

Tuesday, July 31, 2007

Remaining calm on the battlefield.

Â Â Practicing life andÂ law as a harmonious whole. Â Many times I have written about the importance and power of staying calm, whether in the courtroom or anywhere else. That is easier to do when we are physicallyÂ removed from contentious situations (for instance, when floating down a riverÂ on an inner tube)Â than when we are in the heat of battle. Â A lot of anger expressed between and among people results from a feeling of being disconnected. We probably would act less angry if we believed that we harm ourselves as much by yelling at others as much as we harm the people we yell at. Â In the courtroom, we know that yelling at the opposition not only will weaken our ability to win and persuade, but may also bring down the judge's wrath and hammer on us. Â One place toÂ prepare to be calm in the courtroom is not just the courtroom itself, but when driving. So many people take out their aggressions, anger and frustration while driving, where there is no referee except for the possibly passing cop or passengers who will shame their driver. Other drivers often seem all the more disconnected from us, with their faces often hidden by the backs of their head and their windshields and rear windows, and sometimes with their presence seeming impermanent, seeing that one or the other car ultimately will turn in a different direction or will pass the other car ultimately by a long distance.Â I remember many years ago getting very angry at another driver who almost ran a stop signÂ into my car, which was on the main road. I slammed on my horn, stuck my hand through my window, and flipped him a very emphatic bird in the spring evening. His reaction was to be fully physically startled to the point that I got concerned that he might get into an accident, nevertheless, with someone else. After flipping him the bird,Â I realized that he looked like he might be a very likeable and gentle person, who did not intend at all to hassle other drivers. I ultimately regretted my reaction, but this was long after; I never will be able to find this man.Â One thing that helps me stay calmer with everyone -- although I still fail the test sometimes -- is that a person I anger today may tomorrow be on my jury panel without my realizing it, and lie their way onto my jury by claiming not to have interacted with me before. That would be no good for my client. Â This past weekend morning on the road with my son, I tried to view each inch of the road, and of all the ground, as sacred, the ground being part of nature, and the road having been built and maintained by the sweat and toil of so many (rather than only having been built by well-heeled corporations contracted by government agencies permitting environmental degradation).Â I resolved also to try harder to view and treat everyone as sacred, even those whom IÂ previously had viewed as major hemorrhoids. I also know the benefits of teaching my son calm through example. All of this has given me stronger feelings of calm, which has remained undaunted even after I encountered at least two particularly overly-aggressive drivers later in the weekend. Â Â While still an agnostic, I continue deriving inspiration for calmness from various religious practitioners and traditions, including Buddhism. My friend, mentor and Buddhist peacenik nun Jun Yasuda talked to me ten years ago about being more calm by giving up our desires, which would include our expectations of other people. Similarly, it is important to accept our impermanence in integrating harmoniously with everyone and everything around us, as exemplified by this Buddhist approach: Â "In Buddhist funeral services we always say, in true reality there is no coming no going no increase no decrease no birth and no death. This is a deep expression of our gratitude for existence as it is, our knowing that life in order to be life is always full of death, and death, in order to be death, is always full of life. Because of this understanding we don't see impermanence as a threat or a tragedy. We don't see aging and dying as necessary evils we brace ourselves to endure, but rather as fruitions we try to enter with calmness and appreciation."Â No coming, no going. No increase, no decrease. No anger, just calmness. Jon Katz.

Posted by Jon Katz in Persuasion at 00:05

Monday, July 30, 2007

Appearing on local Fox News July 31 in the morning.

Camera image from U.S. Geological Survey website. Tomorrow morning, July 31, FoxNews channel 5 in Washington, DC (not national FoxNews) will interview me about the developments in Michael Vicks's dogfighting prosecution, whose case I discuss here. The interview will last up to five minutes, will start no earlier than 7:00 a.m., and will end no later than 8:00 a.m. Only using the television to watch DVD's, I have no cable and no decent broadcast television connection. If you're in the Washington, DC, area, and think I am worthy, please feel free to set your VHS recorder to tape the interview. It goes without saying that I will be deeply grateful for such a kindness. Have a great week. Jon Katz.

Posted by Jon Katz in Jon Katz in the News at 08:00

"Numbers don't matter. What matters is your commitment to peace."

When my friend and mentor Jun Yasuda was doing a days-long dry fast (with just one drink at the midpoint) in 2000 for Mumia Abu Jamal on or near his prison grounds, an interviewer asked her on day five of her fast, in her very cold tent, how she expected to influence many people by doing her action so far from the nearest city and often with few people seeing her other than the prison workers. Jun-san responded: "Numbers don't matter. What matters is your commitment to peace. Gandhi was just one person, and he did very simple things. He walked to the ocean [in protest of a British monopoly on salt]. He fasted. He was one person. But he was very conscientious. We should be too. Think of one person fasting outside the White House. That act has spiritual power. More, maybe, than big numbers." I first learned about Jun Yasuda soon after Gulf War I started, and when I was feeling torn about doing business as usual during a war that I strongly felt was started too prematurely, at my then corporate law firm in downtown Washington, D.C., which, fortunately, I left in July of that year to join the Maryland Public Defender's Office. To try to get some balance, during lunchtime I would visit the White House-facing Lafayette Park two blocks away, to be with the anti-war demonstrators. On one of my visits, I saw a Nipponzan Myohoji Buddhist nun drumming to the beat of the odaimoku, composed of the words "Na Mu Myo Ho Ren Ge Kyo" (here being chanted by my subsequent and current friend and teacher Sister Takako Ichikawa, who is at Nipponzan Myohoji's Washington, DC, temple, whose webpage I maintain here). Having taken to Japan and Japanese, particularly with my business trip there five years before, I found an opportunity to speak with this intriguing woman, Jun Yasuda, who was fasting on green tea for a month for peace. She was at once soft-spoken and driven to spread the message and spirit of peace. Jun-san invited me to the celebration of the end of her fast. When I arrived, I asked her thoughts on the overlapping of Bush I's order that same day to end the Gulf War, which coincided with Jun-san's pre-planned day to end her fast. Her only response was to give me a knowing smile, unless it was a smile of recognition that the miso soup was ready. True to her proclamation that "numbers don't matter -- what matters is your commitment to peace," Jun-san became my key teacher for being peaceful internally and externally. Although I never became a full pacifist and believe strongly in individuals knowing how to self-defend against physical attacks, I have turned my focus on Jun-san and her teachings many times when I have been tempted to react with anger at opponents, rather than with powerful calm. Fortunately, particularly by now, I usually avoid expressing such anger. I have written here and here about how critical and powerful have been the peaceful and harmonious path to me, both personally and professionally. Often I am helped on this path by others who have struggled to attain and maintain internal and external peace while so much turmoil, injustice, unfairness, and violence surrounds them. Although I do not primarily pursue this path from a religious perspective, many, but not all, of these role models do, as did Martin Luther King, Jr. Here is an overview of some of these people. In 1999, I joined Jun Yasuda and other peace marchers at the last day of a New York prison peace walk, for several hours across from the United Nations, praying and drumming for peace and holding banners for peace. There, I met a woman who told me about sometimes spending time at Jonah House, a peace community in Baltimore. I had heard of Jonah House, and had been interested in meeting the people there. She gave me the e-mail contact, and I got on Jonah House's e-mailing list. By the end of that year, not only did I meet everyone at Jonah House, but I joined with Ramsey Clark to defend four Plowshares activists, two of whom lived at Jonah House, those being Susan Crane and Philip Berrigan. Defending the Plowshares activists brought me not only the ability to overlap my strong desire to defend pro-justice activists -- although to this day I still do not agree with their approach of hammering on armaments -- but led me to a lifetime of deeper learning about living and following the peaceful path, without ever changing my religion. I have written here about the Plowshares activists who I defended: Elizabeth Walz, Susan Crane, Stephen M. Kelly, S.J., and the late Philip Berrigan. They all are remarkable people who are willing to pay the high price of living their convictions of taking the radical peaceful path to stop war. While defending the Plowshares, I also met their many supporters, friends and, in Phil Berrigan's instance, family members. One of them is Elizabeth McAlister, who is Phil's

widow. As I stood outside the courthouse after both sides had rested, with the jury to deliberate the next day, Liz invited everyone to give me a group hug. The Plowshares and their supporters are all about hugging, spiritually and literally, and I deeply felt their positive spirit. That evening, during a gathering of the Plowshares' supporters, I spoke with Liz about my struggle about this being the first time I would not give a closing argument at a criminal trial. Before trial, Phil Berrigan and Elizabeth Walz went pro se, with Anabel Dwyer as their standby counsel, Susan Crane went with Ramsey Clark as her attorney, and Steve Kelly went with me as his lawyer. The defendants had decided to stop participating in the trial after the judge prevented any substantive testimony from their depleted uranium expert witness. Instead of lecturing me about my duty to follow my client's wishes, Liz encouraged me to look within me for the answer. This helped me incredibly at feeling more peaceful the next morning when, in reply to the judge's invitation for me to make a closing argument, I said "Good morning everyone, good morning Steve [who, joining the decision of all defendants, stayed in the courtroom lockup, with the judge piping the proceedings to them by speaker]. Defendant Steve Kelly chooses to make no closing argument." Before the defendants stopped participating at trial, and during the case in chief of the first defendant, Susan Crane, in walked witness Bishop Thomas Gumbleton as a character witness to Susan's peacefulness. I had spoken with Bishop Gumbleton before trial, to arrange his appearance and testimony. The bishop title had never gone to his head, and he invited me to call him by his first name. When he walked into the courtroom, all the dozens of Plowshares' supporters stood in profound respect for him, in a fashion that seemed to go well beyond being thankful for someone as high-level in the Catholic Church as a bishop understanding and supporting Plowshares actions of hammering on armaments and pouring the activists' blood on them. Apparently as a price of expressing such views and taking part in one or more direct actions himself, Bishop Gumbleton eventually became a bishop without a parish. His peacefulness is captured on this video. Among the Jonah House members during the Plowshares trial were Dominican Sisters Carol Gilbert and Ardeth Platte. They both served federal prison time, along with Sister Jackie Hudson, for a subsequent Plowshares action against nuclear weapons in Colorado. Here is an excerpt from a documentary on their Plowshares action, on which you will hear Carol Gilbert speaking. Here is a video of their return to the site, where you will hear Ardeth Platte speaking. Ardeth Platte has a very infectious calm and serenity about her. One day she was telling me about her experience at a peace action outside the Pentagon during holy week. One particular Pentagon police officer would see the protesters there every year. Ardeth told me that she felt she had touched his heart this time around. She only had love for him, and no animosity that he was spending his working hours protecting the war machine that she so much wants to dismantle. Carol Gilbert, like numerous other Plowshares activists, does not seem to fit any stereotype of someone who would risk prison for an action that might not even draw much public or press attention. She seems to share Jun-san's view that "numbers don't matter -- what matters is your commitment to peace." She exudes kindness. Phil Berrigan passed away in late 2002, and I write briefly about it here. At Phil's wake, I saw little sadness and much joy, although I figure the sadness still was there. There, I finally got a chance to meet his brother Dan, who, like Phil, remains without any big ego and with a big heart, without his worldwide fame changing that. Here is a video about the Catonsville Nine action that I first associated with Dan and Phil. A more recent peace action in which some Jonah House members participated is in video here. Their powerful demonstration was in support of the Guantanamo prisoners' rights. About a dozen chained themselves to the White House fence, which was the concluding point of the demonstration. Those who did not pay a fine for their arrest were convicted this month in separate rapid-fire bench trials in federal court, and sentenced to time served. Prompting me to write this blog entry at this time was learning about the recent passing of Harmon Wray, a peace activist whom I have never met. Thanks to Susan McDonald at Research & Writing Blog for blogging about him. Harmon Wray's very peacefulness is captured in this video, in which he proclaims: "The worst thing you can do for your country is support it when it fails to live up to what it says it believes in. A commitment to non-violence takes more guts in many ways than military action does." Each day, I do my best to learn to live peace with the lessons and examples from the above-discussed pacifists, even though I am not a full pacifist myself. Jon Katz.

Posted by Jon Katz in Persuasion at 00:05

Sunday, July 29, 2007

Don't politicize medical marijuana.

