

Wednesday, October 1, 2008

The dragnet of drug arrests.

DEA image in the public domain. In college, on-campus drug use -- and sometimes drug sales, apparently -- ran rampant. I would sometimes be right in the room or in the dorm hallway as others smoked pot or, in one instance, snorted cocaine. If I did not want to be a hermit, it was hard to avoid being with people who smoked pot; this was the early Eighties, and both pot and beer were very popular (and also unlawful for those under twenty-one to purchase). This also having been the Eighties, for small quantities of drugs, drug enforcement, criminal penalties, and collateral consequences were less harsh. Welcome to 2008, where few politicians and prosecutors have enough backbone to support legalizing marijuana, heavily decriminalizing all other drugs, and reducing the penalties for drugs, except that I credit those lawmakers and prosecutors who are at least willing to put some first-time drug cases (I only know of marijuana cases) into diversion to give a chance to avoid convictions, and to enable no convictions or less serious convictions for people who use marijuana for medical necessity. Back to my college experience being around people smoking marijuana, By merely being next to these people -- not even touching nor ingesting the substances -- I was risking arrest, prosecution, and possible conviction, because a drug possession conviction requires nothing more than proof beyond a reasonable doubt that the defendant possessed (defined as knowledge, dominion and control over the drugs) drugs (the prosecutor has the burden to prove the substance was the alleged controlled dangerous substance, ordinarily by bringing in the chemist if any drugs are left and seized). I could have testified until I was blue in the face that I had nothing to do with the drugs, but if I was not believed by the judge or jury, I would have been convicted. Fortunately, neither I nor the others around me were busted for drug possession. So-called controlled dangerous substances remain illegal, often with harsh penalties and tough collateral consequences for convictions, including risks to student financial aid, government security clearances, and risks to immigration status. If anyone needs a reminder about the risks of being a bystander when drugs are possessed, used or sold, just read this September 9, 2008, opinion from Virginia's Court of Appeals finding sufficient evidence to convict a woman for possessing methamphetamines and marijuana with the intent to distribute by having been present in the house where her fiance sold the items. *Dunn v. Virginia*, __ Va. App. __ (Sept. 9, 2008). The evidence may have been sufficient to prosecute Ms. Dunn for simple possession of the substances -- including where a small amount of methamphetamines was found in her jewelry or personal bag -- but the concept of allowing a conviction for intent to distribute just because she knows her fiance is distributing should be a sobering wake-up call to otherwise innocent people who hang around with people possessing or distributing drugs. Curiously, after a three-judge Virginia Court of Appeals panel ruled in Ms. Dunn's favor (by as little as a 2-1 vote), only one judge dissented in this en banc opinion. Query: What made the remaining judge(s) in Ms. Dunn's favor change their minds? It will be a boring world if people choose to avoid arrests by only associating with people as bland as Neil Sedaka, Lawrence Welk, and Pat Sajak hosting Wheel of Fortune. That may be enough of a good reason for legalizing marijuana and heavily decriminalizing all other drugs. Jon Katz.

Posted by Jon Katz in Drugs at 00:00

Tuesday, September 30, 2008

We are closed today, for the Jewish New Year.

Â Today is the Jewish New Year/Rosh Hashanah 5769, which I celebrate every year. Therefore, our law firm will be closed today, and will reopen on October 1, 2008, to serve you.Â Â L'shana tova/happy new year. Jon Katz.

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

Monday, September 29, 2008

Herman Lee Taylor, Jr.: Meet Kumar Barve and Davis Ruark.

Photo from website of U.S. District Court (W.D. Mi.). The nation's drunk driving laws became out of whack by the time the states succumbed many years ago to federal legislation requiring drunk driving convictions for driving with a blood alcohol level of 0.08 or higher, under the penalty of losing valuable federal state highway funding. For one thing, such a per se guilty rule makes a mockery of the criminal law by failing to recognize that plenty of people can drive just fine at that blood alcohol level, and that plenty of people will not even recognize that they are over such a limit, because it is too low. For another thing, breath tests for blood alcohol content -- which tend to be cops' preferred testing methods because they are quicker, cheaper and less cumbersome than drawing blood, at least at the front end for cops -- are fraught with error based on such problems as machinery problems, errors by the people administering the tests, and fluctuations in the mouth temperature of the testing subjects, which temperature is often not measured by the people administering the tests. Moreover, the drunk driving laws -- at least in the jurisdictions where I practice law -- are draconian for those who assert what I consider to be their Constitutional right to refuse breath or blood tests. (See here, too.). Continuing the injustice of the nation's drunk driving prosecution regime, without breath or blood test results, prosecutors rely heavily on the junk science of field sobriety tests. Enough is enough. Let us go beyond Howard Beale (who advises to shout out your window "I'm as mad as hell, and I'm not going to take this anymore") and insist directly to our federal and state legislators and executives that they overturn the 0,08 drunk driving per se rule, eliminate the draconian penalties for refusing breath and blood tests in suspected drunk and drugged driving cases, and strengthen evidentiary rules against unreliable breath test, blood test, and field sobriety testing evidence. Let us also insist directly to our prosecutors to stop supporting such a draconian drunk driving regime. In the meantime, what is good for the goose is good for the gander. If otherwise law-abiding people are going to get unfairly dragnetted into the drunk driving laws, let government officials responsible for passing and administering such laws get a taste of their own unjust medicine. Without that, we may see no positive reform of such laws. In that regard, last May 2008, Maryland Delegate Herman L. Taylor, Jr., was arrested for driving under the influence of alcohol, and goes to trial on October 24, 2008, in Montgomery County, Maryland, District Court. (Thanks to Nobody's Business for blogging on this case.) According to the Washington Post, the police report in the case claims Mr. Taylor was found sleeping in his car with the engine running, that the "officer smelled alcohol and noted that Taylor was confused and disoriented and that his eyes 'were very red and watery.'" The police report also claims that Mr. Taylor displayed poor performance with field sobriety testing, which he ultimately refused to continue (which is his right). The Washington Post also reports that the police report says that after Mr. Taylor agreed to take a breath test for alcohol, he provided an insufficient breath sample which the police deemed a refusal, when in reality numerous innocent factors can cause someone to provide an insufficient breath sample, including the fatigue that Mr. Taylor's lawyer claims he was experiencing. Ironically, or fittingly, Mr. Taylor is getting a taste of his own medicine, having sponsored a bill in 2006 to require a scarlet letter license plate emblazoned with "DUI" for those with over two drunk driving convictions. To my knowledge, the bill did not become law. Mr. Taylor's drunk driving prosecution follows on the heels of this year's drunk driving prosecution, guilty plea and probation before judgment of Wicomico County, Maryland, chief prosecutor Davis Ruark and last July's drunk driving guilty plea and probation before judgment of Maryland house majority leader Kumar P. Barve in Montgomery County. As I said about Davis Ruark's case, hopefully Mr. Taylor's and Mr. Barve's ordeals with the police and in the criminal court system will make them more empathetic to the plight of everyone else facing such ordeals. Jon Katz

Posted by Jon Katz at 00:00

Sunday, September 28, 2008

David Wasserman leaves the planet

Å Å Sadly, David Wasserman died last Thursday. Å Nine years ago, I was further exploringÅ how to get paying, versus only pro bono, clients for First Amendment defense both for criminal and civil cases. This goal fit squarely with my obsession over and passionate work on free speech issues with Amnesty International in college and law school, and my service on the board of the local American Civil Liberties Union a few years before. I recognized that adult entertainment and libel defense were the key avenues to such paying clients. Å On the adult entertainment front, I joined and became very active withÅ the Free Speech Coalition,Å soon thereafter attended a conference of the Association of Club Executives, and later the same year spoke in favor of robust First Amendment protection before a federally-created committee that should never have existed, concerning obscenity laws. Å Through the foregoing activities, I met fellow First Amendment lawyer David Wasserman. David believed, as I believe, in helping others rise as we rise. Already a very accomplished First Amendment advocate, DavidÅ sponsored my application for membership in the First Amendment Lawyers Association. One year after meeting me, David took the time to co-counsel with and teach me in drafting and filing an amicus brief whose contents were referenced extensively in the Maryland Court of Appeals' overturning of Howard County's adult zoning ordinance.Å *Pack Shack v. Howard County, Maryland, 377 Md. 55, 832 A.2d 170 (2003)*.Å In the same year that Howard County's adult zoning ordinance was overturned, David was arrested for growing marijuana at his home, when marijuana should be legalized in the first place. In 2004, with his law license suspended in relation to his marijuana conviction, David turned his attentionÅ to such pursuitsÅ asÅ opening anÅ adult video and lingerie store, and later running and owing an adult cabaret/strip club. Å In late 2007 -- while embroiled in conflict with the local government and his landlord over keeping his cabaret operating --Å David was shot in the chest as he returned home with the night's cabaret receipts. Last month, David filed a federal lawsuit against the local government, which describes the shooting as follows:Å David Wasserman "was robbed and then shot in the chest at point-blank range as he returned home late at night on or about December 9, 2007. He was hospitalized for some time and then convalesced at home for a short time after that. The robber asked for deposits for the club and when PlaintiffÅ€™s president said he would cooperate if the robber didnÅ€™t hurt him, the robber told him it didnÅ€™t matter because he was going to kill him. The robber immediately shot PlaintiffÅ€™s president; the bullet grazed his heart, aorta and esophagus and exited his body through his liver."Å Å Å As Adult Video News online recounts, David said the bullet "grazed my heart, it grazed my aorta, it grazed my liver and it grazed my esophagus, and it came out and didn't do any damage at all." David said that the shooter "stepped out of the shadows, put a 9mm to my chest, pulled the trigger and said, "I'm gonna kill you." I continued to struggle with him, and he asked where the deposits were, so I knew it was not just a robbery; it was a set-up from the club. I told him the deposits were in the trunk and let me bend over and press the button so he can get in, and he did, and as soon as he walked around to the trunk, I laid on the horn and having just had a gunshot fired and the horn honking, I'm sure he got worried about the noise and stuff, and he took off running without the deposits." (As an aside, in recounting the incident, David mentioned the race of his killer; doing so served no purpose, and I disagree withÅ his having done so.) Last April, David talked with Adult Video News online about a then-recent police raid on his club. Å Pictured here, David practiced shaolin kung fu. Whether or not this helped him the night he was shot, that was quick thinking to find a way to divert the shooter's attention and to blast his car's horn to get the shooter to run away. Å Ironically, after saving his own life last December, last Thursday, David took his own life. As the Orlando Sentinel tells it, David was battling depression for a long time, and previously told of having attempted to kill himself. Adult Video News online provides further details on David's passing. Å My brother lawyer Marc Randazza knew David, and gives his own take on David's life and passingÅ here, includingÅ Marc's ultimatelyÅ avoiding David in the interest of associating with happy and fortunate people.Å As explained below, the thought ofÅ avoiding David would not have crossed my mind, particularly when considering how much David helped me. Just as a lawyer needs not be sucked into his or her clients' deep problems,Å a person does not need to be sucked into a colleague's problems even when lending a helping hand when one is needed. Å It goes without saying that I will miss David. The sad story of the ending of his life isÅ a critical reminder to reach out to those around us who are depressed or in other psychological distress, when the help is wanted. Many sister and brother criminal defense lawyers,Å among many others,Å struggle with depression. Some peopleÅ may be reluctant toÅ reach out in order later to avoid feelingÅ like a failure if the person still commits suicide. However, there is no reason to feel like a failure if the reaching out is to lend an empathetic ear and tongue. Å Thanks, David, for you. Jon Katz.

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

Friday, September 26, 2008

Flatulent defendant; albatross of domestic military patrols

Â Â Bill of RightsÂ (From public domain.)Â Today I argued a felony criminal appeal before the Fourth Circuit in Richmond, Virginia where I stayed overnight, so today's blog entry is brief, but very important.Â As George Carlin saidÂ on his Occupation: Fool album from the early 1970's, "farts are fun". That is to say, when they are your own farts.Â Ever since becoming a father two and one-half yearsÂ ago, the words fart, poop and booger flowÂ freely from my tongue. It is one of the many pleasures of having children.Â Â In any event, a West Virginia cop purportedly refused to let a drunk driving suspect use the bathroom, which apparently led to the theÂ expulsion of methane/flatus. The cop claims the suspect fanned the flatulent fumes towards the cop, and claims that to be assault. Curiously, of course, one apparently would haveÂ to be very talented to successfully re-directÂ flatus odor by merely using one's hand to do the fanning. Kudos to theÂ Â Kanawha County prosecutor's office for deciding to pass on the gas-passing assault charge, although the drunk driving charge remains. Thanks to Jonathan Turley for reporting on this (where does he find all these bizarre stories?).Â Meanwhile, I would almost prefer to suffer through the above-described suspect's flatus for a few seconds than to have the albatross of domestic Army patrols, compliments of lame duck George Bush, II.Â (Thanks to a fellow listserv member for posting on this.) Would McCain or Obama do any differently? Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, September 25, 2008

Do you order from my client's restaurant menu, too?

