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THREE MODERN PROBLEMS IN CRIMINAL LAW**

Such cases have included: *United States -- United States District Court for the District of Utah* -- The Center filed an amicus brief in this case emphasizing the particular importance of policing ineffective assistance of counsel at the plea bargaining stage -- particularly where the defendant faces multiple consecutive mandatory minimum terms of imprisonment, imposed in significant part at the discretion of the Executive -- given that prosecutorial discretion and power is at its zenith during plea bargaining and most criminal cases are disposed of by plea and not by trial. The case was argued on March 1, On May 26, , the Supreme Court vacated the lower court opinion due to mootness. The brief further argued that a contrary rule would force the Executive Branch to choose between foregoing developing potentially vital intelligence information and bringing suspected terrorists to justice, or alternatively would incentivize the Executive to try suspected terrorists in less rights-protective military commission proceedings. The motion was argued on January 11, On July 12, , the District Court sided with the Center and ruled for the government. On December 14, , by invitation of the court, the Center presented oral argument in the case before the entire Second Circuit, sitting en banc. *Humanitarian Law Project -- Supreme Court of the United States* -- The Center filed an amicus brief in support of the government in this case, which raises the issue of whether the federal statute criminalizing the provision of material support to foreign terrorist organizations is unconstitutionally vague. This amicus brief was filed in partnership with the law firm Skadden, Aarps, Slate, Meagher, and Flom. The case was argued on February 23, , and on June 21, , the Court sided with the Center and ruled for the government. The case was argued on November 8, , and on January 23, , the Supreme Court affirmed. *Frye and Lafler v. Cooper-- Supreme Court of the United States* -- The Center filed an amicus brief in support of respondents in these joined cases. The cases involve the effect of ineffective assistance of counsel in the plea bargaining stage where counsel inadequately advised the defendants of the consequences of a plea offer and the defendants later were convicted at trial and sentenced more harshly than they would have been had they accepted the earlier plea offer. The case was argued on October 31, *United States -- Supreme Court of the United States* -- This case presents the issue of whether the Confrontation Clause is violated when a defendant is completely precluded from cross-examining an adverse government witness regarding the mandatory minimum sentence the witness would have faced absent his cooperation with the government. On May 18, , the Court denied certiorari. *United States -- Supreme Court of the United States* -- The Center filed an amicus brief in support of a petition for a writ of certiorari arguing that jury unanimity is compromised when a judge issues an Allen charge after the identity of a lone holdout juror has been revealed and then subsequently removes that juror when the context suggests that her removal was based, at least in part, on her position during deliberations. On November 29, , the Court denied certiorari. On May 17, , the Court agreed with the Center and reversed, ruling for the government. *Martin, and Otto G.* On May 6, , the Court ruled for the plaintiff-appellants.

Chapter 2 : Other Important Criminal Law Issues | NYU School of Law

In most conventional criminal law cases, causation is a straightforward matter. Someone commits a criminal action, which is the cause of a crime. However, causation problems can occur whenever criminal liability requires a specific outcome.

Nov 19, at He criticized how forensic evidence is used, how juries are instructed, whether long sentences deter crime, whether confessions are as reliable as we think, and whether many of our core beliefs about the criminal justice system “like that the requirement for proof beyond a reasonable doubt is meaningful” are actually true. If what Kozinski wrote is true, then we have serious problems with how we incarcerate people and need to rethink virtually every piece of our criminal justice system. If Kozinski is right, the way we prosecute and imprison people is a deeply irrational system little better than a roll of the dice. Instead, they filed a response saying that they really think that most prosecutors are good people. And, sure, they have feelings, but they also have flaws. The authors of the response write: Throughout our careers, what has always struck us is the professionalism, integrity, and decency of our colleagues. They care deeply about the work that they do, not because they are trying to rack up convictions or long sentences, but because they seek to ensure that justice is done in each and every case they handle. To be clear, I do think the vast majority of AUSAs are fundamentally good people who are trying to do what they do with integrity. I also think that the vast majority of AUSAs are bright aggressive lawyers who want to win. The DOJ response congratulates the Department for making changes in the face of criticism: At the Department of Justice, we recognize our responsibility to work tirelessly to improve the work that we do, and to enhance the fair administration of justice. For that reason, the Department has moved aggressively on several fronts—whether on a new policy that requires our agents to record custodial interrogations, or our decision to create a national commission to enhance forensic science, or our efforts to limit the application of harsh mandatory minimum sentences to non-violent drug offenders. A requirement to record custodial interviews is good, but also leaves out noncustodial interviews. And DOJ came to this party late, after many state and federal governments already made this policy shift. The national commission DOJ established on forensic science was so slanted that Judge Rakoff resigned from it in protest he later rejoined and it was only done years after the problems with how we use forensic science were blindingly apparent. And, yes, DOJ has done some work on mandatory minimums. But even when you strip away those mandatory minimums for drug crimes, we still way over-incarcerate compared with the rest of the world. And DOJ keeps asking the sentencing commission to increase the sentencing guidelines on an array of offenses.

