

Friday, November 30, 2012

Apply proverbial Krazy Glue to your lips when police question you.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Police will try to make you feel very uncomfortable and even silly for not talking to them before you are arrested, if ever, probably including such lines as: - "If you are doing nothing wrong, why wouldn't you explain that to us?" - "If you were in my shoes, wouldn't your behavior lead you to investigate?" - "I need to get to the bottom of this. Why are you obstructing my just doing my job?" For some people, my exercises about replying with the mantras of "no", "I want an attorney", "I will not speak without an attorney" might not be enough to stay silent with the police, including when the police are double and triple-teaming the suspect, or are trying to divide and conquer the suspect with the help of his or her accompanying friends and family, where the suspect will feel uncomfortable not even answering such questions as "where are you headed/coming from" and "do you have any drugs or weapons?" A suspect might wonder why s/he should not say where s/he is going or coming from if that is not incriminating, but how does the suspect know it is not incriminating? What if the suspect mistakenly matches the description of someone who reportedly committed a serious crime in the vicinity where the suspect is coming from? Moreover, privacy is an important thing. Police are not entitled to know our business. If we answer police that there are no drugs or weapons in the car, what do we do with the cop's follow-up question requesting a search to make sure of the absence of contraband. What if the "consent" search then turns up contraband that you had no reason to know -- or else to remember -- is there? Consider all the people who have been in your car over time. What if some marijuana or other contraband accidentally rolled out of their pockets and into the car? What about if someone borrowed your car and had a handgun, and left it in the trunk before going to the bank, and forgot to retrieve it. When a cop stops a car with multiple occupants, how many of them are going to toss their contraband as far from them as possible, even if the contraband then goes into your lap or elsewhere close to your vicinity, sometimes without your knowing it, especially if it is nighttime? Not only are you giving up your privacy when allowing the police to search you, your car, your home, or your other property, but you are risking trouble that you may not have known existed. Perhaps a tube of imaginary Krazy Glue will do the trick to stay silent with the cops. Once you recognize that you are an actual or potential suspect in the presence of cops, open the imaginary Krazy Glue, and apply it liberally to your lips. Smack your lips shut, and breathe comfortably through your nose. Feel free to smile over your in and out breath. The only thing that quickly undoes Krazy Glue is acetone, which is found in nail polish remover. Otherwise, your lips are going to stay sealed a long while. If you get arrested and want to increase your chances of a reasonable bond, or release on your promise to return to court, you will need to release the Krazy Glue at the police station or jail to provide simple information about where you live and work (and for how long) and with whom. Beware police who mix together the foregoing basic booking questions with further investigatory questions of your alleged criminal activity. Once the cops start asking the non-booking questions, it is time to reapply the imaginary Krazy Glue to your lips. Terrence Vaughan and McKinley Scott learned the hard way what happens when you do not seal your lips shut when a police suspect. Police stopped their speeding vehicle, driven by Vaughan. The stopping Virginia state trooper witnessed four cellphones in the center console (which the trooper suspected indicated drug activity, due to the presence of more than one phone per car occupant), a nervous Scott, conflicting explanations between the two about their travels, and Vaughan's self-contradictory versions of his travels. The Fourth Circuit found that the totality of the circumstances provided reasonable articulable suspicion of criminal activity to allow a brief detention of the two for a drug dog to arrive to sniff the car. *U.S. v. Vaughan*, ___ F.3d ___ (4th Cir., Nov. 29, 2012). The drug dog arrived and alerted to the trunk, where police found over a pound and a half of cocaine. Vaughan entered a guilty plea to possession with intent to distribute cocaine -- receiving a ten year prison sentence -- conditioned on his preserving his right to challenge the stop, detention, search and seizure. Had the car's two occupants just kept their mouths shut, Vaughan may have won his motion to suppress the detention to await the drug dog. Then again, had Vaughan and Scott not left in the open four cellphones and had Scott not been acting so nervous, Vaughan's suppression motion would have been all the stronger. Krazy Glue is the word.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 29, 2012

Love your client. Do not belittle her.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. I strongly believe in loving my clients. When I started with the Maryland Public Defender's Office on my criminal defense path in 1991, I was riveted at a training session by a fellow very experienced public defender lawyer from over thirty miles away who insisted that we love our clients, and never ever create seating distance from them at counsel table, even if they are unbathed. Just fourteen miles away was my prior corporate law firm two blocks from the White House in a nice high-rise building that would not have trained about loving clients versus giving corporate clients ethical top service in an antiseptic way. While I learned great things about advocacy from some great and very smart lawyers at that firm, I felt like a member at a revival meeting when that public defender lawyer admonished us to love our clients. I felt I had arrived home, even though this lawyer was not sounding a theme sounded by many other colleagues in that agency. Less than two years later, that same public defender lawyer shot himself dead after finding himself in some dire straits. I had never taken the time to tell him how deeply and permanently his words resonated with me. I mistakenly assumed he knew how highly so many people felt about him. I should have spoken up. His words still resonate positively with me. About a year and a half after joining the public defender's office, one of the more highly experienced public defender lawyers approvingly pointed out to me that one of the assistant public defenders and prosecutors were laughing about a trial they had the day before together. I was disgusted, jumping to a conclusion that they were laughing about the client or his misfortune; that may have been judging on my part, but I could not imagine what else they were laughing about. Criminal defendants are humans and need to be humanized. If their own lawyers will not do that, who will? With indigent criminal defendants, they do not even get to choose who defends them; they must be treated with the same full dignity as clients paying from their own pocket. Classism has no part in criminal defense. Â Do I ever joke with prosecutors at my clients' expense? Sometimes, when they give me permission during my effort to negotiate a favorable resolution of their case, including dropping the prosecution entirely. But I seek my client's permission first before underlining to the prosecutor that my client "acted like a dingaling" the night of the arrest, but being a dingaling is not a crime. Â If I am going to joke about anyone in the courthouse, I prefer that it be about me. For instance, on the road to winning a bench trial for driving under the influence of marijuana, I objected to the prosecutor's asking the cop about my client's admission to past marijuana use. As part of backing up my objection, I said "My client's prior marijuana use has as much to do with this case as my prior marijuana use." The judge, who is one of the kindest people on the bench and off, and among the most favorable sentencers, is one of the toughest to get a "not" before "guilty" from. Â The judge good naturedly leaned forwards, saying: "Mr. Katz, do you realize that you just disqualified yourself from serving on the Supreme Court?" I replied: "Judge, I disqualified myself a loooooong time ago." Actually what I meant -- only having smoked the stinky weed five times in my life, and never after law school started -- was that I had set myself apart years ago from the political conformity that makes judicial nominees desirable to government executives to nominate and legislatures to confirm. More importantly, why would I want to rule in favor of a prosecution?Â Many of my clients feel like major fishes out of water in the courthouse, even if they feel as confident and revered as can be in their usual work and family roles. They do not need their angst increased by seeing me provide them anything less than my full compassion. It is my honor to do so.Â Â Love your client.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, November 26, 2012

Is waiting for D.C. medical marijuana dispensary openings like waiting for Godot?

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. By statutory and regulatory law, medical marijuana is permitted in Washington, D.C., for the limited ailments of cancer, HIV/AIDS, glaucoma, and multiple sclerosis. In practice, no medical marijuana dispensaries are open yet in D.C. Here is hoping that this delay will be no longer. On another note with medical marijuana, thus far health insurers are not paying for medical marijuana in medical marijuana states. This medicine can get expensive.

Posted by Jon Katz in Drugs at 01:00

Deeply thanking and bowing to Steve Swander, who departed his body November 24.

Some of the greatest lawyers are also very open to helping others rise as they rise. Steven Swander of Fort Worth, Texas, was one of those lawyers. I first met Steve in 2000 at my first meeting of the First Amendment Lawyers Association, of which he is the immediate past president. This tall, unassuming man was among the many FALA members who made me feel welcome to this group that includes many great First Amendment lawyers, defending adult entertainment, political activists and more. Steve never bragged (I can learn further from him there). He did not need to either, because his accomplishments spoke for themselves. In August 2001, I went for a great trail hike with Steve and fellow FALA members Gary Edinger and Allen Lichtenstein on a partly rainy day across the river from downtown Vancouver, British Columbia, and dinner thereafter. I last saw Steve at the February 2011 FALA meeting in Washington, D.C. He looked the same as always. I estimate that he was born around 1950. Then the news on November 24 came that Steve died after a serious illness. Steve is so deeply loved that the FALA listserv filled up with praises to him -- and on no other topic -- thereafter. Steve clearly did not seek out the praise of his colleagues. The praise came for who he was. Deeply thanking and bowing to Steve Swander, a kind, selfless, totally real and highly accomplished human.

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

Sunday, November 25, 2012

An organic vegan Thanksgiving feast.

Copyright Younghee Katz. Copyright Younghee Katz. Thanks deeply to my wife, Younghee, for creating a fantasy Thanksgiving organic feast for the body and eyes, and for taking the above beautiful pictures of our experience. On the plate are Brusselld sprouts sauteed with shallots, sweet potatoes, stuffing, mushrooms, cranberry sauce and multicolored tomatoes. All produce is from My Organic Market.