Â Â - "I don't care what the contract says, it's my money that paid for your work and I am going to know from you what's going on in the case." - "He's my family. Blood is thicker than water, and I'm going to be involved in your discussions with my brother." - "My son has the mentality of a grade schooler. I know what is best for him." Â Â What criminal defense lawyer can avoid clients' overbearing family members? Sure, I can refuse the potential client's case at the outset --Â and have -- if someone else is paying for my services and if that someone else seems like s/he will blatantly disregard my standard contractual provision that says the non-client paying party has no rights under the retainer agreement and case any more than ifÂ s/he had paid anonymously. What happens, though, if such handwriting only appears on the wall in the very middle of the case? What happens if the client will not stand up to the overbearing relative or friend?Â Â I love my work. However, if asked what most annoys me about my work, it often is overbearing friends and family members of my clients. Certainly, criminal clients and their close ones often are worried about their cases, and clients sometimes feel more comfortable including them in discussions (good luck explaining how such discussions can lose attorney-client privilege protection when third parties are present). However, so long as the lawyer is doing a good job, what justifies perverting concern into being outright overbearing and abrasive? Â How to handle such problems? One approach is to use "I" statements, rather than "you" statements, for instance: Â - "Mr. _____; I will be delighted to defend you were it not my concern for your brother who's paying your bills. I need to be effective for your case, and your brother is already laying unnecessary obstacles in the way to effectively defending you" v. "You spineless wimp. Why can't you stand up to your family. Maybe if you had stood up to the cops the night of your arrest and remained silent, you would not have this criminal case against you in the first place?"Â - "IÂ need my evening family weekendÂ time toÂ be refreshed to do battle for the client" v. "YouÂ are are so selfish.Â What nerve you have to call my cellphone repeatedlyÂ late Saturday night, insisting that I should not wait until Monday to set the prosecutor straight through reciting the Magna Carta verbatim?"Â - I understand your frustration that I am holding private conversations with your brother on this, his court date. I am sure we will have some additional breaks where you will also be involved" v. "You WILL get out of my way now, and you WILL exercise at least a sliver of self control." Â - "You have the right to vent. The question is, though, whom to vent to, how politely to vent, and how long and intensively to vent. I already agree with points A, C, and D about your child's case, so might we move forward?"Â v. "You want to vent? Go find a psychologist to do that, while I do the real lifting in your relative's case."Â - "In all seriousness, [client's parent], I am not sure I am willing to take your son's new case. Just last month your spouse was monologuing on and on and on about nothing, to me, about this case" v. "How do you put up with such a selfish f--k of a spouse? He seems to have a mouth but no ears." Response from the parent to my "I" statement: "MyÂ spouse is ADHD; that's why he talks on and on." Â - "I am not so sure I want to take your son's new case." Parent: "Why?" JK: "You repeatedly drone on and on when you call me, without even asking if I have been interrupted" [Note: I take the case and the parent is no obstacle, after the parent explains that such droning is ingrained in him since elementary school] v. "The nerve of you to come back to me after all your abuse I deflected from you on the last case."Â I can count on one hand the number of potential clients I have refused to sign up due to ominous handwriting on the wall of irreconcilable differences with client's family members plus a client who does not seem likely to put his foot down.Â Some honest "I" statements and reasonable reassurancesÂ about the lawyer's time to talk with the family member and to prepare the case defense,Â sometimesÂ can make the whole problem go away. Also, some inward- and soul-Â searching and reflection can help the lawyer learn how much of such exasperation is internally-rooted rather than externally exacerbated. Â What do you do in such situations?Â Jon KatzÂ

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, September 24, 2008

D.C. Jail is on lockdown status.

Â (Image from Bureau of Prisons' website).Â The District of Columbia jail is one of the most unpleasant of the over twenty or so jails and prisons I have visited. My experience would be a picnic compared to what the inmates must endure. Â Thanks to a fellow listerv member for getting the word out that the jail is on lockdown until 6 October, and thatÂ all legal visits need to be made through the staff entrance.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, September 23, 2008

Unreasonable suspicion.

Â Bill of RightsÂ (From public domain.)Â What made me become so skeptical of cops? Certainly, plenty of socializers tried to keep me and my school classmates enamored of cops from the earliest age. I played with cop and fireman toys. I watched Dragnet, Adam-12, Hawaii Five-O, Baretta, Columbo, Police Woman, Kojak, and plenty of other entertaining police shows that shined a favorable light on cops.Â When, at age five, I passed by a man being led away in handcuffs near the bank, a man nearby counseled me that "crime does not pay." Cops spoke to students for assemblies, andÂ convicts only came to theÂ Scared Straight presentation telling us crime does not payÂ (but apparently this was an effort to get parole release).Â Fortunately, I missed the D.A.R.E. program. Â Then, I saw Al Pacino in 1973's Serpico, which was based on a true-life New York cop who got shot by his own when he refused to join them in police corruption: being paid off by drug dealers and skimming off the top from seized cash. It all made sense: Cops are mere humans and not superhumans. The buttons proclaiming that my town's "Fairfield Cops are Tops" were propaganda pieces that should instead have proclaimed "Preserve and Protect the Bill of Rights." Â Too many jurors, prosecutors, judges, and members of the public at large unfairly cloak cops in shrouds of honesty that they do not deserve. They are mere humans, and most humans lie, and lie again. Certainly, as one cop told me when I complained to the nearby Whole Foods grocery store about why this store had armed cops when the stores in ritzier neighborhoods do not, he would risk taking a bullet meant for me even if I kept my healthfully skeptical view of cops and all people. But that does not make him any more honest than if he would not take that bullet. Â Again and again, judges issue search and arrest warrants; and refuse to suppress stops, searches, seizures, and interviews of defendants, without carefully enough considering whether the cops are telling the truth and whether their information is sufficiently reliable or sketchy. Praised be lawyers Andrew Ferguson of the District of Columbia Public Defender ServiceÂ and Damien Bernache of the Nassau/Suffolk Law Services Committee for their recent article in the American University Law Review entitled: "The 'High-Crime Area' Question: Requiring Verifiable And Quantifiable Evidence For Fourth Amendment Reasonable Suspicion Analysis." The title speaks for itself. Thanks to the American University Law Review for publishing an article with this level of pro-Fourth Amendment teeth. Jon KatzÂ

Posted by Jon Katz in Criminal Defense at 00:00

Monday, September 22, 2008

Defending online copyright infringement.

Computer hard drive. (Image from Pacific Northwest Laboratory's website). On May 23, 2008, I blogged about bucking the trend of 94% of federal criminal prosecutions resulting in guilty pleas, by proceeding to a jury trial in Alexandria, Virginia, federal court for alleged criminal copyright infringement. Wired's blog -- parroting the assertion of the Recording Industry Association of America's news release -- describes my trial as the first federal trial for online criminal copyright infringement that primarily involved music; that does not mean that others have not entered guilty pleas for such accusations, because they have. On September 19, 2008, I went to sentencing with my client for this online copyright infringement case. Fortunately, the judge varied substantially below the sentencing guidelines, saying that they are excessive for my client's case, after having addressed such factors as the sentences of co-conspirators that were much lower than my client's sentencing guidelines (of course, those who plead guilty get the opportunity for a lower offense score due to acceptance of responsibility) and the below-guidelines sentence of a federal criminal defendant in another conspiracy case who was sentenced earlier this month for the same type of conspiracy as well as choate online copyright infringement. Although the sentencing judge did not agree with me, I vigorously contested the sentencing guidelines, including my assertion that the guidelines should look at the loss to the alleged victims, and not at retail price multiplied by the number of times the item was downloaded. I argued that even though the guidelines comments for copyright infringement say to use retail value, I said that they are but comments, and do not jibe with the theft guidelines to which the reader is further referenced for infringement exceeding \$5,000, which theft guidelines discuss loss, not the value of the infringed items. On that topic, here is a relevant excerpt from my sentencing memorandum: The seminal treatise on Copyright law acknowledges the difficulty in precisely calculating industry loss from infringement of copyrighted material: "Most such efforts [at gauging the extent of piracy] are either anecdotal or uncritically dependent on data provided by trade associations and other interested parties, since those engaged in pirating intellectual property have not been considerate enough to compile statistics for academic researchers." [Quoting from W. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* 6 (1995).] But a problem in methodology attaches here: to the extent that the pertinent figures rely on an assumption that current infringers would pay list price rather than cease using the pirated product, then they represent the very high end among a spectrum of possibilities. Particularly where high-priced software packages are at stake, the actual receipts of the proprietors "even in the unlikely event that piracy could be wholly obliterated" might turn out to be far lower than those industry projections. Melville Nimmer & David Nimmer, *Nimmer on Copyright*, § 15.01[A][1] at 15-3. Furthermore, a recent scholarly and in-depth professorial study that includes an analysis of relevant raw data, helps blunt the notion that industry loss can be gauged by such an oversimplistic approach as assigning a retail value to each allegedly infringed item multiplied by each download: "The Internet provides a natural crucible to assess the implications of reduced protection because it drastically lowers the cost of copying information. In this paper, we analyze whether file sharing has reduced the legal sales of music. While this question is receiving considerable attention in academia, industry, and Congress, we are the first to study the phenomenon employing data on actual downloads of music files. We match an extensive sample of downloads to U.S. sales data for a large number of albums. To establish causality, we instrument for downloads using data on international school holidays. Downloads have an effect on sales that is statistically indistinguishable from zero. Our estimates are inconsistent with claims that file sharing is the primary reason for the decline in music sales during our study period." F. Oberholzer-Gee and K. Strumpf, "The Effect of File Sharing on Record Sales: An Empirical Analysis," *Journal of Political Economy*, 2007, vol. 115, no. 1 (this article is available in full at http://digital.music.cornell.edu/files/political_economy_filesharing.pdf (last visited September 17, 2008) (emphasis added)). If you are defending online copyright infringement cases, please let me know. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:30

Welcoming your comments / Why fear someone who once wore diapers?

