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

WORKING PAPERS

NEW and FORTHCOMING ARTICLES

"Comment"

BY: JOEL CHARLES DOBRIS
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Paper ID: UC Davis Law, Legal Studies Research Paper No. 63
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ABSTRACT:
There has been a race to the bottom among a large minority of jurisdictions to repeal the Rule Against Perpetuities. This Comment discusses obstacles if we wish to rerun the race, at some point in the distant future, as well as some of the possible ways to bring back the Rule. The author also discusses the continued rejection of the repeal by academics. He

concludes the professoriate may find it possible to live with the consequences of the race and that if the political will to bring back the Rule comes to exist, that Society will find a way to repeal the repeal.

N E W and F O R T H C O M I N G Articles

"Misusing Immigration Policies in the Name of Homeland Security"
New Centennial Review, 2005

BY: BILL ONG HING
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Document: Available from the SSRN Electronic Paper Collection:
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ABSTRACT:
Perhaps we should have expected a crackdown on noncitizens after 9/11. After all, the 19 hijackers were foreigners who somehow made it into the country to commit evil. Since they were adherents of Muslim extremism as advocated by Osama bin Laden, focusing the crackdown on Arab and Muslim noncitizens made sense
- ethnic and religious profiling appeared to be in order. It seemed a natural response to implement new procedures and to reorganize administrative institutions, ensuring that all immigration visa processes and enforcement went through the lens of national security.

But did these responses really make sense? Had the changes been in force prior to 9/11, would the profiling and immigration-specific modifications have prevented the attacks?
What do we have to show for the changes that have been made?
What price has the new regime paid?

Targeting noncitizens of a certain ethnic, religious, or racial background or closing our borders to newcomers or visitors is a national security strategy that does not make our country safe. In fact, those strategies may foreclose the opportunity to engage newcomer

communities in assisting with smarter law enforcement approaches to public safety.

"A Black Robe is not a Big Tent: The Improper Expansion of Absolute Judicial Immunity to Non-Judges in Civil Rights Cases"
Southern Methodist University Law Review, Forthcoming

BY: MARGARET JOHNS
University of California, Davis
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Document: Available from the SSRN Electronic Paper Collection:
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ABSTRACT:
In civil rights cases, absolute judicial immunity has been extended to many defendants who are not judges including psychologists, social workers, mediators, receivers, probation officers, and licensing and parole board members. This expansion of the immunity defense seriously undermines civil rights enforcement, denies victims a remedy, and hinders the development of constitutional standards. It departs from the Supreme Court's decisions circumscribing the scope of absolute judicial immunity and cannot be justified by either historical understandings or policy arguments. Yet, surprisingly, this unwarranted expansion of absolute immunity has been ignored by the Supreme Court and has escaped scholarly criticism.

This Article examines the extension of absolute judicial immunity to two categories of non-judges: (a) court adjuncts and appointees within the judicial system who are not decision-makers; and (b) decision-makers outside of the judicial system where procedural safeguards are lacking. It explains that these decisions fail to satisfy the Supreme Court's requirements for establishing the entitlement to judicial immunity. It then proposes that this unjustified expansion of judicial immunity should be corrected by the adoption of a qualified immunity regime, which protects honest officials from excessive litigation, while allowing the vigorous enforcement of civil rights remedies.

"The Legacy of Jim Crow: The Enduring Taboo of Black-White Romance"
Texas Law Review, February 2006

BY: KEVIN R. JOHNSON
University of California, Davis

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ABSTRACT:
Over the last one hundred years, racial equality made momentous strides in the United States. State-enforced segregation ended.
Slowly but surely, the nation dismantled Jim Crow. As part of that dismantling, the Supreme Court struck down bans on interracial marriage popular in the states. Interracial relationships have increased dramatically over the last fifty years. The nation, however, continues to battle the enduring legacy of slavery and Jim Crow. Besides shedding light on the complexities of U.S. racial history, Essie Mae Washington-Williams with William Stadiem, Dear Senator: A Memoir by the Daughter of Strom Thurmond (2005) and Geoffrey C. Ward, Unforgivable Blackness: The Rise and Fall of Jack Johnson (2004) reveal just how far the nation has advanced over the twentieth century. At the same time, the books suggest ways in which race relations have remained more or less the same.