Multiple sclerosis patient obtains critical relief from marijuana. Walter Cronkite speaks plainly about the excessive costs of the drug wars. In a recent question and answer session, an audience member asked Republican presidential candidate Rudy Giuliani about his views on medical marijuana. Predictably and sadly, Mr. Giuliani panned the idea, and proceeded to say how he was very experienced prosecuting marijuana, and how dangerous it is to have a medicine that is smoked. I doubt Mr. Giuliani is alone in this view among presidential candidates, and many other politicians join him. The time is beyond ripe to educate and persuade all political candidates, government officials, and everyone else to listen to sick people who benefit from medical marijuana, to listen to scientists' and researchers' findings on medical marijuana, to enable scientists and researchers to continue their research work (for instance, by permitting ongoing research with volunteers using sufficient supplies of marijuana that is legally distributed and of sufficient quality and potency), and to consider the source of the scientific studies and findings. While doctors continue administering and prescribing highly addictive and often dangerous drugs with harmful side effects -- including morphine, codeine, and a slew of other drugs -- politicians continue playing politics with marijuana, which is particularly benign by comparison, but which is very beneficial to sick people for such afflictions as multiple sclerosis, nausea and loss of appetite caused by chemotherapy, blindness caused by glaucoma, sleep apnea, orthopedic pain, and the list goes on. Unlike the rampant supply of synthetic medicines that lines pharmaceutical companies' pockets, marijuana (which can be homegrown with quality results, and, therefore, takes profits away from pharmaceutical companies) is natural, and should not be dismissed so quickly. Marijuana's medicinal benefits go beyond THC to its numerous other cannabinoids (see here and here). Why should sick people be at the mercy of scientists reinventing the medicinal wheel if mother nature already provides so many medicinal benefits with marijuana? Many anti-medical marijuana crusaders make a disingenuous argument about the absence of marijuana safety and effectiveness studies that would pass FDA muster. Harvard emeritus medical professor Lester Grinspoon retorts that such an assertion fails to acknowledge that millions of dollars are required to qualify a drug for approval by the FDA, which is the same FDA that is controlled by the anti-medical marijuana White House. Such money will not be available unless the government is willing to provide it; pharmaceutical companies certainly will not want to provide the money, in that marijuana needs no patent and will compete against pharmaceutical companies' products. Dr. Grinspoon points to the powerful anecdotal evidence about marijuana's effectiveness, and discusses the day when such groundbreaking medicines as penicillin were proven through anecdotal evidence. Mr. Giuliani expressed concerns about marijuana being smoked. In that regard, marijuana is also very effective when consumed in non-smoked form, including delicious hashish brownies and hashish cookies. This eliminates problems of secondhand smoke and having others put up with the funky smell of burning marijuana. In any event, in May 2006, a UCLA researcher found no lung cancer risk from smoking marijuana. Furthermore, a benefit of smoked marijuana is that the patient feels the immediate effects of the smoked medical marijuana and is thereby able to regulate how much is inhaled at any one time, once relief is felt. I have written repeatedly about medical marijuana, including here, here here, and here. Let the people, politicians, and government officials know the truth about medical marijuana. Jon Katz. **ADDENDUM** : Despite a recent claim of a connection between marijuana and psychosis, NORML policy analyst Paul Armentano says "if there were such a connection, we would have seen the negative effects they were warning about if they were significant." "Where is the explosion in cannabis-related mental illness? ... The paper says, 'You are right, we haven't seen it. Maybe it is a delayed reaction.'"

Posted by Jon Katz in Drugs at 00:00

Friday, July 27, 2007

In defense of the speedy trial dismissal.

Photo from website of U.S. District Court (W.D. Mi.).
The Sixth Amendment to the United States Constitution guarantees the right to a speedy trial in criminal litigation. Fully honoring the speedy trial right, a trial judge in the county where I live and work recently dismissed a prosecution due to long delays in finding an interpreter for the defendant sufficiently to understand -- and to testify during -- the serious criminal proceedings against him for alleged sex offenses against a seven-year-old girl. Too often, I see prosecutors, police, and even judges being flippant and insensitive in countless other ways about litigants' abilities to speak and understand English as a second language. I challenge them to try to learn a second language flawlessly, and to see how well they can understand that language in a court of law, let alone to testify in that language or to have the case involve their life and liberty. I know how hard this is to do, having spoken French in-depth for over thirty years, and still needing to revert to the subtitles in French-language films.
Thanks to Judge Katherine D. Savage for breathing life into the Constitution's speedy trial guarantees by dismissing the prosecution for the lengthy delays in obtaining a qualified interpreter in this sexual assault case. Admittedly, finding such an interpreter was made all the harder by the small number of people who speak the now-dismissed defendant's primary language. However, once it was known how challenging it would be to find such an interpreter, such efforts as calling other courts around the nation for interpreter recommendations clearly was not enough. For a defendant with such liberty interests at stake, it was not unreasonable even to look abroad for an interpreter. Such an expense is reasonable compared to the personal costs of being imprisoned, and the taxpayers' costs of imprisoning people. Thanks to the dismissed defendant's criminal defense lawyer who successfully argued to get his case dismissed for the violation of his speedy trial rights. I have known this lawyer for a dozen years; she is one of the kindest and most decent people I know. For over fifteen years, I have known the prosecutor in the case, who at least can identify with criminal defendants more than plenty of other prosecutors can, by her having been a Maryland public defender lawyer for many years before joining the county state's attorney's office. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Federal judge strikes down local anti-immigrant ordinances.

The Statue of Liberty is worth little if immigrants' rights are not vigorously protected. On July 26, 2007, on Constitutional grounds, a federal trial judge overturned the bulk of Hazleton, Pennsylvania's anti-immigrant ordinances, concerning such matters as housing and employing people who are not United States citizens. The trial court's opinion and order are over two hundred pages long, so I have only had a chance to skim the opinion. The opinion includes in-depth discussion of pre-emption of local ordinances by federal laws, unconstitutional aspects of Hazleton's anti-immigrant ordinances that go beyond federal pre-emption issues, standing of the various plaintiffs to sue Hazleton in this matter, and the ability of some of the plaintiffs to appear anonymously, due to their being in the United States without legal authorization to do so. The case is *Lozano, et al., v. City of Hazleton*, Civ. No. 3:06cv1586, __ F.Supp. 2d __ (D. M.D. Pa., July 26, 2007). In the opinion's Appendix is a helpful thirteen-page overview of the history of regulating immigration in the United States. The opinion also is helpful to inform challenges to other similar ordinances sprouting out in many parts of the United States. Aside from Native Americans, all others residing in the United States are born abroad or are descended from immigrants. Unfortunately, too many immigrants and descendants of immigrants in the United States believe that some immigrants were created more equally than others, as a justification to bar the "less equal" immigrants. Often such views are based on racial prejudice. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:30

"We'll see about that."

Sometimes depositions get ugly. (Image from Library of Congress's website). Before joining the Maryland Public Defender's Office, where I worked from 1991 to 1996, I had an interview to switch to another corporate law firm. The interviewer represented depositions as a litigation career plateau. I was aiming much higher than such a plateau. Until then, I had sat in on a deposition, but had not taken one yet. What made the deposition interesting -- which involved a dispute by one or more banks -- was that the deponent was a former bank officer who apparently had been convicted and served some prison time related to the litigation for which he was being deposed. Clearly, I was thirsting for something more socially and personally meaningful than such litigation, and got it once I joined the public defender's office. When I left the public defender's office, I decided I would learn how to litigate civil cases -- to add to my criminal defense work -- which was particularly critical for the First Amendment defense work I do. By now, I have taken around

one hundred depositions, which may only be held for civil cases in the jurisdictions where I practice. With no judge present at depositions, some litigators and deponents get more nasty and underhanded than would ever happen before a judge. I sometimes can eliminate such nonsense by such approaches as the following: 1. "You are setting yourself up for a sanctions motion. Please help me avoid wasting my time on that." 2. "Behind you on the bookshelf is a copy of the rules governing depositions in our governing jurisdiction. Would you like to borrow it?" 3. "You are raising your voice at me apparently as an attempted impermissible end-run to intimidate my client. My client is here to answer questions, and nothing more. If you want to raise your voice at me, have at me out of my client's presence, and I'll have at you back, if I choose." While I generally get more exhilaration in trials than in the deposition room, some depositions can have their moments, including getting a chance to engage fascinating people with questions that are much more open-ended than would be prudent at trial. However, none of those depositions have been as fascinating as those here and here, which I assume are both staged. Turn on your speakers, unless you don't want to hear expletives hurled about. I love how the second video's character called Joe J__ (I assume it is not the real Joe J__, but I do not know what the real one sounds like) responds to a cantankerous deponent with "We'll see about that." That response could work well in some trial cross examination instances, too. If you have any other interesting deposition or trial video clips, please post them here in the comments section. Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Thursday, July 26, 2007

Thanks, New Haven, for issuing ID's for all.

Imagine there's no countries
It isn't hard to do
Nothing to kill or die for
And no religion too
Imagine all the people
Living life in peace...
We all live in one world.
The least governments can do is to issue every applicant a photo identification, regardless of immigration status. New Haven, Connecticut, started doing just that on July 24, 2007. Please encourage your local, county, state and federal governments to follow suit. I grew up just twenty miles from New Haven, and previously associated it with the nation's best pizza, Toad's Place, and WPLR radio. Now, at the head of the list, I happily add identification cards for all, and a past pro-drug policy reform police chief who rejected the DARE program. In appreciation, I plan to spend some money in New Haven next time I am nearby. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:05

Wednesday, July 25, 2007

It's not how you dress, but how you persuade.

Adam Levin at Southern Criminal Law e-mailed criminal defense lawyers "whose blawgs I frequently read" for tips on practicing criminal law for newer lawyers and for those transitioning to solo practice. Here are my replies in CAPS: Philosophy What practical advice do you have for maintaining boundaries in your life? A SELF-EMPLOYED LAWYER CAN CONTROL THE NUMBER OF CLIENTS S/HE HAS BY RESISTING THE TEMPTATION TO ACCEPT EVERY CLIENT, PARTICULARLY WHEN THE LAWYER'S PLATE IS OVERFLOWING. PUBLIC DEFENDER LAWYERS NEEDS TO BAND TOGETHER WITH COLLEAGUES WITH BACKBONES AND WITH THE NLADA AND NACDL TO KEEP CASELOADS SUFFICIENTLY LOW TO PROVIDE QUALITY DEFENSE. What are some must-read books for the burgeoning criminal defense attorney (non-fiction or fiction)? FOR SELF-EMPLOYED LAWYERS, JAY FOONBERG'S HOW TO START AND BUILD A LAW PRACTICE. FOR EVERYONE, RAM DASS'S BE HERE NOW. How about films? TWELVE ANGRY MEN. FOR DIVERSION, ANY FILMS BY TAKESHI KITANO OR JOHN WATERS. Do you perform volunteer, pro bono, or low bono work? Why or why not? YES. LAWYERS HAVE A DUTY TO CONTRIBUTE TO EQUAL ACCESS TO JUSTICE, PREFERABLY THROUGH PRO BONO WORK, BUT AT THE VERY LEAST THROUGH FINANCIAL CONTRIBUTIONS TO ORGANIZATIONS ASSISTING EQUAL ACCESS TO JUSTICE NOT JUST TO POOR PEOPLE BUT TO CAUSES THAT RELY ON DONATIONS FOR LEGAL REPRESENTATION. EVEN GOVERNMENT LAWYERS AND JUDGES -- IF OTHERWISE PREVENTED FROM PERFORMING OUTSIDE LEGAL WORK -- CAN DO PRO BONO WORK THROUGH SUCH ACTIVITIES AS PROVIDING LEGAL INFORMATION AND TIME TO NON-PROFIT ORGANIZATIONS, AND BY DISPELLING THE MYSTERIES OF THE LAW THROUGH PUBLIC SPEAKING AND THROUGH PUBLISHING IN THE MASS MEDIA. FROM A MORAL PERSPECTIVE, LAWYERS' PRO BONO DUTIES ARISE BECAUSE IT IS THE RIGHT THING TO DO. FROM A PRACTICAL PERSPECTIVE, THE PRO BONO DUTY ARISES BECAUSE LAWYERS ARE ECONOMICALLY PROTECTED AGAINST COMPETITION THROUGH ETHICAL RULES BARRING NON-LAWYERS FROM PRACTICING LAW; LAWYERS MUST SOMEHOW PAY FOR THIS PRIVILEGE, WHETHER OR NOT IT IS A JUSTIFIABLE PRIVILEGE. MOREOVER, FROM A BENEFICIAL PERSPECTIVE FOR LAWYERS, PRO BONO SERVICE IS AN OPPORTUNITY TO GAIN REWARDING PRACTICAL EXPERIENCE, CAN MAKE A DIFFERENCE FOR THE PRO BONO CLIENT AND FOR JUSTICE, AND CAN MAKE FOR A BETTER LAWYER. How important is it to be involved in local politics or the local bar? DON'T GET INVOLVED IN POLITICS UNLESS THE PURPOSE IS PURELY ALTRUISTIC. TOO MANY POLITICIANS AND POLITICALLY INVOLVED PEOPLE INFLICT TOO MUCH MISERY ALREADY, THAN FOR US TO HAVE PEOPLE GETTING INVOLVED IN POLITICS IN AN EFFORT TO GET CLIENTS. DON'T GET INVOLVED IN THE LOCAL BAR UNLESS YOU'LL STAND UP FOR JUSTICE, RATHER THAN FAWNING OVER JUDGES AND BAR LEADERS ON THE BASIS OF THEIR TITLES (OR ABILITY TO REFER YOU CLIENTS) RATHER THAN ON THE BASIS OF THEIR QUALITIES, ABILITIES AND ACTIONS. If you won 10 million dollars, how would your practice change? I WOULD FEEL AN OBLIGATION TO SHARE A SUBSTANTIAL AMOUNT OF THAT MONEY WITH PEOPLE IN NEED. THE MONEY I KEPT WOULD HELP ME SELECT CLIENTS BASED MORE ON WHICH CLIENTS AND CASES I WANTED AND ON THEIR NEED, RATHER THAN ON THE CLIENTS' ABILITY TO PAY. Clients Is it necessary to like your clients? NO. HOWEVER, I LIKE THE VAST MAJORITY OF THEM. Maintaining client confidentiality is obviously important. What advice do you have for maintaining it? MY LAW PARTNER AND I HAVE NO PROBLEM WITH THAT OURSELVES. FOR SUPPORT STAFF, WE'RE CAREFUL IN THE HIRING PROCESS TO SELECT STAFF WHO WILL TREAT CLIENT CONFIDENTIALITY AS IF WE WERE THE DREADED CIA. Is it ever appropriate to sugar-coat a situation for a client? NO. HELP THE CLIENT TO HAVE A REALISTIC VIEW OF THE CASE, AND TO HAVE OPTIMISM TO PURSUE THE BATTLE FOR VICTORY. Do you always return calls within a set period? I MAKE SURE TO GET CLIENTS' CALLS RETURNED PROMPTLY, AND FOR MY STAFF TO LET CLIENTS KNOW OF ANY DELAY IN CALLING BACK (E.G., VACATION, OR A LENGTHY TRIAL). I HAVE NO OBLIGATION TO CALL BACK A COLD-CALLING SALESPERSON. What advice do you have for dealing with difficult clients? A DIFFICULT CLIENT SITUATION IS A TWO-WAY STREET. SOMETIMES PROBLEMS CAN BE SOLVED BY LISTENING CLOSELY AND DEEPLY TO THE CLIENT, BY HANGING OUT SOCIALLY WITH THE CLIENT WITHOUT DISCUSSING THE CASE OR THE LAW, AND BY SHARING SOME BELLY LAUGHS. SOMETIMES AN INTERMEDIARY IS NEEDED. SOMETIMES, A PSYCHODRAMATIST, STORYTELLER, OR OTHER PROBLEM SOLVER IS NEEDED FOR INTERVENTION. HOWEVER, WHEN NOTHING WILL FIX THE PROBLEM, SOMETIMES LOSSES NEED TO BE CUT, EVEN IF THAT MEANS GIVING UP MUCH OR ALL OF THE ATTORNEY'S FEE. What is your thought process before deciding whether a particular client will testify at trial? PREPARE THE CLIENT TO TESTIFY. ONLY AFTER THE PROSECUTOR RESTS WILL THERE BE A CLEARER PICTURE WHETHER TO TESTIFY. FURTHERMORE, THE CLIENT WILL BE MORE INCLINED TO ACCEPT YOUR ADVICE TO TESTIFY OR NOT TO TESTIFY IF YOU PREPARE THE CLIENT'S TESTIMONY. THEN, THE DECISION