Image from Library of Congress's website. Some blogs get more comments than other blogs. The Volokh Conspiracy, TalkLeft, WSJ, and Res Ipsa get constant dialogue among commenters throughout the day. My criminal defense lawyer brothers Scott Greenfield in particular, Gideon and Mark Bennett get their fair share of comments both quantity- and quality-wise, too; they post many blog entries that entice comments, and they participate with their commenters. Underdog often makes up in comment quality over comment quantity. I notice that the number of quality comments on my blog tends to increase when I address items of more widespread interest, which makes sense. Of course, I keep blogging on such topics that get fewer comments as recent criminal law court opinions, the deaths of those important to me, and the intersection of music and art with my practice of law, because a *raison d'être* of my blog

is to share a place where I organize and think through my thoughts, ready to be retrieved at any time, including when I realize I need access to a court opinion and a synopsis thereof that I have posted to my blog, and only have access to my Blackberry to obtain it. This is imperfectly akin to my t'ai chi teacher Len Kennedy, who yesterday told his t'ai chi class how he has kept over a hundred breast-pocket sized notepads to record his learning and experiences with t'ai chi. He does not keep such ideas in notepads and paperscraps to obtain blogpost comments -- he has no blog at all -- but because it helps his personal growth. I blog to interact with my readers, so I encourage you to keep your blog comments coming, and to know that, conservatively (from reviewing my daily website statistical software), I receive at least three hundred to four hundred daily visits to Underdog's front page, even more visits to all pages at my katzjustice domain, and repeated volume visits for months and beyond to some particularly popular blogposts, so your comments are getting attention well beyond my eyes. My current blog software does not enable me to register commenters, so I have the insufficient choice between permitting all comments without moderation and moderating them. Here is why I moderate comments. Since I started moderating seven months ago, I have only kept out two comments. One was a mere link with an address looking like an MLK-related site, but instead going straight to a very graphic video of two people having sex. (I advocate permitting people to upload such material to the Internet, but I have no obligation to keep such links on my blog, particularly when they purport to be about Martin Luther King, Jr.) The other comment was merely and inane addressing some retail website that had nothing to do with my blog nor any of my blog entries. Rarely does more than one business day pass for your comments to be approved on Underdog, with the exception of this past Wednesday through Saturday, when I had overlooked updating my blog software to use my new email address (jon[at]katzjustice[dot]com) to notify me of new comments, now that I have retired my old email address of jon[at]markskatz[dot]com, which was being redirected to the new one, but which also was the source of the huge amount of spam that I blissfully no longer receive. To reduce spam, do not enable email and webpage hyperlinks to your email address. Some people tell me they are unsuccessful in posting comments. Our comment software only works by commenters' accepting cookies, and possibly only by using Internet Explorer. Judges, I am sure some of you or your law clerks or other assistants are reading this blog, if for no other reason other than to know whether commenters are badmouthing you, and hopefully for the purpose of becoming better people and better judges, just as I hope everyone reading this blog will find ideas on Underdog for becoming better people. Therefore, I encourage everyone to keep commenting, and encourage judges to send me some anonymous comments, and non-anonymous comments if you want your identities known. To keep fully anonymous, you can insert a completely fictitious email address where you are prompted to do enter such an address into the comments page. I will then have no way to know who you are, let alone to reveal who you are. Before closing, here are links to some of my more favorite recent comments: Glenn Graham on "You're not wanted in these parts." Thanks, also, to Jeffrey Raymond, for adding a comment inviting people to an "exhibit about the early life and career of Justice Marshall, which is being unveiled at 5:30 p.m. Friday, Sept. 19, at the Thurgood Marshall Law Library at the University of Maryland School of Law, 500 W. Baltimore St. in Baltimore." I regret that my above-detailed technical glitch caused me to miss Jeffrey's comment until after last Friday's unveiling, which included Justice Marshall's widow Cecilia as a presenter. William Garland, taking a zero tolerance view on "criminal conduct" by both law enforcers and demonstrators, as opposed to my view that cops repeatedly target suspected demonstrators near presidential conventions and beyond for unconstitutionally pre-emptive and censorious content-based search warrants and arrests, intimidation tactics, excessive force (including pepper spray), oppressive and overly lengthy pre-trial detention, dragnet sweeps that often include innocent bystanders, violation of journalistic freedom, and enforcement of unconstitutionally overbroad and oppressive demonstration-rein zones. While that is my reply to William's comment, I welcome all comments, and encourage hearing from those who disagree with me. Ron Sylvester's link to his website's discussion on the Busted video, about which I blogpost from time to time. Remy Orozco's addressing his roller coaster experience in integrating his recent time at the Trial Lawyers College into his life. Saving the best recent comment for last -- and exemplifying the benefits of my blogging and receiving comments -- is Susan Cartier Liebel's comment on "Practicing non-anger": "This is very poetic and even more revealing when playing with a toddler. When you take a moment to realize everyone you represent or interact with was once as innocent as a 2 year old it certainly gives you pause." One month after Susan posted her excellent comment, Gerry Spence wrote how Josh Karton -- acting and trial teacher extraordinaire -- had followed through with Susan's idea, apparently with neither Susan nor Josh's realizing what either one was up to: "At [the Trial Lawyers College], Karton sought to remind the participants that judges are but humans, that they were lawyers as we, and, yes, before then they were once but little children. He called upon a ex-marine, a former sergeant in the Vietnam war to play the part of judge. He dressed this judge up in a pair of little panties and put a teddy bear in his arms. Then Karton called upon another participant to present his argument to the judge. There was spontaneous laughter from the audience. How silly, the judge, how ridiculous. That we should be intimidated by such a man, was unthinkable. But how was it that a tough Marine, by a few exterior accouterments of the child, was transformed in our vision from the fearsome jurist to the ridiculous child?" That, then, is my final thought here. Why fear anyone who at one time wore diapers? Why, indeed? Jon Katz.

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

Sunday, September 21, 2008

Being a t'ai chi bear in an otherwise stressful court.

Yin Yang Nobody can fully and sufficiently describe what it feels like and what the best responses are to being a lawyer being berated by a judge while the lawyer's client is standing right next to the lawyer, and when plenty of other eyes and ears -- and the court reporter's record -- are focused on the action. Even the greatest trial lawyers are not immune from such treatment, although they can be better at preventing (at least where preventing it will not harm the client), deflecting, and diffusing the berating in the first place. Being humans, all judges probably have berated in open court at one, more, many, or too many points, sometimes for good reasons, sometimes for bad ones, and often in between. Essential ingredients for a lawyer to know how to handle such treatment is life experience, constant practice in the heat of battle, and constant self improvement. A lawyer must remain strong throughout court proceedings. This does not mean hiding his or her fears, warts, and awkwardness (although it is good to focus on reducing all three), but does mean keeping and returning to center as much as possible. One lawyer -- now a judge -- who did not seem to be one to unnecessarily get a judge's goat, spoke at an informal gathering on dealing with difficult judges, and spoke of the benefit of enshrouding oneself in Gandhi peacefulness when being berated by a judge, in that doing so can eliminate the problem and doing otherwise can help escalate the situation. How, then, to reach the peacefulness of Gandhi when judges, prosecutors, opposing witnesses, and sometimes even court staffers are readying to sling bows and arrows at the lawyer from every direction? I have found no better answer than the practice of t'ai chi twenty-four hours a day, sixty minutes per hour, and sixty seconds per minute. One day fourteen years ago, I was feeling the rush of the National Criminal Defense College's Trial Practice Institute, and looking to take forward leaps in the quality of service I deliver my clients, towards a return to private practice, and in my personal life. I knew that a local trial lawyer who seemed to have accomplished much in those areas was also a t'ai chi practitioner, Victor Crawford. Victor Crawford was ready to show me the path to t'ai chi study once I called him for guidance three years after I first met him in 1991 and learned about his years of practicing the martial art. By the time I called him seeking direction to learning t'ai chi, Vic already was facing the challenge of cancer from smoking, which would claim his life only around one and a half years later. I visited Vic around a year after starting my t'ai chi study, and told him I was unsure how much time to devote to going to t'ai chi classes when I also wished to continue my more aggressive long distance running regimen. He urged me forward with t'ai chi, suggested dieting as an alternative to running for weight loss, and talked about the amazing energy and other benefits that come from practicing t'ai chi, which I started recognizing more and more firsthand as my t'ai chi continued into today. Vic spoke of understanding his body better than did his doctors. I needed a fellow criminal defense lawyer to encourage me to continue with t'ai chi, and it also helped that one of my two main teachers is a lawyer, Len Kennedy. When my other t'ai chi teacher -- Ellen Kennedy, who equally teams with her husband Len -- told me that Vic's cancer was spreading further through his body, she told me that if I visited him in the hospital and performed t'ai chi in his presence, it could be beneficial; I was too uncertain how I would be received, not having known Vic very well, when if this were today, I would have visited. Was Vic fearless about his then-approaching death? I do not know for sure, but imagine that t'ai chi helped him along the route of fearlessness. Was it mere coincidence that one of the teachers Vic told me about was a fellow lawyer, Len Kennedy, whom I have written about many times, including here, here, and here? Such role models as Vic and Len have been particularly beneficial for my incorporating t'ai chi into my life as a lawyer, because they both have focused heavily on t'ai chi while maintaining grueling lawyer schedules. For several years, Len has been Sprint's General Counsel and Secretary, which continues his general counsel role with Nextel before Sprint took it over, preceded by several years with a large Washington, D.C., law firm after time with the Federal Communications Commission. In the midst of such demanding lawyer work, Len repeatedly has included time each week for many years first to study and now also to teach t'ai chi students at Glen Echo Park just a few miles north of Washington, D.C. What true t'ai chi devotion this demonstrates. Although I try to keep Saturdays as non-working family days, Saturdays are when t'ai chi practitioners -- some with decades of practice -- join at Glen Echo Park at 7:00 a.m. for about an hour of practice. Len has said that when practicing the t'ai chi form together, one cannot reach tao without moving in unison. After a few years away from the Saturday morning practice group, I returned last week and yesterday, and feel more on track to getting greater benefits from t'ai chi by practicing it more correctly and beneficially. As we were concluding yesterday's practice, I saw Len Kennedy for the first time in several years, walking towards the nearby dance hall, where t'ai chi classes are taught, with bags of t'ai chi shoes to distribute. I had caught him after he had taken a year off from teaching. Even though Len's morning class was the first session of the beginner's class, I had little doubt that even in this class I would obtain further inspiration from Len, so I asked and obtained permission to join this one session. Unlike one of my law professors who annually seemed largely to mimic himself on each topic he addressed -- to the point where he would even insert the same jokes -- Len is very much in the moment, in constant self discovery, and in constant sharing of those self discoveries. Here are some things I learned and re-learned from Len and from myself yesterday: A t'ai chi practitioner can practice t'ai chi even when in one of "those meetings" (including being in the heat of court battle), the kind of interactions that can

otherwise be taxing, boring, annoying, stressful and angering. The first step is to refuse to be sucked into such nonsense even if walking away is not a real option. Some verbal t'ai chi -- which must be honest -- can include: "I understand. This is a very unfortunate situation;" "We really need to get to the bottom of this;" and "I understand what you are going through." - Internally, during one of "those meetings," the t'ai chi practitioner is doing t'ai chi, through relaxing and sinking into one's chair or into the ground if standing; by relaxing actively through being fully aware of what is happening around the t'ai chi practitioner; by emptying the mind and body of stress and wasted energy in order to deal with the matter at hand; by keeping the body upright and soft; by focusing breathing and strength in the tan tien (which is in a part of the abdomen, and which is the center for one's chi); by keeping the wrists and fingers softly unbent; by keeping the body's weight separated like yin and yang; and by keeping the waist as the commander of all bodily movements. By doing this, even the most unexpected, seemingly dangerous, and apparently difficult situations can be converted into the simplicity of the five principles of t'ai chi that must be practiced simultaneously, those being: (1) keep the body upright and (2) relax and sink the body into the ground, thus connecting the heavens to the body to the ground below, in other words, keeping the self and body harmoniously connected to everything else that is present and happening in one's immediate and more distant surroundings; (3) keeping the wrists and fingers softly unbent, to prevent tension and to maximize the flow of powerful energy; (4) always turning the body from the waist and never twisting the body; and (5) separating the weight of one's body as in yin and yang. - To start learning t'ai chi, do at least fifty daily bear moves, and do lifting hands. In the bear move, stand upright with the knees unlocked, keep the feet straight and parallel and slightly wider than shoulder width; and keep the palms facing each other. Then, turn the waist towards the left foot, sink all the weight into the left foot, and the right arm will naturally move towards the left foot. Then, uninterrupted, do the same towards the right foot, then back to the left foot, and on and on until a count of at least fifty. This exercise needs to incorporate the five t'ai chi principles listed in the paragraph above, as do all other applications of t'ai chi. - To do lifting hands, nothing beats being taught by a qualified t'ai chi teacher. Lifting hands is one of the first of the thirty-seven t'ai chi postures, and is shown in this video of t'ai chi megamaster Cheng Man Ch'ing. Len once suggested to me that even doing lifting hands with one arm while sitting at one's desk (or on the phone) can be very beneficial. Lifting hands is also very beneficial for those with bad backs and bad knees who are unable to do the many knee-bending aspects of t'ai chi. - Len brought some books beneficial to one's health and well-being, both about t'ai chi and non-tai chi subjects. Several of the t'ai chi books are by Robert Smith, Cheng Man Ch'ing and Ben Lo, all of whom I link to here. I looked unsuccessfully yesterday at the bookstore for the non-t'ai chi book books, and list them here as I proceed to seek them online: - What Healthy People Know, by Zorba Paster. - Minding the Body, Mending the Mind, by Joan Borysenko. - Walking Medicine, by Yanker and Burton. - Thanks to my t'ai chi teachers Ellen Kennedy, Len Kennedy, and Vic Crawford for their ongoing gifts of selfless teaching and for their ongoing inspiration when I am in even the otherwise most stressful and dangerous of situations. Jon Katz - ADDENDUM: Here are some additional excellent t'ai chi links: - Cheng Man Ch'ing teaching the t'ai chi form. - Cheng Man Ch'ing push hands class. - Cheng Man Ch'ing t'ai chi sword class. - Cheng Man Ch'ing discusses t'ai chi. - Robert Smith -- first Western student of Cheng Man Ch'ing, and teacher of my teachers Ellen and Len Kennedy -- spars with Professor Ch'ing. - Robert Smith unsuccessfully punches Wang Shunjin.

