

Friday, March 30, 2007

.xxx domain canned at ICANN meeting.

Bill of Rights. (From the public domain.) On March 30, 2007, ICANN voted nine to five against adding a .xxx domain. Thanks to everyone who raised their voices against adding a .xxx domain, which I blogged about on March 27, 2007. I will try to find out who comprises ICANN's voting members, and how they are appointed. On the one hand, this .xxx vote is reason to celebrate. On the other hand, the five votes in favor of adding a .xxx domain are grounds for concern. Jon Katz.

Posted by Jon Katz in First Amendment at 06:00

Where marijuana grows wild, a search warrant is harder to obtain.

Image from public domain. Marijuana is a weed (thus, one of its nicknames) that can grow wild on one's property without the landowner even knowing it, at least if multiple acres are involved. Consequently, in 1978, the Kansas Court of Appeals wisely decided as follows: "As may be seen, there are only two relevant factual allegations in the affidavit [for a search warrant]: (1) the sheriff and others had seen marijuana growing in defendant's corral; and (2) marijuana had recently been harvested by someone in the area near defendant's farm home. From these two facts the magistrate was asked to draw the inference that marijuana was 'probably stored in one of the buildings on the farmstead.' We agree with the trial court that the inference may not properly be drawn."First, the presence of marijuana growing in the corral does nothing to show the presence of cut marijuana in the barn. We take judicial notice of the fact that marijuana grows wild throughout most of Kansas. [Did Dorothy know that?] There is no indication in the affidavit that the growing marijuana was cultivated or that any of it had ever been harvested, or that the corral was in such use that defendant was necessarily charged with knowledge of its presence."Second, the fact that unknown persons had recently harvested marijuana 'in the area near' defendant's home gave no indication that defendant was the harvester. The affidavit says nothing about how near defendant's home the harvesting took place, whether it was accessible to casual passersby, who else lived close to the harvested crop, or who owned the land on which it grew."In short, there was absolutely nothing to tie defendant to the harvested marijuana except a vague allegation of geographical proximity and the presence of growing but unharvested marijuana in his corral. We agree with the trial court that these facts give rise to at best a suspicion, and do not show probable cause."The State also suggests that the defendant did not have standing to raise the search and seizure issue because the farm on which he lived was actually owned by a corporation. This issue is being raised for the first time on appeal and will not be considered. In addition, the sheriff's affidavit itself describes the premises to be searched as 'the farmstead occupied by Jerry Brown,' and the possession charge must necessarily depend on defendant's being in possession of the premises where the marijuana was found. Such possession was enough to give him standing."Affirmed." State v. Brown, 2 Kan. App. 2d 379, 579 P.2d 729, 730-31 (1978). Thanks to a fellow criminal defense listserv member for bringing this pithy and wisely-decided court case to my attention. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Thursday, March 29, 2007

Burnt marijuana smell does not automatically permit warrantless home search.

Image from public domain.Â Burnt marijuana has a pungent and funky smell that exposes marijuana smokers to police searches.Â Appellate courts repeatedly have given cops the green light to conduct warrantless searches upon smelling burnt marijuana. Defending against such searches calls for attacking the totality of circumstances, including how strong was the odor, from where it emanated, and the officer's personal knowledge of marijuana smell (how on earth can a law-abiding police officer know whether s/he's smelling marijuana or another substance?). It is particularly time to pounce on the search and the officer's credibility when the cop claims to have searched due to marijuana smell but is unable to show any recovery of any remnants of marijuana or marijuana paraphernalia.Â Moreover, when unburnt, marijuana can be very difficult to recognize by smell.Â Praised be the Utah Supreme Court, which on March 9, 2007, refused to automatically permit warrantless home search upon smelling burnt marijuana. In *Utah v. Duran*, the Utah Supreme Court stated: Â "While no one disputes that the odor of burning marijuana was evidence of a 'crime or contraband' in the trailer, the only basis upon which the police could conclude that Ms. Duran would 'destroy' the evidence before a warrant could be obtained was their belief that she would 'smoke it up.' Unlike Mr. McArthur, who knew that the police were onto him, Ms. Duran did not know that law enforcement officers were aware of the presence of marijuana in the trailer until they broke through the door. Most significantly, there is no indication that the law enforcement officers engaged in any effort, much less a reasonable one, to reconcile their law enforcement needs with the demands of personal privacy. In fact, to the extent that the officers engaged in any assessment of competing interests related to the acquisition of a warrant, they balanced their desire to avoid the inconvenience of seeking a warrant against Ms. Duran's privacy interests and concluded that convenience was more important. We cannot countenance this attempt at 'reconciliation'Â and at the same time keep faith with our duty to interpret and apply fundamental constitutional guarantees. We therefore affirm the court of appeals." Â Of course, when police smell burnt marijuana, they see an opportunity not only to search for marijuana and marijuana paraphernalia, but to search for all contraband, including other drugs and handguns.Â DuranÂ helps rein in police excitementÂ to search upon smelling burnt marijuana.Â Jon Katz.Â

Posted by Jon Katz in Criminal Defense at 01:00

Wednesday, March 28, 2007

Violence begets violence.

Image from the Government Printing Office's website. Violence begets violence. Consequently, the fewer weapons in the courtroom (other than trial exhibits) the better. However, a Texas legislator has introduced a bill that "would add deputy prosecutors who handle felony cases to the list of individuals, including judges and district attorneys, who can bring a concealed weapon into court." Yes, prosecutors (and sometimes criminal defense lawyers for that matter, among others) are at real risk of violence from some criminal defendants and their supporters. However, letting prosecutors pack pistols in the courtroom only helps escalate the cycle of violence rather than helping to break the cycle. Moreover, it is hard to expect that a prosecutor with limited handgun safety experience will have sufficient time and opportunity to become sufficiently trained and retrained so as to trust the prosecutor with a handgun in the highly-charged atmosphere of the courtroom. Felony prosecutors ordinarily are too occupied with their cases to be finding the time to know how to use a handgun properly, not to fire one with a hair-trigger attitude, and not to hit innocent bystanders in a crowded courtroom while their attention is focused not on courtroom security but on winning their case. If the prosecutor is carrying a handgun, I will not want the prosecutor coming near defense counsel table, lest my client feel threatened by the approach of an armed opponent. My client's knowledge that the prosecutor -- just a few feet away -- is packing a pistol will not assist my client's reaching calm before the jury, will not assist my client in conferring with me during the trial, and, therefore, will deprive my client of the Sixth Amendment right to a fair jury trial and to effective assistance of counsel. Furthermore, I want a prosecutor to be as receptive as possible when we need to discuss on-the-spot issues in the courtroom (e.g., stipulations to exhibits, or renewed settlement negotiations); a concealed handgun just gets in the way of such open and effective communications. Seeing that prosecutors are public servants charged with serving justice, they should not be packing pistols in the courtroom, but instead should be taking the critical road to teaching and achieving peace, even though the peaceful path can be more arduous, dangerous, and slower than firing a bullet against an actual or perceived assailant. If people want to be able to physically defend themselves, effective non-lethal options abound. However, nothing beats knowing how to defuse and de-escalate a dangerous situation with words (and silence) and with physical withdrawal from the dangerous situation. Even though I advocate robust Second Amendment rights, I applaud when people make a personal choice not to own or use handguns. I do not buy the view of the NRA convention attendee who urged that the best way to show my child I love him is to be armed at home. The best way for me to show I love him is to hug him in my arms literally and figuratively, and to live that way every minute of the day. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:15

Tuesday, March 27, 2007

Oppose this Friday's vote about adding .xxx Internet domain.

Bill of Rights. (From the public domain.) Will .xxx be added as an Internet domain? This Friday, ICANN (Internet Corporation for Assigned Names and Numbers) will decide this question at its Lisbon meeting. I remain as opposed to adding a .xxx domain today as I did three years ago when the Today Show interviewed me on the matter. I strongly believe that such a move will make it more likely to increase efforts unconstitutionally to censor adult entertainment, by first making the .xxx domain a voluntary venue followed by government efforts to force sexually explicit material into a .xxx domain followed by laws censoring and criminalizing material from the .xxx domain. The Free Speech Coalition and I agree on this issue. (I am the founding past president of the Free Speech Coalition of the District of Columbia, Maryland and Virginia, Inc.; the FSC is a trade association for the adult entertainment industry.) As it turns out, some religious groups oppose the .xxx domain, having an expectation that such a domain will increase the availability of sexually explicit material on the Internet. The First Amendment protects the production, distribution, and possession of sexually explicit material that is not obscene and is not child pornography. The .xxx domain seems to have little support from adult websites. Consequently, the only effective purpose of such a domain would be to lead down the path to censorship, which is an illegitimate purpose for a .xxx domain. Among the avenues for expressing opposition to adding the .xxx domain are (1) to contact ICANN directly and (2) to sign onto the .xxx domain opposition page at <http://www.fightthedotxxx.com>, by contacting brandon@fightthepatent.com. The Free Speech Coalition's website has additional information links on the issue. Jon Katz.

Posted by Jon Katz in First Amendment at 07:00

From a medical marijuana sentence on thirty plants, to a probation before judgment.

