

INTEGRATING BROKEN PROMISES INTO OUR SYSTEM OF JUSTICE:

THE STORY OF SAMI AL-ARIAN

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Introduction

On February 20, 2003 the Department of Justice, under the supervision of then-Attorney General John Ashcroft and Assistant Attorney General Michael Chertoff, called a press conference to announce the indictment of Sami Amin Al-Arian and seven other co-defendants. They were charged on 53 counts that ranged from racketeering charges to conspiracy to kill and maim person's abroad, interstate extortion, perjury, obstruction of justice, and for providing material support to Palestinian Islamic Jihad in the Occupied Territories of Israel.¹ "Today's arrests underscore the vigilance of the FBI's Joint Terrorism Task Force to dismantle and disrupt those who support terrorism," FBI Special Agent, James Jarboe, of the Tampa Field Office retorted.² The high-profile indictment later came to embody the embattled project of the Bush Administration's "War on Terror." Indeed, law enforcement officials had collected 21,000 hours of telephone recordings, 152 obtained wiretap applications, 550 videotapes, and seized 30 hard drives in their investigation.³ The prosecutorial vigilance that festooned the six-month trial ultimately belied its outcome insofar as the jury acquitted Al-Arian on eight of the most serious charges, while only two jurors voted against acquittal on the remaining nine counts.⁴ In the face of re-trial, the political context of a "vigilant" campaign by the Government thus invariably colored Al-Arian's decision to enter into a plea agreement with the U.S. Attorney's office of Middle District of Florida and the Counterterrorism Section of the Department of Justice.

¹ U.S. Department of Justice, Press Release, "Members of the Palestinian Islamic Jihad Arrested, Charged with Racketeering and Conspiracy to Provide Support to Terrorists." [press release on-line] (Washington: Department of Justice, 2003, accessed 24 April 2009); available from http://www.usdoj.gov/op/pr/2003/February/03_crm_099.htm; Internet.

² Ibid.

³ *US v. Al-Arian*, 267 F.Supp.2d 1260.

⁴ Petition for Writ of Certiorari, 2008 WL 3165821 (U.S.).

The next clash between Al-Arian and the Government following the plea deal relegated the political landscape to the backdrop of a more poignant debate at the intersection of contract law and criminal procedure, which govern the enforcement of plea agreements. In his appeal to the U.S. Court of Appeals of the Eleventh Circuit, Al-Arian claimed that his plea agreement relieved him from compelled testimony before a grand jury. However, the Court upheld the District Court's ruling that Al-Arian's guilty plea "did not prevent the government from subpoenaing the prisoner to testify before grand jury in Virginia" leaving him to face charges of criminal contempt.⁵ In its decision, the Court refused to admit parol evidence⁶ in interpreting the plea agreement because of the presence of an integration clause.⁷

It is my contention that the court erred in its ruling in three aspects. First, the court made a mistake by relying exclusively on contract law to interpret Al-Arian's plea agreement and ignoring the important policy consideration of encouraging defendants to enter into plea agreements with the government. Secondly, the court applied a purely textualist approach to contracts and closed its eyes to parol evidence which told a different story. Finally, the court should have used a method of contract interpretation, which was less formalistic and more truth seeking to advance the goal of promoting plea agreements. In the following sections I will begin by providing an introductory background to the case *US v. Al-Arian* followed by the three-pronged critique of the courts decision. Ultimately, this critique challenges the conventional

⁵ *US v. Al-Arian*, 514 F.3d 1184.

⁶ Parol Evidence is any evidence outside the final expression of a contract, which may be used to interpret or analyze the nature of the agreement. This could include scraps of paper, notes, letters, previous drafts of the contract, or oral concessions and proposals. Macaulay, Stewart, John Kidwell, William Witford, *Contracts, Law in Action: Volume II Advanced Course*, 2nd ed. (New Jersey: Lexis Nexus, 2003), 271-272.

⁷ An integration clause in a contract states that the negotiations are over, and the text is the full and final expression of the agreement between the parties, and that any contradictory parol evidence from previous negotiations or extrinsic evidence may not be considered for the purposes of contradicting the text of the agreement. The principle area of disagreement is whether parol evidence which is not *contradictory* but *informative* may be used to interpret the agreement or determine ambiguity. *Ibid.*, 274 (emphasis added)

interpretation of plea agreement disputes, and contextualizes the unique features of plea agreement contracts.