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

Friday, September 19, 2008

Ketchup on your Frankenburger?

First the FDA approved the safety of cloned offspring on your plate. Now it's genetically modified chicken, What next? When I was in summer camp, my eyelids needed velcro to stay open as I read a friend's letter telling me about the tomatoes his mother was growing. Of course, that was when I still ate meat. Now, I yearn for the times when I did not need to revert exclusively to the garden to be assured that the genes of my food had not been altered in a petri dish. At least my veganism does not make me a victim of the next step in all this genetic manipulation. Coming to a slaughterhouse near you are animaloids cloned to your desire. You want more white meat on your chicken? Cloned to order. Richer egg yolks? Cloned to your satisfaction. Less fart/methane pollution from cows? Well, scientists can only go so far in one day to create freaks of nature. What about any pain or suffering such Brave New World tactics will cause the animals? Perhaps hitting more home: How long before the genetic modification of human babies? You say that is impossible? How about all those who at first thought the cloned Dolly the sheep was a hoax? Maybe a pox on the house, but not a hoax. Government bureaucrats and technocrats often have a way to extract any human emotions from draft federal regulations and guidelines. (Can you imagine if such folks talked the same way at cocktail parties as they do in their draft regulations?) That is no different from today's new FDA-proposed guidelines for permitting genetically-modified animals. So, get out the velcro to hold your eyelids open, pop open a cold one (or is that genetically modified, too?), and read and comment on the FDA's proposed guidelines to permit animal genetic modification. Yes, Igor? Jon Katz

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

Thursday, September 18, 2008

Would a Virginia bar kick out Virtus if pastie-less?

Virginia's state seal has a bared breast. Virginia's above-displayed seal shows a half bare-breasted Virtus. Under current Virginia law, if Virtus walked into a Virginia bar, she would either be required to cover up with pasties or something more modest, or to leave. A Virginia law that took effect this year provides for the suspension or revocation of a liquor license where one finds "entertainment of an obscene nature, entertainment commonly called stripteasing, topless entertaining, or entertainment that has employees who are not clad both above and below the waist or (ii) [] employees who solicit the sale of alcoholic beverages. The provisions of clause (i) shall not apply to persons operating theaters, concert halls, art centers, museums, or similar establishments that are devoted primarily to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value." Va. Code § 4.1-226 (emphasis added). What was I saying? Perhaps Virtus can avoid being forced into pasties due to her story's serious political value. Va. Code § 4.1-226(2). Did you hear that, Virginia's exotic cabaret owners? Why not try overcoming this general breast ban by starting onstage dressed as Virtus, and then disrobe, to dramatize the very real and human side of Virtus? Reserve your www.eyeoftheVirtus.com domain today. Unfortunately, a 1991 Fourth Circuit case does not buy the argument that women should be able to bare their breasts as much as men are permitted in public. *United States v. Biocic*, 928 F.2d 112 (4th Cir. 1991). Fortunately, the concurring judge in *Biocic* indicated that he only signed onto the opinion because he felt bound by precedent here. *Id.* at 118. For a few months this year, numerous Virginia liquor-licensed establishments stopped requiring pasties after a federal court ruling finding Virginia's anti-nudity statute to be unconstitutionally vague, in violation of the First Amendment. *Norfolk 302, LLC v. Vassar*, 524 F. Supp. 2d 728 (E.D. Va. Nov. 21, 2007). However, as if without better things to do, Virginia's legislature passed a new law a few months later (Va. Code § 4.1-226) that better specifies what is meant by topless dancing, so as to intimidate establishment owners to require that pasties be worn. Jon Katz

ADDENDUM: Thanks to my brother lawyer Marc Randazza, for giving exposure to Virtus's bared breast. .

Posted by Jon Katz in First Amendment at 00:12

Wednesday, September 17, 2008

First Amendment slays spam conviction.

Computer hard drive. (Image from Pacific Northwest Laboratory's website). Thanks to the lawyer(s) who last Friday won a First Amendment-based reversal of a spam conviction in *Jaynes v. Com.*, Va. (Sept. 12, 2008), <http://www.courts.state.va.us/opinions/opnscvwp/1062388.pdf>. The Jaynes victory reverses the February 2008 Virginia Supreme Court 4-3 opinion against Jaynes. As last Friday's opinion explains at footnote 2: "The prior opinion rendered February 29, 2008, reported at 275 Va. 341, 657 S.E.2d 478 (2008), was withdrawn by the Court after a petition for rehearing 28, 2008 and May 19, 2008." Having blogged about the February 29, 2008, Jaynes opinion here and here, I went back to my bloglink to that February 2008 opinion, only to find that the link now goes to last Friday's opinion. Certainly, it is important that the public have access to all Virginia Supreme Court opinions, and if the court is going to erase some of them from the Internet, I guess I will need to save them all on my own hard drive from now on. (UPDATE: Thanks to my irrepressible brother lawyer Marc Randazza for having had the foresight to save the February 2008 opinion, and for having directed me to the opinion's link on his blogsite.) Everything ended up looking brighter for Mr. Jaynes once the Virginia Supreme Court decided to reconsider its February 2008 affirmance of his conviction, by finally agreeing to give him standing to raise First Amendment arguments, which the court at first refused to do, as described here. A unanimous Virginia Supreme Court ruled in Mr. Jaynes's favor last Friday. Now turning to the removal of the Virginia Supreme Court's February 2008 Jaynes opinion from its website: On May 19, 2008, the Virginia Supreme Court granted Jaynes a rehearing, to include coverage of First Amendment issues. 2008 Va. LEXIS 88. Now, where does one find the state Supreme Court's superseded February 2008 Jaynes opinion? Not on Lexis, whose website says: "The Opinion Previously Reported at this Citation has been Removed from the Lexis Service at the Request of the Court, June 12, 2008." 2008 Va. LEXIS 42 (parallel cite for 275 Va. 341; 657 S.E.2d 478). Hopefully the Virginia Supreme Court will put the February Jaynes opinion back on its website, with an explanatory note that it has been superseded by the September 12, 2008, opinion. Congratulations again to Mr. Jaynes and his legal team. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, September 16, 2008

"You're not wanted in these parts."

Â Bill of RightsÂ (From public domain.)Â The late Supreme Court Justice Thurgood Marshall knew the ugliness of racism inÂ Maryland right through his bones. In one televised interview, Justice Marshall recounted oneÂ day as a youth, when he was in a section of Baltimore where he could not find aÂ bathroomÂ other than those designatedÂ for white people only. Unable to find a bathroom where he would not get arrested for answering the call of nature, he decided to use the bathroom at home far away, but by that time, the urine was running down his leg. The ugliness of segregation did not stop there. As only a for instance, Justice Marshall wanted to enroll in the University of Maryland law school,Â but he knew the schoolÂ did not admit African Americans, so he enrolled in Howard University law school. I understand that he declined an invitation to attend the opening ceremony decades later of the Thurgood Marshall library at the University of Maryland, thus helping to avoid whitewashing the school's shameful racist, segregationist past. Â Even after Justice Marshall won the *Brown v. Board of Education*Â school desegregation case in the United States Supreme Court, blatant segregation continued in Maryland. In fact, Robert M. Bell -- the Chief Judge of Maryland's highest court -- was arrested in 1960 and convicted for trespass in a Baltimore restaurant desegregation sit-in.Â The United States Supreme Court left it up to the Maryland courtsÂ to decide whether the intervening change in Maryland's sit-in/trespassing laws would dictate a different result. Unfortunately, the Maryland Court of Appeals said no. *Bell v. Maryland*,Â 236 Md. 356 (1964).Â This past Sunday, I saw a Montgomery County, Maryland, police officer take a man down face first onto the pavement when the large police officer apparently was not satisfied with the apparent stiffness of the much older and smaller man's body when the officer tried to complete his search of the man after arresting him for trespassing, for allegedly violating a written stay away order from the Seven Eleven store where he seemed to be unobtrusive enough outside the store when I entered before the cop arrived. I watched the whole ordeal forÂ quite some time. The arrested man looked disoriented and seemed to be looking in my direction for help. What useful help could I have given other than to offer my services pro bono? I wondered whether the court commissioner would impose a bond on him, and whether he had money to pay a bond. The sole consolation there as far as the court system is concerned is that at least this county's public defender's office provides legal representation at bond hearings, but the inmates appear only on closed circuit television, and the public defender lawyers ordinarily do not have an opportunity to meet with them before such initial bond hearings. Â Today, cops are not permitted to enforce segregation. However, when a store hands a customer an order not to return, who knows whether the stay away notice is based on racial reasons? In this instance, I have no reason to believe that this arrested man was being banished from the Seven-Eleven or arrested for racial reasons. I have no reason to know either way whether the man was banished for good reasons, either (e.g., for trying to shopliftÂ before)Â or bad ones. His arrest on the one hand seemed very removed from the shameful days when Thurgood Marshall could not find a bathroom open to him (though this man was born when segregation was veryÂ alive and well in Maryland), and when Robert Bell had hisÂ trespass/sit-in conviction upheld by Maryland's highest court. However, how rampant is unspoken segregation still with us today in the United States, from the many overwhelmingly lily-white country clubs, to the apartment leasing agents who tell an African American couple that no apartments are available but then rent to the white couple that arrives five minutes later, to the taxi driver who passes an African American woman clearly waving for the cab and then picks up two white women two blocks later (and who urges me to hush when I insist that he tell his passengers to vamoose and that he pickup the woman he snubbed)?Â The list goes on and on. What will you do toÂ erase that list? Jon KatzÂ Â ADDENDUM: When the United States Supreme Court reviewed Robert Bell's above-discussed trespassing conviction, dissentingÂ justice Hugo BlackÂ -- who belonged to the Ku Klux Klan when a lawyer in Alabama -- includedÂ the following footnotedÂ excerpt (n.2)Â of the restaurant owner's testimony paintingÂ himself as a buck-passing anti-segregationistÂ victim of economics:Â "'I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration and told him that I had two hundred employees and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. I wanted to prove to them it wasn't my policy, my personal prejudice, we were not, that I had valuable colored employees and I thought just as much of them. I tried to reason with these leaders, told them that as long as my customers were deciding who they wanted to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills. They didn't want to go back and talk to my colored employees because every one of them are in sympathy with me and that is we're in sympathy with what their objectives are, with what they are trying to abolish . . . '" *Bell v. Maryland*, 378 U.S. 226 n.2Â (1964). Â

Posted by Jon Katz in Constitutional Law at 00:00

Monday, September 15, 2008

Yin-yang and the scales.

At the Trial Lawyers College, the inevitable day comes when everyone is handed a paintbrush, and is told to tell an important personal story through painting, without regard to technical artistry. As it turned out, when I did the painting exercise, some of the most meaningful paintings at first looked as rudimentary as those done by elementary schoolers while the final piece of one of the more talented brushmasters told more of an a la carte menu than an integrated and deep story. When I launched my previous law firm's website in 1999, I chose the Statute of Liberty as the website's symbol, which embraced justice in general, and logically covered my criminal defense work and Jay Marks's immigration work. Now with my new law firm, I unveil my new logo of the scales of justice within the yin-yang, which is a symbol used -- among other things -- to represent the Chinese martial art of t'ai chi, which I have been practicing for fourteen years, as well as representing one of the five principles of t'ai chi (separating one's weight in yin-yang balance). T'ai chi very much defines my approach to trial battle, convinced that t'ai chi principles are essential for the powerful road to litigation victory and to keeping powerfully harmonized no matter what bows, arrows, urine, vomit, and feces I must deflect and neutralize from opponents and others. The scales of justice shown within the yin-yang symbol also involve the principles of balance and harmony that are part of the yin-yang. If the yin-yang is seen as rooted in the East and the scales of justice as rooted in the West, bringing them together arguably completes the yin of the East to the yang of the West, thus creating a global yin-yang. Thanks to my friends and family members who gave me feedback on the various law firm logos I was considering, and thanks immensely to the marketing professional who worked with a graphic artist to turn my idea into reality. I would thank them by name, but my marketing consultant chose web anonymity, at this point. I welcome your feedback on my new logo, good, bad, in between, and indifferent. Jon Katz

Posted by Jon Katz in Persuasion at 00:00

Sunday, September 14, 2008

Before retiring tonight, don't forget to wave goodnight to the FBI outside your window.

