

Wednesday, October 31, 2007

American Bar Association calls for nationwide death penalty moratorium.

^ ^ The American Bar Association for years struck me as a curious organization. Early on, I pigeonholed the group as overly mainstream, at best, with presidents from big law firms with hiring standards that I could not meet for class grade rank and law review membership. (During law school, on the one hand I had an ideal of a public interest law career, but also was^ very interested in working at such huge Washington, D.C., law firms as Arnold & Porter, Covington^ & Burling, and Hogan & Hartson that have spirited pro bono programs, some great lawyers to learn from, and top salaries (which salaries come at the price of working long and efficient hours to bill enough to justify those high salaries eventually, and, I assume, at times to work on the side that oppresses people, which is a counterpoint to the firms' pro bono programs). If I had been hired by one of the foregoing law firms and received favorable performance evaluations, it would have been harder to take the leap to public defender work followed ultimately with my Underdog lawyering work as my own boss, so I owe thanks of sorts to such firms for keeping me out of their hiring radar). ^ Founded in 1878, for decades the American Bar Association excluded African-American lawyers. The National Lawyers Guild was founded in 1937 as an alternative to the ABA's segregationist membership policy and reality, with the ABA waiting until the 1940's^ to^ start admitting African-American members. By now, the ABA has a very active Individual Rights and Responsibilities section, and this very establishment organization, fortunately, does some very good things for justice. ^ With that backdrop, I am pleased to report that this week the ABA called for a nationwide moratorium on executions, saying that "[w]hile the ABA takes no position for or against the death penalty itself, since 1997 it has urged a moratorium in each jurisdiction that provides for capital punishment until the state conducts a thorough and exhaustive study to determine whether its system meets legal standards for fairness and due process." The ABA's Death Penalty Moratorium Implementation Project^ recently issued its key findings^ of flaws so serious in the death penalty system as to necessitate a moratorium. The key findings^ show serious flaws in all of the following areas: "(1) collection, preservation, and testing of DNA and other types of evidence; (2) law enforcement identifications and interrogations; (3) crime laboratories and medical examiner offices; (4) prosecutorial professionalism; (5) defense services; (6) the direct appeal process; (7) state post-conviction proceedings; (8) clemency; (9) jury instructions; (10) judicial independence; (11) the treatment of racial and ethnic minorities; and (12) mental retardation and mental illness.^ While the requisite data often was not collected, maintained, or made available in a way that made analysis possible, general themes emerged in each of the topic areas.^ Ultimately, serious problems were found in every state death penalty system."^ Of course, the above-listed flaws in the death penalty system also are the serious flaws in the entire criminal justice system. Death is the ultimate punishment and the ultimate form of torture (a phrase spread by Amnesty International), which justifies starting with the capital punishment system in fixing the criminal justice system --^ at least^ if it is necessary at all to focus on one part of the criminal justice system rather than taking on the whole system at the same time -- but efforts to fix the criminal justice system must ultimately apply to the entire system, and not exclusively to the death penalty machine. ^ In any event, thanks to the ABA for calling for a nationwide execution moratorium. This call will persuade many ears in the so-called national mainstream who will not be as easily persuaded by such less-mainstream-seeming groups as the American Civil Liberties Union, the National Coalition to Abolish the Death Penalty, and the National Lawyers Guild. Jon Katz.^ **ADDENDUM:** Thanks to the National Coalition to Abolish the Death Penalty for having posted to its website the news of the ABA's call for an execution moratorium.

Posted by Jon Katz in Criminal Defense at 01:00

Tuesday, October 30, 2007

Support your local head shop.

Image from public domain. One of the enjoyable parts of my law practice is going on the road and getting a chance to meet people and to have experiences beyond my doorstep. Long drives to outlying courts and to inmates preparing for trial often are soothed by beautiful mountains for hiking and waterways ready for a canoe or kayak adventure, while leaving the roadway as a distant memory. Post-court time -- at least when the outcome is a good one -- gives me a chance to explore some interesting small towns and cities before heading back to the office and my other clients' cases. A stop for a banana once led to a conversation with two neighborhood men sitting out front, drawing my attention to the first double rainbow I ever have seen. My travels also bring me in touch with head shops and head shop items, including a gas station selling pipes of the type favored for marijuana smoking. Head shops tend to be fascinating places, with many beautiful sights for the eyes, including the design and craftsmanship of many pipes made of glass, wood, and metal. Some have themes. One shop, since closed (possibly after police pressure, which would have been unfortunate), celebrated marijuana legalization. Another, just a few blocks from the county courthouse, celebrates reggae culture, and, in addition to pipes, is filled with reggae and Rastafarian-themed t-shirts, books, magazines, music, buttons, posters, magazines giving the lowdown on upcoming music festivals and concerts, candles, incense, and the list goes on. Another shop has a Grateful Dead theme, including beautiful homemade tie-dyes, mainly focused on children and babies, thus passing on this great art form to the next generation. Then there are the killjoys, those who are stuck in a Reefer Madness timewarp and information warp, passing, supporting, and trying to enforce laws not only focused on suppressing marijuana (nobody can eliminate such an easily-grown and beneficial weed), but on criminalizing not just pipes and rolling papers (which can be used interchangeably to smoke tobacco) but, in some jurisdictions, even to make it criminal to possess ziplock baggies with the intent to package controlled drugs in them. I salute the head shop owners who stand up to these killjoys and in favor of their customers by providing an atmosphere of joy, music, art, and culture in their shops as they simultaneously earn a living. I encourage like-minded people to support their local and non-local head shops by patronizing them often. Even non-smokers like myself have plenty of music, t-shirts, books and other interesting items available to buy. What a wonderful way to light a candle rather than cursing the darkness. Jon Katz. ADDENDUM: Click here for my articles supporting the legalization of marijuana for medical and recreational use.

Posted by Jon Katz in Drugs at 01:00

Monday, October 29, 2007

Window-tinting stops: Ripe for challenges in Maryland.

Â Bill of RightsÂ (From public domain.)Â Praised be the Maryland Court of Appeals for prohibiting traffic stops premised on car window tinting unless the stopping police officer's observation is in the context ofÂ "what a properly tinted window, compliant with the 35% requirement, would look like. If the officer can credibly articulate that difference, a court could find reasonable articulable suspicion, but not otherwise." Maryland v. Arvel D. Williams, ___ Md. _ (October 19, 2007). Â In thisÂ Maryland v. Arvel D. WilliamsÂ case, try as he might have while following the defendant, the arresting officer was unable to find any reason to stop the defendant's car other than for a suspected window tinting violation. The cop was making a pretextual stop -- intending on investigating for drugs and callingÂ a drug sniffing dog to sniff the defendant's car during any processing of a ticket to be handedÂ to the defendant -- and found no basis for alleging any violations of the law other than the positive result from the drug dog. Â A four-to-threeÂ Maryland Court of AppealsÂ majority determined that whether one applies the reasonable articulable suspicion standard (which two in the majority and all three in the dissent used) or probable cause standard (which two in the majority insist upon)Â for making a pretextual Whren stop, the stop and any subsequent search of the vehicle will be suppressed unless the police officer's observation is in the context ofÂ "what a properly tinted window, compliant with the 35% requirement, would look like. If the officer can credibly articulate that difference, a court could find reasonable articulable suspicion, but not otherwise." Maryland v. Arvel D. Williams. In a footnote, the majority continued: Â "There are two other aspects not argued in this case but which may be relevant toÂ stops for tinting violations. First, the issue here is only the validity of the pretextual stop, not the equipment repair order or the indictment for the CDS violations. As presented in both the Circuit Court and this Court, the validity of the stop depends on the application of Fourth Amendment jurisprudence, and, as to that, we have concluded that the proper standard is reasonable articulable suspicion. Appellee has not argued that some higher standard is required under Maryland law. We do note, however, that, to justify actually charging a person with a motor vehicle violation, Maryland law requires that the officer have probable cause to believe that the person has committed the violation. See Maryland Code, Â§ 26-201(a) o f the Transp. Article."Second, as noted, COMAR 11.14.02.14 requires, for post-manufacture tinting, that a label, Â½ x 1-Â½ inches, denoting, among other things, the percentage of light transmittable, be permanently attached to the window, between the glass and the tinting film or laminate. If an officer stops a car based solely on a conclusion, derived from his or her visual observations of the darkness of the window, that a tinted window is noncompliant with the 35% light transmission requirement, one easy preliminary step, before proceeding further, is to check the window to see if such a label is present, for if it is and (1) it shows that the window is compliant with the 35% requirement, and (2) there is no reason to suspect that the label is not genuine, any suspicion that arose from the visual observation would likely disappear . In that event, the officer would be obliged to apologize to the motorist and allow him or her to leave without further detention. On the other hand, if there is no label or the label appears not to be genuine, that alone may justify a citation under Â§ 22-101 or Â§ 23-105(a), a repair order, and some further investigation."Â Curious about this case is that the majority and dissenting opinions each have a retired judge on board. Will a majority be mustered to uphold the current majority's conclusion when and if the issue is revisited by the Court of Appeals judges with only the full-time Court of Appeals judges participating? Â Also interesting about this case is that the trial judge below ordered the suppression of the drugs found subsequent to the stop for the alleged tinting violation, which is a nice change of pace from the cases where defendants wait over a year to get appellate relief where the trial court erroneously denies a suppression motion. Â Finally, this case should put trial judges on notice that a big gap exists betweenÂ reasonable suspicion for stopping cars and people on the one hand, and accepting a police officer's views hook, line and sinker on this other hand. This Maryland v. Arvel D. WilliamsÂ case provides further support for requiring suppression motion hearing judges to permit extensive inquiry by defense lawyersÂ into cops' credibility and motivations not only for stopping a car, but also for detaining a driver long enough for a drug dog to arrive and start sniffing, for believing that the stopped car or its license tags are stolen, and for believing that probable cause existed for searching on the basis of a marijuana odor in the car (what if the odor is faint or if the odor is allegedly of unburnt marijuana?) Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Sunday, October 28, 2007

