

# Criminal Defense Newsletter

A JOINT PUBLICATION OF THE SAN DIEGO CRIMINAL DEFENSE  
BAR ASSOCIATION AND THE CRIMINAL DEFENSE LAWYER'S CLUB



## INSIDE THIS ISSUE:

<b>KUDOS, KUDOS, KUDOS</b>	<b>3</b>
<b>THE FEDERAL TATLER</b> —BY JOHN LANAHAN	<b>4, 7</b>
<b>PRESIDENT-ELECT OBAMA</b> <b>SHOULD CLOSE</b> <b>GUANTANAMO . . .</b> —BY MARJORIE COHN	<b>5</b>
<b>MEMBER PROFILE:</b> <b>MICHAEL PANCER</b> —BY STACEY A. KARTCHNER	<b>6-7</b>
<b>ONE SMALL STEP</b> <b>FOR MANKIND</b> —BY GEORGE MICHAEL NEWMAN	<b>8</b>
<b>MEMBERSHIP APPLICATION</b>	<b>9</b>
<b>COMMUNITY DEFENDER</b> <b>BROCHURE SEMINAR</b>	<b>10</b>

## CDBA/MCLE NOVEMBER MONTHLY MEETING

**November 25<sup>th</sup>  
Meeting:**

**Athens Market**

First and F Downtown

5:00—5:30 p.m.  
Social Hour

5:30—6:30 p.m.  
Program

**Restitution In  
State and Federal  
Courts**

by  
**Jack Phillips**  
and  
**Elizabeth Missakian**

**Note that there will be  
no December Meeting**

## PRESIDENT'S COLUMN BY MICHAEL L. CROWLEY

**"THOSE WHO WOULD GIVE UP ESSENTIAL LIBERTY, TO PURCHASE A LITTLE TEMPORARY SAFETY, DESERVE NEITHER LIBERTY NOR SAFETY."**

**BEN FRANKLIN, 1755.**

Typically neither this column nor our organizations' list serve are utilized for political discussions. In part, this is because although all of our members subscribe to an undying fight on behalf of the Constitution, due process, and fair trials for our clients, we may approach it politically from different perspectives. Our recent election, however, provides an opportunity for a slight exception because of its potential profound effect on the criminal justice system in this country.

While it is probably true that the majority of our members are Democrats (just as it was for reporters when I was a journalist), it doesn't mean that either party holds a monopoly on the systematic destruction of our due process and fair trial rights in the last 25 years. The beginning of that denigration coincided roughly with my entrance into law school in 1980 as Ronald Reagan became POTUS (President of the United States), which makes me wonder whether I should have just stayed as a reporter. I thought surely Mr. Reagan will only be a one-term President and I will just hide in law school until the country came to its senses.

Of course you all know the history of what happened next as the rights of our clients, which are also our own rights, continued in a precipitous decline. The blame does not lie with just the Republican POTUS or the judges they appointed as there was more than once that I shook my fist at William Jefferson Clinton exclaiming loudly to all that would listen, "you taught Constitutional law, how can you sign that bill!"

There is high hope that the election of Barack Hussein Obama II will cause less fist shaking at another teacher of Constitutional law. It is fair to say that Obama's election

was the result of the perfect storm created by George Walker Bush's disdain for the Constitution and due process which finally pushed a majority of voters over the edge. The inherent wisdom of the American electorate, which is not always evident and sometimes fooled, finally drew a line in the sand and said too much of what is precious to America has been stolen under the guise of security. Ben Franklin understood true American ideas, George Bush did not.

My favorite editorial cartoon following Obama's election was by Mike Luckovich, editorial cartoonist for *The Atlanta Journal-Constitution* and twice recipient of the most prestigious journalism award, the Pulitzer Prize. The cartoon is headlined "Day One" depicting Obama in the Oval Office of the White House holding a shredded Constitution trying to put it back together with glue and scotch tape.

We all know piecing the Constitution back together will be a daunting task. The cliché of attempting to put the toothpaste back in the tube is never more appropriate than here. The government has gotten used to their unbridled power and it will be difficult to wrest it from them. There is no need to list the Constitutional detritus as we have been bombarded with them for the past eight years. I would suggest, however, for all of you whose forehead has become flat due to beating your head against the wall, we redouble our efforts to assert the Constitution and American ideals in our courts. That is, we use Luckovich's image to motivate ourselves each day and explain to the powers to be, politely but forcefully, that we intend to rebuild the Constitution bit by bit. That is true patriotism.