WHETHER TO TESTIFY WILL BE BASED MORE ON THE CLIENT'S HAVING A REALISTIC SENSE OF THE POTENTIAL QUALITY OF HIS TESTIMONY THAN OUT OF A CONCERN THAT THE LAWYER MERELY DID NOT WANT TO PUT IN THE TIME TO PREPARE TESTIMONY. In your mind, what are appropriate reasons to turn away a potential client? ASIDE FROM IRRECONCILEABLE CONFLICTS OF INTEREST, WATCH OUT WHEN A POTENTIAL CLIENT IS LOOKING TO REPLACE HIS OR HER LAWYER, AND MAKES COMPLAINTS ABOUT PREDECESSOR COUNSEL THAT ARE LIKELY TO DOG YOU IF YOU TAKE ON THE CLIENT. Do you subscribe to a "client centered" approach to your work? If so, what does that entail? I SEEK POWERFUL HARMONY IN EVERY ASPECT OF MY LIFE AND WORK. FORTUNATELY, ACHIEVING HARMONY FOR MY CLIENT ORDINARILY CARRIES WITH IT MY OWN HARMONY. Investigation What is the most over-looked tool of investigation? CLOSE AND DEEP LISTENING, AND WORKING WITH INVESTIGATORS WHO DO THE SAME (AND WHO HAVE GOOD RELEVANT EXPERIENCE, GOOD HEARTS, AND GOOD HEADS ON THEIR SHOULDERS). If you live in a jurisdiction that uses optional reciprocal discovery, do you recommend its use? NOT APPLICABLE WHERE I PRACTICE. Do you have any tips for using your investigator effectively? INTEGRATE THE INVESTIGATOR INTO THE WHOLE CASE PREPARATION. OTHERWISE, THE INVESTIGATOR IS BEING INSTRUCTED TO FETCH SOMETHING WITHOUT KNOWING THE PURPOSE FOR THE FETCHING, AND WITHOUT BEING ABLE TO ADD INDEPENDENT VALUE TO THE CASE PREPARATION. Trial What do you do before trial to calm your nerves (assuming you still get nervous)? Tai CHI. Is the old advice about starting with your closing statement and working backwards still good advice for preparing a case for trial (it's what they were selling at my law school)? ONE NEEDS TO WORK BACKWARDS FROM THE ANTICIPATED JURY INSTRUCTIONS IF THE CASE IS TO GO TO A JURY, AND WITH THE APPLICABLE LAW IF THE CASE IS TO BE A BENCH TRIAL. IN THIS WAY, THE CRIMINAL DEFENSE LAWYER STARTS WITH THE ROADMAP TO PREPARING ALL PARTS OF THE TRIAL. AS THE TRIAL LAWYER DEVELOPS THE CASE, IT BECOMES IMPORTANT TO WORK BACKWARDS FROM THE CLOSING ARGUMENT, AS WELL. THE CLOSING ARGUMENT WILL RELATE THE DEFENDANT'S CASE THROUGH A PERSUASIVE STORY THAT WILL BE TOLD THROUGHOUT TRIAL, FROM VOIR DIRE TO OPENING TO DIRECT AND CROSS TO CLOSING ARGUMENT. THIS IS NOT TRIAL ADVOCACY CLASS; THIS IS YOUR OPPORTUNITY TO PERSUADE. Other than trying cases, where should an aspiring criminal defense attorney look to improve his or her trial skills? Tai CHI. LAUGHTER AND COMEDY. Any quick tips for Direct Examination? THE WHOLE TRIAL IS JURY-FOCUSED (AND JUDGE-FOCUSED, FOR BENCH TRIALS). TELL A PERSUASIVE, COHERENT, AND MEMORABLE STORY AT EVERY STAGE OF THE CASE. HUMANIZE THE WITNESS AND HELP THE JURY RELATE TO THE WITNESS. Any tips for Cross Examination? TELL THE PERSUASIVE STORY THROUGH CROSS EXAM, TOO, TO THE POINT THAT THE CROSS EXAMINER IN MANY WAYS IS TESTIFYING HIMSELF, AND NOT GETTING TOO CONCERNED WHEN THE EXPECTED ANSWER IS NOT OBTAINED. OFFER THE WITNESS THE CHOICE BETWEEN ANSWERING EACH QUESTION DIRECTLY, OR ELSE GOING THROUGH THE PAIN OF ENDURING INFINITELY MORE SUBQUESTIONS TO GET TO THE EXAMINER'S GOAL. A SOFT CROSS EXAMINATION CAN BE MORE POWERFUL THAN A HARD CROSS EXAMINATION, JUST AS Tai CHI'S POWER IS DERIVED FROM USING THE OPPONENT'S ENERGY AS MUCH AS POSSIBLE. How important is it to get your client into a nice set of clothes? THE CLIENT'S CLOTHES SHOULD BE COMFORTABLE AND PRESENTABLE, TO THE POINT THAT THE JURY DOESN'T NOTICE THE CLOTHES EITHER WAY. What pointers do you have regarding appropriate attorney attire in the courtroom? BE YOURSELF, BUT STILL DRESS SO THAT THE JURY DOESN'T NOTICE YOUR CLOTHES ONE WAY OR THE OTHER. BE WELL-GROOMED. MUCH MORE IMPORTANT THAN ATTIRE IS PERSUASION. ONE OF THE GREATEST CRIMINAL DEFENSE LAWYERS IS TONY SERRA, WHO WEARS SECOND-HAND SUITS, AND REPAIRS THEM WITH STAPLES. WE NEED TO FOCUS ON CULTIVATING AND IMPROVING OURSELVES MUCH MORE THAN ON FOCUSING ON GROOMING. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, July 24. 2007

Hey, prosecutor, I'm at 301-495-4300.

Many times on the way to or from court, I find ideal kayaking places. (Image from National Park Service website.) On July 23, I rose before sunrise to arrive on time for a drug possession trial at a courthouse nearly three hours away. As I had anticipated, the drive was peaceful and beautiful, as I went deeper and deeper towards and into Maryland's westernmost county. All that was missing was a kayak or canoe on the roof -- or a whitewater raft -- and a tent and sleeping bag in my trunk. However, I had to arrive home by evening to be back with my family. I called the prosecutor a few days ago, and left a voice mail suggesting the dismissal of my client's case, with compelling reasons. I heard nothing back. Soon after arriving at court on July 23, the prosecutor told me he had considered the circumstances of my client's case, and decided he would dismiss the prosecution. I replied that I was satisfied with the dismissal, but that I had stayed up the previous evening finishing trial preparation, which would not have been necessary had I known in advance of the trial. The prosecutor already knew that my client was coming from several states away, necessitating a roundtrip of over eight hundred miles. I can only think of four possible reasons why the prosecutor did not tell me before the court date of his decision to dismiss. Possibly he had not decided to dismiss until the trial date. Possibly he had a witness or evidentiary problem that did not come to his attention until the trial date. Possibly he was too busy to let me know in advance of the dismissal decision. Possibly he wanted to assure that my client would drive the eight hundred miles roundtrip as a cost of getting a dismissal; however, the law does not require a defendant's presence merely to dismiss a case. I did not bother asking the reason, in part because I wanted the dismissal entered before having any such discussion. The prosecutor accepted my request to have my case be one of the first called that morning. Before getting back in my car, I spent a few minutes with my client walking and talking around this downtown where I had never walked before. The air and nature seem very clean from there through at least the next hundred miles. The walk and ride were very peaceful. Several years ago, my ability to enjoy beautiful nature areas sometimes got dampered by my knowledge and obsession that the area's judges and prosecutors were more unfairly harsh than those in counties where I usually appeared (and such unfairness and harshness often visits the nearby counties, too). To live that way is to live a stymied life rather than a real life, and overlooks that all people are temporary visitors to wherever they live or travel. Fortunately, I finally moved beyond that, assisted by my deeper and growing connection with nature, including new experiences kayaking and canoeing the waterways, and hiking and biking new paths. My client also enjoyed the nature on the way to and back from court, although he preferred not traveling so many hundreds of miles had it not been necessary to do so. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, July 23, 2007

Michael Vick's one-sided indictment is insufficient to sack or suspend him.

Photo from website of U.S. District Court (W.D. Mi.). Football is a violent sport. So are boxing, hockey, and lacrosse, which is one of my favorites to play and watch. Dogfighting is a violent and reprehensible sport. Eating meat, fowl, and fish is drenched in blood and violence. (Did I ever tell you about the time I saw a food market employee slicing off a flapping fish's scales while it remained alive? The salivating customer said that fish are more delicious when scaled alive, and chicken are more delicious when plucked alive; then there are cooked-alive lobster and crabs.) Moreover, slaughterhouses are focused on efficient slaughtering far beyond any concern about animal suffering during their short lives and bloody deaths. Also, imported meat, fowl, and fish are not necessarily governed by the same "humane" treatment and slaughter laws as those found in the United States. (For this blog entry, I depart from my usual practice of not getting on a soapbox to promote vegetarianism, in that it looks hard for the public to indict Michael Vick without indicting America's animal-slaughtering and meat-eating system.) Perhaps a part of me should welcome all the brouhaha over Michael Vick's indictment over alleged dogfighting and brutal dog executions, in that maybe it will make people recognize that not only Michael Vick's alleged crimes are brutal, but that our society is overdrenched in brutality, from police brutality to child abuse to rampant physical assault to slaughterhouses, and the list goes on. However, I do not welcome the rush to judgment against Michael Vick that leads the People for the Ethical Treatment of Animals and numerous others to call for Mr. Vick's suspension while he remains presumed innocent unless and until proven guilty beyond a reasonable doubt by a unanimous jury. Mr. Vick's federal indictment was filed on July 17, 2007, and alleges violations of laws against animal fighting and animal cruelty. As mandated by the Fifth Amendment of the United States Constitution, Mr. Vick's federal prosecution in the Richmond federal trial court is proceeding on an indictment returned by a grand jury. However, the federal courts have done little to prevent grand jury indictments from being little more than sham rubber stamps of indictments typed by prosecutors who present witnesses and evidence to grand jurors in secret proceedings without the presence of any judge nor the presence of any lawyers other than prosecutors. Armed with such Star Chamber indictments, federal prosecutors repeatedly parade before reporters at government-organized news conferences (often complete with photo opportunities of law enforcement employees and numerous prosecutors), with the prosecutors and reporters rarely informing the public that such indictments are shams that are worth little more than toilet paper (and at least toilet paper sometimes is squeezably soft). These are your very highly tax-paid federal prosecutors at work, as part of a government that is supposed to be run by the governed, when too often the reverse is happening. Kudos to ESPN.com's Mike Sando for taking on this sham federal grand jury system by the jugular, by his telling sports fans and the rest of the public not to rush to judgment, in his July 20 opinion piece. Thanks, also, to Sports Law Blog for drawing attention to Mr. Sando's viewpoint. ESPN's Sando called me about Mr. Vick's grand jury last Thursday, July 19. Clearly, he did not select me for any sports-following prowess, although I have some wonderful memories from live games of the Lakers with Wilt Chamberlain, and the Knicks and Yankees at home. He quoted me as follows: "The prosecutor can get an automobile indicted," Maryland-based defense attorney Jonathan L. Katz said. "The prosecutor puts in the witnesses that he wants and then at the end he says, 'Look, here's an indictment, please agree to it. It just requires the grand jury members to find there is probable cause to believe that a crime occurred. Well, probable cause is not much more than a hunch.'" "Look, I'm a vegetarian for ethical purposes... I don't want anyone misusing dogs. It's just that we should let the jury trial take its course and then make judgments when the jury is all done." This whole rushing to judgment mentality of people seeking Vick's suspension helps to prejudice my jurors in criminal trials. As one of my most trusted criminal defense teachers underlined to me, when jurors first see the defendant, they are asking "What did s/he do?" and not "What is s/he accused of doing, and can the prosecutor prove the alleged crime beyond a reasonable doubt?" Although I agree with many of the animal rights views of the People for the Ethical Treatment of Animals -- and previously successfully defended its activists' First Amendment right to protest the circus in Baltimore -- an ongoing wedge between me and plenty of others in the animal rights movement continues with the efforts of many in the movement to criminalize more animal cruelty offenses and to enforce those laws more strongly, when I repeatedly have cried out against overcriminalization when we have such an unjust criminal justice system and when civil non-criminal remedies remain as an alternative. In Mr. Vick's instance, PETA urges people to insist on Mr. Vick's suspension, saying "tell the NFL that someone who allows this kind of neglect and abuse to occur doesn't belong in its organization." Particularly with the ink having barely dried on the federal prosecutor-penned indictment (which I have uploaded here, from the federal court's online docketing system), the public has insufficient information this early on to know what Mr. Vick did or did not do with dogfighting. The indictment speaks of horrific executions -- by hanging, shooting, drowning, and electrocuting -- of dogs deemed not up to snuff for prizefighting, as well as other alleged crimes related to dogfighting. However, the indictment tends to lump Mr. Vick in with some or all of his co-defendants, not making sufficiently clear the extent to which Mr. Vick allegedly pulled the trigger for any dog executions or even knew about the executions, versus just lumping him in with his co-defendants on the theory that a person is responsible for the foreseeable actions of co-conspirators. Senator John Kerry -- a lawyer

and former prosecutor who, of all people, should understand how unreliable are federal indictments --Â nevertheless wrote to NFL Commissioner Roger Goodell that "In light of the seriousness of the charges, I believe that Mr. Vick should be suspended from the League, effective immediately." West Virginia Senator Robert Byrd, another law school graduate who should be expected to understand that indictments are practically meaningless as information tools, nevertheless took to the Senate floor two days after the indictment's issuance to proclaim that: "I am confident that the hottest places in hell are reserved for the souls of sick and brutal people who hold God's creatures in such brutal and cruel contempt."Â For any reason Michael Vick has indeed committed any of the crimes alleged against him, he still is entitled to all rights guaranteed to criminal defendants, a fair bond, and a spirited defense. That is my watchword; please join me.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, July 22, 2007

Hear Hippie Lawyer's weekly broadcasts.