The Procedural and Factual History of *U.S. v. Al-Arian*

The culmination of events that led to the arrest of University of South Florida professor of Computer Science, Sami Amin Al-Arian, in February of 2003 convey the government's relentless campaign to dismantle alleged terror networks. In its press release, the Department of Justice accused Al-Arian of leading a "U.S.-based Palestinian Islamic Jihad cell" under the auspices of the World Islam and Studies Enterprise (WISE), and Islamic Committee for Palestine (ICP).⁸ The government's volition to invite media attention would eventually be rebuffed with broad skepticism of this prosecutorial diligence. "There are a few prospects in the justice system so grimly awful as when the feds decide never to let go," writes Alexander Cockburn in *The Nation Magazine*.⁹

Indeed, after a disappointing trial for the government and at the prospect of retrying nine of the counts the jury was unable to reach a unanimous vote on, Al-Arian relented and pleaded guilty to Count 4 of the Superseding Indictment, or one count of conspiracy "to make or received contributions of funds, goods or services to or for the benefit of the Palestinian Islamic Jihad [...] in violation of 18 U.S.C. § 371."¹⁰ Nearly three years after the arrest, Al-Arian entered into the plea agreement on February 28, 2006 with the U.S. Attorney for the Middle District of Florida and the Counterterrorism Section (CTS) of the Department of Justice.¹¹ The parties agreed to a sentence guideline of 46 to 57 months with government recommendation of the lower sentence

⁸ U.S. Department of Justice, Press Release.

⁹ Alexander Cockburn, "The Persecution of Sami Al-Arian." *The Nation Magazine*. 1 July 2008 [magazine on-line]; available from <http://www.thenation.com/doc/20080721/cockburn/print?rel=nofollow>; Internet; accessed 28 April 2009.

¹⁰ *US v. Al-Arian*. 514 F.3d 1187.

¹¹ Plea Agreement, *US v. Al-Arian*. 8:03-CR-77-T-30TBM. 28 February 2006; available from <http://www.flmd.uscourts.gov/Al-Arian/8-03-cr-0077-JSM-TBM/docs/2929176/0.pdf>; Internet; accessed 20 April 2009.

and expedited deportation by the Immigration and Custom Enforcement (ICE).¹² On May 1, 2006 Judge James S. Moody of the Middle District of Florida District Court sentenced Al-Arian to 57 months imprisonment followed by 36 months of supervised release before deportation.¹³ Only nine days after the sentencing on May 10, 2006, a grand jury in the Eastern District of Virginia (EDVA) subpoenaed Al-Arian to testify in another terrorism-related case.¹⁴ Al-Arian stipulated to the subpoena, fueled by the CTS, failed to honor his plea agreement ushering a series of motions to quash the order, civil and criminal contempt charges, and motions to vacate the contempt, which ensued for several years.

The plea agreement, initially drafted to end a bitter battle in the courts, instead merely embodied the cantankerous and dubious relationship that had developed between the two parties. Three aspects of the plea deal consequently became central to the next wave of battle, namely jurisdiction of the EDVA and the role of the CTS division of the Department of Justice in the subpoena, voluntariness and inducement, and the absence of the standard cooperation provision in view of the integration clause. Ultimately, at issue was whether compelling Al-Arian to testify before a grand jury at the EDVA court violated his plea agreement. Both the United States District Court for the Middle District Court of Florida and the Eleventh Circuit Court of Appeals found that the “plea agreement is clear, unambiguous, and does not grant Al-Arian immunity from a future grand jury subpoena...[finding] that the government did not breach the plea agreement by issuing a subpoena commanding Al-Arian to testify.”¹⁵ However, in arriving at this

¹² Judge Leonie M. Brinkema, Memorandum Opinion. 2008, WL 3833463 (E.D.V.A.).

¹³ U.S. Government Brief to the Eleventh Circuit, “Brief of the United States of America Criminal Case,” 6 April 2007. 2007 WL 1379342 (C.A. 11).

¹⁴ Brinkema Memorandum.

¹⁵ *US v. Al-Arian*, 514 F.3d 1194.

decision the courts refused to admit extrinsic evidence of an oral agreement that the government had made a promise, which induced Al-Arian into pleading guilty.