## CONTINUED FROM PAGE 1

**R.I.P.****Private Conflicts Counsel****1996-2008**

Speaking of politics and destruction, the perfect storm has resulted in the death of PCC at the end of the year. This is a sad day for indigent defense and the attorneys who tirelessly work for relatively paltry wages on behalf of those clients without resources to pay for an attorney. Having sat on the PCC advisory board for the past two years I watched the cancer spread, leading to the death of an important institution. (Once again, maybe I should have remained a reporter.) Now conflicts representation will somehow be handled in the Public Defender's Office with some notion of a Chinese Wall. (Conflicts handled within the conflicted party's office, quite an irony there. Please sharpen your habeas proceedings for that future fight.)

There is plenty of blame to go around, but only a perfect storm of all the disparate forces at work could have led to this premature death of what had served for the past 12 years as a viable force for vigorous criminal defense, education, and advocacy. I wish I could say this ignominious death was the result of some shameful power grab or squashing of advocacy on behalf of our clients, but really it was all about money.

The county, as could be expected, was attempting to balance their budget on the backs of the poor, which, of course, is a time-honored tradition here. The County Bar, stocked with mostly civil attorneys, perceived a threat to their economic viability that was not apparent and had not shown itself for the past 12 years of PCC existence. The Bar failed to see something as important as indigent criminal defense as something they should have made a top priority to preserve as a service to the community even if there was some risk involved in administering a program. A concrete program such as PCC was far more important than the perennial failed efforts of the Bar to attempt to enforce and promote civility among civil practitioners, apparently the most important problem to the Bar. These attempts, although noble in spirit, must be a continued failure because it has been an issue for the past 24 years I have been a member of the County Bar.

Countless hours and dedication was expended by those people who have been with PCC since the inception and fought for viable indigent defense prior to that. In the end, they were out flanked by the bureaucratic forces at work. The forces of the dark side (those that still believe deep in their hearts while making public pronouncements to the contrary, that *Gideon v. Wainwright* was wrongly decided) have prevailed, to the detriment of those who need it the most, the indigent defendants and the attorneys who serve them and the Sixth Amendment.

As we speak, the same dedicated defenders are attempt-

ing to put together a non-profit organization which will make efforts to resurrect an independent indigent defense entity. Unfortunately, once again the toothpaste is out of the tube and getting the county, given its political makeup, to seriously consider an independent criminal defense organization which they cannot control as they do the Public Defender and the Alternate Public Defender's Office, will be a cold day in hell. I hope I am wrong.

Under the new paradigm, I am told attorneys should expect fee cuts, lost fights for expert services, and reductions in investigative help. Let us vow to keep track of all the denial of our client's Sixth Amendment rights, make sure we bring them to our colleagues' attention through the list serve, and this organization will attempt to archive them for future litigation.

The *New York Times* reported on November 9 that "Public defenders' offices in at least seven states are refusing to take on new cases or have sued to limit them, citing overwhelming workloads that they say undermine the constitutional right to counsel for the poor." We must consider whether we are in a similar situation.

**Historical Headnote**

Just a quick note of historical reference from Sarah Vowel's new book *The Wordy Shipmates*, for those who lament the continuous refrain that Christopher Columbus discovered America despite the fact that there were already Native Americans occupying the same territory. First, when the Puritans who considered themselves analogous to the Israelites, that is, chosen people for the settling of a promised land but considered by Vowel a much more erudite group than the Pilgrims, under the leadership of lawyer John Winthrop brought with them not only the Bible but also the Magna Carta, one of the documents which influenced our own Constitution.

But, second, one of the more interesting points detailed by Ms. Vowel was the expulsion from the colony of the even more religious zealot Roger Williams. Only due to direct intervention by Winthrop was Williams not exiled in the dead of winter, which would have likely ended in death. Of course, Williams was expelled for some perceived blasphemy against the established church, but it was his writings that the King of England had no right to give a charter to Winthrop and his followers because the land belonged to the Native Americans that caused him the most trouble, according to Sarah.