Practicing criminal defense is about bringing the client to harmony as much as possible at all stages of the case, including at trial and at any sentencing. Maryland's medical marijuana sentencing law (which I have discussed here) appears to be a strange compromise between those advocating no conviction for medical marijuana use and those concerned about constituents' and/or federal statutes' resisting the reality that marijuana is medicine. In any event, we reached our final victory in our client's medical marijuana case on March 23, 2007, as follows: On December 3, 2006, I blogged in depth about our success in obtaining a medical marijuana sentence of a \$100 fine and court costs for simple marijuana possession for our client who was alleged to have been growing thirty marijuana plants. On March 23, we returned before the sentencing judge to argue in favor of converting his guilty verdict to a probation before judgment disposition, which involves staying the entry of the judgment of guilt with or without a probationary period. I argued in-depth our client's positive qualities and achievements and the hardship our client faced by having a record of guilt in this matter. The judge granted our request, and converted our client's case disposition from guilty to probation before judgment, without imposing any probation period. This was a great and just result for our client, but it remains an injustice that medical marijuana remains criminalized in most of the nation, and that marijuana itself continues to be criminalized. Unfortunately, the benefits of Maryland's medical marijuana law are reduced by the limited financial resources that many criminal defendants will have for presenting such a defense. Jon Katz.

Posted by Jon Katz in Criminal Defense at 03:30

Firearms expert padded his resume.

Image from the Government Printing Office's website. Joseph Kopera testified as a ballistics expert in countless cases for many years. It turned out that he grossly padded his resume. He committed suicide earlier this month as he faced questions about his credentials. Mr. Kopera worked as a ballistics expert for state and federal prosecutions in Maryland, Virginia, Pennsylvania, and Delaware. For defendants and defense counsel who have had cases involving him, the time is ripe to determine whether to seek appropriate relief from the courts from any convictions under his watch. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:25

Justice Department official to take the Fifth.

Bill of Rights. (From the public domain.) Justice Department official Monica Goodling plans to remain silent when she appears before the Senate about U.S. Attorney-firing-gate. Ms. Goodling is entitled to take the Fifth. With at least

one official of the nation's largest prosecutorial arm asserting her Constitutional criminal defense right to remain silent, perhaps this will make federal prosecutors more sensitive to the rights of criminal defendants to assert their Constitutional rights.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:20

Monday, March 26, 2007

The potential gold of criminal motions.

Most jurisdictions set strict deadlines for filing and responding to criminal and civil case motions. A colleague once humorously asserted that the criminal rules are written to help prosecutors rather than to help defendants; sadly, many rules seem to fit that concept. (Image from public domain). One day a criminal defense colleague remarked with surprise to me: "You file and litigate motions?" Unfortunately, he did not seem to be joking. As dull as the written procedural rules, procedural and substantive statutes, and court orders may often appear on their face, those rules and laws provide criminal defense lawyers with many critical and powerful swords and shields to defend their clients. The key for the criminal defendant is to achieve the best possible result, rather than needing to obtain that result with a sensational flourish. Often the governing procedural rules provide that mechanism to success -- even when the mechanism is far from sexy -- including, but not limited to, keeping out unlawfully seized evidence, keeping out damning testimony when chain of custody is not proven, keeping out damning hearsay evidence, and forcing the prosecution to dismiss a case by referring to courts' procedural rules and practice in successfully opposing a prosecutor's motion to continue a trial date. As but one of many examples, I once used the District of Columbia's procedural rules to lead the prosecutor to dismiss my client's drunk driving prosecution when the prosecutor had failed to file a written response to my procedural motions. The prosecutor emphatically informed me that he would simply re-charge the case and withdraw the last plea offer. This all happened over five years ago, and the prosecutor never re-charged the case, and it now is too late for him to do so. Pursuing well-argued written motions and motions hearings sometimes is the key to victory and pleasant surprises. In the pleasant surprise department, one day I was chewing the fat with my opposing prosecutor while waiting for the courtroom to open for us to argue motions in a drug case. The judge advised the prosecutor to call his first witness. The prosecutor asked for fifteen minutes to get his witness there, who was on call. The judge refused to wait, and I won my motion to suppress evidence. Aside from pleasant surprises, the arguing of motions on paper and in court can help educate the judge about the defense's theory of the case and about the applicable law; this is preferable to leaving the judge only to make on-the-spot decisions during the trial. Moreover, the motions hearing enables the lawyer to ask open-ended questions, which often provides more information to prepare for cross examination of opposing witnesses, which ordinarily is controlled and filled with yes-no questions. In the well-argued motions department, recently I obtained a diversion-dismissal agreement with a prosecutor only after all parties and the judge had invested substantial time into the hearing on my motion to suppress evidence in an assault case. The thrust of my motion was that the police unlawfully kept my client detained even after an unduly suggestive on-scene identification of him. I argued that absent the unlawful ongoing detention, my client would have been released, nobody would have known his name or address, nobody would have known who to prosecute, and, therefore, none of us would be in court on my client's case. The judge was skeptical about this argument, where two prosecution witnesses at the hearing positively identified my client (which was easy to do, with him being the only non-lawyer at the counsel tables) as the assailant, and testified that the police did not ask them for an on-scene eyeball identification. The motions hearing in this assault case started at the end of the court's docket. The prosecutor asked his witnesses many questions about the alleged assault rather than just about the identification, and this helped me very much in further crystallizing my trial strategy. Ordinarily, it is advisable to hold motions hearings prior to the trial date. Such an approach, for instance, provides time to obtain and subpoena any needed additional evidence and witnesses, and to obtain a transcript of key testimony of opposing witnesses. In this instance, the motions hearing immediately preceded the trial, because it was a bench trial for a matter jailable no longer than 180 days in a jurisdiction (Washington, DC) that does not ordinarily afford jury trials where the maximum possible sentence is not longer than 180 days. At the end of the day during our motions hearing, the judge instructed the parties to return the next day, when just before the lunch break, the judge informed both parties of concerns he had about the strengths and weaknesses of each side on my motion to suppress evidence. When the judge broke for lunch, I saw this as a fresh opportunity to reinvigorate my efforts to dispose of the case without a trial or guilty finding. I suggested to the prosecutor that a diversion-dismissal agreement (with conditions on my client for obtaining the dismissal) would help both parties hedge their bets. By avoiding collapsing the motions hearing into our trial itself, I gave the prosecutor more opportunity to consider my diversion proposal. Had the motions hearing and trial been collapsed together, jeopardy already would have attached with the commencement of testimony, and diversion probably would not have been considered by the prosecutor, in that the diversion program delays the case several months to a status conference, at which the case may be set for trial if the defendant has not satisfied the conditions for obtaining a diversion dismissal. About fifteen minutes before court was to have resumed, we had a diversion-dismissal deal. One of my colleagues who brainstormed the trial with me came to the courtroom after the lunch break specifically to watch the trial, only for me to tell him that the fruits of our brainstorming would not be played out at trial. The key to obtaining the diversion-dismissal result in this case was investing time, persuasion, and skill. Prosecutors often can obtain convictions without thorough trial preparation. However, criminal defendants' lives and liberty are on the line and need thorough case preparation from their attorneys.

For that reason, for instance, I visited the scene of the alleged assault prior to our motions hearing and trial date, and spoke with the complainant at the scene. Sometimes taking the trouble to visit the scene and to speak with witnesses yields gold, sometimes not. However, the only way to know if gold will be yielded is to search for it, and sometimes the gold will not make itself readily apparent until as late as the trial date. Pursuing thorough case preparation also helps earn client confidence in the criminal defense attorney. With increased client confidence, the criminal defense lawyer can focus on winning and obtaining more confident and persuasive testimony from the client if the client testifies (and more beneficial consultations with the client before and during the trial), and a more persuasive client presentation to the judge at sentencing in the unfortunate event that the client is convicted. The value of investing time into thorough case preparation reminds me of a joke once told by one of the nation's premiere cross-examination teachers, that instead of going out on Saturday nights, he stayed home preparing for cross examination. Jon Katz.

Posted by Jon Katz in Criminal Defense at 06:00

Sunday, March 25, 2007

Why would law enforcement not want to record "confessions"? Why, indeed.

Ernesto Miranda (r). (Image from State Department's website).
Praised be attorney Paul Charlton for wanting "FBI agents to tape-record interviews and confessions, particularly in child molestation cases on Arizona's 21 Indian reservations, something the FBI historically has not done." Unfortunately, Mr. Charlton's voice is of less authority on this matter now that he is one of the eight fired United States Attorneys.
Why would law enforcement people not want to videotape suspects' "confessions" to enable judges and jurors to make fairer decisions about the voluntariness of the "confessions" and their reliability? Why, indeed? To hide police prevarication, exaggeration and distortion? To try to avoid having jurors lose their lunch (or breakfast) over heavy-handed police interrogation tactics? The last time I checked, the police are supposed to work for the people, and not the other way around. Criminal defendants' lives and liberty are worth requiring all police agencies to purchase and use video cameras to tape "confessions". Jon Katz.

Posted by Jon Katz in Criminal Defense at 02:00

Friday, March 23. 2007

COPA Judge: "[P]erhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection."