In its opinion, the 11th Circuit Court of Appeals stated that the EDVA was indeed bound by the plea agreement insofar as the U.S. Attorney's Office of the EDVA "had agreed [at the plea hearing] that the plea agreement would bind that office, but only to the extent that Al-Arian would not be *charged* by that office with crimes known to it 'at the time of the agreement related to the conduct giving rise to the agreement.'"¹⁶ The Court also pointed to Al-Arian's signed concession that his guilty plea was not based on any "threats, force, intimidation, or coercion of any kind."¹⁷ Moreover, at the plea hearing when asked, "Beyond this plea agreement-beyond the written plea agreement, have you been promised anything from anybody that is an inducement to you to appear in court today and plead guilty?" Al-Arian answered, "I don't recall anything else."¹⁸ In the Appellant Brief, Dr. Al-Arian's counsel, however, "proffered sworn affidavits verifying the existence of a non-cooperation agreement that precluded compelled testimony."¹⁹ In response, the Court of Appeals stated, "The exclusion of a standard plea agreement provision requiring a defendant to cooperate with the government, whether voluntarily or under subpoena, does not establish that the government immunized Al-Arian from future grand jury subpoenas."²⁰ The court's argument never explored the motive behind excluding the provision, citing the lack of ambiguity in the plea text and the integration clause as its primary reasons.

Ultimately, in *US v. Al-Arian* the Court applied the Parol Evidence Rule to the plea agreement, which excludes extrinsic evidence that would alter or modify a written agreement

¹⁶ Ibid. (emphasis added)

¹⁷ Plea Agreement, Section 8.

¹⁸ US Government Brief, Section B "Statement of the Facts."

¹⁹ Sami Amin Al-Arian Brief to the Eleventh Circuit, "Reply Brief of Appellant Sami Amin Al-Arian," 2007 WL 1379343 (C.A. 11), Section B "The Scope of the Non-Cooperation Agreement Remains Undisputed."

²⁰ *US v. Al-Arian*. 514 F.3d 1184.

absent of ambiguity or government overreaching.²¹ The court's reasoning for its decision is both procedurally and substantively maleficent insofar as it relegates integrated plea agreements to a blanket rule of contracts rather than treat it in its manifest interpretative nature. In the seminal case *Santobello v. New York*, the United States Supreme Court established that "however important plea bargaining may be in the administration of criminal justice [...] a guilty plea is a serious and sobering occasion inasmuch as it constitutes a waiver of the fundamental rights to a jury."²² In *Santobello*, the Court found a breach of the plea agreement, albeit inadvertent, when the Government failed to hold its end of the bargain to refrain from sentence recommendation in exchange for a guilty plea to a lesser charge.²³

The *Santobello* decision discerned the sanctity of plea agreements as predicated upon voluntariness and express knowledge of the promises made. Plea bargain disputes thus invariably concern some degree of interpretation of prosecutorial promises and questions of ambiguity. The intersection of contractual boundaries of plea agreements with the constitutional waiver of the right to a jury trial, and in effect due process, is central to the scrutiny the courts should assign to plea agreement disputes.

The Court Exclusively Relied on Contract Law to Interpret the Agreement

According to Dr. Arian's counsel, the government's knowledge of an oral non-cooperation agreement between the defendant and the prosecutor was manifest in the affidavit of a November 6, 2006 hearing where the Government counsel said, "The Defendant Al-Arian says, 'I don't want to cooperate.' So, we say, 'We won't put a cooperation agreement in there.' It's not there and we're not talking about complaining that the Defendant Al-Arian has refused to

²¹ Ibid.

²² *Santobello v. New York*, 404 U.S. 257, *, 92 S. Ct. 500.

²³ Ibid, 495.

cooperate.”²⁴ Whereas Al-Arian purported the omission of the standard cooperation provision from the plea text was the result of this oral agreement, the court found Al-Arian’s claim “especially dubious where [...] the plea agreement contains an integration clause stating that there are no other promises, agreements, or representations except those set forth in the agreement.”²⁵ The court essentially argued that had an agreement been made regarding cooperation, it would have been fully integrated in the text of the contract.

