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The PTO seeks to harmonize the global patent system. An uptick is expected in the use of video evidence as court defense.

Short takes and fast facts on the law.

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CHOOSING BETWEEN SAW AND SCALPEL: FCPA REFORM AND THE COMPLIANCE DEFENSE

The Foreign Corrupt Practices Act ("FCPA") is an essential anti-corruption tool used to prosecute corporations that engage in the bribery of foreign officials overseas. Once a mere rubber stamp, over the past five years the statute has been used aggressively to prosecute wrongdoing abroad leaving many companies nervous that they may be next. Seeking to return predictability to corporations exposed to FCPA-related liability, the United States Chamber of Commerce has sought to introduce a statutory "Compliance Defense" which would serve to inoculate corporations from liability if they have implemented, at the time of wrongdoing, adequate compliance programs. This Note will argue that codifying this defense would be detrimental to the FCPA's efficacy and to global efforts towards preventing corruption. It will utilize and expand upon an existing framework for appraising corporate liability schemes in order to demonstrate the various ways in which a Compliance Defense would damage the FCPA's statutory machinery. Finally, it will consider alternative reforms that may address the valid concerns of FCPA critics.

DANCING THE TWO-STEP ABROAD: FINDING A PLACE FOR CLEAN TEAM EVIDENCE IN ARTICLE III COURTS

Federal agents often employ a two-step interview process for suspects in extraterritorial terrorism investigations. Agents conduct the first interview without Miranda warnings for the purpose of intelligence-gathering. Separate "clean team" agents then give the suspect Miranda warnings prior to the second stage of the interview, which they conduct for law enforcement purposes. Federal courts have yet to decide whether the government can use statements elicited during the second stage of a two-step interview abroad when prosecuting a terrorism suspect, or whether all such evidence should be suppressed. This Note discusses the boundaries of the two-step interrogation practice as an evidentiary issue in Article III courts, using the investigation and prosecution of Mohamed Ibrahim Ahmed as a case study around which to frame the analysis. The Note first explores the contours of current "clean team" practices in extraterritorial investigations. It then analyzes the current state of U.S. law regarding the admissibility of evidence gleaned from two-step interrogations. Finally, this Note situates the two-step practice within existing doctrine and argues courts should admit step-two evidence because the two-step practice in extraterritorial terrorism investigations occupies a particular niche within current Miranda jurisprudence.

SQUARE PEGS AND ROUND HOLES: MOVING BEYOND BIVENS IN NATIONAL SECURITY CASES

Since its inception, the Supreme Court has largely orphaned the Bivens doctrine, a child of its own jurisprudence. In doing so, the Court has repeatedly invoked dicta from the Bivens case warning that unspecified "special factors counseling hesitation" could preclude judicial recognition of future constitutional remedies. Picking up on this thread, lower courts have notably limited the justiciability of Bivens claims in cases challenging counterterrorism-related government conduct. This so-called "national security exception" to the Bivens doctrine has created a substantial hurdle to individual justice and government transparency. This Note therefore proposes the creation of an Article I administrative court with jurisdiction over post-deprivation constitutional claims in national security cases. Part II traces the evolution of the Bivens doctrine and the national security exception; Part III discusses how the lack of a viable judicial remedy has created a critical accountability gap; and Part IV describes the proposed structure and responsibilities of this new tribunal.
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