As many know, Williams eventually founded Rhode Island and was the great initial advocate of a separation of church and state. But he also negotiated a treaty for the land from the natives, having learned their language, rather than accepting a charter from the King of England. But as often happens to dedicated causes, he did eventually seek and obtain an official charter from England, when the Puritans took power. So much for the natives.

## KUDOS, KUDOS, KUDOS!

Congratulations to **Brian Funk** who received an excellent result at trial. Facts are as follows: A fight broke out at party in Oceanside; cops showed up and broke up the party. Group returns to settle score. Client is alleged to have pulled a gun, another pulled a knife, while three beat down complaining witness with bottles. Witness with gun pulled on him testified that he left to get his Posse, returns but without guns or knives. Everyone refuses to cooperate with cops until roommate (client's brother in law) moves and is no longer available to harass regarding stolen laptop. Jury acquits on gun charges (assault with a firearm and possession of a firearm by felon), and the jury hangs 9-3 on assault with a deadly weapon/force likely to cause GBI, battery with serious injury, and burglary charges. Basically, three jurors want to nail client due to prior felon status. In addition, Brian got a grand theft of personal property charge dismissed before it went to jury. Way to go Brian!

Hat's off to **Jeremy Warren** for convincing Judge Hayes to grant a Rule 29 in a 1326 prosecution where the AUSA's witnesses had failed to identify the defendant. Jeremy prevailed when Judge Hayes would not allow the government to reopen its case.

Congratulations to **Kurt Hermansen** who obtained a great victory before the Ninth Circuit on a denial of a habeas in *Slovik v. Yates*. Kurt's client had received a 35-life sentence (Third Strike) for a bar fight in which nobody really got hurt. There is great language by the court in the opinion regarding the importance of the right to the confrontation clause at trial.

Kudos to **Jeff Carver**, and his various co-counsel listed below, for the fantastic results obtained in several cases. First, on September 2<sup>nd</sup>, Jeff started the first of a series of criminal trials over 50 days. The first trial was with **Dave Berman** as co-defendant's counsel. Jeff and Dave's clients were charged with ADW and GBI with strikes. Defense was based on defense of property which transmuted into self-defense. Jury came back not

guilty on all counts. On September 11<sup>th</sup>, Jeff started another trial. This involved drugs, guns, money, and stolen property, and was tried before Judge Einhorn alone with a jury waiver. The defense came in second, but, based on various factors, including the defendant's candid admission of guilt from the witness stand in trial, Judge Einhorn indicated a willingness to consider striking one or more of the four alleged strikes at sentencing. On September 22<sup>nd</sup>, with **Jerry Bodow** as co-counsel, Jeff began a week long Navy court-martial at 32<sup>nd</sup> Street Naval Station. A First Class Petty Officer was charged with falsely answering various security clearance questionnaires. Trial ended September 26<sup>th</sup>, and, though convicted, the jury panel of officers agreed not to discharge the defendant or reduce him in rate. Jeff and Jerry considered this a tie. On September 29<sup>th</sup>, Jeff started a DUI trial in South Bay. The B/A was .081% on the PAS. As of October 6<sup>th</sup>, the jury remained "hopelessly deadlocked." Judge Reuben declared a mistrial and then dismissed all charges when he was advised the jury's vote was 10 to 2 for acquittal on both the (a) and (b) counts. Finally, on October 7<sup>th</sup>, Jeff began a two defendant jury trial with **Jerry Leahy** representing the co-defendant. The alleged violations of HS §§ 11352(a) and 11351.5 arose from a Team 8 buy-bust sting operation in the East Village. After a week long trial, and three days of jury deliberations, the jury remained "hopelessly deadlocked" and a mistrial was declared October 21<sup>st</sup>. Grand Total for Jeff: Five trials in 50 days. Three wins, one tie, and one chance preserved to avoid a life sentence. Excellent job to Jeff, Dave, and the two Jerrys.



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## THE FEDERAL TATLER © BY JOHN LANAHAN

### No. 132: Letters to Two Presidents

Dear President Bush,

Every great culture needs a scourge to wake it up and remind it of the reasons for its greatness. Every Rome has its Nero, Mr. President, and you were ours. Thank you for making such a mess of things that now this nation can focus on real problems instead of tax cuts and whose stain was on a blue dress. Let me be more specific.