Â Bill of RightsÂ (From public domain.)Â In college, I had an excellent Eastern European politics professor -- Sarah Terry -- who recounted a Halloween party she attended at one of the Western embassies or other Western centersÂ in Warsaw during the Cold War (I think in the 1970's or 1980's). Outside the party was a car obviously containing Polish (or Soviet?) surveillance agents. Not missing an opportunity to extend the merrymaking, a bunch of the party attendees paraded out in full garb to the surveillance agents and merrily invited them outside. The agents' reaction was that they would prefer being anywhere else at the moment. Â In the United States, domestic police and intelligence spying and surveillance on United States citizens and non-citizen residents is rampant. If only the same reaction could be obtained by greeting an FBI agent watching outside your window as the reaction of the Polish agents, that is if you could tell it was an FBI agent. Â What will the next United States president do about spying and surveillance on United States residents? On the one hand, I am not too charitable that Barack Obama will be any type of savior in that department, if for no other reason to placate his supporters who want "law and order" and "toughness on terrorism". On the other hand, I anticipate that John McCain will be worse, if for no other reason than to placate the rightwing that he relies on to have a chance at winning the Oval Office. Â Now, less than two months from the presidential election, the United States Justice Department (inevitably with the blessing, direction, or both from George Bush, II), is authorizing the Federal Bureau of Investigation to infiltrate our lives even more than the G-men and G-women already do, including with racial profiling. Here is the New York Times's rundown on the story. I looked for written guidelines from the government on this matter, but thus far have instead found this transcript from a September 12, 2008 Justice Department news conference on the matter. Â Â Today's extensive domestic spying and surveillance on United States residents and citizens -- even when little or nothing connects them to criminal activity and support of national "enemies"Â -- is inconsistent with a government that governs with the blessing of the people, rather than a government that pays mere lipservice to that critical goal. Jon KatzÂ

Posted by Jon Katz in Criminal Defense at 00:00

Friday, September 12, 2008

The strength of positive karma.

A Maryland Daily Record reporter reads my blog, and saw my posting about the transition from the Marks & Katz law firm into separate firms. She interviewed me for an article expected to appear this Monday, about law firms that split. I said that although I know about some friction-filled law firm split-ups, ours was amicable, and Jay and I continue sharing good karma (and even have similar roots to our new email addresses, shown below). In fact, we even have jointly notified the public of our new firms, with the information release posted at the bottom of this blog posting. The world will be a much better place when people take delight in the positive energy that brought them together into a friendship or business relationship, rather than harping on the circumstances that made the relationship end, become more distant, or otherwise change. Imagine if all divorces were that way, and how much better the children of the divorce would emerge from the transition. Imagine if friends ended their friendships positively rather than running to magistrates to swear out criminal charges against each other. In that spirit, before you end today, why not find a way to create harmony out of an apparently disharmonious situation? The rush from doing that can be incredible. Fortunately, an active movement of so-called holistic lawyers has infiltrated just about every corner of the nation, to help facilitate settling disputes in a more harmonious fashion, and to demonstrate that lawyers, like athletes, are more powerful when using their strength in a well-timed and well-chosen fashion, rather than bothering with baring a bunch of fangs purchased at the Halloween shop. Here is our announcement: ***** FOR IMMEDIATE RELEASE ***** A Joint Announcement By Jon Katz And Jay Marks: AFTER TEN YEARS TOGETHER, SILVER SPRING'S JON KATZ AND JAY MARKS OPEN NEW CRIMINAL AND IMMIGRATION LAW FIRMS After ten years together as law partners at Marks & Katz, LLC, Jon Katz and Jay Marks have started their separate law firms in Silver Spring, Maryland, focusing respectively on criminal defense and immigration law. Jon and Jay attended public school together in Fairfield, Connecticut, and ultimately joined forces as law partners. They continue to support each others' important work focused on individual liberties, government for the people, and equal access to justice. Jon said "We had ten wonderfully successful years together, and continue our good mutual karma." Jay added: "Together, Jon and I fought important, life-changing battles on behalf of our clients - the least among us. Now we continue into our next chapters fighting for justice." Jon writes daily on his Underdog blog at www.katzjustice.com/underdog. Jay appears weekly on top-rated Spanish-language station El Zol on 99.1FM, and nationwide on "Bienvenidos a America." FOR MORE INFORMATION, CONTACT: Jon Katz, 301-495-7755, jon@katzjustice.com Jay Marks, 301-578-4444, jay@marksjustice.com

Posted by Jon Katz in Persuasion at 00:00

Thursday, September 11, 2008

Seven years later.

Â The Silver Spring, Maryland, YMCA has become an eerie place of sorts. On September 11, 2001, I was working out there before starting the workday. On my way to the locker room to the office, I saw the television playing the horrifying footage of the World Trade Center attack and collapse, and learned that the Pentagon -- just about ten miles away --Â also had been attacked. Â A year later, on October 22, 2002,Â I hit extraordinarily heavy morning traffic on the way to the same YMCA. The radio said that another sniper shooting had just happened.Â I finally arrived at the YMCA, and laterÂ 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. Â In July 2005, I visited for the first and only time the site of the World Trade Center attack. Eerie does not begin to describe the feeling. For the year before law school, I worked just six blocks from the World Trade Center, sometimes used its subway and commuter train stop, and rode its elevators several times. Now those buildings were gone. Â In airports and beyond, our civil liberties have been tremendously curtailed after September 11. After first dealing with the horror and sadness of the tragedies of that day, anger ran rampant with countless people, and I do not fault the feelings of anger. How best to channel and diffuse that anger? Do violent responses guarantee further violent counter-responses? Â As I often do when pondering such questions, I ask "what would my teacher Jun Yasuda do?" Jun-san once said:Â "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,Â I onceÂ 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.Â Â Before closing, I repeat and continue agreeing with the following article I wrote about September 11 soon after it happened, which was published in a special edition on the tragedy in the Trial Lawyers College'sÂ Warrior magazine,Â and I reprint itÂ here:Â Â ON JUSTICE, MILITARY RESTRAINT AND PEACE:Â Â SEPTEMBER 11 LEADS TO CRITICAL CROSSROADS
The only just goal of battle and war -- if there is any -- is to achieve a just peace. There can be no just war if no side struggles for justice, restraint, peace and love within and without.Â The September 11 terror attacks hit all the more home for me, because I have spent plenty of time living and working near the Pentagon and World Trade Center, and have visited people who work in both buildings. To the extent that these attacks involved an anti-Israel campaign, the attacks also strike at my strong support over the years for a secure and just peace for Israel and for a just Israeli government and military.Â It is hard enough for me to have sufficient faith in the United States government and military in general, let alone when the United States is preparing for battles and warmaking. The United States military has not shown that it can stop more My Lais and more military atrocities. The United States government and military executed the unjustified Grenada invasion, the unjustified Panama invasion, the premature invasion of Iraq, and the numerous premature post-war bombings of Iraq. The United States government and military also push for military solutions to drug trafficking, often empowering unjust foreign governments in the process.Â Before the September 11 attacks, we already had a government that provided insufficient protection of civil liberties and civil rights, and a president who vocally supported the Texas death penalty machine and who can be expected to do the same at the federal level. In the weeks and months ahead, we can expect unjustified and unconstitutional gags and obstacles on peaceful demonstrators and the press, further erosion of Fourth Amendment rights, increased harassment of immigrants, expanded use of the unconstitutional secret terrorism courts, and expanded enforcement of the statutes criminalizing financial donations to organizations that the State Department deems to be terroristic.Â For those of us who oppose the death penalty and embrace full due process rights for criminal defendants and civil litigants, how do we jibe such sentiments with sending United States troops to battle where they will cause soldier and civilian deaths and wounds without any sufficient semblance of due process? How can death penalty abolitionists harmonize their total opposition to court-ordered killing, with the even wider-spread killing of soldiers and civilians that comes from going to war? For those, like myself, who are scared about putting a gun and power of arrest in a rookie police officer's hands, how do we feel about putting guns and bombs in the hands of inexperienced soldiers and unjust soldiers?Â The power of love has been a big focus at the Trial Lawyers College. Wartime cannot suspend our struggle to continue to be loving -- or at least just -- even towards our most heinous enemies.Â Through it all, I continue to be reminded of the message of so many pacifists that violence begets violence, and also of my intention to flee or fight when those I love or myself are threatened with immediate physical harm.Â To sufficiently restrain themselves, United States warmakers must listen to the voices of the rational pacifists. One of them is Jun Yasuda of Grafton, New York, who is a longtime peace activist and nun with the Nipponzan Myohoji Buddhists. She 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).
Rev. Ishi Bashi-san of Queens, New York, also with Nipponzan Myohoji, told me about being held up at gunpoint one summer evening in Central Park. Instead of fleeing or fighting or fearing, Ishi Bashi-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. Ishi Bashi-san told the robber that the robber clearly needed money more than Ishi Bashi-san, 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.
I asked Ishi Bashi-san whether he thinks it wrong for a person to defend against an immediate physical attack. He accepts this as an option, but says he would never do so himself.
Let us learn from past military injustices, atrocities and overkill. Let us learn from the rational pacifists. We are at a critical crossroads where we all must struggle to maintain and enhance justice and human rights during the heightened national security and military actions and hysteria that will take place. We will pay a high price if we do otherwise. Originally appeared in the Trial Lawyer's College's Warrior magazine (October 2001 special edition), Jon Katz shares copyright with the Warrior.
Jon Katz
ADDENDUM: While the horrors of September 11 must not be allowed to trump civil liberties, this does not preclude the deep importance of keeping the victims in our hearts and memories.

Posted by Jon Katz in Constitutional Law at 00:00

Wednesday, September 10, 2008

Revisiting a denied objection.