Georgia's Supreme Court frees Genarlow Wilson

Â Bill of RightsÂ (From public domain.)Â Congratulations to Genarlow Wilson for having finally been released from prison for good after originally having received a ten-yearÂ mandatory minimum sentence forÂ having had consensual oral sex with a fifteen-year-old when he was seventeen-years-old. The Georgia Supreme Court's October 26, 2007, opinionÂ in this case is here. Â The Georgia Supreme Court's 4-3 majority opinion is based on a finding that Mr. Wilson's ten-year sentence is unconstitutionally cruel and unusual, including when considering that the state legislature subsequently decided to remove such a mandatory minimum sentence, even though the amendedÂ statute provided that it would not be retroactive.Â Mr. Wilson's ultimate sentencing victory clearly was not a shoe-in, in part considering that the victory was achieved only by a four to three majority. Thanks to the state supreme court judges who voted in the majority.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, October 26, 2007

The feds: Censoring overseas voices by keeping them from America's shores.

Â Bill of RightsÂ (From public domain.)Â A huge problem I have faced with my decades of civil liberties activism are the often attendant feelings of upset, anger, and disbelief at the extent to which people step on other's basic liberties, often in the guise of well-meaning politicians, judges, prosecutors, cops, and government bureaucrats, as well as fromÂ such other power structures as the rest of the government-military-industrial complex. That is what I get for not having pursued the path of blissful ignorance. Â On the immigration front, inÂ law school, I finally learnedÂ how deeply the spirit of McCarthyismÂ survived his Senate censure to this day. Repeatedly,Â the United States governmentÂ bans and substantially impedes even brief visits by non-citizens to the United States (even for lecture circuit purposes) on the basis of ideology and speech. Those banned include Nelson Mandela (listed as an "undesirable alien" until 2003, requiring special permission to enter the United States); Gabriel Garcia Marquez (who had to apply for special permissionÂ for each entry to the United States, through 1996, due to his leftist leanings and friendship with Fidel Castro); and John Lennon (who was subjected to an attempted ban in the early 1970's, whenÂ the United States government mightily tried to deport him due to his pro-peace stance). When comparing the dates of these exclusionary efforts to the presidents in office, we see that such Democratic administrations as Clinton's allowed such bannings; once again, as in the First Amendment squelching arena (and bannings of such visitors amounts to censorship of their voices, too), neither major political party has a monopoly on such repressive activity. More on this sad state of affairs is hereÂ at the American Civil Liberties Union's website. Â Such banning of brief visitors for their views and voices amounts to government censorship that often goes below the public's radar. As we gear up for the 2008 Presidential, House and Senate elections, please include considerations of what those candidates will do about the rights of non-United States citizens to visit the United States, and the rights of United States citizens to meet and hear visitors with views different from the presidential administration or the majority of Congress members. Jon Katz.

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

Thursday, October 25, 2007

Mistrial in Holy Land Foundation terrorism prosecution.

Â Bill of RightsÂ (From public domain.)Â On October 22, 2007, a mistrial was declared in the federal terrorism prosecution against the Holy Land Foundation and five of its former leaders. About this mistrial, American Civil Liberties Union National Security Project staff attorney Hina Shamsi wrote: Â "HLF was the nation's largest Muslim charity before the government shut it down and accused it of providing "material support" to a foreign terrorist organization. The group had made donations to local "zakat" committees that provide humanitarian aid in the West Bank and Gaza Strip. (Zakat is a form of tithing and one of the obligatory five pillars of Islam.) Although the government claimed the committees were controlled by Hamas, the committees were not designated terrorist organizations and the U.S. government did not allege that HLF intended to support terrorism or that its funds were actually used for that purpose. (Full disclosure: the ACLU represents two of the HLF defense lawyers in our lawsuit challenging the National Security Agency's warrantless surveillance program.)"Â We must remain ever-vigilant to speak out against governmental abuses of individual liberties. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:01

Wednesday, October 24, 2007

Why send inmates on a wilderness program if they will be returned to their cells in a matter of days?

Image from Bureau of Prisons' website.Â Oak Hill is a District of Columbia jail for males, located in Laurel, Maryland. Recently nine Oak Hill inmates were sent on a survival program, apparently to help them better adjust to society. Fine and dandy if the result is to release them from incarceration at the end of successfully completing the survival program, but quite another thing if the inmates are returned to incarceration, which they were.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Tuesday, October 23, 2007

When police step on deaf people's rights.

First Amendment and the rest of the Bill of Rights. (From the public domain.) Deaf Law blog, which last posted over five months ago, has two important posts about police mistreatment of deaf people. In one instance, police in Modesto, California, fired upon a deaf motorist who did not hear -- and, therefore, did not follow -- police commands to get out of his car. The police did not stop to think he might be deaf; they did try addressing him in Spanish, which clearly was of no help. In another instance, Deaf Law blog reports on a confidential litigation settlement by a man who filed a complaint alleging unlawful arrest and detention arising from a warrantless search, and a violation of the Americans With Disabilities Act not only for the police failure to provide a sign language interpreter, but also for the ongoing handcuffing of the arrested man, which deprived him of his main means of communication. More information on this case is here. I hope Deaf Law blog resumes its blogging activities. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:05

Monday, October 22, 2007

When the nature of an interviewer is learned after the fact.

