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CDBA-CDLC Criminal Defense Newsletter

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CDBA/MCLE APRIL MONTHLY MEETING

April 29th Meeting:

Athens Market
First and F Downtown

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Social Hour

5:30–6:30 p.m.
Program

Alex Landon Legislative Update

&

"How To" Session on CDBA/CDLC Website by Michael Crowley and Chuck Sevilla

PRESIDENT'S COLUMN— MICHAEL L. CROWLEY

IT IS OUR DUTY TO PROTECT THE RULE OF LAW

Dick The Butcher: "The first thing we do, let's kill all the lawyers."

Shakespeare, William. Henry VI, Part II

"Ol' Billy was right, let's kill all the lawyers, kill'em tonight . . ."

Glen Frey and Don Henley.

Get Over It by Eagles

Shakespeare's words are seized upon by those who believe lawyers and the legal system are the root of all their woes, along with those of the country and the world. They believe Shakespeare supports their position. But just like pop-sages Frey and Henley, those who would have us all dead, either never read Shakespeare's historical play or didn't understand it.

Jack the Butcher was a murderous co-conspirator plotting to overthrow King Henry on behalf of Cade's questionable claim to the throne. This was believed to be Shakespeare's dramatization of Cade's Rebellion in 1450 where 30,000 peasants seeking land reform marched on London.

Justice Stevens, in *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305 (1985), taught us Shakespeare's real meaning. "As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government." *Id.* at 371. Stevens writes this in a footnote to his statement, "I reject its (the court's majority) apparent unawareness of the function of the independent lawyer as a guardian of our freedom." As our Jaded Federal Practitioner (John Lanahan) said last month on these pages, "thankfully Justice Stevens seems to live forever."

My criminal defense brethren, what we do every day is operate as the first line of defense on behalf of the established rule of law, our Constitution, against those who would bring about a totalitarian form of government. They wouldn't call it totalitarian, of course, it would just be here before we knew it. As defense attorney Michael Kennedy posits and I have shamelessly adopted as my own, we are all Constitutional defenders and our clients are the incidental beneficiaries of our efforts. In other words, we make up the quality control department of the system. (Chris Plourd's excellent primer on DNA in last month's issue gives us the initial tools to test the evidence in that arena.)

From the public defenders and private counsel challenging the government to prove their cases everyday, to the upper reaches of the Justice Department and those in the glare of the cases that have caught the public's and the cable news shows fancy, we attempt to draw a line which the government should not cross.

I could give you a list of magnificent defenses of the rule of law (many, if not most of them, would be in the area of criminal law), but the rule of law is not always followed and, as we all know, some of our fellow lawyers fail to understand their precious duty to protect us from the totalitarians.

To illustrate our crucial role, contrast a recent courageous success on behalf of the Constitution with one intended to usurp it. This is a comparison of an attorney who attended the U.S. Naval Academy and eventually Seattle University Law School with a graduate of Harvard University and Yale Law School who is now a professor at Boalt Hall School of Law at the University of California, Berkeley. Guess which one faithfully defended the Constitution?

The life of Lt. Commander Charles Swift,

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an attorney for the Navy's Judge Advocate General's Corps since 1994, changed forever in March 2003, when he reported to the chief defense counsel's Office for Military Commissions. Long story short, he sacrificed his academy-graduation-propelled military career to defend the rule of law by representing Salim Hamdan in defiance of the President of the United States and the Secretary of Defense all the way to the U.S. Supreme Court. The court ruled in his favor and the rule of law. He has now been passed over for promotion which means he will have to leave the military. (Some of our local colleagues must be applauded for their work on behalf of Guantanamo detainees.)

You guessed it, the story of Yale graduate John Yoo as Deputy Assistant Attorney General is somewhat different. Tasked with researching the torture issue for the executive branch, he produced a document which provided the questionable legal justification that allowed for the torture of those we were holding, mostly from our conquest of Afghanistan. It is a persuasive briefing.

What it lacks is the sizable body of law on the other side of those questions as evidenced by those who served in the Justice Department and resigned rather than signing off on illegal activities. (Including, on a slightly different subject, former Attorney General John Ashcroft, who from his hospital bed refused to add his approval of warrantless wiretapping.) The New York Times called Yoo's work, "Eighty-one spine-crawling pages . . . that might have been unearthed from the dusty archives of some authoritarian regime and has no place in the annals of the United States."

