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T A B L E of C O N T E N T S

NEW and FORTHCOMING ARTICLES

"Representation Reinforcement through Advisory Commissions: The Case of Election Law"
New York University Law Review, Vol. 80, 2005

BY: CHRISTOPHER S. ELMENDORF
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Paper ID: UC Davis Law, Legal Studies Research Paper No. 42

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ABSTRACT:
An increasingly prominent strain of legal commentary warns that the democratic good of robust political competition is endangered by legislators' penchant for enacting, and preserving, statutes that entrench incumbent officials and dominant political parties against challengers. This political entrenchment dynamic is thought to warrant external regulation of the content of election law by a politically insulated constitutional court or regulatory commission. Drawing on recent institutional innovations in Australia, Canada, and England, this Article suggests a different institutional remedy for the entrenchment problem: a permanent advisory commission, authorized to draft bills for the legislature to consider under a closed-rule procedure, or for the citizenry to address by referendum. The approach suggested here provides an answer to the two main criticisms that have been lodged against external regulation in the interest of fair political competition: that such regulation is democratically illegitimate, and that the regulator itself is likely to be captured by political insiders. The standing advisory commission can be expected to do a better job of identifying and pursuing normatively appropriate reforms than would an otherwise similar external regulator. The very tenuousness of the advisory commission's de facto power to reform the law (depending as it does on public opinion) should make the body a more reliable agent of the citizenry's interests and concerns. And in the event that the body falls under the sway of political insiders, it stands to do much less damage than a captured external regulator, thanks to the voters' freedom to ignore it.

"Reclaiming 'Abandoned' DNA: The Fourth Amendment and Genetic Privacy"
Northwestern University Law Review, Vol. 100, 2006

BY: ELIZABETH E. JOH
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Document: Available from the SSRN Electronic Paper Collection:
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Paper ID: UC Davis Law, Legal Studies Research Paper No. 40

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ABSTRACT:
We leave traces - skin, saliva, hair, and blood - of our genetic identity nearly everywhere we go. Should the police be permitted, without restriction, to target us and to collect the DNA that we leave behind? In a growing number of instances, the police, unburdened by criminal procedure rules, seek this "abandoned DNA" from criminal suspects in hopes of resolving otherwise unsolvable cases. Abandoned DNA is any amount of human tissue capable of DNA analysis and separated from an individual's person inadvertently or involuntarily, but not by police coercion. What are the consequences of allowing this investigative method to remain unregulated? In stark distinction to the growing body of commentary on the collection of DNA samples for state and federal DNA databases, little attention has been paid to this backdoor method of DNA collection.

Deciding whether DNA might ever be "abandoned" is important, because abandoned DNA provides the means to collect genetic information from anyone, at any time. Criminal procedure law poses no restrictions on this kind of evidence collection by the police. Not only does the label of abandonment affect police behavior, it also raises basic questions about the changing nature of legal identity. How should we characterize the relationships between our physical bodies and our identities, now that nearly any "body particle" can reveal our genetic information? The final part of this Essay proposes first steps towards addressing the problem, but its primary task is to show the need to reframe the debate over covert involuntary DNA sampling and to make the case for "genetic exceptionalism."

"Symposium Introduction - 'Immigration and Civil Rights After September 11: The Impact on California'"
UC Davis Law Review, Vol. 38, No. 3, March 2005

BY: KEVIN R. JOHNSON
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Paper ID: UC Davis Law, Legal Studies Research Paper No. 34

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ABSTRACT:
This is an introduction to a U.C. Davis Law Review symposium on "Immigration and Civil Rights After September 11: The Impact on California." The articles come from a distinguished group of scholars, attorneys, and activists and will unquestionably contribute significantly to the ongoing national dialogue about the treatment of noncitizens in U.S. society. The papers in the symposium issue were presented at the U.C. Davis School of Law in April 2004. The panels focused on "The War on Terror, Racial Profiling, and Immigrants," "Detention of Immigrants: Recent Developments and the Future," "Guest Workers," and "Activism in Immigrant Communities." As the panel titles suggest, the papers offer observations and insights about a full range of interrelated immigration developments, with a particular emphasis on the civil rights implications of the heightened immigration enforcement measures put into place after September 11. Authors include Susan Akram (Boston University), Kif Augustine-Adams (Brigham Young University), Charles Weisselberg (UC Berkeley-Boalt Hall), Larry Kupers (Assistant Federal Public Defender), Bill Ong Hing (U.C. Davis), Philip Martin (U.C. Davis (Agricultural Economics)), Adela de la Torre (U.C. Davis (Chicana/o Studies)), Rowena Seto (J.D., U.C. Davis), Isao Fujimoto (U.C. Davis (Asian American Studies)), and Gerardo Sandoval.

"A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall"
UC Davis Law Review, Vol. 38, 2005

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ABSTRACT:
Diversity is touted as a preeminent concern and important goal of the legal profession generally and of the UC Davis School of Law specifically. Known as King Hall (after Martin Luther King, Jr.), the UC Davis School of Law is relatively diverse compared to other law schools and enjoys a reputation as a kinder, gentler place to study law. This article and the study on which it is based investigate whether King Hall truly is, for students of various demographic backgrounds, the uniquely supportive community it purports to be. The article thus contributes to the burgeoning literature on the influence of a student's race, ethnicity and gender on her law school experience.

Based largely on extensive statistical analysis of a student survey conducted at King Hall in February 2004, we conclude that, as at other law schools, statistically significant differences exist between the self-reported experiences and perceptions of women and minority students, on the one hand, and their male and white peers, on the other. We also find that students' perceptions and experiences often evolve over the course of their time in law school, with students becoming more negative as their law school careers progress. The data and analysis reveal that race, ethnicity, gender and often class year are significant predictors of student comfort, satisfaction, and success.

Our study indicates that King Hall is, effectively, two different law schools. It is a comfortable and supportive place for those who might be considered mainstream or insiders, those

who embody what we label the mean voice of King Hall. But it is an often uncomfortable and alienating place for many minority and women students, relative outsiders whose perspectives differ significantly from that mean, or average. This discomfort operates to their distinct detriment academically and emotionally.

We conclude that a disproportionate number of students of color and women do not experience King Hall as a kind, gentle, and supportive environment for the study of law. To address this inequality, we recommend that the leaders of King Hall renew their commitment to achieve even greater diversity among students, faculty and staff. We also argue, based on widespread and vehement criticism of the Socratic method by students of color and women, that the time has come to re-think and modify its use. Finally, we suggest that law schools frequently provide opportunities for all students to express their perceptions about their legal educations. Responses should then be evaluated by students' demographic features to ensure that the experiences of some groups are not obscured by the average.

The suggestions offered based on the study of King Hall may be appropriately implemented at other law schools, for if an institution as well intentioned and diverse as King Hall is alienating many students of color and women, it is reasonable to assume that other law schools may be even more hostile to these student populations. If law schools, as the gatekeepers of the legal profession, truly wish to diversify the profession and make it a more welcome and tolerable one for persons of diverse backgrounds, simply doing better than in the past, or doing better than other law schools, is not sufficient.

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