Bill of Rights. (From the public domain.) Yesterday, March 22, United States District Court Judge Lowell A. Reed, Jr., courageously and wisely struck down the Child Online Protection Act (COPA) by granting a permanent injunction against its enforcement. *ACLU v. Gonzales*, Civ. No. 98-5591 (E.D. Pa. March 22, 2007). COPA seeks to prevent minors -- and consequently adults, too, since the Internet does not have a way to know whether an adult or minor is surfing from a particular computer -- from viewing sexually explicit material on the Internet. Judge Reed's opinion strikes down COPA as a vague and overbroad statute that violates the First Amendment. Near the end of Judge Reed's lengthy opinion, I was pleased to hear him re-state a view similar to one that I frequently express: "I without hesitation acknowledge the duty imposed on the Court [as Justice Kennedy observed] and the greater good such duty serves. Indeed, perhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection." [*ACLU v. Reno*, 31 F. Supp.2d 473, 498 (E.D. Pa. 1999)]." Similarly, I often talk about the bad civics lesson of trampling on the Constitution, which lawmakers and government officials often do in the belief they are helping society, rather than with the specific intention of shredding the Constitution; for instance I have said: "If a convicted person is going to be put in prison, it is a bad civics and rehabilitation lesson to over-censor the prisoner." The Justice Department of Alberto Gonzales (how long he stays there is anybody's guess) will certainly appeal this ruling. The American Civil Liberties Union -- whose membership card I have proudly carried for over two decades, on whose local board I served for three years, and to which our law firm proudly donates funds annually -- most certainly will continue its powerful fight against COPA. Thanks in many respects to you, ACLU, the Constitution is working. Jon Katz.

Posted by Jon Katz in First Amendment at 02:30

Court recognizes that computer experts will not lug their equipment to government offices.

Computer hard drive. (Image from Pacific Northwest Laboratory's website.) This follows up on my November 27, 2006, blog entry, which said, among other things: "Two technology experts testified in November 2006 in Virginia federal trial court that 18 USCS § 3509(m)'s requirement that computer hard drives in child pornography prosecutions generally only be examined at government facilities, 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 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. On January 25, 2007, the Knellinger trial judge fortunately agreed to order that the defense expert -- when designated -- receive a duplicate of the defendants' hard drive(s) to examine. The court acknowledged that "the practical reality is that computer experts would not agree" to transport their equipment to government facilities to examine computer hard drives there, as opposed to conducting the analysis at the experts' offices. Consequently, if a hard drive copy were not provided to the defendant, the defendant "ultimately would be prevented from conducting his analysis at all." My own experience shows the difficulty of finding a qualified expert to examine computer hard drives at a government facility. In working with my favorite computer expert, I learned early on that the equipment to analyze the hard drives is heavy and bulky, and an imposition to transport. Many hours can be required to have the hard drive examined by the analytical equipment, and the expert can use that time for other work in the interim. Consequently, even if a qualified expert could be found to conduct such an analysis, the cost of the expert's time likely would be economically prohibitive for most defendants. Here are some practice pointers in working with computer experts in child pornography cases. First, the expert will need a precise duplicate of the hard drive to examine. Work with the expert to put language in the court's order to assure that the hard drive copy provided to the defense is indeed a precise duplicate. For instance, it is important that original and copy of the hard drive have matching hash values. Second, in analyzing the hard drive copy, some experts may find potentially incriminating evidence (e.g., additional images that might be the subject of additional child pornography criminal counts) that the authorities have not found. Some experts will report that to the authorities; it is critical that such experts be up front about that with the defendant's counsel before being retained. Jon Katz.

Posted by Jon Katz in Criminal Defense at 02:00

Thursday, March 22, 2007

Maryland max security prison closed. Now what?

Too many people are unjustly caged in United States prisons. (Image from Bureau of Prisons' website). By now, I have visited clients in nearly all the prisons throughout Maryland, and numerous state jails. If people's lives and liberty were not involved, I would be intrigued more by the peculiarities of many of these prisons, including the Central Laundry prison where inmates wash state-owned sheets and clothing; the minimum security facility on the Eastern Shore with no fences or other external escape barriers; the decrepit Maryland Penitentiary, whose general visiting area has been an on-location site for the Homicide series; the hospital facility that could have been from an Alfred Hitchcock film; and the so-called supermaximum facility that houses death row inmates and numerous others who have little to no contact with other inmates. Many of these prisons are depressing beyond depressing. Many prison guards probably feel like they are voluntary temporary prisoners in these bleak places. Prisons dehumanize. On March 19, 2007, Maryland officially closed one of these depressing prisons, which is the Maryland House of Corrections in Jessup, a town on the way to Baltimore that teems with prisons. The violent assaults became too many. The facility was modeled after nineteenth century prisons. Twentieth century gadgets like cellphones cannot receive signals through some of the prison's thick walls. MHC Jessup ultimately will be converted from its former maximum security status to a minimum security prison. Meanwhile, MHC Jessup's maximum security prisoners this month have been shipped to other prisons inside and outside Maryland. The closing of MHC Jessup does not solve the state's prison problems. Rather, the situation further reveals the severe dysfunctions of a criminal justice system that overprosecutes and is overburdened by drug prosecutions. Throughout the nation, the criminal justice system is overgrown, over-oppressive, and over unjust. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Wednesday, March 21, 2007

Cert. petition filed over prisoners' First Amendment rights.

Â Bill of Rights.Â (From the public domain.)Â On February 27, 2007, Joseph D. Koutnik's lawyers filed this petition for the Supreme Court to agree to consider the limits on prisons for censoring inmates' outgoing mail. In this instance, a prisoner used a swastika as part of criticism of the prison system.Â I originally blogged about this case on August 14, 2006. Jon Katz.

Posted by Jon Katz in Constitutional Law at 01:00

When clothed shots are prosecuted as child pornography.

Image from CPSC's website. Â Remember, so-called crotch shots can expose a person to a child pornography prosecution and conviction. Â One person who learned this the hard way is Jeff Pierson, who has been prosecuted federally for allegedly taking "too sexual" clothed shots of children whose parents hired him to take the photos. An article addressing the First Amendment concerns in Mr. Pierson's case (and I think the First Amendment prohibits prosecutions for mere possession of child pornography, but the Supreme Court and lower courts do not agree with me) is here. A March 8, 2007, article after Mr. Pierson's guilty plea is here. Â Mr. Pierson's criminal charging document is here, and his plea agreement is here. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Tuesday, March 20, 2007

Ninth Circuit denies injunction against federal prosecutions of medical marijuana.

Image from public domain. On March 14, 2007, the Ninth Circuit refused to issue an injunction against federal prosecutions of medical marijuana, in *Raich v. Gonzales*. The opinion is here. The court's opinion is helpful in acknowledging the medicinal benefits of marijuana, and in leaving open the possibility of raising a necessity defense by medical marijuana users in a marijuana prosecution. As an aside, I know lead plaintiff Angel Raich and, for many years, one of her attorneys, Robert Raich, who is also her husband. Knowing Angel and Rob brings to life all the more my support for Angel's plight and for the cessation of prosecutions against people using marijuana as medicine. Jon Katz.

Posted by Jon Katz in Drugs at 01:00

Ed Rosenthal wins vindictive prosecution argument.

Image from public domain. On March 6, 2007, I blogged about the criminal retrial of medical marijuana cultivator Ed Rosenthal. Congratulations, Ed, on your March 14, 2007, victory in dismissing the new counts against you, through using the vindictive prosecution defense. The trial court's opinion is here. Now the prosecution is left to decide whether to pursue the original counts against Mr. Rosenthal, which yielded only one day in jail the first time around. The one-day sentence will generally cap any new sentence if Mr. Rosenthal is convicted at his retrial. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Saddam Hussein's vice president hanged after first receiving a life sentence.

Death penalty: Always unjust. All execution is brutal and unjust. This morning, Saddam Hussein's former vice president -- Taha Yassin Ramadan -- was hanged even though his trial court ordered a life sentence. However, the appellate judges who reviewed the case ordered a resentencing, saying the original sentence was too lenient. That's right, the United States has been sacrificing the lives and health of thousands of soldiers, spilling the blood of many more than that, and pouring billions of dollars into Gulf War II, and for what? To have a new Iraqi government that mimics Saddam Hussein's former government in such reprehensible ways as this execution. Jon Katz.

Posted by Jon Katz in Jon's news & views at 01:00

Monday, March 19, 2007

When international extradition leads to insufficient protection of the accused.