Born in 1925, Essie Mae Washington-Williams is the half Black daughter of the late U.S. Senator Strom Thurmond. Dear Senator tells the story of her life as the invisible child of a staunch segregationist and prominent national politician.
Washington-Williams was the daughter of Carrie Butler, a young African American woman who had worked as a domestic in the Thurmond family home in South Carolina. Only upon Thurmond's death in 2003, however, did it become widely known that he had a Black daughter.

A generation before Washington-Williams's birth, Jack Johnson was the first African American heavyweight boxing champion of the world. His capture of the championship was a milestone in the social history of the United States; previously reserved exclusively for white men, the title served as a high profile symbol of white supremacy. Jack Johnson flaunted the social mores of his times by living a sporting life in which he refused to accept the restrictions on interracial relationships that applied to most African American men, and were strictly enforced through rigid social norms, anti-miscegenation laws, and brutal extralegal means. Ultimately, the federal government prosecuted Johnson for transporting a woman across state lines for illicit purposes, and imprisoned him,

effectively ending his boxing career.

Both books reveal much about the deep legal and social taboo of Black/white relationships before the Supreme Court's 1967 decision in Loving v. Virginia. Importantly, the legacy of Jim Crow and the legal and social separation of the races continues to affect the formation of interracial relationships in the modern United States. Most Americans marry persons of the same race. Although increasing, white/African American relationships are relatively rare and much less common than those between Asian Americans and whites, Latina/os and whites, and Native Americans and whites.

This essay analyzes how the books reveal the lasting impact of slavery and Jim Crow, exemplified by the ban on miscegenation in the United States, on social relations in modern times. Even with the demise of the legal prohibition on interracial relationships, the social taboo on Black/white relationships remains. So long as we live in a socially segregated society, low intermarriage rates between African Americans and whites will likely remain.

"Corporate Hierarchy and Racial Justice"
St. John's Law Review, Vol. 79, 2005

BY: THOMAS WUIL JOO
University of California at Davis Law School

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ABSTRACT:
Although traditional corporate governance theory viewed corporate directors and executives as agents accountable to shareholders, commentators today tend to agree, as a descriptive matter, that those "agents" enjoy wide discretion to govern the corporation free from shareholder input. There is normative disagreement, however, over whether the law should increase shareholder participation in corporate decisionmaking. This was illustrated recently by the debate over the SEC's failed proposal to expand shareholders' power to nominate director candidates.

The normative debate is typically framed in terms of shareholder value. This essay, prepared for a symposium on race, gender, and corporate law, applies a different normative
standard: whether increased shareholder power would make corporations more responsive to issues of racial justice and social responsibility generally. I suspect it would not.

Increasing shareholder power will strengthen the voice of justice-minded shareholder activists, but it will also empower those shareholders who are concerned primarily with profits.
This is even more likely to be true in the context of shareholder voting for two reasons. First, social justice concerns, particularly those involving racial minorities, typically do not enjoy majority support in the political arena.
Second, most shareholders are rationally apathetic toward corporate elections. Third, shareholders, as dispersed and anonymous participants in governance, are not held accountable for corporate policy. Thus shareholders will be strongly tempted to vote in their narrow self-interest.

Directors and executives currently enjoy the discretion to consider social justice in making corporate policy. That power imposes moral obligations and makes the public view them as accountable for social effects of corporate actions. Increased shareholder power, however, may generate explicit, legally enforceable shareholder demands for higher profits rather than social justice. That would remove directors' discretion and trump their moral obligations. The point here is not that the existing, management-centered corporate governance system is an ideal method of making corporations responsive to racial justice issues. Indeed, dependence on management discretion is probably the worst possible method - except for all the others.

JEL Classification: D21, D63, D79, K22, L20

"The (Legal) Value of Chance: Distorted Measures of Recovery in Private Law"
American Law and Economics Review, Vol. 7 No. 2

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ABSTRACT:
Parties who make investments that generate externalities may sometimes recover from the beneficiaries, even in the absence of contract. Previous scholarship has shown that granting recovery, based on either the cost of reasonable investment or the benefit conferred, can provide optimal incentives to invest. This article demonstrates that the law often awards recovery that is neither purely cost-based nor purely benefit-based and instead equals either the greater or lesser of the two measures. These hybrid approaches to recovery distort compensation and incentives. The article demonstrates the surprising prevalence of these practices and explores informational and institutional reasons why they emerge.

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