Friday, February 1. 2013

Finding a niche in life, work, and livelihood.

By Jon Katz, a criminal defense lawyer, drug defense lawyer, marijuana defense lawyer, and DWI/ DUI/ Drunk Driving lawyer advocating in Fairfax County, Virginia, Montgomery County, Maryland, and beyond for the best possible results for his clients. http://katzjustice.com Â The economy goes up and down throughout history. Even when the economy overall is booming, a significant portion of people in the world suffer financially. When the overall economy is struggling, numerous people still do well financially. The factors causing a sizeable percentage of people's financial fortunes to be opposite the tide of the overall economy are many, and are the topic for another blog article. Today's blog article is about improving one's prospects for earning a living in the law by finding a niche in life and the law. Â One day, a more senior associate at my first law firm came into my office, in 1990,Â and recounted: "Yesterday, I walked into name partner Z----------'s office, and told him I don't feel I have a niche at the firm. He replied that I have two months to find a new job." I doubt the name law partner decided this termination from the top of his head. The decision either had been made and not yet communicated to this associate lawyer, or was being considered by the firm partners handling the decision, and the associate's niche conversation possibly made the termination decision easier to make. Â This lawyer had already been at the firm a few years. If he wanted to stay at the law firm (did he?), he might have considered finding a niche at the firm, rather than dropping a bomb of "I don't feel I have a niche" to a partner. If he was willing to put in the time, he could have not only sought his niche by seeking it with the partners and others at the firm (and with the firm's clients), but he could have also made more of anÂ effort at bringing clients to the firm, publishing articles that would have underlined areas of knowledge making him more worthwhile to the firm, and networked through local professional associations, attended relevant local business conventions, andÂ networked informallyÂ to have made him more valuable in the eyes of the law firm. Â This senior associate proceeded to tell me he was actively looking for a new job, but preferred not to work at a law firm anymore, and asked if I had any suggestions. What suggestions would I have beyond what already was likely obvious to him, in this city, Washington, D.C., full of opportunities with public interest organizations, trade associations, corporations, and government agencies?What was my niche, I asked myself. I obtained invaluable regulatory and pretrial litigation experience at this law firm with some very bright and helpful teachers. However, I was yearning to give back to society and not just earn a paycheck from a law firm earning most of itsÂ revenues from financial institutions and transportation companies. I could have sought a public defender (helping equal access to justice along the way)Â or public interest job earlier, but let myself be lured by the much higher pay at this firm, with an ideal of working in the private sector and doing substantial pro bono work. Some of the best law firm pro bono work was at some of the largest law firms, those generally requiring the law school grade rank (for instance the top 20%)Â and law review experience that I was not able to provide them.Â I reviewed my financial obligations and needs more closely and realized that I would not suffer financially to take a paycut -- to a certain extent -- to follow my dreams more, and joined the Maryland Public Defender's Office two years after starting law school. This was followed five years later by joining a civil litigation law firm for two years, where I tried over fifteen jury trials and several bench trials and honed my deposition skills and further honed my in-court and written persuasive skills. Then I became my own boss fourteen years ago, where I have benefitted tremendously from the experience in my prior work.Â By now, I have found a very satisfying niche. It starts with my practice focus of criminal defense, drunk driving defense andÂ First Amendment defense. For me, this is about defending the Bill of Rights daily, which has been my obsession for decades. I also found a way over a decade ago to do work for theÂ adult entertainment industryÂ -- including for adult video stores, strip clubs, adult webmasters, and escorts -- that usually involves First Amendment defense, criminal defense or both. My love of languages assists me with dealing directly with Spanish and French-speaking clients without needing an interpreter when we meet in person or by phone.Â I learned not to let naysayers get in my way. Numerous people told me that earning a living doing retainedÂ criminal defense is challenged by the huge percentage of criminal defendants who obtain public defender and court appointed counsel. Numerous people told me of the advantage I would have in being a prosecutor before doing retained criminal defense; I refused to prosecute. Many others told of the formidable obstacles earning a living defending civil liberties.Â Potential and actual clients sooner or later learn whether their lawyer enjoys life,Â enjoys the work s/he is doing, likes the client, and is willing to bust the lawyer's butt to fight for the client. When all those questions are answered with a yes, that is a strong niche for success in life and work.Â I have heard people talk about doing things they do not like in order to get ahead professionally, including staying in a room with a client smoking a stinky cigar (or acting sexist or racist), attending boring and even irritating social and professional functions, and joining country clubs and other organizations that do not interest them. I remember interviewing for a straight commission job selling life insurance out of college where the interviewer excitedly told me how one promising new insurance agent was networking at the Kiwanis club (my eyes glazed over at that) and where a newer agent told me how psyched he was about the job, and that with such a high turnover in life insurance sales, it was essential to be psyched. I was not psyched. I interviewed there in case my preferred jobs did not pan out, and also in consideration of the good income I might derive. A few weeks later I got a job working as a financial auditor at the Irving Trust Company

in Manhattan, then one of the nation's largest thirty banks. I was psyched about that job. The work sometimes was not exciting, but the new things I learned and new people I met by going to new parts of the bank every two to three weeks for a new audit was very interesting -- in addition to living in the middle of the Manhattan playground --Â topped off by a business trip for nearly a whole month to Japan and Hong Kong.Â I know someone whose parents paid the college tuition of him and his siblings only if they majored in accounting, to insure a positive financial return on their tuition investment. If a person wants to be an accountant, that is just fine. However, to take overly safe decisions throughout one's life is only so much of a life.Â Wayne Dyer makes a good point when he says that we all come from abundance, so why can we not lead an abundant life, in all ways (not merely by having a safe educational and work career that yields high grades and good income)? He points out that non-human animals find a way to provide for their needs through a natural rhythm and cycleÂ without stressing out. Humans can do the same. This does not mean that hard work does not increase one's chance of success. It does mean that when we find our niche in life and work, we have more energy, inspiration, and ability to succeed in life and work.Â The Dalai Lama has spoken ofÂ finding a way to be happy right now, no matter where one is in life and work. I agree. As a response to those studying accounting to earn a living even if they abhor the idea of being an accountant, Bill Evans underlined howÂ when we take care of the music, the music takes care of us. When a lawyer takes the best care s/he can of clients while always improving as a lawyer, his or her law practice will take better care of the lawyer.Â

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, January 30. 2013

Following my own medicine: Saying no to paying a moving violation ticket.

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 Â For my clients defending against drunk driving charges, I review their driving records. Most have a few points here or there against their license, a few have no adverse points, and the occasional client's driving record screams such a lead accelerator foot that I want to assure s/he is nowhere near me on the road before I hit the road.Â Â A good driving record can help, and certainly will not hurt, in trying to negotiate a desirable outcome in a DWI or other jailable traffic case, and in arguing one's case to the judge if convicted. Plenty of times, my clients rack up moving violation points by not going to court to contest the moving violation charge, and instead paying the ticket. Â Yes, it is a time hassle to take off from work to go to court to see if the cop shows up, and to not know how to handle one's case without a lawyer. Paying a lawyer to defend a non-jailable moving violation may not always seem a good investment against still losing and paying the court fine and costs on top of the lawyer's fee, when compared to how much one's insurance rates will increase from the ticket and whether the driver is likely to have the points haunt him or her any more than that. Â I get so few moving violation tickets against me, that I did not even realize until this month -- when my 60 in a 45 mile per hour speeding ticket hit the Virginia courts online docketing system -- that plenty of lawyers send direct mail offering their services to people charged even with non-jailable moving violations. I received at least ten such letters, and this is for a rather rural county over two hours from me. I stopped reading after the third letter, with all of them providing me a mix of warnings about the ticket's following me if paid and not contested, with some of the letters so generic that they were also geared towards those charged with jailable reckless driving (which required going at least five more miles per hour than I was clocked at), with all of them offering to go to court without needing my presence, and with one of them quoting a fee of $175.Â I rarely defend people charged with non-jailable moving violations. I much more enjoy defending people facing much greater risks in their lives, and charge a significant consultation fee to discuss non-jailable moving violation cases, since I am still investing my time away from existing clients to talk with moving violation defendants and to offer a full analysis of their defenses. (I tend to not charge a consultation fee to talk with people charged with drug offenses, DWI, and weapons, under the view that they have so much at stake that they are more likely to be willing to hire a lawyer and to look for more than the least expensive lawyer.) I tell people with such tickets that they can find a lawyer charging substantially less than I, but some people still hire me for such charges. Once hired, I defend as doggedly as I would for a more serious case. I advise my client to provide me his or her recent driving record; I sometimes advise to do a live half-day or full-day driver improvement class and to have his or her speedometer checked for accuracy; I see whether the prosecutor gets involved in negotiating such cases; and I go in fully prepared for trial, including to challenge the police officer's method of measuring my client's speed, while arguing that no speed testimony should be admitted into evidence without admissible evidence -- I argue for live rather than documentary evidence -- that the speed measuring device (laser, radar or speedometer) was properly and correctly adjusted for accuracy and certified therefor. Seeing that reckless driving based on speed is jailable in Virginia and risks driving suspension up to six months, my work on such reckless driving cases is directly related to the defense I provide for non-jailable speeding charges.Â Â Two months ago, I just got off the main highway onto a secondary road in Prince George County, Virginia, on a beautiful day, on the way to a neighboring county's prosecutor's office to view and copy a substantial stack of evidence in my client's felony case. Soon after getting onto the secondary road, a police car started driving behind me. Not knowing whether he was merely coincidentally behind me, I did my best to be slightly below the speed limit, but he stopped me anyway within a minute and ticketed me for going 60 in a 45 mile per hour zone. He was using radar, as the ticket says, which meant that any speed calculation was done before the office started driving behind me. He was amiable, gave me the ticket quickly rather than having me wait and wait for him to run an open arrest warrant check on me and a stolen vehicle and license plate check (common and authorized for officers to do, unfortunately, with stopped cars), and I was off to my ultimate destination within less than five minutes. Â Â It did not make sense for me to drive such a long distance, uncompensated, to challenge the ticket. Instead of opening any more direct mails, I reached out for defense or a referral -- in my absence -- to a very competent-seeming colleague who regularly handles non-jailable moving violations farther away from this courthouse, and he gave me one referral, telling me that the lawyer is not always good at calling back quickly, and I do not believe he called back. In the interim, I received several responses to my simple email to several lawyers found on a Google search for "Prince George Virginia traffic lawyer" (when facing a jailable charge, it is important to go much more in-depth in seeking the right lawyer than merely relying on such a Google search and an email conversation with the lawyer), saying: "How are you doing? Attached is the docket in my Prince George General District Court speeding case for 60 in a 45 set for January _, 2013. Please tell me your fee [I myself do not quote fees without a scheduled consultation first] and the extent to which it is possible to negotiate such a ticket to a lesser offense in this county."Â Â I received several emails back, but only one lawyer, Christian Parrish, answered the second question,