Image from the Government Printing Office's website. This follows up on my October 19 blog entry about my then-upcoming panel interview for that evening about the pros and cons of gun control, including my discovering only after the interview about the program's links to Press TV, which is at least partially funded by the Iranian government. This televised panel discussion and debate provided me an opportunity to hear the views of others dealing with this topic all the time, and to get my own views out to the public, not only about my insistence that we not be disingenuous to the Second Amendment nor to any other parts of the Constitution, but also to let viewers know that innocent people often get dragnetted into gun arrests (the same thing happens with drug arrests); that many people live in states that permit carrying a handgun in one's car, only to be arrested (sometimes on charges of speeding or other moving violations) in another state that does not permit such activity, without knowing that in advance; and that the mandatory minimum sentences for possessing a handgun in relation to a drug felony (even if the drug felony is possession with intent to distribute a few ounces of marijuana, which I strongly believe should be legalized) are unjust. On the four-person panel were two firm gun control advocates, a gun ownership/use advocate whose gun rights views are at times firmer than those of the executive director of the National Rifle Association, and myself, who says that the Second Amendment needs to be amended before the federal, state and local governments are permitted to limit firearm possession close to the current level of limitations. The two gun control advocates consisted of a gentleman whose son was murdered with a handgun in the District of Columbia, and a fellow local National Lawyers Guild member who has been supporting Brady bill types of legislation. Asked for my thoughts about American society's rampant violence, I responded that the answer goes well beyond the widespread availability of handguns. For one thing, when deprived of firearms, people wishing to commit violence have such alternative options as knives and explosives made from material that is easily obtained (e.g., Molotov cocktails). I said that violence often happens because of societal desensitization about violence and feelings of disconnect in society. I got nods of agreement from the pro-gun control panelists when I said that America's constant warmongering helps desensitize people about violence. I also pointed out that Oklahoma City bomber Timothy McVeigh served in the military during the first Iraq war in 1991. The gun rights panelist insisted the current Gulf War was justified for having removed a "sadistic dictator." Further discussing the causes of violence in America, I pointed out the frontier mentality that still overly pervades American society, with too many people having an attitude of "Hooray for me. To hell with you." I said that everyone needs to reach out to everyone else, starting with the people living right next door to us. I also got nods of agreement from the pro-gun control panelists when I pointed out that desensitization about violence also arises from too many police officers being too trigger happy with their tasers and guns. At the conclusion of the taping, I went over to the man whose son was murdered, and told him I was sorry that his son had been killed. He thanked me and gave me a hug, rather than shunning me for my views. From the time I was invited to this interview, I started trying to make sense of what the Arab Television Network is all about, this being the television station that conducted the interview. It appears that the station is too new to have any useful Google coverage. The station is based in Denmark, and its website has limited information. One of the station's employees expects the interview will soon be uploaded to PressTV.com (and possibly portions on YouTube) under the section for the "American Dream" program that handled the interview. Press TV's website says: "PRESS TV is the first international Iran-based news network to broadcast in English on a round-the-clock schedule. Our Tehran-based headquarters is staffed by media professionals from around the world. PRESS TV has an extensive network of bureaus located in the world's most strategic places." The International Herald Tribune reports that the station launched just over three months ago. Other reports confirm that Press TV is at least partially-funded by the Iranian government. An article on IndyMedia.org quotes Amir Afra -- who produces and hosts Press TV's "Fine Print" program -- as saying: "We're state-funded, not state-governed... We are like so many non-governmental organizations that receive state funds. We have our own editorial board." A host of "American Dream" (different from the host when I appeared) is Mark Levine, who claims he is not being censored on the show, and who confirms the show's affiliation with Press TV. Consequently, I wonder why the woman who invited me to the panel interview characterized it as an interview by Arab Television Network rather than an interview for a show running on Press TV. In any event, an interviewee always runs the risk that an unfamiliar interviewing news organization will have an agenda opposite that of the interviewee. Would I still have appeared on this program had I known its connections with Press TV? I probably would have wanted to dig into what Press TV is all about before making a final decision. Even now I do not have enough information about the extent to which the station is as independent as it claims from the Iranian government. Jon Katz. ADDENDUM: On December 13, I accepted an invitation to return to the same "American Dream" program, this time about the December 6, 2007, mall shootings in Nebraska. The person inviting me, from ATV, told me that she always tells interviewees that the program broadcasts on Press TV. Therefore, if I mis-heard about Press TV when invited for the above-described October 19 "American Dream" appearance, I apologize about my original comments about that in the above blog entry. Whether or not I misheard, now I know the nature of Press TV, and told the person

inviting me on the show for December 13 that I accepted the invitation so long as I will not be censored, which she said I will not. If it were only so easy to know something is so just because someone says it is so.

Posted by Jon Katz in Constitutional Law at 00:19

Sunday, October 21, 2007

Underdog visits underground comix fest.

First Amendment and the rest of the Bill of Rights. (From the public domain.) On September 30, I blogged about the October 13 whirlwind weekend of local appearances and performances by Bill Griffith, Andrew White and Ben Lo. Happily, I got to the Small Press Expo, where the shadow of Zippy creator Bill Griffith loomed large. Unfortunately, I missed attending another annual t'ai chi learning session with superstar teacher and practitioner Ben Lo, and missed hearing Andrew White perform jazz live. My main motivation for visiting the Small Press Expo -- which focuses on underground and alternative comics -- was to catch a glimpse of Bill Griffith. I got much more than I bargained for, having been second in line to meet with him immediately upon arriving in the exhibition hall. Bill Griffith is a class act. He very much likes and appreciates his fans. While keeping one eye on Bill and the other on my son -- who started walking back towards the sign-in area -- I thanked him for his sharing his amazing creativity with the world. I often forego seeking autographs, but was interested in having both the karma and artistry of Bill's. I e-mailed him the next day seeking his permission to upload his autograph, which he gave. I have e-mailed Bill before, also receiving specific replies that clearly were from him. Imagine such an accomplished creator who stays in such frequent contact with his fans; in fact, his webpage says an effort is made to answer within twenty-four hours. I also got a chance to hear most of Bill's slide show presentation later the same afternoon, which included Bill's initial efforts to become a "serious artist" and later efforts to make some easy money by offering his cartooning talents to Screw magazine. Bill talked about the origins of Zippy from one or more actual circus sideshow characters from many generations ago, at least one of which had "pinhead" in his name. Bill's mother was a science fiction writer, and his dad a stiff career military person; he thinks his personality displays some of both. Returning to the exhibition upstairs, I had to take the escalator and pass by a very formal wedding party, with the professional photographer snapping away while trying to crop out the very informally-dressed (to say the least) comics expo attendees passing by. It is rather strange if the convention hotel did not think to tell the wedding party that they might want to consider the crowd next door. At nearly every exhibition table was the actual creator of the material being promoted. Without exception, the many creators I met were very accessible to me and the other attendees, and seemed very happy to have a chance to interact with the alternative comic-reading public. High quality comics and accessories abounded. In addition to my meeting with Bill Griffith, I particularly enjoyed speaking with Ted Rall, whose work previously was carried in the Washington, D.C. City Paper. The Small Press Expo took place at the Marriott hotel about ten miles up the street from Georgetown in Washington, D.C. The West Coast probably has a parallel and larger annual shindig in San Francisco; meanwhile, I am very happy to have such an annual event just a few miles from where I live. I understand that proceeds from the event partially benefit the very worthy Comic Book Legal Defense Fund, which apparently has been at the forefront of defending the First Amendment rights of alternative comics. It is sad that such censorship exists in the first place. Jon Katz.

Posted by Jon Katz in First Amendment at 00:10

Mark Bennett on cross examining experts

Photo from website of U.S. District Court (W.D. Mi.). Thanks to fellow criminal defense lawyer Mark Bennett for his beneficial series on cross-examining expert witnesses. His three installments are here, here, and here. Numerous times, Mark has covered and praised me and this Underdog Blog; particularly when considering the source, I appreciate his words very much. Likewise, I very much appreciate Mark's devotion to excellence and sharing his experience and wisdom. Mark is a Houston criminal defense lawyer whom I know from the Trial Lawyers College; for around two years, we shared the often thankless task of keeping the TLC's listserv running (we made and enforced no rules other than that listserv members were limited to people who attended the multi-week TLC program). He and I share a devotion to incorporating powerful life approaches from outside the legal profession into our law practices; excellence in representing our clients; and a refusal to paint an unrealistically rosy forecast -- as opposed to presenting an optimistic battle plan -- to potential clients, even though many people will hire lawyers painting unrealistically rosy forecasts. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Friday, October 19, 2007

Jon Katz will appear on Arab Television Network Tonight.

Camera image from U.S. Geological Survey website. This evening, October 19, 2007, at 8:00 p.m. EST, Arab Television Network (available on cable television) will spend about an hour interviewing me (in ATN's Washington, DC, studio) and a panel of other interviewees who are pro and con on gun rights. I have blogged several times about my support of strong protection for gun possession rights unless and until the Second Amendment is amended. I believe that weakening Second Amendment rights disserves a robust protection of First Amendment rights. (Compare: (1) "Congress shall make no law ... abridging the freedom of speech, or of the press; or THE RIGHT OF THE PEOPLE peaceably to assemble, and to petition the government for a redress of grievances" (the First Amendment); and (2) "A well regulated militia, being necessary to the security of a free state, THE RIGHT OF THE PEOPLE to keep and bear arms, shall not be infringed" (the Second Amendment).) Of course, I worship at the altar of the First Amendment. Apparently the interview will broadcast live, and is available on cable television, for those receiving the Arab Television Network on their cable television plans. Have a great weekend. Jon Katz.

