

Tuesday, January 1, 2008

Breakfast of champions.

Â Â This cop took seized marijuana, shared it with his wife in baked brownies, and did not get prosecuted.Â Lawmakers, cops, and prosecutors: It is time to learn a lesson from this, by legalizing marijuana, and by cutting some slack to non-cop suspects, too.Â Jon Katz.

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

Monday, December 31, 2007

Benazir Bhutto: Adding my view.

Â Pakistan plunged into further and deeper violence after Benazir Bhutto's assassination. ThisÂ yin-yang symbol represents the needÂ for Pakistan and the whole world toÂ follow a peaceful path during the fight for human rights and justice.Â Â In 1983, fifty-one year-old opposition leader Benigno Aquino returned to the Philippines to challenge dictator Ferdinand Marcos, only to be shot dead as he exited the plane in the Philippines. Only three years older than Aquino on her return to Pakistan, main opposition leader Benazir Bhutto narrowly escaped an assassination attempt on her return there in October 2007, only to be assassinated two months later. Â Regardless of one's views of Ms. Bhutto's politics and political past, her return to Pakistan brought hope of a real challenge to and change fromÂ strongman Musharraf's grip on and abuse of power, inspired courage by Bhutto's standing up against the threat of assassination, and led to a furtherÂ outpouring of opposition to Musharraf's repressive ways, not only from Bhutto supporters but also from lawyers willing to stick their necks out for justice (see the November 7, 2007, Underdog blog).Â Despite the many differences between the Philippines after Aquino's assassination and Pakistan after Bhutto's assassination, hope springs eternal that out of this assassination will spring a Pakistani non-violent people power sort of movement that successfully removes Musharraf (the leaders that followed Marcos were not the greatest shakes, but were better than having Marcos as dictator; in Pakistan, the key is to avoid having worse than Musharraf as his replacement).Â Such a non-violent path is essential, as opposed to the violent reaction of Ms. Bhutto's supporters and opponentsÂ (I am trying to learnÂ the extent to which theÂ killings and injuries are being caused by supporters of Bhutto as opposed to government forces and her opponents). Â Clearly, Bush II needs to realize that nobody buys his recent claims before the assassination that Musharraf was good for democracy. Musharraf's removal is essential, and he needs to yield to a full and fair electoral process. Jon Katz.

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

Sunday, December 30, 2007

Getting filtered out by "child-friendly" blocking software.

Computer hard drive. (Image from Pacific Northwest Laboratory's website). While away from home and at a hotel this past week, I got onto a computer to check something on our website. Lo and behold, our static front page (<http://markskatz.com>) and Underdog blog were filtered out by so-called "child-friendly" blocking software. I was able to access several other pages from our website, including our links page and even our First Amendment page, which includes discussion about our adult entertainment law practice. Curiously, my biographical page is blocked, but not my law partner Jay Marks's bio. I do not know which filtering software the hotel uses. Sometimes, the computer redirected from blocked pages from our site to CyberSleuth Kids, but it does not seem that filtering is provided by that website. While individuals and private entities (as opposed to government) are free to install Internet filtering-blocking software, when people do so, they are dealing with technology that has been known even to block such websites as Planned Parenthoods (for discussing abortion). Of course, I do not plan to change our website to pass through filtering software. If any of you have experienced the filtering of any of our webpages, please let me know. Jon Katz.

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

Friday, December 28, 2007

The power of interconnection, and the power of one.

Seva Cafe in Ahmedabad, India. Â Â "Power of One" from One Earth.Â Plenty of society's ills arise from the disconnection and lack of warmth felt by many. The first of the above-two listed videos shows not only a restaurant connecting with people in part by trusting visitors to pay what they think is best to pay, but also a message to start doing something now to make the world a better place, without the need to wait for others to act. Â The second video shown above, conveys the theme of the "Power of One". Yes, it is important that people feel connected to each other and need reconnection. At the same time, some of the greatest human achievements come from starting now, rather than listening to any voices in one's head to tread cautiously. Jon Katz.

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

Thursday, December 27, 2007

"And Justice for All"

Â "I'm out of order? You're out of order," says Pacino's And Justice for All character to the judge in the Baltimore City Circuit Courthouse where I have appered many times. If this happened in real life -- where the defense lawyer turns on his client in front of the jury, fed up with how the powerful often get away with things the less powerful cannot -- I would be livid at Pacino's character. Eleven years after watching the movie, I entered law school. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, December 26, 2007

Execution in U.S. and China: Efficiency over humanity.

Â Dig to China from execution equipment purveyor Fred Leuchter's Massachusetts (he lost his prison customer base after denying the Holocaust), and see similar death penalty brutality, at a more severe magnitude. Â Â Meanwhile, see the recanting former Virginia executioner here, including his admission that he barely knew what he was doing when executing by injection. Jon Katz.

Posted by Jon Katz in Constitutional Law at 02:10

Tuesday, December 25, 2007

Why did Truman not dump J. Edgar Hoover?

What made presidents so fearful of giving J. Edgar Hoover the axe? (Image from Library of Congress.) Recently revealed in the news is that then-FBI director J. Edgar Hoover (whose FBI wiretapped Martin Luther King, Jr.'s telephone, with then-Attorney General Robert Kennedy's approval), just days after the United States joined the Korean war in 1950, proposed that the FBI be given authority to detain twelve thousand allegedly disloyal people in military prisons. As the New York Times tells it: Hoover's proposal was for the FBI to "apprehend all individuals potentially dangerous to national security...The arrests would be carried out under 'a master warrant attached to a list of names' provided by the bureau. The names were part of an index that Hoover had been compiling for years. 'The index now contains approximately twelve thousand individuals, of which approximately ninety-seven per cent are citizens of the United States,' he wrote." The New York Times further reports: "In March 1946, Hoover sought the authority to detain Americans 'who might be dangerous' if the United States went to war. In August 1948, Attorney General Tom Clark gave the F.B.I. the power to make a master list of such people." Fifty-two years after Tom Clark gave Hoover such approval, his son Ramsey -- who became Lyndon Johnson's last attorney general -- said he felt Mr. Hoover meant well, and did not have vicious purposes. I wonder if this New York Times piece changes his opinion on that. The New York Times piece ends with this chilling information: "In September 1950, Congress passed and the president signed a law authorizing the detention of "dangerous radicals" if the president declared a national emergency. Truman did declare such an emergency in December 1950, after China entered the Korean War. But no known evidence suggests he or any other president approved any part of Hoover's proposal." The parallels between the foregoing story and the Bush II regime's actions and policies are frighteningly numerous. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:10

Monday, December 24, 2007

Relaxing and sinking til January 1.

While I am away for the rest of the month, I have pre-programmed Underdog to release one short blog entry daily. Also, while the blogosphere slows down for the end of the year, this might be a good time to review our archives and our static website. The above video shows the power of the t'ai chi that I practice physically, mentally, and in the practice of law. Being interviewed is Robert Smith, who is the first Western student of t'ai chi master Cheng Man Ch'ing, with whom Professor Cheng spars in this video. The title of this blog entry comes from one of the five principles of t'ai chi, which are: relax and sink firmly rooted into the ground; separate the weight in yin-yang fashion; keep the body upright as if the head is suspended from the heavens; turn from the waist; and keep the wrists gently unbent. Mr. Smith taught t'ai chi to my teachers Ellen Kennedy and Len Kennedy, apparently in the same place -- Glen Echo Park in Montgomery County, Maryland -- where I studied with the Kennedys, where they still teach, and where free t'ai chi practice sessions still take place every Saturday at 7:00 a.m., no matter what the weather or date. Mr. Smith was in Taiwan with the CIA when he studied with Professor Cheng and with plenty of other Chinese martial arts masters and mega-beings. Having fled to Taiwan so as not to live under Communist rule in mainland China -- where a treasure trove of t'ai chi practitioners lost many of their practicing and teaching gifts through the banning of t'ai chi during the years long Cultural Revolution -- Professor Cheng supported the United States' participation in the Vietnam war. I look beyond their politics to cherish the t'ai chi gifts they unselfishly have shared with the world. Professor Cheng ended up opening and running a t'ai chi school in Manhattan, during the era of hippies and the free love that he apparently firmly disagreed with. He upset many Chinese traditionalists by widely opening his Manhattan school to all races, rather than limiting enrollment to those with ethnic Chinese backgrounds. From that school sprouted great teachers, just as what happened with his students in Taiwan. Professor Cheng was a master of the five classic Chinese excellences: t'ai chi, Chinese medicine, painting, poetry, and Chinese calligraphy. To master even one of the first two is a monumental feat. When I am in a tough courtroom situation, sometimes I summon strength by imagining I am accompanied by Professor Cheng, my trial practice mentor Steve Rench, and my friend and spiritual teacher Jun Yasuda. Jon Katz.