in addition to my first question, saying that it might be possible to negotiate to a lesser charge. As he requested, to retain him I paid $250, and got him my clean driving record and the speeding summons. His legal assistant was a pleasure to deal with, and he spoke with me briefly the day before my trial (I was the one who delayed seeking a lawyer until two days before trial, and hired him the day before) with a likeable and professional manner. For $250 for Christian's total fee -- and knowing the score in defending such cases -- I was not about to engage him in lengthy conversation, which did not seem necessary in the first place. Before he got back to me with the result, I looked online to see that Christian had gotten my speeding ticket reduced to a no-point infraction of defective vehicle equipment! I know I was beyond giddy at winning a drunk driving trial the day before (after a would-be damaging evidentiary ruling), but I was also giddy at the great result Christian obtained without my even having had to drive to court. I can pay the defective equipment fine and cost of $150 online and it is done. Moving violation tickets can significantly increase government treasuries, and here the government got my money in the mix, but without points against my license. Â Â Now when my clients ask why they should contest every moving violation charge, lest it come back to haunt them in a drunk driving or other jailable traffic offense, I can point them to my own practice of contesting the occasional moving violation charge against me, even if that means considering hiring a lawyer to appear in my stead, in circumstances and courthouses where that is permitted. Â Thanks again to lawyer Christian Parrish of Midlothian, Virginia, for having delivered me such great results.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, January 29. 2013

Winning at trial after a would-be damaging ruling.

CASE RESULTS DEPEND UPON A VARIETY OF FACTORS UNIQUE TO EACH CASE, AND DO NOT GUARANTEE OR PREDICT A SIMILAR RESULT IN ANY FUTURE CASE UNDERTAKEN BY OUR LAW FIRM.Â Va. R. Prof. Cond. 7.1(b). Â 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 . Â Dare to challenge a judge's evidentiary ruling, and s/he might growl: "I have already ruled, counsel. Move it along." The judge may not be growling only to directly address the lawyer's behavior, butÂ alsoto scare the lawyer's client so much that the client will beg the lawyer not to upset the judge too much. Â Give into a judge's wrong and damaging evidentiary ruling, and risk irreparble damage. Â With the foregoing in mind, recently I went to trial in a Virginia driving while intoxicate (DWI) case. I anticipated that our victory relied on convincing the judge that probable cause was absent to arrest our client, because failure to suppress seemed nearly inevitable for our client's blood alcohol content test to come into evidence, to be relied on by the judge as accurated, and to lead to a conviction for driving well over the 0.08 legal limit for blood alcohol level.Â At the suppression hearing, the prosecutor presented the defense with a mixed bag of damning and redeeming evidence. Damning was my client's one-car accident leading his car to smash into an embankment, very recent alcohol drinking activity, and all six clues for the nystagmus test (with the trial judge incorrectly assessing the HGN results as very bad). Redeeming for us was that the ground was wet from recent rain, my client told the officer his car skidded on the wet road, he did great on the so-called standard field sobriety tests, other than the HGN,Â and showing no clue other than stepping off the walk and turn line but once. Also helpful was that the judge sustained my objection to the officer's testifying from his notes, leading his testimony to be more watered down against my client than his actual police report. Hallelujah!

On redirect, the prosecutor asked the officer (this exchange is to my best recollection and not verbatim)Â Prosecutor: What was the result of the handheld preliminary breath test result? Â Jon Katz: Objection. (Available bases: Absence of the officer's telling the defendant he did not have to take the test. Absence of the officer's saying it could not be used for guilt-innocence determination. Absence of showing that the preliminary breath test machine was a model approved by the Virginia Department of Forensic Sciences. Absence of proof that the machine had been recently and correctly calibrated for accuracy and that the oficer was properly trained in operating the machine, was properly operating it, was properly instructing my client in using the machine, and was properly reading it. Had the judge let in the PBT result, the result would have been shown to be well over the 008 BAC legal limit, and the judge would have likely found probable cause to arrest my client.)Â Judge: Overruled. (Or: I have already ruled, counsel. Move it along.)Â Jon Katz: Judge, the law prohibits this evidence without a showing that the PBT machine model used was one approved by the DFS and properly satisfied. (BINGO! Responding to an incorrect ruling with the Written Law.)Â Judge: Commonwealth, lay your foundation. Â Prosecutor: What model PBT machine did you use? (The judge already has overruled my objection that this PBT line of questioning exceeds the scope of my cross examination of the officer.) Â Officer: I do not recall. (Praised be this officer's honesty here.)Â Prosecutor: Judge, I will now call the DFS blood technician to establish the PBT machine model use . (I highly doubted she would know, and she did not.)Â In arguing that no probable cause to arrest existed, my focus included: "How many convictions do we see for DWI where the field sobriety tests are this excellent? The law directs us to look at the totality of the circumstances."Â The judge proceeded to say that the evidence was close on probable cause, but that he was ruling in our favor, and dismissed the case. Â In the moment, I risked the judge's irritation at my asking him to revisit a ruling that had no basis in the law. Had I done otherwise, we would have lost. Instead, we won.

Posted by Jon Katz in Jon Katz's victories at 00:00

Sunday, January 27. 2013

Murray Janus's positive example lives on with his criminal defense colleagues.

Murray Janus, from Richmond Times-Dispatch.Â Â Around 1994, Murray Janus --1981-82 president of the National Association of Criminal Defense Lawyers -- stood up to speak for his portion of the NACDL's continuing legal education program in Washington, D.C. He spoke kindly and confidently, with an economy of words, with a southern accent, obtained from birth in his native Virginia in 1938.Â Murray was a consummate gentleman who found a way to fight zealously for his clients while maintaining a graceful manner, without sacrificing his clients' interests in the process of his kindness. Murray impressed me for being able to effectively defend his clients without needing a big ego, and while maintaining a t'ai chi calm. Â Â I last saw Murray around two years ago as I arrived at the Chesterfield, Virginia, courthouse as he was going to his car. Murray briefly and colorfully regaled me briefly with his morning's interesting experience in the courtroom, before going on his way. Â Yesterday, Murray left his body. The well-deserved criminal defense lawyer listserv plaudits are already coming in. Murray lives on, including his influence on me to continue pursuing the path of calm and compassion while fighting zealously for my clients.Â I never asked how Murray felt about growing up and practicing law amidst Virginia's virulent Jim Crow, which continued when he was sworn into the Virginia bar in 1963, and which likely spilled over into bigotry towards Jewish people, and Murray was active in the Jewish community. I figured that he had transcended such artificial human-created barriers, and that he would have pointed out that virulent bigotry and the hope of eradicating it was not bordered at the Mason-Dixon line.Â Murray was born in Virginia, and apparently stayed there all his life except for his college years in Dartmouth. Â Â The first time I called Murray for his feedback on a Richmond judge at least a decade ago, he could not have been more gracious and generous and on the money with his time and thoughts and kindness. Â When I first heard Murray talk, he spoke of a particular chief prosecutor as a class act. The same is what I think about Murray.Â Â Deeply thanking and bowing to Murray Janus.

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

Invitation to the January 29 D.C. Contemplative Law Group gathering.

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 . Â To all lawyers, judges, law students, and legal professionals: This past June, I took on the role of coordinating monthly meetings of the D.C. Contemplative Law Group and co-administering its email listserv. All of you are invited to join our email listserv and our monthly gatherings, including our following January 29, 2013, gathering at Bua Thai Restaurant. Just let me know. We usually meet the last Tuesday of each month from 7:00 p.m. to 9:00 p.m., as with this month's gathering. Here are the details for our next meeting: Bua Thai Restaurant, January 29, 2013. 1635 P Street NW,Â Washington, D.C. 20036, (202) 265-0828. The meeting runs from 7:00PM to 9:00PM. Some people often come as early as 6:45PM. Parking is available across the street at Colonial Parking if you do not find street parking. The nearest subway stops are Dupont Circle and Farragut North. Â We order dinner, do guided mediation for 20 minutes (we have a few members experienced to guide meditation), and eat dinner that includes a discussion led by one of the members. Not one who is big on traditional county and state bar association activities, I feel that these Contemplative Law Group gatherings are a great way to further powerfulness as a lawyer by furthering mindfulness practice while also better understanding that everyone is interconnected, and to use that understanding for a better advantage in serving clients.Mindfulness and meditation by now are in the mainstream in society, where they always have belonged. Here isÂ my blog entry on the June 2012 contemplative law retreat at Blue Cliff Monastery. Please RSVP to Jon Katz, jon@katzjustice.com, 301-495-7755, ext. 224. We already have numerous people confirmed. I look forward to seeing attendees there.

Posted by Jon Katz in Persuasion at 01:00

Friday, January 25. 2013

D.C. Circuit greenlights DEA's business as usual in maintaining marijuana as a useless drug.

By Jon Katz, a criminal defense lawyer, drug defense lawyer, marijuana defense lawyer, and DWI/ DUI/ Drunk Driving lawyer advocating in Fairfax County, Virginia, Montgomery County, Maryland, and beyond for the best possible results for his clients. http://katzjustice.com Â Â Image from public domain.Â By now, scientists and physicians examining medications know that marijuana is effective and relatively safe medication. However, marijuana has been politicized into the criminal realm for over seventy years in the United States, listed as a Schedule I drug, meaning that it has no beneficial medical uses. Â Whether or not the federal demonization of marijuana has been influenced by a desire to fatten drug companies' and synthetic material companies' wallets -- as urged by the late Jack Herer (whom I liked very much when I met him a couple of times in the early Nineties) and many others -- the drug companies do in fact benefit from marjuana's remaining crimnalized, because nobody needs to go to a pharmacy to use marijuana, rather than to just grow it in the backyard or with hydroponics. The vast majority of people today have lived inÂ a society where it is a given that marijuana is illegal, at least until Colorado and Washington legalized it for personal possession, and over a dozen states legalized it for medicine. Progress marches on, but too slowly for legalizing maijuana. Â State laws legalizing marijuana for medicinal use, and legalizing and decriminalizing personal possession of marijuana recognize that the Schedule I moniker makes no sense. Emeritus Harvard medical school professor Lester Grinspoon points out that FDA approval of new drugs costs at least $200 million by the applicant. Absent a billionaire donor coming forward, suchÂ study will not be done with marijuana, and we will be left with anecdotal evidence, Grinspoon points out, to demonstrate the medical benefits and limited harm of marijuana. A group of pro-marijuana activists recently petitioned the U.S. Drug Enforcement Administration to re-open consideration of rescheduling marijuana down from Schedule I. The DEA declined, and the U.S. Court of Appeals for the D.C. Circuit this week ruled that the DEA was within the law in so ruling. Americans for Safe Access, et al., v. DEA, __ F.3d _ (D.C. Cir., Jan. 22, 2013). Â Consequently, with the DEA's foregoing position and with the Obama Administration's continuing zealous prosecution even against marijuana cultivators and sellers for medicinal purposes where their activities are legal under the law of the states where they operate, we must continue to push beyond the court system to legalize marijuana for medicine, for personal use, and for all other purposes.