Posted by Jon Katz in Constitutional Law at 14:00

When "fart" is expressed in august courtrooms.

The Seventh Circuit sniffs out the to do with Pull My Finger Fred. (Image made available for copying under the terms of the GNU Free Documentation License.) My brother lawyer Marc Randazza certainly finds humorous legal-related tidbits to blog about. One day I'll ask him if his secret to finding such stories goes beyond panning for gold. Marc is an adjunct law professor who introduces his students to the saga of fartman How much more fun law school would have been had I been assigned to read the essence of the unanimous panel opinion in *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910 (7th Cir., March 20, 2007), which opens as follows: "Meet Pull My Finger® Fred. He is a white, middle-aged, overweight man with black hair and a receding hairline, sitting in an armchair wearing a white tank top and blue pants. Fred is a plush doll and when one squeezes Fred's extended finger on his right hand, he farts. He also makes somewhat crude, somewhat funny statements about the bodily noises he emits, such as 'Did somebody step on a duck?' or 'Silent but deadly.'" First, John Wayne Bobbit's case made it easier for Al Bundy to say the p word (almost) on television. Now, Pull My Finger® Fred makes "fart" acceptable to be expressed in a court opinion. This is one judicial chambers conference and opinion drafting session that I would have wanted to witness. Perhaps the judges' law clerks will expel some light on such developments. (Speaking of this case's judge lineup, one of the panelists approving the opinion is none other than Daniel Manion, who barely squeezed by his Senate nomination vote, by a tally of 48-46.) For anyone wondering, this Pull My Finger® Fred case is a serious intellectual property case upholding over a half million dollars of relief for a blatant ripoff of Pull My Finger® Fred. Thanks for Copyright Law's link to Marc's annals (Marc's selected description) of finger-pulling dolls. Patently O also covered the story. Jon Katz.

Posted by Jon Katz in First Amendment at 00:00

Thursday, October 18, 2007

Support the Comic Book Legal Defense Fund

Bill of Rights. (From the public domain.) On October 13, I had a great time at the Small Press Expo in Bethesda, Maryland, where the highlight was meeting the amazing creator, writer, and artist Bill Griffith of Zippy the Pinhead fame. The Small Press Expo features underground and alternative comics and their creators; with at least one hundred artists engaged in stimulating conversations with alternative comics fans. Stay tuned this Sunday for more information here about the event. At the Small Press Expo, I met two of the staff of three at the Comic Book Legal Defense Fund. Sadly, unjust attacks on comics did not end with the 1950's Congressional hearings that apparently secured heavy doses of blandness in mainstream comics, and led my treasured Mad Magazine to convert to a magazine format to avoid such nonsense (but which also apparently led to its ceasing publication of its masterful allied comics). The CBLDF's work includes support of Gordon Lee, who is being prosecuted after the mistaken distribution of an adult-themed comic to a minor during a Halloween celebration. The prosecution and the law (detailed here) being used for the prosecution both are preposterous violations of the First Amendment and basic individual rights. I recommend donating to the CBLDF, particularly to fans of underground and alternative comics. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Wednesday, October 17, 2007

China opposes Congressional award to Dalai Lama. What's new?

The Dalai Lama said: "Tolerance can be learned only from an enemy; it cannot be learned from your guru." (Image from the public domain). China has been vigorously lobbying against the Dalai Lama's receipt on October 17 of a Congressional Gold Medal in Washington, D.C. Fortunately, Congress is going full speed ahead with the award. What does the Chinese government fear here? An amplified and living image of its own atrocities? Instead of spending so much time and resources trying to whitewash and revise its shameful history and present with Tibet and Tibetans, the Chinese government should focus on respecting and protecting human rights throughout Tibet and China. Jon Katz.

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

Tuesday, October 16, 2007

Shrooms to be banned in Holland.

Image from USDA's website. Many tourists to Holland make beelines to marijuana in cafes, psilocybin "magic mushrooms" (also known as shrooms), and legalized prostitution. Relying on anecdotal evidence rather than on hard scientific facts (e.g., about the varying potency of such mushrooms and their actual harmfulness rather than claimed harmfulness), conservative Dutch lawmakers were behind instituting a recent ban on magic mushroom sales in Holland. It appears that possession of such mushrooms will not be banned at present, thus keeping it available for pizza toppings and other recreational uses. Jon Katz.

Posted by Jon Katz in Drugs at 00:00

Monday, October 15, 2007

When the White House ejects reporters

Bill of Rights. (From the public domain.) Neither Republicans nor Democrats have a monopoly on oversquelching others' speech, in their efforts to obtain picture-perfect media events. I have written more about this here. Bizarrely, and according to WTOP (Washington, D.C.) news radio, on October 11, 2007, WTOP political commentator Mark Plotkin was shown the door out of the White House during an event honoring D.C.'s Ballou High School's marching band. The attendees included hostess Laura Bush, the high school band, Barbara Bush, D.C. Mayor Adrian Fenty, Council Chair Vince Gray, Delegate Eleanor Holmes Norton and School Chancellor Michele Rhee. Laura Bush gave a short speech, and Mark Plotkin asked: "Mrs. Bush, do you agree with those who say and believe that members of the Ballou High School band should not grow up to become members of the House of Representatives?" Ms. Bush remained silent and walked away. According to WTOP reporter Mark Segraves, the following events then unfolded: "At that moment, White House staff formed a human wall between the press and the First Lady and pointed to the door. One White House staffer told Plotkin he was out of line because the event was 'about the kids.' 'My question WAS about the kids,' Plotkin fired back. "As we left the East Room, Plotkin ran into White House Chief of Staff Josh Bolten. Bolten wasted no time telling Plotkin he had been disrespectful. As we stood in the horseshoe driveway of the White House, Sally McDonough from Mrs. Bush's press office hurried over to us. 'Next time you have a question for the First Lady you can call me and request an interview.' 'Great,' he said. 'I'll call tomorrow and we'll set it up.' 'I said you could request an interview.' Plotkin smiled. "Then McDonough asked Plotkin for his name and employer, which she wrote in her notebook. 'Thanks, I'll walk you out.' She escorted Plotkin to the gate." Your tax dollars at work. Curiously and sadly, many online commenters -- but certainly not all -- viewed Mr. Plotkin as having been out of line. Kudos to Mark Plotkin for his years of passionately standing up for District of Columbia statehood and voting rights in Congress. I lived in the District of Columbia for fourteen years, always feeling tremendous discomfort about living in the city of taxation without Congressional voting representation (which phrase finally reached D.C. license plates several years ago). Around fourteen years ago, I met Mr. Plotkin at a neighbor's holiday party. He struck me as a very likeable, bright, and articulate person. I wonder whether the Lyndon Johnson White House would have ejected Mark Plotkin under similar circumstances, as opposed to just telling him that no question and answer session was scheduled, and that for him to stay, he'd need to refrain from news-related questions. Lyndon Johnson may have been many things, but he apparently was not high on social graces, perhaps even less so as a reaction to John Kennedy when Johnson was vice president, and Robert Kennedy during the Kennedy and Johnson administrations. Johnson apparently went as far as meeting with reporters (and possibly some staff members) while sitting on the toilet, apparently thinking less of those reporters who would not look him straight in the eye during such sessions. (This raises the question about gender discrimination concerning reporters and staff members.) The question remains whether Johnson was doing bathroom meetings merely as a time-saving device, with the idea that he sometimes only had time to meet reporters while on the toilet. As a further digression, I once heard a story about Johnson taking Robert Kennedy hunting at Johnson's ranch. Kennedy is said to have fallen down from the force of pulling the trigger, and Johnson is said to have reacted dismissively at Kennedy's having lived a life that would not have gotten him accustomed to such shooting exercises. Back to the topic of Mark Plotkin's question to Ms. Bush, which was District of Columbia statehood. The denial of statehood to the District of Columbia comes in the context of decades of customary discrimination against African Americans in D.C., which long has had a majority African-American population. Republicans might fear greater Democratic Congressional power if D.C. obtains statehood, but this apparently would not involve more than two senators and one member of the House of Representatives. The argument that Washington, D.C., as a federal city, should not be a state, does not fly either. The federal government only occupies a small percentage of downtown Washington, D.C., and it would not be hard to set aside that part -- most of which does not even cover residential areas -- from a state in what is now Washington, D.C., which covers sixty-one square miles, and has a population exceeding 580,000. Retrocession of Washington, D.C., to Maryland is another idea that has been proposed by some for enfranchising District of Columbia residents, although statehood seems to be more the talk of the day among its residents. In any event, kudos to Mark Plotkin, for sticking to his convictions, for doing so with Laura Bush (whose husband and his political party have been no friends of District of Columbia statehood), for somehow finding a way to get hired by WTOP when his rabble-rousing bona fides were well known when he was hired, and for finding a way to stay with WTOP apparently without watering himself down. I would like to see or hear a full and unvarnished version of this whole White House ejection affair from Laura Bush or her handlers, but am not holding my breath. Jon Katz. ADDENDUM: Curiously, the White House's full quote of Ms. Bush's speech at this event ends with "Thank you all so much for coming. I'm so excited to see this story of the Ballou High School Marching Band. (Applause.)" Not surprisingly, the White House's online version of the event omits any mention of Mark Plotkin's question and ejection that immediately followed.