Wild banana plants. (Image from Library of Congress's website.) On March 14, 2007, the Chiquita corporation issued a press release admitting to past payoffs to Colombian paramilitary groups. The news release includes the following: "In 2003, Chiquita voluntarily disclosed to the Department of Justice that its former banana-producing subsidiary had been forced to make payments to right- and left-wing paramilitary groups in Colombia to protect the lives of its employees. The company made this disclosure shortly after senior management became aware that these groups had been designated as foreign terrorist organizations under a U.S. statute that makes it a crime to make payments to such organizations. Since voluntarily disclosing this information, Chiquita has continued to cooperate with the DOJ's investigation." On March 17, 2007, CNN reported that Colombian President Alvaro Uribe is interested in extraditing Chiquita executives to Colombia over this matter. Such an interest does not amount to a formal extradition request, the United States government has the option to deny extradition requests, and subjects of extradition requests have the right to contest extradition. One problem about the United States government's drug wars and terrorism wars is that the government seeks so many extraditions of defendants to the United States (and even invaded Panama in 1989 in part to force Manuel Noriega to come to the United States for trial) that the United States government probably feels more inclined to grant more extraditions out of the United States than if the United States were not requesting so many extraditions into the United States. The United States government should exercise tremendous caution in extraditing people not only where the criminal charges were issued unjustly or on insufficient or shaky evidence, but also where the fairness of the prosecution, trial (e.g., such procedural protections as access to qualified government-paid counsel to the indigent, the right to remain silent, a twelve-member jury trial requiring an acquittal absent a unanimous jury finding of guilt beyond a reasonable doubt, the exclusion of unlawfully obtained evidence, and the general exclusion of hearsay evidence), sentencing, pretrial bond-setting, detention conditions, and appellate rights might fall below the protections provided in United States courts. Unfortunately, the vast majority of nations provide criminal defendants protections that are far substandard to those in the United States. Take that into consideration before travelling abroad. Chiquita's past large payoffs to paramilitary groups certainly give me cause for pause about buying Chiquita products. Chiquita, of course, is not alone in this category, and I have a huge list of products and companies that involve gross violations of human rights, the environment, the economy, workers, and the list goes on, starting with every purchase of gasoline. (Hello, Gulf War II). Every consumer's purchasing, consumption, and voting decisions affect justice on a local, national, and international level; we cannot merely point fingers at governments and corporations for causing human misery and rights violations. Nevertheless, as with all criminal defendants and suspects, I strongly support the right of Chiquita, its executives and its employees to fair treatment in the criminal justice system, and to a vigorous defense. Jon Katz.

Posted by Jon Katz in Criminal Defense at 03:15

Protect human rights in the Philippines.

The Philippines. (Image from National Virtual Translation Center's website.) Over ten years ago, I accepted an invitation to join the Philippine American Bar Association of the Washington, DC area (PABA), which seeks members both with Filipino and non-Filipino roots, of which I have none. I liked several of the members, and still do, and found at least two who believed very much in human rights activism (at least one of whom was an anti-Marcos activist while still in the Philippines), and a few others who understood my human rights message. I checked the Philippines' human rights situation from time to time -- usually in Amnesty International reports, and usually not finding much to smile about -- ultimately reading accounts in 2005 about the Arroyo government's suppression of demonstrators with water cannons. Then, in early 2006, the Arroyo government declared a state of emergency, during which the police arrested three Arroyo critics, and police raided a small newspaper critical of the Arroyo government, with police seizure of editorial materials and threats to take over the newspaper. Clearly, the People Power upsurge that led to the voluntary departure of the tyrannical Ferdinand Marcos did not bring with it a guarantee of a human rights paradise (nor is the United States a human rights paradise for that matter, either (although human rights battles often can be won in the United States), aside from the United States' repeated support over time for Marcos and countless other tyrants). During the 2005 water cannon incidents and the early 2006 state of emergency declaration, I tried to convince PABA leaders to make at least a general stand urging the Arroyo government to protect human rights in the Philippines. The PABA leaders heard my voice, but took no stand. Consequently, particularly as a past four-year PABA officer through 2001, I resigned my PABA membership last year not long after the state of emergency had been declared, and I converted the unofficial PABA website that I created in 2000, into a demand for human rights in the Philippines. Meanwhile, I have found another reason to remain a member of the National Lawyers

Guild -- despite my vehement misgivings with many of the Guild's actions and policies -- which is the Guild's very active work insisting on the protection of human rights in the Philippines, gathering information on the human rights situation there, and running a listserv on the human rights situation in the Philippines. Recently off the presses is the March 8, 2007, update to *Seeking Answers: Probing Political Persecution, Repression & Human Rights Violations in the Philippines*. The report is by the Women's Human Rights Delegation, on behalf of the Center for Constitutional Rights, the International Association of Democratic Lawyers, the International Justice Network, and the National Lawyers Guild. Concerning PABA, I remain friendly with many of its members. However, friendship cannot stand in the way of standing up for human rights. Jon Katz.

Posted by Jon Katz in Jon's news & views at 01:15

Sunday, March 18, 2007

Building a blog and website II

Our website launched in 1999, and our blog in 2006. Following up on this previous blog entry, here are some more thoughts for bloggers, webmasters, and e-mailers:

- Alexa is an imperfect but useful site for comparing one website's traffic and visibility to another's. Alexa arrives at its traffic rankings through people's use of the Alexa toolbar. Because not everyone uses the Alexa toolbar (I do not, in part because it is one more of the myriad intrusions into online privacy, which is an oxymoron to begin with), the usefulness of Alexa's traffic rankings and statistics is limited accordingly.
- Links to other websites can go dead at any time. Therefore, I use my judgment about which links are more likely to stay or fade (e.g. Cornell's posting of the Bill of Rights is likely to stay, but many new websites fade when it comes time to renew their domain name registration, or to pay a new sitehosting bill). Similarly, if you change the URL/web address of one of your webpages, you may wish to keep a duplicate of the page at the old URL address to accommodate websites that link to that address. We have hundreds of links by now, which are too many to be checking all the time for accuracy. Therefore, on our links page, we say: "IN CASE OF A DEAD LINK: Try finding an archived version of the site with the wayback.com site."
- Sitehosts for websites (companies that provide space to upload and park webpages, and that often provide e-mail service) can change in quality and even existence from one month to the next. Factors to consider in selecting and changing sitehosts include: the sitehost's ability to accommodate your web publishing software and its extensions; whether the sitehost runs redundant servers to minimize having your site and e-mail (if you use the sitehost for e-mail) unavailable when the main server goes down (and Internet servers will go down from time to time, no matter how excellent the sitehost); the availability of sitehost technical support to recognize and fix website downtime twenty-four hours daily; whether the sitehost censors (for me, it is more a matter of principle than practical need); and the overall quality of customer service and fair and accurate billing. Make sure regularly to backup every page of your website and blog, in case the sitehost's backup technology fails or if the sitehost goes out of business. We are on our fourth sitehost -- Daytona Networks -- in seven years, after the previous three started off strong but petered out within as short as a few months or as long as two years. I welcome all recommendations for sitehosts to have in my back pocket.
- Whether or not you have a website, with the Internet, your words can come back to haunt you now more than ever before. Before clicking the send key to deliver an angry message to a website's comments section or to an e-mail listserv that you mistakenly thought was confidential (none are), and before uploading any webpage or blog entry, consider not only that you will never be able to retrieve those words from the recipients, but that the message may become permanently findable on google.com and the other search engines. On the flip side, this phenomenon also gives you a chance to render widespread praise where praise is due, including my praise of Sun Ra's railings against nuclear madness (and the accurate, more blunt, lyrics are here).
- If you refer to a website in a court filing or other important writing, it is a good idea to save the webpage being cited, in case it changes or gets deleted. Thus far, I have found but one scholarly writing that refers to our website, which is a 2003 research dissertation by a Cape Town, South Africa, law school student, entitled "Unsolicited Commercial Email - Overview on possible approaches towards the problem of spamming from an American and European legal perspective." (I would have shortened the title to: "Spammers are Hemorrhoids who Deserve Free Expression Protection Nonetheless"). Page 27 of that dissertation twice footnotes my 2003 article for the Libel Defense Resource Center's newsletter about an ironic libel lawsuit by spammers against anti-spammers. Spammers (as well as everyone else) should not file libel suits, because such suits weaken the very First Amendment that is often the only thing that prevents lawmakers and prosecutors from running roughshod even more over the First Amendment against spammers. Jon Katz ADDENDUM: Here are thoughts on why I blog: By doing this blog, I'm keeping a valuable diary that helps keep my pen sharpened, my self-awareness deepened, and my bully pulpit strong. Also, it can be more important to touch one person in the audience in a valuable way than for thousands to receive the message in a much less profound way.

Posted by Jon Katz in Jon's news & views at 01:40

Friday, March 16, 2007

Maryland's highest court provides further unintended incentive for cops to stop for driving/walking while black.

Cox v. Maryland provides police an additional reason illegally to detain people. (Image from U.S. Courts website.) On November 9, 2006, I strongly disagreed with Myers v. Maryland, 395 Md. 261 (2006), which allows arrests of people stopped unlawfully by the police, so long as the police learn that the suspect has an open arrest warrant. As I said when Myers was issued: This Myers decision will provide police with another incentive 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. Rather than changing, the situation has gotten worse. Whether or not the black defendant's race in Myers was a factor in stopping him, race certainly was a factor in stopping the defendant in Cox v. Maryland, ___ Md. __ (Feb. 8, 2007). Without deciding whether Defendant Cox's stop by the police was illegal, Maryland's Court of Appeals assumed as much for purposes of this appeal where the police stopped Cox and another person after a civilian report of being robbed the previous day by two teen-age black males. Of course Cox had been detained; the officer checking Cox's identification said he was not free to leave while his identification was being checked for open warrants. During the open warrant check, the police told Cox to sit down with his hand on his head. After the police confirmed Cox had an open arrest warrant, the police for the first time found marijuana on the ground (the court does not say how close the marijuana was to Cox). The police charged him with possession with intent to distribute marijuana, even though the police did not see who placed the marijuana there, and even though Cox was sitting next to an arrested co-suspect at the time. (Such dragnet arrests for drug cases are common with police, and are another reason for my limited confidence in the criminal justice system). Even though the police never would have found this marijuana had they not stopped and held Mr. Cox in the first place, Maryland's Court of Appeals affirmed his conviction, finding that the discovery of Mr. Cox's open warrant removed the taint of any illegal arrest, and that the marijuana was abandoned property the seizure of which, therefore, could not be challenged by Mr. Cox. I live and work in Maryland, which certainly does not have nearly the most oppressive criminal justice system in the nation. (Neighboring Virginia competes strongly for such a title). If the courts are not going to resist rendering such bad opinions as Cox, it is even more unlikely that legislative or executive branches will do anything to correct the situation. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:15

Thursday, March 15, 2007

Beware having the accused testify in Virginia.