Posted by Jon Katz in Drugs at 00:00

Thursday, January 24. 2013

The power of community

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 . Â How many people factor community in their choices of college and graduate school, jobs, cities to live in and homes to live in? We are challenged on a daily basis to transcend living a fragmented life to a life connectedÂ with others,Â with nature, andÂ with all the elements around us. Daily life challenges us with substantial work hours and commutes, and limited time to attend to such basics as a doctor's visit, to spend quality time with ourselves/family/friends; and to provide ourselves sufficiently balanced nutrition and rest. Â Meditation and mindfulness certainly help alleviate the foregoing challenges. So does benefiting from a supportive community of similarly-minded people. As an antidote against feeling alone (other than being on a team with my client) and isolated in the courtroom, I sometimes summon the image of my mentors Steve Rench to my left, Jun Yasuda to my right, and Cheng Man Ch'ing to my rear when in the courthouse. Sometimes, the courtroom and courthouse itself have colleagues sending good vibrations and ideas my way towards victory, working for all of us to rise together, rather than seeing successful competition as stepping on colleagues' heads and necks in a race to win clients and name recognition. An even bigger gift are my colleagues who for years have selflessly given up time on a weekend morning -- sometimes driving many miles -- to join at my office for workshops to prepare me and my clients for my trial presentation and their testimony. As I revel in these wonderful teamwork opportunities, it becomes all the more alien to remember the words of a former corporate law firm litigation mentor who said to a former solo practitioner at the firm that it must not be easy not to have another lawyer in the office next door to bandy about ideas. Granted, the Internet helps eliminate such isolation, but for me it helps just knowing that there are great colleagues who will drop whatever they are doing when I am close to starting a trial or in the middle of a trial, to lend moral support, brainstorming, and other ideas; and I am there to help with the same.Â While I have made public my dissent from the Trial Lawyers College's squandering its ability to be something much greater than it is, I have benefitted tremendously from the Trial Lawyers College's and National Criminal Defense College's Trial Practice Institute's hammering home the lesson that true success as a trial lawyer requires acknowledging when we need moral support, brainstorming help, and ideas from colleagues, rather than walking into the courtroom pretending that we can perform well for our clients by doing all the lifting ourselves, without ever consulting with colleagues on any cases.Â The times have been too many when I see a courtroom empty of supporters for my clients, even when they are risking serious jail time if convicted. For those who have committed particularly despicable crimes -- rather than being merely accused of them --how many were influenced by feelings of isolation and disconnect in their lives? When people go to prison, what type of positive community life do they find, if at all? Fortunately, such former prisoners as Jean Harris foundways to create and build beneficial communities in prison, with Harris having worked with fellow inmates in obtaining their GED's and with other opportunities. Â Each of us can help provide others with a deep feeling of positive community by reaching out to others, and to help them rise in life as we rise. I am not talking about being paternalistic, patronizing, overhelping, overbearing, nor over-sacrificing. I am talking about listening and acting compassionately, and offering help when help is wanted. Not one yet heavily into platonic hugs at the time, I remember how much better I felt when I got an unsolicited group hug outside the courthouse in 2000, from a bunch of supporters of the depleted uranium Plowshares defendants, after a long-seeming afternoon learning more about what it is like to defend activists who put their message ahead of their liberty. And moments earlier, I witnessed the same supporters join in solidarity in the courtroom -- seemingly unconcerned about the risks of being found in contempt of court, which did not happen -- once the defendants put a stop to their participation in trial, with the supporters joining in unison to the hymn, apparently from the Catholic Worker tradition "Courage, sister, you do not walk alone, We will walk with you and send your spirit home" (here sung by the Deer Park monastics). I was in awe of this solidarity, and recognized the comfort that it gave the four defendants, all locked up pretrial, having not sough bail. Two of the Plowshares defendants were from the Jonah House community, which is a group that heavily underlines living, working, helping and resisting in community. Â In this nation with a history of so-called pioneers (I call them so-called, because Native Americans preceded them long before) and vast lands with sparse populations in the early days, individualism took hold early on. Nevertheless, we can build beneficial communities without sacrificiing individual liberties and a more democratic society. We are all connected, and are naturally destined to build and benefit from productive communities. Â As a criminal defense lawyer, it is much better that I know my back is covered when I walk into the courtroom with my client, than having to be as concerned about watching for bows and arrows from all directions. It is better for my client, as well.

Posted by Jon Katz in Persuasion at 00:00

Tuesday, January 22. 2013

My teacher Tara Brach's "True Refuge" book launches today.

I am deeply grateful to my many teachers who help me discover a better life path, both longterm teachers like Steve Rench, Jun Yasuda and SunWolf and many more; those who are my unintentional and unexpected teachers whom I bump into and interact with for but a brief moment; and all my teachers in between. Â Tara Brach is a great teacher. When I first saw her at the BuddaFest's special weekend gathering for the tenth anniversary of the September 11 murders, she was looking at me and my family with a warm smile, as if she had already met us. My wife described her smile as that of an angel. Â Subsequently, I have made the time -- along with a few hundred others, so arrive early -- on a few occasions to attend Tara's weekly meditation/dharma talk gatherings on Wednesday nights at the River Road Unitarian Universalist Congregation in Bethesda, where I experience deep and great meditation, and learn some great lessons from Tara's Dharma talks and from those of her guests that sometimes fill in as leaders. Â Tara wrote a book Radical Acceptance describing how her mindfulness practice, being in the moment, has tremendously helped her in dealing with otherwise deeply painful and distressing situations, including being supremely dissed before her cohorts by her previously revered teacher of years and years. Extreme ouch does not even begin to explain the hurt she felt from that. Today launches the release of Tara's new book True Refuge, which I understand includes underlining on focusing on the present moment as a counterpoint and healing approach to even the most difficult situations we encounter each day. Â Tara kindly included me in her YouTube Finding True Refuge series, in which I am interviewed here. She generously posts her weekly dharma talks online for free. Of course, people cannot live on love alone, so I recommend also purchasing one or more of Tara's books, and attending her retreats and other sessions. Â Whereas the Dalai Lama found serenity years ago amidst the turmoil inflicted in Tibet and worldwide, Tara has continued facing deep challenges -- evenÂ while an accomplishedÂ meditation and Dharma teacher, including challengesÂ in dealing with her son and with her orthopedic problems that keepÂ her from the many activities she so lovesÂ -- so shows us by example how mindfulness/being in the moment is tremendously beneficial for even the most extreme-seeming challenges. Â Deeply thanking and bowing to Tara Brach.

Posted by Jon Katz in Persuasion at 00:00

Monday, January 21. 2013

Deeply thanking Martin Luther King, Jr.

NOTE: This is a re-print from 2010's Underdog entry on Martin Luther King, Jr., Day. Â Martin Luther King, Jr., presented his immortal "I Have a Dream" speech when I was just four months old. When he was shot dead on April 4, 1968, I was only five years and three days old, and he was only thirty-nine. He would have been eighty-two years old today. Â I have been very positively influenced by the nonviolent path in fighting for social justice from Gandhi and Martin Luther King, How did they take up and stay on the nonviolent path? For both, their deeply-held religious beliefs helped them on that path. For Gandhi -- writes Radhika Rao --he was also influenced by the non-violence of his mother and of Tolstoy, and the civil disobedienceÂ message ofÂ Rousseau. Martin Luther King, Jr., was heavily influenced by Gandhi's non-violent path, starting with Mordechai Johnson'sÂ discussion of Gandhi. Ironically, hanging in King's office was a picture of Gandhi; both were assassinated. Â On non-violence, King said: Â "The ultimate weakness of violence is that it is a descending spiral,begetting the very thing it seeks to destroy.Instead of diminishing evil, it multiplies it.Through violence you may murder the liar,but you cannot murder the lie, nor establish the truth.Through violence you murder the hater,but you do not murder hate.In fact, violence merely increases hate....Returning violence for violence multiplies violence,adding deeper darkness to a night already devoid of stars.Darkness cannot drive out darkness; only light can do that.Hate cannot drive out hate; only love can do that." Â In overcoming violence, we have a very long way to go. Let us make the first step and the next step today on the non-violent path. Â Happy birthday, Martin Luther King, Jr., and thanks many time over.