We are trained to be able to argue either side. Some of us are faced with situations which require us to stand-up for the rule of law in which we have to sublimate our horror at the crimes our clients may have committed, sometimes endanger our personal comfort and financial interests, and endure the ridicule of courts, staff, and the general public. Yet, we all work relentlessly to keep the system honest. In these two cases, one stood up at great personal sacrifice and one chose the politically expedient route. Always follow the rule of law and never forget why we do what we do.

HISTORY HEADNOTE

You can't give me an opportunity to write without me trying to sneak in some history, the study of which keeps me going. I have decided, therefore, rather than just trying to weave some history into the President's Page to separately give you a tidbit I found historically interesting and you can take it or leave it. Here is one.

The election of 1800 was, of course, a watershed year and the decision to give the Presidency to Thomas Jefferson was as controversial at the time as *Bush v. Gore* was in 2000. (At least Jefferson overwhelmingly won the popular vote, but there were threats of Virginia and Pennsylvania militias marching on the Capital if Jefferson was denied the Presidency when the electoral college ended in a tie.)

We all have a vague recollection from high school history class of the departing President John Adams (he didn't even stay in town for Jefferson's inauguration) making midnight appointments before he left, including the most important one of John Marshal as Chief Justice of the U.S. Supreme Court. Marshal, by the way, was a cousin of Jefferson. We also learned about *Marbury v. Madison* establishing judicial review, written by Marshal even though he was the one, as Adams's Secretary of State, who failed to deliver Marbury's commission to be justice of the peace. (No conflict there!) (Many years ago, U.S. District Court Judge Rudy Brewster made my receiving $10,000 in CJA funds for an expert witness contingent on telling him the holding of *Marbury*. I did get the money.)

According to scholar Bruce Ackerman in his book *The Failure of the Founding Fathers*, Jefferson believed his election was a revolution and, shocking as it may seem to us today, he had little use for certain parts of the U.S. Constitution, especially Article III, the judiciary. He purposefully set forth to get rid of all Adams's appointees starting at the district level. He had the Republican-controlled Congress begin impeaching judges and they obeyed. (By the way, the Jefferson Republicans were not the same party called Republicans today.)

The first victim was District Court Judge John Pickering, who was impeached by the House on a party-line vote. The Senate then summarily voted to remove him from office. Hey, you say, what happened to a trial to prove "high crimes and misdemeanors". Const., Art. II, Sec. 4. There was a brief discussion of this by the Senate, but it was decided there was no need to get legalistic. The Senate wouldn't even allow time for Pickering to travel to Washington D.C. to speak before the august body. Jefferson took down his first victim in an intended disposal of all the Federalist judges from the bench.

Within an hour of Pickering's removal, an impeachment bill was introduced in the House targeting U.S. Supreme Court Justice Salmon Chase, a political opponent of Jefferson. Everyone knew Chief Justice John Marshal would be next once Chase was eliminated. Again, a party-line vote in the House for impeachment. According to Ackerman, Jefferson wasn't commenting in public concerning these shenanigans, "but he played an organizing role behind the scenes."

Luckily, cooler heads finally prevailed in the Senate and some of Jefferson's own supporters decided there had to be a "legalistic" reason, i.e., high crimes and misdemeanors, to remove a Supreme Court Justice. A trial was conducted even though Aaron Burr, presiding over the Senate, denied Chase's request for a three-month extension to prepare. Chase barely escaped impeachment (four votes short) because of the lack of evidence of high crimes and misdemeanors. The idea of a Marshal impeachment was then dropped.

This is what we do every day – demand the evidence of high crimes and misdemeanors, lest the government decides to kill all the lawyers. Keep up the good work.

"Dedicated to the Fair Administration of Justice and to Protecting the Rights of the Accused"

SAN DIEGO CRIMINAL DEFENSE BAR ASSOCIATION

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No. 126: Everything Unspoken: *Baze v. Rees*

There are cases in which the dicta overwhelms the decision. A paradigm example was the decision last week on *Baze v. Bees*, ___U.S.___, 2008 DJDAR 5398 (07-5439, 4/16/08), which ended the self-imposed moratorium by states in executing death row inmates in the United States. It may have been that effect, to restart executions, rather that the actual holding, that explains the fevered subtextual debate that erupted in what procedurally was a fairly simple case[1]. The narrow issue was whether Kentucky's three drug protocol of sodium thiopental to render the prisoner unconscious, followed by pancuronium bromide to paralyze all muscular-skeletal movements including breathing, and finished by potassium chloride that arrests nerve activity, thereby stopping the heart, violates the Eighth Amendment ban of cruel and unusual punishment in the event the execution protocol is not properly followed. The petitioners in this case, two death row inmates, conceded that if the protocol was properly followed, it would not violate the Eighth Amendment. The issue, therefore, became whether the petitioners had shown sufficient evidence before the Kentucky courts that the protocol would not be properly followed.