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

More lessons on the mindful, compassionate and taijiquan path.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Recently, I wrote the following words inspired by my mindfulness, compassionate, taijiquan path: - Krishna Das on Neem Karoli Baba: "It was the love then. It's the love now." - Sharon Salzberg: "Love and lovingkindness, compassion, are a tremendous force which can transform this world." - When we are not compassionate and open to all, how can we do so with any one person? How can we just switch such an approach on and off? - When we let ourselves repeatedly get bent out of shape by occurrences outside of us, how can we be truly content? - Wayne Dyer: "When someone squeezes you, puts pressure on you ... and out comes anger ... that is what's inside." - My ongoing challenge is to feel and act as calm and grounded and joyful in the courtroom battlefield ia I do with a group of meditators. - It is not automatically coldness nor indifference to not react with utter glee nor angst over events. Equanimity is part of nondualism. Approaching life with equanimity alone is insufficient. Compassion and empathy are essential. - With taijiquan sparring, intention interferes with strength and achievement. The same goes for meditation. The same goes for life. A challenge for me in trial work is to harmonize having a theory, themes and plan in the battle with the power of non-intention.- Once the framework of trial battle is laid, nonintention reminds me that I cannot control what happens outside of myself. I can only summon the best strength that I can from within. Wuwei-non-doing In the battlefield helps victory unfold.Â - Non-intention is engaging the now and in the now. Intention can include struggling with a future that may never happen. Â - Intention can breed hesitation, which, rather than strategic waiting, has no place in battle. The samurai who hesitates can lose his head. Â - Even when things seem mundane, like when cleaning the toilet, the profound and powerful must not be overlooked. Â - Rather than rolling the eyes over someone who seems annoying or heartless, it is better to recognize the person's potential greatness and Buddha nature. Â - One is not weak by having compassion for an opponent. How can we have compassion for ourselves but not for all else? By having compassion for ourselves, we are stronger. By having compassion for our opponents, we disarm them. Â - Can a truly content person ever get bored, even if eternally aware but not in a body, stuck in an elevator with Muzak, or in a Target store? Â - The moment is the only reality we have. Consequently, it is in the moment that we must persuade. Â - To hit the target, become one with the target, the bow, and the arrow, as detailed in Eugen Herrigel's Zen in the Art.Â - Upset is optional.Â - Mirabai Bush on mindfulness at work.Â - "Emotions are like waves. Watch them disappear in the distance on the vast calm ocean." -Bhagavan Das, from Be Here Now. Â - Article on handling ruts. I add: Practice mindfulness; good spirit/diet/rest/exercise; serving others; and non-attachment. Â - "A man too busy to take care of his health is like a mechanic too busy to take care of his tools." Spanish Proverb Â - Matthieu Ricard at Google, on TED, and in print. Â - Richard Davidson on mindfulness, at Google. TY listserv member for the link. Â - Michael Merzenic on thinking faster, focusing better and remembering more.Â - At her November 19 dharma talk in Washington, D.C., Sharon Salzberg underlined that others may notice our advances through mindfulness practice before we do. Mindfulness reveals the good and less pleasant; it awakens us. Â - D.C.-ares Dharma Punx meet every Sunday, 7-8:30 p.m., Yoga District, 526 H St., NE, Washington, DC. Â - Check out the December 1 D.C. Kirtan Fest. Â - How to sustain this sense and expression of powerful calmness no matter how heartless, underhanded or foul-playing my opponent seems? As Geshe Kelsant Gyatso says: "A controlled mind will remain calm and happy no matter what the conditions." Furthermore, Ringu Tulku writes that the concept "that all phenomena are devoid of coming and going ... means that an enlightened bodhisattva sees the truth, the way things are. This is seeing directly without adding any concept or philosophy. Within this clear vision there is not the slightest doubt about anything, so there is no need for clinging or running away. A realized bodhisattva has no dualistic view. Within this sheer and naked seeing, spontaneous compassion arises. Once we no longer feel compelled to cling to ourselves and fixate on our own problems all the time, we can look around and see everything clearly. We can perceive others' lives and understand how and why they experience their problems. Although we see that others are suffering greatly, we know that their suffering is almost needless. They are not doomed to be in pain, because their suffering just comes from a wrong way of seeing and reacting. If they could see how things truly are, they would not suffer anymore.

This is the understanding of an enlightened being." Ringu Tulku, Daring Steps Toward Fearlessness: The Three Vehicles of Buddhism at 58 (Snow Lion Publications, 2005).

Posted by Jon Katz in Persuasion at 00:05

Friday, November 23, 2012

When a key teacher admits to racial prejudice when "showing you mine so that you will show me yours."

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. In early 1995, I arrived as early as possible to catch for the first time my soon-to-be critical trial teacher Steve Rensch speaking at the Baltimore City Public Defender's Office. He wrote a great manual on preparing cases for trial. He was featured at the National Criminal Defense College, but I missed the session at which he appeared. When Steve walked in front of that room in Baltimore, he looked completely unassuming. Had I passed him on the street, I would not have taken notice of him. Then he opened his mouth, and I was transfixed and mesmerized during his entire talk, as he illustrated how we can all be great trial lawyers, even if we were not born with charisma or dazzle. To boot, I later learned that Steve eats vegetarian, as do I, after an experience with an injured bird. Steve spoke of the then-new Trial Lawyers College as an amazing place, even with my having already attended the National Criminal Defense College's Trial Practice Institute the previous summer. He was returning for the entire four weeks of the program. Motivated more by Steve Rensch's recommendation and presence at the TLC than anything else, I took four weeks out of my life to attend there, ten miles from the nearest paved road, living in a simple dormitory setting while spending morning through late afternoon revealing to ourselves and each other who we really are, working on becoming better people as an essential basis of becoming better lawyers, unlearning law school and law firm culture pressures to shed feelings and emotions, and incorporating all of that into jumping quantum levels in being persuasive in court. The TLC program I attended could have achieved its goals in shorter time -- and now the full-length program is fewer days, but includes weekend work, apparently -- and could have been better organized with little effort, so that we would not find ourselves cross-examining nursery rhyme characters. The TLC was nevertheless critical for me to further discover and awaken my own strengths as a person and lawyer, to learn from others, and to know that I had been right all along to keep my passions with me for my clients' causes and for social justice, feeling no longer isolated along that path, and with a nationwide network of other lawyers who were so deeply committed to being better lawyers -- and putting clients ahead of money -- that they would leave their families and law practices for four weeks on that path. Taking central stage at the Trial Lawyers College was Gerry Spence, with the college's full name being Gerry Spence's Trial Lawyers College. Together, Gerry Spence and Steve Rensch for me were a yin-yang powerhouse whose combination was much more powerful than the sum of their parts. Gerry is charismatic and a born persuader who struggled with many painful life experiences -- including his mother's suicide, the breakup of his first marriage, and alcoholism -- and has embraced that pain to make him all the stronger. Steve Rensch is captivating but not charismatic man, focusing heavily on methodology and preparation on the road to trial victory, and, in his own words, has never suffered substantial pain in his life, so fights for justice out of a sense of the need for fair play. Others may converse, or not, about whether the Trial Lawyers College is a cult -- and I have addressed some of the TLC's cult elements here -- but I focus on the good I have derived and continue deriving from the TLC. Although I have previously blogged that the Trial Lawyers College has forsaken opportunities to be much greater than it is -- without needing extra effort nor funding to do so -- what I learned there remains priceless. On top of that, I am deeply grateful to the numerous TLC participants who have dropped what they were doing to talk with me about my upcoming trials, and to the numerous TLC attendees and staff from Pennsylvania to Virginia who have ventured to my office on numerous occasions for weekend morning workshops to further prepare me and my clients for trial. Over the years, I have heaped many words of well-deserved praise upon Steve Rensch (who left the TLC by around 1997) and Gerry Spence. And now -- whether or not Gerry has cherry-picked his cases in order to have won all his jury trials -- Gerry has again risked maintaining his win record by returning to trial, after previously saying that his criminal defense of Geoffrey Feiger was his last trial, by leading the trial team pursuing money damages against the city of Council Bluffs, Iowa, and detectives whom Gerry claims are responsible for the wrongful conviction and years-long imprisonment of his client Terry Harrington, along with co-plaintiff Matthew Wilber, who is represented by a local Iowa law firm. The two plaintiffs already settled for \$12 million against the county. The trial began Halloween 2012. During jury selection, Gerry pursued an "I'll show you mine if you show me yours" approach to engendering trust from and convincing potential jurors to reveal their racial prejudices (his client is African-American), by saying: "Now, I've got another problem, and that is I told you I was born in a little town in Sheridan, Wyoming. I never saw a black man, or a black woman. I didn't know what black people looked like, and I went to the University of Wyoming where I never saw any black people. I've practiced for 60 years in the town of Jackson Hole, and other towns in Wyoming, where we have hardly any black people, and yet I find that I have something that I'm ashamed of. And that is there is something about me that I don't like, and I don't want to admit to. But I have a sense of prejudice, a little bit, against black people, and I don't know why, and I wish I didn't have it, and it makes me ashamed to admit it to you. I wonder if anybody else has that feeling. I'm all alone? Yes? Let me just say thank you." The foregoing approach is

straight out of page 117 of Gerry's Win Your Case. I read most of Win Your Case a few years ago, but must have skimmed past what he said therein about his prejudices about African-American people. The statement makes me more than just uncomfortable. TLC staff and attendees include African Americans, which possibly offsets Gerry's earlier life experiences where it seems the only non-white people he mainly saw were Native Americans. Gerry has long been committed to fighting for ordinary people. If he feels this way about African Americans, how widespread are such feelings by people who are not even committed to fighting for ordinary people? Yet, he has expressed such feelings both in Win Your Case and at trial a few weeks ago. Gerry knows that if he has such feelings about African Americans, plenty of potential jurors will have similar or harsher feelings than his about African Americans. Unknown to me is the response Gerry got from the potential jurors on this topic. However, he would have gotten no response had Gerry straightforwardly just asked: "Do any of you have any prejudices or biases that would lead you to give less weight to Terry's testimony or to the value of his life?" It galls me that such jurisdictions as Maryland and most federal courts let potential jurors be picked in such a sterile fashion -- with judge-directed jury voir dire rather than lawyer-directed voir dire -- that will not elicit honest-enough responses. Gerry Harrington's case has gone up the Supreme Court, settled with Pottawattamie County before being decided by the court, which originally granted certiorari on the following issue as framed by SCOTUS Blog: "Whether a prosecutor may be subjected to a civil trial and potential damages for a wrongful conviction and incarceration where the prosecutor allegedly violated a criminal defendant's substantive due process rights by procuring false testimony during the criminal investigation, and then introduced that same testimony against the criminal defendant at trial." Here is the Harrington trial docket, showing that the case proceeds to the twelfth day on November 30. A review of the most recent docket entries shows that the plaintiffs are still presenting their case in chief. The trial is in the federal Southern District of Iowa, and is worth catching to experience Gerry Spence and the rest of the trial. If you attend, please let me know.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 22, 2012