This blog entry provides another reason to live outside Virginia. (Image from Virginia Forestry Dept's website.) Beware having the accused testify in Virginia state court. When the accused testifies there, the prosecutor has appellate authority enabling the trial judge to permit cross examination of the defendant beyond the scope of direct examination. The case is *Drumgoole v. Commonwealth*, 26 Va. App. 783 (1998). In *Drumgoole*, the Virginia Court of Appeals affirmed a conviction where the prosecutor cross-examined the defendant beyond the scope of his cross examination. In reaching this holding, the Court of Appeals relied on two cases from the days of Virginia's fully-entrenched Jim Crow culture: "Cross-examination . . . entitles the Commonwealth to bring out . . . facts relating to the guilt or innocence of the accused . . ." *Thaniel v. Commonwealth*, 132 Va. 795, 806, 111 S.E. 259, 262 (1922). *Drumgoole*, 26 Va. App. at 786. Worse: "When the accused voluntarily takes the stand he 'loses his character as a party, becomes a mere witness, and may be examined as fully as any other witness. He may be examined and must answer concerning all matters which are relevant to the case, whether testified to on the direct examination or not.'" *Smith v. Commonwealth*, 182 Va. 585, 598, 30 S.E.2d 26, 31 (1944) (citation omitted) (quoted in *Drumgoole*, 26 Va. App. at 786). *Drumgoole* quotes further from *Smith v. Commonwealth*, 182 Va. 585: "To confine the cross-examination of the accused to such matters as have been brought out on direct examination is 'palpably unfair to the prosecution,' for since it can not call him as a witness or compel him to testify on direct examination, unless it could develop relevant facts on his cross-examination it might be deprived of all means of proving them, and this, too, although the accused, by voluntarily taking the stand, had waived the privilege of self-incrimination. [*Smith v. Commonwealth*, 182 Va.] at 600-01, 30 S.E.2d at 32." *Drumgoole*, 26 Va. App. at 786-87. There you have it, the Virginia Supreme Court in 1944 -- long before so many critical Supreme Court decisions on criminal defendants' rights, including *Miranda*, saying that "To confine the cross-examination of the accused to such matters as have been brought out on direct examination is 'palpably unfair to the prosecution.'" *Id.* A fellow criminal defense lawyer has a good idea for handling this conundrum: If at the arraignment the defendant was told s/he would be subject to cross examination the same as any witness if the defendant testified, then it is impermissible to permit cross examination beyond the scope of direct examination, because the defendant at arraignment was not put on notice that cross examination could go beyond the scope of direct examination. Consequently, it is a good idea for defense lawyers to bring the arraignment transcript to trial. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:30

Wednesday, March 14, 2007

Let Peter Pace himself out of his position.

If you see Peter Pace on the street, let him know what you think about his view that homosexual activity is immoral. (Image from the Defense Department's site.) This has been quite the scandalous month for the Bush Administration, with FBI dirty-spying-gate, fired U.S. Attorneys-gate, and now Joint Chief Peter Pace's "homosexual activity is immoral"-gate. I look forward to hearing everyone who opposes bigotry and discrimination against gays -- as do my law partner Jay and I -- raise their voices against Joint Staff Chief Peter Pace's recent pronouncement that homosexual activity is immoral. Mr. Pace certainly has the right to his opinion. However, I have been fully opposed both to Gulf Wars I and II, and am particularly not interested in having the U.S. military run by people with such views on gays as Mr. Pace's. I do not think the First Amendment prevents government officials from being sacked or demoted rather than having people suffer from having their wrongheaded views put into action. Mr. Pace's public words against homosexual activity likely will be seen as a green light by many military decisionmakers and supervisors that they can more easily get away with discriminating against people they think are gay or who support gay rights, beyond the discriminatory "don't ask, don't tell" rule. (As far as I know, don't ask, don't tell does not apply to the legions of civilian military employees and employees of military contractors who depend on the military budget for their livelihoods). Consequently, it is all the more critical that George Bush II and Defense Secretary Robert Gates immediately go to the news media and reject Mr. Pace's view that homosexual activity is immoral. Society needs to move more quickly towards fully respecting the rights of adults to engage in consensual sexual and romantic activity. Puritanism should not be imposed on the non-Puritan. Mr. Pace is not necessarily the only high-ranking military person with such strong views against homosexual activity. However, he has made his views known, and it is time to oppose them, and to hear George Bush II's and Defense Secretary Robert Gates's full opposition to those views. Jon Katz.

Posted by Jon Katz in Jon's news & views at 06:00

Innocent people may plead the Fifth.

The Fifth Amendment to the Bill of Rights. At least as long as a court witness has reasonable cause to apprehend danger from his or her answers if questioned at trial, the witness is permitted to assert the Fifth Amendment right to remain silent. (From the public domain). Thanks to a fellow criminal defense e-mail listserv member for posting a link to *Ohio v. Reiner*, 532 U.S. 17 (1991). Reiner confirms that the Fifth Amendment right to remain silent in court may even be exercised by people maintaining their innocence. So long as a court witness has reasonable cause to apprehend danger from his or her answers if questioned at trial, the witness is permitted to assert the Fifth Amendment right to remain silent. *Ohio v. Reiner*, 532 U.S. at 21. Jon Katz.

Posted by Jon Katz in Persuasion at 01:00

Alberto Gonzales: Ready. Aim. Fired.

Hopefully they'll fire themselves while they're at it. (Image from State Department's website). Here is further information about the ouster of eight United States Attorneys. Jon Katz.

Posted by Jon Katz in Jon's news & views at 01:00

Tuesday, March 13, 2007

Scooter Libby's conviction opens discussion on Bush II's pardoning policies and procedures.

Scooter Libby (Image from public domain). Â On March 6, I said that if George Bush II decides to pardon Scooter Libby, I can think of many equally deserving -- but less influential -- candidates for Mr. Bush to pardon. Â Thanks to the Washington Post's Dan Froomkin for addressing Mr. Bush's stingy approach to granting presidential pardons. The Justice Department's published pardon guidelines say not to bother seeking a pardon until one has been released from prison: "The [Justice] Department's regulations require a petitioner to wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application (28 C.F.R. Â§ 1.2)." United States Attorney's Manual Standards for Consideration of Clemency Petitions Â§ 1-2.112. Â If Mr. Bush bypasses the foregoing pardon standards and pardons Libby, he will have some explaining to do about whether he also will be relaxing the pardon standards for everyone else.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:30

Monday, March 12, 2007

FBI Director: Oops! We broke the law.

Let's not return to (or remain with) the dark ages of J. Edgar Hoover. (Image from Library of Congress.) It is not enough that the FBI Director and Attorney General admit that the FBI violated Patriot Act limits on domestic spying multiple times, nor that they claim they will fix the problem. The admitted violations are severe enough damage. This FBI gaffe comes from a presidential administration that doesn't give much of a damn about the Fourth Amendment in the first place. Letting law enforcement folks -- especially those answerable to George Bush II -- decide on their search authority without seeking court permission is like letting foxes guard the henhouse. Jon Katz.

Posted by Jon Katz in Constitutional Law at 01:15

D.C. Circuit gives meaning to Second Amendment.

Image from the Government Printing Office's website. After posting three days ago that the D.C. Circuit struck down the District of Columbia's handgun ban, I had a chance to read the opinion more fully. The D.C. Circuit has hit the Second Amendment head-on, ruling squarely that individuals have gun-ownership rights under the Second Amendment. The court ruled that gun ownership may be regulated, but not banned outright. This ruling stands in stark contrast to many courts that have turned the Second Amendment into a creampuff. Here is a March 12, 2007, opinion piece on this issue from Robert A. Levy of the CATO Institute, who served as co-counsel against D.C.'s handgun ban. Here is a March 11 article about his clients. Here is a March 10 article on the case. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Sunday, March 11, 2007

Journalists are humans. Resist the temptation to treat them as confidants.