Posted by Jon Katz in Persuasion at 00:02

D.C.'s attorney general resigns.

Bill of Rights (From public domain.) The District of Columbia is the land of taxation without voting Congressional representation. Congress may veto legislation passed by the city council and signed by the mayor. Judges are nominated by the president and confirmed by the Senate, rather than having the mayor and city council handle it. The lion's share of felonies are prosecuted by the United States Justice Department through the United States Attorney's Office, rather than through the local Attorney General's Office. I deal with the D.C. Attorney General's Office -- formerly named the Corporation Counsel's Office -- when defending drunk driving cases and various other misdemeanors (e.g., indecent exposure and underage drinking), suing the D.C. government, defending businesses against enforcement of D.C.'s adult entertainment regulations, and dealing with D.C.'s alcoholic beverage regulatory maze. The D.C. Attorney General's Office for long stretches of time has been plagued by underfunding and understaffing. Once during oral argument on my motion to compel discovery responses from my opposing counsel at the then-named Corporation Counsel's Office, the federal judge proclaimed something along the lines of: "Don't you know you are dealing with a foreign government? I will permit ___ weeks additional time for a response to your discovery requests." Recently I learned that now short-lived D.C. attorney general Linda Singer has resigned as attorney general, being replaced in the interim by Mayor Fenty's general counsel Peter Nickles, who lives in rural Virginia. In trying to do t'ai chi battle with my opponents, it is important to know not only about my opposing lawyer, but also about their bosses and their office culture. If I were working at the attorney general's office, I might feel in a precarious position about my job posting and job security, until learning who takes the helm from the interim attorney general, and what the new attorney general's priorities will be. Those fearful of job security might be fearful of proceeding in any manner other than a conservative one. However, being public servants, government lawyers should proceed with the public interest in mind, rather than their own job security; how many people actually follow that approach? Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, December 23, 2007

Biometrics, Big Brother, and the Bill of Rights.

Â "There are no nations; there are no peoples. There are no Russians. There are no Arabs. There is no third world. There is no west. There is only one holistic system of systems; one vast interwoven, interacting, multivariate multinational dominion of dollars. Petrodollars, electrodollars, reichmarks, rubles, rin, pounds and shekels. It is the international system of currency that determines the totality of life on this planet. That is the natural order of things today." (Ned Beatty's Arthur Jensen to Peter Finch's Norman Beale, in Network.)Â No matter how much I like Ned Beatty as an actor, I despise his Arthur Jensen character, depicted above, who claims the world to be nothing but "the international system of currency." In reality, governments exist, and must be fully answerable to people. Governments will only be answerable to people if people insist on it. Â For instance, when the United States proceeds with an ambitious biometrics program to identify and track people worldwide through images of their faces, fingerprints and palm patterns, people need to recognize the harm such a program can cause to civil liberties, and they need to speak up, starting with me and with everyone reading this blog entry. Jon Katz.

Posted by Jon Katz in First Amendment at 00:00

Friday, December 21, 2007

If Joe Ligotti were a trial lawyer.

CAVEAT EMPTOR: F-bombs and worse ahead. I may vehemently disagree with Joe Ligotti's xenophobia, politics, and general worldview. I may bury my head in my hands about the content -- using expletives, by themselves, does not both me -- of his many rants and raves. I may wish he never appeared on the scene. However, he is here, he is a phenomenon being listened to by over one million monthly online views (by his claim), and he often is not exaggerating when claiming "I have the balls to say what [many are] thinking." Joe Ligotti apparently is in non-fiction -- although possibly, underline possibly, exaggerated -- character when he rants and raves on YouTube as The Guy from Boston. With an overconfidence in his opinions akin to Rush Limbaugh's overconfidence, he pontificates, rants and raves, and displays near vein poppers (at times) over topics ranging from immigration (he conveniently blames a whole host of society's ills on undocumented immigrants -- how he knows such specific statistics of the uncounted is beyond me) to American Idol to sex. By day, he works at Two Guys Smoke Shop in Salem, New Hampshire; on his offtime, he consistently adds a new self-produced video to his arsenal. Even with all my differences with him, sometimes he tones himself down enough to be entertaining, at least when he is talking about pizza and other non-political topics. He has potential for Hollywood as a character actor, if he is willing to suppress his political and social rants and raves on the movie set. He claims he wants to engage people to assure that all eligible voters vote (he's not eager for non-citizens to vote). Getting out the vote is a good thing, and he might be able to rouse some non-voters who are not roused to vote by others. If Joe Ligotti were a trial lawyer -- at least if he were able to tone down his rhetoric -- he would be able to entertain, engage, and sometimes educate plenty of decisionmakers. I agree with the Dalai Lama that "everyone is my teacher, starting with my enemy." Whether or not Joe Ligotti is my enemy, he is one of my teachers. As much as I wanted to ignore him and hope he goes away, he will not go away, at least not right away. He must, therefore, be known and understood. Ligotti's website well sums up his rants and raves: "This website may contain language and subject matter that is offensive to some people. If you find this content offensive then good. I've done my job." My First Amendment fanaticism has a price, and one part of that price is Joe Ligotti. I wish to learn that he is no more real than Borat, but am not holding my breath. Jon Katz.

Posted by Jon Katz in Persuasion at 00:20

Thursday, December 20, 2007

The crime of harboring undocumented people.

Image from NASA's website. Clearly, I favor the immigration sanctuary movement, and want to eliminate laws prohibiting providing such sanctuary. However, federal law provides for up to five years in prison for the least serious violations of laws against harboring undocumented people, and the penalties get even more severe when adding additional factors. Ironically, one of the latest folks to get convicted under this immigrant-harboring law is Lloyd W. Miner, who is a former high-level anti-corruption United States immigration official. He was convicted by a jury on December 18, 2007, in the Alexandria, Virginia, federal court. The charges arose from allegations about his live-in girlfriend from Mongolia being undocumented; she was convicted with him at the same trial for immigration fraud. Here are Mr. Miner's docket sheet and indictment. His sentencing is set for March 7, 2008. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, December 19, 2007

Vegetarian and religious diets in prison: Beyond getting along with your cellmate.

Â Â The movie *Brubaker*, in which Robert Redford plays a new prison superintendent masquerading as a prisoner to know what he is up against, depicts bleak, corrupt and brutal prison life; a prisoner squealing with joy and then raping a new prisoner, as everyone, including Redford's Brubaker, looks away; one inmate helping himself to Brubaker's bread on his first day; and Brubaker finding a worm in his chow room food -- yummm, protein. Â Some of this certainly happens in all prisons; some of them are less bleak than others, and others at least as bleak. What to do, then, if on top of so much bleakness a prisoner has dietary restrictions as a vegetarian (let alone as a vegan) or for religious reasons? Â My initial review of the Internet shows that vegetarians generally do not have a Constitutional right to vegetarian meals; here is more on the topic. One vegetarian jail inmateÂ told me he resorted to buying instantÂ Asian noodlesÂ through commissaryÂ due to the lack of vegetarian options, but the instant noodles tend to be filled with empty calories at best.Â Â If oneÂ has religious dietary restrictions, then the First Amendment right to free exercise of religion kicks in, but still is balanced against the prison'sÂ efficient functioning.Â Here is an article about the right of inmates to obtain vegan and vegetarian meals if the request is religion-based.Â America remains too stuck on the Standard American Diet (how SAD it is), which overfocuses on meat,Â milk (PETA claims that pus gets into milk all the time - cheers),Â and cholesterol, which easily lead to heart disease, cancer, and, PETA claims, sexual dysfunction. The SAD is apparently driven even harder in places that receive surplus cheese and other artery-clogging agricultural items that result from farm price support subsidies from Uncle Sam; I surmise that such surpluses reach some or many prisons, but have yet to verify it. Â As it turns out, the cost of feeding a vegan in prison apparently is no more expensive than feeding the prisoner a SAD diet. Fortunately, numerous prisons already make vegan meals available in prison. That is amazing that beyond merely vegetarian meals, vegan meals are available. I do not yet know whether such vegan meals go as far as providing fresh fruits and vegetables, rather than frozen and canned items. Â Of course, the vegetarian offerings are not always tasty. When then-sniper suspect Lee Boyd Malvo asked for meals consistent with his following Islam, the jail responded by serving him a revolting baked loaf of yuck. When that happens, it is time to speak up. Â Of course, if prisons want to get wise, to have a happier and less unruly prison population, to see prisoners adjust better to the outside world when released, and to see less recidivism, they will promote healthy lifestyles in prison, including plenty of vegetarian and vegan eating options, plenty of fresh fruits and vegetables, plenty of exercise options, plenty of opportunities to get fresh air, and plenty of opportunities to feed the mind and soul, and not just the body.Â This is not about installing bleeding heart administrators into country club prisons. This is about breaking the cycle of human dysfunction, treating inmates and everyone elseÂ with dignity, and, in the end, having a less costly criminal justice system whereÂ fewer people will get caught (or re-caught) inÂ that system.Â Jon Katz.Â Â

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, December 18, 2007

Bush II's contempt for freedom of information.