I've been suspected/stopped/arrested. Now what? Thanksgiving weekend edition.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Holiday time means more police on the lookout for people to arrest to meet their arrest quotas perceived obligations to the public. Watch out for speed traps, sobriety checkpoints, police watching for easy targets leaving bars, and more. Long ago, I lost track of the "aw sh*t" look on the faces of visitors to my office when I hand them my top ten list on dealing with the police or my Just Say No advice of rights video on dealing with police, even though such advice has been on my website for over a dozen years. Once in awhile, a potential client tells me s/he refused a search or to talk to the police, and I am pleased that one more line of defense is available for this person. Here are some tips to help keep police bored while on the job during the holidays and beyond:

KEEPING THE POLICE BORED - STAYING AWAY FROM THEIR RADAR AND HANDCUFFS - Practice zero tolerance getting behind the wheel for at least several hour after taking your last sip of beer, wine or alcohol. Better yet, call a cab or limousine, get a hotel room, or use a designated driver. All are less expensive than hiring me if you get arrested. - Police have a penchant for conducting dragnet arrests for everyone who is in the vicinity of illegal drugs, weapons, stolen property and other contraband. Consequently, think twice about getting into a car with questionable people, beware giving rides to strangers, and watch out if you are at a party or anywhere else where people are toking or snorting it up. Watch out also for those who throw their contraband as far as possible when the police approach; the contraband may fall at your feet. - If you are with people creating the smoked marijuana stink, you are a target for being searched, and for being arrested for any marijuana and other contraband found nearby. - Alcohol is a catalyst for many people to act their worst, whereas marijuana tends to reduce violent tendencies. There is little reasoning that can be done with an irrational drunk person at a bar or anywhere else. It is better to bow out of a potential arrest for a mutual affray than to risk getting your head bashed in or being arrested for breaking someone's nose in self defense. As to marijuana, unless you are in Colorado or Washington, or have the necessary medical marijuana documentation where it counts, I have no comforting words to give you about dealing with police when you have marijuana. - Alcohol can breed irrational action and criminal action, including sexual assault. Drink moderately, and beware the harmful actions of drunk people. - Speaking of sexual assault, not only does "no" mean "no", but the question where I practice law is whether the alleged victim consented to sexual activity even if s/he did not say no. If a potential sexual partner has had too much to drink (defining that line is not so easy), s/he might be found by a jury not to have consented. - Also speaking of sexual assault, casual sexual activity brings such risks as (1) statutory rape (where I practice, there is no defense to having sex with an underage person, even if s/he presents the most genuine looking of fake ID's), and (2) cries of rape by the partner who feels treated like trash after a one-night stand. - Unfortunately, no matter how cautious you are about keeping a low profile with the police, you may be targeted for racial profiling, geographic profiling (like when I drove a black car with D.C. license plates (a so-called source drug city) out of state), or stoner profiling. It is wrong and must stop. - **WHAT IF THE POLICE STOP OR DETAIN YOU?** - Silence is golden with the police. Even if your arresting officer was your wrestling team buddy in high school, the lines are drawn when the cop suspects you, and the cop is going to choose his or her job security and sense of law enforcement obligations before helping you get out of a jam. - Don't think for a moment that your pre-Miranda words cannot be held against you in a court of law. Police know that *Miranda v. Arizona*, 384 U.S. 436 (1966) does not apply before your liberty is restrained beyond a short moving violation stop nor for basic booking questions at the police station or jail. - Beware the jurisdictions where pre-arrest silence can be used against you at trial. In such jurisdictions, it may seem a Hobson's choice between talking and not talking to the police. Beware. - Your post-Miranda silence cannot be held against you. The police just do not tell you that, because they do not have to. - **HOW TO GET RELEASED PENDING TRIAL** - If stopped by the police, it is ideal to contact a qualified lawyer right away, although plenty of them are not so easy to reach after hours (but some, like I, get paged when called). The police may not accommodate such a request right away. However, by asking for a lawyer and saying you will only talk with your lawyer present, you have taken an important step to preserving and protecting your rights. - Many suspects have a tendency to try to talk their way with police out of an arrest, to try to avoid having to pay for a lawyer, in order to avoid having their loved ones or employers freak out worrying themselves sick about where the suspect is, and to avoid a conviction. Doing so is like struggling in quicksand, often likely to make you sink more quickly towards doom. - The police are obligated to bring arrestees before a judicial officer within a reasonable amount of time to set prerelease and bond conditions, or to set a date forthwith for a pretrial release hearing. Do your best to get a qualified lawyer at this and every other critical stage of your case. - Rather than trying to give you the heebie jeebies with the foregoing blog entry, when the above tips are followed, more court victories follow.

Posted by Jon Katz in Criminal Defense at 00:10

Celebrating Thanksgiving without eating turkey or other animals.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. The following blogpost is reprinted from my 2010 Thanksgiving entry. Many people's greeting for today's holiday is not merely "Happy Thanksgiving", but "Happy turkey day." Would you be eating meat today if you were shown and told in advance since infancy what you were really eating and how the animals are slaughtered, including the blood, guts, and untold suffering? Is it anything but advertising euphemism that meatsellers cloak animal corpses in such code words as hot dogs, hamburgers, pork, beef, bologna, sausage, bacon, ham, meatballs, and meatloaf? Soon after graduating college in 1985, I could no longer resolve all the toil I had spent advocating for human rights while chomping on burgers, chicken, and tuna fish. I responded modestly by cutting out all red meat, to distance myself further from my relatives in the so-called meat food chain. Three months later, I was at the Carnegie Deli, and ate a corned beef sandwich -- one of the most delicious meat items in the world for me of all time. I finished off the corpse in no time, with the most delicious rye bread, pickles, and fries on the side. A year later, I finally swore off red meat for good. A year after that, I learned how disgustingly gelatin is made. Completely grossed out, I then cut off all land animals from my plate. Two months later, I went to the Baltimore aquarium, followed by a visit to Little Italy for dinner. I felt ill at the thought of ordering marinara and shrimp, after having spent time with so many amazing and feeling fish at the aquarium a mile away. I later learned that it is not only lobster, crabs and shrimp that face the most gruesome of boiled/steamed-alive fish deaths, as I watched a fish being scaled alive at a Chinese supermarket a few years later, to be told by its buyer that chicken also is more delicious by plucking the feathers when the chicken is alive. I have never eaten meat fish or fowl again. In 2001, I cut eggs and milk from my eating. Egg-producing chickens and milk-producing cows get slaughtered for meat after they stop producing; their relatives who are not raised to produce eggs and milk get slaughtered earlier. Too many food-raised land animals are treated horrifically during their terribly short lives, including the calves who are slaughtered as babies for prized veal, after struggling in tiny cages in the dark without their mothers, iron or milk, to obtain the tender pink flesh prized by chefs and restaurant food critics. How does that bad karma not get transferred to the meat that is eaten? Human executions are excruciatingly painful, despite litigation geared to reduce the pain. No similar efforts are made to minimize the physical and psychological suffering of animals, as they are led to slaughter first seeing and hearing their brother and sister animals slaughtered before their very eyes. Unlike humans executed in American death chambers, food animals are methodically beheaded, stabbed, and killed otherwise. See this gruesome video giving a brief meeting of your meat. More videos are here. Even if most people are unwilling to become vegetarian, world hunger and food prices will still dramatically fall if people drastically reduce their consumption of meat, fowl, milk, milk products and eggs. There has never been an easier, more healthful, or more delicious time to live vegetarian; even supermarket aisles have infinitely more vegetarian choices than just six years ago. Restaurants have more vegetarian options than ever before, including Burger King and Subway with their veggie burgers (which may not be vegan, though, but it is a start). See how you feel about your health, your annual physical exam, the environment (including reducing methane pollution from animal farm flatus), the animals around you, and world hunger after making such a change in your eating choices. You may never turn back. For many years I kept my vegetarianism mostly to myself, figuring that everyone should be able to do their own thing. They may, including my own thing to speak up for the animals who cannot speak up for themselves. Happy Thanksgiving? It will be much happier -- particularly for the turkeys -- when people switch from eating turkey to delicious Tofurkey. Jon Katz.

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

Wednesday, November 21, 2012

How many judges are "sentencing guidelines judges" without saying so?

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Sentencing is a difficult part of the reality of criminal defense. Plenty of my clients avoid a conviction, and thus a sentence, but plenty do get convicted and sentenced. Consequently, when defending my clients for criminal cases, I take the following three-pronged approach to preparation: prepare for trial and pretrial battle, for settlement negotiations, and for possible sentencing. To do otherwise disserves the client. Advisory sentencing guidelines exist in all jurisdictions where I practice criminal defense. I say advisory, because the United States Supreme Court prohibits sentencing guidelines (versus mandatory minimum sentencing, which the appellate courts permit) from being mandatory. *U.S. v. Booker*, 543 U.S. 220 (2005). The upside to *Booker* is that the judge may sentence below the guidelines. The downside is that the judge may do the opposite, as well. Even after *Booker*, though, various colleagues refer to certain judges as "guidelines judges," meaning that they most often sentence within the guidelines. Even for judges who do not read all Supreme Court criminal law opinions -- and I would hope that judges would read every new appellate opinion controlling their jurisdiction -- they must be aware of *Booker*, which spelled a tectonic shift in making sentencing guidelines advisory only. Nevertheless, plenty of judges are so accustomed to treating sentencing guidelines as mandatory pre-*Booker* -- both as judges and as trial lawyers before that -- or have limited criminal law experience to begin with, that they may be very reluctant, uncomfortable or both to deviate too often from the sentencing guidelines. They are not permitted, though, to act counter to *Booker* nor any other Supreme Court command. In the foregoing context, last month the District of Columbia Circuit ordered a resentencing of Gregory Terrell, where his sentencing judge made it sound like he only deviates below the sentencing guidelines for compelling reasons, and had only gone below the guidelines twice before for compelling reasons. *Terrell v. U.S.*, ___ F.3d __ (D.C. Cir., Oct. 19, 2012). Terrell found the trial judge to have been giving presumptive reasonableness to Terrell's guidelines sentence, which a sentencing judge is not permitted to do. Thus, Terrell ordered that the defendant be resentenced. How does a lawyer convince a trial judge to treat sentencing guidelines as advisory only, and not as mandatory nor as presumptively reasonable? Slamming the controlling appellate caselaw on counsel table will not do the trick, nor will having a proverbial embolism in frustration do so either. Convincing judges -- and anybody else -- of anything requires a focus on inspiring the judge to bring out his or her best self, in part by recognizing that the judge, being human, is fallible, has prejudices, and is not superhuman. Even the most difficult judges can be swayed, not always immediately, and sometimes at a frustratingly glacial pace, but they can be swayed. Persuading others also starts by applying the magic mirror, and by cultivating and bringing out the best in oneself, including Gandhi's example where he was not ready to urge a child to stop overeating sugar before Gandhi himself stopped eating it. There is no "out there" for the mind. I have written more on persuading judges here, here and here.