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

Sunday, January 20. 2013

Sixteen miles of kirtan to the White House, with undersung hero Jun Yasuda

By Jon Katz, a criminal defense lawyer and DWI/ DUI/ Drunk Driving lawyer advocating in Fairfax County, Virginia, Montgomery County, Maryland, and beyond for the best possible results for his clients. http://katzjustice.com Â Â No Drones Walk around 2 miles from the White House, on Rhode Island Avenue. I am pictured at front. (Photo by Jules Orkin.)Â Â Before Ram Dass visited India as Richard Alpert, the West apparently knew little about his now-famous guru Neem Karoli Baba, also known as Maharaji. Maharaji became famous once Ram Dass's essential Be Here Now hit the bookstands. Â Before the Internet became ubiquitous, many fewer people than today knew about my peace mentor and friend Jun Yasuda, Jun-san remains an undersung hero, as she lives peace every minute, without a publicist, without writing articles, and usually without television cameras. If she had those, I have little doubt that she would be a superstar among millions.Â I met Jun-san when I needed to. I was deeply opposed to Gulf War I as having been launched much too prematurely, if ever it should have been launched, in part when considering how much Kuwait's government-- Bush I's purported reason rather than oil for invading Iraq -- is not much of a human rights prize. Jun-san was praying and drumming for peace for thirty days during Gulf War I at Lafayette Park across from the White House, just two blocks from the law firm where I was working at the time. We met one day when I walked to Lafayette Park to escape the suffocation of feeling not free to discuss my views of Gulf War I at the firm in the midst of those there displaying yellow ribbons and yellow ribbon/Support-Our-Troops words, without offsetting those views with concerns about the massive death and wounding that was being inflicted beyond just American soldiers. Â Before meeting Jun-san, I did not think about improving the world in terms of finding and cultivating peace within myself along the path. I was angry at Supreme Court justices who allowed executions, at law professors who kept closed-door policies when I was paying high tuition, at George Bush I for Gulf War I and more, at human rights violators worldwide, at judges too often holding indigent defendants pretrial with bonds too high for alleged petty offenses, and the list continued. I was angry. I confronted politicians in person and in writing to stop this and that trespass upon human rights and civil liberties, but did little to change my internal disharmony over the state of the world. If I wanted to become a better and more fulfilled person and lawyer, something had to change with me.Â I later learned, just over a year ago, that Lama Surya Das, for instance, also found it insufficient to join anti-demonstrations without improving himself from within, and to find peace. Â It took many years for me to get it that I needed to focus on my internal development first and foremost rather than obsessing over the world's injustices. Fortunately, I have met critical teachers who have been there at the right times on my path to getting it. A few months after meeting Jun Yasuda, I met the late trial lawyer Victor Crawford, who was brash, likeable and approachable, and seemed like anybody but a stereotypical taijiquan practitioner (as I later learned, many great taijiquan practitioners do not fit any stereotype), but he was, and I then started studying the martial art three years later and do my best to practice it daily and to apply it to everything I do. Taijiquan is an internal martial art, meaning that its practice calls for limited use of force. Its being an internal martial art, underline internal, it reminds me to look within for my development, satisfaction, and addressing imbalances in life. As my teacher Ihaleakala Hew Len says, "There is no out there for the Mind."Â Particularly when I accept that we all are connected, all these teachers of mine are not supposed to be there for me to latch onto, to miss when I do not see nor speak with them for long times, nor to get upset when their paths take turns with which I sharply disagree. My teachers are there to help me unlock the doors that have been stuck within me and to find and navigate the paths to being harmonious, happy and successful as a person. For that same reason, Bhagavan Das said in his fascinating autobiography It's Here Now (Are You?) -- an essential adjunct to Be Here Now -- that after his many years of becoming a revered yogi in India, born Kermit Mike Riggs in California in 1945, he realized that he did not need to go to India to learn the essential lessons he learned there. He did not need to attach to any teachers. I understood that be here now message by then, but certainly was not in the now when I tried to meet him and get his autograph at the end of the evening where he led kirtan at a yoga studio in Philadelphia in 2005. Being here now is easier said than done. Â We know what we need to do to lose weight, but plenty of obese people are brilliant despite knowing how to lose weight. By now, I know the path towards inner peace, harmony, contentment and non-duality. However, that path remains quite the challenge when an eighteen-wheeler is tailgating me in heavy highway traffic blasting its bright lights and horn on me. My teachers help remind me to stay on that path. Â On my way to court last Friday for a critical felony motions hearing, Jun-san called: "Jon-san, I will be in Washington, D.C., at the temple tomorrow night" during a peace walk against the United States' drone attacks on real and alleged terrorists and their supporters, along with some members of Veterans for Peace. Â My wife, son and I love spending time with Jun-san. My son and I had a great time in her temple's enclosed loft last year, with our flashlights ablazing along with the guest cat. My wife revels in Jun-san's positive energy, which Jun-san ascribed yesterday to my wife's own positive energy reflecting on her perception of Jun-san. Â As we drank tea together, Jun-san asked if I would be joining yesterday's last leg of the walk, from Beltsville, Maryland to Washington, D.C. Of course I wanted to join, but my family had already made plans to visit Richmond the next day. Thanks deeply to my amazing wife for encouraging me to join the walk anyway, and I did. Â We fluctuated from eight to nine walkers, starting from near the Costco on Route 1 in Beltsville,

Maryland, and taking that Route 1 straight into Washington, D.C., turning left at Sixteenth Street to go to the White House. That is a sixteen-mile walk. I wore a banner around my neck urging that the drone attacks stop. Jun-san and Keiko-san beat the drum to the Odaimoku chant -- which is the essence of the Lotus Sutra and whose acronym graces my license plate -- and two of the veterans carried big flags with the symbol and name for Veterans for Peace. Â It was a beautiful and sunny day, starting with my needing a heavy jacket, a hat and gloves, and proceeding to my exchanging for a lighter jacket in my knapsack. Â I was not under any delusion that our walk was going to convince Barack Obama overnight to stop drone missile attacks. I was heavily motivated to join the walk as part of my path of increasing my internal peace, and my greatest motivating factor was to be with Jun-san, from whom I always learn essential life lessons, and who always reminds me to stay on the path of internal and external peace. Also, last year Jun-san suggested that one can get a better understanding of the Odaimoku by joining a peace walk; my only other one with her was in 2005 for a shorter distance, and that also was amazing. Â Sixteen miles of walking with wind resistance caused by my banner had led to quite a bit of muscle soreness, now that I do not do long distance running any longer. It was all worth it. During the entire sixteen miles, I joined Jun-san and Keiko-san in relay chanting of the Odaimoku, with each set of people responding to the other chanting Na Mu Myo Ho Ren Ge Kyo. Never had I chanted the Odaimoku for so long during one period. This non-Hindi kirtan chanting helped focus me further on the peaceful path. Krishna Das makes sense about the benefits of chanting the names of divinity, or, in this instance of chanting the essence of the Lotus Sutra. Â We passed by places that I have driven by hundreds of times, but have never walked more than a mile. Along the way, some people honked in support; others asked us about our cause. As Jun-san says, we cannot make such connections from automobiles. And Jun-san believes strongly in connecting with nature, which happens when we walk. I was the only local person, and I helped navigate the walking path. Â When we got within two miles of the White House, the support van pulled up, and two veterans pulled out a model drone aircraft hooked up with three missiles on each wing, representing one-fifth the size of an actual drone plane. This was eerie, but certainly not as eerie nor morbid than real drone missile weapons. Â A mile from the White House, I took the left wing of the drone aircraft, and held it to the side of the main body of the aircraft when there was not much foot traffic in the opposite direction. We passed several police cars during the sixteen miles. I give them all credit for never stopping to ask if we had a demonstration permit (we did not) or to tell us that our First Amendment-protected display of a scary weapon was somehow verbotten. Â We ultimately got to the front of the White House -- or as close as we could with the president's inauguration parade bulletproof reviewing stand blocking the presidential palace -- and stood in front of the White House's entrance, just to the left of a Secret Service vehicle -- on Pennsylvania Avenue, holding the drone aircraft model aloft, chanting the Odaimoku (by those who wanted to), and feeling the burn in our muscles from the long walk, standing at the end of the walk for thirty minutes in that position rather than resting. Â ABC and NBC still camerapeople took photos; a reporter interviewed the veteran holding the front of the drone aircraft; many more people than usual were there due to the upcoming inauguration; many photographed us; hundreds saw us and our banner and model drone.Â And here Jun-san and I were, twenty-two years after our first meeting, just ten yards from the spot where we first met.

Posted by Jon Katz in Persuasion at 00:00

Friday, January 18. 2013

Revisiting the cradle of the Confederacy on Lee-Jackson 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 . Â In case I really needed to be reminded that I had come to the South to attend law school at the George Washington University in Washington, D.C., all I needed to do was to drive along Lee Highway in Arlington, Virginia; go a little furthr south to see the stars and bars proudly displayed on various pickup trucks; or go to Richmond's avenue of statues of Confederate figures, with Arthur Ashe's statue added only later, and much farther down the avenue. Â I passed the Mason-Dixon line after crossing into Maryland from Pennsylvania. Maryland has its own recent shameful past with blatant racialÂ segregation. Then again, as we approach Martin Luther King, Jr., Day this Monday, although the world has made major strides towards less virulent and widespread racism, racism remains too virulent and too rampant in the Unitd States and beyond. Â I chose to live where I live, and I am not going to avoid remnants of the Confederacy rearing their heads in Virginia and further south, unless I keep my head buried in the ground. Virginia is the place 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 United StatesÂ Supreme Court in the 1960's to reverse Virginia's criminal ban on intermarriage between black and white people. Â Â Yesterday I was re-reminded of my geographical location when an amiable courthouse criminal clerk expressed her giddiness over the approaching Lee-Jackson Day, celebrated today, that always gives Virginia'sÂ state and local government employees a four-day weekend, when we add Martin Luther King, Jr., Day. I will treat today as a regular day, and will be in Maryland court as the Virginia courts close today and reopen next Tuesday. Â Today in Virginia is [Robert E.] Lee-[Stonewall] Jackson Day. Consequently, instead of the four-day weekend being a means of paying penance for Virginia's shameful centuries-long role with slavery and segregation right into the second half of the 1960's, here is the real story: Â Until 2000, Virginia set the same date for celebrating Lee-Jackson day and Martin Luther King, Jr., Day, until legislation passed to separate the two holidays with Lee-Jackson Day falling on the Friday before Martin Luther King Day. The Roanoke, Virginia, Times quotes a regional Virginia NAACP leader as follows on this peculiar holiday juxtaposition: Â "The Rev. Glenn Orr, president of the Montgomery County-Radford City-Floyd County branch of the National Association for the Advancement of Colored People, said it's not a matter that members dwell on. 'We're really focused on honoring Dr. King rather than trying to tell somebody they can't honor Lee, Jackson,' Orr said. 'We just celebrate our opportunity to remember Dr. King and the values that he helped us to develop.'"Â Having visited the Washington, D.C./Virginia area three times before starting law school here in 1986, I knew full well that I was going to the South, at least when crossing the border into Virginia. As with probably many others, I was drawn to Washington, D.C., with the possibility of getting involved in what was going on in the nation's capital. Ultimately, my resulting law practice is only relevant to the federal government for a small part of my law practice other than for my federal criminal defense work. Â Like Reverend Orr, this weekend I will do my best to focus on Dr. King, and to transcend my with the close juxtaposition of the Lee-Jackson Day celebration.Â 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 throughout the world.