The peace symbol went far beyond hippies. Gerald Holtom designed the symbol in 1958, and the Campaign for Nuclear Disarmament adopted the symbol for its logo. A Hippielawyer is Alan Graf, a fellow National Lawyers Guild member who lives at A The Farm A cooperative community in western Tennessee. A Check out Hippielawyer's weekly online broadcasts called Third Planet Report A , presenting news, interviews, commentary, and A homespun music. The latest Third Planet Report, from July 17, covers post-Katrina New Orleans, including the story of a man who lied to the police that some crack dealing was going on at the hospital, feeling that is the only thing that would motivate police to go there to give help to the people stranded there in the aftermath of Hurricane Katrina. Jon Katz.

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

Friday, July 20, 2007

Talking about DC madam case and Michael Vick.

Photo from website of U.S. District Court (W.D. Mi.). Two days ago, the New Orleans Times-Picayune called to interview me about the recent disclosure by alleged D.C. Madam Deborah Jean Palfrey -- who I think is gravely mistaken to be talking publicly about her case, let alone in such depth -- that she expects to have Louisiana Senator David Vitter testify at her trial. The resulting article and my quote are here. I have written many times that prostitution should not be criminalized, particularly when the police and prosecutors have plenty to do with more serious crime, and particularly when police and prosecutors need to spend more time evaluating their cases so that they do not prosecute the wrong people. I have also argued to legalize marijuana and to heavily decriminalize other drugs, not only for civil liberties reasons, but also to eliminate an overgrown and overly unjust criminal justice system that runs rampant on the right against unreasonable search and seizure, the right to obtain a just bond, the right to receive a fair sentence, and the list goes on. As revealed by the online filings in Ms. Palfrey's federal case in the District of Columbia (available through the PACER website), her assets have been frozen pending efforts to forfeit her property as alleged gains from alleged prostitution crimes. Perhaps frustration over her frozen assets influences her decision to speak out so publicly about her pending case. Jon Katz. ADDENDUM 1: Yesterday, ESPN.com interviewed me about the prosecution in Richmond, Virginia, federal court for alleged dogfighting crimes against Atlanta Falcons star Michael Vick. I anticipate that the story will include quotes from me about the grand jury process in the case. I will post a link to the story after it is uploaded. ADDENDUM 2: The ESPN interview referenced in Addendum 2 above culminated in this opinion piece that includes quotes from me.

Posted by Jon Katz in Jon Katz in the News at 06:10

Understanding intolerance and narrow minds by looking from within.

When I arrived at college, I walked to my basement room in a large house converted to a dorm, and found that my two roommates had already staked out their corners of the room. One roommate, PA, I took to immediately; he was from near Pittsburgh, and seemed very likeable, intelligent, and caring. The other roommate, LI, gave me cause for pause. He was from western Long Island, displayed no stereotypes of Western Long Islanders (which is not a bad characteristic in him), and chose the farthest corner from me, facing the door. By the second day of orientation, he had painted "his wall" black, ultimately explaining that the black wall helped him feel less confined. LI put a Kate Bush and Eraserhead poster on his black wall. He started getting on my nerves. One day he pondered aloud whether it would be too conformist to return his lunch tray to the cleaning area, determined it would be, and left it there, for the students on work study ultimately to clean up after him. Another day, when my friend called, out of the blue he asked if he was a homosexual. Another day, after stringing dorm doors together with toilet paper (later explaining it was his reaction to the disconnection he felt existing among many people in the dorm), he chewed out the woman who daily cleaned the dorm, for having the audacity to clean up the toilet paper. LI could not simply be marginalized; he was different, apparently brilliant, and quite a few people took a liking to him. Even I liked some things about LI, one of which was that he was musically inclined. One night, just spontaneously, I whipped out my trumpet, LI whipped out his banjo, and PA whipped out his accordion, and we started jamming in the TV room, and the other residents enjoyed the good music and positive energy. Things unravelled after that. Ultimately, I just wanted out of that overcrowded dormroom, the black wall, LI, and the dorm itself. As I started my visits to the campus housing office to find out about vacancies in other double rooms (freshmen didn't qualify for single rooms), I was in the cafeteria one day with two friends, and LI sat down with us. I felt he was taunting me by interrupting my respite from him. I did not say a word to him, and he did the same with me as we ate. During the semester that LI, PA and I shared the dormroom -- LI suspended college the following semester, I moved to another dorm, and I entirely lost track of LI after bumping into him on the street a few weeks after I left the original dorm -- I read *A Confederacy of Dunces*. *Confederacy* is about Ignatius Reilly, a brilliant but obnoxious hero who sucks jelly out of donuts and returns them to the box for others to eat, takes a filing job only to throw out papers to be filed, takes a hot dog stand job only to eat up the profits, and takes a library job only to spend an entire day gluing just one pocket for return cards into one book. He proclaims that he was born in the wrong century, and that medieval times would have suited him better. *Confederacy's* author became so tormented that he killed himself, apparently because he could not find a publisher for the book, with his mother finally finding a publisher, and with the book earning a Pulitzer prize. LI also liked the age before electricity, and belonged to the campus Society for Creative Anachronism, sometimes donning period clothing. In many ways, LI was my Ignatius Reilly, a brilliant yet obnoxious hemorrhoid in my life. Reading *Confederacy*, I always could close the pages on Ignatius. I could not do the same with LI. On the flip side, I was LI's hypocritical hemorrhoid. Around him, I had trouble summoning the humor -- often bent and pushing the envelope -- that I so often enjoy. I was to him a killjoy and a stick in the mud. I could not

even tolerate that he had taped the front page of Communist Pravda to the room's front entrance when he was studying and soaking up Russian, while also honing his impeccable French, studying German, and studying English. Language filled his entire semester. Â Something was very off with me. While being all intolerant of LI, his black wall, and the Â Pravda front page, I was working actively with Amnesty International, which is all about tolerance. I believed strongly in the ACLU's First Amendment agenda, but was being intolerant of a black wall. Not long after we parted ways, I recognized more fully than ever what a fool I had been not to have just had a one-to-one rap session about what we liked and didn't like about each other, and to seek harmony, and to keep the black wall and Pravda out of it. I did not seek him out to tell him this. I just wanted to put it all behind me. But it still dogs me. Â LI had a poster for David Lynch's masterpiece and pre-Twin PeaksÂ Eraserhead., displayed above on YouTube. I finally watched it thirteen years after its release. I wondered why I had not just talked to LI about the film, or talked to him more at all. I Googled LI a few years ago, but only foundÂ his father, who was a state legislator. I askedÂ by e-mail of LI's well being and whereabouts, but received no reply. Maybe I will try again. Â Tying this all into my law practice, for me to understand why I face so many narrow-minded and intolerant judges, jurors, and prosecutors, I don't need to look much farther than myself and my intolerance and narrow-mindedness with LI and others. For me to help motivate others to shed their narrow-mindedness, I must recognize and shed my own. Jon Katz.

Posted by Jon Katz in Persuasion at 00:05

Thursday, July 19, 2007

Speaking proactively to the media, rather than following the media to the lions.

Lynn Stewart on organizing news conferences, and more. Â Talking to the media about one's criminal client without a sufficient goal and plan that are solely client-focused is like running through a lion's den at lunchtime. I have written about this here. Â Kudos to radical lawyer Lynne Stewart for talking about speaking to the media to a criminal defense client's advantage, with a vengeance. No matter one's view on whether Ms. Stewart should have been prosecuted, convicted, and subsequently disbarred, her above-posted video is a battery charger for me for defending clients with a vengeance, well beyond any media front.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, July 18, 2007

Criminalizing assisted suicide.

Photo from website of U.S. District Court (W.D. Mi.). Assisted suicide does not seem to be prosecuted much, and perhaps even less now that Jack Kevorkian claims not to be doing it at the moment (apparently, at least, to pay lip service to his post-incarceration conditions). For that reason, I have not needed to research the criminal law as it applies to suicide, until this week, when someone asked me about Maryland's suicide law, which sparked my curiosity about what I would find. I learned that a person cannot be prosecuted in Maryland for attempting to take his or her own life. (Of course, nobody is available to prosecute if the attempt succeeds.) Assisted suicide is punishable in Maryland up to one year as a felony, which is a lower maximum than I would have expected, perhaps as a legislative acknowledgment that it should not be classified on par with rape, robbery or murder. Md. Crim. Law Code § 3-104. The Maryland Code provides protection against such prosecutions for health care professionals (and home care providers who follow the directions of health care professionals) attempting to treat a person rather than trying to kill the patient. Among health care treatments that can hasten death is morphine, no matter its pain relieving benefits. I have asked a few people about the possibility that a person jumping off a bridge or roof might, somewhere before landing, decide it was a mistake to commit suicide, and recognize that the decision now is irreversible. One person suggested such a scenario is unlikely, in that a person likely feels so much pain at the time of jumping that the goal remains to end the pain. I suppose that people who believe in reincarnation do not believe that committing suicide ends all one's problems. I recall reading a theory that Japan would have a lower suicide rate but for many people there having a reluctance against burdening others with their problems. No such hurdle exists in the United States, yet it appears that plenty of people still kill themselves in the United States who would not do so if they obtained quality psychological counseling, support from friends and family, or both. Of course, many people also commit suicide as an alternative to suffering from disease. As much as I wish society and individuals would help healing so that fewer people would want to commit suicide, I do not wish to see arrests and prosecutions for assisted suicide any more than I want prosecutions of people who botch attempts to kill themselves. That is separate from prosecuting "mercy killings" (where the killer singlehandedly determines that the victim should die, thinking the killer knows what is best for the victim) or triage killings (where the victim is denied medical treatment on the supposition that the person is too old or feeble to merit redirecting medical resources from others). What is the law governing suicide and assisted suicide where you live? Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, July 17, 2007

Happiness is the heart being free.

Relating to my July 15 blog entry, here is an excellent video from a Buddhist monk about the necessity of seeing our happiness as connected to everyone's happiness, since we are all connected (and I believe this connection extends beyond human-to-human relationships to all living beings' relationships with each other, which helps explain why I have remained a strict vegetarian for nineteen years). When something bad happens to one person, it ultimately affects everyone in some way, and vice versa. Tying this into fighting for justice -- including fighting for my criminal defense clients -- fighting in and of itself ordinarily will result in unhappiness for the losing side. If that is so, then let the happy victory rest with the side of justice, which includes the criminal defendant. When fighting for my clients, I do my best to engage in t'ai chi battle, which involves emptying myself of all anger, fear, and desire (other than the desire to neutralize the opponent and to harmonize the conflict to my client's favor); maintaining the wonder, joy, and fearlessness of a well-adjusted child; knowing that sometimes I may lose, but investing the loss into future victories; and using the other side's energy and anger as best I can in battling the opponent, while not over-expending my own energy; focusing on harmonizing a conflicting situation rather than on inflicting damage on the other side; and being ready, when unavoidable, to inflict even profound damage on the opposing side if that is the only way to reach harmony for my client, so long as I adhere to all personal and professional ethics during the fight. Through my experience fighting for well over two thousand litigation clients, I know that my opponents -- like the public at large -- run from decent people who will fight as fairly as possible (unfortunately, even plenty of otherwise decent people sometimes will be tempted to do things that are far from decent) up to heartless people who have little heart, caring or decency to give to others. Therefore, fighting for justice requires never flinching, lest the opponent throws sand in the fighter's eyes and then kicks the fighter where no kicks ever should be directed. T'ai chi battle calls for the fighter not to expect any fairness or decency from the opponent, so as not to be weakened by anger or disappointment when the opponent fights dirty, but to be ready to be pleased when the opponent fights fairly. Certainly, less damage will be suffered by battling parties if they will be open sincerely to try to overlap and harmonize their mutual goals before taking the gloves and sheaths off to go to battle. Such negotiations involve trying to reach maximum mutual advantage while creating a clear, accurate and diplomatically-worded picture of the damage ahead for the opponent if battle should proceed, so that the parties are negotiating not in a vacuum, but with an accurate battle weather forecast staring them in the face while they negotiate. Tying this all back to the above-displayed video, when we all focus away from a self-centered life and towards the happiness of everyone (including ourselves and those with whom we negotiate), less conflict, misery and unhappiness will surround everyone. A trial lawyer can, and should, follow the two-pronged path of focusing on the well-being of all, while giving priority at all times to harmonizing on the side of justice. Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Monday, July 16, 2007

Healing must continue, both inside and outside jails and prisons.