From National Archives website. As I blogged on May 13, I handle Freedom of Information Act ("FOIA") requests and litigation. The FOIA is critical for shining the light of day on government, and can provide important evidence in preparing for criminal and civil litigation. Of course, commercial interests love the FOIA at least as much as everyone else. The Bush II administration is contemptuous of the FOIA, which law includes the president by saying that "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." 5 U.S.C. § 552(f)(1). The Bush II administration's desire to be exempt from the FOIA is made clear in its Motion for a Judgment on the Pleadings (the exhibits thereto are here, here, and here) filed by the White House Office of Administration ("OAH") against this FOIA Complaint of Citizens for Responsibility and Ethics in Washington ("CREW") in *CREW v. Office of Administration*, U.S. Dist. Ct. (D.D.C.) Civ. No. 07-0964 (CKK). The FOIA Complaint seeks to learn about the status of lost White House e-mails. The White House keeps a very short list of the entities in the Executive Office of the President ("EOP") that it claims are subject to the FOIA, namely: Council on Environmental Quality, Office of Administration, Office of Management and Budget, Office of National Drug Control Policy, Office of Science and Technology Policy, and Office of the United States Trade Representative. The language of the FOIA does not support the White House's claim in its Motion for a Judgment on the Pleadings that the FOIA does not apply to the Office of Administration. However, the White House is doing its darndest to convince the federal trial court otherwise. The presiding judge is Colleen Kollar-Kotelly, who currently heads the FISA court. Here is CREW's opposition to OAH's Motion for a Judgment on the Pleadings. Here are an attachment to the Motion, and the Motion's exhibits here, here, and here. Here is CREW's motion to supplement its opposition motion with this interesting find from Jimmy Carter's presidential papers. Here is Judicial Watch's Motion for Leave to file a brief in support of CREW's position. (As an aside, only months before Judicial Watch was founded in 1994, I interviewed with its founder Larry Klayman for a job opening at his then Washington-based law firm, not knowing about Judicial Watch, let alone what lay ahead with the group, and knowing nothing about Larry aside from his Martindale-Hubbell listing (the Internet had not yet taken widespread hold in society). It is a good thing that our discussions ultimately went nowhere, on the basis of Judicial Watch alone.) Here is Judicial Watch's brief and its exhibit thereto. The last filing in this case was around two months ago. The Court's decision is pending. Thanks to The Jurist (<http://jurist.law.pitt.edu>) for having written the article that brought this matter to my attention. Jon Katz. ADDENDUM: On December 17, 2007, United States District Judge Royce Lamberth (D.D.C.) issued an order finding that Secret Service White House visitor logs are agency records subject to the FOIA, rather than documents protected by so-called presidential privilege. The order is here. FOIA Blog's review of the case is here. A CNN article on the story is here. Thanks to Professor Jonathan Turley's blog for informing me of this story.

Posted by Jon Katz in Constitutional Law at 01:00

Monday, December 17, 2007

Sometimes studio interviewers cancel.

Camera image from U.S. Geological Survey website. Fortunately, of the dozens of times I have accepted invitations to be interviewed at television and radio stations, I have only been cancelled around two or three times, ordinarily because the segment had to be cancelled or rescheduled in favor of other more late-breaking or seemingly newsworthy segments, and only by smaller news organizations. As a Hollywood insider once told me: "That's showbiz." Last Thursday, I blogged that I was scheduled to appear tonight for Arab Television Network's "American Dream" program, about the recent Nebraska mall murders. I wrote: "I did not know about the Iranian government funding aspect of this program until after I appeared on the show the last time. This time around, I told the person inviting me on the show for December 13 that I accepted the invitation so long as I will not be censored, which she said I will not." As it turns out, I was not censored, that I know of. Instead, I received a phone call from the inviting person just two hours before I was to arrive at the studio and an hour before I was about to start driving there. She said that the segment was being rescheduled until the new year; however, by then, the story will be stale news, indeed. Because my imagination sometimes entertains me better than reality, I wanted to rib the inviter about whether Iran's secret police had directed the switch, but I did not know the name of the organization that replaced the former Shah's brutal SAVAK; later I learned that the successor is the Ministry of Intelligence and Security. Speaking of the Iranian government, yesterday's Washington Post carries an interesting article about Columbia University President Lee Bollinger's apparent lack of foresight or willingness to consult his own university's Iran experts for a useful historical and political context before speaking in such shrill tones when introducing Iran's president this past September. The article says, for instance: "At first, much of the anger [from some or many faculty members] was directed at Bollinger's presentation, which was seen by some faculty members as supportive of the Bush administration's tough stance against Iran. At issue was Bollinger's assertion that Iran has been behind terrorist attacks against U.S. troops in Iraq." Over one hundred faculty members signed a letter asserting that Bollinger "has publicly taken partisan political positions concerning the politics of the Middle East, without apparent expertise in this area or consultation with faculty who teach and undertake research in this area." Back to Press TV, which receives Iranian government funding and which broadcasts the "American Dream" program that I was invited to before the invitation was cancelled: Curiously, Amir Afra, who produces and hosts another Press TV news show said earlier this year that "he has tried to invite onto [his] show reporters who have covered Iran for the Wall Street Journal, Forbes, The Washington Post, the Los Angeles Times and The New York Times. 'They often say yes, but then can't get permission from their agency,' said Afra. He said he sees these outlets, and CNN, as having a more subtle focus on a U.S. attack on Iran than Fox News. 'If the lineup of guests seems lop-sided, it's not our fault,' Afra said. 'We try hard to have a balanced show, but the mainstream media shuts you out.'" Whom to believe? Jon Katz.

Posted by Jon Katz in Jon's news & views at 18:00

Congratulations to Sami Al-Arian and Abdul Rahman al-Lahem's client. Speak up for Sean Conway.

Bill of Rights (From public domain.) "I read the news today, oh boy," and it was great news indeed. On December 4 and 7, I blogged about Sami Al-Arian, including his then-ongoing civil contempt incarceration. This morning, I was welcomed to an e-mail from Line Halvorsen, the director of USA vs. Al-Arian, that Sami has been released from his contempt detention, which now makes it likely he will complete his prison term for his Florida federal conviction in the first half of 2008. Sami's lead lawyer in the contempt matter, Jonathan Turley, bluntly sums it up as follows on his very active blog, which I have just added to Underdog's blogroll: "Unable to convict Dr. Al-Arian before a jury, prosecutors have sought to mete out their own brand of justice through the grand jury system. It is a tactic used in other cases where the Justice Department where the government creates the perfect Catch-22 for unconvicted citizens: choose between a perjury trap (where the slightest inconsistency or omission is criminally charged as perjury) and a contempt charge for refusing to enter the perjury trap. It has specifically used this approach with other defendants who had the temerity to fight criminal charges and win in federal court." Professor Turley teaches at my law school alma mater George Washington University. How I wish he were there when I were there, not only to take his classes, but to have another professor willing to stand up against injustice and not to candy-coat his words in the process. This is as opposed to another law professor -- who appeared to represent the sentiments of too many of them -- who refused to sign a human rights petition that I was circulating, for Amnesty International I believe, not because she did not agree with it, but because she was concerned that doing so would get her on "one of those [black]lists." Maybe she had not received tenure yet. On December 5, I blogged in support of Saudi lawyer Abdul Rahman al-Lahem, the lawyer representing, pro bono, the woman sentenced to six months in jail and 200 lashes after being gang-raped after not following Saudi Arabia's prohibition against women being alone with unrelated men, and not staying quiet about it. Very prominently today, CNN News (which provides news feeds to my cellphone) announced that King Abdullah pardoned this woman. I

hope this also spells the end to a lawyers' disciplinary committee actions concerning his publicly criticizing his client's unfair treatment by the judiciary. Justice sometimes is done. We just need much more of it done more quickly. Everyone, please speak out for justice loudly and clearly every day, from your blogposts, on the street, from your pen, and everywhere else. In so doing, at the very least those doing injustice and considering doing injustice will hear our voices in the process, which sometimes will cause them more discomfort than if they were meting out injustice in a vacuum. Now it is time to get a trifecta by speaking out for lawyer Sean Conway, who faces bar disciplinary action for having exercised his First Amendment right to bluntly criticize a judge, on the JAA Blog. (Consequently, Saudi lawyer Abdul Rahman al-Lahem has company in getting heat from bar disciplinary authorities for criticizing the judiciary; it is easier to understand such sanctions happening in Saudi Arabia, which makes no claim to be a bastion of liberty, but why is it happening in the United States, whose governments make so many efforts to proclaim to the world that the United States is a beacon of liberty?) American society is no place to have judges protected from such criticism as if they were ensconced in thrones. Judges are part of the government, and ours is a government that is present to serve the people, not the other way around. Thrones have no place in the United States. Jon Katz.