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

Thursday, January 17. 2013

Let us become the land of the free and home of the brave, and not remain the land of the cops and home of the caged.

By Jon Katz, a criminal defense lawyer and DWI/ DUI/ Drunk Driving lawyer advocating in Fairfax County, Virginia, Montgomery County, Maryland, and beyond for the best possible results for his clients. http://katzjustice.com Â In grade school. we usually started off the day with the pledge of allegiance and a patriotic song, including "America", "Yankee Doodle", "Grand Old Flag" and "America the Beautiful" (which song Pete Seeger liked very much and did a great version of during one of the American Folk Life festivals around the early 1990's). What justifies public schools promoting AmericanÂ patriotism like that, with the word "god" in the pledge and in so many patriotic songs, in stark contrast to the First Amendment's protection of free speech and silence and protection to exercise religion or not? Â "Grand Old Flag" praises the United States as the land of the free and the brave. However, the United States is too much the land of the cops and the caged with our state of overcriminaliztion and over-incarceration. Â The United States' inmate population does not seem to have gone down since Adam Liptak reported in the New York Times in 2008 that the United States incarcerates nearly one quarter of the world's prison population and the highest prison population rate per capita, even far surpassing China, that bastion of human rights abuses. Â America's prison population is particularly huge as a result of lengthy incarceration -- often with draconian mandatory minimum prison sentences, and a huge percentage of defendants dropping like flies to plead guilty and snitch to reduce mandatoryÂ minimm exposure, rather than having their day in courtÂ leaving fullÂ the burden of proof on theÂ prosecutionÂ -- of non-violent drug offenders. In the process, with incarceration costs in the tens of thousands of dollars per inmate per year, the prison system and the rest of the criminal justice system are dragging down our recovery from the recssion. Part of the solution, of course, is toÂ drasticallyÂ shrink the criminal justice system by legalizing marijuana, gambling and prostitution; heavily decriminalizing all other drugs; eliminating mandatory minimum sentencing; elminating per se drunk driving laws; and eliminathig the death penalthy. Â What does the United States' huge prison pupulation say about any claim to America's being the land of the free and the brave, rather than the land of the cops and home of the caged, or the oppressed and enslaved? Â The fight for social justice continues, and never ends.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, January 15. 2013

Sentencing in Virginia- Be ready for showtime.

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. Â "What are my chances of winning or of no jail?" is a common question potential criminal defense and DWI clients ask me. When they come to me early on for Virginia cases, I have thin information on which to base my reply, although I do still reply. Police reports are not filed with the Virginia courts, other than brief narrative criminal complaints in DWI cases and various other cases -- often bare bones and sometimes more detailed than that -- and the potential client's version of events and his or her criminal court history may differ substantially from the police version and nationwide criminal case database (leaving the factfinder and judge to sort out what is accurate) regardless of who has supplied the more reliable information. Nevertheless, with my first meeting with a potential client, I usually have enough information to start addressing potential defenses, defense preparation and potential outcomes, underlining that I will have even more details to provide on defenses, defense preparation and potential outcomes as my work and investigation proceed, including when I learn what is in the police report(s) (which Virginia law does not entitle the defense to see), or, more succinctly, once I learn about my clients' alleged statements to law enforcement, exculpatory evidence (prosecutors often have a much narrower definition of exculpatory evidence than do I) and my client's criminal record, and any other information that I obtain independently from witnesses, police and prosecutors, on top of any additional information that police and prosecutors are willing to provide me. Â 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. 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. On the federal level, sentencing authority and attorney Alan Ellis tells us that 99% of federal criminal defendants are sentenced and 83% of criminal defendants get incarcerated. Let us bring the United State to being the land of the free and home of the brave, and not land of the cops and home of the caged. Â By the conclusion of sentencing, I tell my clients about their options, when they exist, of seeking a sentence modification. In Maryland, such requests must be filed within ninety days, and judges are authorized to hold them in abeyance for a few years, pending the defendant's showing the extent to which s/he has turned a new leaf. In federal court, sentence modification generally will not happen without the prosecution's concurrence or with a variance between the written judgment order and the law and what was said by the judge orally at sentencing. Â In Virginia, the judge loses the power to modify a sentence once a defendant is in the state prison system unless twenty-one days has not yet passed from the sentencing date -- as opposed to the local jail -- even if the defendant has been transferred to the penitentiary system by mistake and against the judge's ruling to keep the defendant in the local jail pending any court order to the contrary. Stokes v. Va., __ Va. App. _ (Jan. 15, 2013). The foregoing was bitter poison for Kenneth Stokes, Jr., who rolled the dice by filing both a petition for appeal to the state Court of Appeals (and then sought appellate relief from the state Supreme Court after the Court of Appeals denied relief) after being sentenced to several decades of prison after a felony guilty plea and filing a sentence modification request. The problem was that the trial judge deferred ruling on the sentence modification request until seeing the outcome of the appeal petition (which petition was denied at all appellate levels), and Stokes was mistakenly transferred to the state prison system in the interim. Â Of course hindsight is clearer than crystal balling, but Stokes might be slamming his head in misery against his cinderblock cell walls upon recognizing that had he not filed for an appeal, the trial judge -- who ruled that he lost authority to modify the sentence upon Stokes's transfer to prison -- probably would not only have reduced his sentence but the prosecutor indicated its consideration to agree to eliminate all of the active portion of his decades-long prison sentence, apparently based on Stokes's completed and pending assistance with law enforcement against other criminal defendants. In finding he had lost jurisdiction over Stokes's sentencing modification request, due to Stokes's transfer to the prison system, the sentencing judge indicated that Stokes â€œ'would have been entitled to some relief' because of appellantâ€™s assistance to the Commonwealth in a related criminal case." Stokes. At a hearing on Stokes's sentence modification motion while Stokes's petition for relief to the state Supreme Court was pending, the prosecutor suggested to the trial judge: â€œperhaps elimination of the active portion of [appellantâ€™s] sentence.â€• Stokes. Â Talk about the importance of striking while the iron is hot, considering the prosecutor's openness to eliminating Stokes's sentence except for the suspended part of the sentence and probation. Only the shadow knows how Stokes and his lawyer responded to the prosecutor's interest in such a startlingly favorable sentence reduction, whether or not Stokes's lawyer by then urged Stokes to withdraw his appeal in order to reduce the risk of his being sent to the prison system before the judge ruled on the sentence modification motion (because the judge was awaiting the result on appeal), and whether the appellate process was initiated more at the behest of Stokes or his attorney. Â Stokes is a two-to-one appellate opinion. Dissenting Judge Elder insists: Â [T]he literal interpretation of Code Â§ 19.2-303 espoused by the majority allows an administrative agency to defeat any reconsideration of a defendantâ€™s sentence while he is in the custody of the local

jail by transferring the individual to the DOC without any notice to the trial court and in contravention of its clearly expressed intent, memorialized in an order, to retain jurisdiction over the proceeding. Indeed, the majorityâ€™s approach does not allow relief for those circumstances in which a transfer has been made in bad faith. Although the majority acknowledges the remedial nature of Code Â§ 19.2-303, it adopts an interpretation that allows grossly unfair results, like those reached in this case. Â Stokes (Elder, J., dissenting). Â I hope Stokes appeals and wins before the Virginia Supreme Court.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, January 14. 2013

Virginia judges may indeed self-amend DWI charges to reckless driving.

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. Â On January 10, 2013, Virginia's Supreme Court allowed trial judges to amend drunk driving/DWI charges to reckless driving, at least where the judge has not yet found guilt of DWI and where the defendant does not oppose the amendment. Kelley v. Stamos, __ Va. _ (Jan. 10, 2013). Â Reckless driving is a double-edged sword in Virginia. On the downside, a reckless driving conviction can arise not only from driving recklessly but from driving twenty miles an hour or more over the speed limit or eighty miles an hour or more, and is a Class 1 misdemeanor carrying up to a year in jail, up to a $2500 fine, and up to six months of suspended driving (with restricted driving privileges available). On the upside, for less serious DWI charges (e.g., with a low blood alcohol reading) or where the prosecutor is unsure whether s/he will win the DWI charge, Virginia prosecutors sometimes offer to amend DWI to a guilty plea or reckless driving, which looks better on one's record than DWI and eliminates the mandatory ignition interlock. Over time, some judges have been more willing than others, even, to amend DWI to reckless -- even without prosecutors concurring,Â as I obtained at the end of a DWI trial as explained hereÂ and without my request -- where the judge finds such an amendment to be merited, even though reckless driving is not a lesser included crime of DWI. Â Last Thursday, Virginia's Supreme Court authorized trial judges to continue with the practice, if the judges so choose, to amend a DWI charge to reckless driving if they so choose, without kneeing the prosecutor's consent. In Kelley, the defendant entered a guilty plea before the General District Court judge, who continued the case disposition to the following month. The General District Court being a court not of record, with no recording device in the courtroom unless one or both parties arrange for it, the Supreme Court was not sure what precisely took place in the District Court, so relied on the documents in the case and the notations made on the case disposition sheet.Â The prosecutor successfully sought an order from the next highest court, the Circuit Court, for the General District Court judge to change his disposition to DWI. Praised be Virginia's Supreme Court for reversing the Circuit Court, saying that trial judges are authorized on their own, without the prosecutor's consent, to amend criminal charges. Implicit in the ruling is that the defendant needs to consent to the amendment, and what defendant would not consent to amending DWI to reckless driving, everything else held equal?Â ADDENDUM: As procedural curiosity, the foregoing Kelley case arose from the chief county prosecutor Theo Stamos's filing a lawsuit against the presiding General District Court Judge Thomas Kelley (before whom I have appeared many times) seeking a mandamus order from the Circuit Court. Kelley also addresses Judge Kelley's procedural challenges to the prosecutor's seeking mandamus relief. I am curious about whether the General District Court system paid the fee to have Judge Kelley represented by counsel in this case, who on appeal was Robert R. Musick of Richmond.

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

Sunday, January 13. 2013

What to do with the rest of one's life?