The Supreme Court, in a seven to two decision, affirms the Kentucky Supreme Court that the petitioners have not carried their burden to show that the protocol would not be properly followed. The plurality opinion by the Chief Justice, joined by Justices Kennedy and Alito, states that "[t]his Court has never invalidated a State's choice procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment." 2008 DJDAR at 5402. He conducts a brief review of other challenges to earlier methods of execution, first upholding death by firing squad in 1879, then execution by electrocution in 1890. He also relies upon *Louisiana ex rel. Francis v. Resweber,* 329 U.S. 459 (1947), as authority that the possibility that an execution will be botched does not violate the Eighth Amendment. *Id*., at 5403. He refuses to have Courts engage in the monitoring of execution procedures, which "would embroil [them] in ongoing scientific controversies beyond their expertise, and would substantially intrude on the role of state legislatures in implementing their execution procedures — a role that by all accounts the States have fulfilled with an earnest desire to provide for a progressively more humane manner of death." *Id*., at 5403. He notes that 36 states have adopted some form of lethal injection as the means of execution, undercutting the claim that such a means of execution is "objectively intolerable." He also rejects that a constitutional violation could arise from errors by untrained personnel that could result from the failure of initial first injection, of sodium thiopental, to render the prisoner unconscious prior to the injection of the second and third drugs that would cause pain.

The opinion also refuses to review the claim that the correct procedure should be a massive dose of only sodium thiopental. *Id*., at 5403-04. Although this procedure is used to euthanize animals in the United States, it is *not* followed in the Netherlands, which uses a muscle relaxant similar to pancuronium bromide in medically assisted suicide. *Id*, at 5405. This, according to the plurality, shows a split within the scientific community that undercuts the claim that Kentucky's execution scheme is inherently flawed.

Justice Alito concurs separately to emphasize that the standard articulated by the plurality is not limited to the protocol adopted by Kentucky, in an attempt to avoid further litigation challenging similar, but not identical, protocols by other states. He first writes that it is not unconstitutional for an execution procedure to not employ physicians (who refuse to use medical training to kill people) and the Court cannot require that the execution protocol be modified to require the use of trained medical personnel who would then refuse to implement the procedure. *Id*., at 5408. He writes that "a prisoner must demonstrate that the modification [of the execution protocol] would "*significantly* reduce a *substantial* risk of *severe* pain" to require a modification under the Eighth Amendment. *Id*., at 5408. He is leery of the more flexible standard set forth by Justice Breyer's concurrence, that the execution protocol could violate the Eighth Amendment if it creates an "untoward, readily avoidable risk of inflicting severe and unnecessary pain." *Id*., at 5409.

Things move into the realm of dicta with Justice Stevens's concurrence. On the issue before the Court, he notes there is no nationwide consensus on the correct protocol, particularly the use of pancuronium bromide. He remarks that "[s]tates wishing to decrease the risk that future litigation will delay executions or invalidate their protocols would do well to reconsider their continued use of pancuronium bromide." *Id*., at 5410. He then embarks upon a general view of the efficacy of the death penalty, being the only member of the Court who upheld the structure of current death penalty statutes in 1976 in *Gregg v. Georgia*, 428 U.S. 153. Like Justice Blackmum before him, he has come to doubt the efficacy of the death penalty, either in its unique ability to incapacitate (given the alternative of life without parole sentences) or deter. *Id*., at 5411. What's left, he finds, is solely retribution that, citing the plurality opinion of the Chief Justice and the dissent of Justice Ginsburg, has lessened as society has moved "towards ever more humane forms of punishment." *Id*., at 5411. He notes the irony that the phrase "death is different," which was used to justify the greater procedural safeguards required in capital cases has, in more recent cases, "endorsed procedures that provide less protections to capital defendants than to ordinary offenders." *Id*., at 5412.