Posted by Jon Katz in Constitutional Law at 06:00

Love your client.

Sixteen years ago, when I started with the Maryland Public Defender's Office on my criminal defense path, I was riveted at a training session by a fellow very experienced public defender lawyer who insisted that we love our clients, and never ever create seating distance from them at counsel table, even if they are unbathed. Around two years later, this inspiring criminal defense lawyer ran into serious personal woes of his own, and ultimately blew his brains out. It goes without saying that I was deeply saddened by this, and still am. Fortunately, though, by that time his words -- to love our clients -- had already been flowing and ricocheting within me the entire time, and had taken full hold. I never made an effort, before he passed, to tell him how much his words meant to me, and still do. I figured he already knew how great a lawyer and person he was; in retrospect, how much I wish I had told him. I do so here. Sometimes I get so wrapped up in fighting for justice for my clients that in the heat of battle and battle preparation, I bypass the social graces that often are so critical for them to feel balanced and assured that I am with them every step of the way, and that I continue to have the fight in me. Most of my clients I get along with and enjoy just fine. Some of my clients, though, are so concerned and even scared about their criminal cases that they overlook looking out for anybody other than number one, sometimes leading me to much refocusing and retooling to return to or to reach mutual harmony. A small number seem to feel they have carte blanche to be inconsiderate of me, on the theory that my legal fee entitles that; when I was a public defender lawyer, a small number of clients seemed to feel the same, on the theory that they only had a public defender because they did not have money for a "real lawyer", even though some of the best criminal defense lawyers started off as public defenders (including three of my most amazing criminal defense teachers Steve Rench, SunWolf, and Larry Pozner). Of course, the latter attitude nearly backfired on a murder defendant who reportedly asked who the hell was the man standing next to him at his preliminary hearing two decades ago, to which the man answered: "I am your court-appointed lawyer." The defendant replied: "I don't need you. I'm hiring H_____ K____," one of the most legendary criminal defense lawyers in the state. The lawyer took his leave, promptly returned, shook the defendant's hand, and said: "I am H_____ K____. That will be \$100,000." Fortunately, I remain so invigorated fighting for criminal defendants that this keeps my optimism and drive going the vast majority of the time. I try to know my clients not only in the context of their cases, but as the people they are. Sometimes we decompress or celebrate after court -- and sometimes before the court date -- with a walk through a town relatively new to us both, over drinks (the non-alcoholic kind) or lunch, and sometimes we continue socializing over time. One client in particular remained a fascinating roundtrip driving companion to a courthouse six hours roundtrip away; we stay in touch long after his case got dismissed. Some clients are nice enough, but do not express appreciation, either because they never learned to show anybody appreciation (and because nobody ever showed them appreciation) or because they believe they deserve any achievement I accomplish for them in the first place, sometimes even when we win against heavy odds. Of course, appreciation is not the reason I do what I do. I practice criminal and Constitutional defense at once to help people while helping the greater good of justice, and to earn a living doing it rather than earning a living drafting wills. Still I falter sometimes when I think a client is trying my patience with a bunch of apparent wildgoose chases that seem to be based on prevarication upon prevarication, which sometimes arises from fear and uncertainty whether to trust me fully. Such faltering has become very infrequent by now. I understand now better than ever before the fears and hopes driving my clients. However, it is easier to intellectualize the whole situation from a distance; in the heat of the moment, I sometimes need to struggle as best I can to see the situation from my client's perspective. I was inspired to write this blog entry after Scott Greenfield at Simple Justice emailed me that a client had anonymously recommended me for 2007 criminal defense lawyer of the year, for which Scott is accepting nominations, and for which I have nominated SunWolf. Scott describes the nomination as follows: "The nomination came from one of Jon's clients who preferred that his confidences not be displayed in this comment, but the gist of the nomination is for the humanity and empathy that Jon showed his client during this very trying time. Jon was not only helpful in the way he is supposed to be as a top-notch attorney, but provided that extra level of human respect that many lawyers can't find the time to provide. It was greatly

appreciated by his client, so much so that he wanted to show his appreciation by nominating Jon as Criminal Defense Lawyer of the Year."Â When a client shows such appreciation for my work, it recharges my batteries to keep loving my clients, and to keep encouraging them during our battles for justice, even when it seems that some of them are throwing unnecessary obstacles in the struggle to obtain victory for them. Â Now, sixteen years after the same words were carved into my mind and tattooed on my heart, I repeat them to all criminal defense lawyers: "Love your client." Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, December 16, 2007

Images from the days of Korematsu.

Â Bill of RightsÂ (From public domain.)Â On June 8, 2007, I wrote: "Voting six to three, the Supreme Court allowed president Roosevelt to continue with the World War II concentration camps for Japanese-Americans. *Korematsu v. U.S.*, 323 U.S. 214 (1944)." To that blogpost, I linked 1943 photos by Ansel Adams of the Manzanar concentration camps in California. Â Thanks to Arbitrary and Capricious for linking to recent artwork about the concentration camps by former concentration camp inmate Roger Shimomura. Particularly striking is this sold-out painting of a boy playing with a ball behind barbed wire. Â Artist Roger Shimura said concerning his paintings: "[F]or most viewers, I offer this exhibition as a metaphor for the impending threat posed by current times, and as a warning and reminder that during international crises our government seems to consistently lose its memory regarding past mistakes." How true.Â Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Friday, December 14, 2007

New Jersey ends death penalty: Now a light -- not an armpit -- unto America. (Reposted blog entry.)

Life without parole -- and growing old in prison -- is no picnic. (Video of former New Jersey prison warden Gary Hilton.)[^] Over the years, I have actively joined Roseanne Roseannadanna[^] and countless others in lampooning New Jersey, which I know best through its inhuman turnpike. [^] Now, I take it all back, with New Jersey apparently becoming the first state -- at least in the last half century -- to abolish the death penalty. The state legislature has passed the measure, and Governor Corzine has pledged to sign it into law. [^] Of course, this situation does not create an automatic picnic for New Jersey's death row inmates, in that they will still spend the rest of their lives in prison without the chance of parole. Shown at the beginning of this blog entry are the detailed views of[^] former New Jersey prison warden Gary Hilton about how tough it is to grow old in prison and to spend the rest of one's life there. [^] In any event, where the death penalty does not exist, prosecutors are not able to scare a defendant into a life without parole guilty plea (of course, many capital prosecutions never involve a guilty plea offer), and the playing field thus is better leveled for murder defendants to defend themselves. Where the death penalty is abolished, the huge gap between the cost of a defense lawyer for a death penalty case and a non-capital murder case is eliminated. Where the death penalty is abolished, the inevitable racism that comes along with the death penalty system dissipates. When the death penalty is abolished, the state removes itself from overseeing legalized state-sanctioned murder. When the death penalty is abolished, we are forced to use non-violent and less violent means to address society's ills. [^] I thank every New Jersey legislator, the governor, every New Jersey voter, and everyone else who contributed to the abolition of the death penalty in New Jersey. This is[^] a very happy day and very happy week. Let us make it a happy 2008 by abolishing the death penalty everywhere else. Jon Katz.[^] **ADDENDUM I:** Capital Defense Weekly provides excellent highlights of this New Jersey victory, and a good general overview of the present gains against the death penalty elsewhere in the nation. [^] **ADDENDUM II:** December 19, 2007: Somehow, the text of this message got wiped out, only leaving the graphic. Fortunately, I tracked down the text in Google archives, and have reposted it here. I also have left intact the blog entry with the wiped-out text, in case keeping it will help me figure out if it was a technological glitch, hacker, or human error on my part that wiped out the text.

Posted by Jon Katz in Constitutional Law at 00:10

The Day of the Iguana; the nightmare of Guantanamo detainees.