Â This follows up on my July 15 blog entry about focusing on the roots of crime rather than just on the cure. Â Many jails and prisons are depressing beyond depressing. Many jail and prison guards probably feel like they are voluntary temporary prisoners in these bleak places. Prisons dehumanize.Â My awesome friend and mentor Jun YasudaÂ 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."Â Nevertheless, thousands of new people are caged each year in America's jails and prisons. We should not just let them be warehoused, hidden, and forgotten. You can make a difference in providing compassion and more humanity for inmates, who consist of people still presumed innocent and awaiting trial, and those already convicted. After all, accumulated feathers still sink the boat. Every little bit helps, and every larger step helps all the more, including getting on the backs of your lawmakers and the other government powers that be; spreading the word of justice for prisoners and criminal defendants to your family, friends and acquaintances; and visiting inmates (and even offering to provide them classes in your areas of strength, beÂ it academic, creative, supportive, or otherwise)Â and giving them moral support. Â The Human Kindness Foundation has an excellent webpageÂ about how to easily arrange to visit with inmates and what to do with the visits, and sends thisÂ messageÂ about whatÂ you can do to help inmates.Â In this spirit of helping inmates, Vipassana meditation teachers have gained access to inmates in SeattleÂ -- since at least 2001 -- to help their healing and harmonization process, as detailed in the above YouTube video. Hopefully, jails and prisons nationwide will welcome such programs, both for their inmates and for the jailers.Â Jon Katz.Â ADDENDUM: Another example of excellent assistance to inmates comes in the form of the Beat the Heat manual by ex-inmate and now-lawyer Katya KomisarukÂ (whom I first met in 2000 when training to defend April 16 anti-globalization activists). It offers practical tips for adjusting to incarceration (e.g., how to avoid taking sides with other inmates, and not to join a conversation in progress unless invited to do so) and for creating harmony with other inmates (including recommending that cellmates give each other daily time alone in the cell).Â

Posted by Jon Katz in Criminal Defense at 00:01

Sunday, July 15, 2007

When compassion overcomes robbing.

How infectious that a witness to a robbery in Capitol Hill a few days ago neutralized the situation by inviting the robber to join everyone for wine and nibbles. Soon, the robber had removed his mask, apologized, and said he must have been at the wrong address. He asked for individual hugs, and then a group hug, which he got. Clearly, nobody wanted to spend a millisecond with this intruder. However, the woman who invited the man for wine apparently recognized the hope to avert violence by humanizing the robber. This is not the first time I have heard about a robber being neutralized by showing compassion. As I wrote here nearly five years ago, Buddhist monk Ishibashi-san of Queens, New York, told me in 1999 about being held up at gunpoint one summer evening in Central Park. Instead of fleeing or fighting or fearing, Ishibashi-san profusely apologized to the robber that he had no money on him, since he only had on shorts and a t-shirt without pockets. Ishibashi-san told the robber that the robber clearly needed money more than Ishibashi, so he invited the robber to come home with him, where he could give the robber money. The robber became scared, bowed, and ran away. A perhaps more extreme variation of Ishibashi-san's above-recounted peaceful response to threatened violence is the following story from my teacher and friend Jun Yasuda of Grafton, New York, who is a longtime peace activist and nun with the Nipponzan Myohoji Buddhists, which is the same Buddhist order of Ishibashi-san. Jun-san once told me about the day she joined a protest supporting the land rights of native people in Canada. At some point, an opponent of the protest rushed towards Jun-san and some other protesters swinging a metal pipe. Jun-san expected she would die. Instead of protecting herself, Jun-san prayed for the attacker, because he and all human life are sacred to her. Jun-san did not flee or fight in fear, because she has resigned herself that she will die one day anyway, and she sees death as just another part of life. Somehow, the attacker's pipe never hurt anyone, and he was subdued, clearly not by Jun-san. Jun-san practices caring about everyone else every minute of the day. During a seven-day dry fast -- with no food nor water except for one drink at mid-week -- for and outside the prison of death row inmate Mumia Abu-Jamal, she said of the prison staff: "Some of them wave ... and I wave back. Prison guards are also humans. They also need peace. They also need healing." Unlike myself, Ishibashi-san and Jun-san never intend to use physical force to self-defend themselves. Jun-san says: "You know, several times I have had somebody hitting me during a prayer. I do not hit back. That would just make him more angry, more hateful. My way, if somebody is trying to hurt me, is to bow to him and to pray. I try to ask why he is angry, and to listen to him. I want to know why is he wounded inside." In that regard, I once asked Jun-san what she would do if she lived in the 1940's and bumped into Hitler, since I knew her response would not have mirrored my response of shooting him dead first and asking questions later. Whether or not I agreed, Jun-san explained that everyone has several personalities including good parts of their personalities; she mentioned Hitler's having been a painter. Jun-san would have asked Hitler why he was so angry. She said she might have started by offering him a massage, looking at it as soothing the soul of a savage beast, I suppose. Jun-san also exemplifies being fully assertive while remaining fully peaceful. Jun-san told me about the day she was arrested and put in a holding cell -- apparently pending seeing a judicial officer to determine bail status -- dragnetted in with angry opposing demonstrators between whom she was trying to inject some calm. In the cell, she began beating her drum to her chant of the odaimoku/prayer for peace, "Na Mu Myo Ho Ren Ge Kyo" (which by now is on my license plate as an acronym, having popped to mind while waiting in line at the MVA to get a vanity plate saying "BEHRNOW", which had beaten out AMOMENT). A jailer walked to her cell and shouted "Shut up!" Jun-san smiled, the jailer walked away, and Jun-san resumed her drumming and chanting. The same jailer returned, again shouted "Shut up," and this time took away her drum, and left. Jun-san took off her shoe, and resumed drumming on the floor with her shoe to the odaimoku, which sounds like a better way to rap one's shoe than Khrushchev's 1960 shoe-banging tirade at the United Nations. Jun-san exemplifies the importance of trying to heal the world one person at a time, starting with ourselves: "Gandhi was just one person, and he did very simple things. He walked to the ocean. He fasted. He was one person. But he was very conscientious. We should be too. Think of one person fasting outside the White House. That act has spiritual power. More, maybe, than big numbers." Jun-san has inspired me to be more peaceful and harmonious, particularly in the heat of litigation battle. I have much farther to go, but also have come a long way. Eight years ago, I read an article about Jun-san folding origami peace cranes during an interview about her peace activities. As a result, I learned about the powerful peaceful significance of origami peace cranes, self-taught myself to fold them from an online manual, and have handed out every one of the hundreds I have folded, running from loved ones and friends to total strangers to various stations at the Hiroshima Peace Park, usually soon after the folding is completed. Much more often than not, my simple act of folding a peace crane and handing it with peaceful intentions to another person spreads peace or other forms of happiness to them. I have considered, but thus far declined, handing peace cranes to selected prosecutors and other opponents; then again, consider George Harris's powerful act of placing carnations in the gun barrels of police during a 1967 antiwar demonstration. Here is an article about the 2002 Hiroshima Peace Flame walk organized by Jun-san, which concluded with a ceremony near ground zero, with the flame placed on an altar, along with peace cranes and

lilies.Â During the Washington, DC, leg of the PeaceÂ Flame walk, I drove the two peace flame lanterns a few miles, and recount my experience here.Â Â When I first met and re-metÂ Jun-san in Lafayette Park across the White House inÂ 1991 as she fasted on green tea and drummed and chanted for thirty days for peace during Gulf War I, I was seriously out of harmony with my life in numerous ways, including being very upset about Gulf War I, being very dissatisfied with my job, and seeking greater peace, fulfillment, and enjoyment in life. Jun-san has been one of the very positive influences and catalysts to get me closer to harmony and peacefulness than I have ever been. I never was in such dire personal straits -- nor ever in dire financial straits --Â that I needed to resort to robbery nor burglary during my turmoil. However, having experienced the healing power of dealing with such caring people as Jun-san, I do not think it is farfetched at all that the robber on Capitol Hill was neutralized by one human being recognizing the robber as another human being, and by inviting him to connect with everyone else there with a glass of wine. Â So many people crave basic humanity,Â compassion, and connectionÂ from others, that we sometimes read stories about burglars helping themselves to a snack at their target homes (and perhaps some time to peruse family photo albums), to feed not just their stomachs, but perhaps also their fantasies to live the apparently stable lives lived in the homes they target. Â People crave proverbial and literal hugs. People crave being treated as precious individual humans, and not cogs in the machine. It takes little effort for each of us to show caring and warmth to other people every day (and nearly infinite, but essential, effort to raise children harmoniously and beneficially), to avoid cutting off and tailgating other cars (and to avoid flashing bright lights at drivers for not exceeding the speed limit like "everyone else", blasting horns at them, and flipping them the bird), and to seek for others to rise up with us as we rise, rather than to step on their heads and faces as if they were rungs in a ladder to success. Â Crime will go down in the first place if people show each other more compassion, caring, and understanding, before problems run out of control. As with medicine, it is more effective and less costly in the long-run to treat the causes of society's ills than to seek cures. The woman who offered the robber a glass ofÂ wine was right on target.Â Jon Katz.

Posted by Jon Katz in Persuasion at 00:05

Friday, July 13, 2007

DOJ publishes proposed updated adult recordkeeping regulations.

Â The First Amendment and the rest of the Bill of Rights.Â (From the public domain.)Â First Amendment issues repeatedly come up when the government tries to prosecute and regulate child pornography, particularly when those efforts trample on material and activities that are fully protected by the First Amendment. Â In any event, soon after our law firm opened, I expanded my law practice to include adult entertainment defense; I was also the founding president of the Free Speech Coalition of the District of Columbia, Maryland and Virginia. Early on, I learned that one of the biggest questions of adult webmasters and producers of adult films and videos is complying with the 18 U.S.C. Â§ 2257 requirements to keep records showing that all models are over eighteen. In that regard, for the convenience and information of all, here is a link to the federal government'sÂ newly-issued (on July 12, 2007) proposed updated adult recordkeeping regulations.Â The deadline for submitting written comments on the proposed regulations is September 10, 2007. I plan to review the proposed regulations and to comment on them soon here. Jon Katz.Â ADDENDUM: I updated the link to this adult recordkeeping proposed regulation. The original link connected to the Government Printing Office's website, which turned out to be unreliable on the morning of July 13, 2007. The new link goes directly to the text that I saved directly to our website.

Posted by Jon Katz in First Amendment at 00:10

Thursday, July 12, 2007

Discussed on YouTube

Computer hard drive. (Image from Pacific Northwest Laboratory's website). Vlogger Paula Gloria found me recently through my link to an interview with Bhagavan Das and her. Overlapping my blogging today about Bhagavan Das, Paula and I have recently traded a couple of e-mails about Bhagavan, including how I learned about him through Ram Dass's Be Here Now. She sent me this link to an upcoming broadcast that includes Paula's brief discussion (starting at minute four) about me and my detailed personal links page, and her intrigue that all this comes from a lawyer. By now, our website and blog are very extensive and in depth (with less depth and breadth to my personal website), through an accumulation of over seven years of work. Jon Katz.

Posted by Jon Katz in Jon Katz in the News at 06:00

When Bhagavan Das was elusive.

My four key gurus -- the pantheon, my law partner, Jay Marks, calls them -- are Steve Rench (trial battles), Jun Yasuda (peace, compassion, and eliminating my fear of death), Cheng Man Ch'ing (t'ai chi), and Victoria Boutenko (healthy and harmonious living and eating). I have spent time with all of them --- except Professor Cheng, who died before I took up t'ai chi -- particularly many times with Jun-san and Steve. When things get heated in court, sometimes I imagine that Steve Rench is on my left for confidence, Jun-san on my right for compassion to all (even my enemies), and Cheng Man Ch'ing behind me for full fighting power. I have many other key teachers, including a sampling described here. One of my key teachers has taught me one of my most important lessons without my ever getting a chance to meet him. He is Bhagavan Das. Bhagavan Das was born Kermit Mike Riggs in California in 1945. Then John Kennedy was assassinated, and he left the country for what became a multi-year journey, first in Europe, and ultimately spending several years in India as an ascetic holy man. He tells his fascinating story in It's Here Now -- Are You?, which describes his whirlwind ride soaking in spiritual life in India, coming under the tutelage of Neem Karoli Baba, seeking out Richard Alpert/Ram Dass for the acid he was sharing (and introducing Alpert to Neem Karoli Baba, and the rest is history, recorded in Be Here Now), and ultimately returning to fame in the United States through the story about him in Be Here Now. The ride continued. Bhagavan eventually cut his hair and became a whiz at selling used cars, followed by encyclopedias and insurance. The Eastern holy man made an even more abrupt self-revolution when he became a born again Christian and dumped his Eastern religious objects in the water, including his begging bowl made from a human skull. Ultimately, Bhagavan left an exclusively Christian path to focus on spirituality itself, no matter the source. Why am I drawn to Bhagavan Das? The most important reason is his view that he never needed to spend all those years in India to learn what he learned there, while at the same time, his journey in India was fascinating. He did not need anybody else to make his life complete, even though many people helped enrich it all the more. He did not need to convert to a used car salesman from an ascetic holy man, but he did, and he made huge profits from it. Whether intentionally or not, Bhagavan Das underlined to me how I do not need to meet and spend time with my teachers to learn from them. In April 2006, I drove to a Philadelphia yoga center, which was one of the stops on his tour. I arrived late, and the rest of the night involved seemingly endless responsive chanting called kirtan. My eyes glazed over with limited interest after the initial excitement of being in the room with Bhagavan. Once the program ended, I tried to meet Bhagavan, with his autobiography in my hand. Many wanted a piece of him. One man told him he had driven all the way from farther than I, and Bhagavan said: "That's devotion" and ended up inviting him to stay overnight where he had been provided lodging. Yet with me, he seemed to remain elusive. The drive back would bring me home for limited sleep, so I left without meeting him. On reflection, I don't know if Bhagavan was just tired late in the evening and could not give a piece of himself to all, whether he was responding to my not looking plussed over all the kirtan chanting, or whether he was trying to teach me that I can learn from him and other teachers without needing them to autograph their book and without needing to talk to them. Sometimes, one's learning truly begins after leaving one's teacher. In Hollywood, this was exemplified in the Kung Fu series -- which I religiously watched -- when Kwai Chang Caine had to leave the Shaolin temple and his cherished teachers once he was able to snatch the pebble. Closer to home, many of Cheng Man Ching's t'ai chi students apparently moved from being more unified when he lived to running various autonomous schools after he passed away. One of his senior students, Benjamin Pang Jeng Lo speaks reverently about Professor Cheng, while demonstrating his own powerhouse abilities, including successfully defying anybody to be able to move his extended arm when it is relaxed. Further about Ben Lo, five years ago, at one of Ben's annual weekend seminars in the Washington, DC, area, I managed to get a seat at his table during lunchtime. He seemed amused to learn I was a lawyer, telling me that another lawyer t'ai chi practitioner was stiff; a new line of lawyer jokes, perhaps. I asked him how a person unable to bend much (because of replaced knees) can perform t'ai chi. He advised to focus on the lifting hands movement. A repeated message at the Trial

Lawyers College and the National Criminal Defense College is to share our learning with other like-minded lawyers. The taught become the teachers, while simultaneously learning from those they teach. Jon Katz.

