Buffalo Criminal Law Center: UB's Newest Research Hub

UB Law Forum

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Write a check for less than one dollar and you could end up facing a federal judge. Exchange the check for something with the insignia of the Swiss Confederation on it, and the seller might be headed for Leavenworth, too.

At least that’s what the U.S. criminal code seems to say. Strange criminal offenses aren’t the biggest problem with Title 18 of the United States Code, but they are indicative of the need for reform.

That’s the first goal of the Buffalo Criminal Law Center, UB Law’s newest research hub. The broader mission of the center, which Associate Professor Markus Dubber has been organizing over the last year, is to guide criminal justice policies in a more thoughtful direction and to shake up the study of criminal law in general. Dubber hopes to establish the center as a source of in-depth analyses that state and federal lawmakers can tap for comprehensive approaches to criminal justice issues. He also sees it as a beacon for innovative academic research.

“We’re trying to jump-start scholarship in this area,” he says.

The task began officially in November when the Criminal Law Center hosted participants from both sides of the Atlantic for a conference titled Rethinking Federal Criminal Law. Papers from the conference will be featured in the first issue of the Buffalo Criminal Law Review, to be published in May. Planning already is under way for another conference later this year, possibly geared to the 10th anniversary of the federal sentencing guidelines.

Annual conferences with national and international panels of experts will follow.

“The direction Markus is going in is an interesting one,” says UB Law Dean Barry B. Boyer. “It’s very timely to begin thinking about this because we’ve had several decades of piecemeal thinking ... He’s got a really good start on becoming a nationally renowned center.”

Dubber believes criminal justice policy has reached a critical juncture. Rehabilitation hasn’t worked but the nation has yet to find a new strategy. Meanwhile, the prisons and the statute books swell with the results of lawmakers guided more by short-term politics than regard for long-term consequences. Failure to reform Title 18 is just one example. Dubber shakes his head over cases like the recent one of Rita Glutman, the Soviet emigre tried in federal court for the ax murder of her husband. Federal jurisdiction - with its proce-
dural rules favorable to the prosecution — owed to a 1994 law making it a federal crime to cross state lines to attack a spouse. "The ridiculous part is how it ends up in federal court," Dubber says. "It's about crossing state lines, not chopping up your husband."

The Criminal Law Center's effort to spur new thinking is welcomed by many. "There's a real need for this," says New York Supreme Court Justice Kevin M. Dillon, a 1976 UB Law graduate who served until this year as Erie County district attorney. "A lot of people have made a career out of saying, 'We're going to be tough on crime,' and the analysis ends there."

Admittedly, the fledgling center has a way to go before it approaches the stature of something like UB Law's 22-year-old Baldy Center for Law and Social Policy. While Dubber is aggressively pursuing funding to beef up the center's research capacity, the staff now consists entirely of him and students in UB Law's new Criminal Law Concentration. But that hasn't kept the center from quickly establishing a reputation for itself. The Rethinking Federal Criminal Law conference in November included speakers from the University of Chicago, Columbia, Duke, Northwestern and the University of Virginia law schools, as well as from the United Nations and elsewhere.

"People were seeking information from the conference within days of the proceeding," recalls Jay S. Ovsiovitch, a second-year student assisting Dubber. "We had a call from the Department of Justice looking for a copy of the journal."

The Buffalo Criminal Law Review's editorial board is a multinational roster of prominent figures in criminal law, such as Dan M. Kahan of the University of Chicago, Paul H. Robinson of Northwestern, Douglas N. Husak of Rutgers and Pieter C. Spierenburg of Erasmus Universiteit in Rotterdam. UB Law professors Guyora Binder and Charles Patrick Ewing are on the board, as are UB Associate Sociology Professor Simon I. Singer and Associate Philosophy Professor James B. Brady. Among the other schools represented are Stanford, the University of California campuses at Los Angeles and Berkeley, and the University of London. George P. Fletcher of Columbia will serve as guest editor for the Review's second edition, which will highlight new work in criminal law theory. That edition is scheduled for publication in December.

The center has also set up an Internet site that is quickly becoming a valuable criminal law resource. In addition to information at the state, national and international levels, the site contains the only on-line version of the Proposed New Federal Criminal Code, the 1971 product of five years work by the National Commission on Reform of Federal Criminal Laws. "It's basically been forgotten," says Dubber. "We decided to put it on the Web to make it available to everyone."