This photo at[^] Guantanamo's Camp Delta prison is the least whitewashed of those at this Defense Department Guantanamo photo webpage.[^] Enlarge this photo only on an empty stomach. I first featured this photo here. [^] Sahr MuhammedAlly is a Senior Counsel with the Law & Security Program at Human Rights First. On the ACS Blog this week, she detailed her experiences at the second day of[^] last week's[^] military commission hearing of Salim Hamdan at Guantanamo, Cuba. Ms. MuhammedAlly blogged about the first day of the hearing here. [^] Both blog entries are important reads for getting a glimpse into what is happening at the Guantanamo hearings. I have already[^] decried the Guantanamo prisons[^] many times. [^] Now to the title of this blog entry, aside from the movie directed by John Huston: Ms. MuhammedAlly ends her December 10 blog entry as follows: "I would like to note that the U.S. government consistently maintains that the Constitution and other federal laws are inapplicable to Guantanamo. This has allowed the government to strip detainees of the right to habeas corpus, right to counsel, and to seek recourse from ill-treatment. But at Guantanamo I happened to notice that the government applies the Endangered Species Act to the naval base. The act outlines how iguanas must be treated (a 25 mph speed limit is strictly enforced to avoid road kill) and there is a \$10,000 fine if anyone is caught harming an iguana. For the 300 human detainees, however, there are no such federal laws to protect their rights." Now, it is time to apply federal legal rights to the Guantanamo detainees, as well. Jon Katz.[^] **ADDENDUM:** Also on the website of Human Rights First is this article about the unreliability of information obtained through torture. Additional articles[^] on this topic are available here, here, and here.

Posted by Jon Katz in Constitutional Law at 00:00

Thursday, December 13, 2007

Jon Katz will appear on Arab Television Network/Press TV Monday, December 17.

Camera image from U.S. Geological Survey website. On Monday, December 17, 2007, at 7:00 p.m. EST, the "American Dream" show (available on cable television) will spend about an hour interviewing me (in Arab Television Network's Washington, DC, studio) and specialists in sociology and human behavior about the tragic (they all are tragic) December 6, 2007, mall shootings in Nebraska. The producers already know from my initial appearance on the program in October 2007 (detailed here and here) about my support of strong protection for gun possession rights unless and until the Second Amendment is amended. I believe that weakening Second Amendment rights deserves a robust protection of First Amendment rights. (Compare: (1) "Congress shall make no law ... abridging the freedom of speech, or of the press; or THE RIGHT OF THE PEOPLE peaceably to assemble, and to petition the government for a redress of grievances" (the First Amendment); and (2) "A well regulated militia, being necessary to the security of a free state, THE RIGHT OF THE PEOPLE to keep and bear arms, shall not be infringed" (the Second Amendment).) I do not know the extent to which other aspects of the criminal law will be discussed on the program. The shooter killed himself, so I suppose that any discussion on the program about criminal law will be more relevant to other cases and about efforts at preventing repeats of such tragedies. I will also be ready to discuss how -- aside from mental illness that is hard to treat -- violence often arises from the strong disconnect, disenfranchisement, and powerlessness that so many people feel in American society. Plenty of people feel that violence in the entertainment and news media plays a substantial role in encouraging real-life violence, but I tend to feel that the feelings of disconnect are at the heart of the matter. We all can reduce the feelings of disconnect by reaching out to others, one-by-one, from such simple enough deeds as letting the other driver pass in front of us, to inviting a neighbor for dinner, to being there patiently to listen to a person who needs to be heard or who needs just not to be alone, and the list goes on. The show will air on Press TV. Press TV's website says: "PRESS TV is the first international Iran-based news network to broadcast in English on a round-the-clock schedule. Our Tehran-based headquarters is staffed by media professionals from around the world. PRESS TV has an extensive network of bureaus located in the world's most strategic places." The International Herald Tribune reports that the station launched in mid-2007. Other reports confirm that Press TV is at least partially-funded by the Iranian government. An article on IndyMedia.org quotes Amir Afra -- who produces and hosts Press TV's "Fine Print" program -- as saying: "We're state-funded, not state-governed... We are like so many non-governmental organizations that receive state funds. We have our own editorial board." I did not know about the Iranian government funding aspect of this program until after I appeared on the show the last time. This time around, I told the person inviting me on the show for December 13 that I accepted the invitation so long as I will not be censored, which she said I will not. If it were only so easy to know something is so just because someone says it is so. Then again, why would the Iranian government wish to censor information and opinions about social ills in the United States? Jon Katz.

Posted by Jon Katz in Criminal Defense at 11:00

"She don't lie, she don't lie, she don't lie."

DEA image in the public domain. Ah, 1977, before sentencing guidelines, before Nancy Reagan's "Just Say No" campaign, before I ever stepped foot in law school. That's when Eric Clapton released "Cocaine" (just click the title here and listen to the song). Cocaine has been very much in the criminal defense news this week. On December 10, the United States Supreme Court gave trial judges wide discretion not only to attempt to rectify the unjust sentencing guidelines disparity between powder cocaine and cocaine base, but went further to permit trial judges wide latitude in departing from the guidelines for all criminal cases (which, however, permits them wide latitude to depart upwards from the guidelines, and not just downwards). Next, on December 11, and almost like precision choreography, the United States Sentencing Commission "unanimously voted ... to give retroactive effect to a recent amendment to the Federal Sentencing Guidelines that reduces penalties for crack cocaine offenses. Retroactivity of the crack cocaine amendment will become effective on March 3, 2008." The Sentencing Commission's news release goes on to say that: "Not every crack cocaine offender will be eligible for a lower sentence under the decision. A Federal sentencing judge will make the final determination of whether an offender is eligible for a lower sentence and how much that sentence should be lowered. That determination will be made only after consideration of many factors, including the Commission's direction to consider whether lowering the offender's sentence would pose a danger to public safety. In addition, the overall impact is anticipated to occur incrementally over approximately 30 years, due to the limited nature of the guideline amendment and the fact that many crack cocaine offenders will still be required under Federal law to serve mandatory five- or ten-year sentences because of the amount of crack involved in their offense." U.S. Sent. Comm. News Release (Dec. 11, 2007) (emphasis added). In any event, the Sentencing Guidelines change narrows but does

not eliminate the sentencing disparity between powder cocaine weight and cocaine base weight. Moreover, only Congress -- and not the U.S. Sentencing Commission -- can reduce the 100:1 powder cocaine to crack cocaine sentencing disparity for mandatory minimum sentences. Therefore, please contact your Senators and House members now to urge them to change the mandatory minimum sentencing laws accordingly (and later we can urge them to eliminate mandatory minimum sentencing entirely).Â Jon Katz.

Posted by Jon Katz in Drugs at 00:00

Wednesday, December 12, 2007

20% Sex

Photo from website of U.S. District Court (W.D. Mi.). "20% Sex" begins the brochure that I recently received for Dr. SunWolf's "Practical Jury Dynamics", which I blog about here. The first page of the brochure more fully proclaims: "What are your jurors thinking about? 20% Sex, 40% Worrying, 20% Reminiscing, 2% Religious Thoughts, 12% Actively Listening ... You can change the outcome of your case." (The previous numbers add up to 94%, leaving room for 6% of additional distracting activities.) Jurors are captive audience members ultimately thrown into a jury room with a bunch of total strangers to act as amateur Solomons (at best) over litigants' cases. At least people can escape lousy, boring, or upsetting movies by walking out; they can close the door on door-to-door salespeople, and can hang up on telemarketers. Even if the judge admonishes jurors to pay full time and attention to all courtroom proceedings, that does not automatically translate into jurors adhering to such an admonition, particularly as to jurors who are not accustomed to doing so in the rest of their lives, and also as to jurors for whom a wandering mind substitutes for their inability to leave the courtroom at will, if they wish to leave. The more a trial lawyer and the lawyer's clients and witnesses empathize with and understand jurors and the venire jury panel, the better they will fare before the jury. Dr. SunWolf is a great person to learn from on this path. It is interesting that "Sex" is the lead word in the Practical Jury Dynamics promotional pamphlet. It certainly acknowledges reality, that sex heavily occupies most people's activity, thinking and imagination time. Sex sells. Must a lawyer, then, present a sexy trial to win, in order to compete with the power of sex? No, but it certainly can help for a lawyer to let his or her hair down to help relax and entertain the jury. One local lawyer who is particularly successful with jurors when advocating for medical malpractice victims, I understand, presents a particularly non-sexy trial. Insodoing, he is being the same non-flamboyant, kind, big-name lawyer without an ego who spends big advertising bucks, whom I occasionally bump into; thus, he is real at every turn, and being one's best real self can be powerfully persuasive. I understand that this legal legend is totally committed to his clients, completely credible, and fully versed in his persuasion work and in the knowledge trove of his opposing doctors. I am sure he is polished in his own non-flamboyant way. He wins, and wins big. Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Tuesday, December 11, 2007

On December 10, a trio of Supreme Court sentencing opinions.