Thank you for ending that ridiculous post cold-war fallacy of the end of history by showing us that history, like everything else, moves much faster now than it ever did before. Thank you for showing us why budgeting and arithmetic matter by taking a half a trillion dollar surplus and turning it into a trillion dollar annual deficit in eight years. Thank you for showing why diplomacy matters by your “my way or the highway” approach that transformed the sympathy of the civilized world after a brutal terrorist attack into almost universal loathing of an inept aggressor within two years. Thank you for showing us that war is not some quick surgical procedure and how all the military hardware in the world is no substitute for a coherent military strategy while you stopped fighting the real terrorists in Afghanistan in order to waste hundreds of billions of dollars, thousands of American lives, and hundreds of thousands of Iraqi lives to create another Vietnam. Thank you for showing us that winning a war is more than “shock and awe” by your inept regime in Iraq that by its anarchy was more brutal than the one it replaced.

Thank you for showing why the Constitution and the Supreme Court matter as you took a nation that prides itself on the rule of law and a fair, transparent, and humane justice system and pilloried it by holding thousands of prisoners indefinitely without a trial or any court proceeding for over five years. Thank you for showing what it’s like to be a repressive and brutal regime by your “renditions” and how a nation that once outlawed torture could torture the language to permit it.

Thank you for exhausting our resources so we could see how helpless we had become while a great city drowned. Thank you for showing us why oversight and regulation of complex financial transactions makes a difference

by making the economy so sour that Americans lost their complacency and out of necessity shed their prejudices and realized the dream that Abraham Lincoln set in motion during the greatest crisis of this nation. Thank you for showing how the class system is alive and well by showing how birth and a “legacy” education are more pernicious than any affirmative action needed to correct it (and which your successor never needed to use). Thank you for proving the words of Thomas Jefferson, that democracy requires the eternal vigilance of its citizenry and by being the nightmare who woke the sleeping giant of American electorate. Thank you for your imminent exit, thereby restoring my pride to be an American.

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Dear Mr. President-Elect Obama:

I just thanked your predecessor for having been the scourge who woke America from its long slumber. Thank you for giving us more than just an alternative, but a reason, or at least a rational basis, to hope that things can not only change but, unlike the last eight years, change for the better. Thank you for making this JFP<sup>1</sup> a little less jaded. I know it won’t last, but it feels good for the moment.

Please undo the changes of your predecessor. Please end the disgrace and travesty of Guantanamo and either let these prisoners go or try them in courts which are open and give them a chance to win. Please end surveillance of citizens, and please end monitoring conversations of prisoners with their lawyers. Please tell your Attorney General to shelve any certification of capital states under Chapter 154 of the Anti-Terrorism and Effective Death Penalty Act of 1996, which would put all of the federal courts of a particular state, and this one in particular, on an arbitrary fast track that would shut down the federal courts for any other business. Please stop using the border of the United States and Mexico as a reactive barometer to quell the nativism that sprang up in California with Prop 187, and has now infected the rest of the nation. Please don’t go down the road of making criminal penalties harsher so you look tough, as have all of your predecessors since Reagan. Please don’t expand the list of death eligible fac-

**CONTINUED ON PAGE 7**

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<sup>1</sup> Jaded Federal Practitioner.



## PRESIDENT-ELECT OBAMA SHOULD CLOSE GUANTANAMO, REFRAIN FROM ESTABLISHING NATIONAL SECURITY COURTS —BY MARJORIE COHN

After September 11, 2001, George W. Bush established the Guantánamo Bay prison to enable the United States to imprison non-Americans indefinitely outside the reach and protection of both U.S. and international law. The military commissions and their trial procedures, created under the Military Commissions Act of 2006, have been universally condemned by jurists, scholars, and human rights specialists as violating minimum fair trial standards and of being a sham intended to secure convictions.

President-elect Barack Obama, on the first day of his presidency, should issue a presidential order closing Guantánamo Bay prison and ending military commissions.

He should thereafter ensure that Guantánamo Bay prisoners are released, repatriated, resettled, or brought to trial (if there is probable cause to believe they have committed a crime) in strict accordance with international human rights and humanitarian law, and the principles of fundamental justice pertaining to criminal proceedings including, but not limited to, the *Four Geneva Conventions of 1949*, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights*. The United States has ratified all of these treaties which makes their provisions binding U.S. law under the Supremacy Clause of the Constitution.