As much as I worship at the altar of the First Amendment, that does not automatically justify worshipping journalists. (Image from the public domain). Many times, potential clients seek to pay me through "tons of inevitable publicity" of their case, rather than through money payment. I guess they have not heard me speak about my general inclination to speak little to the press about my own clients' cases and to be more readily available to talk about non-clients' cases. The opportunity for a lawyer to fulfill any dream of being on television (whether for the excitement of appearing on this still-fascinating yet overly-censored medium, or for publicity reasons) should not be at clients' expense, particularly when the appearance turns out to be an awkward dress rehearsal at best. Fortunately, I learned before ever stepping foot into law school how awkward one can look and feel on television. For me it started at thirteen years old, when a cable television interviewer asked for an interview of a youthful customer at the legendary Louis Tannen's magic shop in New York. My excitement quickly turned into sweaty palms, as I became preoccupied with the interviewer's request to look into the camera and not at him while answering his questions and eventually making a coin disappear. My opportunity to expand my magic show clientele went south. Five years later, I watched myself on New Haven's local ABC affiliate, playing lead trumpet with a folk rock group after we had privately produced and issued an LP record (before the days of CDs). Somehow, the camera tended to close-up on me just after I was finishing a riff, only to see me emptying out the accumulated saliva from my spit valve to the floor. Perhaps such visuals were more in sync with auditioning for *Vomit and the Zits*. Visually, I was a not ready for prime time player. Thankfully, a few factors ultimately came together to make me more comfortable and presentable in the mass media, including constant public speaking through court trials, handling rapid-fire questioning from appellate judges, joining my law partner Jay for two years behind the mike on our former weekly radio show "Legalmente Hablando" ("Legally Speaking"), learning from Jay's natural ease speaking on camera and on microphone, and, ultimately, many interviews for several years.

Journalists are humans. It is best to resist any temptation to treat them as confidants. Being human, they are fallible; they are deadline-driven, and many churn out overly-short news stories rather than pursuing in-depth investigation and lengthier coverage, which often is inconsistent with obtaining and presenting objectivity and accuracy; and they compete against the 24/7 never-ending churning of news stories online and off. As much as I worship at the altar of the First Amendment, that does not automatically justify worshipping journalists (aside from Daniel Schorr -- heavy admiration is more like it -- but he has not tried interviewing me; he is in a class by himself). Over time, I have experienced the real value of never hesitating to say with a smile to journalists: "Off the record", "I will not be commenting on that right now, because...", "You should seek a different interviewee, because my opinion does not match the viewpoint you seek," and "You appear to be trying to get an inaccurate soundbite from me through seeking a yes or no answer to your convoluted question." Journalists often work at a fast clip, and often seek interviews close to deadline. Recently, a longtime reporter with a Washington, DC, network affiliate kept calling my office while I was offsite, hoping to hear back before her deadline, and telling my secretary she would keep close to her cellphone for my return call about an interesting client for whom we had recently fought another aggressive public round. Not expecting my client to be well-served by talking on the record before feeling out the reporter, I told her at the outset that the conversation was off the record. She wanted to keep talking, and seemed interested in my helping to simplify the convoluted procedural picture of my client's litigation battles. However, soon she started grilling me -- non-objectively -- like a prosecutor might grill a criminal defendant who has waived his or her Fifth Amendment rights. I told this journalist that I found it of no use to be grilled in this fashion in an off the record conversation, and that I was becoming uncertain whether she would honor keeping the conversation off the record. She tried to bait me to speak on the record by telling me she was waiting for a response from my opposition. She wanted a comment from me before her deadline. She asked: "What should I do? Say you declined to comment?" I responded: "You cannot even say that I declined to comment, because I said at the very beginning that everything I say in this conversation is off the record." With that, this two-decade veteran of local network television news thanked me for confirming lawyers' reputations and abruptly hung up. Granted, this was after I had earlier told her that my years-long experiences with journalists taught me that many could be trusted, but many not. Finally, when one speaks to a journalist without saying "off the record", the speakers' words are fair game to be quoted and misquoted. (One reason for misquotes is the deadline-driven, news-churning culture of most journalists, but I suspect that too many journalists are more committed to printing a quote than to taking the time and effort to assure it is not a misquote.) Recently, for instance, I returned the phone call of an ABC reporter, and figured he was just getting some background from me, and possibly considering interviewing me on camera about Barak Obama's lawyer's sending "a cease-and-desist letter to [Lindsay] Ashford, asserting that the use of the photos [of presidential candidates' minor children and grandchildren] is not simply defamatory, but is a criminal act," and that the Illinois senator reserved the right to 'pursue civil remedies and criminal referral.'" However, at the end of the discussion, I learned that the call was for an online article, so I realized I might be quoted. That was fine by me, because I never said "off the record." In this instance, the journalist was professional, and quoted me correctly (but

only a snippet of our talk): "If Obama knows that his lawyer is doing this, then that's one reason not to vote for him,' Katz said. "These are clear free speech issues." Then, again, I said the same thing about the rest of the candidates. As an aside, the journalist also interviewed First Amendment lawyer Larry Walters, with whom I had the pleasure of working as local counsel in fighting the termination of a prison guard who had posed nude on an Internet site celebrating the tattoo and body piercing culture.Â Â My work is never dull. Jon Katz.

Posted by Jon Katz in Jon Katz in the News at 00:00

Friday, March 9, 2007

Federal court strikes D.C.'s blanket handgun ban.

Despite my support for full Second Amendment protection, I encourage people to choose to remain unarmed, and am mindful of the severe violence that guns cause. I chose this image so as not to candy-coat how scary guns look. (Image from the Government Printing Office's website). Hot off the presses, today the United States Court of Appeals for the District of Columbia gave teeth to the Second Amendment, striking down the District of Columbia's near-total ban against possession of handguns in the District of Columbia, even in one's home (except for law enforcement). The case is *Parker v. D.C.*, ___ F.3d __ (2007). I plan to read fully and report on this case in the coming week. Meanwhile, I have previously discussed my view here and here that much of the nation's gun control legislation is incompatible with the Second Amendment, and should not be permitted before the Second Amendment is amended. Many gun control advocates try to reduce the Second Amendment to a creampuff by arguing that it speaks of the "right of the people" rather than the gun rights of individuals. However, such a Constitutional misinterpretation would also render meaningless the following critical protection of the First Amendment: "Congress shall make no law respecting ... the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. Const. Amend. I (emphasis added). I anticipate that the losing side will petition for this ruling to be overturned en banc by the full Court of Appeals. Time will tell whether this case reaches the Supreme Court, which, over time, has avoided addressing the Second Amendment gun ownership rights issue head-on. Jon Katz.

Posted by Jon Katz in Criminal Defense at 16:00

Lessons from Amsterdam

Once upon a time, marijuana was legal in the United States. In Amsterdam, where marijuana for personal use generally is not prosecuted, we find further support that marijuana is no more harmful than liquor, and probably less harmful (marijuana is to mellow as liquor is to violent). It is time to let people in the United States light up without fear or paranoia of being busted. Jon Katz. ADDENDUM: Although the following book might benefit from more analytical rigor, I think everyone on all sides of the marijuana legalization/criminalization issue will benefit from reading Jack Herer's *The Emperor Wears No Clothes*, not to be mistaken with the children's book. As Jack wrote in signing my copy of his book sixteen years ago: "Jon- Start at page one, and teach it to the world. Love, Jack". For beneficial material supporting rescheduling marijuana for medicinal use, see the writings of Tod Mikuriya, M.D. here and Lester Grinspoon, M.D. here, and my medical marijuana defense article here. For my marijuana blog entries, see here and here.

Posted by Jon Katz in Drugs at 01:00

Support the RISE Act.

Convictions for marijuana and other drugs should not be permitted to cut off student financial aid. (Image from public domain.) On March 2, I blogged about the student financial aid fallout for drug convictions. In addition to the information link by Students for Sensible Drug Policy listed in that blog entry, please electronically sign the SSDP's petition letter supporting the RISE Act -- fully quoted below -- to repeal statutory provisions precluding student financial assistance for people convicted of drug offenses. Also, I know SSDP Executive Director Kris Krane. He and his organization are class acts, and I recommend providing financial support to the SSDP. 109th CONGRESS 1st Session H. R. 1184 To amend the Higher Education Act of 1965 to repeal the provisions prohibiting persons convicted of drug offenses from receiving student financial assistance. IN THE HOUSE OF REPRESENTATIVES March 9, 2005 Mr. FRANK of Massachusetts (for himself, Mr. WAXMAN, Mr. OWENS, Mr. MARKEY, Mr. PAYNE, Mr. HINCHEY, Mr. LANTOS, Ms. LEE, Mr. BROWN of Ohio, Mr. CUMMINGS, Ms. ZOE LOFGREN of California, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mr. FILNER, Ms. SCHAKOWSKY, Mr. FARR, Mr. VAN HOLLEN, Mr. MCDERMOTT, Ms. WATSON, Mr. OLVER, Mr. ABERCROMBIE, Mr. WEXLER, Mr. CLYBURN, Ms. SLAUGHTER, Mr. MCGOVERN, Mr. CAPUANO, Ms. CARSON, Ms. VELAZQUEZ, Ms. ESHOO, Mr. STARK, Mr. KUCINICH, Mr. MATHESON, Mr. GUTIERREZ, Mr. GRIJALVA, Mr. ISRAEL, Mr. TIERNEY, Mr. DAVIS of Illinois, Mr. ALLEN, Mr. TOWNS, Ms. WATERS, Mr. CONYERS, Mr. WATT, Mr. NEAL of Massachusetts, Ms. LINDA T. SANCHEZ of California, Ms. BALDWIN, Mrs. JONES of Ohio, Ms. JACKSON-LEE of Texas, Mr. RANGEL, Mr. BERMAN, Mr. NADLER, and Ms. NORTON) introduced the following bill; which was referred to the Committee on Education and the Workforce A BILL To amend the Higher Education Act of 1965 to repeal the provisions prohibiting persons convicted of drug offenses from receiving student financial assistance. Be it enacted by

the Senate and House of Representatives of the United States of America in Congress assembled,Â SECTION 1. SHORT TITLE. Â This Act may be cited as the `Removing Impediments to Students Education Act ' or the `RISE Act'.Â SEC. 2. REPEAL OF PROVISIONS PROHIBITING PERSONS CONVICTED OF DRUG OFFENSES FROM RECEIVING STUDENT FINANCIAL ASSISTANCE. Â Subsection (r) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091(r)) is repealed.