Chapter 3 : Causation - Problems and Considerations in the Criminal Law

Even if the law is clear and it applies to all, rendering just sentences can still be a problem. The New York Post reported that the: Attorney General criticized the nation's system of sentencing criminals as slow, uncertain and unfair, and said it 'has the attributes of a lottery.'

Indeed, citizens almost everywhere have reason to be grateful if their country has a criminal justice system that tries to ensure justice. Such a system involves a framework of laws, a police force to enforce them, and courts to administer justice. However, criminal justice systems in various countries have made harmful and embarrassing errors. Instead of punishing the guilty and protecting the innocent, at times innocent people have been punished for crimes they did not commit. Other individuals have spent years in prison, only to be released before completion of their sentence amid serious doubt as to whether they were guilty and their conviction was warranted. We can better appreciate the challenges of a criminal justice system by considering some causes of injustice and obstacles to justice. Also, we will note how complex the problem of obtaining full justice is. No one law for all One major problem of the criminal justice system is the fact that, today, how much justice you get may involve who you are or how much you have. But these lawyers are often overworked or are not available for all types of cases. Yet a newspaper editorialized: Any prominent defendant can plausibly argue that public exposure and contempt are sufficient retribution. By that standard, it is only the least favored members of society who would receive the highest penalties, since they cannot claim loss of status. Unfair sentences Even if the law is clear and it applies to all, rendering just sentences can still be a problem. The New York Post reported that the: In one federal judicial district, 71 per cent of all convicted defendants go to prison while in another district only 16 per cent are imprisoned if convicted of similar charges. You may have heard the suggestion that there should be a set mandatory sentence for each crime. For example, anyone who steals a car gets a certain fine or length of imprisonment; the person who commits arson must serve a fixed number of years in confinement; and so forth. While such a judicial system might sound simple and fair, would it really be just? For example, should the first-time offender who is sincerely repentant receive the same sentence as a brazen criminal? A national council on crime reported: Those caught up in the system are overwhelmingly the poor, the lower class, members of minority groups, immigrants, foreigners , persons of low intelligence and others who are in some way at a disadvantage. Those who have a good chance of escaping the system are the affluent criminals, corporate criminals, white-collar criminals, professional criminals, organized criminals and intelligent criminals. Corruption Because of corruption and incompetence in high places, untold numbers of people have suffered. They have been wrongly confined to asylums and prisons or have even been sentenced to death. Children have been taken away from their parents. Entire estates have been lost to the rightful heirs. As an illustration, you may have tried to get some legal matter settled. Perhaps it was obtaining certain travel or family documents or a permit to make alterations on a building. You met all the legal requirements, such as fulfilling the building code. But did you get fair, just treatment? There is no reason to believe that the criminal justice system is any better. For instance, do you know of cases in which a prominent lawmaker, judge or politician accepted bribes, peddled his influence or broke the law to enrich himself or advance his career? Yet did he receive just punishment? Or was his punishment much lighter than a person from a minority group might expect for a comparable crime? Unreliable witnesses and police According to Judge Rolf Bender of Germany, in 95 percent of all criminal cases, statements from witnesses are decisive as evidence. But are such witnesses in court always reliable? Judge Bender thinks not. He estimates that half the witnesses who appear in court tell untruths. I would say the typical reason for errors of justice is that the judge relies on unreliable statements of witnesses. Particularly following a crime that causes public outrage, the police come under pressure to make an arrest. Under such circumstances, individual policemen have succumbed to the temptation to manufacture evidence or to force a suspect to confess. When the six men who were convicted of the Birmingham bombings were released, the British newspaper The Independent carried the headline: Police lied, colluded and deceived. In fact in some cases, prejudice may make the police and public suspect individuals of a certain race, religion, or nationality. Age old problem

Those who have tried to solve some of the more glaring public injustices have learned that this is easier wished for than done. Among solutions that you may hear from any man on the street are: But injustice is an age-old problem. Who can say how many different human governments and reform movements have tried to end injustice? Yet it is still with us. Recognizing this historical fact can be a safeguard for us. It can protect us from getting quickly swept up in another human effort of some sort to change the situation, an effort probably not much different from what has been tried before. Over the centuries sincere men and women have struggled to decrease injustice and increase justice. Reform movements have altered political structures. Legal procedures and court systems have been revised and reorganized. But, being realistic, we know that this will not always be the case. Share this post with your social networks: Subscribe to master problems by email to receive updates right in your inbox.