He identifies several areas of "special concern" concerning the death penalty. The first is "the rules that deprive the defendant of a trial by jurors representing a fair cross section of the community . . . The prosecutorial concern that death verdicts would rarely be returned by 12 randomly selected jurors should be viewed as objective evidence supporting the conclusion that the penalty is excessive." *Id*., at 5412. The second concern is "the risk of error in capital cases may be greater than in other cases because the facts are often so disturbing that the interest in making sure the crime does not go unpunished may overcome residual doubt concerning the identity of the offender." *Id*., at 5410. There is also the risk of

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[1] Jaded Federal Practitioner

discriminatory application of the death penalty. *Id*., at 5413. The final concern is "the irrevocable nature of the consequences." *Id*., at 5412. He cites Justice White's concurrence in declaring the former death penalty statutes unconstitutional in *Furman v. Georgia*, 408 U.S. 238 (1972), that the death penalty produces "negligible returns" and is particularly excessive. He concurs to uphold the Kentucky protocol, however, despite his conclusion with regard to the constitutionality of the death penalty in general, because the petitioners in this case failed to prove that Kentucky's protocol, under existing law, violates the Eighth Amendment. *Id*., at 5413.

Justice Scalia responds to this shot over the bow of the death penalty with a rhetorical barrage reserved for constitutional apostates. He finds Justice Stevens's conclusion that the death penalty violates the Eighth Amendment because it has such negligible returns to the State to be "insupportable as an interpretation of the Constitution, which generally leaves it to democratically elected legislatures rather than courts to decide what makes significant contribution to social or public purposes." *Id*., at 5415. He notes the death penalty is specifically mentioned as a potential sentence in the Fifth Amendment, which requires Grand Juries in capital cases, as well as several statutes enacted in 1790 that created several capital offenses. He disagrees with Justice Stevens's conclusion that the death penalty has no deterrent effect, by citing one study that every execution deters eighteen homicides. *Id*., at 5416. He also objects to Justice Stevens's cost-benefit analysis that is based upon a concern that an innocent person could be convicted of a capital crime and sentenced to death, because a false conviction is inherent in any criminal prosecution. "But actually, none of this really matters," because thus is an area of the legislature and not, what Justice Scalia characterizes as, "rule by judicial fiat." *Id*., at 5417.

Justice Thomas's concurrence focuses on the history of the Eighth Amendment and how it was not intended to abolish the death penalty, but to ban the practices that intentionally intensified the death sentence. *Id*., at 5418. The amendment does not, however, apply to executions done by means not intended to intensify the capital sentences, but which do so because of mechanical error. He recites a grizzly Louisiana electrocution worthy of *The Green Mile* that was not found to violate the Eighth Amendment in *Resweber*, and the holding of that case that Louisiana was not required to implement additional safeguards to insure that such an execution would not reoccur. *Id*., at 5421. He finds this is a simple case under current Eighth Amendment law because it was undisputed that the lethal injection protocol, if properly administered, would not violate the Eighth Amendment, and, therefore, no constitutional error arises from the possibility that unnecessary pain would result if it was not done properly. *Id*., at 5422.

Justice Breyer also concurs because he finds that neither the evidence presented to the Court in Kentucky, nor the scientific literature on the subject, is sufficient to show that Kentucky's protocol poses the "significant and unnecessary risk of inflicting severe pain." *Id*., at 5423. He notes Justice Stevens's concerns are over the death penalty in general, and seems to share at least some of those by citing his own dissent from the denial of certiorari in 2007 in *Smith v. Arizona*, "[b]ut the lawfulness of the death penalty is not before us." *Id*., at 5424.

Finally, the dissent of Justice Ginsburg, joined by Justice Souter, finds that the case should not be disposed of "so swiftly given the character of the risk at stake. Kentucky's protocol lacks basic safeguards used by other States to confirm that an inmate is unconscious before injection of the second and third drugs." She would vacate the decision of the Kentucky Supreme Court, and remand the case on the issue of whether the lack of certain safeguards in the Kentucky protocol that other states use in their executions "poses an untoward, readily avoidable risk of inflicting severe and unnecessary pain." *Id*., at 5426. She recites some of the procedures used by Florida, Missouri, California, Alabama, and Indiana, missing from Kentucky's protocol, that leaves it up to the prison warden to determine if the prisoner has been rendered unconscious by the initial injection of sodium thiopental, and the lack of monitoring of consciousness by an EEG. *Id*., at 5426-27.