Posted by Jon Katz in Constitutional Law at 00:10

Underdog's facelift is one year old.

Â Â A year ago, our Underdog blog underwent a facelift and technological metamorphosis. Before that, our blog ran on regular Internet publishing software rather than on blogging software. Â Thanks immensely to our sitehost Daytona Networks for finding, configuring, and uploading our new blog software.Â Â A few people have told me about Underdog uploading slowly sometimes. Our sitehost believes that's related to the brief times each day when the sitehost's power is lower for such tasks as daily site statistic downloading. However, if anybody has any suggestions for a faster sitehost or faster-loading quality uploadable blog software, I welcome your suggestions. I am particularly interested in finding a sitehost with redundant servers, to have a backup hosting server during any outages of the primary hosting server. In any contract with a sitehost, I do not wish to have censorship provisions. Â Underdog was launched on April 20, 2006. Many blogs start tentatively but soon either peter out or blog infrequently. Ours is here to stay, and,Â has published every weekday since April 20, 2006, except for vacation time, when we have linked to earlier months' archives to review. My articles on blogging are [here](#) and [here](#). Jon Katz.

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

Sunday, October 14, 2007

Be here now / The hugging culture

Â Â Â OftenÂ I blog about battling powerfully as a trial lawyer by being in the present. Â My path to sufficiently valuing and practicing being here now took many years and many mis-steps. I did not start consciously focusing on being in the present until the age of seventeen,Â when I read and tried to apply Herbert Benson's Relaxation ResponseÂ to try to help me be more relaxed when I often was the opposite. Two years later, I experienced Count Basie live, including his very deliberate being in the now.Â I then became interested in t'ai chi four years later, when I saw a character in Peter Wang's A Great WallÂ perform daily t'ai chi and expel flatus as a climax (apparently a way of expelling negative elements in the body, but fortunately my form of t'ai chi omits the flatus, perhaps particularly seeing that classes are held indoors), and took up the practice eight years later (as I describe here the long delay in getting started), ultimately learning of t'ai chi's focus on being here now and applying it twenty-four hours a day. Â T'ai chi apparently is heavily influenced by taoism. A year after I started practicing t'ai chi, I read The Tao of Pooh and The Te of Piglet, both by Benjamin Hoff (who apparently has given up on working with book publishers). The books helped enhance my t'ai chi teacher Len Kennedy's teaching to accept and work with change, rather than fighting it.Â Eight years later, in 2003,Â I heard and met Ram Dass, when he spoke in Washington, D.C. By then, he had left the depression of his stroke and saw it as Fierce Grace. When I finally met Ram Dass, standing patiently in line to do so after his talk, I saw how much in the now he was, and is. I finally bought and read Ram Dass's essentialÂ Be Here NowÂ within a few days.Â Ram Dass was certainly not in the now when he was still RichardÂ Alpert -- recently booted out of Harvard for having teamed with Timothy Leary to conduct psychological experiments with then-legal LSD --Â during the first days he spent with Bhagavan Das, who let Ram Dass know that Bhagavan had no interest in where Ram Dass came from, nor his credentials. Learning from them, t'ai chi, and the likes of Count Basie, my favorite letter in the alphabet became "Bee", for Be Here Now. Â Two years later, in Philadelphia, I met Bhagavan DasÂ ,Â who perhaps sensed I was not being here now at the time; otherwise,Â why was I carrying his book It's Here NowÂ (Are You?) -- which was already several years old and therefore removed from the nowÂ -- clearly for the possibility he would sign it. So he kept himself elusive to me, and it took two years for me to recognize that this was his lesson for me to get back to the now, and a reminder of a central theme of It's Here Now, which is that we do not need to travel far distances to find our teachers. Â A year later, my son was born. He is now nineteen months. He has not read the Relaxation Response, heard Count Basie, read The Tao of Pooh or The Te of Piglet, read Be Here NowÂ , nor read It's Here Now. Nevertheless, heÂ lives very much in the moment, exemplifying the practice of being here now. He has no schedule, does not wonder about the future, and simply does not worry. Recently, we went together to the national zoo (yes, captive animals and all; for him it is a wonderland). I pretty much let him go where he wanted and for as long as he wished. Curiously as much as he loves the zoo, one of his happiest moments during that visit was just to sit on the curb alongside the main walking path, playing with some leaves, and experiencing the animals around him -- both the human and non-human sort. Â Aren't most nineteen-month-old children like that (unless they experience or witness abuse -- which would be the topic for thousands of pages of discussion)? What makes most of them lose touch with such inner joy, magic and strength as they get older, to the point that authors, publishers, and therapists rake in huge sums of money to try to get them back to what they already knew and felt as such young children? Jon Katz.Â Â ADDENDUM: Perhaps young children start losing their being in the now as they start feeling more stress and disconnect; meet other children and adults who act cold, mean, intolerant, and violent; struggle with boredom and try to break out from boredom; and deal with the stresses of school when little attention is paid to teaching how to keep exams and everything else in life in balance and harmony. I am sure that thousands of pages have been written about this. I add the following. Â It appears common that as children grow older, at least in American society, they are hugged less frequently and are discouraged from hugging as much. Babies love being hugged, cuddled, and massaged. As they get older, they might think it less cool to be cuddled, and their parents might think they are smothering too much to cuddle as much. In the process, many children probably start feeling disconnect. As I look back on the many cold experiences I had in starting new schools,Â my first full-time job out of college, and various other new experiences, I re-feel the strong disconnect I felt. Warmth seemed too much missing; hugs were not necessary for that, just the warmth. It took me a long while to get and expressÂ more warmth in me, too; I was too busy keeping up my guard against real and imagined conflicts and adversaries ahead. Â At the Trial Lawyers College, hugging was the theme of the day, and remains so. Plenty of participants were into it; but I at first felt some coercion into it, lest I feel banished from the tribe while still in the middle of nowhere for four weeks. Before entering the Trial Lawyers College, I laughed my head off at a sitcom recreating a men's wilderness retreat, with the protagonist in the middle of the circle wailing out his woes as the drum beat methodically,Â and then begging for a hug, which he received in multiples. I heard the stories of sexual harassment lawsuits that included complaints about incessant requests from bosses for hugs. (Then again, a very skilled and caring plaintiff's discrimination lawyer was one of the first TLC attendees to ask me for a hug, which I declined at first still thinking the whole hugging culture bizarre (unless among family members, close friends, or those attracted to each other); she told me that I left her feeling very

unhugged.) I write a little about the TLC hugging culture here and here. Â I ultimately learned that just about everybody who offered me a hug at the TLC -- aside from the few who did it just to conform to the tribe -- did it with genuine intentions to connect, to give comfort, and to shed their protective armor. Â If people are not going to receive and give literal hugs, then at least figurative hugs are in order, starting with sharing warmth rather than coldness, shedding our protective armor more often, and being empathetic. That certainly would make the world a better place.

Posted by Jon Katz in Persuasion at 00:01

Friday, October 12, 2007

Too many innocent people get convicted.