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

Wednesday, July 11, 2007

Welcome to Beijing. Want a blindfold?

Â Death penalty: Always unjustÂ A clichÃ© before death by firing squad is to blindfold the soon-to-be executed person. Is the blindfold a gesture to the firing squad victimÂ or more an effort to keep the target more still to save expending excess bullets and excess time? Â In China, the final insult for a long time was the government's billing of the executed person's family for the killing bullet, fired to the back of the head, which would have made the bean counters happy for avoiding wasted bullets. By now, China has invested into lethal injection vans, which have carried out executions as swiftly as fourteen minutes after sentencing. According to the Times, in 2004, China's "Supreme People's Court announced that it would in future review all death sentences. The government has also indicated it will reduce the number of crimes that carry a mandatory death sentence."Â However, China's rampant death penalty machine continues. Just yesterday, China executed its former chief food and drug regulator, Zheng Xiaoyu,Â for corruption concerning the approval of drugs.Â Also this month, a Chinese court sentenced China's former drug approval head to death -- with a two-year reprieve for officials to decide whether to carry out the execution -- for taking bribes and for undermining public confidence in China's food and drug regulatory agency. If China thinks its death row and other stiff sentencings will restore global confidence in its exported would-be edibles, I have a bridge in Brooklyn to sell Hu Jintao.Â China's death penalty machine moves forward with a fury, withÂ judges in capital casesÂ acting as the puppets of the Communist party; no jury trials here.Â The extreme inhumanity of China's death penalty system -- which has gone as far as sentencing even evangelicals to death (and later reducing their sentences, possibly to try to placate George Bush II as a prelude toÂ his meeting with China's president) -- Â might cause advocates of the American death penalty system to gloat that the U.S. death penalty machine is overly-replete with sufficient safeguards. But why? The American death penalty machine is but an unjust watered-down microcosm of China's death penalty monstrosity; moreover, by maintaining the death penalty, the United States has little moral authority to pressure China to stop its ongoing slaughter by execution. Â While the United States remains the only Western industrialized country to execute people, industrial giant Japan hasÂ dozens of inmates on death row.Â Japan's immediate past justice minister refused to sign any execution orders. However, apparently to reduce the death row population to under one hundred, this past April, the current justice minister gave the green light for three men to hang, and hanged they were. This came on the heels of four ChristmasÂ day hangings in 2006. Â Â Among the many reasons I have given against the death penalty, the irreversibility of an execution is one of the most compelling arguments, particularly seeing how often innocent people are wrongfully sent to death row. Fortunately, joining the United States' spirited death penalty abolition movement is an infant abolitionist movement in China, with one of its leaders being Qiu Xinglong, who is a law dean atÂ Xiangtan University. Â Look around your home, alone, and see the dominance of Chinese-manufactured products, starting with your electronics -- including computer components -- and moving on to appliances, children's toys and stuffed animals, and cups and plates (and do they contain lead, considering all the adulterated food products that have been coming out of China lately?). Just as I have recommended favoring doing business in American states that do not have the death penalty, I advocate thinking twiceÂ about buying Chinese-made products. Jon Katz.

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

Tuesday, July 10, 2007

A frivolous lawsuit threat does not amount to extortion.

Â Image from Bureau of Engraving and Printing's website.Â In the real world, threats of litigation and responses thereto often are much harsher than Nathan Detroit's entertaining melody to his significant other: "Call a lawyer and sue me, Sue me, What can you do me, I love you. Give a holler and hate me, Hate me, Go ahead, hate me! I LOVE YOU."Â Fortunately, even a knowingly frivolous threatÂ to file aÂ lawsuit unless money is ponied up, does not amount to criminal extortion in Maryland nor under federal law, says Maryland's intermediate appellate court. The case is *Rendelman v. Maryland*, __ Md. App. __ (July 6, 2007). Â Although the court's opinion is silent about the First Amendment, I certainly think the First Amendment should be of protection in such circumstances. In any event, the Court of Appeals reached the right result here, and the victory is all the more sweet considering that the defendant received the maximum ten years imprisonment available by law. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:50

Battling with total physical, mental, and spiritual health.

Out of shape, with my boy (Great Falls Park, Va., Jan. 2007).Â Back in the saddle. (Rockville, MD,Â July 2007.)Â Rockville, Maryland (July 2007).Â Many times, I have blogged about going to battle with a sound mental and spiritual approach. Sound physical health is similarly critical, in terms of diet, rest and exercise. Â As to physical fitness, I have battled the bulge ever since starting law school. Following is my recent comment to Ocean Shaman on the topic, including my recently successful return to healthy weight and healthy eating. To see my back-and-forth battle of the bulge, see this in-shape July 1996 photo, this out-of-shape August 1999 photo, my in-shape headshot from October 2004 here, and the three photos above, from out of shape to back in shape.Â Maintaining harmonious physical fitness is critical for being powerful in trial battle, which is why I write about it here. In relation to my dozen years practicing t'ai chi, one of my teachers reminded me that t'ai chi master Cheng Man Ch'ing -- who developed the t'ai chi chuan yang style short form that I practice -- had a notable paunch, and that the goal of t'ai chi is not to have a bodybuilding physique. In fact, I think Professor Ch'ing advised against lifting weights, due to the hard energy needed to do weight training. I agree that it is not necessary to have a flat stomach or remarkable muscle tone, but to follow a healthy diet, rest and exercise path.Â Hi, Shaman- As a fellow battler of the stomach bulge, you're a member of a society of hundreds of millions worldwide. For whatever it's worth, I took a very radical and quickly effective weightloss approach, by adopting raw veganism, which I have fully detailed at <http://www.markskatz.com/RawLiving.htm>. It fully worked for the four years I followed the raw vegan path, until my waist grew fast after I added cooked food again in mid-2005 (staying 99% vegan). Three months ago, I switched back to 100% raw vegan, and quickly shed most of my excess weight even though my exercise program was too moderate for awhile during the switch back to raw.Â (I exercise with my boy, and will get more biking done when he's ready for the bike trailer.) I've gone a little less extreme by adding up to 10% cooked vegan whole food, but only during daylight hours, to prevent under-metabolized rice, etc., at night. I think the raw part is not as important for my controlling my eating as much as minimizing eating too much starch, nuts, seeds and sugar. Bananas can add too many calories; avocados don't give me added weight on this program, because of the remaining balance, but can make weight loss slower. On this round of mostly raw veganism, I've been eating over 60% organic. I feel a sense of well-being by doing so that makes me less interested in gorging myself on non-organic food, nor on organic foods. I've not been eating nuts or nut/seed butters this time around. I have been eating modest amounts of raw flax seeds ground in a coffee grinder and added to salads or mixed with bananas or citrus juice, which provides bulk and Omega 3 and 6. I've also been eating small amounts of raw sesame seeds. For some people, like myself, cooked food is an addiction. That's why this approach works for me. All the best on this path.Â Jon Katz.Â ADDENDUM: Among my role models to stay on this physical fitness path is fitness fanaticÂ Jack La Lanne, still in great health at ninety-three years, and still getting on soapboxes everywhere to preach the fitness gospel.Â

Posted by Jon Katz in Jon's news & views at 00:07

Monday, July 9, 2007

If you could not practice law, what would you do?

Â Photo from website of U.S. District Court (W.D. Mi.).Â When interviewing at a corporate law firm for a summer associate position forÂ the so-called key summer before law school graduation, the interviewer asked: "What would you do career-wise if you could not practice law?" I think I answered that I would find another area of business to work in, perhaps business consulting. This was just a year after I left being at a Wall Street bank for a year before law school, when I still thought it might be possible to do enlightened work in the corporate world; it still might be possible (e.g., working with a small computer software development company that includes charity work to enable blind people to use computers), but it takes real work to find such a path. Â Eight years later, I interviewed at a federal public defender's office onÂ a Saturday, called just days earlier to fly two time zones away to this office that at the time often did not give much advance notice to fly there for an interview. I thought federal public defender work would enable more sufficient resources (and higher pay to me) and more reasonable caseloads to defend indigent criminal defendants, after having been for four years with the Maryland public defender's office, which officeÂ may have beenÂ above average at the time in resources compared to the resources of other state public defender offices, but which trailed substantially behind federal defender offices in that respect. However, I had not stopped yet to consider sufficiently how uncomfortable I would feel assisting day in and day out with snitching and other distasteful aspects of federal criminal defense that are so common in the draconian federal criminal court system. Â In this group interview with just about every federal defender who worked there, one of theÂ interviewers asked what I would do if I could not practice law. By that time, I dreamed of a life defending indigent criminal defendants. How to do that if I could not practice law? Helping people in the inner city came to mind, considering all the dehumanization often affecting disenfranchised people in the inner city and elsewhere, so that is how I responded, admitting that I had not thought through what type of work I would do in the inner city, including teaching or community organization or counseling. I saw little value in thinking much about the unlikely possibility of not being able to practice law for any reason than my own personal choice. Â Suspended and disbarred lawyers, of course, are indeed prevented from practicing law, and must decide what to do unless and until they can get reinstated. Bill Clinton lost his law license for lying in his deposition about Monica Lewinsky in his defense against Paula Jones. However, it is doubtful that, as an ex-president, he would have practiced law, anyway, after leaving the presidency. (As an aside, Paula Jones's original legal team was co-led by Joseph Cammarata, who worked at my last law firm during my last halfÂ year there. Joe is a true gentleman; I never sought to talk with him about what motivated him to represent Ms. Jones.) Â A suspended personal injury lawyer whose firm I have gone against told me that instead of putting on a suit in the morning, he puts on boots and goes to construction sites. Such work keeps one in touch with ordinary people. For deal-making lawyers in expensive law suites, it can be very easy to get out of touch with ordinary people. Â The only disbarred criminal defense lawyer with a blog, to my knowledge, is OceanShaman, about whose blog I learned through Arbitrary and Capricious. Ocean Shaman gives more than enough clues about his identity, but I will not add to the clues. Suffice it to say that I have found him to be a likeable now-former fellow criminal defense lawyer from Maryland's Eastern Shore who was recently disbarred, apparently after a federal drug conviction. His recent blog entries reveal that he is confined on home detention when not at work or at "meetings" (I assume those to be meetings with his probation agent and group substance abuse meetings). If drugs were heavily decriminalized and marijuana legalized -- as I want -- Ocean Shaman may not have been convicted nor disbarred in the first place.Â Not even permitted outdoors to exercise -- indoors he practices t'ai chi, for instance -- he has devoted much time to his blog. Through Ocean Shaman's blog, I have learned how much more he and I have in common. Beyond t'ai chi, we both are on a spiritual path and spiritual search. I imagine that he, like I, is on this path not out of any new age devotion but out of a feeling of necessity. He writes about his teenage sons, their highs, their lows, and each son going to a weeks-long rustic camping program with OC's goal for them to be on a more productive path. With a sixteen-month-old boy, I keep my ears tuned to what works and what does not with teaching and raising children, and anticipate my son's eventual question of me: "How do you advocate drug legalization and decriminalization, but tell me not to use recreational drugs or alcohol other than small amounts of wine with you at the dinner table [which seems to work well in Europe]?" My anticipated answer at this point is: "I have seen the tremendous harm that drug and alcohol abuse brings to people, but the even greater harm that all this criminal prohibition brings," and I would take it from there. Â Finally, some people switch from daily law work out of luxurious choice. One trial lawyer I know from the Trial Lawyers College -- a true hugger literally and figuratively -- won such a huge jury verdict subsequent to the Trial Lawyers College (that clearly did not get decimated by judicial fiat nor appeal) that she has been on a years-long sabbatical from law practice, enjoying life and being. A criminal defense lawyer who wowed me with a masterful re-creation of a winning direct examination of his rape defense client -- asking questions as close to leading as would be permitted without sustained objections -- is now sixty-four, serves as an Episcopal priest after receiving a divinity masters degree two years ago, and remains of counsel to the law firm where he previously was a name partner. Â In the end, it is ideal that a lawyer practice law because s/heÂ wants to and that the lawyer provide quality service, and not out of a feeling that no other sufficient

career or income source exists.Â As I tell people who try to stereotype me with the rest of lawyers: "I was a human being beforeÂ entering law school, and a human being I remain." Similarly, going to law schoolÂ does not mandate that one remain a practicing lawyer at all times. Fortunately, I have found my calling doing what I do day in and day out.Â Jon Katz.

