a daily blog, sometimes I will delay automatically the posting date of a less time-sensitive blog entry. That way, I do not need to attend to our blog on a daily basis, but daily blog entries still appear. Even though Crimlaw has switched from the side of the angels (criminal defense) to the darkside, he has some good legal blogging ideas here. Numerous other bloggers also have posted tips and tricks for blogging. Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:30

Tuesday, November 7, 2006

**Where must police draw the line in using deadly force?**

The Supreme Court will take up the issue this year. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, November 6, 2006

### **The death penalty: Always unjust.**

Saddam Hussein has been sentenced to death. The man was a walking violation of human rights, who was no friend of death penalty abolitionists. Consequently, why should death penalty abolitionists -- including myself -- care whether he is executed? Because the message of death penalty abolition is clear: The death penalty must be abolished, without exception. The ACLU's website includes some of my key reasons for opposing the death penalty. We should not engage in special exceptions to death penalty abolition, such as a Saddam Hussein exception. All that does is lead the way to more exceptions to the death penalty, and more insensitivity to the injustice of the death penalty. What is the worst thing that will happen if Saddam Hussein is not executed? Overall, nothing worse than if he were executed. Moreover, by not being executed, he will die a slow and uneventful death; he will be more forgotten in this way than if he were executed. My opposition to the death penalty is hardly radical. By now, a broad base of mainstream institutions and individuals oppose the death penalty, including the European Union, the Catholic Church, Amnesty International, and the list goes on. While I have not had a sufficient opportunity to reach a full opinion about how fair or unfair was Saddam Hussein's trial (although I know of allegations of such unfairness as undue Iraqi government pressure on the judges, and the killing of several of the defense lawyers), it was a trial without a jury, and he apparently had no right to choose a jury trial. I think that any trial -- particularly a capital trial -- is unfair without the right of the defendant to opt for a jury trial. George W. Bush is already hailing Saddam Hussein's death sentence. Mr. Bush has never been a friend of death penalty opponents, and is a gross impediment to abolishing the death penalty in the United States. On the other side of the political aisle, I was saddened to learn that influential Democrat Tom Lantos also agreed with the death sentence against Saddam Hussein. I plan to check the latest passed and signed United States legislation on enemy combatants to see whether it permits executions without juries, which I understand was the situation before the latest enemy combatant legislation was passed. As DNA studies, alone, have shown over the years, even juries repeatedly sentence innocent defendants to death. The death penalty must be abolished everywhere, and must be abolished now. Jon Katz

Posted by Jon Katz in Criminal Defense at 02:00

### **Frank Dunham leaves the planet.**

Sadly, on November 3, Frank W. Dunham, Jr., passed away. Mr. Dunham was the first federal public defender for Alexandria, Virginia. He apparently operated his federal public defender's office with the full independence that is critical for all public defender offices. The most striking professional information in Mr. Dunham's obituary is his constant dedication to first-rate criminal defense in private practice and through the federal public defender office that he ran. Beyond that, I am concerned about the article's mention that a security clearance would be required to finalize the appointment of Michael Nachmanoff as the next federal public defender. That seems to clash with the independence that is critical for any indigent defense office. Finally, I took to heart how Mr. Dunham bent over backwards to be there for his family, to the point that one of his sons often did not even realize how intense was his workload. Such role models are critical for all lawyers. Thanks to Capital Defense Weekly for covering this sad news. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:05

Sunday, November 5, 2006

### **If Neil Young were a trial lawyer.**

© 1976 Mark Estabrook. Republication permitted, as detailed here. Click here for YouTube clip. If Neil Young were a trial lawyer -- at least if he were arguing on the side of the angels, which is the only side I could imagine him arguing -- he would probably blow the opposition out of the water. How many lawyers come close to moving jurors the way Neil Young moves people singing: "Old man take a look at my life; I'm a lot like you. I need someone to love me the whole day through. Ah, one look in my eyes and you can tell that's true." How disarming. That is a trial lawyer's challenge with jurors: to disarm them without manipulating them nor making them feel manipulated, to move them as close as possible to finding in the lawyer's client's favor, and to entertain them. In the sterile, windowless, and often chilling and chilly surroundings of a courtroom, the imagination is needed to make the place come alive for justice. Most jurors probably know of hundreds of other places they would rather be than the courtroom. The persuasive lawyer gives them fewer reasons than that. In the end, the persuasive lawyer does not need to be a Doug Henning of entertainment to grab the jurors, keep them listening, and convince them of the lawyer's cause. Credibility is key. Packaging the credibility in a format that is interesting, memorable, and moving to the jury helps keep the jury's attention on the message. Jurors retiring to deliberate after hearing a Neil Young closing will remember the words "Old man take a look at my life; I'm a lot like you." It's a powerful and moving story that everyone can relate to. Jon Katz.