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

Tuesday, November 20, 2012

D.C. Circuit reconfirms no retroactivity to narrowing cocaine sentencing disparity.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. In August 2010, the U.S. Congress passed enacted the Fair Sentencing Act ("FSA"), reducing the sentencing disparity for cocaine base/crack versus powder cocaine from 100-to-1 to 18-to-1, by increasing the quantity of crack needed to trigger the ten-year mandatory prison minimum. Crack and powder cocaine are pharmacologically identical, and should not have a sentencing disparity. Moreover, when the disparity is further narrowed, this should be done by increasing the quantity of crack needed to trigger any mandatory minimum sentences, rather than cynically reducing the quantity of powder cocaine needed to trigger mandatory minimum sentencing. Thomas Fields was convicted by a jury for "distributing 50 grams or more of crack and for possessing with intent to distribute another 50 grams or more." *Fields v. U.S.*, __ F.3d __ (D.C. Cir., Nov. 9, 2012). Originally set for a 2009 sentencing, he obtained a few sentencing date continuances. In denying Fields's third continuance request, the trial judge "explained that it was uncertain whether the FSA would apply to Fields and that it saw no reason to 'postpone every crack sentencing until Congress acts, because none of us knows when Congress acts, whether it's going to act, what they're going to do.'" *Hr. Tr. 6* (July 8, 2009). As we have previously held, this represents a perfectly adequate reason for denying a continuance. *United States v. Lawrence*, 662 F.3d 551, 553 (D.C. Cir. 2011)." *Fields*. "Fields confirms that the Fair Sentencing Act only applies to those sentenced once the Act became law, and does not apply retroactively, noting: "To be sure, the FSA, as interpreted by *Dorsey*, produces a certain degree of arbitrariness. Individuals who commit the same offense on the same day may receive different sentences based purely on when they are sentenced—a date determined by the vagaries of the judicial system and not anything related to the goals of sentencing. But "disparities, reflecting a line-drawing effort, will exist whenever Congress enacts a new law changing sentences." *Dorsey*, 132 S. Ct. at 2335." *Fields*.

Posted by Jon Katz in Drugs at 00:00

Monday, November 19, 2012

A prosecutor misguidedly dissents from my pre-emptively filing an objection.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. "Overcover risk," admonished my last boss, prior to my becoming my own boss in 1998. Among other things, meet court deadlines well in advance, send a confirming letter to an opposing lawyer close in time to his or her agreeing to a critically beneficial point, and never rely on a judge to extend a deadline or court date to be better prepared. Prepare, prepare, prepare. I already knew all of this, but learned the very phrase "OVERCOVER RISK" from him. Repeatedly, I face opposing counsel who dance on the opposite edge of overcovering risk, including failing to secure a critical expert witness before trial for no reason other than an overworked opponent, failing to show for a hearing scheduled by the lawyer on a motion to narrow my lawsuit, filing a second motion to extend the briefing deadline on the very day the brief is due, and failing to subpoena critical witnesses. A stitch in time saves nine, as well as lost sleep. Even the most prosecutorially-oriented judges are going to draw the line on how unprepared they will let a prosecutor get, particularly when the defense shows that s/he is fully prepared, which offers the judge a chance to move the docket along, rather than to keep the court's work clogged by yet another trial date continuance. Recently, I was talking with a prosecutor about my client's Virginia drunk driving case, and the prosecutor spiritedly took exception to my having filed a preemptive objection ("Objection") to the introduction of my client's certificate of analysis showing his blood alcohol content that registered on the breathalyzer machine. I saw no logic to such a complaint -- whether genuine or an attempt to throw me off. I smiled and told the prosecutor that I serve my clients well by immediately filing an objection to the certificate of analysis, lest I become a victim of a late delivery from the U.S. Postal Service of the prosecutor's notice ("Notice") of intention to introduce the certificate of analysis without witnesses. The time window to file such an objection is a mere fourteen days from the date the prosecutor files the Notice, Va. Code. Â§ 19.2-187.1, which means that I receive the Notice less than fourteen days before my deadline to file an objection -- when giving time for mail delivery and the possibility of mailing by the prosecutor's office the day after the filing date of the Notice, unless the prosecutor faxes me the Notice -- and I then need to allow for a time lag for my mailed Opposition to reach the court unless my staff or I hand-file the Opposition.Â Once I receive the prosecutor's Notice, I immediately file a new Objection. If I do not receive a timely date-stamped court copy on my Objection, I assure that the Objection is re-filed timely whether by mail or hand-filing. Routinely, I obtain court date-stamps on copies of all my court filings. More than once, I have had a judge say that s/he does not see a particular court filing by me. Without skipping a beat, I pull out the date-stamped filing and show it to the judge, thus removing risk to the defense. Routinely, I obtain proof of delivering copies of court filings to prosecutors by getting date stamps from their offices when my filings are hand delivered to them, and by faxing or emailing court filings on top of any requirement to mail or hand deliver such filings to prosecutors. That can be a pain, but is so very worth it when even the most upstanding prosecutor tells me s/he does not see a copy of one of my material court filings, and I produce the proof of delivery to the prosecutor.Â I have won two DWI trials by keeping out certificates of analysis, one where the trial judge agreed with me that the certificate was inadmissible without at least a sworn statement from the Virginia Department of Forensic Sciences, and the other where the judge found guilt of reckless driving instead of DWI, when the prosecutor did not bother introducing the certificate (nor a breath technician) after I had timely filed an objection to the certificate of analysis.Â Not long after the Virginia law instituted the above-referenced fourteen-day rule to object to a certificate of analysis, I watched in disappointment as a trial judge denied a criminal defense lawyer's request to extend the deadline to file an objection to the certificate of analysis, where the predecessor lawyer had missed the deadline. The judge said that he would give some leeway to an unrepresented defendant for missing the deadline, but not to a lawyer. The judge said he would not second-guess the predecessor lawyer's not filing the Objection, and left room that not filing the objection may have been strategic. There is no strategic benefit to not filing the objection.Â Overcover risk. Always.

Posted by Jon Katz in Criminal Defense at 00:10

Our office is open today through Wednesday.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. This week, I will be working full days -- including for meetings -- Monday through Wednesday, November 19-21, and will be off this Thursday (Thanksgiving) and Friday. I will be back in the working saddle the following Monday.

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

Sunday, November 18. 2012

Israel and Gaza: Time to ceasefire.

This blog is not only about criminal defense and the law, but about social justice. War always brings injustice. Less than four years after Israel went to war in Gaza, heavy bombing from each side of the border is now ongoing. Civilians are being killed on both sides, not just soldiers and other military people. I am not a full pacifist, and never have been, as much as I remain heavily influenced by the non-violent teachings of Gandhi, Martin Luther King, Jr., Jun Yasuda, and Plowshares peace activists. I believe in Israel's right to exist within secure borders. I also believe in Israel's obligation to protect everyone's human rights, and to exercise its military power with restraint. When Israel unilaterally withdrew from Gaza in 2005, the Israeli government clearly knew that its withdrawal would lead to even more violence and military buildup within Gaza. Rocket attacks have been ongoing over the years from Gaza into Israel. Responsive strikes have been ongoing from Israel into Gaza. What, then, motivated Israel at this point in time not only to make retaliatory strikes but to assassinate Hamas's Ahmed Jabari, whom Ha'aretz's editor-in-chief Aluf Benn (whether reliably or not) characterizes as Israel's subcontractor to minimize violence from the Gaza into Israel by forces beyond Hamas? Benn finds Israel's upcoming election to be a likely contributor to such timing. Gaza is densely populated. Even if Israel is doing its best only to harm those who are fighters in Gaza, too many of those killed and wounded in Gaza are civilians. Beyond that, there is no excuse to target media and propaganda facilities -- including to risk harm to those civilians located at such facilities -- which attacks make me wonder how much Israel is committed against censorship within its own borders. The situation is likely too complex for either side to be painted in black and white. That does not detract from the necessity to implement an immediate ceasefire, which is easier said than done.

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

Friday, November 16. 2012

How many officers disregard race in deciding whether to stop or arrest a suspect?

