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Criminal Defense Newsletter

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

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CDBA/MCLE MONTHLY MEETING

Meeting:

Tues., June 28th

Athens Market

First and F Downtown

5:00—5:30 p.m.
Social Hour

5:30—6:30 p.m.
Program

Judge David Danielsen on Evidence Based Practices

PRESIDENT'S COLUMN—BY TROY BRITT

The purpose of this month's column is to thank those of you that regularly attend our monthly trainings and to invite everyone else to start attending regularly. The trainings are a great way to network and remain current in the struggle to defend our clients. This is particularly important in a time when the San Diego Police Department seems besieged by misconduct and criminality.

There are currently nine San Diego Police officers (that we know about) either being investigated or facing criminal charges. Officer William Johnson was charged with driving under the influence and causing an injury. Another unnamed police officer is being investigated for using excessive force while arresting an allegedly drunk person in front of a local bar. Officer David Hall was arrested and charged with driving under the influence and hit and run allegations in Serra Mesa. Sgt. Kenneth Davis was charged with stalking a fellow police officer. Another officer is being investigated for an off-duty assault of a 17 year-old neighbor who was allegedly committing the horrific crime of smoking marijuana. Officer Art Perea was accused of raping a local university student. Officer Arevalos was accused of sexually assaulting women during traffic stops. Officer Tungcab was arrested and charged with domestic violence after fighting with his wife. Finally, another unnamed officer is being investigated for using excessive force during an arrest at a soccer game at Qualcomm Stadium.

All of this misconduct is grist for cross-examination, trials, and other efforts to help our clients. The hope is that our monthly trainings will provide sufficient groundwork to take advantage of this misconduct. The monthly trainings also cover diverse topics aimed at making us better advocates for our clients and better trial attorneys. The other benefit of the monthly trainings is the networking that happens before and after the training.

We should all remember that the police officers are presumed to be innocent (at least of the current charges), and that only through practice, training, and networking can we stay vigilant.

THE FEDERAL TATLER © BY JOHN LANAHAN

No. 160: Prisons Do Not Rehabilitate: *Tapia v. US*

Given the nature of the Supreme Court's decisions this term, had I been told the Supreme Court reversed a criminal law decision of the Ninth Circuit 9-0, I would expect yet another castigation of how yet another decision we had come to rely upon just did not make the grade. Imagine, therefore, my unabashed delight in reading *Tapia v. United States*, ___U.S.___ (10-5400, 6/16/11), which does exactly the opposite. This is one of a number of recent decisions (such as *J.D.B. v. North Carolina*, 09-11121, in which Justice Sotomayor reverses the Court's recent trend of revisions to *Miranda v. Arizona* by expanding the circumstances when *Miranda* warnings should be given to juveniles) that have elevated the tenor of this term from catastrophic to merely abysmal. It's a particularly appropriate subject of the *Tatler*, because it represents a victory by Federal Defenders of San Diego, Inc. and Reuben Cahn, who argued it in April.

The case originated in San Diego, where Alejandra Tapia was convicted of transportation of illegal aliens, one of the dismal staples of local federal practice. She was sentenced in the land that forgot time, my affectionate term of the courtroom on a local district court judge and former magistrate who inspired a whole cycle of songs during the many, many hours I spent in his court when I used to handle new arraignments 20 years ago while in the Federal Defender's Office. The district court judge on occasion puts on his "social worker" hat (his words) in court. He found that Ms. Tapia, who had a serious history of drug abuse, jumped bail, and was later found in an apartment with methamphetamine, a sawed off shotgun, and stolen mail, needed the 500 hour Residential Drug Abuse Program (RDAP) offered by the federal Bureau of Prisons. This program, if successfully completed, will reduce a prison sentence by one year and presumably offer effective drug treatment. A problem is that it has a waiting list and if an inmate has too little time in prison to complete the nine month program, he, or in this case she, is precluded from entering it. Ms. Tapia's sentencing guidelines were 41 to 51 months, and the district court imposed the high end of the guideline range for two reasons: (1) Ms. Tapia needed the RDAP and a longer prison sentence was necessary to make it more likely she would take it, *and* (2) such a sentence was necessary to deter her in the future. No objection was made at the time of sentencing and this JFP[1] is curious to see how it could even be appealed under the plea agreements used in this district unless the judge went way above the recommended sentence by the Government.