Posted by Jon Katz at 00:30

Thursday, March 8, 2007

"Why is there a prison here? Five hundred years ago there was none"

Too many people are unjustly caged in United States prisons. (Image from Bureau of Prisons' website). My awesome friend and mentor Jun Yasuda has spoken of the time when the land that now comprises the United States had no prisons: "Why is there a prison here? Five hundred years ago there was none. There were only Native Americans living in peace. They had reverence for each other. Now we fear each other. I am here to help people stop fearing each other, and to trust. We need to change the way we think. Putting people in cages is not a solution." The law books, courts, and criminal justice system in the United States are over-criminalized. Countless criminal defendants are caged pre-trial while presumed innocent. A slew of innocent people are convicted. Countless people are victimized by unfairly harsh sentences, sometimes for nothing more serious than being a drug addict convicted the second time for passing less than a half gram of crack cocaine, to be paid a crack commission to feed the addict's habit. What good does our overcriminalized society do? It places too much power in police to abuse their power and in prosecutors to abuse their power. Police and prosecutors are not going to be a sufficient source for bringing us closer to a just society that breathes life into the promises of the Bill of Rights and the Declaration of Independence. That change first and foremost must come from the people, persuasively demanding that their politicians, judges, and government officials reverse the overcriminalization. Caging so many criminal defendants (over two million) -- including so many people in their teens and twenties -- segregates them from society, rather than addressing and healing the root causes that lead so many people to act in ways that harm others. If each person committed to being available for full empathy and support for just one other person for the long haul, we would be far along the path of solving those root causes. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Wednesday, March 7, 2007

Are fired U.S. Attorneys in angelic positions merely due to others' wrongs?

Partners in violating the Constitution: George Bush II and Attorney General Gonzales. (Image from State Department's website). Numerous times, various lawyers have asserted to me that prosecutors can do more for criminal defendants than can criminal defense lawyers. Such a notion assumes that enough prosecutors will stick their necks out for criminal defendants; will pour out their blood, sweat and tears for defendants; and will have the courage to leave their prosecution posts and salaries (which, for federal prosecutors, can amount to the highest pay scales of all federal attorneys), rather than follow orders that are contrary to helping criminal defendants. In other words, such a notion sounds more like a fairy tale than a reality. Prosecutors can do enough unjust damage to criminal defendants based on the very nature of their jobs (e.g., seeking convictions rather than acquittals, even though that inevitably will involve convictions of innocent people, too), the laws they deal with (e.g., the draconian mandatory minimum sentencing laws and the draconian federal law -- upheld by the Supreme Court -- that forces a huge universe of presumed-innocent people to remain caged pending trial), and the very systems in which they operate (prosecutors certainly are not paid to get a whole slew of acquittals, and federal prosecutors daily rely on convictions by using snitches who would commit perjury against their grandparents to avoid the draconian federal sentencing system). Prosecutors can do even more damage if they are heartless or sinister (too many prosecutors have these characteristics). They can do even more damage than that when they yield to unfair and unjust pressures from legislators and other powers that be. The current scandal involving the ouster of eight United States Attorneys does not automatically mean that the fired federal prosecutors (they oversee civil litigation, too) automatically are angels, even if some or all were fired for not meeting litmus tests of the Bush Administration, which rampantly urinates on the Constitution. Nor does it automatically mean that any or all of them are evil. Each of them should be assessed on their individual merits, actions, and relevant viewpoints. A thorough investigation of the firings of these eight United States Attorneys is essential. Such thoroughness is more likely with a Democratic-controlled Congress than if Bush's party were in the Congressional majority. This is not to say that all Democrats are angels, either; far from it. The longtime two-party dominance of America's political system often presents us more with a non-choice of Tweedledee and Tweedledum than a sufficient opportunity to improve civil liberties, social justice, and democratic government. In the current two-party system, government does not always improve merely by electing wrongdoing rascals out of office. Jon Katz.

Posted by Jon Katz in Criminal Defense at 06:00

Two more executions scheduled this week. Your vocal opposition can make a difference.

Texas has been executing more people than any other state. Thirteen states do not have death penalty laws, even though federal capital trials can be held in those states. (Image from the Energy Department's website). Last night, the Texas government carried out yet another legalized murder, this time against Robert Martinez. Even if Mr. Martinez was as brutal and dangerous as reported in this article, that does not justify continuing this death penalty machine that traps too many innocent defendants; is racist in effect; is too riddled with racism in intent, starting with America's shameful history of racism that does not automatically stop at the door to the jury deliberation room; is staggeringly expensive; and is not much of a deterrent, if any. More executions are scheduled this week alone, as follows: March 7 (today): Joseph Nichols, TX, March 9: Allen Holman, NC, March 20: Kenneth Biros, OH, March 28: Vincent Gutierrez, TX, and March 29: Roy Pippin, TX. If you oppose any or all of these planned executions, or the death penalty itself, please raise your voice in opposition by contacting the governors and lawmakers who can put a stop to executions, by writing letters to the editor (smaller newspapers, in particular, are eager to print such letters on both sides of the issue), by spreading the abolitionist message one person at a time, and by giving your time and funds to such organizations as the National Coalition to Abolish the Death Penalty, the American Civil Liberties Union, and the Innocence Project. It may seem frustrating to have but one voice against the death penalty, but even accumulated feathers sink the boat. Moreover, the death penalty abolitionist movement has made more strides over the last few years than ever before. You can strengthen your voice against the death penalty by joining with like-minded people, including through the National Coalition Against the Death Penalty and its state and national affiliates. The path towards further erosion of the death penalty looks a whole lot brighter today than when I joined the abolitionist movement over twenty years ago. Jon Katz.

Posted by Jon Katz in Constitutional Law at 03:00

Maryland's governor opposes capital punishment.

The death penalty: Always unjust. (Image from public domain). On February 21, 2007, Maryland governor Martin

O'Malley wrote a short Washington Post opinion piece fully opposing the death penalty. I appreciate his coming out so clearly against the death penalty. Now, I look forward to seeing Governor O'Malley turn his words into actions, including commuting all death sentences, and, until making such commutations, imposing a blanket moratorium on executions. Because Mr. O'Malley's opinion article recognizes the horrifying frequency of convictions of the innocent, hopefully he will keep this in mind in carefully appointing judges committed to full justice, who will fully strive to minimize wrongful convictions, and who will resist the temptation to move along crushing criminal dockets at the expense of fair trials. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, March 6, 2007

Libby convicted on four of five counts.

Â Â Do not hold your breath for Cheney to come clean about his involvement with Plame-Gate. (From the public domain). Â Today the jury found Scooter Libby guilty of four of five criminal counts. Â As I already have said, as much as I want Bush out of office, I would have beenÂ more than happy to see Mr. Libby acquitted. His indictment accuses him of lying to law enforcement and the grand jury investigating how and when Valerie Plame's CIA employment status got leaked to the press. So long as the criminal justice system remains asÂ unjust as it has long been, it will be difficult for me to want to see convictions for such alleged crimes.Â Do not hold your breath for Cheney to come clean about his involvement with Plame-Gate. If George Bush II decides to pardon Mr. Libby, I can think of many equally deserving -- but less influential -- candidates for Mr. Bush to pardon. So, Mr. Bush, please be ready toÂ leave the light on for me. Jon Katz.

Posted by Jon Katz in Criminal Defense at 18:00

Ed Rosenthal going back to trial.

Photo from website of U.S. District Court (W.D. Mi.).Â On April 26, 2006, I exulted over the federal appellate victory of medical marijuana grower Ed Rosenthal, whom I first met during the 1991 Drug Policy Foundation and NORML conferences in Washington, DC. Â As with most appellate reversals, Mr. Rosenthal's appellate win amounted to the right to a retrial, and not to an outright dismissal. On March 19, 2007, he gets retried, and this time on a superseding indictmentÂ that includes allegations of money laundering and tax law violations.Â On March 1, 2007, the trial judge denied Mr. Rosenthal's motions to dismiss the superseding indictment or in the alternative recuse the prosecutor for grand jury misconduct; to recuse the prosecutor for prosecutorial misconduct; to dismiss for due process violations; to dismiss for selective prosecution; to dismiss for undue delay; andÂ to declare U.S. Attorneyâ€™s appointment unconstitutional.Â Also on March 1, 2007, the trial judge agreed toÂ consider Mr. Rosenthal's motions toÂ dismiss on grounds of vindictive prosecution; for reconsideration of severance;Â for impeachment evidence; and for Rule 404(b) evidence.Â Mr. Rosenthal's trial courtÂ docket is here. As with his original trial, I wish Ed victory on his retrial, and look forward to the day when he may grow marijuana in peace and without legal penalties.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, March 5, 2007

Let the Midnight Special shine a light on me.