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. Â Last year, after about two decades I reestablished contact with a lawyer who worked at my first law firm and who started practicing law around seven years before I. We got together for lunch soon after and again a few days ago. Little did I know beforehand how much we had in common about finding meaning in our relatively short lives on this planet. When at that law firm, I did not open up to many colleagues about my personal and political views and yearnings, particularly after hearing a law partner and my supervising senior associate praise Bush I's then-invasion of Panama during lunch together -- coupled with praising the "war on drugs" that I have long seen as a war on the Bill of Rights -- after I started there as an associate, and saw yellow ribbons there during Gulf War I without a counterbalance of expressed concern about a war entered much too prematurely by Bush -- and found refuge at lunchtime with the peace demonstrators at the nearby Lafayette Park. I threw up my hands about whether I would get anywhere productive talking politics and social justice with my law firm colleagues -- beyond the fact that I did express my interest in doing pro bono work with the firm. Â Consequently, without telling my law firm colleagues, I reveled in attending my first conference of the National Organization of Marijuana Laws in 1990, where I shared my feelings of law firm isolation on such topics with some conference attendees; attended a pot freedom rally in Lafayette Park not long after; joined a friend in demonstrating against the Senate's authorizing Gulf War I; joined the second weekend march against Gulf War I; and took out a subscription to High Times in protest against a federal subpoena for the magazine's advertiser records, writing then-attorney general Dick Thornburgh that I had done so under such protest. Â When I left the firm after two years to join the Maryland Public Defender's Office, I was all bright-eyed and bushy-tailed that I had found the ultimate job where I could feel more comfortable being open with my colleagues about politics and social justice, but found no such enclave there for such discussions. Such like-minded people may have been there, but I did not find them -- maybe in part because I heard few people there speaking of such things that I agreed with, beyond our criminal defense work at hand, so did not seek them out -- although I found many who were truly devoted to providing top-flight service to indigent criminal defendants.

I learned many years later about the concept of moving beyond opposing injustice by others to making oneself an example of peace, compassion and justice, to be the change one wants to see in the world. For instance, Lama Surya Das when still Jeffrey Miller, demonstrated against the Vietnam War, and then faced the reality that his friend's girlfriend Allison Krause was one of the four peaceful antiwar demonstrators gunned down in 1970 by National Guard members. Consequently, he sought a "way to find peace, to become peace. I headed east." Lama Surya Das is an important inspiration for me on this path. Like me, he grew up Jewish -- and I still consider myself Jewish, also into Buddhism and any other spiritual path that teaches me how to become a better person -- and found important life answers from the East, and, at least today, is not a monastic. I met Lama Surya Das briefly in 2011 when Krishna Das came to town and later that year when he and Sylvie Boorstein gave spectacular presentations during BuddhaFest's weekend during the tenth anniversary of the September 11 murders. Â Back to my recent lunch with this former law firm colleague. At one point he asked my view on how we should spend our remaining several decades on the planet. Without hesitation, I said that an important part of our remaining time on earth is to serve others and to be compassionate towards them, and of course to ourselves. Ram Dass has been unquestioning about serving and loving others, because he took that as a commandment from his teacher Neem Karoli Baba. Â I pointed out that my colleague is already serving others by the devotion and time he has spent in raising his children and paying their college tuition. Of course, I feel I am constantly serving throughout the day, starting with my criminal defense clients alone, but it is important for me to serve beyond doing so for those who have paid me, both through pro bono work and through good deeds beyond my role as a lawyer. Â The hesitation many may have about serving is whether those being served will not know reasonable boundaries in dealing with the person serving, or might even try to take advantage of the person serving. That does not justify not serving. The server can always say no when anybody does that. Â It is easier emotionally to serve people afar -- for instance when I joined and organized human rights campaigns for overseas victims of human rights violations with Amnesty International -- than to be looking them straight in the eye when trying to help them. I can always put down my pen to later resume drafting a letter insisting that a government official stop abusing human rights, When with a person in need of help, it is not easy simply to walk away when the emotional and time toll seem to become too much.
Â Serving others can start with such simple and limited time tasks as compassionately responding to a person's request for some change, or to sometimes buy the person some food and drink. Sometimes, we can let down our defenses to give a literal or proverbial hug to someone who will feel warmth and maybe even some healing from it. Other simple acts of service include standing up for those being mistreated by police and civilians; and to stand up for children being hit by

their parents (beware making the hitting parent feel humiliated, lest s/he express that humiliation through further assaults once at home) and not simply walking by such abuses and pretending they did not occur. Yes, the best way to respond is with compassion to the wrongdoer as well, but not to ignore the trespass. Â In that regard, I became all the more happy with my decision to attend law school -- where I truly believed law school training and a law license could help me help others all the more for social justice -- rather than graduate business school, when in the spring of 1986, when on a dream work assignment for three weeks to Hong Kong, and then followed by further work in Japan, when an employee at the tailor shop where I was picking up my custom-made shirts on my last night in Hong Kong was dehumanizingly tapping-rapping a tailor over the head with a wire hanger, while a manager used angry hand gesticulations for grabbing another's neck to express his anger at the tailor, apparently because my shirts were not yet ready. When I insisted that this tailor was a human being and that this abuse of him stop, the hanger-hitting employee insisted: "Don't worry. He is not your tailor," as if my complaint had been motivated over a selfish interest in seeing my tailor get the job done rather than sustaining a job-delaying headache or head wound from the employee. Back at our headquarters in Manhattan during lunch (this blog entry relates numerous lunchtime experiences), one of my colleagues who was in Hong Kong with me shared his bellylaugh to other colleagues that I got paid back for speaking up by a delay beyond that evening in getting my shirts. Another of my four Hong Kong assignment colleagues expressed puzzlement to our co-workers about my making a "human rights argument" to the hanger assailant and tailor shop manager. Enlightened capitalism exists, but I found no colleagues at this huge commercial bank, the former Irving Trust Company, with whom to commiserate on social justice issues. Â Ram Dass asked his guru how he can get enlightened, to which Neem Karoli Baba replied "Serve people, and feed people." (See minute 9:45 of this video, and of course the rest.) Ram Dass's fellow Maui resident Wayne Dyer agrees, saying "Youâ€™ll find yourself feeling purposeful if you can find a way to always be in the service of others." 10 Secrets for Success & Inner Peace. I have been convinced of that for a long time.

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

Friday, January 11. 2013

Of Michalangelo's David in a museum, and bull gonads on the back of a truck.

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. Â Michelangelo's original David statue is in Florence, Italy, and numerous people told me after I left that it is a not-miss spectacle. I missed it, spending the first day walking with my friend around the city and seeing a mummy in another museum -- which was the bomb -- and the next day in nearby Pisa. Â Michelagnelo's David and so many other artistic masterpieces depict people in their birthday suits. Why, after all, paint the clothing fashions/artwork developed by others? Then again, I almost lost my dinner when I opened the wrong door at one of my college's academic buildings while looking for the mountain club meeting, and instead happened upon an art class with a model in his birthday suit encircled by sketching art students. It seems that painting nude models is a common part of college art classes. Â I have heard over the years about people eating Rocky Mountain oysters, a euphemism for cow's testicles. They are a common byproduct of beef farmers' castrating their bulls to tame them. For those wanting to eat meat without killing animals, perhaps Rocky Mountain oysters are an option, but that disgusts me gastronomically, and such castration is particularly unpleasant for the bull, and is part of the path to slaughtering the bull and its offspring for food and leather. Â But I digress, other than to lead into the following connection between David, with his genitals hanging in full view, and the display of a bull's testicles.Â If I hang an image of Michelangelo's David from the back of my car, will police stop my car and ticket me? No, so long as the image is not blocking my rear window. Â If I hang a plastic duplicate of bull's testicles (called "bull n*ts" where they are sold), will I be stopped and ticketed? Possibly yes if I do that in South Carolina. In at least two recent instances, police in South Carolina have stopped and ticketed people displaying bull n*ts on the rear of their vehicles, under the state's obscene rear vehicle display law. Â Praised be Virginia Tice for fighting back against this First Amendment/free expression violation, being stopped and ticketed for hanging plastic bull testicles from the rear of her vehicle, as Jonathan Turley reported in 2011.Â My Google search shows nohing by way of any court resolution of her case, other than that the caseÂ has been delayed three times as of last MayÂ 2012, whether or notÂ her caseÂ still is ongoing. Â One persons art is another's vulgarity, and vice versa. The First Amendment is not needed to protect expression that everyone likes, but to protect expressin that is vilified by many.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, January 10. 2013

In short order, two appellate courts reverse lower courts' prior restraint on speech.

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. Â Praised be the Virginia Supreme Court and Florida District Court of Appeal each for recently reversing prior restraints on speech imposed at the trial level. Â In Virginia on December 28, the Supreme Court reversed a prior restraint against a man who complained on Yelp about a home improvement contraactor. The state Supreme Court did so without even waiting to hear from the contractor. How I wish the Supreme Court had publicized its action, rather than keeping it as an unpublished order. Dietz v. Perez (see extensive links to the case, including the Virginia Supreme Court's unpublished opinion). Here is the transcript from the trial court proceeding in the case. Â In Florida, the District Court of Appeal reversed a prior restraint against a woman's making commercial use of her ex-boyfriend's name. Vrasic v. LeibelÂ (Fl. Dist. Ct. of Appeal, 4th Dist., Jan,. 9, 2013).Â Congratulations and thanks to fellow First Amendment Lawyers Asssociation members Gary Edinger and Dan Aaronson for obtaining this victory, and thanks to Gary for providing information on the case. Â While the above two appellate actions reverse prior restraint of speech, they do not preclude legal action for money damages against the alleged wrongdoers. I look forward to the day that the First Amendment is strengthened by eliminating libel actions.

Posted by Jon Katz in First Amendment at 00:00

Wednesday, January 9. 2013

Trials require substantial payment for full firepower, but the price interferes with equal access to justice.