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. How many officers disregard race in deciding whether to stop or arrest a suspect? No more than one phone booth's worth, with room for comfort left over? When police consider race in deciding whether to stop or arrest a suspect, they do not admit it, unless they are comparing the broadcast description of a wanted crime suspect to the person stopped by police. In 2000, in the majestic United States Supreme Court building -- whose immediate surroundings are entirely shielded from the more rundown cityscape as close as ten blocks away -- all nine justices allowed police to take into consideration the running away from police in determining whether reasonable articulable suspicion of crime exists to permit a temporary Terry stop. *Illinois v. Wardlaw*, 528 U.S. 119 (2000). The four-justice *Wardlaw* dissent found no reasonable articulable suspicion to stop *Wardlaw*, mainly because: "In my judgment, Illinois has failed to discharge that burden. I am not persuaded that the mere fact that someone standing on a sidewalk looked in the direction of a passing car before starting to run is sufficient to justify a forcible stop and frisk." *Wardlaw*, 528 U.S. at 140 (Stevens, J., concurring and dissenting in part). Praised by dissenting-in-part Justice Stevens for pointing out well-founded innocent reasons to run from the police: Among some citizens, particularly minorities and those residing in high crime areas, there is also the possibility that the fleeing person is entirely innocent, but, with or without justification, believes that contact with the police can itself be dangerous, apart from any criminal activity associated with the officer's sudden presence.FN7 For such a person, *133 unprovoked flight is neither "aberrant" nor "abnormal." FN8 Moreover, these concerns and **681 fears are known to the police officers themselves,FN9 and are validated by law enforcement investigations into their own practices.FN10 Accordingly, the *134 evidence supporting the reasonableness of these beliefs is too pervasive to be dismissed as random or rare, and too persuasive to be disparaged as inconclusive or insufficient. FN11 **682 In *135 any event, just as we do not require "scientific certainty" for our commonsense conclusion that unprovoked flight can sometimes indicate suspicious motives, see ante, at 676, neither do we require scientific certainty to conclude that unprovoked flight can occur for other, innocent reasons. *Wardlaw*, 528 U.S. at 132. Flash forward to today, a dozen years later. District of Columbia police troll (I mean patrol) an allegedly high-crime area, within ten miles of my law office:Shortly after midnight on January 31, 2010, two uniformed Metropolitan Police Department officers on routine patrol in a "high crime area" of northeast Washington pulled their marked vehicle alongside three young [African-American?] men who were walking in the neighborhood. Officer Matthew Jones explained to the [African-American?] men that they were "not in any trouble," but that the officers would like to "talk to [them] for a minute" about some recent robberies in the area. The officers then asked the [African-American?] men if they would agree to a pat-down for weapons. Two of the men replied that they had no objections, and Officer Sean Kenney began to frisk them. The third man, Javon Henson, agreed to be frisked, but then came to his senses and declined a frisk. He ran away rather than walking away. In affirming the legality of the stop and frisk of Henson, D.C.'s Court of Appeals -- relying on *Wardlaw*, supra -- seemed to rely mainly on the high-crime area, the nighttime, and Henson's running away for justifying the stop and frisk. *Henson v. U.S.* __ A.2d __ (D.C., Nov. 15, 2012). Concurring Judge Anna Blackburne-Rigsby points out how much closer a call it was for her than for the two-judge majority to agree that the stop and frisk of Henson was lawful: "Had appellant simply walked away when the officers first approached him, without demonstrating other suspicious conduct, that scenario might compel reversal. Accordingly, I would simply stress that the totality of these factors, and not merely the evidence of flight in a high crime area, form the basis of our affirmation of the trial court's finding that when the officers seized appellant, they had reasonable, articulable suspicion that appellant was unlawfully armed." *Henson* (Blackburne-Rigsby, J., concurring). Thanks to local law professors Andrew Guthrie Ferguson and Damien Bernache (and to Judge Blackburne-Rigsby for referencing their article, in *Henson*) for proposing that prosecutors be required to present "objective and verifiable data on crime rates in particular areas" to justify a claim of a "high crime area" being part of the justification for stopping, frisking or arresting a suspect. "The 'High-Crime Area' Question: Requiring Verifiable and Quantifiable Evidence for Fourth Amendment Reasonable Suspicion Analysis" *American U. L. Rev.*, Vol 57, pp. 1587-1644 (2008). Is this the type of society we want? Where police repeatedly target suspects for their race? Where police try to draw a foul to see whether suspects will run away from them, in order to try justifying stopping and frisking them? Imagine if your children or other close relatives or friends were the victims of such police behavior? This scenario can change, but only when we join together effectively to put a stop to it.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 15, 2012

Love what you do. Do what you love.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. "The supreme accomplishment is to blur the line between work and play." Arnold Toynbee. Trial lawyers and everyone else are more persuasive when they are in the moment, honest with themselves and everyone else, caring, and enjoying the present moment. The foregoing approaches to life are more powerful and beneficial when applied for themselves alone, and not for any financial gain. Various people give me sparks of inspiration on the foregoing path, and in blurring the lines of work and play. They include Doug, an amateur magician at the Trader Joe's in Annapolis who delights his customers and himself with gags and magic as he does his work. A year after I bumped into Doug at his checkout line, I saw him again, and told Doug about my foregoing blog entry about him, to which he commented online: "I wish to express my sincere appreciation for the heartwarming observations that you made about me in your blog. I have not read *The Art of Happiness at Work* and wonder if I really need to. I truly enjoy people and in whatever encounter I have with others I try to draw a smile, laugh, or a dropped jaw. This simply adds to my enjoyment. My approach to life, which definitely includes magic, has awarded me with many accolades which cause me to be inspired and have a feeling of self worth. Your blog is another great trophy for me. Thank you, Doug." The late Randy Pausch delighted in a life always full of happiness, even when he knew he had less than a year to live, and shared that delight with the world. How does one delight in life when faced with constant huge hurdles, which is the constant lot of criminal defense lawyers? I have blogged about that many times when writing about finding calm in the eye of the storm, including with taijiquan. On the non-law-world level, an example of someone delighting in life to the hilt in the face of sizeable obstacles is the late J.B. Hutto, a masterful blues slide guitarist whom I had the privilege of experiencing -- and interviewing for my college ethnomusicology report -- at my campus pub in 1981 and again at a non-descript bar in Bridgeport, Connecticut, a few months later. J.B. Hutto had a deep love for creating excellence in music, and apparently never compromised on its quality for commercial purposes. The story goes that he gave up full-time music performing for eleven years after a woman grabbed his guitar at a nightclub where he was performing, and smashed it over a man's head. He became a janitor at a funeral home, continued playing music on the side, and, in 1963, after one of his musical mentors died, returned to playing. Videos of Hutto are here and here. Deeply thanking J.B. Hutto; Doug; my taijiquan teachers Julian Chu, Ellen Kennedy Len Kennedy, and David Walls-Kaufman; and everyone else who inspires me to love what I do and do what I love.

Posted by Jon Katz in Persuasion at 00:00

Wednesday, November 14, 2012

Behind Virginia's natural beauty is a tough criminal justice system.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Virginia has much natural beauty, including Great Falls, Shenandoah, Chinconteague/Assateague, and the many wonderful waterways around places like Gloucester for paddling a canoe or kayak. Nevertheless, to this day in Virginia, I still feel a jolt to my system when I see vehicles -- always trucks to this point -- proudly displaying the Confederate flag in front. I never experienced such visuals -- only seeing them in Virginia thus far -- until moving from New York to Washington, D.C., to attend law school, and staying in the area. This is the state where courts and other government buildings close on [Robert E.] Lee-[Stonewall] Jackson Day, where a confederate soldier statue pointing his rifle greets visitors to the Loudoun County courthouse courtyard, where a skilfully engraved likeness of Robert E. Lee greets visitors to the Culpeper Circuit Court clerk's office, and where a couple named Loving had to go straight to the Supreme Court in the 1960's to reverse Virginia's criminal ban on intermarriage between black and white people. Times change. In the 1980's, Virginia elected an African American governor, Douglas Wilder. Twice, a majority of voting Virginians voted for Barack Obama, our nation's first African-American president. Northern Virginia, for one, is in many ways a greater Washington, D.C., with transplants from all around the country and many parts of the world. Next needs to come radical change on the criminal justice front in Virginia, where criminal discovery rules are crabbed as to defendants' rights and defense posture, where police routinely jail arrestees for hours for alleged public intoxication -- even in a bar, where the owners want patrons to spend, thus resulting in plenty of intoxicated patrons -- for them to sober up first (even though intoxicated in public is not aailable offense); and where simple possession of cocaine and LSD is a felony, as is theft of anything worth \$200 or over. In Virginia, driving too fast isailable, so watch that speedometer, and make sure it is accurate. Why do I practice in Virginia, then? The answers partly come here and here about why I practice criminal defense at all in a criminal justice system that to this day is too unjust. I certainly like the in Virginia we get real lawyer-directed jury selection/voir dire, which is not the case in the surrounding jurisdictions of D.C. and Maryland, nor in the surrounding federal courts other than the Western District of Virginia, which also permits lawyer-directed voir dire. With the foregoing backdrop, praised be Virginia Court of Appeals Judge Elder, who yesterday was the lone dissenter in an opinion that held, in Judge Elder's words, "that driving at approximately 42 to 72 miles per hour above the speed limit, in a populated area with numerous cars around is sufficient to support a finding that appellant acted maliciously when he caused the traffic accident that injured four people." Knight v. Va., __ Va. App. _ (Nov. 13, 2012). The defendant was convicted of malicious wounding, which is a Class 3 felony, carrying five to twenty years in prison. As with my work in college with Amnesty International, where AI's watchword was that it is better to light a candle than to curse the darkness, I see the ongoing possibilities in making Virginia a more just place, even if when the pace in the right direction does not move quickly enough.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, November 13, 2012

D.C. Circuit vacates copyright infringement restitution order where no loss evidence was presented.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Last Friday, the U.S. Court of Appeals for the District of Columbia Circuit vacated a \$740 million restitution award to Adobe Systems, Inc., against a man who pled guilty to copyright infringement. The restitution order was vacated for the prosecution's failure to provide sentencing evidence of Adobe's losses from the infringement. Instead, the prosecution only provided evidence of the defendant's gains. U.S. v. Fair, ___F.3d ___ (D.C. Cir., Nov. 9, 2012).

Posted by Jon Katz in Criminal Defense at 08:00

Monday, November 12, 2012

Appellate court affirms \$300,000 judgment for morphing G-rated child images into sexual ones.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Last Friday, the U.S. Court of Appeals for the Sixth Circuit affirmed a \$300,000 civil judgment against lawyer-expert witness Dean Boland for having helped a child pornography defendant by morphing G-rated stock pictures of two children into sexual images. Doe, et al. v. Boland, ___ F.3d _ (6th Cir., Nov. 9, 2012). First Amendment and other defenses failed, with the Court pointing out that Boland could have reached his same goal, undiluted, by morphing images of adults. I have not read the whole opinion, but plan to do so soon. Wired provides further background on this story, including earlier efforts -- later tabled -- to prosecute Dean Boland for child pornography over his morphed images, and the success his morphed images may have had in the court results of the criminal defendant involved.