Much as I, amazed to admit it, think Justice Thomas is correct *that under current law* this is a simple case. The Eighth Amendment has not been used to find a method of execution unconstitutional unless it is intended to make the execution worse than death. Prior Eighth Amendment cases have not made the accidental infliction of pain during an execution otherwise not intended to make the sentence worse than death a constitutional violation. What is interesting is the obvious debate below the surface as to whether the death penalty is constitutional. This, more than 30 years after *Gregg*. Justice Stevens's Blackmunesque musings take on considerable significance, given that he is the only member of the Court to have approved the current death penalty structure in *Gregg*, and the intensity of Justice Scalia's attempt to strangle this reinquiry in its cradle shows his concern in stifling this debate. Justice Breyer hints that he too may be willing to examine whether the death penalty is constitutional, and maybe Justices Ginsburg and Souter would join in granting certiorari on that issue. That would then leave it to Justice Kennedy, who decides the grand moral issues. In this most unlikely of Supreme Courts, there may be a window in which the whole capital structure might just be brought down.

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.

CENTER FOR CONSTITUTIONAL RIGHTS SUPPORTS NATIONAL LAWYERS GUILD'S CALL FOR DISMISSAL AND PROSECUTION OF JOHN YOO— MARJORIE COHN

On April 1, a secret 81-page memo written by former Deputy Assistant Attorney General John Yoo in March 2003 was made public. In that memo, Yoo advised the Bush administration that the Department of Justice's Office of Legal Counsel would not enforce U.S. criminal laws, including federal statutes, against torture, assault, maiming, and stalking in the detention and interrogation of enemy combatants. The week after the publication of Yoo's memo, the National Lawyers Guild ("NLG") issued a press release calling for the Boalt Hall Law School at the University of California to dismiss Yoo, who is now a professor of law there. The NLG also called for the prosecution of Yoo for war crimes and for his disbarment.

Two days later, the Center for Constitutional Rights ("CCR") released a letter supporting the NLG's call for Yoo's dismissal and prosecution. CCR Executive Director Vincent Warren wrote:

> The "Torture Memo" was not an abstract, academic foray. Rather, it was crafted to sidestep U.S. and international laws that make coercive interrogation and torture a crime. It was written with the knowledge that its legal conclusions were to be applied to the interrogations of hundreds of individual detainees . . . And it worked. It became the basis for the CIA's use of extreme interrogation methods as well the basis for DOD interrogation policy . . . Yoo's legal opinions as well as the others issued by the Office of Legal Counsel were the keystone of the torture program, and were the necessary precondition for the torture program's creation and implementation.

More than 108 people have died in U.S. detention since 9/11, many from torture.

The day after the NLG issued its press release, Boalt Hall Dean Christopher Edley, Jr. posted a statement on the Boalt Hall website, responding to "the New York Times (editorial April 4), the National Lawyers' Guild, and hundreds of individuals from around the world" who had criticized or questioned Yoo's continuing employment at Boalt Hall.

Dean Edley cited the University of California's Academic Personnel Manual sec. 015, which lists under "Types of unacceptable conduct: . . . Commission of a criminal act which has led to conviction in a court of law and which clearly demonstrates unfitness to continue as a member of the faculty." Edley said he was not convinced Yoo had engaged in "clear professional misconduct — that is, some breach of the professional ethics applicable to a government attorney — material to Professor Yoo's academic position." Edley was likewise not convinced "the writing of the memoranda, and [Yoo's] related conduct, violate[d] a criminal or comparable statute."

Edley felt Yoo's conduct was not "morally equivalent to that of his nominal clients, Secretary Rumsfeld, et al., or comparable to the conduct of interrogators distant in time, rank, and place." Edley wrote, "Yes, it does matter that Yoo was an adviser, but President Bush and his national security appointees were the deciders."

Indeed, ABC News reported last week that Dick Cheney, Condoleezza Rice, Donald Rumsfeld, Colin Powell, George Tenet, and John Ashcroft met in the White House and micromanaged the torture of terrorism suspects by approving specific torture techniques such as waterboarding. George W. Bush, the decider-in-chief, admitted, "yes, I'm aware our national security team met on this issue. And I approved."

These top U.S. officials are liable for war crimes under the U.S. War Crimes Act, and for violation of the Convention Against Torture and the Geneva Conventions, which are all part of U.S. law. They ordered the torture which was carried out by the interrogators.