The danger of the *Al-Arian* court’s approach was demonstrated in *Palermo v. Warden*. In *Palermo*, the court examined the government’s argument that the plea agreement negotiated with a defendant violated contract law. Specifically, the government noted that under contract theory people could not bargain with stolen property, which they had no right to use as consideration for the contract.²⁶ However, the *Palermo* court understood that such an argument could radically undermine plea agreements, which are necessarily negotiated between suspected criminals and the government, rather than traditional buyers and sellers. It therefore not only looked to contract law, but to “notions of fundamental fairness” to ensure plea agreements retained their appeal.²⁷ On the other hand, in *Al-Arian*, the court examined the issue from the sole perspective of contract law, and avoided dealing with factors that govern incentives to enter into plea agreements.

In applying contract law so strictly as to allow the integration clause to supersede all other considerations, the *Al-Arian* court even overlooked those aspects of contract law which favored Al-Arian. For instance, the court’s approach failed to consider “those principles of contract law that seek to guarantee meaningful consent,” namely the “contract-law doctrines of

²⁴ Al-Arian Brief to the Eleventh Circuit, Section A “The Parties Agree Dr. Al-Arian Had a Non-Cooperation Agreement.”

²⁵ *US v. Al-Arian*. 514 F.3d 1192.

²⁶ *Palermo v. Warden*, 545 F.2d 286.

²⁷ *Ibid.*, 295.

duress and mistake.”²⁸ While plea agreements typically include a voluntariness clause to ensure the consensual nature of the deal, it is important to discern that knowledge of the promises made ultimately define the consensual scope of the agreement. In addition to a calculus where the government benefits from “systemic pressures to plead guilty,” defendants find themselves making choices “under threat that a substantially greater sentence might be imposed should [they] stand trial.”²⁹ Applying the law of contracts in a manner that obscures the unique nature of plea agreement contracts and sidesteps intent threatens an already leery relationship between the contracting parties.

The Court Utilized a Textualist Interpretation of Contract Law

In view of the exclusively contractual lens the *Al-Arian* court applied in its decision, the court applied a rigid standard of admitting parol evidence in the plea agreement dispute specifically in the presence of an integration clause. This Willistonian approach of contract theory, as articulated by Professor Samuel Williston, looks solely to the text of the contract to determine both the intent and the finality of the agreement.³⁰ Therefore, in justifying its refusal to admit parol evidence to discern the intent of the agreement, the court extended the textualist approach from two preceding cases: *re Grand Jury Proceedings (Perdue)*, and *re Grand Jury Witness Altro*. Still, key factors distinguished these cases from *Al-Arian*’s such that even within a textualist framework, his case bared a stronger rationale for including parol evidence in resolving the dispute.

²⁸ Ostrow, Eleanor J. “The Case for Preplea Disclosure.” *The Yale Law Journal*, Vol. 90, No. 7 (Jun. 1981), 1609.

²⁹ *Ibid*, 1609-1610.

³⁰ In a Willistonian approach to contract law, the existence of an integration clause ends the inquiry into whether the text of the final document represents the entire nature of the agreement. The only exceptions are where the clause was added by fraud, or if the document appears “obviously incomplete” by lacking some important provision necessary to complete the agreement. In most cases, this means any promise or interpretation of the agreement which could be ascertained by looking at Parol Evidence, cannot be considered or enforced. (Macaulay, 276 -277)

During plea negotiations in *Perdue*, the government offered to “make a low sentence recommendation in exchange for voluntary cooperation in on-going investigations, or the government would make a higher recommendation if Perdue refused to cooperate.”³¹ Perdue refused the offer and accepted the higher sentence. When he received a grand jury subpoena to testify with immunity, he refused to testify claiming that “the plea agreement [...] barred the government from attempting to force [him] to testify.”³² The court rejected Perdue’s claims because the language of the plea text made no mention of this, thus, applying the Willistonian approach.

While Perdue contended that his rejection of the shorter sentence implied the intent and the agreement that he would not cooperate, the government “neither support[ed] nor contradict[ed] Perdue’s statement.”³³ In this case, the court admitted that the government might have misled Perdue. Nonetheless, it stated that “while there is a clear conflict in the understanding of the plea agreement, the *words of the agreement are unambiguous*... [therefore the court] cannot enforce an agreement that was never agreed upon with specificity.”³⁴ Conversely, Al-Arian’s non-cooperation agreement was not merely implicit. It was manifest in an oral agreement with the government, notwithstanding the vague scope of non-cooperation. The action of omitting the standard cooperation provision is furthermore indicative of some form of agreement that might have induced Al-Arian to accept the plea deal. Whereas Perdue relied on merely an understanding that his willingness to take a longer sentence relieved him of the duty to cooperate, Al-Arian’s dispute was founded on an express agreement between Al-Arian and the government.