Posted by Jon Katz in Jon's news & views at 00:10

Sunday, July 8, 2007

Blue note

Don Cherry on pocket trumpet. Jazz is improvisation, spontaneity, feeling, being in the moment, tight interaction, entertainment, pushing the limits of excellence, creativity, expanding into new frontiers, fun, inspiration, and discovery. That also is what my criminal defense work is about, albeit with frustration frequently challenging the fun part. Moreover, my countless live trumpet performances with various bands helped make it more natural for me to perform before audiences in the courtroom. Perhaps, then, it was no accident that I took to jazz with a fury over thirty years ago -- long before I had any inkling I might become a lawyer one day -- with the added good fortune of experiencing live (and sometimes meeting) some of the then-living jazz legends dating back to the bebop era and before. At the end of great jazz musicians' long evening on stage, my older brother came up with the idea of offering to help as load-up volunteer stage crew a couple of times. I was floored when one of Dizzy Gillespie's band members welcomed our offer, after Dizzy and the band floored me in 1977 at a local nightclub just twenty feet away. For too long, jazz still has not reached its rightful place in musical appreciation in the country of its birth, to the point where jazz musicians consistently have gotten bigger and more appreciative audiences in Europe. The only silver lining for me about this situation is the many times I have been able to experience jazz legends sometimes as close as twenty feet from nightclub stages, including Dizzy, McCoy Tyner, Ahmad Jamal, Ron Carter, Horace Silver, and Woody Shaw. These intimate surroundings with jazz greats sometimes fostered some amazing face-to-face interactions. For instance, in 1985, I met Horace Silver at the Blue Note after his performance finished. When I mentioned having recently relocated from Boston, he said he wished someone would arrange a performance for him there; to this day, I do not know if he was exaggerating. Two years earlier, I went to experience Woody Shaw on the Boston Harbor jazz boat. Arriving too late to easily find a seat with a stage view, my friend and I took a seat slightly behind the stage. A kindly man encouraged looking harder for a seat seeing the stage, to hear the music better. We finally found seats where he recommended. Woody Shaw came onstage, and I was floored that he was the man recommending seeking better seats (by then, he unexpectedly looked much different than the pictures on his albums). During intermission, I told Woody how much he and his music had meant to me. I asked him about his trumpet, and he handed it to me, which I had not sought nor expected. I pretended as best I could to be calm with his priceless Yamaha trumpet, and handed it back as quickly as I could like a hot potato. Woody's official website says: "Like many geniuses, however, Woody's journey would involve periods of prolonged struggle and hardship, yet through his sacrifice and dedication to the evolution of Jazz music, he added to the vocabulary of the trumpet and created a musical language which was all his own." The same month as my law school graduation, Woody died of kidney failure at age forty-four, which is my current age. He accomplished so much in such a short time. Only recently did I learn that another jazz great, Don Cherry, passed just a dozen years ago, from hepatitis. Cherry first drew my attention over twenty-five years ago through Old and New Dreams's performance of his "Guinea" composition. Three years later, I was floored by Cherry and the rest of Old and New Dreams when they performed at the now-defunct Jonathan Swift's in Cambridge, Massachusetts. His son Eagle-Eye Cherry carries on the musical tradition. Flash forward to 1999, when my close friend Trudy Morse told me about her close friend Cecil Taylor's then-upcoming concert at the Library of Congress. I went along with a criminal defense lawyer friend who had so much trouble getting into the music that he graciously bowed out at intermission. On first hearing him, Cecil may sound "out there", and he certainly did not disappoint in that respect at this amazing concert, when at one point he started plucking a few of the piano strings, and at another point was dancing around at the piano bench. We went to an after-concert reception with Cecil at the Library of Congress, and I was floored by this eclectic giant, who spoke not only of music, but about his fascination with the architecture, design, and function of bridges, and who later spoke of the relationship between music and dance. He is a night owl and very sociable, which gave me the opportunity to join with him later on at his hotel room with Trudy and several others close to him. This artistic genius even watches pedestrian television, and can distill the gold from there. He seems to be like Duke Ellington in terms of saying there are only two types of music (and Cecil likely would add art to the phrase): good and bad. My friend Trudy -- whom I discuss here as to our first meeting -- says "never an accident." Imagine my surprise that just three days after blogging about never-an-accident Trudy and about jazz great Andrew White, that I bumped into Andrew for just the second time in my life, and only because I got stuck in so much traffic returning from northern New Jersey. Andrew passed by me as I was strolling our fifteen-month-old son to our table at a restaurant that had a branch in Washington closer to his home. He was sitting just two tables away, and by the time he and his wife finished eating, I spoke with them, and told Andrew how I had blogged about him just three days before. As his wife focused on my son, I found out about two of Andrew's then-upcoming performances, which were yesterday at the Coltrane tribute in Lausanne and this October at Twins Jazz in the District of Columbia. Particularly after hours, as I finish preparing for the next day's trial or a midnight online motions filing deadline, I mine a treasure trove of great jazz music, sometimes finding on Pandora.com the same gems that would help me get through a night of studying as a student, together with many other musical eye poppers. Jon Katz.

Posted by Jon Katz in Persuasion at 00:15

Friday, July 6, 2007

When jurors cave into pressure from fellow jurors.

Photo from website of U.S. District Court (W.D. Mi.). In so many ways, American jurors are fish out of water. They arrive for jury duty asked to train on the job, with a low-paying daily stipend at that. Jurors assigned to criminal trials are required to make lasting judgments about defendants' lives and liberty. Imagine the pressure and fear that jurors feel in criminal cases. Earlier this week, a capital murder juror revealed that two weeks ago he let juror peer pressure improperly lead him to agree to convict Alfredo R. Prieto of murder even when he did not believe the prosecutor had proven his guilt of murder. This issue is critical, because the law required a unanimous jury verdict beyond a reasonable doubt to convict. The juror did not reveal this peer pressure problem until the second of three phases of Mr. Prieto's trial in Fairfax County, Virginia, where I frequently defend clients. The first trial phase was to decide guilt-innocence. The second phase was to determine whether Mr. Prieto was mentally retarded, which would have precluded a death sentence, based on a recent Supreme Court decision. If Mr. Prieto were not found to have been mentally retarded, the third phase would have determined whether he should have been sentenced to death. During the second phase of jury deliberations, the dissenting juror sent the judge a note that his decision was "firm and final and deliberation has crossed the line into peer pressure. Please end this deliberation." The judge told the jury to go to lunch and to resume deliberations. However, the dissenting juror responded with another note saying that the other jurors were "a pack of lions protecting their kill." He said there was "absolutely no evidence provided or proven beyond a reasonable doubt" that Mr. Prieto was guilty of murder. The dissenting juror's revelations are remarkable in and of themselves, and are even more remarkable when considering that the dissenting juror waited two weeks to reveal any unfair pressure in the jury room. In some instances -- perhaps the vast majority of instances -- jurors never reveal such impropriety. In this instance, the dissenting juror's revelation of the peer pressure in trial phase one seemed only to come about because he felt peer pressure in trial phase two. Because non-capital trials ordinarily involve only one trial phase (plus a second phase for recommending a sentence in states like Virginia, where juries recommend criminal sentences), one is left to wonder if, in a one-phase trial, juror psychology would make jurors less likely to reveal improprieties in jury deliberations with increased passage of time. The answer likely is yes. One factor that might make jurors fearful to reveal jury room improprieties post-verdict is fear of penalties for not speaking up before entering a guilty verdict, let alone fears about harsh words from friends, family, the press and fellow community members. Jurors need to be protected from legal penalties for revealing such jury room improprieties (jury deliberations are neither recorded nor observed by non-jurors) and be reassured that they will not be so penalized. In this instance, Mr. Prieto's trial judge said the dissenting juror committed juror misconduct for voting for a murder conviction when he did not believe murder had been proven. The trial judge ordered a mistrial in the entire case, and ordered the trial to start anew with phase one, beginning with the selection of an entirely new jury. In so doing, the trial judge rejected the prosecutor's recommendation to re-start phase two of the trial with a jury alternate replacing the dissenting juror, or else to return the jury to deliberations in phase one, with an alternate replacing the dissenting juror in that instance. The trial judge also rejected the suggestion of Mr. Prieto's very capable and experienced defense lawyer Peter Greenspun that Mr. Prieto be sentenced to life in prison, seeing that the jury had failed to rule unanimously in phase two of the trial. Dr. Sunwolf -- one of my key criminal defense and personal teachers -- writes and teaches extensively about how lawyers can help empower jurors to act independently, to resist peer pressure, and to reach the best verdict they can. She focuses at all times on empathizing with jurors, loving them, and not fearing them. She underlines the importance of lawyer-directed jury selection/voir dire. Sunwolf's groundbreaking treatises convincingly show that harmful juror biases and susceptibility to peer pressure are more likely to be revealed through lawyer-directed voir dire than judge-directed voir dire. Potential jurors are less likely to admit an inability to follow a judge's instructions when speaking to the authority-figure judge, sitting in a literally and figuratively elevated position in a black robe, than making such admissions to a mere mortal lawyer in a suit. Echoing Sunwolf's concerns, defense lawyer Peter Greenspun said: "I think this shows what pressure regular people are under when they're in the unknown world of the jury system. It's a people process, and therefore it's going to suffer from the frailties we all have." Imagine if the dissenting juror had remained silent up to now, enabled a death sentence, and only come forward after the execution date. The irreversibility of the death penalty is one of the compelling reasons to eliminate capital punishment. Jon Katz. ADDENDUM I: Defense lawyer Peter Greenspun is a class act. A colleague referred me to Peter to brainstorm on a few very fact-specific questions for an upcoming felony trial I had in Fairfax, one that had plenty of evidence to shock the jury. With full kindness, no ego, and patience, Peter nailed each issue on the head, with his opinions having been right on the money. I do my best to replicate Peter's approach whenever fellow criminal defense lawyers come to me for brainstorming. ADDENDUM II: Thanks to Arbitrary and Capricious for blogging about this juror who proudly blogs that she joined ten of her other jurors in pushing the remaining juror to convict a murder defendant: "This being Idaho we were all for sending the guy up the river except this one older lady that was in tears because she kept personalizing the guy like he was her own kid. Eventually the 11 of us cowed her into voting him guilty." The blogging juror, named Kristen, proclaims: "It's a scary amount of power we put

in our citizens." To blogging juror Kristen, I reply: It's scary that you were not stricken from the jury, that you did not answer jury selection questions in a way that would have gotten you stricken, and that you did not follow your juror oath, by having contravened the judge's instructions that the jury must presume innocence unless and until proven guilty beyond a reasonable doubt and that each juror must vote independently (and, by corollary, must not "cow" other jurors to convict). Your blog does not seem to provide enough information about where your trial took place. Therefore, I implore you to let the applicable court and opposing lawyers know the contents of your blogpost and the case to which it relates.

Posted by Jon Katz in Criminal Defense at 00:11

Thursday, July 5, 2007

Scooter Libby paid his \$250,000 fine today.

Scooter Libby (Image from public domain). Scooter Libby paid his \$250,000 fine in full today, together with \$400 for his special assessment. His payment receipt is here. I blogged about his sentence commutation here. This quick payment looks like a good move for Mr. Libby's interests, both (1) to seek a full pardon by showing that he has sacrificed financially by his fine payment and (2) to try to convince his trial judge and probation officer to go easy on him with his conditions and supervision for his court-ordered two years of supervised release. The trial judge ordered Mr. Libby's counsel and the prosecution to submit written filings by July 9, 2007, about whether Mr. Libby should still be subject to his two-years of supervised release now that his sentence has been commuted. TalkLeft refers here to Howard Kieffer's explanation as to why Mr. Libby still is subject to his two years of supervised release. Also on TalkLeft, top-notch federal criminal defense authority and attorney Peter Goldberger mischievously talks about the circumstances under which the trial judge could enlarge Libby's supervised release conditions to include: 18 U.S.C. § "3563(b)(6): refrain from associating with specified individuals (Might this include Karl Rove or Dick Cheney?); (b)(10): remain in custody of the Bureau of Prisons for nights, weekends or other intervals totaling no more than one year, during the first year of supervision; (b)(19): home confinement during non-working hours, with or without monitoring." Going beyond such mischievous musings, imposing such enlarged release conditions could boomerang unfairly to other criminal defense clients. It is best to leave well enough alone. Jon Katz.

Posted by Jon Katz in Criminal Defense at 18:10

What drives criminal defense lawyers to fight for the accused?