Photo from website of U.S. District Court (W.D. Mi.).Â 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. Â One day a man charge withÂ burglarizing a house for something no more valuableÂ than a run-of-the mill DVD player came to my office. HeÂ experienced sticker shock when I quoted my fee. He asked if he couldÂ add his father to the conversation, since his father would be paying his legal fees. When the father heard my fee -- a moderate fee quote for me, this not being a complex-seeming case, but a huge amount of money for the father -- he became very upset, and expressed his dismay that a lawyer would cost that much for the alleged burglary of such a smallÂ value of belongings. The father was also upset about having to pay to defend his "innocent son." Â I empathized, and said I have no doubt that they can find a lawyer charging less, but that for me to putÂ my full firepower into the son'sÂ defense -- which is the only way I go --my fee quote was necessary to cover my time and opportunity cost to provide an effective defense. As I always feel and often express, I told the defendant and his father that my primary interest is in seeing the son get the best possible result, regardless of whom he hires as a lawyer. Â As much as I glowed when hearing Maryland's Court of Appeals judges underline the importance of pro bono work on my swear-in date (better swear-in than swear at), neither lawyers nor anyone else can live on love alone. I proudly do pro bono work each year, which for court appearance work ends up meaning that I have not only worked for no pay, but have paid out of my own pocket to do the work, when considering the clients who end up hiring another lawyer when my court time prevents me from appearing in court on the same date for a potential client, or meeting with the potential client sooner. Â Time management sticklers will find a true challenge with trial work, where rules and court orders dictate deadlines, where getting to court is often a hurry up and wait exercise, and where getting productive work done while waiting in the courtroom is a true challenge, particularly in courtroomsÂ that ban cellphones and laptop computers. Â Lengthy trials translate into limited time on trial days for a lawyer to communicate with his or her staff, clients, witnesses, opponents, and courts other than for the trial at hand. This is what the battle is all about, focusing on the combat at hand, persuading in the moment, and getting the ultimate opportunity to vindicate the lawyer's client. Moreover, once opponents know a lawyer knows how to effectively and persuasively prepare for and try a case, the more successful the lawyer will be at obtaining favorable settlements to avoid trials. As the saying goes, when a lawyer prepares a case to go to trial it is more likely to settle; when a lawyer prepares a case to settle, it is more likely to go to trial. Â I wish there were better solutions to equal access to justice, which are hampered by the fees that lawyers must bill for litigation-- even by lawyers who are not money-hungry but who will notÂ try to live on love alone. Trial combat is expensive.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, January 7. 2013

What if a criminal trial were held and no criminal defense lawyers came?

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. Â What if a criminal trial were held and no criminal defense lawyers came? Â For India's rape-murder case against the five accused of gang-raping and violently assaulting a medical student in additional horrific ways, Reuters today reports: "With popular anger simmering against the five men and a teenager accused in the case, most lawyers in the district where the trial will be held refuse to represent them." Â Compare the foregoing reluctance to the widespread, but certainly not total, willingness and honor by so many lawyers in the United States to defend those charged with even the most horrific acts, frequently for free or at substantially reduced billing rates. Many of those lawyers are not only lawyers regularly practicing blue collar criminal defense; many such lawyers are thoroughly establishment lawyers from thoroughly establishment law firms, and Nixon admirer and Oklahoma attorney Stephen Jones defended the ultimately convicted and executed Timothy McVeigh in the Oklahoma City bombing prosecution. Â Of course lawyers representing detested people will sometimes find themselves detested. Such venom towards lawyers will be reduced when people realize that if lawyers do not fight to the hilt -- and are prevented by law an judges from fighting to the hilt -- for the rights of those accused of heinous crimes, everyone else's rights are much more at risk. Â William Kunstler, the jokester he was, responded to Jewish Defense League members protesting outside his office over his defense of El Sayid Nossair -- charged and convicted for being their leader Meir Kahane's assassin -- by having coffee and doughnuts delivered to the protesters. Make mine a coconut doughnut.

Posted by Jon Katz in Criminal Defense at 00:00

Sunday, January 6. 2013

Meditation makes one more productive, healthy and happy.

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. Â From Nipponzan Myohoji Peace Pagoda, Grafton, NY. CopyrightÂ Jon Katz. Â Our localÂ monthly Contemplative Law Group meditation-dinner gatherings attract a core of around eight people, and numerous other people join each month. One of those core attendees thinks that some lawyers are hesitant to meditate -- or at least to come out of the closet to join with others -- lest they be seen as lazy in a profession that involves constant movement. On the contrary, if the vast majority of lawyers ignore meditative and mindfulness practice, they will lag behind Google and the slew of corporations, military commanders,Â film director David Lynch,Â and other organizations and fields that are embracing meditation and mindfulness as an essential ingredient to productivity, better clarifying and simplifying goals and work demands and solutions, happiness, and strong physical, mental and spiritual health. Mindfulness and meditation are more mainstream than ever.Â For those wondering how they can make the time for learning and applying mediation and mindfulness, it does not take muchÂ time to learn (it starts with focusing and reveling inÂ the present moment, and paying attention to one's in-breath and out-breath to keep attention to the present moment) nor apply (one can practice mindfulness every moment of the day, particularly with such work and study breaks as walking to the water fountain, waiting a few extra rings before picking up the phone (thanks to Sharon Salzberg for that idea), and replacing watching a sitcom with taking a walk outside or sitting quietly, and spending quiet moments with loved ones, in nature and with companion animals). The foregoing approach becomes even more time efficient than the time needed to drive to the gym, change clothes, work out, shower against stink, get dressed again, and drive home.Â For me, mindfulness and meditation practice is an essential part of my hard work for my clients, making time to be fully in the present with and for my family, and feeling more fulfilled. Mindfulness and meditation practice does not require moderate to light work hours (versus heavy hours), being self-employed (as opposed to having a boss who dumps an assignment on an employee's desk at the end of the week, requiring that it be turned in before Monday -- consider replacing such an employer if you cannot resolve that happening more than rarely), nor having a smoothly-running daily practice. Mindfulness and meditation help unclutter the day, settle down to get a good night's rest, and awake refreshed from an uninterrupted sleep (which is also helped by turning off all computers, television and other electronics for at least one hour before going to sleep). A great and quick read for learning mindfulness is John Kabat Zinn's Mindfulness for Beginners. It is great also to learn from an experienced meditation teacher. The major cities are bound to have such teachers. In Washington, D.C., we are blessed with several locations to do mindfulness meditation in the Thich Nhat Hanh tradition, with the Insight Meditation Community of Washington, and with monthly meditation sessions and dharma talks with Sharon Salzberg. Â Meditation and mindfulness practice are more mainstream than ever for lawyers, judges, and bar associations. In fact, tomorrow night, January 7, the D.C. Bar is sponsoring a mindfulness for lawyers workshop to be led by local mindfulness teacher Hugh Byrne. Â Mindfulness practice has become so prevalent that even U.S. House member Tim Ryan has been tooting the mindfulness horn in his book (published by Hay House, known for including many inspirational titles, and so-called new age titles) and on the podium, saying that he feels it his duty to do so as a potential remedy for soldiers and those domestically following challenging times, no matter those who question whether he risks his career for doing so. Â Meditation and mindfulnessÂ have proven its human benefits for over two thousand years in the East. It may first have seemed like a hippie fad in the West in the 1960's, but has proven to be equally beneficial in the West. The practice is far from being for wimps. For instance, one of the great Buddhist meditation and mindfulness teachers of the twentieth century, Dipa Ma, would inquire about people's meditation practice and encourage them not to let any obstacles get in the way of their daily practice. She advised sleeping no more than four hours and working in the meditation practice time. Dipa Ma's encouragement for dedicated practice echo the Buddha's last words at age eighty: "Life is a river always moving. Do not hold onto things. Work hard." Â Hard, and joyful, work in all aspects of life is part of a successful mindfulness practice. A meditation practitioner (meditating an hour daily) proclaimed on one of the deadline-driven chef competition television episodes that her life unfolds very positively with meditation practice, which I agree happens with that practice. She proceeded to prepare an eye-appealing meal well in advance of the deadline as her opponents furiously raced against the clock, looking all smiles, relaxed and in retrospect overconfident over her accomplishment. However, her meat (I am a vegetarian, but watched the show with two omnivores) was unappetizingly undercooked. She had the meditation ingredient on point, as well as the concept of positive unfoldment, but did not sufficiently follow through with the hard work. Perhaps she succeeds better in the comfort of her own kitchen, away from the cameras and fierce competion with surprise ingredients cooking outside over a charcoal grill, against the clock and her peers.Â Â As former Buddhist nun Martine Batchelor counsels, "The busier you are, the slower you should go," handling one task at a time with clarity and mindfulness. Thich Nhat Hanh likens the mindfulness and clarity practice to pouring a glass of unfiltered apple juice and giving time for the sediment to settle. Mindfulness and meditation help that sediment inÂ our dailyÂ livesÂ settle so that

we may reach powerful clarity.

Posted by Jon Katz in Persuasion at 00:00

Friday, January 4. 2013

Giving a cop the finger does not justify a stop nor arrest. (I am not pulling your finger -- I mean leg -- either.)

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. Â The middle finger never needs to be extended towards anyone. We have enough other fingers to gesture and point. Giving the finger is divisive in a world where we are all connected, and where the negative energy of giving the finger comes back to us like a boomerang.Â Yet, if we do not protect people's right to engage in despicable expression, our own rights to engage in what we consider to be legitimate expression is threatened. Therefore, I am a free expression zealot, supporting free expression protection far beyond what the courts have yet been willing to do.Â Car passenger Jon Swartz expressed his displeasure with a police officer operating a speed radar by giving him the finger through an open window, says Swartz's civil rights lawsuit against the officer. Based on that finger alone, the officer temporarily detained Swartz on suspicion of disorderly conduct, investigated, claimed that Swartz committed further actions to justify arresting him, and arrested him, followed by a prosecution that lasted a few years until being dismissed on speedy trial grounds. Swartz claims that he did nothing relevant other than that one finger display. Swartz, et al., v. Insogna, et al.,Â _ F.3d _ (2d Cir.,Â Jan. 3, 2013). (Thanks to a colleague for posting on Swartz). Â Â On Swartz's appeal of the dismissal of his civil rights suit over his resulting arrest, the Second Circuit -- praised be the panel ruling in Swartz's favor -- that although New York's disorderly conduct statute covers many activities, it does not cover the simple finger display alleged in Swartz's complaint. The Second Circuit does not mention any First Amendment right to give the finger, and does not preclude police detentions where the finger is coupled with such actions as yelling one's head off at a cop (although yelling one's head off in public, by itself, often can be ruled sufficient to arrest in the jurisdictions where I practice, at least if such yelling is not in response to perceived police mistreatment of the suspect, and if civilians are around to be disturbed by the yelling). Â The finger does merit sufficient First Amendment protection, and various other courts have said so, as I blogged over two years ago. Â Extending a congratulatory handshake -- or should I make that a middle finger shake? -- to Jon Swartz and his co-plaintiff Judy Mayton-Swartz for winning this round in their litigation.Â Â

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, January 3. 2013

Beware the "time served" illusion.