President-elect Obama should not establish special national security courts. Although he said in August,

"It's time to better protect the American people and our values by bringing swift and sure justice to terrorists through our courts and our Uniform Code of Military

Justice," three Obama advisers told the Associated Press that the President-elect is expected to propose a new court system to deal with "sensitive national security cases." Concerns have been cited about disclosure of classified information in civilian courts and courts-martial.

However, the Classified Information Procedures Act ("CIPA") provides an adequate method of protecting classified information in existing U.S. courts. CIPA allows a judge to assess the importance of sensitive evidence before it is disclosed in open court and, if necessary, create a nonclassified substitute for use

at trial. Former federal prosecutors Richard B. Zabel and James J. Benjamin, Jr. studied the 107 post-9/11 cases and prepared a 171-page white paper for Human Rights First called *In Pursuit of Justice: Prosecuting Terrorism Cases in the Federal Courts*. They wrote, "[w]e are not aware of a single terrorism case in which CIPA procedures have failed and a serious security breach has occurred." National security courts, they write, "would give the government more power and make it easier for the government to secure convictions."

Guantánamo Bay prison is a legal black hole that has become a symbol of injustice, abuse, and U.S. hypocrisy. The National Lawyers Guild called for its closure in 2005. President-elect Barack Obama should finally end this disgraceful chapter in U.S. history.

*"[w]e are not aware of a single terrorism case in which CIPA procedures have failed and a serious security breach has occurred."*

## MEMBER PROFILE: MICHAEL PANCER BY STACEY A. KARTCHNER

Michael Pancer originates from Pittsburgh, Pennsylvania. He received his undergraduate degree from Antioch College. His major was in Administration. Michael explained that “the Antioch administration was too liberal to acknowledge they had what was in essence a business major”. Prior to becoming a lawyer, Michael had “probably 50 different full and part-time [positions]. By far the best, in terms of being fun and educational, was dealing craps in Las Vegas and Lake Tahoe.”

In the late 60s, Michael decided that he wanted to become a lawyer because, as he stated:

I have an inherent distrust of government and a strong Libertarian streak. It is based on my observation of government activities and reading libertarian philosophers. During the Vietnam War, these views were re-enforced.

The most prolific serial killer in this country probably murdered 50 people. In Vietnam, our government wasted 50,000 American soldiers’ lives as well as the lives of hundreds of thousands of innocent Vietnamese. And, apparently, no lessons were learned. I have concluded the greatest danger to a citizen’s life and liberty comes from the government. Being a defense lawyer seemed like a worthy profession.

In addition, most of the cases I started defending were victimless crimes. When I passed the bar, smoking marijuana and oral sex were still a felony. A lot of young people committed two felonies before breakfast. It was ridiculous.

Michael attended and graduated from UCLA law school. He started as a draft counselor and then moved into criminal defense when the draft ended. Since passing the bar, he has been self-employed.



*Michael Pancer leaving the courthouse with his client, Ralph Inzunza. Photo: Nelvin Cepeda / Union-Tribune*

On his downtime, Michael enjoys skiing, surfing, reading, and playing in poker tournaments. He also enjoys traveling to his favorite vacation spot, Mainland Mexico. In addition, Michael enjoys teaching. He teaches regularly at the National College for Criminal Defense in Macon, Georgia.

**LAWYER MICHAEL MOST ADMIRES:** Michael really admires Michael Tigar because of his “commitment to the cause of justice. When I first started practicing,

he published the Selective Service Law Reporter. It covered every aspect of Selective Service Law, including draft counseling techniques and all significant legal decisions. And I think he did it without any help. Locally, when I started practicing I was greatly influenced by Lou Katz who never abandoned his passion to help those persecuted by the government.”

**NON-LAWYER MICHAEL MOST ADMIRES:** “There are lots of non lawyers I admire. And they tend to have the common strength of character trait that allows them the optimism and determination to overcome long odds and difficult obstacles to get to where they are today. Barack Obama is an example of that kind of person, but there are many I number among my friends and family. I haven’t been drawn to those who have had it easy.”

**PROUDEST CAREER MOMENT:** “Every not guilty and even some dispositions.”

### FAVORITE QUOTES:

“And this too shall pass” from a Jewish folktale about King Solomon.

“In the midst of winter I found there was within me an invincible summer” attributed to Camus.