Bill of Rights (From the public domain.) What drives criminal defense lawyers to fight for the accused? I am not talking about the mere willingness to do such work, but about the very thirst to represent such clients and to do it excellently. Here is my brief story; I welcome the stories of all other criminal defense lawyers. When plotting my transition into criminal defense and away from a corporate law firm sixteen years ago, I attended the mandatory training session for new court-appointed criminal defense lawyers in Washington, DC. Whether or not he had financially and personally struggled himself, somehow our lawyer instructor had become able to enter his clients' minds, souls and bodies so well that he felt instinctively what it was like to be his clients. At one point, the training lawyer told us about being assigned to defend a man who was arrested in the act of sexually defiling a person's corpse, and was prosecuted as the alleged murderer. He said that if there is ever a time when a criminal defense lawyer knows whether s/he's cracked up to defend any criminal defendant without limitations, this is such a time. This gave me cause for pause at the time about whether there might come a time that I would feel unable to defend a client who very likely committed indescribably heinous violence. However, that thought came when being on the outside of the criminal defense practice looking in. Moreover, I felt so committed to helping to equalize the quality of criminal defense provided to indigent clients as to paying clients that this goal -- but certainly not this goal by itself -- assisted helping me look well beyond such concerns about defending people accused of heinous violence, even when it seemed clear that the client had done the alleged act. With the help of such role models as this indigent defense trainer, I never hesitated for more than a moment about defending people charged with unspeakably despicable acts. One despicable accusation that particularly stands out of for me involved my defense of a man prosecuted for allegedly breaking into his grandmother's house and raping her. Before beginning my criminal defense practice, I would have struggled profoundly about defending this man had I thought he committed the alleged crime. By the time I started defending him, I was able to look at the bigger picture of the problems and struggles that he experienced that would have led him to rape his grandmother, if he had indeed done that, without losing sight of the horrible crime he was alleged to have committed. Another man I represented was accused of burglarizing a woman's house, and locking her in the closet to keep her out of the way, where she stayed until she died of dehydration, because he allegedly ran out focused on getting away rather than taking the time to release her. I also represented a man accused of raping his minor daughter, which led to her giving birth to a girl who at once was my client's daughter and granddaughter. The list goes on of cases that would challenge my resolve to defend any criminal defendant. It is not enough intellectually to want to represent criminal defendants. If one's heart is not into helping the client, the client suffers. As another early criminal defense teacher admonished: "Love your client... Even if your client smells, love your client, and stick close to your client." Who else will? Perhaps it does not hurt that I was sometimes on the unfair end of "J'accuse..." ("I accuse...!"). My zeal for fighting for criminal defendants goes as far back as the age of nine (probably earlier) when the adjacent fourth grade teacher had the audacity to accuse me of trespassing on the apartment grounds across the street for no other reason than that a brown-haired boy around my age in a blue coat was allegedly seen there. In one of my earlier instances of self-advocacy, I retorted contemptuously: "Not only have I never been to that property, but I am angered

that you have singled me out just because I have the same color and type of coat that most boys my age wear," and walked away from this precursor to the DARE soldiers. So this is what misidentification and j'accuse is all about. I want nothing of it. Fortunately, the man never won out with me -- when I was five and trying to make sense of someone being arrested near a bank -- admonished me: "Crime does not pay." (What happened to innocent until proven guilty beyond a reasonable doubt before a jury? On the ironic and tense side, crime -- or more succinctly my defense of alleged criminals -- leads to my being paid very well. Of course, nothing is preventing me from following Tony Serra's much more pro bono and low bono path.) Plenty of my clients are accused of crimes that I think either should not be crimes in the first place, or should not be treated so severely. Many of my clients in that category are charged with offenses involving marijuana, which I advocate being legalized. Not having smoked marijuana more than a handful of times, I rely all the more on my marijuana clients to help me fill in the gaps of my limited smoking experiences and the gaps not filled in by previous marijuana defense. Many times, I have enjoyed living vicariously through their marijuana experiences; the marijuana smoking, growing and lifestyle culture fascinates me. In any event, people come from many paths to have a passion for fighting for criminal defendants. I originally came to criminal defense through my anger and obsession over rampant government civil liberties violations, and as an offshoot of my human rights activism that began soon after I started college. Some have come to criminal defense from a life of decency, fair play, and devotion to peace and non-violence. Some might have struggled against the criminal justice system as defendants themselves or experienced close ones victimized by the criminal justice system. Others might have grown up feeling oppressed by poverty or by the power establishment in general, ready to fight for individual rights. A critical unifying thread for being a powerful and effective criminal defense lawyer is to care deeply about each client. Although he was just acting in a movie, Joe Pesci in the title role in *My Cousin Vinny* exemplifies that caring is more important than idealism and a stellar grade transcript when it comes to criminal defense; otherwise, he would not have won his cousin's murder trial. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:20

Wednesday, July 4, 2007

July 4 is meaningless without an ongoing struggle for civil liberties.

Â Bill of Rights.Â (From the public domain.)Â Whenever I look around on July 4, the scene is long on fireworks, beer, and merrymaking, and too short on discussion of what Independence Day is all about. Â The Declaration of Independence was hardly signed by a bunch of pacifists. The signers must have realized the bloodshed among the warring sides would lengthen and intensify with the Declaration of Independence, and it did.Â Violence begets violence, and the rampant violence that led to Britain's surrender did not take place in a vacuum; instead, it fed into all subsequent American wars and smaller military actions.Â The United States' repeated victories in wars (withÂ the Vietnam war probably ending all the later to delay America's first war defeat) likely made the United States all the more militaristic and cocksure militarily.Â Â ByÂ now, the United States governmentÂ thrives on control backed by force,Â the threat ofÂ force, and punishment, not only through militaryÂ might, but also through an overgrown and overbearing criminalÂ "justice" system of police, laws, money, prosecutors, courts, andÂ prisons; Â an overgrown national security system that leaves us little privacy, security, or sufficientÂ liberty; and an overgrown spying and "intelligence" system. Â Fortunately, a strong movement continues in favor of civil liberties and government by the governed rather than the reverse. The movement is led by the American Civil Liberties Union, fearless and skilled criminal defense and Constitutional lawyers, the drug legalization movement, and the list goes on. Â July 4 is meaningless without an ongoing struggle for civil liberties. Now is the time to join that struggle. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Tuesday, July 3, 2007

Fred Bennett leaves the planet.

Photo from website of U.S. District Court (W.D. Mi.). Sadly, this past Sunday, Maryland criminal defense lawyer Fred Bennett passed away after a two-car collision. I always wanted to meet Fred, but somehow the opportunity eluded me, perhaps partly because I did not even know what he looked like until recently. Fred was a true fighter for criminal defendants, with his battles for justice including serving as the District Public Defender for Prince George's County, Maryland (where I worked for two years when he already was Maryland's federal public defender), the Maryland Federal Public Defender, and name law partner with former adversary and Maryland solicitor general Gary Bair. In 1992, the United States Court of Appeals for the Fourth Circuit declined to re-appoint Fred as Federal Public Defender, at a time when assuring the independence, aggressiveness and effectiveness of chief federal public defenders was already a hot topic for criminal defense lawyers. Never one to pull punches, in 1999 the ever-inspiring Steve Bright, who has long directed the Southern Center for Human Rights in Atlanta, Georgia, wrote the following about Fred's non-renewal and the federal defender appointment system: "The appointment of public defenders in many judicial districts by federal judges 'creates a serious problem of perception and provides the opportunity for occasional abuse,' a committee of judges and lawyers appointed by Chief Justice Rehnquist reported. One example is the refusal in 1992 by the United States Court of Appeals for the Fourth Circuit to renew the appointment of highly respected federal defender Fred Bennett, after eleven years in office. The judges apparently did not like the aggressive advocacy of Bennett and his assistants, but it may be fairly questioned whether this action promoted the best interests of the clients served by the federal defender or whether the judges disagreed with the zealous representation of poor people." An aggressive fighter, Fred also cared much about courtroom civility: "Many young lawyers seem to have forgotten that you need to be an advocate for your own client, but also treat your opponent and court personnel with dignity and respect. There are still a lot of prima donnas out there" "You have attorneys with 15 years' experience who still have problems. The most precious commodity a lawyer can bring to the table is credibility. If the court perceives you as playing 'fast and loose' with the law or the facts, you're more likely to lose close cases." As much as treating opponents respectfully is important in and of itself, I focus my attention on calm firmness with opponents for the tai chi benefits it gives my clients. Fred urged lawyers to provide service beyond their time spent to earn income. This has always been very important to me, and requires discipline, balance, and passion to accomplish both. His hard work included fighting the death penalty machine; I have tremendous gratitude and respect for lawyers on that path. As with all great people who leave the planet, Fred lives on in abundant ways. Jon Katz.

Posted by Jon Katz in Jon's news & views at 05:05

Dubya: Now let's commute thousands of others' sentences.

Scooter Libby (Image from public domain). On July 2, 2007, George Bush II commuted Scooter Libby's prison sentence for being "excessive". As I already have said, as much as I want Bush out of office, I would have been 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 as unjust as it has long been, it will be difficult for me to want to see convictions for such alleged crimes. In any event, Bush is being disingenuous by commuting Libby's prison sentence as "excessive" unless he also gets busy commuting the countless other excessive prison sentences ordered by federal courts, including the countless unjust mandatory minimum sentences for drugs. A slew of innocent people are convicted annually. Countless people are victimized by unfairly harsh sentences, sometimes for nothing more serious than being a drug addict selling enough to feed the defendant's own drug addiction. If you run out of names to commute, Dubya, feel free to call me, the National Association of Criminal Defense Lawyers, the American Civil Liberties Union, or other birds of my feather. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, July 2, 2007

Why fall on a sword, when nothing worse is risked by fighting?

Photo from website of U.S. District Court (W.D. Mi.). Many times, colleagues scratch their heads about why I will not recommend my client to plead guilty when a probation-only sentence looks like a good bet, and when a guilty plea will get me out of court more quickly so that I will have more time for my next client (or, perhaps, to contemplate my navel). My response is: Why fall on a sword, when nothing worse is risked by fighting? Many times I have obtained victories for clients with this approach. (DISCLAIMER: Past experiences are not an indication of future results with our law firm). Moreover, many clients have no choice but to plead innocent when obtaining a conviction will violate probation or parole, or will harm their security clearance status, employment, or immigration status. Additionally, each conviction risks jail for any future probation violations (even if a probation-only sentence is likely) and will increase the risk of higher sentences for any future convictions. Finally, the prosecutor always has the burden to try to convict a defendant beyond a reasonable doubt; defendants and their lawyers have no obligation to help police or prosecutors do their job, and have every obligation to fight for the least possible harm for their clients within a realistic, intelligent, and thorough risk analysis. Here is a case in point about not falling on a sword when nothing worse is risked by fighting. Recently, I was in court for a drunk driving case in another county, so I asked a local lawyer some things about the judge, and he ended by saying: "This judge will be happy to bind himself on the sentence before a guilty plea is entered." I replied: "Who is talking about a guilty plea? My client is going to trial." He responded: "Why go to trial if the prosecutor is offering a guilty plea to the lesser charge and a probation before judgment?" I answered: "What difference does that make, unless my client is later found in violation of a probation before judgment, when at that time only will the client face higher points off his license and more jail exposure?" In the same courtroom was another colleague who shook his head about the judge I had, not because he is a harsh sentencer, but because "He's tough to obtain an acquittal from." As it turned out, when the prosecutor called my client's case (some counties permit prosecutors to call the case order in District Court, which is a practice I very much oppose, in part because of the favoritism, spite, manipulation, and pressure prosecutors can try to use in the process), he moved to postpone the trial over my vehement objection. The prosecutor's witnesses were present, but one of them had to leave for a scheduling conflict, said the prosecutor. The judge ultimately granted the postponement, but only after I made my record to help prevent the prosecutor from getting any further postponements. Particularly with the case having been postponed over my strong objection, what good would have come from my client's entering a guilty plea that day? The next time we come to court, who knows if one of the prosecutor's witnesses again will be unavailable? If that happens, and if the prosecutor's postponement request is denied, we win, most likely through a dismissal. When clients express sticker shock over my fees, I tell them stories like I have told above, about the time I allot for preparing, presenting, and fighting for them and their cases. Because I advise clients to go to trial when they are unlikely to do worse that way than by pleading guilty, I need to set aside more time for trial, which sometimes means ending work later that night (and arriving home later) to prepare for the next day's court date, and which sometimes means losing potential clients who wanted my services for the same day or to meet with me during the time I had blocked off to be in court already. Some ask me for a la carte service; e.g., just to bill to enter a guilty plea, so the client may save money. I stick to providing a full-course dinner. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:10

Sunday, July 1, 2007

Bush Lied - They Died.

^ The First Amendment and the rest of the Bill of Rights. (From the public domain.) It is a supreme irony when civil liberties are curbed domestically -- particularly when the curb has nothing to do with winning any war -- during a war purportedly being waged to protect "freedom". ^ Praised be Arizona lawyers Lee Phillips, Natalie Jacobs, Charles Babbitt (related to Bruce Babbitt?) (all from the Law Office of Lee Phillips, P.C.), , and Dan Pochoda (Arizona's ACLU legal director) for filing this Complaint on June 26, 2007, in Dan Ray Frazier v. Patricia J. Boomsma, et al. Civ. No. _____ (D. Az.). ^ As the Complaint states: "This action seeks a declaration that Arizona's recently enacted Senate Bill 1014 (hereinafter Bill) which prohibits the use of the name of any soldier, alive or deceased, on any item for sale without permission of the soldier or their legal representative, violates the First and Fourteenth Amendments to the United States Constitution." ^ The Arizona Bill apparently was written with Plaintiff Dan Frazier in mind. The Complaint confirms that: "Among the items for sale on Plaintiff's website are t-shirts which contain the words 'BUSH LIED ^ THEY DIED'. ^ The statement 'BUSH LIED' is printed on the front of the t-shirt and the statement 'THEY DIED' is printed on the back of the t-shirt in large capital and bold letters... The 'BUSH LIED THEY DIED' is printed over a background of the names of the American soldiers who have died in Iraq. ^ The names of the deceased soldiers are printed in small type approximately the size of newsprint." As the Complaint further states: "The names of the soldiers killed in Iraq are matters of public record and can be accessed by private citizens in numerous ways." ^ Mr. Frazier's t-shirt activities are at the very heart of First Amendment protection, and I look forward to seeing him achieve victory in this litigation. Jon Katz. ^ ADDENDUM: Thanks to my brother Marc Randazza for blogging on this First Amendment lawsuit. Thanks also to Arizona ACLU legal director Dan Pochoda for taking my phone call, and for consenting to my posting the Complaint here. (He and I both agree that no such consent should be required, seeing that the document is in the public domain; nevertheless, it was nice to speak with another civil liberties bird of a feather). ^

Posted by Jon Katz in First Amendment at 00:20