Posted by Jon Katz in First Amendment at 19:00

Sunday, November 11. 2012

Death penalty film claims to show hidden electric chair execution footage.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. The death penalty must be abolished. Thanks to a colleague for alerting me to a new film entitled Execution, which is having a limited run now through next week serially in Washington DC (yesterday), New York, Boston, Chicago, Atlanta, Austin, San Francisco. and Los Angeles at Regal Theaters. Apparently Regal will show the film more broadly depending in part on audience turnout for the limited run. Execution's website boldly proclaims to include hidden electric chair execution footage that was secretly filmed in 1995, confiscated, and never seen by the public until now. Of course, today the preferred execution method in the United States is lethal injection, which hides from view the torture suffered by the person being executed. The reports are legion of terrible suffering from lethal injection -- beyond the act of killing itself that is part and parcel of an execution, and beyond the death penalty being the ultimate form of torture. The trailer for the film, alone, shows very gruesome images, which is in keeping with the topic of the film. My colleague informed me of the film and its November 11 local screening just three days ago. I was not able to go. If you see the film, please tell me your impressions. Here is the schedule for Execution's screenings.

Posted by Jon Katz in Constitutional Law at 20:00

Putting Veterans Day into perspective.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. On Veterans Day, I reiterate that I believe the United States needs an effective military. However, I also believe that the military-industrial-government complex is dangerously overgrown; the United States has been too trigger-happy with the military and that effective diplomacy needs to be given more opportunity; and violence begets violence. Even though I am not a full pacifist, Gandhi and many other pacifists' messages are important to take to heart and are often very powerful and effective. I also believe that the United States military has been the source of too many severe abuses, atrocities, and imperialist expansion whether originating from the lower ranks, the highest echelons, or somewhere in between; and that the United States government repeatedly has used war -- and by now terrorism, as well -- as an excuse to stymie civil liberties. Using effective diplomacy and hemming in military excess is not impossible. Although I take it that America's military, military budget, and nuclear arsenal continued growing under his watch, Jimmy Carter "was thankful that although my profession was that of a military man - commander in chief of the armed forces, prepared to defend my nation with maximum force if I had to - I was able to go through my entire term in office without firing a bullet, dropping a bomb or launching a missile." (Esquire, January 2005). Many Americans at the time preferred the cowboy mentality of Ronald Reagan, who defeated Carter in an Electoral College landslide. Carter's full quote is: "The hostage crisis lasted almost a year. Most of my political advisers were urging me to launch an attack against Iran. I could have, in effect, destroyed Iran with one strike. And it would have been politically popular to do so. But in the process, I would have also killed thousands of innocent Iranians. And it would have undoubtedly resulted in the execution of our hostages... My family tied me back to the human element in the most important international, diplomatic and military decisions I had to make. And in the end, I was thankful that although my profession was that of a military man - commander in chief of the armed forces, prepared to defend my nation with maximum force if I had to - I was able to go through my entire term in office without firing a bullet, dropping a bomb or launching a missile." Plenty of members of the military see few other economic opportunities other than the military, including with ROTC coverage of tuition, preferences in hiring veterans for federal civilian employment, and opportunities to work with military contractors after leaving the military. The military is a huge business on the governmental and non-governmental sides, and in the civilian and non-civilian sides. How much healthier would our economy be if the military and criminal justice budgets were substantially shrunk? I have defended many current and former military people in civilian criminal court, and will continue to do so. I have also represented numerous peace activists, and will continue doing so. We all are connected. Our nation is too militaristic. That tide must be reversed. In short, Veterans Day should not be a day blindly to glorify the military, military service, nor soldiers. Instead, it should be a time to humanize soldiers and those they have harmed; to understand the psychological and physical wounds so many of them have inflicted, suffered and continue to suffer; and to recognize the sacrifices they have made, while maintaining a realistic and critical assessment of American militarism; recognizing the serious tradeoffs involved in using and threatening military force; and recognizing that soldiers are humans including those who will commit horrid atrocities and others who will try to stop the atrocities. One cannot expect to avoid military atrocities

when putting guns and other weapons in the hands of a huge number of soldiers, with a huge percentage having had very limited critical life experiences, no experience abroad, and little knowledge and understanding of world affairs. Similarly, one cannot expect to avoid repeated police misconduct when putting guns, tasers, handcuffs and the power of arrest over a huge number of people, many of whom also have limited critical life experience. The military and police are very undemocratic institutions. The United States honors soldiers with two federal holidays, which are Veterans Day and Memorial Day. Fortunately, we also have one federal holiday honoring a nonviolent activist, Martin Luther King, Jr. Gandhi and Martin Luther King, Jr., both were assassinated as they pursued justice through nonviolence. Further on the peace action front, refusing to be drafted into the military and to register for future military drafts are not automatically cowardly acts rather than courageous stands against militarism and abuse by the military, sometimes at the risk of being shunned by their own families and communities for doing so. The person who influences me most with the peaceful path is my friend and peace mentor Jun Yasuda. When soldiers refuse to follow inhumane orders from military superiors, and urge military superiors and colleagues to refrain from excessively and unnecessarily violent actions, they are taking steps that all military personnel must take, but which most apparently do not. The military is a necessary evil that causes death, maiming, and destruction -- during warfare and other combat -- without due process of law. My total opposition to the death penalty very much informs my strong preference for diplomacy before military action as a last resort, and to erring on the side of restraining military actions. We all are connected, not just humans with humans, but humans with all other beings. Once not-so-distant-cousins started shooting dead and maiming their cousins during the American Civil War, that perhaps spelled a culture in the American military and among American soldiers to more easily dehumanize the "enemy" in order to be more willing to kill opposing soldiers, and to see battles and wars as conflicts between good and evil, rather than in shades of gray, and rather than questioning the real motives of the government officials ordering warfare (thus the antiwar slogan "No war for oil" that started with Gulf War I).

Posted by Jon Katz in Jon's news & views at 19:10

Thursday, November 8, 2012

The anti-marijuana war continues crumbling, with Colorado and Washington in the lead.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Thanks and a deep congratulations to the marijuana legalization activists who have struggled, fought and persuaded for countless hours over the decades to make marijuana no more regulated than alcohol. Their efforts paid off in gold and diamonds on Election Day, with the legalization of recreational marijuana possession in Colorado and Washington. More details are here. With the foregoing law change in Colorado and Washington, no more should a cop's claim of marijuana odor permit a probable cause search of a car or anywhere else -- unless the cop has probable cause to believe the suspect possesses with intent to distribute an unlawful amount of marijuana or unless the feds get involved with going after alleged marijuana dealers -- thus helping reduce people's suffering from government encroachment on privacy and police tyranny (tyranny, at the very least, with the unnecessarily harsh tactics often employed by police to try to ferret out crime and to search cars, homes and elsewhere or contraband). This is a victory to truly savor, as the walls further crumble on the governments' anti-marijuana wars. President Obama and the rest of the federal government: The voters of Colorado and Washington have spoken. Please do not interfere with marijuana activities that are legal under applicable state laws, including medical marijuana cultivation, dispensing and possession that would be legal under the law of the state where the activity takes place.

Posted by Jon Katz in Drugs at 20:00

Persuading through being compassionate towards all, including oneself.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Recently, after being in a federal courthouse that bans cellphones for several hours, I left the parking garage and parked on the side of the road to check emails and make phone calls. While on the phone with my assistant, a car pulled to my side, and the driver insistently told me to make room for him, saying I was taking up more than one space. I told him I was on the phone and would make room for him, He repeated for me to move my car to make room for him. I replied: "If you want someone to do you a favor, you might want to speak nicely." He replied: "Listen, move the f**king car." I replied: "Are you going to be an a**hole today?" I made room. He parked. I finally came to my senses that my engaging this driver in conversation and the dozens was of no benefit to me, him, nor to anyone else. I drove off to another parking space to avoid any further confrontation.

When we are truly grounded, our feeling of contentment cannot be reversed so easily by others and by outside forces. My inspiration to follow that path is reinforced by a great quote I recently saw from Wayne Dyer, apparently from his *Ten Secrets for Success and Inner Peace*, which includes: "You can't give love away to others if you don't have any for yourself. You can't show respect for others if you lack self-respect. You can't give happiness away if you feel unhappy. And of course, the reverse is true." "This concept is simplified by a description of squeezing an orange." I once asked my friend and peace mentor Jun Yasuda if she ever gets angry. She does, perhaps at least out of frustration with the lack of better progress towards world peace. We all can get angry. The goal is to reduce and dissipate the anger -- which usually arises from fear -- and to express the anger in positive ways. By being kind and compassionate to ourselves and others, we are more persuasive, in and out of court.

Posted by Jon Katz in Persuasion at 19:10

Wednesday, November 7, 2012

We are open Veterans Day.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Our law firm is open Veterans Day, with our staff working 9:00 a.m. to 5:00 p.m. We close on all federal holidays EXCEPT for being open on Veterans Day and Columbus Day.