Bill of Rights. (From the public domain.) Too many innocent people get convicted, whether through wrongful convictions by judges or juries, or by pleading guilty when the likelihood is high of a wrongful conviction (with an attendant harsher conviction from pleading not guilty) (North Carolina v. Alford, 400 U.S. 25 (1970) allows innocent people to plead guilty, and even to deny guilt but to be adjudicated as if they had been found guilty without a trial). The harmful repercussions of a conviction go beyond incarceration. Plenty of convictions preclude people from a whole host of job, housing, and other critical opportunities. A conviction -- even if a wrongful one -- ordinarily will be treated as sufficient for revoking one's probation or parole (and to reincarcerate as a penalty), to deport a non-citizen if the conviction is for a deportable crime, for enhancing a person's sentencing guidelines exposure, and for impeaching one's credibility on the witness stand in any civil or criminal trial. Another bittersweet example of this sad state of affairs came this week, when Ronald Taylor was released from prison in Texas (see additional details here), after serving over a dozen years for a rape he did not commit. Harris County District Attorney Chuck Rosenthal apologized for the wrongful conviction, which arose in connection with the crime lab's erroneous claim that no semen was found on the bedsheet involved in the rape. Fortunately, the Innocence Project (please donate generously to the Innocence Project) recently paid to have the bedsheet tested, whereby the new lab found semen on the sheet; the DNA found on the sheet was matched to an entirely different inmate. As a result, Mr. Taylor was released from prison after being convicted by misidentification. Remarkably, Mr. Taylor's mother said she has no anger towards anyone. As much as I have written about the importance of achieving power through eliminating anger, it is one thing to enunciate the idea and quite a different thing to live the principle to the amazing extent that Mr. Taylor's mother does. Too many prosecutors, cops, judges, and others (sadly, I have heard some criminal defense lawyers join in) jump to conclusions about one's criminality merely by knowing they have been arrested, let alone knowing they have been convicted. Too often they proclaim "where there is smoke there is fire," when sometimes the smoke merely is coming from dry ice, from a delusion or illusion, or from outright lies. Such a mindset is wrong. Each of us can change that mindset, no matter how painstaking is such a persuasion process. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Thursday, October 11, 2007

L.A. police report admits excessive force at May Day demonstration.

Bill of Rights. (From the public domain.) On May 3, 2007, I blogged about severe police brutality by Los Angeles police against demonstrators and journalists near the conclusion of a huge pro-immigrant demonstration. Thanks to a fellow listserv member for posting about a recent Los Angeles Police Department report that admits excessive force was used by police at the demonstration. Fortunately, the report goes beyond that obvious conclusion to provide details about how such rampant brutality took place in the first place. As Agence France Presse relates from the Los Angeles Police report: "As the day wore on, there was a breakdown in command' that left officers on the ground to their own devices when they were pelted with bottles and rocks by protesters. "As subordinates from various positions in the field made numerous requests over the radio that went unacknowledged and unanswered ... officers began to make independent decision in efforts to control the crowd,' the report said. "Some officers used their batons to strike protesters, while others fired rubber bullets inappropriately into the crowd in violation of police procedures, the report added." How many more such instances of police brutality do we need before more people recognize the high risks of giving anybody a gun, the power of arrest, and a police uniform (the same can be said of giving a gun and the authority to maim and kill to soldiers)? I think police brutality will continue to run deep and rampant as long as society remains as overcriminalized as it is, because an overcriminalized society requires an excessive number of police, which translates into too many underqualified police being hired, insufficient training, insufficient supervision, insufficient police morale, and insufficient selection and training of those who train and supervise the frontline police. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Wednesday, October 10, 2007

The right to bear arms; the right to drive for undocumented folks; and living where such driving is lawful.

Cesar Chavez: A champion for the empowerment of workers and immigrants. In 2004, I went to the National Rifle Association annual meeting in Pittsburgh, to learn more about modern-day firearms in order to strengthen my ability successfully to defend criminal gun cases, and also to get a better handle on the realities of my support for a Second Amendment with teeth (believing that being disingenuous to enforcing Second Amendment rights -- unless and until the Second Amendment is amended -- disserves a robust protection of First Amendment rights. (Compare: (1) "Congress shall make no law ... abridging the freedom of speech, or of the press; or THE RIGHT OF THE PEOPLE to peaceably to assemble, and to petition the government for a redress of grievances" (the First Amendment); and (2) "A well regulated militia, being necessary to the security of a free state, THE RIGHT OF THE PEOPLE to keep and bear arms, shall not be infringed" (the Second Amendment).) The mantra at the NRA meeting, though, was scary: throw money at Second Amendment-supporting politicians even if they urinate on the rest of the Constitution; and "there would not have been a Nazi Germany or Soviet Union if people had the right to bear arms." Another NRA mantra is supporting hunting, so that people may live off the land and enjoy the great outdoors (which I, as a strict vegetarian do without fishing, hunting or eating animals). It was too much for me to deal with; I resigned my NRA membership, which membership was necessary to attend the annual NRA convention, which had more than a football-sized display area of the latest handguns, rifles, and weaponry accessories. At the NRA conference, some people asked me what it was like to live in the People's Republic of Maryland, so named for Maryland being inhospitable to the Second Amendment, as opposed to Virginia, where in some parts of the state people are permitted to pack a concealed pistol while walking down the street, which can give all the more cause for pause about looking anyone cross-eyed in the former cradle of the Confederacy. Of course, worse than Maryland, District of Columbia statutory law does not even permit gun ownership at home, but D.C.'s highest federal court this year ruled such crabbed laws to be in violation of the Second Amendment. By now, I have lived in all three Capital Beltway jurisdictions. I started in Arlington, Virginia, for a year, at a point just a mile from Georgetown in Washington, D.C. I hurled at the thought of living in a state that so actively executes people. I moved to Washington, D.C., and stayed there for fifteen years. For people living in the area, the city has its lure; however, taxation without representation did not sit well with me; on the other hand, at least D.C does not have the death penalty (that's reserved for the federal courts). In 2002, I moved not only to Maryland, but to Montgomery County, which in many ways is a people's republic within a people's republic. On the other hand, all three places have miserable histories of racial segregation and racial injustice. Overall, of the areas surrounding the Capital Beltway -- where I need to live for easy access to the many courts where I practice -- I prefer living in Maryland, including some great nearby hiking, biking and boating places. Curiously, little did I know until speaking recently with a Maryland Motor Vehicle Administration employee that undocumented people are eligible for drivers' licenses in Maryland. (I should have talked about this with my law partner, Jay, who would have told me he already has handled such assistance.) I was under the misimpression that such a benefit was not available in Maryland, and possibly not elsewhere, either. As much as many Marylanders might want to eliminate such a benefit, I want the benefit to remain forever. Fortunately, many Maryland lawmakers agree. It appears that very few states make drivers' licenses available to undocumented people, and that the number is dwindling. Over a year ago, CASA of Maryland filed a lawsuit over the allegedly glacial pace for plenty of non-U.S. citizens to obtain driver's licenses; I do not know that status of that lawsuit yet. Lawmakers have identified how to continue making drivers' licenses available to undocumented people while still coming into compliance with the Big Brother Real ID Act, which is to make Real-ID-applicable drivers' licenses only available to those who request them (apparently such Big Brother "Real IDs" ultimately will be required to board planes and who knows what else (maybe I will find out that Maryland already has them, by the time I renew my driver's license in a few months). New York is another state that looks out not only for undocumented people in permitting them to have drivers' licenses, but as a result looks out for all drivers and passengers, whom are better served by having all drivers licensed, to assist in assuring at least minimally adequate driving skills by all drivers, and to assure that everyone is eligible to purchase car insurance. The next step will be to encourage people to get out of their cars often, so as to wake up and smell the jasmine flowers, and to help reduce the environmental degradation from driving. Meanwhile, welcome to Maryland, everyone who is not eligible to get licensed in neighboring jurisdictions. Jon Katz.

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

Tuesday, October 9, 2007

Tasers: Additional violence in police arsenals.