Photo from website of U.S. District Court (W.D. Mi.). Judges are generalists, at least where I practice law. They are expected to grasp and rule on a vast body of law. The law is too vast for even the most conscientious insomniac judge to be a walking encyclopaedia on the law. As a mentor told me not long out of law school: In your written advocacy, write as if you are talking to the judge with your hand casually sticking in your pocket. He also said that you need to shove your point down the judge's throat, because s/he does not have the time to try to divine any hidden meanings in your writing. (Perhaps that is a bit of hyperbole to say to get straight to the point with the judge, and to give the judge the relevant condensed law so that the judge is not left on a hunting trip.) What to do when a judge denies a motion so as to have a ruling that flies in the face of established law. If you start arguing about the judge's ruling, the judge may say "I have ruled. It is time to move along. Raise the issue in the appellate court, if you wish." On the other hand, the judge might listen further if you help the judge save face and eliminate concern about interference with "moving it along", and say something along the lines of: "Judge, thank you for considering our motion. I hope you might consider page 246 of the Aardvark decision, which mandates the opposite of what your honor has just ruled." Now, the judge has been offered an invitation to revisit the issue without losing face, or to say "Thank you, counsel, for your tenacity. I stand by my ruling. I look forward to seeing you on our next court date." A problem a judge faces when a lawyer hands up a court opinion to read, on the spot in court, is that so many appellate opinions are lengthy, and take time to sift through the decision to figure out what the writers are really saying. If you are in a jurisdiction that does not require all legal authorities to be presented to the court before the court date, you can help out the judge by handing him or her case opinions that have relevant pages highlighted and tabbed. You might even wish to hand up two or three cases with a short written summary of the benefit of those cases to your cases. The key is to make it no less pleasant for the judge to leaf through the often turgid prose of appellate opinions and statutes, than to say "denied" without reading the provided authorities. One very talented criminal defense lawyer has a penchant -- at least at CLE presentations -- to project relevant portions of cases on the screen and to read aloud some of the most apt, and sometimes, humorous passages with a laser pointer to follow along, including this passage from the Ninth Circuit's 1985 ruling on Larry Flynt's contempt of court ruling, quoting Flynt's exchange with a federal trial judge (I think this may have been as part of a presentation of how to deal with out of control clients, or perhaps about how Flynt got his lengthy contempt sentence cut short by the appellate court): "FLYNT: I move that you call the U.S. marshal to the stand that was present when I took the drugs, when I was flung on the floor by an inmate, and when I was kicked when I was smacked. I want the U.S. marshal called, I also want the guard called that tipped me off that this asshole was sending me to Springfield. THE MARSHALL: Open up the door. / THE COURT: No, that is all right. He's got the responsibility. That is going to cost you 30 days, Mr. Flynt. THE DEFENDANT: Hey, you know what punishment -- is. Well, you don't give a f*ck. / THE COURT: Mr. Flynt, you just keep that up. THE DEFENDANT: F*ck you. Give me life without parole you foul mother-f*cker. / THE COURT: That is another 30. THE DEFENDANT: I want you -- give me more. You chicken- shit son-of-a-bitch. / THE COURT: That is another 30 days. THE DEFENDANT: Give me more. [So much for an ordinary day in an august courthouse.] United States v. Flynt, 756 F.2d 1352 (9th Cir. 1985). Back to my mentor who certainly had a point about talking to judges as if your hand is informally sticking in your pocket. Doing so puts one more in the mood of sitting around with friends, in a relaxed setting. That helps remove the bullsh*t quotient. Judges and most other people have no tolerance for bullsh*t. A case in point about convincing a judge to overrule an objection on the spot came at a recent administrative hearing to determine whether my client would lose his driving privileges for several weeks for having allegedly driven in contravention of the drinking and driving laws. If an adverse ruling is announced at such hearings, the alleged wrongdoing driver might face worse devastation from the driving suspension than the possibility of sitting in jail a short period for a drinking and driving conviction. Inside, I am incredulous that the administrative law judge refuses to dismiss the case when the matter cries out for dismissal. Outwardly, I try my best to use non-confrontational words and tone of voice to share my concerns about the adverse ruling rather than to push against the judge. All of the sudden, there is silence. The judge is more studiously reading my appellate case decision that is directly on point with the need for dismissal. Then more silence and reflection comes, and the ALJ finally says that although he does not agree with all of my characterization of the applicable case, in this instance he finds no valid grounds in the record to justify the cop's request for a breathalyzer test from my client. Once we emerge from the hearing room, I congratulate my client, and say "Let's get the hell out of here. No need to give the ALJ a chance to change his mind." So we vamoose like bats out of hell. Jon Katz

Posted by Jon Katz in Drunk driving/DWI/DUI at 00:00

Tuesday, September 9, 2008

ACLU seeks staff attorney in South Carolina

Bill of Rights (From public domain.) Full Glass Consulting has asked me to spread the word about an open ACLU staff attorney position. In the early Nineties, I served on the board of the ACLU of the National Capital Area, and recommend applying for this position if you are looking for a new position and if your ability and interest meet the job description, which follows:

Position Availability / Staff Attorney of South Carolina National Office
Charleston, South Carolina
The American Civil Liberties Union welcomes applications for the position of Staff Attorney of the South Carolina National Office, available immediately.

The National ACLU
The national American Civil Liberties Union was founded in 1920 to preserve the fundamental liberties written in the Constitution and its Bill of Rights. The ACLU is composed of two separately incorporated nonprofit organizations: The ACLU and the ACLU Foundation. The ACLU Foundation conducts litigation and public education programs in support of civil liberties. The Foundation is a 501(c)3 tax-deductible charitable organization, and contributions to it are deductible to the extent allowed by law. The ACLU conducts membership outreach and organizing, legislative advocacy and lobbying. It is supported primarily by membership dues. It is a 501(c)4 organization, which is tax-exempt, but donations to it are not tax-deductible. The majority of support for the ACLU and ACLU Foundation comes from individuals, who believe in the guarantees of freedom, justice, equality, and fair treatment under the law. The ACLU and its affiliates receive no government funding and never charge clients for legal representation.

Every ACLU office builds a menu of programs and services to meet the unique characteristics of the communities that are served. Through communications, lobbying and litigation, the ACLU endeavors to preserve and enhance liberties grounded in the United States and state constitutions and civil rights laws. Among these liberties are separation of church and state, freedom of speech, freedom of religion, freedom of association, the right to privacy, reproductive rights, due process of law, and the right to equal treatment under the law.

To learn more about the work of the national ACLU, please visit www.aclu.org.

The ACLU South Carolina
The ACLU South Carolina is a national office of the ACLU and is the state's guardian of freedom. Working to promote and defend civil liberties throughout the state, its mission includes a variety of legal, legislative and public education programs encompassing a broad range of constitutional issues.

Until recently, the ACLU of South Carolina was a separately governed and operated statewide affiliate organization located in Columbia, South Carolina.

In June, 2008, the national ACLU suspended the operations of the existing South Carolina affiliate and reorganized to create an office of the national ACLU to strengthen its statewide operations and program capacity.

The new office, to be opened in July, 2008, will be located in Charleston, South Carolina, with easy proximity to South Carolina's state capitol, Columbia, which is located about 100 miles to the northwest via Interstate 26. Under the supervision of the Executive Director, the Staff Attorney will be responsible for building, managing and coordinating a statewide legal program and will also participate in non-litigation advocacy activities including public speaking, media interviews, writing press releases, op-eds, newsletter articles, and reports. The Staff Attorney will work also work collaboratively with national staff and legal projects, as well as local cooperating attorneys throughout the state.

The City
Consistently named among Condé Nast Traveler's top 10 US destinations, Charleston, South Carolina is a world-class city. Beautifully preserved historic sites, outstanding resorts and recreational facilities, and its premier waterfront location attract millions of visitors and new residents to the Charleston area each year.

With a mild year-round climate, miles of beaches and waterway, a burgeoning young professional scene and several up-and-coming neighborhoods, the region is thriving, even during difficult economic times.

This influx of diverse people of all ages, backgrounds, and origins also sustains an incredible array of world cuisine, shopping that ranges from small boutiques to large stores like Saks Fifth Avenue, and cultural amenities rarely found in markets of similarly-sized cities, including a world-class symphony orchestra, a ballet company, several stage companies, a number of museums and a growing base of art galleries and artist studios. Sports fans can also take advantage of the region's many sports teams, with minor league baseball, professional soccer, professional tennis and professional hockey all represented here. The three-county region is also home to several colleges and universities, which greatly influence the vibrancy and diversity of the community. The region's population of a 600,000 is predicted to grow more than 20 percent in the next few years.

The Position
The Staff Attorney is the leader of the South Carolina National Office's statewide legal program and provides the strategic and tactical direction necessary to enable the ACLU to fulfill its mission to protect and defend the rights and liberties of the people of South Carolina.

In partnership with the local and national leadership teams, the Staff Attorney is responsible and accountable for all aspects of the ACLU South Carolina National Office's statewide legal program, including:

ROLES AND RESPONSIBILITIES: Serve as lead and co-counsel on a variety of civil liberties cases; work with the National ACLU litigation team, coalition partners, and cooperating attorneys. This includes performing legal research, conducting discovery, drafting pleadings, motions and briefs, and presenting oral arguments in state and federal courts at both the trial and appellate levels Investigate civil liberties complaints that may lead to law reform litigation Work closely with the Community Organizer to identify legal issues and litigation opportunities in communities throughout the state Create and oversee systems to professionally review, evaluate and respond to phone and mail

intake Recruit and work with ACLU volunteer attorneys Prepare legal memoranda and letters; review, comment or write amicus briefs; provide legal analysis to other senior ACLU staff Advocate for civil liberties and serve as a spokesperson for the ACLU both with the press and as a public speaker Develop and maintain relationships with fellow legal staff members within the National ACLU and state affiliates. Participate in National ACLU legal conferences Establish and maintain relationships with legal services and other public interest attorneys/ organizations in South Carolina Prepare regular reports of all significant legal department activities for the South Carolina Executive Director. The Ideal Candidate The ideal candidate will have a J.D. degree and at least eight years of litigation experience, with a background of raising constitutional, criminal justice, or discrimination issues and experience in non-profit advocacy or public interest work. The successful candidate will also be a member of the South Carolina State Bar (or must pass the next Bar Examination). The ideal candidate will also possess substantive knowledge and understanding of constitutional law and will have experience working on civil liberties issues. This experience will include the ability to identify and prioritize litigation of interest to the ACLU, conduct thorough legal analysis and research, and develop clear recommendations about whether, and when, to pursue cases. The candidate will have excellent communication and interpersonal skills with both legal and non-legal audiences, and be an enthusiastic "friendraiser" with like-minded audiences throughout South Carolina. The candidate will enjoy collaboration, and will possess the skills necessary to build relationships and work effectively on projects with many key stakeholders, including other attorneys, staff members, community organizations and coalitions across the state. The successful candidate will possess the ability to work effectively with and quickly gain the respect and support of various constituencies including clients, prospective clients, local staff, national staff, consultants, and the legal community. The successful candidate will be committed to diversity and demonstrate a personal approach that respects differences of race, ethnicity, age, gender, sexual orientation, religion, ability, and socio-economic circumstance. The candidate must be comfortable working with managing partners at large law firms and working directly with high-level local, state and national officials. The successful candidate will also be equally comfortable, and dedicated to, working the Community Organizer at a grassroots level to identify key issues throughout the state and to directly engage the people who are most affected by those issues, either as potential clients, or as partners and colleagues. In addition to a strong legal background within constitutional or public interest arenas, an entrepreneurial spirit is imperative for the ideal candidate. The successful candidate will be a passionate advocate who is "at home" in a start-up environment, yet comfortable navigating within a larger national structure and hierarchy. The candidate must also be highly resourceful and possess the key qualities necessary to build and sustain a legal committee, litigation docket and other initiatives. The candidate will possess excellent planning, strategic thinking and management skills with the ability to coach and lead team members in an environment that fosters creativity, teamwork, a commitment to excellence, and mutual respect. Other Requirements: A reputation for honesty, fairness, and high ethical standards in all aspects of professional work A willingness and ability to travel frequently throughout the week and on weekends, both locally and regionally, is a must. A willingness to devote as many hours as necessary to get the job done Proficiency with computers; Windows and Microsoft Office in particular A demonstrated commitment to the preservation and vigorous enforcement of civil liberties A commitment to the mission, goals and principles of the ACLU Compensation The ACLU offers a generous and comprehensive compensation and benefits package, commensurate with experience and qualifications. Applications Please send a cover letter and resume that describes your interest in this position, your relevant qualifications and experience, and your availability. Applications should also include two writing samples; at least one of which should be a legal research memo, brief, or article. All applications will be confidential. Applications should be sent directly by email to Laura.Deaton@FullGlassConsulting.com with "ACLU SC Staff Attorney [SC-03/WACLU]" in the subject line. Applications will be accepted until position is filled. Please indicate where you learned of this position. The ACLU is an equal opportunity/affirmative action employer and encourages applications from women, people of color, persons with disabilities, and lesbian, gay, bisexual, and transgender individuals. The ACLU comprises two separate corporate entities, the American Civil Liberties Union and the ACLU Foundation. Both the American Civil Liberties Union and the ACLU Foundation are national organizations with the same overall mission, and share office space and employees. The ACLU has two separate corporate entities in order to do a broad range of work to protect civil liberties. This job posting refers collectively to the two organizations under the name "ACLU." Jon Katz

Posted by Jon Katz in Constitutional Law at 01:00

Money laundering: On a hanger or in a box?