³¹ *Re Grand Jury Proceedings*. Appeal of Ronald Anthony Perdue, 819 F.2d, 985.

³² *Ibid.*

³³ *Ibid.*, 986.

³⁴ *Ibid.*, 987 (emphasis added)

In *Altro*, the defendant, Ralph Altro, similarly initially refused to enter a plea agreement that compelled his cooperation in exchange for a lower sentence, but he later relented and accepted an agreement with an integration clause.³⁵ When he received a subpoena to testify before a grand jury, he refused to testify claiming the subpoena violated “the spirit of the plea agreement.”³⁶ Again, this case is strikingly different from *Al-Arian*’s insofar as his claims could not be proven either textually or orally. Although both *Altro* and *Al-Arian* contained an integration clause that called for a strict application of the parol evidence rule, the former case is distinguishable because the defendant was unable to produce concrete evidence of an agreement that induced his decision.

While under the Willistonian-textualist approach, the court might have found the omission of the standard cooperation provision—the disputed matter here—bared ambiguity as to the intent of the omission, a better approach to resolving plea agreement disputes is the method outlined by Professor Arthur Corbin, dubbed the Corbinite approach. The Corbinite view critiques the textualist interpretation inasmuch as the Willistonian approach discusses intent, but falls far short from actually examining it or working to find it.³⁷ Both Professor Corbin and Williston concur that the text in an integrated contract is central; however, Professor Corbin recognizes the constraints it poses in explaining what really happened. He outlined his approach as such:

Since the very existence of an ‘integration’ ... is dependent on what the parties thereto say and do (necessarily extrinsic to the paper instrument), at the time they draw that instrument ‘in usual form,’ are we to continue like a flock of sheep to beg the question at issue, even when its result is to ‘make a contract for the parties,’ one that is vitally different from the one they made themselves?³⁸

³⁵ *Re Grand Jury Witness Ralph Altro*, 180 F.3d 372.

³⁶ *Ibid.*, 374.

³⁷ Macaulay, Kidwell, and Whitford, 277.

³⁸ *Ibid.*

Thus, for Professor Corbin, an integration clause does not end the discussion as to what the parties intended. Rather, the court is not able to determine whether the dispute stems from an inducement wrought on by an alleged promise by merely looking at the text.

In Al-Arian's case, without examining the government's admission in open court of some sort of agreement regarding cooperation, it fails to discover true intent of the provision's omission. Furthermore, the Parol Evidence Rule, which admits extrinsic in the events of ambiguity and government overreaching, fails to consider the omission of terms in its scope of ambiguity. "It is impossible to interpret the 'plain meaning' of a contract with ambiguous language *or an omitted material term* without calling upon some sort of gap-filling or default presumption," Daniel Kaplan argues in a law review article titled, "When Promises End."³⁹ In his article, Kaplan argues for an interpretation approach that recognizes plea agreements as a unique cross-section in the law of contracts and due process.

The Willistonian-textualist approach promotes itself under the guise of fairness and predictability in contracts; however, it makes no effort to discover real intent or gauge knowledge and intelligence of which voluntariness is predicated upon. Moreover, the textualist approach claims to hold the true meaning of the terms the contractual parties expressly agreed upon; however, it is still merely an interpretation of the *product* of a negotiation process. The court is better able to discover the meaning of this product by looking at the process that led to arrival of such agreement. Therefore, this dispute could be better resolved by looking at what the parties "say and do" to determine the intent of the text.

The Court Ignored the Fundamental Purpose of Plea Agreements

³⁹ Kaplan, Daniel Frome, "Where Promises End: Prosecutorial Adherence to Sentence Recommendation Commitments in Plea Bargains." *University of Chicago Law Review*, 1985. pp. 751 (emphasis added)

The methods of interpreting plea agreements inherently foster strong policy considerations that the courts must be aware of in determining which party should prevail. As the court observed in *Santobello v. New York*, plea agreements are recognized as “an essential component of the administration of justice. Properly administered, it is to be encouraged.”⁴⁰ With nearly nine out of ten cases settled through plea bargains,⁴¹ the integrity of the prosecutorial system is imperative to the very tools of judicial efficiency. As such, plea agreements should be encouraged because they are an essential element of the criminal justice system. Not only do they achieve finality for the victims, government, and defendants alike, sometimes plea agreements lead to the discovery of valuable information, which might help the government in further prosecution. In the political contours of the “War on Terror,” ruling in favor of the defendant may help expand an important governmental interest in facilitating agreements with terror suspects in exchange for information. Therefore, the court should reconsider the rules governing the admission of parol evidence in integrated plea agreements to reflect both the realities of plea disputes and how its ruling affects both parties in the plea process.