On appeal, Ms. Tapia argued for the first time that a district court could not use rehabilitation as a basis either to impose a prison sentence or to lengthen it. The Ninth Circuit, in a unpublished decision, relied upon its decision in *United States v. Duran*, 37 F.3d 557 (9th Cir. 1994), to hold with the Sixth and Eighth Circuits that 18 U.S.C. § 3582(a) precludes a judge from using rehabilitation as a basis for imposing a prison sentence, but once the court decides to impose a prison term, rehabilitation can be used to determine the length of the sentence. Ms. Tapia appealed to the Supreme Court, Cert. was granted, and the Government agreed she was right. That would seem to be the end of the story, but because the Circuits were split on this issue, the Supreme Court appointed an Amicus to argue that the district court and the Ninth Circuit were right.

All for naught, because the unanimous decision by Justice Kagan holds that 18 U.S.C. § 3582(a) in conjunction with 28 U.S.C. § 994(k) forbid rehabilitation as a basis to either impose or increase a prison sentence.[2] The decision finds the federal Government, unlike California, abandoned the charade that prison rehabilitates when it passed the Sentencing Reform Act of 1984 (SRA). The opinion focuses upon the lynchpin of current federal sentencing, 18 U.S.C. § 3553(a)(2), to find that sentencing judges should consider four factors, retribution, deterrence, incapacitation, and rehabilitation, in fashioning a sentence. This is the statute in *United States v. Booker*, 543 U.S. 220 (2005), that the Supreme Court found trumped the guidelines in order to save

[1]Jaded Federal Practitioner.

[2]The Court specifically leaves open the question whether a district court may use rehabilitation as a basis to decrease a prison sentence.

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them. The SRA notes that four kinds of sentences are available: imprisonment, supervised release (which follows a term of imprisonment), probation, and a fine. 18 U.S.C. § 3582(a) specifically states that imprisonment "is not an appropriate means of promoting correction and rehabilitation." A similar provision, concerning the creation of the Sentencing Commission that promulgates the Sentencing Guidelines, requires the Commission to "insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment." The combination of these two statutes makes it clear that the other 3553(a) factors, retribution, deterrence, and incapacitation, may be used to determine if a prison sentence should be imposed and for how long, but rehabilitation cannot.

The opinion reads like a primer on statutory constriction, an approach that has yielded at least more favorable decisions for the defense from the Court this term than a constitutional analysis that, in all but a very few cases, has not. Justice Kagan proves she was not only witty when appearing before Congress last summer to be confirmed, but also as a writer. For example, she finds the lack of more "commanding language" such as "'thou shalt not' or equivalent phrase to convey that a sentencing judge may never, ever, under any circumstances consider rehabilitation in imposing a prison term" does not indicate a judge may consider it. "[W]hen we interpret a statute, we cannot allow the perfect to be the enemy of the merely excellent. Congress expressed itself clearly in [18 U.S.C.] § 3582(a), even if armchair legislators might come up with something even better." She rejects the claim by the Amicus that "'t]he effects of imprisonment plateau a short while after the incarceration' and '[t]he difference in harm between longer and shorter prison terms is smaller than typically assumed.'" This is someone who will give Justice Scalia a run for his money in the best writer department.

The decision also focuses on the absence of the statute to empower a judge to order a defendant to participate in prison rehabilitation programs. Instead, the SRA is very clear that a judge may order a defendant to participate in certain rehabilitative programs for treatment as condition of probation or supervised release, but federal judges have no authority to order such things once a person is committed to the Bureau of Prisons. Instead, all a district court judge can do is recommend what the Bureau of Prisons should do, but the decision on designation and what is offered to a specific inmate is entirely the decision of the Bureau of Prisons. This case illustrates that despite the "strong recommendation" by the district court, Ms. Tapia stated during her psychological screening for admission into the program that she was not interested and she was not placed in it.

> The sentencing court may have had plans for Tapia's rehabilitation, but it lacked the power to implement them. That incapacity speaks volumes. It indicates that Congress did not intend that courts consider offenders' rehabilitative needs when imposing prison sentences.

As a final note, the Court finds the legislative history (without even a ruffle from Justice Scalia for such heresy) indicates that Congress had had it with any correlation between prison programs and rehabilitation.

Although the Court is unanimous that the Ninth Circuit was wrong that rehabilitation could be used to increase a prison sentence, it splits on whether that was what the district court actually did. The majority finds that because the district court could have used the need for the drug program as a basis for recommending where Ms. Tapia was to be housed, and not was a basis for her sentence, it could have been correct.