Lord Acton’s quote, “Power tends to corrupt; absolute power corrupts absolutely”.

**FUNNIEST THING A JUROR HAS SAID TO YOU:** “I think the most unusual said to me was by an older woman juror who came to me in the hallway after a hard-fought, six-week trial. She was smiling, so I thought she was going to

## CONTINUED FROM PAGE 6

compliment me. Instead, she informed me that she was an elementary school teacher. She told me I should sue my elementary school, as they let me get by with the handwriting skills of a five year-old. Then she turned and left. I've been self-conscious about writing on poster boards in front of jurors ever since. I still do it, because it engages the jury. But it sure emphasizes what we all know, 'you never know what they are thinking about.'

**MOST OUTRAGEOUS/SILLIEST CHARGE YOU HAVE HAD TO DEFEND SOMEONE FOR:** "Every drug case is silly. The government's been fighting an expensive, insane losing war for 75 years."

**FAVORITE LAW/OPINION:** "Lately, Crawford."

**LEAST FAVORITE LAW/OPINION:** "There are a lot of them in contention, but I think *Mistretta* which originally upheld the federal sentencing guidelines was the most disturbing."

**ADVICE TO COLLEAGUES:** "It is important to remember trials aren't about us, they are about the clients. Those of you who have tried cases with lawyers who see that differently will know what I mean."

## CDBA SCHOLARSHIP

Each year CDBA grants a scholarship in the name of one of our founding fathers Tom Adler to pay for a deserving new attorney to go to the

**Institute of Trial Advocacy (ITA)** at California Western School of Law. If you know of a deserving attorney dedicated to criminal defense (or you are one yourself), please send

a letter or e-mail explaining why to Executive Director Stacey Kartchner. *The deadline to apply for the ITA Scholarship is*

*February 2, 2009.*

## CONTINUED FROM PAGE 4

tors in the federal death penalty statute (contrary to your comments after the Supreme Court decided *Kennedy v. Louisiana* last year). Please honor all treaties that require the courts in this country to give certain rights under specific treaties to foreign nationals, and set out and enforce clear sanctions against "law enforcement" agencies that belie that label when they violate those treaties.

And then there's a few things I would like you to do. Please ask Congress to consider lifting mandatory minimum sentences that distort the result in many criminal cases by forcing them into a draconian and Procrustean paradigm. Please appoint federal judges who realize that judicial restraint does not mean judicial impotence, or when it is unrestrained it means advancing a conservative agenda. Please appoint someone to the Supreme Court who may have reservations about the arbitrary effect of the death penalty and how it has distorted the criminal justice system prior to when s/he first starts in the Court, instead of coming to that conclusion after being there for twenty-five or thirty years like Justices Blackmun and Stevens. Please appoint judges who understand that equal protection means protecting the rights of a few and particularly not taking away rights from groups the majority may find distasteful. Please appoint judges who view the Constitution as an evolving document that expands protection to groups that have been denied it. Please have a Civil Rights Division that understands the police sometimes need policing and restores the power of the Federal Government to correct by example, rather than punishment.

You have a nation in serious trouble like Presidents Lincoln and Roosevelt, who dealt with the nation in crisis, and many will disagree with what you do to deal with that. I'm sure I will disagree with many things you do, because you write on living skin and not on paper like I do<sup>2</sup>. You have been given great power by those who look to your accomplishments and ability, and who hope you will keep us very, very proud to be Americans.

*John Lanahan has been a lawyer for the accused for almost 30 years, first in Illinois and now in California. His practice includes cases in both state and federal court, ranging from capital trials while a Public Defender in Chicago, to handling appeals in both state and federal court as well as state and federal post-conviction petitions. He is a past-President of the San Diego Criminal Defense Lawyer's Club and lectures and teaches in areas of criminal practice, most recently as a faculty member for the Darrow Death Penalty Defense College at DePaul School of Law in Chicago.*

<sup>2</sup> To paraphrase my favorite romantic heroine, Catherine the Great.