Posted by Jon Katz in Persuasion at 01:00

### **The amazing Sunwolf presents "Juror Competency, Juror Compassion"**

Dr. Sunwolf -- the great storytelling lawyer who proclaims that "Reality is no obstacle" -- is one of my six most influential and beneficial trial teachers and inspirers. The others are Stephen Rench, who inspires trial lawyers to "Dare to be great;" Larry Pozner, who teams with Roger Dodd to make effective cross examination less a mystery and more an achievable goal; Don Clarkson, a Radar O'Reilly of sorts who gets right to the heart of the matter in helping lawyers prepare for trial; Josh Karton, an acting teacher par excellence who gets to the heart of the matter as quickly as Don Clarkson; and Gerry Spence, who inspires to win for justice and in life by discovering and cultivating our unique magic, warts and all. I have been hooked on Sunwolf ever since she presented an amazing session on motions hearings at the 1994 National Criminal Defense College Trial Practice Institute. Sunwolf shows the power of persuading through storytelling. She is a past training director of the Colorado Public Defender's office, and is now an associate professor of communication at Santa Clara University. Sunwolf's two jury dynamic books and companion DVD are musts for trial lawyers: Practical Jury Dynamics, and Jury Thinking (the 2005 companion to Practical Jury Dynamics), and the Jury Talk DVD. Now available is Juror Competency, Juror Compassion, Sunwolf's 2006 companion volume to Practical Jury Dynamics. Just as Jury Thinking is a self-contained volume in itself -- rather than a treatise pocket part -- I anticipate that Juror Competency, Juror Compassion will be the same type of beneficial stand-alone volume. Promoting Sunwolf's Juror Competency, Juror Compassion for pre-order is my opportunity to give back in a small way to her for all the amazing gifts she has shared with me. The volume can be ordered at <http://bookstore.lexis.com/bookstore/catalog?pk=59482&action=product&>. You may wish to ask Lexis about any available discounts as a repeat customer or as a member of any lawyers' associations. By Jon Katz

Posted by Jon Katz in Persuasion at 00:05

### **Defending Reckless Driving in Virginia**

Following is a trial lawyers' listserv message by me that -- together with this article from our website -- gives a good overview for defending reckless driving in Virginia: For jailable offenses, I think a pro se defendant has a fool for a client. Nevertheless, plenty of defendants show up pro se for reckless charges; possibly some do not realize in advance that reckless is jailable up to a year and can suspend driving privileges up to six months. Here are my brief thoughts on this case: - The prosecutors in Fairfax County are not likely to offer a plea to less than reckless for speed at 84 in 55. - In addition to the defendant doing the reckless and aggressive driving course, it's a good idea to get his speedometer checked; if the speedometer needle incorrectly indicates the driver is going slower than the actual speed, that goes to intent for this specific intent criminal charge. M&M in Fairfax is a reliable company for doing the speedometer check: 703-591-9601. - For the trial date, a qualified lawyer will be able to assess the chances of winning a trial (e.g., whether the police officer is present and has the necessary, current and admissible calibration information on the speedometer/laser/radar, and whether the cop's speedometer pace was sufficient and reliable and for a sufficient distance). - If the chances of winning at trial are minute, sometimes it's better to plead

guilty without a plea agreement, and to argue for the judge to exercise statutory judicial authority to reduce the charges to the non-jailable improper driving charge (in some jurisdictions, the judge might reduce the charge to non-jailable speeding). In the event of a reckless conviction, a qualified lawyer will work for the most favorable sentence, the shortest suspension period, the most favorable restricted license provisions, and the lowest possible fine. - For sentencing and arguing to reduce the charges, it can help if the traffic was a light as possible and if the defendant had limited experience in the particular stretch of highway. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, November 3, 2006

**Tobacco prohibition: A bad idea.**

The number of Americans favoring a tobacco ban is staggeringly high. See this article by Ethan Nadelman against such prohibition; I agree. — Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 2, 2006

### **Feds targeting employers of unauthorized workers.**

Federal authorities are bringing enforcement actions against employers of unauthorized workers. One of the targeted companies is IFCO Systems, with federal authorities claiming that 53 percent of the company's 5800 employees had faulty Social Security numbers. Marks & Katz believes strongly in widely opening the United States' borders to immigrants. We also believe in fair treatment of immigrants and all other employees by management. Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:00

### **Selecting a prison.**

By the time a criminal defendant is convicted and sentenced, the defendant's attention often is focused on where s/he will be housed. Here is a Wall Street Journal article discussing former Enron CEO Jeff Skilling's efforts to obtain his first choice for prison. In any event, the article's title refers to "Club Feds." However, no matter how comparatively desirable might be some federal prisons over others, no inmate is at liberty, from things as small as being told when to awake in the morning to having the clock tick closer and closer to a defendant's release date. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, November 1, 2006