Revising interest in federal criminal code reform is the center's first project. While most states codified their criminal law after the American Law Institute's Model Penal Code was issued in 1962, attempts to do the same at the federal level failed. Most of the federal criminal law is contained in Title 18, which has been criticized as complex and convoluted, obsolete and downright indecipherable. "It starts with aircraft and motor vehicles and just goes up the alphabet," notes Dubber. "There's no structure to this at all, except the alphabetical structure."

In a paper presented at the November conference, Robert H. Joost, a former Senate counsel, notes that additional criminal provisions are scattered throughout the U.S. Code and that the relevant judicial commentary runs to about 3 million pages. He and others argue that straightening out the mess would lead to greater efficiency, deterrence and public confidence in the criminal justice system.

Joel L. Daniels, who graduated from UB Law in 1963, has had firsthand experience with the federal code as a prominent criminal lawyer in Buffalo. "It needs revision. It's antiquated. It needs a total reform, updating," he says. "Congress chose to revamp the sentencing laws before they changed the criminal code. They put the cart before the horse. ... They're relying on statutes that haven't changed since our grandparents were born."

Dubber would like to see the Buffalo Criminal Law Center involved in drafting model general provisions for the federal criminal code that better describe principles of liability, defense and other issues that are now missing or vague. "Courts feel free to ignore the code," he says. "They would rather rely on precedent than the code."

In addition to tackling the federal criminal code, the center will serve as something of a think tank for criminal law issues. "My idea is to focus on legislation," Dubber explains. "To help legislators consider these issues rather than just responding to the perceived needs of the moment, which tend to be dictated by re-election rather than long-term concern about the crime problem."

Ultimately, Dubber hopes that the center's work can help to revive and elevate the legal study of criminal justice issues. "Criminal law scholarship in the United States has been neglected for as long as anyone can remember," he says. "No one pays any attention to it."

Dillon applauds the effort. The former DA says it has become increasingly difficult in recent years to keep up with all the incremental changes in criminal law. "There is a great need for scholarship," he says. "The process is not always one born of calm reasoning followed by clear reflection. Many times these things are done in the heat of the moment without, I think, sufficient time to determine the long-range impact of the legislation being passed."
The center is applying an interdisciplinary approach to its legal scholarship, as evidenced by the Criminal Law Review’s editorial board. “They’re all criminal law people,” says Dubber, “but some are historians, some are philosophers, some are sociologists.”

Singer, the UB sociologist on the board, welcomes the opportunity. “Anything that brings the social and the legal aspects of law together is very valuable,” he says.

UB Provost and former Law School Dean Thomas E. Headrick is also supportive. “We have to look for ways of bringing together the expertise we have throughout the university to analyze issues that should be addressed,” he says. “This area has not received much attention, yet it is, as we all know from the public concern about it, an extremely important area of the law.”

For all its promise, the Criminal Law Center’s creation was almost an accident. Last year, Dubber organized a UB Law conference titled “The New York Death Penalty in Context.” The conference was so successful that it became the subject for a special issue of the Buffalo Law Review. It also came at a time of growing student interest in criminal law studies. A student in Dubber’s advanced criminal law seminar approached him with the idea of starting a criminal law review. Dubber, mindful of the limited academic audience for criminal law, was brusque. “I thought it was a stupid idea,” he recalls. “But then I thought

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preparations those of us who want to go into the field a lot better than we would have been.... And as far as the Criminal Law Review goes, there’s only three or four others out there in the country, so UB is ahead of the game.”

some more.”

Dubber realized that a law review could serve both as the nucleus for some much-needed criminal law research and for a new criminal law concentration as part of the school’s New Curriculum. Students in the Criminal Law Colloquium, the more intensive of the two criminal law tracks that became available in the fall, edit the Buffalo Criminal Law Review and conduct research for the Criminal Law Center. “I saw it as a way to start this institute without any initial investment,” Dubber says. “The students supplied the labor.”

The results have been gratifying for Len Opanashuk, the student who first suggested the law review. “From the standpoint of a student, it’s incredibly valuable,” he says. “It