Justices Sotomayor and Alito (the later coming to the defense of Judge Moskowitz – oops, it slipped out – a fellow New Jersey native) express skepticism that he erred, because "the thoughtful District Court judge"[3] properly considered all of the 3553(a) factors, and imposed the greater sentence based upon the nature of the crime, Ms. Tapia's

[3]If only she knew how excruciatingly, maddeningly thoughtful.

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history and characteristics, her combined conduct while on bail, the need to protect the public from her, the need for correctional treatment, and the need to avoid sentencing disparity. Justice Sotomayor finds, however, that "his comments are not perfectly clear" and agrees the case needs to be remanded to correct the Ninth Circuit precedent, *United States v. Duran*, that permitted rehabilitation to be a basis to increase a prison sentence. The case is remanded to consider the effect of the failure of Ms. Tapia's lawyer to object.

This case shows there's still life in federal sentencing law after *Booker*. It also shows that when the Supreme Court engages in statutory construction, as opposed to constitutional interpretation, those on the defense side of the courtroom often do better.[4] Next month's Tatler may explore how *J.D.B. v. North Carolina* (which got much more press than *Tapia*) shows the emergence of Justice Sotomayor as a worthy successor to Justice Stevens as a counterweight to the penchant of the conservative Justices to rewrite settled decisions with legal revisions, such as *Berghuis v. Thompkins*, 560 U.S. ___ (2009). For now, however, I want to commemorate a worthy local victory arising from a truly thoughtful judge who, unlike many of his colleagues, has the confidence and courage to show how he thinks in order to provide an equally thoughtful review.

The Court specifically leaves open the question whether a district court may use rehabilitation as a basis to decrease a prison sentence.

[4]But not always. See *Sykes v. United States*, ___U.S.___(09-11311, 6/9/11), which recently held that the crime in Indiana of "using a vehicle" to "knowingly and intentionally" "flee from a law enforcement officer" after being ordered to stop, is a violent felony under the Armed Career Criminal Act.

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.

Special Kudos

Chuck Sevilla is in the news again. He is magnanimously gracing the cover of the "Super Lawyers" publication. Being the featured lawyer is a well-deserved recognition of Chuck's continued prominence in our criminal defense community. Calling him the "Mr. Fix-It", the article in the magazine explains why Chuck is the go-to guy "when lawyers have a mess on their hands." Some of his better-known appellate and habeas successes are detailed in the article. Chuck's sense of humor and his commitment to equality of justice come through loud and clear. Forty-six other San Diego lawyers were named to the Criminal Defense Super Lawyers list, and another four were named for White Collar Criminal Defense. Congratulations to Chuck and the other Super Lawyers.

CDBA and CDLC would like to recognize and thank **Jim Dicks** for his very generous contribution to the National College of Criminal Defense in support of the Tom Adler Scholarship. A portion of the funds given by Jim will be used this year for scholarship winner Laura Sheppard; the remaining funds will be used for next year's scholarship, which will be awarded to a deserving candidate. Thank you Jim for your support!

CDBA Founder **Tom Adler** will be added to the memorial plaque in the San Diego Superior Courthouse. The plaque honors the lives and service of outstanding members of the criminal justice community. He is the only lawyer (prosecution or defense) to be honored by the Criminal Justice Memorial Committee this session. The other honorees are all judges, including Donald Smith, William Mudd, Napoleon Jones, and Howard Turrentine.

MEMBER PROFILE – MICHAEL McCABE
BY STACEY A. KARTCHNER

Michael McCabe

Michael McCabe ("Mike") was born in Long Beach, California; however, his parents moved almost immediately after he was born to the east coast where his father had received orders to report. Thereafter, Mike lived on a number of Marine Corps bases until he was 10 years-old. In 1958, his family returned to the west coast after his father had been transferred to Camp Pendleton. Although he spent most of his formative years in South Orange County, Mike considers San Diego to be his hometown. Mike received his Bachelor's Degree from the University of San Diego. He majored in Biology. Mike intended to apply to medical school after completing the requisite pre-med courses; however, he ultimately decided to go to law school. He received his law degree from the University of San Diego.

When asked what made him decide to become a lawyer, Mike stated:

> Combination of factors. My disillusionment with the field of medicine; the injustice of seeing my father wrongly convicted of assaulting and battering police officers who attempted to enter his home without a warrant; and my desire to avoid the draft by self-education as to how to beat the Selective Service System. My mother was not happy with this career choice. At my law school graduation she said, "Congratulations, but you could have been a doctor if you weren't so lazy."