But John Yoo and the other Justice Department lawyers, including David Addington, Jay Bybee, William Haynes, and Alberto Gonzales, are also liable for the same offenses. They were an integral part of a criminal conspiracy to violate U.S. laws. In *U.S. v. Altstoetter*, Nazi lawyers were convicted of war crimes and crimes against humanity for advising Hitler on how to "legally" disappear political suspects to special detention camps. The United States charged that since they were lawyers, "not farmers or factory workers," they should have known their technical justifications for circumventing the Hague and Geneva Conventions were illegal.

The cases of Altstoetter and those of the Bush lawyers share common aspects. Both dealt with people detained during wartime who were not POWs; in both, it was reasonably foreseeable that the advice they gave would result in great physical or mental harm or death to many detainees; and in both, the advice was legally erroneous. More than 108 people have died in U.S. detention since 9/11, many from torture. And the Department of Justice's Office of Legal Counsel later withdrew the memoranda, an admission that the advice in them was defective.

Furthermore, the Bush lawyers have engaged in ethical violations which should result in their disbarment. As New York

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University School of Law Professor Stephen Gillers wrote in *The Nation*, H. Marshall Jarrett, counsel for the Justice Department's Office of Professional Responsibility, who is examining the legal advice these lawyers provided, "should find that this work is not 'consistent with the professional standards that apply to Department of Justice attorneys.'"

Even Dean Edley appears to recognize that the case of John Yoo is not a simple issue of academic freedom, such as "merely some professor vigorously expounding controversial and even extreme views."

As CCR President Michael Ratner wrote in the forthcoming book, *The Trial of Donald Rumsfeld*:

> Had these various opinions been written as a law school or academic exercise, they could be merely condemned and their authors would fail their class, but they would not be held criminally accountable. But they were not an academic exercise. They were written by high-level attorneys [such as John Yoo] in a context where the opinions represented the governing law and were to be employed by the President in setting detainee policy. This was more than bad lawyering; this was aiding and abetting their clients' violation of the law by justifying the commission of a crime using false legal rhetoric.

It is inconceivable that Attorney General Michael Mukasey, who has served as a rubber stamp for Bush's illegal policies, will bring any of these leaders or lawyers to justice. There is a chance that a future Attorney General will do so. Barack Obama has pledged to have his Justice Department and Attorney General "immediately review the information that's already there and to find out are there inquiries that need to be pursued . . . if crimes have been committed, they should be investigated . . . Now, if I found out that there were high officials who knowingly, consciously broke existing laws, engaged in coverups of those crimes with knowledge forefront, then I think a basic principle of our Constitution is nobody above the law." Congress should repeal the provision of the Military Commissions Act that would give these deciders and lawyers immunity from prosecution for torture and other mistreatment committed from September 11, 2001, to December 30, 2005.

In addition to criminal prosecutions, disbarments, and the dismissal of John Yoo from the Boalt Hall faculty, Jay Bybee, who was rewarded for his illegal advice with a federal judgeship, should be removed from the bench by impeachment.

It is time for the impunity enjoyed by the Bush administration to come to an end.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and president of the National Lawyers Guild. She is the author of Cowboy Republic: Six Ways the Bush Gang Has Defied the

KUDOS, KUDOS, KUDOS!

Congratulations to **Allen Bloom** for obtaining a new trial and then a dismissal from the District Attorney in the Cynthia Sommer case. Ms. Sommer had been accused and convicted of first-degree murder by poison and for financial gain of her Marine Corps husband in a case that received national media attention. Allen effectively argued evidence of improperly allowed evidence and additional scientific evidence showing the Marine likely died of natural causes. His client spent more than two years in custody for a crime she did not commit. Great job Allen.

Kudos to **Kate Thickstun Leff** and **Michael Anttanasio** for their hard fought result in the Peregrine case. After two trials totaling five months in federal court, the government finally conceded they had no case and requested dismissals against the associates of Peregrine Software who were represented by Kate and Michael.

Congratulations to **Rich Muir** who received an acquittal in a misdemeanor hit and run case. The jury was only out 30 minutes.

Kudos to **Michael Messina** who won a mental disorder offender trial in San Luis Obispo. The Court ruled that the State failed to prove the mandatory in custody treatment beyond a reasonable doubt. Excellent job Michael.

Deadline for submissions
for the May 2008 newsletter
is noon, Mon., May 12th, to
skartchner@grimesandwarwick.com.

CRIMINAL DEFENSE NEWSLETTER

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