Image from Bureau of Engraving and Printing's website. The closest I ever came to being a cop was my year before law school as a financial auditor at a large Wall Street commercial bank. Early on, among our duties, we were taught to monitor for violations of the money laundering laws, by verifying that IRS Form 8300 had been properly filed for cash transactions over \$10,000, and that multiple deposits by the same customer were not being used to circumvent the money laundering laws. Later on, one of my department's vice presidents, a very colorful man, did a training presentation on money laundering, and spoke of the law's focus on drugs, which I felt was a waste of time and resources for the criminal law to focus on. In any event, I found no evidence of money laundering during the two

instances when I handled audits involving customer cash transactions. It was 1985, in the midst of Nancy Reagan's oversimplified "Just Say No to Drugs" campaign (easier for many to say about cocaine and heroin, but how about valium and percodan?). Today, money laundering is a significant part of many federal prosecutions for such cases as drug felonies. Worth reading for the limitations on the reach of the money laundering laws are the following Supreme Court cases from the last term. In *Cuellar v. U.S.*, ___ U.S. ___, 128 S. Ct. 1994 (2008), the Supreme Court limited the circumstances under which a person can be inferred to know that a plan to transport funds to outside the United States "was designed at least in part to 'conceal or disguise the nature, the location, the source, the ownership, or the control' of the funds. 18 U. S. C. Â§1956(a)(2)(B)(i)." *Cuellar* (Alito, J., concurring). In *U.S. v. Santos*, ___ U.S. _ 128 S. Ct. 2020, (2008), Justice Scalia -- writing for a four-justice plurality and construing the meaning of that case when adding Justice Stevens's concurring opinion -- concluded that: "The money-laundering charges brought against Santos were based on his payments to the lottery winners and his employees, and the money-laundering charge brought against Diaz was based on his receipt of payments as an employee. Neither type of transaction can fairly be characterized as involving the lottery's profits. Indeed, the Government did not try to prove, and respondents have not admitted, that they laundered criminal profits. We accordingly affirm [the lower court's dismissal of the convictions]." Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00

Monday, September 8, 2008

I will never forget that face?

Â Bill of RightsÂ (From public domain.)Â An armed robber bursts into the local bank with guns drawn. As a bank customer, do you stare at the robber's face to be able to describe the perpetrator to the police in the minutest detail, or do you try to protect yourself and those around you? Â Unfortunately, countless innocent people are wrongfully convicted on the testimony of an eyewitness saying "I will never forget that face" when the witness never had a chance to process the image of the suspect's face and other features in the first place, when the visual and sound observation totaled only seconds at best, and when the witness's first priority was to emerge safely, rather than to be a photographic-memory witness. We already know through DNA evidence how often people are wrongfully convicted. Defendants have a Due Process right to call expert witnesses in identification and memory related thereto. Â Particularly when discounting identification evidence will spell the difference between guilt and innocence, the defense must be permitted to present psychological experts in witness identification, because such cognition issues are uniquely within the ability of qualified experts to assist lay jurors in deciding a criminal defendants' liberty. However, on September 5, 2008, Maryland's intermediate appellate court gave trial judges wide leeway to slam the door on such expert testimony (leaving trial judges "sound discretion" to bar such witnesses), which is particularly ironic when considering such junk "expert" testimony allowed in evidence by the appellate courts in Maryland and elsewhere by so-called experts on whether a drug possessor intended to distribute the substance. *Bomas v. Maryland*, __ Md. App. __ (Sept. 5, 2008).Â Concerning the defendant's efforts to present expert testimony, *Bomas* says in pertinent part: Â "According to appellant, the court abused its discretion in assuming that potential deficiencies in the detective's recollective capacities could be exposed through cross-examination. There is, he claims, a 'recent national trend in the law' that recognizes that 'reliance on . . . jurors's common sense and understanding is an insufficient proxy for expert guidance as to the limits of eyewitnesses.'" Appellant's argument relies exclusively on decisions from other jurisdictions suggesting that studies have shown that juries give much weight to the memories of eyewitnesses, even when the memories have been shown to be unreliable. But the studies were not part of Dr. Schretlen's testimony. He neither relied upon them nor even referred to them in the course of testifying." *Bomas*.Â The above-reference studies not testified to by *Bomas*'s expert are referenced in footnote 5 to the *Bomas* opinion as follows: Â "Appellant relies on *United States v. Brownlee*, 454 F.3d 131 (3rd Cir. 2006), where the United States Court of Appeals for the Third Circuit reviewed a large amount of scholarly materials concerning the uncertainty of human memory and the reliability of eyewitness identifications. The *Brownlee* Court noted that 'while science has firmly established the "inherent unreliability of human perception and memory,"' id. at 142 (quoting Rudolf Koch, Note, Process v. Outcome: The Proper Role of Corroborative Evidence in Due Process Analysis of Eyewitness Identification Testimony, 88 Cornell L.Rev. 1097, 1099 n. 7 (2003)), 'this reality is outside the jury's common knowledge,' and often contradicts jurors' commonsense understandings.' Id. (quoting Koch, 88 Cornell L. Rev. at 1105 n. 48). He also relies on *United States v. Smithers*, 212 F.3d 306 (6th Cir. 2000) ('Today, there is no question that many aspects of perception and memory are not within the common experience of most jurors, and in fact, many factors that affect memory are counter-intuitive.')." *Bomas* at n.5.Â Hopefully cert. review to Maryland's highest court, the Court of Appeals, will be sought and obtained in *Bomas*.Â How do your jurisdictions deal with allowing criminal defendants to call experts in witness identification and failed witness memory? Jon KatzÂ

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, September 7, 2008

Was McCain a war hero?

A U.S. government photo. Napalm was one of the horrors of the Vietnam war. Here is the horrifying picture of Kim Phuc and other villagers after a napalm attack. Here are Kim Phuc's resulting physical scars. A trial lawyer's listserve member who opposes McCain nevertheless sees him as a war hero. I replied: "I am curious why some or many think McCain was a war hero. I ask this for the following reasons: - On the one hand, he cannot be accused of selfishly avoiding wounds and death in war, because McCain went to war. He apparently never gave into his captors, and, whatever his motivation, he rejected POW release before those imprisoned longer than he. According to the AP, he was "instrumental in pushing for normal relations between" the U.S. and Vietnam. <http://www.msnbc.msn.com/id/25418965> - On the other hand, I ask these questions: -- Where did the United States military and its soldiers fall on the morality scale in the Vietnam War? Was it a just war? Does it make any difference that Congress never officially declared war? Where did McCain fall on this morality scale? Is it sufficient to say that it is not for a young soldier (McCain was already 29 when captured) to decide whether or not to go to war (never ever)? -- Is it virtuous to avoid war if the purpose is altruistic? For instance, was it brave for World War II conscientious objectors to refuse to go to war, in order to avoid harming others? -- Is the pacifist movement irrelevant to the issue? -- The Vietnam War atrocities were deep and ugly, including by plenty of American soldiers: <http://katzjustice.com/underdog/index.php?serendipity%5Baction%5D=search&serendipity%5BsearchTerm%5D=%22winter+soldier%22> What if any role did McCain have in perpetuating, permitting, preventing, or vocally opposing atrocities by U.S. military members? -- When John McCain was captured in Hanoi, he had bailed out of his bomber aircraft. <http://www.msnbc.msn.com/id/25418965> (who took this picture in the article showing his capture by civilians, I wonder?) What was his role on the aircraft? Pilot? Navigator? Medic? Bomber? Was it right to drop bombs on Hanoi? Did the bombing mission include civilians as targets? (This Nation Magazine article says McCain wrote that he was frustrated that commanders limited bombers to military targets, and that McCain would have escalated the war if he had the choice: <http://www.thenation.com/doc/20000103/dreyfuss>). Considering all this, was McCain a war hero? Jon Katz

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

Beyond law blogs.

An image from Library of Congress's website. Anne Reed invited me and four other blawgers to list five of our favorite non-law blogs. she was tagged by another blawger for such a list, but I end my link of the chain letter here, never having sent out such messages before. Instead of listing just five blogs, I list one set of blogs that are far removed from the law, and another set that deals with public policy and legal issues from outside the lawyering realm. In any event, my favorite reading material usually is beyond blogs, as listed here. Now for the lists: FIVE NON-LAW BLOGS NOT INVOLVING PUBLIC POLICY- Cloud Hands- Conflict Zen- Happy as a Fat Rat in a Cheese Factory- Michio Kaku- Ocean Shaman FIVE MORE NON-LAW BLOGS- Index on Censorship- PETA Files- Photography is Not a Crime- Prison Pete- Real Cost of Prisons What are your favorite non-law blogs? Jon Katz.

Posted by Jon Katz in Persuasion at 00:00

Friday, September 5, 2008

Lobotomy of police-handled phlebotomies.

Â Bill of RightsÂ (From public domain.)Â Who wants police to be permitted to pin down a drunk driving suspect to draw blood? What medical professional in his or her right mind would agree to draw the pinned-down suspect's blood? Then again, will some police just take the lobotomized route of skipping the phlebotomist entirely, and draw the blood themselves? Not if such judges as Pima County Superior Court Judge Richard S. Fields are presiding. Judge Fields recently wrote that blood drawsÂ "carried out in roadside situations with poor lighting and in less than sanitary conditions" present "an unreasonable risk of infection and injury."Â Of course, the prosecution says it plans to appeal, which is another reason I am happy that I have never prosecuted. (Thanks, Lawrence Taylor, for posting on all topics contained in this blog entry). Â Then again, will law enforcement agencies get their cops certified as phlebotomists? That is what theÂ Utah Highway Patrol did with its troopers, to save the time and \$50 per blood draw of calling in a medical technician. AsÂ blogger Lawrence Taylor aptly points out: "Ignoring the pain, injury and infection aspects for the moment, bear in mind that the blood must be taken from a vein, not an artery (which has a higher blood-alcohol concentration); the skin must be swabbed with an approved antiseptic (not isopropyl alcohol, which can raise the blood-alcohol concentration); the correct amount must be taken, with no contamination from the officer; it must be placed in a sterile and sealed vial; an approved preservative in the correct amount must be added and mixed in (to prevent fermentation, which increases BAC); an anti-coagulant (to prevent clotting, which increases BAC) must also be added, again in the correct amounts." Â If a drunk driving suspect is going to be coerced or forced into submitting to a blood test, the least the powers that be can do is to provide the suspect at least some comfort, confidence and dignityÂ by providing an experiencedÂ medical technician for the blood-drawing, rather than to have it done by a handgun-toting cop who claims to be certified in the procedure. Â All of this Orwellian forced blood drawing comes to you thanks to the 5-4 decision inÂ *Schmerber v. California*, 384 U.S. 757 (1966) (finding no Constitutional violation from a non-consensual blood draw), which, sadly, was penned by my otherwise hero Justice Brennan. Jon Katz

Posted by Jon Katz in Drunk driving/DWI/DUI at 08:27

Thursday, September 4, 2008

Sami Al-Arian released to home detention.

Â Bill of RightsÂ (From public domain.)Â When Sami Al-Arian was terminated from his university professorship over six years ago (I am referenced in theÂ news release from the Foundation forÂ Individual Rights in Education)Â followingÂ threats of violence and donor pullouts to the University of South Florida, that was small potatoes compared to the five years of incarceration that followed with a subsequent indictment alleging his central role in terrorism.Â What did theÂ United States Justice Department have to show forÂ its six-month criminal trial in 2005Â that likely cost the prosecution millions of dollars?Â The jury refused to convict on most counts and hung on the remaining counts, followed byÂ a plea bargain to lesser chargesÂ of conspiring to aid theÂ Palestinian Islamic Jihad by helpingÂ get immigration relief for a relativeÂ allegedlyÂ linked to PIJ, and lying to a journalist concerning anotherÂ person's PIJ links.Â Not satisfied to rest on the plea disposition in the Florida federal court, federal prosecutors kept Mr. Al-Arian jailed after his prison release dateÂ by indicting him for refusing to testify under immunity to a grand jury. However, the catch-22 of giving such testimony is that a perjury prosecution can be instituted by the same prosecutors who call the immunized witness before the grand jury, and such a prosecution can go forward even if no lies were told as long as the presiding judge for the perjury prosecutionÂ finds probable cause to believe perjury took place. Â One of Mr. Al-Arian's legal team members is indefatigable bloggerÂ Jonathan Turley, who views the ongoing hounding of Mr. Al-Arian by the federal prosecutors as vindictive. To date, Professor Turley has not posted on the latest development this week in Mr. Al-Arian's case, so I will. For the first time in five years, Mr. Al-Arian is being released from jailÂ into home detention. This is no small feat, because too often courts permit immigration detention, which is the most recent jailing suffered by Mr. Al-Arian.Â In this instance, his lawyers have been arguing that the current contempt prosecution against Mr. Al-Arian violates his plea agreement in Florida court, whereby Mr. Al-Arian contends that he should be permitted to be deported without delay. Apparently, the federal judge in the pending contempt case in Alexandria, Virginia, federal court pressed the federal authorities to justify holding Mr. Al-Arian in immigration detention together with prosecuting him for contempt,Â rather than just deporting him. Â Home detention is no picnic, but is much more preferable than the five years Mr. Al-Arian spent jailed, never able to spend private time with his family. Moreover, this Washington Post report suggests that Mr. Al--Arian is being permitted some time on the streets, as well. Â Here are some relevant links to Mr. Al-Arian's case:Â The pending contempt indictment against Mr. Al-Arian for refusing to testify before the grand jury;Â the contempt prosecution court docket;Â Mr. Al-Arian's habeas corpus petition in Alexandria federal court;Â the fed's reply to the habeas petition;Â my 2006Â O'Reilly Factor interview opposing a retrial of Mr. Al-Arian; andÂ my previous blogposts on Mr. Al-Arian. Â Thanks to Mr. Al-Arian's current legal team of Jonathan Turley, William Olson,Â andÂ Philip Meitl. Thanks, also, to his criminal trial team of Linda Moreno and William Moffitt, who spent an entire six months of their lives with Mr. Al-Arian in his FloridaÂ terrorism trial. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, September 3, 2008

Sarah Palin and Tipper Gore, meet Frank Zappa.