Mike described his path prior to becoming a lawyer as follows:

> I never had a career prior to being a lawyer, having been admitted to the Bar at age 24. My diligent pursuit of education, however, was spurred in large part by fear of being drafted and sent to Vietnam to die as had a number of the members of my High School graduating class of 1965. I toyed with the idea of becoming an archaeologist, but decided to become a doctor at my mother's insistence. That plan changed also. I took the LSAT at my father's urging, scored high, and entered USD Law School in 1969 on the equivalent of a full scholarship, since my father, who at that time was a member of the faculty, was entitled to full tuition and books for any member of his immediate family who attended any school of the university.

Mike started his legal career with Advocates of San Diego Inc., San Diego's first public interest law firm. After three months, in March of 1973, he was hired by Federal Defenders of San Diego, Inc. His first assignment was to take over all of the draft cases which had back-logged in the office. Since he had law clerked for a number of draft lawyers in law school, including Pete Savitz and Charlie Khoury, as well as volunteered at the draft counseling centers, he was intimately familiar with the vagaries and intricacies of the Selective Service Act. Mike became the one-man Selective Service Unit of Federal Defenders, and was opposed by the one-man unit of the Selective Service prosecutions detail of the U.S. Attorneys Office, Mike Quentin. Mike stated that Mike Quentin:

> Was a recent JAG Corps transfer to the U.S. Attorney's Office with a high and tight haircut, and what I believed at first to be, incongruously, a peace symbol tie clip. Upon examination, however, this tie clip was revealed, in reality, to be a B-52 Bomber. Needless to say, Mr. Quentin and I did not get along very well. However, none of my clients ever went to jail, largely because of deals made by Judge Turrentine, who was assigned the vast majority of these cases.

On January 1, 1977, Mike left the employment of Federal Defenders and joined his former employer and mentor Pete Savitz, in a two-man law firm in which Pete did all the state criminal work and Mike did all the federal criminal work. Mike and Pete stayed together until Pete's retirement in 1985. Since that time, Mike has been a sole practitioner

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doing both state and federal work.

Throughout his career, Mike has stayed very involved with the community. He has served on the Board of Directors of the Defender Organizations, Federal Defenders of San Diego, Inc., Appellate Defenders, Inc., and, at the time Defenders Program of San Diego. Mike was the president of the Board of Directors from 1983 to 1985, during which time Alex Landon was hired to remedy the many shortcomings of the Defenders Program under the previous regime. Of this, Mike stated, "Alex, of course, turned the program around, only to be supplanted by the public defender." In addition, Mike also served for five years on the Board of Governors of CACJ. Moreover, he has served as treasurer, secretary, vice president, and president of the San Diego Criminal Defense Lawyers Club from 2000 to 2004. Further, Mike has provided pro bono representation to a number of individuals charged with what he believes to be politically motivated prosecutions. In fact, in 1978, the San Diego County Bar Association gave Mike an award for his pro bono representation of Salvador Mercado, an Anti Klan demonstrator, who was charged with assault with a deadly weapon on members of the Klan who were demonstrating at the border for stricter enforcement of the immigration laws when Mike's client threw a brick through the windshield of the car being occupied by one of the Klansmen. Mike was successful in securing a verdict of a lesser charge of malicious mischief, and Mr. Mercado was sentenced to summary probation with community service.

In his spare time, Mike enjoys riding his bicycle, swimming, and sailing his 13-foot catamaran around Mission Bay.

LAWYER MIKE MOST ADMIRES: "That has to be my good friend Chuck Sevilla, my co-counsel during the 13 years we jointly represented Robert Alton Harris on the appeals from his death sentence, joined at the end by Michael Laurence. Chuck is the most generous individual I have ever seen with his time, and is never too busy to lend a helping hand to a colleague in need. He has also helped me immensely through some very dark times in my life, and I will be forever grateful to him for that in particular, as well as the support and help I received from Jack Phillips."

NON-LAWYER MIKE MOST ADMIRES: "The Dalai Lama, who has devoted his entire life to the pursuit of peace on earth, the most laudable goal I can think of."