Bill of Rights. (From the public domain.) Violence begets violence. If you disagree, ask the Hatfields and McCoys. During the John Kerry tasergate, the UCLA tasergate, and the Ohio tasergate (in the state of Kent Stategate), numerous commenters on blogs and online news websites proclaimed that the police must be obeyed, and that tasing is about law and order. Fortunately, plenty of people do not buy such arguments. Tasing is violent, and only adds violence to police arsenals. Without tasers, we likely would see more police patience and, consequently, less violence. Tasers might obtain quick compliance in the short run and might be more sexy than patience. However, in the end, patience and non-violence is the better route. Gandhi knew that; so did Martin Luther King, Jr. The United States Justice Department funded a study at Wake Forest University (how reliable and objective is the study, seeing that it was funded by the nation's largest law enforcement machine?) on taser safety, and the study apparently downplays taser dangers. Not so, says Amnesty International, which reports dozens of taser-related deaths in the United States and Canada through 2004 alone, and over 200 such deaths in the United States through present. According to CNN: "The Wake Forest researchers acknowledge that there have been roughly 270 people who have died in police custody after being Tasered, but they say that there is no clear evidence that the deaths can be attributed to Tasing or other causes." Imagine if the U.S. Food and Drug Administration approved drugs with such an approach: "There is no clear evidence that deaths can be attributed to LSD, so we will allow it to be sold at 7-11 stores, and to be used on criminal suspects." Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, October 8, 2007

Bush: "This government does not torture people." No, Bush II's henchpeople just slap terror suspects, waterboard them, and give them the chills.

Bill of Rights. (From the public domain.) The Bush Administration, thinking it knows what is best for the American people (or, more likely, fearful of the people's backlash once they learn the truth about the government's torture of terror suspects), continues to operate under as much secrecy as it can in detaining, harshly interrogating, and torturing terror suspects. The New York Times reported on October 5, 2007: "In two separate legal opinions written in 2005, the Justice Department authorized the C.I.A. to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures." Bush II on October 5 insisted: "This government does not torture people." He was responding about a disclosed secret Justice Department legal opinion allowing harsh physical tactics in interrogating terror suspects just months after the Justice Department claimed torture to be abhorrent. Apparently the shift came with Alberto Gonzales's taking the helm of the Justice Department. Bush II claimed such interrogation methods had been fully disclosed to appropriate members of Congress. However, Congress members apparently were not provided the documents authorizing such harsh interrogation methods, and West Virginia Senator Jay Rockefeller -- for one -- insists on having those documents. Bush II said: "And when we find somebody who may have information regarding a potential attack on America, you bet we're going to detain them, and you bet we're going to question them, because the American people expect us to find out information actionable intelligence so we can help protect them. That's our job." Where will Bush II draw the line at such detentions? At least on American soil, the Constitution does not allow detaining people merely because they "may have information regarding a potential attack on America." White House deputy press secretary Tony Fratto complained that the New York Times, which revealed this harsh interrogation authorization, harmed the nation's security. There is nothing like having the government play the national security card to try to avoid responsibility for trampling on human rights. During times of war -- Bush II considers a war on terrorism to be in existence -- the people must be particularly vigilant to protect everyone's civil liberties and human rights, both to protect people's rights today, and to prevent such wartime violations from spilling into peacetime, as well. If we do not protect the basic human rights of terrorism suspects, then none of our rights are safe from the Bush II regime. Moreover, if you think you are not a potential terrorism target, just speak to Brandon Mayfield, who will prove you wrong. If you think Bush II's henchpeople do not try to indefinitely detain terror suspects -- even those who are United States citizens -- speak to Jose Padilla or his lawyers. Moreover, the same Bush administration that advocates harsh physical interrogation of terror suspects is the same Bush administration that prosecutes federal crimes and imprisons suspected and convicted federal criminals. How should the Bush administration be expected to respect and protect federal criminal suspects' and defendants' Constitutional rights when it will not respect terror suspects' human rights? Finally, John D. Hutson, who was the former top Navy lawyer during the Clinton administration makes a good point that: "The problem is, once you've got a legal opinion that says such a [harsh physical interrogation] technique is O.K., what happens when one of our people is captured and they do it to him? How do we protest then?" Please speak out now against the Bush administration's violation of human rights as part of its anti-terror campaign. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00

Sunday, October 7, 2007

DWI: Fight back against administrative suspensions and civil fines.

Image from National Institute of Standards & Technology.)
When I was a public defender lawyer in the early 1990's, I heard that more indigent defendants were willing to pay a private lawyer to defend for drunk driving cases than for plenty of other types of cases, in order to preserve their right to drive. Of course, if loss of driving privileges is a motivator for indigent defendants to pay for privately-retained DWI counsel, I wonder if the real risk of jail leads them to hire retained counsel to try to avoid incarceration at all, seeing that people cannot drive during their incarceration period. In any event, here are a few practical tips for defending against administrative loss of driving privileges for drunk driving cases in Maryland and the District of Columbia, and for fighting Virginia's draconian civil fines for drunk driving and reckless driving cases: In Maryland and Washington, D.C., arresting cops routinely serve notices on the defendant advising of the administrative loss of driving privileges (for a specific time period in Maryland, and for an unstated time period in Washington, D.C.). It is critical to timely file a demand for a hearing to challenge a loss of driving privileges. In Maryland, just get the properly-prepared hearing demand (together with the required fee) postmarked by the deadline. In Washington, D.C., for local people, it probably is best to go personally to the DMV office to request a hearing date. It appears dicey to request a hearing by fax, although one lawyer a few years ago told me he routinely requested his hearings by fax. The fax number at the DMV for demanding such hearings is (202) 727-0646; the head of that hearing division is Ms. Carol Cade, at 202-727-6105. I recently accompanied a client to seek a D.C. DMV suspension hearing, even though he was beyond the short deadline listed on his notice of intention to suspend for seeking a hearing. Fortunately, one of the more experienced employees there informed me that the deadline for out-of-state defendants to seek a hearing had been extended from ten days to fifteen business days, which made our hearing request timely. Word to the wise: Demand an administrative suspension hearing even if you think you are late filing a request for such a hearing. An argument for having more time to seek such a hearing date in Washington is that some or all of the suspension notices continue listing the DMV's old address on K Street, where now the hearing office is at the MVA headquarters to the left of the District of Columbia Superior Court, in the basement level accessible from C Street, Northwest. Similarly, in Maryland, around two years ago an MVA employee told me that late written requests (where they are late to a certain point) for administrative suspension hearings were generally being accepted as timely filed, due in part to the MVA's backlog in scheduling administrative suspension hearings. In D.C., the DMV presents suspects with a form for seeking an administrative hearing to contest loss of driving privileges in D.C. One of the lines seeks the grounds for seeking a hearing. The best thing to say in that blank probably is: "I am presumed innocent under the law." In Maryland, the hearing application form asks why the suspect no longer possesses a license. I usually just answer that the police confiscated the license on the incident date. In Virginia, the ongoing big news about DWI and reckless driving cases involves the draconian civil fines imposed for such cases. Thus far, some lawyers have succeeded in persuading some judges to rule the statute unconstitutional for violating equal protection of the laws for only applying the law to Virginia licensees. Meanwhile, some members of Virginia's legislature are focused on updating this civil fine statute to apply to all drivers, not just Virginia-licensed or Virginia-resident drivers. Meanwhile, for basic background information on defending drunk driving cases, see here. Jon Katz. **ADDENDUM:** At first this blogpost may seem dry. However, people's lives and livelihoods are significantly harmed when their driving privileges are suspended. Consequently, this blogpost points to some important tips for defending against the adverse civil collateral consequences of drunk driving arrests and convictions.

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

Friday, October 5, 2007

Inspirations for dissipating anger: Dalai Lama and Bodhisattva Never Despise.