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. Â During my first year as a public defender lawyer, I arrived at the courthouse at my customary early time at least an hour before the judge took the bench, and at the courtroom customarily early. On my way to the courtroom with my ten to fifteen jailable traffic cases for the day, the prosecutor eagerly proclaimed: "Your client Joe Moxie in the lockup. Don't worry about it. Time served!" Curious that he would say that, with his knowing that one of the key things I do in advising clients about plea negotiations and the advisability to go to trial is the availability of the prosecutor's essential witnesses and evidence; maybe he just forgot whom he was talking to. Â A few minutes later, the judge (long gone from the bench by now), all smiles, told me that my client in the lockup had nothing to worry about. Yow! Was this telepathy between the judge (a very nice man off the bench, but one with a judicial demeanor and intellect that made him unfit to be a judge) and the prosecutor (who seemed upstanding), or had some improper ex parte conversation gone on between the two as they grabbed their morning coffee? No matter for my client. I independently assessed his chances of winning at trial through talking with him and the witnesses and through assessing the evidence and case starting well before the trial date. Â Time served is a code word for getting a jail release for those unable to make their bond before trial. Plenty of public defender clients do not -- often cannot -- even pay bonds that involve paying as low as $500 or less to the court or a bail bondsperson to get released. However, the cost of getting time served is to get a guilty verdict through a guilty plea or a guilty finding at trial. A suspended sentence and probation period usually accompany time served. Plenty of people then violate probation, making time served an illusion, just an interruption in the incarceration/caging process. On the other hand, plenty of times I have had success in avoiding probation violation findings and in avoiding incarceration for probation violations, by attacking the law and evidence, and by doing my best to show that the probation-violative conduct is now in the past and likely not t be repeated. Â Particularly when the conviction is for a crime the judge believes is particularly serious, a probation violation occasioned by a new conviction can lead plenty of judges to impose a substantial portion of the suspended sentence, if not the entire suspended sentence, upon finding a probation violation. Ordinarily, appellate courrts leaveÂ this and all types of sentencingÂ decisions to the sound discreition of trial judges. See, e.g., Booker v. Virginia, __ Va App. _ (Dec. 18, 2012). Â Consequently, I urge my clients not just to look at the potential active jail time in reviewing plea negotiations and sentencing guidelines, but to look at the potential probation length (and probation conditions) and potential suspended jail time, in addition to how a conviction will affect the person's career, educational prospects, social future, and immigration exposure. Â Criminal defendants are presumed innocent and have the right to go to trial. That is the default from which I discuss settlement negotiations with clients, backed up by a position of strength through a readiness and preparedness to go to trial.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, January 2. 2013

Fourth Circuit affirms conviction of foreign national for overseas theft.

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. Â How do United States courts get extraterritorialÂ jurisdiction over criminal prosecutions for crimes allegedly committed outside the United States? How did a United States federal trial court get jurisdiction over the prosecution of Manuel Noriega (I was not yet a criminal defense lawyer when the U.S. invaded Panama to seize Noriega, and have not yet looked up any challenge Noriega made to such extraterritorial jurisdiction)? For prosecutions for people supporting, overseas,Â listed terrorist organizations, the U.S. federal courts are very ready to give jurisdiction to prosecute them in the United States. Â What about getting U.S. federal court extraterritorialÂ jurisdiction over a non-United States citizen/Jordanian resident working for the United States embassy in Iraq who steals U.S. government funds in Iraq?Â In affirming jurisdiction for the U.S. prosecution of Osama Ayesh -- U.S. v. Ayesh, __ F.3d _ (4th Cir., Dec. 18, 2012) -- the Fourth Circuit turned to the 1922 Supreme Court decision in United States v. Bowman, 260 U.S. 94 (1922): The Supreme Court in Bowman held that if Congress intends for overseas crimes "against private individuals or their property . . . which affect the peace and good order of the community," to be punished in this country, "it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard." Bowman, 260 U.S. at 98. But that is not the end of the analysis. The Court went on to say that "the same rule of interpretation" should not be applied to criminal statutes that are "not logically dependent on their locality for the governmentâ€™s jurisdiction, but are enacted because of the right of the government to defend itself against obstruction, or fraud wherever perpetrated, especially if committed by its own citizens, officers, or agents." Id. (emphasis added). In such cases, congressional intent may be "inferred from the nature of the offense." Id. The Court added that to apply such a statute only territorially would "[g]reatly . . . curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home." Id.Â Â How, then, will the United States government respond whenÂ United States citizens are prosecuted overseas solely for activities committed inside the United States, and where the overseas court system does not even provide the barest of due process nor other basic protections to criminal defendants? Beware of the approach of what's good for the goose is good for the gander.

Posted by Jon Katz in Criminal Defense at 00:10

Sending good vibes to Allan Lokos, Susanna Weiss, and all others in the plane crash.

Allan Lokos is one of my peace teachers, in addition to Jun Yasuda, Thich Nhat Hanh, the Dalai Lama, Ram Dass, and more people. I have not yet met Allan, who is the founder of New York City's Community Meditation Center andÂ has a great book entitled Patience: The Art of Peaceful Living. Â Allan teaches about peace, including being peaceful while traveling. Sadly, while traveling on December 25, Allan, his wife Susanna Wiseman, and the other passengers were injured --Â with two peopleÂ killed --Â in a recent plane crash in Burma. I do not have details about the other passengers beyond that. Allan and Susanna suffered injuries including burns. Susanna Weis-Bohlen reports on Allan's Facebook page: Â Our dear friends Allan Lokos and his wife Susanna Weiss were in a terrible plane crash in Burma on Christmas day. They eventually made it to Thailand where Allan has had surgery but has burns over 30% of his body. Susanna is also burned and has a broken vertebra. Many of you know Allan from his wonderful, insightful talks on Buddhism at breathe books. Please send all your love and healing to them and I hope they are able to make it back to the states for treatment soon.Â Sending good vibes and prayers to Allan, Susanna, and the rest of those on his flight.

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

Tuesday, January 1. 2013

New year's resolutions, sinking the boat with accumulated feathers, and standing on the shoulders of giants.

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. Â Happy new year to all Underdog blog readers. Â Few of us have gotten through the last few days without coming up with new year's resolutions or piecing together an answer when asked for our resolution. No matter when during any given year we make the decision, resolving to improve ourselves and the world around us, locally and globally, and taking concrete and effective action on such resolutions, helps lift the world from the dark shadows, abhorrent human activities, and often deeply harmful negligence that we read about and witness too often and expand the substantial light and positive energy that are already present. Â My own years long ongoing resolutions continue to be making myself a better person in part through the daily practice of taijiquan and the supplemental less frequent practice of sitting meditation, and the attendant benefits of being in the now and non-attachment/non-duality; and by making the world a better place by feeling and showing compassion for myself and everyone else and all sentient beings, and by fighting for civil liberties and social justice, particularly in my daily work as a criminal defense lawyer where there is no such thing as getting a defendant out of a prosecution pickle on a technicality, but by pursuing my clients' Sixth Amendment Constitutional right to effective and zealous assistance of counsel. Â Caring about the world around us sometimes can seem a daunting and overwhelming task. It seems less so when we recognize that it takes a lifetime to make the greatest difference. Amnesty International's decades-long admonition to light a candle rather than curse the darkness did not at first register well enough with me, because the darkness, depth and breadth of worldwide human rights violations seemed too massive to produce and light enough candles, let alone to find and get access to the places and people -- from those doing good to those harming others and everyone in between -- that needed those candles. Â Then, I flipped through my 1990 Amnesty International calendar, and found a quote that "Accumulated feathers sink the boat," and that hit home. It took me twenty-seven years, until that day, to shed more of my ego's expectation that I could move mountains by myself in a short time.Â In The Essential Huainanzi: LiuAn, King of Huainan by An Liu and John S. Major, the above accumulated feathers concept is described as follows: "A pile of feathers can sink a boat. Lots of light things can break an axle."Â Yes, it is good to dream big, but many people and many years, at the very minimum, are often needed to make substantial differences. Then again, Ralph Nader urged the students at my law school not to get blindsided by people and events that are obstacles to achieving good or simply disinterested about doing so, but to remember that one of the most influential pieces of legislation (I forget which piece) was initially drafted by two cohorts at a kitchen table. Â Fortunately, many giants have preceded us in pursuing the path of good -- however one defines good -- including Gandhi, Martin Luther King, Jr. and thousands of others, including such inspiring advocates for justice as SunWolf, Steve Rench, and Mary Jane DeFrank. Gandhi, Martin Luther King, Jr., and many others paid with their lives for fighting for a better world. We are usually not creating new paths to improving ourselves and the world; at minimum we can expand those paths in the right direction and at best we can elevate those paths by quantum leaps and get much closer to their destinations, and we should have fun along the path. Â Recently, a state legislator I know almost dismissively (I say "almost" because he seems still to be very open minded in listening to others' opinions, no matter how much I disagree with some of his legislative stances) on a listserv referenced my opposition to one of his legislative efforts thusly: "I expected the civil libertarians to chime in." When we pour our blood, sweat and tears into endeavors that will help the world but may not earn us money, fame, nor power other than the power resulting from our achievements (and the power of our fight that can scare our opponents), there will be naysayers and well-meaning people who advise us to look after number one first (as if number one is somehow disconnected from everyone and everything around him or her) and of course naysayers who oppose our stance or path. When we are not interested in winning popularity contests nor in accumulating excessive wealth, we are less likely to be sidetracked by the naysayers. Â We are all in this life together. We are all connected. We are not divided by Republican v. Democrat v. Libertarian v. Anarchist v. Zappa-for-Dictator, nor by smoker v. non-smoker, gun-toter v. anti-gun activist, nor by criminal defense lawyer v. prosecutor and cop, and the list goes on. I constantly need to remind myself of that. As Ram Dass underlines the ultimate end of the path of non-attachment, in The Only Dance There Is:Â When you get finally finished with the attachment, the desires that keep making you be born again and again cease, and you become one with "the One." And that is the merging back into the One... [Y]ou only see the One if you're two. Once you are in the One it's non-dualism. Â Part of non-dualism/non-attachment is living and being in the now, including not staking our sense of well-being on the results of our labors, even though our wisely-planned labors are very important. A reminder of that is Derek Turesky's recent quote on Twitter: "What if we could let go of wanting things to be different and find the beauty in the way things are in this precious moment?" Yes, do not merely settle for things as they are, but we achieve more with even more energy and power by always being in the now.Â My goal is to be mindful in everything I do. When one live mindfully, the magic bursts forth.

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