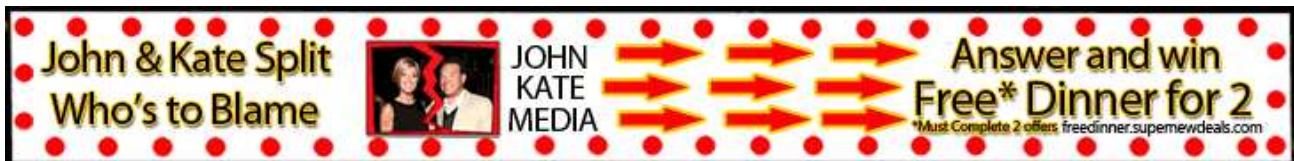


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August 31, 2009

IN THE MAIL: From Harvey Silverglate, *Three Felonies a Day: How the Feds Target the Innocent*. Some years ago I started on a project entitled *Due Process When Everything Is A Crime*. The gist was that since criminal law has expanded to the point where *everyone* is some sort of a felon, the real action is in the area of prosecutorial discretion — in choosing whom to prosecute from among this population-wide mass of the guilty — where, in fact, due process basically doesn't apply. That suggests that maybe there *should* be some due-process limits on decisions to prosecute. I never got to it (my scholarly rangetop has so many back burners it must be a half-mile deep) but the issue continues to deserve attention

Along these lines, you might also see Gene Healy's *Go Directly to Jail: The Criminalization of Almost Everything*, and Angela Davis's (no, not *that* Angela Davis) *Arbitrary Justice: The Power of the American Prosecutor*. It's an issue that's worthy of a lot of attention.

Posted at by Glenn Reynolds at 11:00 am