### **Politicians: Weed out security goons.**

Security goons are not wedded to any one political party, political stripe or politician. Witness, for instance, the First Amendment-violative arrests and hyper-security at recent Democratic and Republican national presidential conventions. Witness the manhandling of my former client and political conservative Ben Wetmore, who, after videotaping Tipper Gore's 2002 American University campus speech experienced the following by the admission of the Public Safety official judicial complaint: When Wetmore refused to turn over the videotape, "the officers pried the camcorder from Mr. Wetmore's hands, put him on the floor and placed him in handcuffs. The videotape was confiscated." (See <http://www.thefire.org/index.php/article/69.html>). Then, to add insult to Mr. Wetmore's injuries, he was victimized by a kangaroo Star Chamber disciplinary hearing that followed the customary rule to force the student's lawyer -- in this case myself -- to stay out of the hearing room and in the adjacent hallway. Going back further in time, it was at the 1968 Democratic national convention, not at a Republican national convention, where police goons' brutality led to the chant "The whole world is watching." Fast-forward to Halloween, October 31, 2006, when the political roles were reversed, and security goons (or were they but mere supporters?) for Senator George Allen tackled Senator Allen's nemesis Mike Stark, who has openly blogged to wanting to repeat Roger and Me with George Allen and to use guerrilla tactics to win elections. Here are accounts on the security goon incident -- depicted in the above YouTube video, from the Associated Press (via the pro-business Forbes.com site, so no liberal bias there) and the conservative National Review, For whatever reason, as of today, silence is the result of my search of Senator Allen's official website concerning this goon incident, macaca-gate, and Senator Allen's denial that his mother was raised Jewish subsequent to the date she says that she confirmed to him that she was raised Jewish. I imagine that plenty of Democrats' websites remain silent on serious scandals, but such silence is a serious mistake no matter whose website is silent. UPDATE: I re-reviewed the foregoing paragraph, recognizing that the official website that I referenced is Senator Allen's website in his official role as a senator. Therefore, I looked for his campaign site, which seems to be [www.georgeallen.com](http://www.georgeallen.com). A google search of Allen's campaign site (inputting site:georgeallen.com [search phrase]) and a direct search of the site find the following: - The site says nothing about the strongarm violence against Mike Stark shown in the above YouTube video, but instead attacks Mike Stark here (showing him raising legitimate questions about whether Senator Allen used the N word before, and about why he had a Confederate flag and noose in his office (if the latter items were indeed there)), and by highlighting the above-listed National Review article. If Senator Allen does not publicly reject and state his opposition to this strongarm treatment of Mike Stark, he will be giving the green light for his supporters and security assistants to continue such activities in the future. - The site seems completely silent about macaca-gate. - The site includes a press release about Senator Allen's pride in his Jewish heritage, but the site does not appear to explain why he denied that his mother was raised Jewish subsequent to the date she says that she confirmed to him that she was raised Jewish. - The site provides this comparison chart of where George Allen and Jim Webb stand on such issues as immigrants' rights, free choice on abortion, gay marriage, and flag burning. I come out against George Allen's positions on those four issues. - The above YouTube video does not look doctored, and apparently was captured by a local television station. Moreover, I have been inside the same Omni Hotel in Charlottesville, Virginia, many times, which is next door to the federal courthouse. The video does not look like it was staged somewhere else. It is time for Senator Allen to speak up honestly about the gooning against Mike Stark, and to reject it. I would say the same if the gooning had been by Jim Webb's crew or anybody else's crew. POST SCRIPT 1: On a related note, Mike Stark has filed a criminal complaint over this incident. Charlottesville News Channel 29's website reports that: "One of those people who tackled Stark is former Albemarle County GOP chairman John Darden. In a statement released to NBC29, Keith Drake, current chair of the county Republicans, said Darden declined to comment on the incident because the campaign ought to be about 'issues and a record not public stunts.'" It goes without saying that in criminal court, I would as readily and aggressively defend a person whose actions and views I despise, as a person whose actions and views I love. All suspects in the assault of Mr. Stark deserve full protection of the Constitution in any criminal investigation or prosecution, as do all criminal suspects. POST SCRIPT 2: Charlottesville News Channel 29's website reports that: "Senator Allen (R) commented on the series of events, saying, 'This person, and this has been typical of the webb campaign, wanted to provoke and create an incident. And it's unfortunate. I would like to see Mr. Webb denounce this sort of activity.'" Jon Katz.

Posted by Jon Katz in Jon's news & views at 20:00

### **The Busted video: Reduce arrests by widely distributing this YouTube link.**

Please donate to [FlexYourRights.org](http://FlexYourRights.org), which produced this Busted.video and authorized this version on YouTube. Too many arrestees come to my office to have their hearts sink to the ground when I play them this

Busted video, realizing that they would not have been arrested or prosecuted in the first place had they watched and applied the lessons in Busted. I urge everyone to encourage everyone they know to watch this video before they next leave home. Kudos to the video's producers at FlexYourRights.org for making the entire video available on YouTube, and for giving our firm permission to embed the video onto our site. Busted now is linked to an image on the left side of this blog, and on most pages of our website. Please donate to FlexYourRights.org, which produced this Busted.video and authorized this version on YouTube. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:10