RECENT NOTEWORTHY VICTORIES: "Most recent victory was in *People v. Eugene Davidovich*, a medical marijuana defense case. My client was accused of possession for sale and sales of approximately seven ounces of marijuana in connection with his medical marijuana delivery service. After 10 days of trial and Davidovich's grueling cross-examination at the hands of DDA Theresa Pham, spanning two days and 10 hours, the jury returned its verdict acquitting him of all charges after less than five hours of deliberation. The verdict was returned in March, 2010. Earlier, in the summer of 2008, I, with the assistance of Chris Yturralde, successfully defended a neurologist, Reynaldo Santa Mina, M.D., in Brawley, CA, of charges of forcible oral copulation of his male patient, as well as charges of misdemeanor sexual battery, and sexual exploitation of a patient by a physician. After 11 days of trial spanning three weeks in 116 degree temperatures, the jury acquitted Dr. Santa Mina of all charges, in approximately four hours time. Particularly persuasive in the jury's resolution of this case, I believe, was the evidence that I was able to present demonstrating the investigating police officer's bias in threatening a defense witness with perjury or obstruction of justice charges if he testified, as expected, that the alleged victim had been illegally working while collecting disability benefits at the time of the alleged incidents in question."

PROUDEST CAREER MOMENT: "That would have to be my most stunning courtroom victory in *People v. Michael Fleder*. Mr. Fleder and his co-defendant, represented by Jimmy Dicks, were charged originally with 75 counts, one count of conspiracy to defraud the insurance company for which Mr. Dicks' client worked as an adjuster, as well as 37 counts of grand theft, paired with 37 counts of insurance fraud. The prosecution's theory was that my client and Mr. Dicks' client conspired to defraud the insurance company for which Mr. Dicks' client worked by double billing for services performed by doctors under contract to my client for services performed on behalf of the insured. At trial, however, we were able to demonstrate that the true villains in this scenario were the doctors who where obligated by contract to receive their pay from my client, after he received it from his billing to the insurance company. However, when the doc-

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tors' billings to my client were not honored within 90 days, many of them, including the 37 who were the subject of the 74 counts of the indictment, billed the insurance company directly for their services. They, of course, did not inform my client of this breach of their contractual agreement. When my client billed again for their services, the insurance company once again paid, and my client delivered what he owed under the contracts to the doctors concerned. After I dragged four of the doctors in and confronted them with the evidence of their duplicity, the rest took the Fifth. However, the prosecution was undaunted, and confident of victory. So confident that since this was DDA Don Canning's last criminal trial before retirement after 30 years of service in the DA's office, the courtroom was packed with DA office staff and supporters ready to celebrate Mr. Canning's final victory. However, the jury acquitted our clients of every single charge against them amounting to 69 counts, as six earlier paired counts had been dismissed on a 995 motion by Judge Bernie Revak.

My greatest appellate victory, however, was *People v. Konow*, the first medical marijuana challenge mounted by the DA's Office against the first collective in San Diego run by Ms. Konow and her son. The DA's Office brought this prosecution in 2000 shortly after the passage of the Compassionate Use Act, Prop 215, legalizing medical marijuana for use by qualified patients. However, the law failed to provide for access to the marijuana which the qualified patients were now allowed to smoke for their medical conditions. The DA's Office brought this case to establish, once and for all, that there was no "implied right of distribution," to be inferred from the initiative. Unfortunately, the plan was derailed at the preliminary hearing presided over by Judge William Mudd, who dismissed the case in the interests of justice, finding the activities of Ms. Konow and her co-defendants to have been motivated by a sincere desire to comply with the provisions of a very poorly written law. The People appealed; Judge Shore reinstated the complaint, and the case was returned to Judge Mudd, who reluctantly held the defendants to answer, stating, in doing so that he "sorely wished that he had the power to dismiss the case once again". We then brought a 995 motion before Judge Wellington, who found in our favor, ruling that Shore had overstepped his authority in overruling Judge Mudd. The People then appealed to the Court of Appeal, which reversed Wellington by a three to zero vote. We then petitioned the California Supreme Court for review, which was unanimously granted, and prevailed on the issue by unanimous vote of seven to zero in the California Supreme Court. Although I was lead counsel throughout these proceedings, I must give a great deal of credit for the ultimate victory to my co-counsel on appeal, Matt Braner who labored tirelessly to bring about this great win, as well as Cyndi Sorman and Marianne Harguindegy Cox."

FUNNIEST THING A JUROR HAS SAID TO MIKE: "'Those cops must have thought we were all retarded.' - Statement from Foreperson of Jury following acquittal of Eugene Davidovich of all charges in the prosecution of him for possession for sale and sale of medical marijuana."

SILLIEST CHARGE MIKE HAS HAD TO DEFEND SOMEONE FOR: "A young girl who was charged with possession of alcohol by a minor when she picked up a can of beer left on the beach and was in route to put it in a trash can when intercepted by an overzealous police officer. To his credit, Judge Gallagher didn't even wait to hear the defense case before dismissing the charges."