Bill of Rights. (From the public domain.) After issuing a trickle of opinions through last week, the United States Supreme Court opened the faucet full blast to issue a trio of sentencing decisions on December 10, with two of them setting a major direction in sentencing guidelines jurisprudence, and with the third revisiting the meaning of using a firearm in relation to a drug trafficking crime. The cases, respectively, are *Kimbrough v. U.S.*, *Gall v. U.S.*, and *Watson v. U.S.* At the essence of *Kimbrough* and *Gall* is the great deference to be given to sentencing judges in deviating from the Sentencing Guidelines, which can benefit defendants when the deviation goes below the bottom of the Guidelines, but which can harm them when the Guidelines are exceeded. Certainly, this pair of cases does not detract at sentencing from mandatory minimum sentences that treat cocaine base (often called crack) as harshly as powder cocaine weighing one hundred times the weight of the cocaine base. *Watson* holds as follows: "Given ordinary meaning and the conventions of English, we hold that a person does not 'use' a firearm under §924(c)(1)(A) when he receives it in trade for drugs." Douglas Berman at Sentencing Law and Policy gives a rundown here of this trio of Supreme Court opinions, as well as his take on the sentences of Michael Vick and Conrad Black, and Scooter Libby's withdrawal of his appeal. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, December 10, 2007

Adult video store wins grandfathering right (Georgia).

Bill of Rights. (From the public domain.) My law practice includes criminal and civil representation of those in the adult entertainment industry. In that context, I learned from a fellow listserv member that a Georgia adult video store in September 2007 won a partial federal court victory by winning the right to be grandfathered under an otherwise much more stringent legal scheme for regulating adult entertainment businesses. *Augusta Video v. Augusta-Richmond County*, No. 06-16053 (11th Cir. Sept. 6, 2007) (unpublished). In some respects, this case's appellate holding relies on the grandfathering zoning provisions of Georgia law that do not apply to every state. At the same time, the opinion addresses some issues that repeatedly arise in adult zoning cases nationwide, including the Constitutional requirement for limiting discretion to government officials who issue operating and zoning permits for adult entertainment businesses. Adult entertainment litigation typically involves First Amendment issues that go to the heart of everyone's First Amendment rights, and not merely to the rights of those in the adult entertainment industry. Jon Katz

Posted by Jon Katz in First Amendment at 00:00

Sunday, December 9, 2007

Rabbi Shmuel Kawior leaves the planet; great man from a passing generation.

Rabbi Shmuel Kawior was born in Lomza, Poland, highlighted here in dark blue. (Image from public domain.)[^] When Jay Marks and I opened our law firm over nine years ago, we often plotted strategy over falafel masterfully prepared by chef Momi (sp?) at Max's restaurant up the street. Sometimes on our visits, we had the good fortune to see and speak with Rabbi Shmuel Kawior, who would supervise the operations of various area kosher establishments to assure they were keeping kosher. When talking with him, I would set aside my aversion to helping the meat industry, and my dissent from the sexism that is part of Orthodox Judaism. (A good friend from law school -- and fellow vegan -- who veered towards Orthodox Judaism a few years ago unconvincingly explained to me that it is not sexism, but is instead a recognition of different roles of men and women in religious life. That sounds like sexism to me.)[^] Rabbi Kawior -- in his late seventies or early eighties when we first met him -- was like a warm grandfather to all. He seemed never to be in a hurry. He made the time to talk when approached, and sometimes would approach first. He spoke Polish and Yiddish; his English spoke of the languages he was born with.[^] One day, I was driving down Colesville Road to my office, and saw Rabbi Kawior waiting at the southbound bus stop. I stopped my car a few yards ahead, and offered him a ride, which I thought would just be to the bus station a mile down the road. He said he was going to Rockville, which was closer to a thirty minute roundtrip there and back to my office. I had work waiting there to be done, but decided that if I had to work a half hour later as a result, I would. As I drove to Rockville's Kosher Mart, the rabbi told me a bit about being from Poland and about his son who is a lawyer; time flew fast. I opened the door for him at our destination. He got out, and kissed me thanks on the cheek, the old school way.[^] I saw him at least once or twice more at the same bus stop, and each time felt compelled, rather than obligated, to give him a ride, except for perhaps one time when I could not rearrange my schedule to do so. Each time we spoke in the car or at a kosher restaurant or market, my life was enriched more.[^] Then, I stopped seeing Rabbi Kawior as often, as my eating moved away from such heavy food as deep-fried falafel balls, as delicious as they are. A few days ago, I bumped into a fellow lawyer who eats at the same falafel restaurant more frequently than I and asked if he knew about the rabbi's well-being. He responded that the rabbi had passed away around a year ago, of old age.[^] I did not know much about Rabbi Kawior beyond what I recount above. I searched high and low on the Internet for more about him, and finally found a treasure trove of an article here in the Washington Jewish Week. The article includes the following about Rabbi Kawior:[^] "Rabbi Shmuel Kawior of Silver Spring, a scholar who helped establish standards for kashrut supervision in Greater Washington, died Dec. 26. He was in his late 80s.[^] "Born in Lomza, in prewar Poland, Kawior studied and received rabbinical ordination at "the greatest institutions in the world," said Rabbi Yitzchok Breitowitz, a friend of Kawior's for many years and his rabbi at Woodside Synagogue in Silver Spring.[^] "Kawior studied under prominent Torah scholars, Rabbi Elchonon Wasserman at the Baranowitz Yeshiva and Rabbi Boruch Ber Leibowitz at the Kaminetz Yeshiva, both in Poland.[^] "He survived the Holocaust in Siberia although his entire family was killed. He immigrated to the United States after World War II, living initially in New York, where he was certified as a shochet, a kosher slaughter, by Rabbi Yosef Henkin."[^] The following descriptions about Rabbi Kawior's persona hit on what endeared me so much to him:[^] "In spite of his great eminence, he was friendly and approachable. He projected a sense of great, great friendliness and love of all people, without exception," said [his rabbi], adding that the staffers at the hotels he supervised, including the dishwashers, all loved him." "He had the ability to communicate with people of all walks of life, whatever their status," Kawior's son, Shraga, said. "He was a modest person," who had declined requests to be an honoree on several occasions."[^] Rabbi Kawior is an inspiration to me to do what the Dalai Lama does, which is to connect positively with others, and to speak with everyone the same. I miss you, Rabbi Kawior. Thank you for you. Jon Katz.

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

Friday, December 7, 2007

Recharging batteries at premier of "USA v. Al-Arian"

Â Bill of RightsÂ (From public domain.)Â Two nights ago, I attended the D.C. premier of USA v. Al-Arian, whose sponsors include two organizations to which I belong: the local American Civil Liberties Union and the local National Lawyers Guild. On this snowy night, the tickets were sold out in advance, and the great majority of the seats were filled. I blogged in advance hereÂ about Sami Al-Arian and this event. Â USA v. Al-ArianÂ not only focuses on the gross overkill and overly-hyped prosecution, very successful defense, and personal and family turmoil involved in the years-long prosecution of Sami Al-Arian, but also provides a window into the dehumanization, government brute force, and challenges for defendants not to beÂ broken down that is common in the American criminal justice and incarceration system. For around eighteen months, director Line Halvorsen and her crew closely followed the comings and goings of the Al-Arian family -- including countless intimate family moments at their home -- as it struggled forward after Sami's arrest several years ago, during his six-month trial, after his acquittal on most counts and a 10-2 hung jury on most of the remaining counts, and pleading guilty to one of the lesser counts only to have the judge deviate to the top of the guidelinesÂ from the prosecutor's recommendation for a sentence at the bottom of the guidelines.

