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Osler's Razor

Musings, rants, recipes, repressed memories, haiku, and drivel from a professor at Baylor Law School.

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Contributors

Mark Osler

Mrs. CL

Mr. CL

IPLawguy

Links

The book:

[Jesus on Death Row](#)

Monday, February 01, 2010

Now that January is done...



I can look back, and be glad about all that I took on-- teaching and writing two Supreme Court amicus briefs at the same time, as part of my pro bono sentencing work. Those briefs are now available on-line. In getting everything done, I relied on the great work done by four Baylor students who helped me this winter: Tyler Atkinson, Katherine Holstead, Landon Ramsey, Nathan Winkler, and Warren Wise. Links are provided below (click on the case caption):

1) [United States v. O'Brien and Burgess](#)

One of just three amicus briefs in what might end up as the most important criminal case this term, I wrote this one for the National Association of Federal Defenders. Previously, I wrote their brief in [Kimbrough](#), and as always they were a pleasure to

work with. The Defenders, of course, include some of the finest appellate advocates in the country, so it is both an honor to be asked to write for them, and a special challenge to meet the standards of experts who understand the issues so well.

This case is especially significant because it carries the possibility of fundamentally changing the nature of mandatory minimum sentences, by requiring that they be supported by jury findings rather than fact findings by a judge. My argument is that mandatory minimums suffer the same constitutional defect as the mandatory guideline systems stricken by the Court in *Blakely* and *Booker*-- the sentencing range is altered based on facts determined without a jury.

Oral Argument will be held on February 23, under an expedited schedule.

2) [Dillon v. United States](#)

This brief was prepared on behalf of the [Washington Legal Foundation](#), and was the only amicus brief submitted to the Supreme Court. I wrote this one with Prof. Rory Ryan and his sister Elizabeth Ryan, and many (perhaps all?) of the best ideas in the brief were theirs. As their [web site](#) makes clear, [the WLF](#) "champions free market principles, limited and accountable government, individual rights, business civil liberties, and legal ethics." Like the Federal Defenders, they have far more experience than I do in Supreme Court litigation, and it was a pleasure to join the roster of people who have written on their behalf-- they were wonderful to work with.

Dillon involves the resentencing of people who are eligible for a lower sentence when the Sentencing Commission changes the guidelines. The Commission had announced a rule that at resentencing a court cannot consider anything other than the changed guideline. We argued that this was wrong in several respects: That it violated controlling statutes, that it allowed an administrative body to define the jurisdiction of federal courts, and that it ran against a long tradition of individualized consideration at sentencing.

Various musings on SSRN:

Papers

The Video:

America's Worst Model

My Dad's Art:

John Osler

Baylor Blogs:

Bob Darden

Female Parts

Amy the Law Student

Boiler Babe!

Magnificent Vista

Alico Person

Catfish n' Paddles

Justin T.

Self-Infliction of Emotional
Distress

Clark

Waco Restaurant Blog

Future Student!

Thompsons

Yee

Spanish Medievalist

Unexposed Granite

Yoga n' Philosophy

On Rhetoric

Baylor CSO

Big Daddy Weave

Angela

Gardner Campbell

Baylor Alums of Blogging Note:

Lasting Liberty

The Austin Daytripper

Scott Baker

Justin Scott

Citizen Lane

DiaDeIKendall

B

Justin Hill's Auto Safety Blog

Maggie Weaver

Boots and Sabres

This brief, because it presents a unique viewpoint, has a chance of being determinative in the case. Argument is set for March 30.

I love the idea that I can write these things at the kitchen table, and that they end up where they do-- in the hands of the Justices and their clerks, with the chance (and sometimes only that) of changing the law for the better. What a great country, where that is possible!

posted by Mark Osler @ 12:08 AM 

Comments:

With all that on your plate it was a wonder you gave up drinking for the month of January! You needed the clearest mind possible.

Great job!

posted by  Christine : 8:22 AM

You found a still photo of the justices!! Usually when they show the justices on CNN they are moving around and talking, just like in Harry Potter. Busy, busy, busy Professor Osler!!

posted by  Anonymous : 10:24 AM

Just think of the places where the clerks will be reading the briefs you wrote.

posted by  IPLawguy : 5:28 PM

Thanks for asking us to work with you on Dillon. I think loyal Razor readers will be UNSurprised to learn that you contributed an idea or two to a brief on the federal sentencing guidelines. (Nominee, understatement of the year).

posted by  RR : 10:14 PM

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