FAVORITE LAW/OPINION: "My favorite opinion is *People v. Konow*, (2004) 32 Cal 4th 995. I love reading about myself."

LEAST FAVORITE LAW/OPINION: "All the rest of them."

FAVORITE VACATION SPOT: "Anywhere in Italy, except Genoa. My wife and I are particularly fond of Venice (Venezia) which we believe to be the most beautiful and romantic spot in the world which we have visited so far."

FAVORITE QUOTE: "There are a number of them by Mark Twain. My favorite is, 'It is better to keep your mouth shut and appear stupid than to open it and remove all doubt.' However, as virtually everyone who knows me is aware, I have frequently violated this rule, to my great chagrin. I am also partial to another Mark Twain quote, 'Whatever you say, say it with conviction.' I think I've managed to follow this one just about invariably. Finally, there's my own victory mantra: There is no substitute for total and complete victory."

ADVICE TO COLLEAGUES: "Come up with a theory of defense and stick to it. In other words, as Benjamin Franklin Rayborn advised me, 'Don't mix chicken s**t with chicken salad.'"

KUDOS KUDOS KUDOS

Congratulations to **Brian White** who obtained an acquittal in a homicide case. Client (22 years-old) and his girlfriend had been drinking as they walked the streets of Lakeside. They got into an argument after she told Client that she had cheated on him with his best friend. According to girlfriend, Client then pushed her to the ground and hit her over the head with a bottle of rum, knocking her unconscious. Client then left girlfriend and was soon approached by a vehicle full of teenagers, one of whom recognized him. The teenagers asked Client to accompany them to a party. On the way to the party, Client proudly displayed his new knife, said he had just been in a fight with his girlfriend, and that he was going to stab a cop that night. Once at the party, Client proceeded to get drunk and became loud and obnoxious. He was asked several times to leave, but refused. Eventually, Client was escorted out of the party and onto the street. A fight ensued. Less than one minute later, the host of the party stumbled backwards and fell to the ground clutching his chest. He had suffered numerous knife wounds, one fatally to the heart. Moreover, another partygoer suffered two knife wounds, one of which required 17 staples. Client also suffered two puncture wounds to his left arm. (The Government alleged that Client's injuries were self-inflicted.) Client fled the scene, but was apprehended several hours later. The police recovered a knife from Client's pocket, which had the dead guy's DNA on it. At trial, the judge instructed on murder, voluntary manslaughter as a lesser offense, assault with a deadly weapon, and felony domestic violence – along with the personal use of a deadly weapon enhancement. The jury returned with verdicts of not guilty on all counts. Excellent work, B!

Kudos to **David Bartick** and co-counsel **Gerardo Gonzalez** who obtained an acquittal in a 10 year mandatory minimum conspiracy and importation of methamphetamine case in federal court. Client was the sole occupant of a vehicle crossing the San Ysidro Port of Entry, which contained two kilograms of methamphetamine. The defense was that Client was specifically informed that the vehicle would contain money, not drugs. David reported that Judge Sammartino was an excellent trial judge, and permitted the defense to bring in an expert witness to testify that because of new banking regulations in Mexico, U.S. currency is actually being transported north of the border into the U.S. The jury returned the not guilty verdict within 90 minutes; however, David credits his client's young age (19) as being as instrumental in swaying the jury as any good trial advocacy.

Congratulations to **John Lanahan**, the erstwhile JFP, who got slightly less jaded last month when the Government dismissed a case involving a commercial bus driver who was arrested at the border with a bus full of passengers, and 500+ kilos of marijuana in the gas tank. Client was adamant that he was innocent, much to the disbelief of one of John's interpreters. After meeting with the Government to explain how he had been recruited, and finding out that there had been a number of temporary passenger bus services from Mexico to the U.S. for very short stops across the border, the Government dismissed. John opined that he believes that he is the only one that thinks that Client did not know, but that the Government could see that it would be a difficult case to prove.

Kudos to **Reuben Cahn** and **Federal Defenders of San Diego, Inc.** for their incredible result in *Tapia v. United States*. See this month's Federal Tatler for specifics.

CRIMINAL DEFENSE NEWSLETTER

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Deadline for submissions

for the June 2011 newsletter

is noon, **Friday, July 15, 2011**

to *sak@staceykartchner.com*.

CRIMINAL DEFENSE NEWSLETTER

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