Defending anti-globalization demonstrators was a further eye-opener for me about demonstrator solidarity and government and police urination on demonstrators' rights. I have written here about one of my own confrontations with police as an anti-war demonstrator. (Image from the public domain). Check out the Midnight Special Law Collective's "Know Your Rights" helpful criminal defense and student discipline defense comics here. I first learned of and interacted with the Midnight Special Law Collective when defending anti-globalization activists during the April 16, 2000, World Bank/IMF meeting. I handled such criminal defense more to counter growing governmental and police abuses against lawful demonstrators -- which continues to this day -- than from any opinion about the demonstrators' anti-globalization message. I was heartened to learn from this experience that peaceful and positive activism -- including among the nation's youth -- is alive and well. I recount here some of my experiences with the Midnight Special (see the song lyrics here) and from the April 16, 2000, demonstration weekend. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:45

Sunday, March 4, 2007

Cars: The subject of Terry frisks.

Let us reverse the state of affairs that permits rampant warrantless searches of automobiles. (Image from National Institute of Standards & Technology). [^] Cars bring mobility (but also pollution, congestion, environmental damage from highway construction,[^] and car accidents). However, cars are also ripe for unjustifiable police stops and warrantless searches, including Terry searches. I discuss Terry here, and vehicle searches[^] here.[^] The key Supreme Court case on Terry car frisks is Michigan. v. Long, 463 U.S. 1032 (1983), which I discuss here.[^] [^] Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, March 2, 2007

Jon Katz seeks dynamite Legal Assistant/Paralegal.

Marks & Katz welcomes applications from top-notch legal assistants and paralegals. [Click here.](#) To all Underdog readers: We have an immediate opening for a top-notch, highly experienced litigation Legal Assistant/Paralegal, primarily to assist me with criminal and Constitutional defense. The right candidate will go beyond ordinary legal assistance to working with me and my clients in strategizing and brainstorming for victory, in executing the strategy, and in assisting in court from time to time. This is a rewarding, rare, and excellent-paying career opportunity. We believe in showing our proper appreciation for people who refer us top-notch staff members, including you. Full details on this position are [here](#). Have a great weekend. Jon Katz.

Posted by Jon Katz in Jon's news & views at 06:00

Students: Beware financial aid fallout from drug convictions.

Convictions for marijuana and other drugs should not be permitted to cut off student financial aid. (Image from public domain.) Criminal defendants need to consider not only the direct consequences of a criminal conviction (e.g., the potential of incarceration, fines, probation, and higher sentences for any future convictions), but also such collateral consequences as adverse immigration consequences, risks to employment and security clearances, risks to academic standing, and risks to student financial aid. Sadly, the Aid Elimination Provision of the Higher Education Act (HEA) provides for at least a temporary cutoff of federal financial aid even for students convicted of nothing worse than marijuana possession. As the American Civil Liberties Union's website explains, the HEA imposes the following harm to student financial aid for drug convictions: "Students convicted for possession are automatically ineligible for aid for one year from the date of the first offense, two years from the date of the second offense, and indefinitely if convicted three or more times. Students convicted for sale are automatically ineligible for aid for two years from the date of a first offense, and indefinitely if convicted two or more times. Students barred from receiving aid can regain eligibility prior to the designated terms only by completing a federally approved drug rehabilitation program, of which there is a severe and well-documented shortage, even if they are not addicted to drugs." Fortunately, numerous activists are working to reverse this state of affairs in the federal and state legislatures. To get involved and for more information, visit [here](#) and [here](#), Jon Katz. **ADDENDUM:** In addition to the above information link on this situation from Students for Sensible Drug Policy, please electronically sign the SSDP's petition letter supporting the RISE Act -- fully quoted below -- to repeal statutory provisions precluding student financial assistance for people convicted of drug offenses. **109th CONGRESS 1st Session H. R. 1184 To amend the Higher Education Act of 1965 to repeal the provisions prohibiting persons convicted of drug offenses from receiving student financial assistance. IN THE HOUSE OF REPRESENTATIVES March 9, 2005 Mr. FRANK of Massachusetts (for himself, Mr. WAXMAN, Mr. OWENS, Mr. MARKEY, Mr. PAYNE, Mr. HINCHAY, Mr. LANTOS, Ms. LEE, Mr. BROWN of Ohio, Mr. CUMMINGS, Ms. ZOE LOFGREN of California, Ms. MILLENDER-MCDONALD, Mr. GEORGE MILLER of California, Mr. FILNER, Ms. SCHAKOWSKY, Mr. FARR, Mr. VAN HOLLEN, Mr. MCDERMOTT, Ms. WATSON, Mr. OLVER, Mr. ABERCROMBIE, Mr. WEXLER, Mr. CLYBURN, Ms. SLAUGHTER, Mr. MCGOVERN, Mr. CAPUANO, Ms. CARSON, Ms. VELAZQUEZ, Ms. ESHOO, Mr. STARK, Mr. KUCINICH, Mr. MATHESON, Mr. GUTIERREZ, Mr. GRIJALVA, Mr. ISRAEL, Mr. TIERNEY, Mr. DAVIS of Illinois, Mr. ALLEN, Mr. TOWNS, Ms. WATERS, Mr. CONYERS, Mr. WATT, Mr. NEAL of Massachusetts, Ms. LINDA T. SANCHEZ of California, Ms. BALDWIN, Mrs. JONES of Ohio, Ms. JACKSON-LEE of Texas, Mr. RANGEL, Mr. BERMAN, Mr. NADLER, and Ms. NORTON) introduced the following bill; which was referred to the Committee on Education and the Workforce A BILL To amend the Higher Education Act of 1965 to repeal the provisions prohibiting persons convicted of drug offenses from receiving student financial assistance. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the 'Removing Impediments to Students Education Act' or the 'RISE Act'. SEC. 2. REPEAL OF PROVISIONS PROHIBITING PERSONS CONVICTED OF DRUG OFFENSES FROM RECEIVING STUDENT FINANCIAL ASSISTANCE. Subsection (r) of section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091(r)) is repealed.**

Posted by Jon Katz in Drugs at 01:00

Supreme Court holds Crawford inapplicable to collateral proceedings.

Supreme Court. (Image from Supreme Court's website.) On February 28, 2007, the Supreme Court unanimously held that its phenomenal decision in *Crawford v. Washington*, 541 U.S. 36 (2004) is inapplicable to habeas corpus and

other collateral proceedings involving trials that preceded the Crawford decision. Whorton v. Bockting __ U.S. __ (2007).
Â When I argue Crawford to trial judges, some of them seem to prefer the old pre-Crawford days. Fortunately, Crawford is a train moving full-speed ahead to bar testimonial hearsay from criminal trials. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, March 1, 2007

Beware the Justice Department's power over prisoners.

United States Penitentiary (USP), Terre Haute, Indiana. (Image from Bureau of Prisons' website). Federal inmates generally are detained in -- and classified to -- prisons run by the same Justice Department that has prosecuted the inmates. Being in prison is no picnic, it goes without saying. My own repeated visits to jails and prisons -- having totalled hundreds of hours -- are no fun, other than the opportunity to see my clients, and I at least get a roundtrip visit. We need to keep our radar screens open to a new and disturbing trend in how allegedly terrorism-related and national security convicts in the United States are selected for which prisons and how they are monitored. Last Sunday's Washington Post reports on the government's Communications Management prison unit in Terre Haute, Indiana, that overwhelmingly only holds Moslems, severely limits the inmates' communications with the outside world (which are heavily monitored), and prohibits non-English communication, even though sometimes their family members (aside from the inmates themselves) do not speak sufficient English. Any prison ghetto-izing of Moslems or any other religious or racial group is unacceptable. Before prisons prohibit non-English communication, they first should invest in interpreters to make the communications understood to prison officials (not that I agree with such heavy monitoring of communications). The inmates at the Communications Management prison unit are far from all being hardened terrorists, including Rafil Dhafir, who is an Iraqi-born physician serving a two-decade sentence for charity fraud and violation of economic sanctions against Saddam Hussein's government. The Bush Administration would like nothing better than for prisoners (and civil liberties, for that matter) to be forgotten by the public. However, if the public does so, the civil liberties of both the inmates and everyone else in the United States will suffer. Jon Katz.

Posted by Jon Katz in Criminal Defense at 07:15

Support the Flex Your Rights Foundation.

Watch this video before you see another cop. Yesterday, I met for the first time Steve Silverman and Scott Morgan from Flex Your Rights, which produces the above Busted video. Steve, Scott, and Flex Your Rights are class acts, and so is their Busted video, which provides an excellent overview for levelling the playing field with cops, who are trained to convince people to waive their rights to remain silent and to refuse searches. I believe so strongly in the Busted video, that it has been prominently featured on this blog ever since I obtained FlexYourRights' authorization to do so. Our law firm donates financially to Flex Your Rights' indispensable work teaching people how to know and assert their civil liberties, and I encourage you to do the same. You don't even need to consider it a donation, because they have great products available for each donation. I recommend all three products at their online store: the excellent Busted video, the excellent companion -- of sorts -- Beat the Heat manual by Katya Komisaruk (whom I first met in 2000 when training to defend April 16 anti-globalization activists); and their t-shirts refusing searches and demanding to see search warrants. Steve and Scott are a one-of-a-kind powerhouse spreading the practical how-to gospel for flexing our Constitutional rights. Their organization merits your financial gifts for them to keep spreading the good word. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00