In *Santobello* the court encouraged plea agreements in part by demanding they be “attended by safeguards to insure the defendant [obtains] what is reasonably due in the circumstances.”⁴² The *Santobello* court was aware that defendants would be disparaged from entering into plea deals if they thought they would get an unfair bargain. Thus, the court ruled that “when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be

⁴⁰ *Santobello*, 260.

⁴¹ Murphy, Walter F., C. Herman Pritchett, Lee Epstein, Jack Knight. *Courts, Judges, and Politics: An Introduction to the Judicial Process*, 6th ed. 2006. (New York: McGraw Hill), 383.

⁴² *Santobello*, 260.

fulfilled.”⁴³ Additionally, in order to ensure the integrity of the plea agreements, the Supreme Court requires that pleas are voluntary and intelligent.⁴⁴ In *Palermo*, the court decided that even unfulfillable promises made by prosecutors are indeed still considered a promise. Moreover, if the promise helped induce the guilty plea of the defendant, then it undermines the voluntariness aspect of the agreement. The decision made in Al-Arian’s appeal fails to hold prosecutors to the “meticulous standards of both promise and performance” in plea bargaining they were required to observe under *Santobello*.⁴⁵

Conclusion

The case of *US v. Al-Arian* collates several debates within legal theory and policy implications. The intertwining of the “War on Terror” and plea agreement disputes in a politically charged sphere provides a context to the age-old debates of contract legal theory at the intersection of criminal procedure. In a recent admission by the EDVA prosecutors, the U.S. Attorney’s office in the Middle District of Florida allegedly had prior information that Virginia would subpoena Al-Arian to testify, but failed to inform Al-Arian’s attorneys suggesting that perhaps “Tampa prosecutors knew it was a violation of the plea agreement.”⁴⁶ U.S. Circuit Court Judge Leonie Brinkema said in response, “This is not one U.S. Attorney’s Office versus another. You have the United States Department of Justice ... involved at both ends.”⁴⁷ Assistant U.S. Attorney Gordon Kromberg, however, contends that the neither the Tampa nor the Virginia

⁴³ Ibid.

⁴⁴ Dressler, Joshua, George Thomas. *Criminal Procedure: Prosecuting Crime*, 3rd ed. 2006, 1017 (citing *Brady v. US*)

⁴⁵ *Correal v. United States*, 479 F.2d 944, 947 (1st district 1973).

⁴⁶ Meg Laughlin. “Al-Arian’s Fate Lies with Judge,” *Tampa Bay Times*, 22 April 2009 [magazine on-line]; available from <http://www.tampabay.com/news/courts/criminal/article994489.ece>; Internet; accessed 1 May 2009.

⁴⁷ Ibid.

Offices had a duty to inform each other or Al-Arian's counsel of the plans to subpoena the defendant.⁴⁸

The tinge of government overreaching resides in the role the Counterterrorism Section of the Department of Justice plays in both the Florida and the Virginia prosecutor's office and grand jury. Nevertheless, the heart of this case is not mere government foul play, but the very essence of the law of contracts in conjunction with plea deals. Even the question of informing Al-Arian's counsel of the Virginia plans to subpoena the defendant broaches the question of "preplea disclosure," which "can significantly reduce the extent and degree of duress in the guilty-plea process."⁴⁹ In an adversarial system, the judge may act as "umpire to enforce the rules of the fight," moreover the outcomes of judicial decisions inevitably shape the policies on which institutions rest on.⁵⁰ *U.S. v. Al-Arian* demonstrates that where courts defer to one side of the adversarial system, they can blind themselves not only to important aspects of law but potentially undermine the interests of the whole system in achieving finality to criminal prosecutions.

⁴⁸ Ibid.

⁴⁹ Ostrow, 1610.

⁵⁰ Murphy, Pritchett, Epstein, and Knight, 399.

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