Chapter 4 : 5 major problems with the criminal justice system ~ MASTER PROBLEMS

The Center also files briefs addressing other important criminal law issues. Such cases have included: Angelos calendrierdelascience.com States-- United States District Court for the District of Utah -- The Center filed an amicus brief in this case emphasizing the particular importance of policing ineffective assistance of counsel at the plea bargaining stage -- particularly where the defendant faces multiple.

Criminal law is no longer a matter of finding the person that stole your car; as our lives are being enriched with technology and the advantages of globalisation, the complexity of criminal law is rising. We have gotten back in touch with Dennis Miralis, who has previously spoken about the issues of regulating cryptocurrencies and how to determine whether an incentive is a hidden bribe. This month he touches on how criminal law is expanding globally, and how it is no longer a jurisdiction-by-jurisdiction problem. Dennis reveals why criminal law and human rights go hand in hand, and what pushed him to specialise in criminal law. Now at the top of your game, what made you want to become a lawyer? My reasons for becoming a lawyer were largely instinctive and I daresay I was primarily driven by a desire to help those who were facing serious criminal law problems. This continues to remain my motivation, although the circumstances in which legal problems present themselves to individuals and entities have become more complex and international. Whilst globalisation has had an enormous impact on the practice of law and being a lawyer, the underpinning concept of justice remains as relevant today as when the classical Greek philosophers were grappling with the essence of that term. What in particular led you to specialise in criminal law? I was drawn to criminal law for a multiplicity of reasons, but chief amongst them, was an interest in the way in which Governments sought to use criminal law to try and deal with societal problems through incarceration, punishment, deterrence and rehabilitation. In my view, criminal law alone is inept at permanently solving many of the underlining reasons that continue to be the key drivers for criminal behaviour, including poverty, mental illness, addictions and institutionalised disadvantage. In my practice of criminal law, I have had to challenge Governmental powers where they seem to have been exceeded. I believe that criminal law is intimately connected to the protection of human rights. How would you define the motto behind your work? What drives you to win? In the adversarial system of justice, this is the key role of a criminal lawyer, and this applies whether the client is an individual or a legal entity, whether they have been indicted, are going to trial or are pleading guilty. Winning for me means that a client has emerged from their entanglement with the legal system with a sense that their legal rights have been fiercely protected and advanced; they have had a fair trial and the Courts have acknowledged their side of the story, irrespective of outcome. How have you seen the practice of criminal law change and what is your take on that? Criminal law is becoming increasingly international and there is a global trend towards countries trying to address emerging international crimes such as cybercrime, money laundering, bribery, corruption, and economic crime, through multilateral treaties and international conventions. One of the key areas where there will be significant development will be in the area of extradition, as globalisation has made people hyper mobile and nation states need to utilise many more tools to bring offenders to justice, such as Interpol red notices. A good example of this internationalisation is the application of the Budapest Convention which seeks to combat cybercrime, a truly borderless type of crime. The convention provides for countries to share data, execute search warrants, issue arrest warrants and provides for extradition in combatting international cybercrime. Similar conventions play important roles in the area of bribery, corruption and money laundering. There has been a lack of international consensus, however, about how human rights are to be protected within this dynamic, and in particular in the areas of privacy, dual criminality, jurisdictional shopping and the right to a fair trial. Further complicating the process, is the increasing phenomenon of parallel criminal investigations in one or more jurisdictions as well as civil prosecutions. In my opinion, criminal lawyers will need to quickly develop skills to adequately protect their clients in this dynamically changing landscape. Where do you see your firm in this changing landscape? We define our firm as an international criminal law firm due to the significant practice we have in this area. I think that in the future we will see the emergence of a truly global criminal law firm which acts across all

jurisdictions in the areas of economic crime, bribery and corruption, international security law, espionage, cybercrime, freezing orders and proceeds of crime, extradition and Interpol. The drivers for such a development already exist and will continue to grow within the next two to three years as more legal markets try and harmonise their laws in these areas. Dennis Miralis is a leading Australian defence lawyer who practices in the following areas of complex domestic and international criminal law; white-collar and corporate crime; bribery and corruption; cybercrime; money laundering; serious fraud; worldwide asset forfeiture; transnational crime; extradition; Interpol Red Notices; anti-terrorism law; national security law and encryption law. He appears in all courts throughout Australia and regularly travels outside of Australia to advise in complex international criminal law matters.

Chapter 5 : The Problem of Vague Criminal Laws

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Chapter 6 : Hot Topics and Features

The relationship between criminal and administrative law dates to the turn of the 19th century, when Congress established early federal administrative agencies and a regulatory framework that.

Chapter 7 : The International Problem of Criminal Law

Identifying potential problems before they manifest into criminal misconduct is essential. Proper training in the use of deadly force and safe vehicle operations are paramount to averting disaster.