妨害司法罪之探討

- 以美國聯邦法制爲借鏡

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關鍵詞:妨害司法、偽證、隱匿、變造、偽造

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摘 要

現行司法實務存在許多亟待立法填補處罰的妨害司法行為,雖然妨害司法 罪之增訂將影響被告之言論自由權與辯護權,並對新聞自由產生相當程度的影 響,然如果原本對於司法協力義務之認知有誤,並無視其他先進國家之相關規 範,似有必要在調整規範與觀念之偏差後,才有可能正確地對於相關修法草案 提出批評。在保障言論自由之基礎上,依明顯且可能危險原則以及利益權衡原 則,相關妨害司法行為之處罰,其所欲保護的法益必須具備高度公益性的特 徵,並較言論自由更具保護之價值,以免過度限制言論自由。

A Study on the Offense of Obstruction of Justice: Lessons from the United States

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Abstract

There are a lot of loopholes to be filled out with regarding obstruction of justice. Although passing laws of obstruction of justice would affect the right to counsel as well as the right of freedom of speech, it is vital to get complete understanding of civilian obligations regarding improving criminal justice so that correct criticism of the proposed amendment to the criminal code could be secured. Based on the protection of freedom of speech, the clear and probable danger test and the balancing test, any relevant punishment on obstruction of justice should focus on the protection of more valued public interest and the right to freedom of speech should be proportionately restricted.