Â Both dominant political parties in the United States have too many candidates and officeholders who do not hesitate to promote censorship. Some deny it is censorship, but a stinkbomb remains a stinkbomb even if Madison Avenue calls it a biscuit. Â Frank Zappa did an excellent job taking on Tipper Gore and her bipartisan group's push to force ratings on music -- with the silent if not vocal complicity of AI -- and GOP veep candidate Sarah Palin (any relation to Michael Palin from Monty Python?) veered towards library book banning when a smalltown mayor. AsÂ Time reports: "[Palin's mayoral opponent] Stein says that as mayor, Palin continued to inject religious beliefs into her policy at times. 'She asked the library how she could go about banning books,' he says, because some voters thought they had inappropriate language in them. 'The librarian was aghast.' That woman, Mary Ellen Baker, couldn't be reached for comment, but news reports from the time show that Palin had threatened to fire Baker for not giving 'full support' to the mayor."Â Of course, both sets of presidential and veep candidates carry on the shameful history of remaining silent while convention protestors' get pushed far away from the earshot and eyesight of conventiongoers and while police abuse demonstrators and suspected demonstrators left and right, as I have blogged about during the last few days. Jon Katz

Posted by Jon Katz in First Amendment at 00:00

Tuesday, September 2, 2008

Keep the light shining on convention protestors' rights.

Arrest of Democracy Now's Amy Goodman (Sept. 1, 2008). On September 1, police in Minneapolis arrested at least four journalists covering the protests during the Republican National Convention, including Amy Goodman of Democracy Now. Did the police have any good reason to arrest these journalists? Assuming for arguments' sake, probable cause to have allowed the arrests of the four journalists. Police have discretion about whether to arrest (imperfectly akin to when a police officer gives an alleged speeder a warning notice rather than a ticket). Why was such restraint not exercised here? Of course, when journalists are silenced through arrest, that will be a convenient way for police in Minneapolis to look the other way about allegations of Constitutional violations of dissenters' rights to demonstrate. When reporters' cameras roll, police managers have trouble ignoring such coverage. Concerning Amy Goodman, her arrest likely feels like a cakewalk to her, compared to her close brush with death during the 1991 massacre of East Timorese by Indonesian soldiers. However, she and the two arrested members of Democracy Now's production staff need to be released so that they may return to reporting on what is happening in the streets of Minnesota, particularly since it appears that the so-called mainstream media are giving insufficient coverage to the RNC demonstrations. Jon Katz ADDENDUM I: Around 11:30 p.m. on September 1, Allison Kilkenny at HuffingtonPost reports that Amy Goodman's arrested producers Sharif Abdel Kouddous and Nicole Salazar have been released, and are eligible to be accused of crimes later on. Amy Goodman was released around 9:15 p.m.. Thanks to TalkLeft for having covered Amy Goodman's arrest. ADDENDUM II: Democracy Now's website posted a news release that includes the following: Amy Goodman was charged with obstruction, and felony riot charges are pending against producers Kouddous and Salazar. "All three were violently manhandled by law enforcement officers. Abdel Kouddous was slammed against a wall and the ground, leaving his arms scraped and bloodied. He sustained other injuries to his chest and back. Salazar's violent arrest by baton-wielding officers, during which she was slammed to the ground while yelling, 'm Press! Press!,' resulted in her nose bleeding, as well as causing facial pain. Goodman's arm was violently yanked by police as she was arrested." Of course, such police abuse is not limited to mistreatment of journalists during demonstrations.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, September 1, 2008

How will Republicans and police protect demonstrators' rights?

Â Bill of Rights.Â (From the public domain.)Â Â Now Republican leaders and Minneapolis/St. Paul government and law enforcement have their chance to show if they will do any better than the Democrats and Denver authorities to protect demonstrators' rights, during the Republican National Convention. Â The Ramsey County sheriff seems to be trying to say that the recent raid(s) on alleged anarchists is isolated to the alleged anarchists. Hopefully that is true, but that sounds questionable and still does not satisfactorily answer why law enforcement apparently encroached on the alleged anarchists' First Amendment rights in the process. Here is some information and opinion about the raid(s) and its aftermath: Â - For Labor Day, a protest march was planned, with organizers expecting tens of thousands of participants. Â - TwinCities.com reports: "The American Civil Liberties Union and the National Lawyers Guild filed motions in Ramsey and Hennepin district courts Sunday, seeking the quick return of some of the 'First Amendment-protected literature' that had been seized, said Chuck Samuelson, ACLU of Minnesota executive director. There were fliers and banners taken in the searches, mostly from a St. Paul center used by a number of groups, that people had planned to hand out or display at today's march, Samuelson said. They aren't asking for the return of 'any of the materials that are related to the prosecution of the crimes for which people were arrested,' Samuelson said."Â - TwinCities.com further reports on the National Lawyers Guild's insistence that the seized items from the alleged anarchists are ordinary household items, and disturbing confirmation by law enforcement itself about blackouts on letting people record searches: "The National Lawyers Guild has said the confiscated materials were common household items and that the RNC Welcoming Committee's Web site has never stated or discussed plans for violence during the RNC, including against law enforcement. Â "Also Sunday, Communities United Against Police Brutality President Michelle Gross released video [see the video here] of the first seven and a half minutes of Friday's raid. She was at the center and was ordered to the ground with the other people inside. She said sheriff's deputies turned off her video camera. 'We document these incidents and then to have them pick up and then turn off the video camera ... is grotesque,' Gross said. 'More than that, though, this was only the latest in a salvo of several incidents involving police attempting to block people from telling the story of what they're doing.' Her organization and the National Lawyers Guild filed a motion Saturday in Hennepin County District Court asking a judge to stop police from seizing video equipment and cellular phones used to document officers' conduct and cited other examples of it happening. [Ramsey County Sheriff Bob] Fletcher said Sunday that deputies would have turned off Gross' camera because law enforcement has 'the right to control the scene of anybody who is inside a search warrant. If she's out in the public, it's a different thing; but she was inside the scene.'"Â - Thanks to the above-discussed Michelle Gross for very calmly but insistently giving the police a good reason to permit her to keep her video camera running. Here is the video portion that ran, before the police cut off further video recordings. Â - Minnesota National Lawyer Guild chapter president Bruce Nestor was present during the execution of two search warrants. He said:Â "œPolice seized political literature, cellphones, computers, cameras, personal diaries, and many common household items such as paint, rope, and roofing nails. These items are present in almost any home in south Minneapolis and are not evidence of a crime ... Seizing boxes of political literature shows the motive of these raids was political. Sheriff Fletcher has staged a publicity stunt, violated constitutional rights, and misrepresented what was seized during the raids."Â - Are the police raids limited to the alleged anarchists (by the way, anarchists do not shed their Constitutional rights by being anarchists, and the Constitution cannot outlaw people from being anarchists)? If so, why did the police raid a home housing members of a group called I-Witness Video? The video here shows the Ramsey County sheriff followed by a member of I-Witness Video. Â - The apparently left/"progressive"-leaning Twin Cities Daily PlanetÂ further addresses conflicting accounts between law enforcement and activists about the police home searches. Â - Orin Kerr at Volokh weighs in on the matter, with a ratherÂ "law and order" bent, with many commenters giving a wide range of opinions. Â In any event, people can debate the real facts of the recent Minneapolis raids. This should not obscure the need to watch closely what the police are doing to demonstrators' rights, and for everyone to insist not only on preserving their Constitutional rights, but also to protect robust and extensive rights peacefully to demonstrate, because courts often give overly-crabbed interpretations of First Amendment free speech rights. Jon Katz

Posted by Jon Katz in Criminal Defense at 00:30

Remember people and their labors every day.

Labor Day parade (from Library of Congress's website). Â NOTE: This blog entry is duplicated and updated from my Labor Day 2007 blog entry. Â On Labor Day, salesÂ (handled by labor), vacations (serviced by labor), and the end of summer for too many people eclipse deep thinking and feelings about labor. Â Every day should be a day to care about working people, to consider them in all our actions, and to take them into account in our purchasing decisions. Â Millions upon millions of workers worldwide labor and suffer under unspeakably miserable conditions and pay, including

countless factory workers in China, whose communist revolutionaries came to power proclaiming justice for the working masses. Imagine, then, how bad the working conditions are for millions of people in countries whose governments and employers barely pay even lipservice to justice for workers. As always, when we think globally and start by acting locally, miserable treatment of workers often starts with the custodial employees emptying our wastebaskets and cleaning our toilets, the dishwashers and plenty of other kitchen workers in the restaurants we frequent, the seasonal farmworkers picking our fruits and vegetables, and the workers who produce the countless cheap products sold at Wal-Mart and countless other discounters (who often are not giving their own workers good pay, working conditions and careers). Those of us who are employers, managers and bosses owe our employees harmonious and just working conditions, fair pay and benefits, and full respect and dignity. A supervisory manager at a previous legal employer told me that he generally followed the misguided lesson from a more experienced teacher of not smiling to his students (when he was a teacher) nor now his new employees until Thanksgiving. Why? So that the employees do not get lulled into a false sense of security and substandard work? Every worker deserves a thanks for the good work s/he does, every day. Every kindness deserves a thank you every time. For those workers doing work that we do not believe in -- whether it be fighting in Iraq, arresting people for marijuana possession, torturing alleged enemy combatants, or anything else one disagrees with -- it remains essential to understand and see each such person as a human being, not to mistreat such people merely because they are mistreating others, but still to be firm in calling for a change of the system that leads them to do such work, and sometimes to call for them to turn away from such work. We have many options to better the lot of workers, starting with our own wallets. An unfortunate irony of voting with our wallets can be to leave jobless the very workers we wish to help. However, if we are willing to send our money and business where workers and justice are better served -- including a willingness to pay more money as a result -- hopefully the same workers will find jobs with the more just employers. For those in jobs involving mistreating other workers or non-workers, sometimes the only option is to leave such jobs if efforts fail to stop mistreating them. As one particular judge -- not one I looked to for much justice -- once perceptively observed from the bench, most people, including cops, are just looking to get through the day. This situation raises multiple issues, including how to approach persuading people. However, if most people just want to get through the day, how much effort are they investing in justice rather than in just surviving for themselves, their families, and their friends? On the topic of judges -- who also are workers, although often wielding tremendous white collar power backed up by the power of the state -- a colleague who has known many local judges since childhood and through the old boy/girl network recently told me that half the judges he knows in a particular county do the work out of a sense of public service, with the other half dreading the grind of the daily docket. No matter how some judges may not seem to give much of a damn about justice, or not seem to define justice very justly, they remain humans including those toiling much longer than a forty hour workweek. While still on the topic of judges, it is important to remember the work of their supporting crew, including the courtroom clerks, office staff, clerks' office staff, people cleaning the courts' hallways and bathrooms, and the list goes on. In his book *Working*, writer Studs Terkel has written of the misery so many face working eight hours daily (if they are fortunate enough not to be working longer days than that). Thus, we are left with the importance of balancing each humans' need to work to live -- rather than to live to work -- with the importance that each human put in sufficient effort and ability to justify being hired, kept, and sufficiently paid for the work performed. Daily, we are helped by working people. How often do we show them sufficient thanks and appreciation? Thanks, again, to everyone who now works for me, who has ever worked for me, and who has helped my clients along the way. Thanks specifically to my current support staff comprised of David and Younghee, who provide caring and effective service to our clients and thereby help me stay focused on my work at hand by my being able to have full confidence in them. Jon Katz.

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