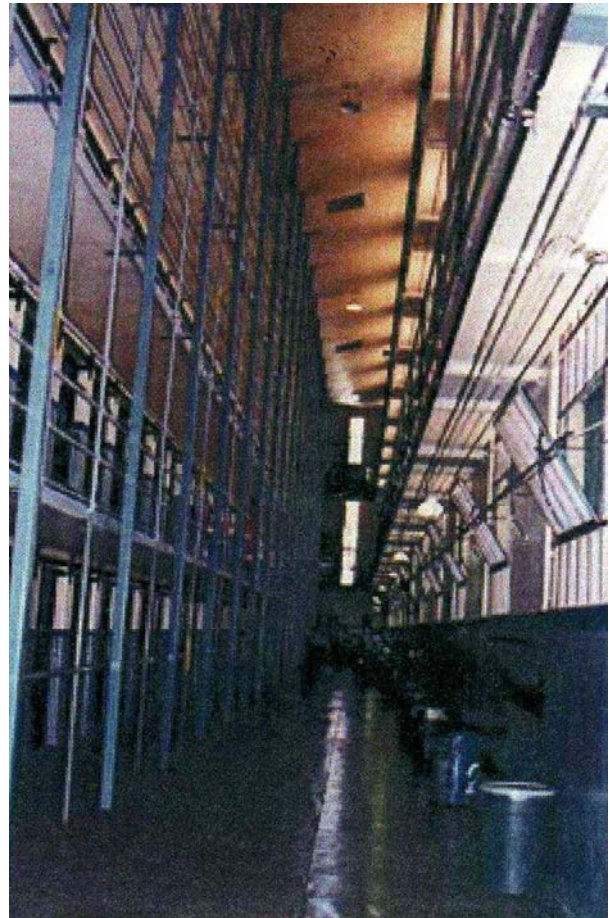


**ONE SMALL STEP FOR MANKIND—BY GEORGE MICHAEL NEWMAN**

The following paragraph is taken from *Recording Carceral Landscapes: How We Got the Security Housing Unit*; Terry Kupers, M.D. ([http://www.paglen.com/carceral/interview\\_kupers.htm](http://www.paglen.com/carceral/interview_kupers.htm))

“In the 1930s and 1940, prisons were about rehabilitation. Yes, there was a lot of racism; yes, there was a lot of brutality; and yes a lot of people were killed by the guards. But, rehabilitation was also possible. Later in the century, the idea evolved that prisoners were incorrigible, that rehabilitation didn’t work, and that the best way to deal with prisoners was to lock them up and throw away the key. As that evolved as the reigning ideology in the California prisons and the prisons around the country, various self-interested people joined the bandwagon. Along came the guards union. Along came politicians giving inflamed rhetorical speeches about how what’s wrong with our society is not that we’ve messed up our education system, it’s not that we’ve dismantled welfare, it’s not that there are no jobs for poor people. It’s that there’s a bunch of criminals on the street and we should focus public attention on locking up criminals forever. Then there were the people who build prisons – there was a huge prison building boom in the 1980s. All of these people started making more money and gaining more power by causing prisoners to fail. The longer a prisoner stays in prison or, if he gets out, the sooner he gets put back in, the more money and more power these interested groups get. This is the idea of the Prison Industrial Complex: that the prison isn’t really there to rehabilitate the prisoner, prison is there to make the reputation of a politician, or increase the power or the money of these various interests.”

An aspect of the phenomena is reported in the September, 2008 issue of *Prison Legal News* (“PLN”), revealing that California Department of Corrections and Rehabilitation (“CDCR”) whistler-blower Richard Krupp has been appointed as head of CDCR’s audits and compliance department. PLN reports, as drawn from the Associated Press, that 35 year CDCR veteran Krupp had earlier been assigned by his then-supervisor to whitewash an audit report reflecting a finding of \$29,000,000.00 in sick-leave and overtime abuses; not only had Krupp refused, his own figures reflected that the \$29,000,000.00 figure was an under-estimation.



In retaliation for his refusal, Krupp was reassigned to a dead-end position, reviewing student applications to interview prisoners. He sued, and in 2004 won and was awarded \$500,000.

Appointed to the new position by CDCR’s Undersecretary, Stephen Kessler, Krupp is reportedly now out from under “seditious supervisors as he reports directly to Kessler”.

Reportedly, Krupp has stated that “Now, I can help solve some of the problems”.

Considering that recent news reports reveal that CDCR will need at least \$8,000,000.00 just to address the crisis in inmate health care delivery, if Krupp’s statement bears fruition it stands to contribute a titling of much needed funds toward enacting the recently adopted name adaptation “Rehabilitation”; heretofore, the CDCR was known as the California Department of Corrections until the name revision, in 2004, having merged commensurate with the 1977 Determinate Sentencing Law into a mission deflected from rehabilitation toward punishment.