Â The Dalai Lama said: "Tolerance can be learned only from an enemy; it cannot be learned from your guru." (Image from the public domain).Â I grew up with a lot of suspicion about plenty of other people and with a lot of upset and anger over the present and past history of the most vile and inhumane mistreatment of humans by other humans. It started with an obsession over the Holocaust and other genocides, race-based concentration camps, and racist violence and subjugation, and continued from there. When I tried to do somethingÂ to stopÂ human rights violations, for instance by becoming very active with Amnesty International in college and law school, a problematic byproduct was the constant realization of how far humans have yet to go in stamping out inhumanity, no matter how far the world has progressed overall in that regard. Â Obsessing over human rights violations, over a far from perfect world, and over my future and general lot in life, I missed out on many of the joys of the moment, and often felt very alone. Amnesty International's message has been to light a candle for justice rather than cursing the darkness, but that did not sufficiently sink in for a long time that this was a way also to emerge from all the gray I felt in life. Abbie Hoffman was a living example of having fun while fighting injustice, but I did not know his message for many years. How many other people, when asked "What were you doing during [some major historical event]?" can only shrug their shoulders to say they missed it all, during the daily grind of work and life, the commercial monster, commuting, eating, sleeping, and beer?Â Clearly, I needed to break out of this cycle. Â As often is the case with solutions to our problems, the answers have always been available for me to dissipate my anger over global and local injustice and criminal justice system injustice, and to have more faith in others' ability to do good and in my ability to inspire them to do goodÂ -- rather than walking down the street suspicious of others' intentions and thoughts. After becoming a trial lawyer, dissipating my anger and cynicism about people became all the more critical. Dissipating anger and tension makes one a more powerful fighter; not dissipating anger and tension harms my clients. Â Two of my most influential inspirations for dissipating anger and suspicion of others are the Dalai Lama and Bodhisattva Never Despise. As with Gandhi and Martin Luther King, Jr., it is remarkable that the Dalai Lama sets forth with boundless non-violent optimism for the present andÂ future, despite the decades of severe violence and repression by the Chinese government against his fellow Tibetans. The Dalai Lama has said:Â "Tolerance can be learned only from an enemy; it cannot be learned from your guru." Â On October 17, 2007, the Dalai Lama comes to Washington, D.C., to receive a Congressional medal. Congress should practice what it preaches about this medal. Congressmembers cannot go honoring the Dalai Lama's fight for justice without honoring and fighting for justice in the work they do day in and day out. In any event, here is aÂ linkÂ to the Dalai Lama's public appearance on October 17 and related events. Thanks to a very close friend for forwarding me the link. Â Helping me in finding inspiration towards dissipating anger while fighting hard for justice,Â a few years ago, I started letting my guard down all the moreÂ about whether people would try to convert me to their religion if I tried to find some inspiration from them. As a result, I have found much inspiration from some dynamite church gospel choirs, Ram Dass and his gurus, the Plowshares Catholic peace activists, the Dalai Lama, and the list goes on. I have heard it suggested that it can be more easy to convert a rigid adherent of one religion to another religion, which would make me a tough nut to crack, being the longtime agnostic that I am. In that regard, the Dalai Lama once said: "For those who may not find happiness to exercise religious faith, it's okay to remain a radical atheist, it's absolutely an individual right, but the important thing is with a compassionate heart -- then no problem."Â Â No wonder so many people are drawn to the Dalai Lama, even if they are not Buddhists themselves.Â Much less well-known than the Dalai Lama, but equally inspiring to me is Bodhisattva Never Despise, who is discussed many times inÂ Yumiko Miyazaki's translations from Nichidatsu Fujii Guruji in a new and superb one-volume compilation entitled TRANQUIL IS THIS REALM OF MINE: Dharma Talks & Writings Of The Most Venerable Nichidatsu Fujii. My friend and teacher Takako Ichikawa gave me the book a few weeks ago, which is particularly fortunate in that it does not seem to be on the physical or Internet bookstands yet. Â Ryuei Michael McCormick said that: "Bodhisattva Never Despise had one simple practice, which was to bow before everyone he met saying, 'I respect you deeply. I do not despise you. Why is that? It is because you will be able to practice the Way of the Bodhisattvas and become Buddhas.' Even in the face of intolerance and persecution by those who did not want to hear the teaching of universal awakening, he never ceased to practise this deep recognition and respect for the Buddha-nature, the potential for awakening, within all beings. This kind of practice over innumerable lifetimes is what culminated in the Buddha's™ recognition of all beings Buddha-nature and subsequent intention to help all beings realize this for themselves as he sat beneath the Bodhi Tree on the morning of his own awakening." Â Once I am able sincerely and unhesitatingly to display such deep reverence even to my worst adversaries,Â my anger will be dissipated more than ever, and I will be all the more powerful. As my close friend Trudy Morse would say, it was no accident that I received Tranquil is this Realm of Mine when I did. Jon Katz. Â ADDENDUM: This blogposting originally was uploaded at 12:01 a.m. on October 5 with a greater focus on the Dalai Lama's October 17, followed by a significant rewrite. ADDENDUM II: The only October 17 puplic appearance I found for the Dalai Lama will at 2:30 p.m. on the Western Lawn of the Capitol. Unfortunately, it appears that excessive security may prevail.

Posted by Jon Katz in Persuasion at 00:00

Thursday, October 4, 2007

FREE BURMA!

International Bloggers' Day for Burma.

Posted by Jon Katz in Persuasion at 00:00

Wednesday, October 3, 2007

When cops let non-cops do the dirty work.

Bill of Rights. (From the public domain.) Cops know that courts generally refuse to apply the Fourth Amendment to private actors. What better way to tempt cops to entice private actors into actions that would be Fourth Amendment violations if committed by cops? Last week, the District of Columbia Court of Appeals underlined this point by refusing to apply the Fourth Amendment to a dorm search at the George Washington University (where I graduated law school), even though GW special police waited closeby in the wings during the search, and then some. The case is *Limpuangthip v. U.S.*, __ A.2d __ (D.C. Sept. 27, 2007). Thanks to one of our frequent Underdog readers for alerting me to this Limpuangthip case -- through a link to FourthAmendment.com -- before I read it via the online slip opinions. I welcome readers' ongoing tips. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00

Beating detained protestors is not restraint.

The Burmese government claims its military exercised tremendous restraint with anti-government demonstrators. That's like Pinocchio saying he has no nose and that his absent nose is not wooden. Pro-demonstrator blogger Kho Htike has posted a CNN video here that shows Burma's claims of restraint to be as true as Big Brother's insistence that $1 + 1 = 3$. Jon Katz.

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

Tuesday, October 2, 2007

Will I win or lose?

Image from Marine Corps' website. Fellow criminal defense blogger Shawn Matlock recently blogged about handling potential clients' and actual clients' inquiries about whether they will win. Here is my comment on the matter: My short answer is to be honest with the potential client, and the actual client, about your ability and drive to go to the mat for the client, but inability to have a crystal ball, and why. Sometimes I tell the potential client that I'd be dishonest and in violation of my ethical obligations as a lawyer to paint a rosier picture than available. The most difficult questioners about chances of winning often are from the non-client paying parties (who do not have the benefit of the full confidential case and strategy analysis I give to potential clients after they give me the confidential information about their case) and from potential clients between a real rock and hard place (e.g., having lost at a misdemeanor bench trial with another lawyer, they now want a guarantee that the new lawyer will win at their de novo trial on appeal). When the latter type of conversation goes nowhere, I decline representation. The main dynamics involved in such a conversation are the potential client and the client's fears, the reality of the case, the dynamics of the lawyer, and the interaction between the lawyer and the potential client. Some clients want a rock bottom fee to just go and plead guilty; I decline such representation. Some want assurance that the lawyer will treat the client with the same attention, drive and passion as if it were the lawyer's closest friend or relative. One example of the attention I give my clients is that a few weeks ago, a probation agent told me that this was the first time in her two-decade career that she saw a lawyer join his or her client to an interview for preparing a presentence investigation report (of course, I work hard to try to avoid needing a presentence investigation report in the first place). The initial meeting with a potential client also is an opportunity for the lawyer to determine whether to cut losses early on and not accept the potential client. It is curious that I rarely feel inclined to decline service to any potential criminal defense client who is paying himself or herself. On infrequent occasion, intense upset comes from the non-client paying party, whom I list in the contract as having no more rights as to the contract than if the paying party had not paid at all (although I use more gentle language than that). Not to stay on this tangent very long, part of building trust with the client is reading how much of an interference the paying party will be. Ordinarily, I require the paying party to sign an addendum to the client contract saying: "The only client is _____. My status in helping to pay the client's fees and expenses is no different than if the client anonymously had been given the funds to hand directly to counsel. Counsel has full rights to enforce any insufficient funds check and any credit card payment that is reversed or otherwise not honored." I welcome potential clients' detailed questions about what I can do for them. By covering those questions in depth at the outset, we are better freed to focus on fighting together for success for my client from thereon in. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Monday, October 1, 2007

How to deal with hecklers when interviewed?

Â Lowering the BarÂ reports that the above-displayed heckler at O.J. Simpson'sÂ lawyer's news conference is none other thanÂ actor Tony Barbieri, who interlopes into celebrity events, this time with blackened-out teeth. He reminds me of a man I know who inserts himself into family photos in parks and other outdoor venues. Â When people agree to outdoor interviews, they are at risk of such interlopers. O.J.'s lawyer seems to handle it well. What would you do if in his shoes with such an interloper? Jon Katz.Â

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