Posted by Jon Katz in Jon's news & views at 19:00

"What's a Klondike Bar?" More on the need for sensitivity to foreign language speakers.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. One day at a convenience store, I heard a man around sixty -- clearly American born -- inquire of the cashier: "What's a Klondike Bar?" I resisted the urge to proclaim it is a delicious combination of vanilla ice cream surrounded by chocolate (I was not yet a vegan at the time); in part because it seemed strange that at his age he would not have known what a Klondike Bar was. The cashier -- around 24 and also clearly American-born -- replied "A dollar." The customer replied "Thanks," paid and left. Those two men understood that the customer was asking the price of a Klondike Bar. I was left scratching my head about where English language usage had slid that such an incorrect usage of English would have been used and understood by two native English speakers. A client once told me about a federal administrative law judge -- clearly American-born -- who got irritated and impatient when asking him: "Are you "ell ee" or "ell eye"? English was his second language, and my client did not understand the question, nor did I. The judge got irritated and repeated the question. Still, my client did not understand. As it turns out, my client's name was Giovanni Vitale (I have made up his name here), and the judge was misusing the English language in her effort to find out if my client's name ended in LE versus LI. Next, how about the myriad native English speakers who misuse myriad as a noun ("I saw a myriad of people that night") versus using it correctly as an adjective. ("Myriad people swarmed the stadium.") Most police are not tested on their wordsmithing precision to be admitted to the police academy, and plenty of police reports bear that out. Police are taught to mess up English language usage even more by writing in the passive voice (possibly so as not to reveal which cop did what, lest the defense lawyer figure out whether the prosecutor's necessary witnesses have arrived to the trial date): "Two boxes of ziploc bags were found in the glove compartment." They are also taught to use English as if they were from another planet: "I exited my cruiser" (translation: I got out of my car); "We made a knock and talk" (translation: we went to the suspect's house to see if he would speak with us); "I responded to the T/A" (translation: I drove to the store after hearing a radio run about something suspicious there"); "I made contact with the owner" (translation: I spoke with the owner); and, then, the euphemisms ("While attempting to place the suspect in handcuffs, we escorted him to the ground; we offered to take him to the hospital") (translation: we tackled the suspect face-first into the pavement, breaking his nose and necessitating an ambulance.) Now, with so much garbled, unclear, and messed-up use of English by native English speakers -- even by various people who have gone to law school -- is it any wonder that even a very experienced speaker of English as a second language ("ESL") will often misunderstand plenty of what cops say to them, particular in the less-than-ideal circumstances of cops running on adrenaline, loud streetscapes with sirens and lights blaring, the fear and distraction of being forced to be with a police officer with a badge/power of arrest/taser/gun, and cops needing to move things along in order to return to the road to stop more suspects? Yet, particularly with judges insufficiently experienced with English as a second language -- meaning never having struggled to live in another country using a second language, starting with hoping that the corner restaurant does not mistake one's food order as requesting horsemeat -- too many judges do not allow sufficient room for those speaking English as a second language to misunderstand the police and miscommunicate to the police due to the nuances and hurdles of communicating in a second language, and for such suspects to be slower and more distracted in trying to follow a police officer's instructions (including field sobriety test instructions in drunk driving cases), to the point that my efforts to present the English as a second language theme to the defense can meet with skeptical judicial eyes (and jurors' eyes) at best. Let's face it. Not until the last twenty years have Americans recognized how critical it is to know a second language well to thrive in this global economy, seeing that up until the 1980's, international trade only made up ten percent of the American economy. Not so any longer. Consequently, those who went to secondary school and college in the 1980's and before are even less likely to have struggled to gain workable conversational abilities with a foreign language -- let alone the many who went to high school and college thereafter -- and less likely to accept that just because a speaker of English as a second language has been in the United States for even twenty years or longer, s/he always will understand his or her native language best. When a cop insists "He understood English just fine the night I arrested him," often the cop

is really exhibiting his or her lack of appreciation of the difficulty that ESL speakers have in understanding English, let alone further problems of ESL speakers (and native English speakers, as well) understanding police-ese in stressful situations; disingenuousness; or defensiveness to try to avert an acquittal based on foreign language issues. Bringing in a foreign language interpreter does not fully solve the situation for ESL speakers. Language interpretation is an art, not a science. Merely speaking two languages fluently does not automatically make one a qualified courtroom interpreter. Imagine the memory, intelligence and focus needed for a person to follow and simultaneously interpret what more than one party is saying? Not all courts have sufficiently rigorous standards for vetting interpreters, particularly when it comes to languages other than the most popular ones (including Spanish, French and Chinese). Not all interpreters have the patience to not cut corners when trying to interpret for someone who speaks too fast, too softly, or is not very intelligent, and to not cut corners so as to move things along, and to appease judges who want to move things along, to the point of failing even to ask judicial permission to seek clarification from the speaker. Lengthy interpretation (taking over two hours) calls for tag team interpreting to avoid exhausting an interpreter's throat or concentration. I have heard plenty of interpreters who seem qualified at first blush but then misinterpret either because they are daydreaming, or because they are fish out of water experiencing stagefright as they struggle with the stressful and fast-paced setting of a courtroom, or because they simply are not qualified. Today's blog entry was spurred by this past Monday's Fourth Circuit's re-stating "three types of evidence which tend to prove a translation was incompetent": "(1) direct evidence of incorrectly translated words; (2) unresponsive answers by the witness, which provide circumstantial evidence of translation problems; and (3) a witness's expression of difficulty understanding what is said." *Singh v. Holder*, ___ F.3d __ (4th Cir., Nov. 5, 2012) (slip op. at n.19, quoting *Perez-Lastor*, 208 F.3d at 778). What's a Klondike Bar?

Posted by Jon Katz in Criminal Defense at 00:00

Monday, November 5, 2012

Vote. Accumulated feathers sink the boat.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. For many decades, a huge percentage of registered voters in the United States have not voted even during presidential elections. The reasons are many, including apathy, registering irritation at the candidates and political system by not voting, being busy, and feeling that their vote will not count. I reply by saying VOTE. Accumulated feathers sink the boat. If you don't like the slate of candidates for president or other offices, then consider writing in a name of someone else, but vote. I want to see the two-party stranglehold on American politics ended, but expect not to vote for third parties this election so as to give my vote more meaning for each office up for grabs. In Maryland, where I vote, several state constitutional amendments also are on the ballot. As to the presidential election, I am not crazy about Obama, seeing him as no better than Bill Clinton, whom I was not crazy about. However, Romney scares me more than Obama about such matters as federal court nominations, with Romney destined to nominate judges who, on balance, are much more hostile to civil liberties than Obama's picks, both to satisfy his conservative voting base and to reflect his own predilections. I anticipate seeing at least one to two Supreme Court vacancies (Justices Ginsburg and Breyer are advancing in age, with Justice Ginsburg's health declining over the years, and must not be replaced by those to the right of Justice Kennedy; and Justices Scalia and Kennedy are advancing in years, and are best replaced by justices who on balance are better protectors of the Bill of Rights) and slews of federal circuit and trial court vacancies being filled by the next president. I do not want Romney making those picks. I also anticipate Romney will be more trigger happy than Obama with militarism. Obama has been no great prize for diplomacy and other peaceful options to war (including the U.S. military's assassination/drone missile attacks, and warfare in Libya to bring down Qaddafi), but Romney talks more like Rambo than Obama, and is likely to pursue a more bellicose, violent, expensive and jingoistic warfare and foreign affairs approach than Obama. If Obama wins, I will breathe a partial sigh of relief, and will shrug my shoulders about four more years of a president I am not thrilled about, who has repeatedly violated civil liberties -- at least with the war on terrorism -- versus civil rights involving anti-discrimination; and who prefers to be the law and order president rather than one who does much to protect the Constitutional rights of criminal defendants. Moreover, the president who has admitted to past cocaine snorting and who is reported to have enjoyed marijuana so much that he would have the car windows rolled up -- as a youth in Hawaii -- to enjoy the smoke to the further maximum, has even backed down from preventing prosecutions of medical marijuana dispensaries in states where their operations are legal. If Romney wins, I will acknowledge my role in his victory, with my not having donated a dime to Obama's re-election effort (out of my refusal this election cycle to play realpolitik when it comes to political donations) and with my not having said much about the campaign other than on my blog. In modern times alone, such people as China's Tiananmen Square pro-democracy demonstrators (huge numbers of which were murdered in June 1989 by the Chinese military in response to the protests) and Aung San Suu Kyi (who lived under house arrest for years in Burma, despite her party's win over the ruling party in government-permitted elections) -- and countless lesser-known people -- have paid stiff personal and family prices to seek the simple right to vote. It was not long ago that racists in the South inflicted violence on people who encouraged and helped African-Americans to register to vote -- and on the African-Americans who sought to register and vote -- and today many lawmakers have pushed laws to impose identification requirements on voters that hit legitimate voters who simply do not have such identification (seeing that the United States blessedly still does not require anybody to have nor carry an identification if not driving). Not until the early twentieth century did women win the Constitutional right to vote, much too late in American history, after African Americans won the same Constitutional right much too late. Vote, and do so with your conscience and as a fully informed voter.