Â Today,Â Sami sits in Virginia's Northern Neck Regional Jail under a civil contempt order from federal judge Gerald Lee (E.D. Va., Alexandria Div.) for refusing to give immunized grand jury testimony, thus frustrating the very reason he entered a guilty plea, which was finally to put this case behind him and to start over in a new country, rather than moving on to an expectedÂ multi-year challenge against otherwise likely efforts to deport him. Â Following the film was a top-notch panel discussion moderated by Democracy Now's Amy Goodman, who always floors me for her excellence in presentation, regardless of the strong biases (many of which I agree with) that she wears on her sleeve and through her on-mike voice. Florida lawyer Linda Moreno -- who defended Sami in his criminal trial along with D.C. lawyer Bill Moffitt, whoÂ tells reporters in this film that the case is about First Amendment rights -- struck me heavily in real life, in the film and on the panel with her calmness andÂ absence of any displayed anger. She clearly believes strongly in his legal cause and against Sami's prosecution, sentence, and current civil contempt incarceration. Nevertheless, she exudes calmness and optimism. In so doing, she is a critical teacher for me. Â George Washington Law School Professor Jonathan Turley -- who leads Sami's legal team (along with lawyers at the Bryan Cave law firm)Â fighting his current civil contempt incarceration -- presented an interesting mix of ongoing optimism in the American legal system with being strongly convinced that Sami's getting a raw deal. Georgetown Law School Professor David Cole -- previously with the Center for Constitutional rights when William Kunstler was there, where David's work included defending flag burning cases -- presented the matter in starker terms, including voicing strong dissent at the Bush Administration's efforts to shred the Bill of Rights, and urging non-violent resistance (in that regard, I think he included mention of speaking out and getting this USA v. Al-Arian film shown -- in the last paragraph of this blog entry, I tell you where to order the film) to such a state of affairs. Linda Moreno, Jonathan Turley, and David Cole in particular helped me recharge my batteries for the passionate defense of the Bill of Rights by putting the whole matter in a context that includes and goes well beyond Sami's plight. Â After the panel discussion, I finally met Linda Moreno for the first time. That alone would have been worth taking time out that night. Before my January 2006 O'Reilly Factor interviewÂ where I supported the dismissal of Sami's prosecution after the jury returned its verdict, Linda spent substantial time bringing me up to speed on what had happened in the courtroom during the course of the six-month trial, and she did so at a moment's notice, because I was only called to be on the show the same day that it aired. Â I also met Sami's eldest son Abdullah. On the panel, he included a discussion of his father's weeks long hunger strike earlier this year that seriously weakened his health and made him drop fifty pounds. He also said that the United States Marshals Service denied his request this year for a hernia operation, saying not unless the situation was life-threatening. Earlier this year, Amnesty International stated its concerns about alleged ill-treatment of Sami by his jailers, due to views that he is a terrorist. Amnesty's public statement in part says: Â "Amnesty International has raised concern before about Dr Al-Arian's treatment in prison, in particular the harsh conditions under which he was held for three years of pre-trial detention, when he was confined to a cell for 23 hours a day with inadequate exercise. In its latest letter, AI expressed concern about reports that Dr Al-Arian had been moved to an isolation cell in the Virginia jail where he is currently held, with no reason given. "Dr Al-Arian was due to be released from prison in April 2007. However, in November 2006 he was sentenced to a further 18 months' imprisonment for refusing to testify before a grand jury investigating another case. His attorneys claim that this was in breach of a plea bargain agreement. Amnesty International has called on the Attorney General to review Dr Al-Arian's case to determine whether use of the grand jury proceeding was politically motivated."Â One of the panel members -- I think it was David Cole or Jonathan Turley -- said that the Bush II administration's anti-terrorism campaign includes efforts to chill SUSPECTED terrorists. One of these two also said that a huge problem is that Bush II and his gang do not have a crystal ball about who will or will not commit terrorist acts. Of course, in the process of its anti-terror campaign, the Bush II regime has been terrorizing plenty of innocent Moslems, among others. Â I also met the film's director, Line Halvorsen, who flew from her home in Norway. I mentioned to her that one of my law school classmates seemed hesitant about

attending the film, apparently concerned about Sami's very different views from his (and from mine) about Israeli-Palestinian relations. She felt that Jewish people -- from their own history of struggling against oppression -- should be able to identify with the oppression of Palestinians, which makes sense. A line mentioned earlier during the program that a television broadcast of this documentary was rejected by PBS and the other American broadcast outlets she approached, whereas some European stations accepted it for broadcasting. For me, the jury is out about whether PBS's rejection of the film represented fear of lost funds from corporations, individuals and the government (and/or non-financial-based censorship) versus an acknowledgment that the film shows a very strong bias that came out in the production and editing process. I do not dissent from the film's bias, however, and encourage everyone to see it. The film is available here in DVD format for around \$33 after shipping and handling, converted from Norwegian kroner. This is the Norwegian version of the film -- the English version is not yet available on DVD -- but I understand from talking with the director and reviewing the film's website that the only significant difference is that the Norwegian version includes Norwegian subtitles (and, possibly, the Norwegian language in the brief introductory and ending text). However, all speaking is in English, except that English subtitles are provided during the few scenes where Sami and his family are talking in Arabic. When inputting your credit card information to buy the film online, the entire ordering process will be in English until you are asked to input your credit card information, where the format will make it easy to understand the information being sought; the prompts for selecting the credit card type, card number and expiration date will be obvious, and the remaining input is the three-digit security code on the back of the card. If you watch the film, I will welcome your feedback. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, December 6, 2007

Law and Disorder Radio hits the airwaves.

Â Bill of RightsÂ (From public domain.)Â One of the benefits of not having resigned my National Lawyers Guild membership is getting such interesting listerv messages as a notice about the existence of Law and Disorder radio. Â Granted, I know I have substantial points of political departure with two of the show's hosts (I do not know enough about the remaining two hosts to know our points of agreement and departure). However, I will be listening and, I expect, agreeing with plenty of what the hosts say about the Bush II administration's assault on civil liberties. Â Law and Disorder is available online and on several broadcast radio stations.Â The show even managed to get broadcast in Enid, Oklahoma. Stay tuned. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Wednesday, December 5, 2007

Praised be Abdul Rahman al-Lahem

Â In theÂ United States, financial opportunity costsÂ (and rejections from short-supply and often low-paying public interest jobs) are about the only thing preventing a lawyer fromÂ doing social justice and pro bono work and, if the lawyer wishes, to criticize the judiciary in the process (of course, the legal ethics enforcers will sometimes claim that such criticism violates lawyers' ethical rules, but praised be the First Amendment for limiting such enforcement efforts). Â Perhaps the plight of Saudi lawyer Abdul Rahman al-Lahem will inspire lawyers to be more willing to take personal and financial risks and sacrifices to work for social justice, when seeing that Mr. al-Lahem goes one step further by risking his law license in the process of very vocally representing, pro bono, the woman sentenced to six months in jail and 200 lashes after being gang-raped after not following Saudi Arabia's prohibition against women being alone with unrelated men, and not staying quiet about it. Â To pay his bills, Mr. al-Lahem does commercial work. To feed his conscience, he takes pro bono cases defending social justice in a nation lagging far behind the social justice situation in the United States, which itself has severe social justice deficits. Â Mr. al-Lahem -- who has previously been jailed for his vocal human rightsÂ work -- came onÂ the human rights soapbox scene at least a few years beforeÂ defending this rape victim, which might explain what drewÂ this current worldwide high-profile client to him.Â If his voice for human rights is an oasis in an oppressive kingdom, hopefully what he calls his generation of lawyers has members joining that oasis. Â Today, Mr. al-Lahem is scheduled "to appear before a disciplinary committee on 5 December 2007 for publicly criticising his client's unfair treatment by the judiciary." Unable to find Mr. al-Lahem's contact information in Google and Martindale.com, I have asked two Saudi lawyers, listed as including criminal practice -- as well as Amnesty International --Â if they have his contact information, so that I may add my voice of support for him if he wishes it. Â Making Mr. al-Lahem a particularly able advocate for human rights is his metamorphosis from supporting the Saudi government's strict interpretation and application of Islamic law, to deciding byÂ the time he attended law school thatÂ theÂ Wahhabi Islamic thought should not eclipse other interpretations of Islam. Â Mr. al-Lahem remains focused on continuing to fight for social justice. He isÂ a critical inspiration for social justice activists worldwide. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Tuesday, December 4, 2007

"USA vs. AL-ARIAN" premieres this Wednesday night in Washington, D.C.