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And to Protecting the  
Rights of the Accused*

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BAR ASSOCIATION**

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Fax: \_\_\_\_\_

Level of Membership: (select one)

Sustaining: \$135 \_\_\_\_\_

General: \$ 50 \_\_\_\_\_

First-Time Member \$ 25 \_\_\_\_\_

First-Year Lawyer or Student: Free \_\_\_\_\_

I am committed to the fair administration of justice and the defense of persons accused of a crime. I am not a member of any law enforcement agency or of any agency engaged in the prosecution of criminal matters.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

**Mail application with payment (if applicable) to:**

**CDBA Treasurer, 302 Washington Street, Box 137, San Diego CA 92103-4221**

*The University of San Diego School of Law presents*

**The Sixth Amendment: We Shall, We Shall Not Be Moved**

Saturday, January 24, 2009  
 University of San Diego School of Law  
 5998 Alcalá Park, San Diego, CA  
 Room TBA

**8:30 – 9:00 a.m.**

**Registration**

**9:00 – 10:15 a.m..**

**The Law: Sixth Amendment, Crawford, Bruton-Aranda, Impeachment, Severance**

John Philipsborn, Esq.  
 Jerry Wallingford, Esq.

**10:15 – 10:30 a.m.**

**Break**

**10:30 – 11:45 a.m.**

**Cross-Examinations: Children and Rape Victims**

Linda Brown, Esq.  
 Kay Sunday, Esq.

**11:45 a.m. – 1:15 p.m.**

**Lunch**

**The Commitment to Competent Counsel: Still Crazy After All These Years**

Tom Adler, Esq.  
 Laura Berend, Esq.  
 Hon. Norbert Ehrenfreund  
 Alex Landon, Esq.

**1:30 – 2:30 p.m.**

**Cross-Examination: Informants**

John Cotsirilos, Esq.  
 Steven Feldman, Esq.

**2:30 – 3:30 p.m.**

**Cross-Examination: Experts**

Allen Bloom, Esq.  
 Michael Marrinan, Esq.

**Come celebrate the Sixth Amendment and forty years of contributions of the Defenders' spirit to the San Diego criminal defense community. The attorneys speaking at this seminar represent honor, commitment, excellence and dedication to the defense bar -- lessons learned at Defenders, Inc. This seminar is dedicated to all of us who continue to fight for the life of the Sixth Amendment.**

*The University of San Diego School of Law is a State Bar of California approved MCLE provider and certifies that this activity is approved for five and a half hours (5.5) of general MCLE credit.*

**The Sixth Amendment:  
 We Shall, We Shall Not Be Moved**

January 24, 2009

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Registration by fax (credit card): (619) 260-7933

Registration by mail (personal check):  
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 Attn: Leilani Sharrett  
 5998 Alcalá Park, WH-109F  
 San Diego, CA 92110

Name \_\_\_\_\_

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Address \_\_\_\_\_

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\*Email \_\_\_\_\_

\*Email address required for seminar updates (changes, location, etc.)

**Pre-Registration fee prior to 01/16/09**

(includes syllabus, coffee and muffins, and lunch)

- Former Defenders Inc. members (no charge)
- USD Faculty and students (no charge)
- \$40.00 USD Alumni
- \$50.00 all others

**At-Door Registration fee (and after 01/16/09)**

\$65.00 (At-door registration will not guarantee lunch or syllabus)

**\*\*This seminar will only accommodate 150 attendees.\*\***

**Lunch Selection**

- Alcalá Cobb Salad
- Rio Grande Salad (Vegetarian)

**Method of Payment**

- Check enclosed (payable to USD)
- Visa/MasterCard

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For more information, please call (619) 260-2209 or email: [cdisd@sandiego.edu](mailto:cdisd@sandiego.edu)

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**CRIMINAL DEFENSE NEWSLETTER**

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**Deadline for submissions**  
 for the December 2008 newsletter  
 is noon, **Monday, December 17, 2008**, to  
[skartchner@grimesandwarwick.com](mailto:skartchner@grimesandwarwick.com).

**CRIMINAL DEFENSE NEWSLETTER**

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