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

Sunday, November 4, 2012

Of pork bellies, lawyers and their fees.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. "How much do you charge for a [murder/rape/drug felony] case?" the relative asks, for a criminal defendant stuck in jail pretrial having been denied bond or unable to pay bond. Sometimes the defendant has court-appointed counsel (some of the greatest criminal defense lawyers started as court-appointed/public defender lawyers, and many still are), and the family tries to find out the cost of a retained lawyer after guilty plea negotiations have fallen through or fear of the upcoming trial intensifies, with little or no familiarity with attorney fee ranges if they have just started to inquire. Some people asking about fees over the phone are, of course, trying to shop among lawyers without feeling like they are wasting their own time first to visit too many lawyers. Sometimes I am tempted to ask whether the same caller would call a shoe store asking the price of a pair of shoes, without mentioning the type, model and size to the salesperson. Likewise, how many people ask a doctor his or her surgery fees before visiting the doctor for a first time? I resist that temptation. This is my opportunity to start explaining how I set my fees, which is to start with a calendared initial consultation, where I will set my fee -- usually a flat fee for a pending criminal trial -- based on the individual circumstances of the potential client and the case. Speaking with a shoe store and doctor at the outset about their fees are more commonplace for most people than to seek a lawyer's assistance. Many people feel like fishes out of water talking with lawyers. A common refrain I hear from people who never have called a lawyer is: "I am new to this. I do not know what to ask or say," with some trying then to talk on and on, and others then seeking a cue from the lawyer. I welcome the opportunity to hear and respond to the concerns, hopes, and fears of potential criminal defense clients, including about my fees. This is the opportunity for both the potential client and I to determine whether we are a good fit for each other. I am happy to explain to potential clients how I arrive at the tailor-made fee -- usually a flat fee for pending trial case -- as well as why I do not negotiate on my fees (because I have set them through fourteen years of experience, calculated for my staff and I to give each client full time and attention and full firepower) and why I do not accept payment plans (among other things, late payments should not be a wedge in my relationship with my client; I want to agree on payment (or not) and then move fully into full representation). Some potential clients tell me of my moral obligation to serve justice by doing free and reduced-fee work. I do include such work, but it is I -- not the potential client -- who decides which people will receive my pro bono and low bono work. I look forward to the day when I have no need for an income and can provide all my clients with free service, but when that day comes, I still will be selective about who receives such service, which I usually focus on those with certain First Amendment-related matters, those who seem to have been victimized for their race or other status that should not be discriminated against, and animal rights activists. How do I serve equal access to justice in the way I set my fees? Fortunately, indigent criminal defendants are entitled to court-appointed counsel under *Gideon v. Wainwright*, 372 U.S. 335 (1963), and its progeny. However, in the states where I practice, Virginia pays non-Public Defender court-appointed counsel abysmally, and sets the hurdle too high to qualify for indigent defense counsel. While there are qualified lawyers who bill less than I, I still have an obligation to help equal access to justice, and am honored to do selected pro bono and low bono work. Consequently, I set my fees, and provide these tips -- beyond merely fees -- for choosing a criminal defense and DWI defense lawyer. Criminal defendants are free to place price above all else in selecting a lawyer, and some have insufficient financial resources to do otherwise, which is one of the reasons I advocate shrinking the criminal justice system. Decades ago, a system of uniformity was created at the Commodities Futures exchange, to sell pork bellies (for bacon), orange juice, coffee hogs, cattle and numerous other non-uniform agricultural products (but how do we call sentient beings agricultural products?) In my college economics classes, I learned that our studies assumed perfect competition, where all widgets are the same and where no competitor had a competitive advantage over the other. Lawyers, though, do not provide service and quality duplicating that of all other lawyers. The only way for a criminal defendant to find a qualified lawyer is through careful questions of the lawyer, homework, and tapping into networks that will know good lawyers to recommend. I am delighted to quote my initial consultation fee over the phone to callers. I bill for jail visits depending on how far away is the jail, how accommodating the jail will be with my arranging and pursuing the meeting, and how long the meeting is likely to take to prepare for and hold, followed by debriefing the friend or family member who arranged my visit. For non-jail visits, I will bill hourly for some meetings, a flat fee for some others, and none for still others. I will not quote a fee before the initial consultation takes place, not even a ballpark, except that I will sometimes provide some sort of rough minimum flat fee price range when quoting a substantial jail visit fee. I fit my fees and services to the potential client's goals and the defendant's case at hand, with the resources that I anticipate my staff and I will need to provide, while also focusing on my maintaining a moderate number of clients so that I may fully and effectively serve each of them. A pamphlet that I once saw being distributed at the D.C. Superior Court's criminal clerk's office advised people that most lawyers will take the time to speak with them by phone first before having a scheduled meeting. How could that be with a busy criminal

defense lawyer who often will be in the courtroom when people are calling? The lawyer is not going to pick up the phone in the courtroom, and may not be interested in phone tag rather than having the potential client set a discussion or meeting time through the lawyer's support staff. I am here to fully serve each of my clients, and bill to provide them the full firepower of me and my staff.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, November 2, 2012

Remaining powerfully serene and enchanted in the presence of once-detested opponents.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. A few months ago, for the first time in my lawyer career, a prosecutor had the audacity to open the door into the meeting room where I was conferring with my client, without a knock. Inside I was livid that a prosecutor would dare invade the attorney-client privilege inner sanctum. Reverse roles. This particular prosecutor is a rather recent law school graduate. Perhaps he did not realize that this no-knock door opening opened the door to violating the rule protecting attorney-client privileged communications. Perhaps he did not recognize the huge difference between criminal defense lawyers trying to catch conversations between prosecutors and police -- where no attorney-client privilege is involved -- and a prosecutor or cop eavesdropping on a lawyer talking with his or her client. Another prosecutor I know would not surprise me if I learned that he practices three hours of eye-rolling each night, followed by an extra hour of sarcastic sighing, all to play up to the judge (and hopefully not to the jury). Reverse roles again. I am a fly in various prosecutors' ointment and a booger in their lunch, there to serve nobody and nothing but my clients, the governing law, and lawyer rules of professional conduct. I have no strong friendships with prosecutors nor judges to seek nor keep. This particular prosecutor labelled me an obstructionist -- perhaps a wasted breath at hyperbole -- when I told him I was going to oppose his motion, made pretrial, to amend my client's criminal charging document, despite my solid legal grounding for opposing the prosecutor's motion. As circumstances had it recently, both of my DWI trials in the same day were with the two foregoing prosecutors. Instead of my wondering what kind of irritation they would try serving me that day (counter to being in the moment) or what kind of lessons they would teach (not in the moment, and everyone is my teacher, starting with my enemy), I cleared my mind of unpleasant expectations, irritating memories, and a list of snappy answers to heartless-sounding verbal bows and arrows, turning instead to the power of zero and Ho'oponopono. No sooner had I wiped my memory slate positive that these two prosecutors tried throwing no darts my way. Had they just come to their senses that my ability to be an a**hole cancels out their same ability, the magic of the magic mirror, or my helping them see me not as the previous fly in their ointment but instead someone who had no need to cause any irritation other than any irritation that may be unavoidable on the road to fighting for victory. How often when one feels like a monster is chomping down on his testicles does he learn that he is the one doing the chomping? There is no out there for the mind. I am reminded of a former lawyer with the Federal Elections Commission who told me of his encounter with an investigation subject who was cantankerous, rude, indignant; you name it. Just as Gandhi is said to have told a parent to come back in a week before he answered the parent's request to help get her child off his chocolate addiction (because Gandhi needed first to prepare by stopping his own chocolate eating), this FEC lawyer went to his hotel at the end of the day, meditated, and cleared the clutter and cobwebs in his being. The next day, the lawyer returned to the same man who was cantankerous the previous day. With the FEC lawyer's feeling all calm and grounded, the subject of the investigation was calm and no longer negative. How to sustain this sense and expression of powerful calmness no matter how heartless, underhanded or foul-playing my opponent seems? As Geshe Kelsant Gyatso says: "A controlled mind will remain calm and happy no matter what the conditions." Furthermore, Ringu Tulku writes that the concept "that all phenomena are devoid of coming and going ... means that an enlightened bodhisattva sees the truth, the way things are. This is seeing directly without adding any concept or philosophy. Within this clear vision there is not the slightest doubt about anything, so there is no need for clinging or running away. A realized bodhisattva has no dualistic view. Within this sheer and naked seeing, spontaneous compassion arises. Once we no longer feel compelled to cling to ourselves and fixate on our own problems all the time, we can look around and see everything clearly. We can perceive others' lives and understand how and why they experience their problems. Although we see that others are suffering greatly, we know that their suffering is almost needless. They are not doomed to be in pain, because their suffering just comes from a wrong way of seeing and reacting. If they could see how things truly are, they would not suffer anymore. This is the understanding of an enlightened being." Ringu Tulku, *Daring Steps Toward Fearlessness: The Three Vehicles of Buddhism* at 58 (Snow Lion Publications, 2005). When a prosecutor tries to get my goat, I return to the power of zero.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, November 1. 2012

Wax Tailor inspires to keep creating.

Perhaps I was asleep not to have known until today about Wax Tailor, when hearing his "Que Sera" on the sound system at the nearby natural food coop, fifty years after Alfred Hitchcock presented his own version of the song.Â

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

Roadblocks to prosecuting for non-listed cannabis analogues: They are all over the place, including chocolate.

By Fairfax County/Northern Virginia/Maryland/Beltway criminal defense lawyer Jon Katz. Defending DWI/ DUI/ Drunk Driving, drugs, marijuana/medical marijuana/cultivation, sex cases, felonies and misdemeanors. Fighting tirelessly for the best possible results for his clients. <http://katzjustice.com>. Anti-drug people in government keep trying to play catch up with producers of marijuana analogues by outlawing not only specifically-listed chemicals, but also analogues, for instance by calling them cannabimimetic agents. A defendant prosecuted for possessing or dealing in cannabimimetic agents has various defenses to consider asserting, including the following (always consult a qualified lawyer -- this is not advice -- and consider the multiple state and federal laws and regulations involved, and the ever-changing laws): - Does the product contain a listed prohibited substance? - Even if a listed prohibited substance is contained in the product, did the packaging or shipping material include notice of that, or did the product's supplier provide a chemical analysis listing that did not include any prohibited items? - Was the possessor on reasonable notice that any problematic substance was in the product? For instance, did the supplier provide a report from an independent chemist on the product's contents (and is the chemist's report accurate, and does it apply to all the supplier's product, or do various batches of the product have differing ingredients?) - Virginia, as a for instance, outlaws described cannabimimetic agents rather than all of them -- Va. Code § 18.2-248.1, but even when limiting the cannabimimetic agent listing, the outlawed components are so vast in number as to render the prohibition unconstitutionally vague and overbroad, without enabling the defendant to have the necessary knowledge of the illegal nature of the substance, thus barring a conviction. - To outlaw all cannabimimetic agents will be completely unconstitutional as entirely vague and overbroad, even covering such lawful substances as chocolate (thanks to a chemist who alerted me to the cannabinoid-chocolate connection). By the way, the foregoing oft-referenced short 1996 Nature article on chocolate's cannabinoid mimics/cannabimimetic agents discusses anandamide as a "brain lipid that binds to cannabinoid receptors." A review of several sources on the Internet seems to show the following fascinating definition of anandamide to be accurate: "Ananda in Sanskrit means bliss, The compound Anandamide is present in chocolates and cocoa powder. It is structurally the ethanolamide of arachidonic acid. Biochemist Daniele Piomelli and coworkers [who wrote the foregoing brief Nature article] isolated anandamide- from chocolate and cocoa powder."

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