USA vs. Al-Arian On this blogpage and our static website is a visual link to my January 2006 O'Reilly Factor interview, in which I supported the dismissal of the prosecution against Sami Al-Arian. As I previously blogged, the Foundation for Individual Rights in Education several years ago hooked me up with then-professor Al-Arian to advise him on his Constitutional claims after he was suspended from the University of South Florida, after the university experienced substantial heat following Mr. Al-Arian's own appearance on the O'Reilly Factor. My views about Mr. Al-Arian's politics were irrelevant to his unjust suspension and subsequent firing over his appearance on the O'Reilly Factor, and irrelevant to my subsequent support for the dismissal of his prosecution. A recent listserv e-mail announces the December 5, 2007 (7:00 p.m.), Washington, D.C., premiere of U.S. v. Al-Arian at the Uptown Theater, which has the best and biggest movie screen in the city. Tickets must be purchased in advance. At the conclusion of the screening will be a panel discussion moderated by Amy Goodman of Democracy Now, with the following participants: Georgetown Law Professor David Cole; Linda Moreno, who was one of Mr. Al-Arian's trial attorneys, and who was very kind and generous with her time in helping me prepare for the O'Reilly Factor interview on the case; George Washington Law Professor Jonathan Turley; Mr. Al-Arian's son Abdullah Al-Arian; and film director Line Halvorsen. I have a prior obligation on the night of the premiere; otherwise, I would be going. If you attend, please update me. I will be attending, and look forward to posting an update here. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, December 3, 2007

Pringle and inevitable discovery: An unholy duo.

Photo from website of U.S. District Court (W.D. Mi.). In *Maryland v. Pringle*, 540 U.S. 366 (2003), the Supreme Court gave the green light more than ever to arrest everyone nearby contraband. When even such police-friendly cases as *Pringle* prove to be insufficient coverage for police to run roughshod over the Fourth Amendment, their backup position is to save an arrest or search from taint through arguing inevitable discovery, attenuation (which I rail against here), and independent source. See *Carroll Antonio Hatcher v. Maryland*, No. 1055, Sep. Term, 2006, __ Md. App. __ (Nov. 7, 2007). In *Hatcher*, the police stopped a car engaged in moving violations; the police confirmed the car was listed as stolen. The police arrested the driver and both passengers. Police took backseat passenger Mr. Hatcher to a "secure location", which amounted to a seizure under the Fourth Amendment. They searched Hatcher, finding cocaine in his pockets. Hatcher argued on appeal that the cops found the cocaine pursuant to an unlawful arrest and unlawful search, arguing the absence of probable cause to believe that Hatcher was guilty of theft of the car. However, Maryland's Court of Special Appeals found the arrest lawful, placing substantial reliance on *Pringle*. The court further determined that even if the initial arrest and search incident thereto had been unlawful, any taint of such a search was removed in that several minutes after the arrest and search of Hatcher, the cops learned he had an open arrest warrant, which inevitably would have led to a lawful search of Hatcher incident to an arrest on the open warrant, and the discovery of the cocaine which he would not have had an opportunity to conceal while being lawfully detained for an investigation about the stolen car under *Terry v. Ohio*, 392 US 1 (1968). I hope Mr. Hatcher will file for certiorari review in Maryland's Court of Appeals if he has not done so already. Unlike the Supreme Court's *Pringle* decision, which allowed the arrest of all a car's occupants on the view that they all could have been in joint possession (defined as knowledge, dominion and control) of illegal drugs found in the car through a police search following the driver's consent, it is much harder to determine that police have probable cause to believe that passengers of a stolen car are also guilty of car theft, in that the mere status of a car as stolen does not provide such probable cause absent such additional facts as the car's being found shortly after its theft within a distance reasonably driveable over a short period of time from the theft location, or a popped ignition or a busted driver's window that would be obvious to any passenger. Moreover, *Hatcher* grossly stretches the *Terry* doctrine by suggesting that it might have been lawful under *Terry* for the police to have detained Mr. Hatcher for such a long time to investigate his possible involvement in the theft of the car in which he was a passenger. *Terry* is a terrible case, and *Hatcher* is an example why *Terry* is so terrible. Jon Katz..

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, December 2, 2007

Working out at the same YMCA as the sniper convicts.

Photo from website of U.S. District Court (W.D. Mi.). On the morning of the last Beltway sniper shooting, October 22, 2002, I left home early in upper Silver Spring to go to the Silver Spring YMCA -- which is just inside the Beltway -- on the way to my office in downtown Silver Spring. However, soon after I started driving, I hit extraordinarily heavy traffic. The radio said that another sniper shooting had just happened. I learned that police were trying to search cars driven by men near the scene of the shooting; unless the searches were by consent (I think most "consent" searches are not consensual), they violated the Fourth Amendment's prohibition against searches without probable cause. A radio news announcer talked of the risk of people caught in that morning's heavy traffic running out of gas, because many people became too frightened to stop for gas during the weeklong shootings, as some of the murders had taken place at gas stations. I had enough gas, but realized that I had had enough to drink at home that I wondered how long I could hold it in while waiting to get to a bathroom. My efforts to take detours around the traffic were of little help. I finally arrived at the YMCA; I think the traffic was still heavy, thus leading me still to workout there while waiting for traffic to clear. Later I learned that, in all likelihood, now-convicted snipers John Allen Mohammed and Lee Malvo were at the YMCA while I worked out there that morning, and probably numerous times before that. If I ever saw them there, I was never able to match their photos in the media with anyone I saw at the YMCA. Two days after the last sniper shooting, the sniper suspects were arrested, on October 24, 2002. The same day, I wrote on our website: "Two sniper suspects have been arrested in Montgomery County, MD. I underline, SUSPECTS. I've heard a lot of talk about 'catching 'em' ever since the first shooting, and little talk of preserving suspects' and criminal defendants' Constitutional rights. Now comes seeing how much justice will/won't be done from hereon in. Was it just for cops to stop white trucks left and right these past three weeks (the two suspects weren't even in a white vehicle), and then, two mornings ago, go as far as to try to search every car driven by a man near the scene of the last sniper killing? NO. "Will it be just to execute either of these arrested suspects if found guilty? NO; the death penalty is wrong. "Interestingly, the Gulf War, which I vehemently opposed and marched against as being premature at the least, trained Timothy McVeigh to kill, and suspect John Allen Muhammad to kill. Does violence beget violence, no matter how much the violent actor thinks s/he's on the side of angelic defense? How much does the U.S. military and the rest of the U.S. warmaking apparatus consider that when training and deploying soldiers? How much reasonable doubt will the arrested suspects' attorneys be able to show? If the suspects say nothing to the cops, and if they told nothing to anybody else, it's all circumstantial evidence, and will the prosecutors be able to rule out that nobody else did any of the killings, and that it wasn't somebody else who exclusively used the suspect's vehicle and the weaponry found inside to do any shootings? "As we all know, it's in times of danger like with these multiple sniper murders that too many people are willing to give up too much liberty. My own script when the police want a consent search is "No. No. I won't tell you why I'm refusing. I won't tell you why I'm refusing to tell you why I'm refusing. Am I free to leave?" "The sniper murders were horrendous. There's no question about that. The shooting victims are not honored if the Constitution is not honored during all these investigations and coming prosecutions." On November 5, 2007, Maryland's intermediate appellate court affirmed the Montgomery County, Maryland, Circuit Court conviction of John Allen Muhammed, who represented himself at trial. The 150-page court opinion, *John Allen Muhammed v. Maryland*, ___ Md. App. __ (Nov. 5, 2007), includes chilling details of the sniper murders, including key descriptions of Lee Malvo's testimony of how the killings were planned. I assume that review will be sought in Maryland's highest court, which is the Court of Appeals. John Muhammed's appeal to the Maryland Court of Special Appeals complained as follows: "1. that Judge Ryan erroneously failed to comply with Maryland Rule 4-215, when he permitted the appellant to discharge counsel and to proceed pro se; "2. that Judge Ryan erroneously conducted a competency hearing and erroneously found the appellant to be competent to stand trial; "3. that Judge Ryan erroneously denied him a fair trial by refusing to permit him to call a number of witnesses in his defense; "4. that Judge Ryan erroneously permitted the State to present the prior recorded testimony of Dr. Emily Ward; "5. that Judge Ryan erroneously refused to remove the trial from Montgomery County; "6. that Judge Ryan erroneously refused to question the jury venire about a possibly disqualifying conversation reportedly overheard by one prospective juror; "7. that Judge Ryan erroneously allowed the State to cross-examine an officer about compliance with the discovery requirements and erroneously instructed the jury with respect to such compliance; "8. that Judge Ryan erroneously refused to allow the appellant to recross-examine a State's witness; and "9. that the cumulative effect of all of the above denied the appellant a fair trial." During the sniper shootings, I was very upset at the killings, but figured that statistically I was very safe, even though six of the shootings took place in the county where I live and work, and most of the others took place where I often travel for such activities as court appearances. However, now recognizing that Muhammed and Malvo were working out at my gym starting several weeks before the Beltway sniper shootings began, I may have been overoptimistic at the time. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00