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- "Book Review of Transnational Litigation in United States Courts"** 
The American Journal of International Law, Vol. 103, 2011
UC Davis Legal Studies Research Paper No. 274

ANUPAM CHANDER, University of California, Davis - School of Law
Email: achander@ucdavis.edu

In *Transnational Litigation in United States Courts*, Harold Koh surveys the doctrines that frame the transnational legal process in U.S. courts. The compass is broad, from international business transactions to human rights law, though the emphasis is on the former. The manuscript grows out of Koh's experience as a private and governmental lawyer, teacher, and scholar – and more proximately, out of his series of lectures at the Hague Academy of International Law. Much of the book represents a doctrinal survey, but Koh goes further to identify five interrelated themes that animate the doctrines: party autonomy, national sovereignty, comity, uniformity, and the separation of powers. So stated, the principles seem elementary and obvious. Yet, like Arrow's conditions for rational social choice, it turns out that these principles are often at odds with each other. The identification and juxtaposition of these rationales will put pressure on courts to assess the fundamental goals of the legal doctrines at stake and to rationalize the contours of doctrines. At the same time, both students and practitioners will find the book of much practical value.

- "The Golden Anniversary of the 'Preliminary Study of the Advisability and Feasibility of Developing Uniform Rules of Evidence for the Federal Courts': Mission Accomplished?"** 
UC Davis Legal Studies Research Paper No. 281

EDWARD J. IMWINKELRIED, University of California, Davis - School of Law
Email: EJIMWINKELRIED@ucdavis.edu

"Preliminary Study of the Advisability and Feasibility of Developing Uniform Rules of Evidence for the Federal Courts" is the title of the famous 1961 report prepared by a committee appointed by then Chief Justice Earl Warren. The Chief Justice tasked the committee to address two questions: (1) whether the state of the common law of Federal evidence was satisfactory; and (2) if not, whether the federal judiciary should adopt court rules codifying evidentiary doctrines. The committee critiqued the common law and urged the promulgation of court rules. The committee's report eventually led to the adoption of the Federal Rules of Evidence in 1975. Fifty years have now elapsed since the committee submitted its report.

The golden anniversary of the report is an opportune time to evaluate the impact of the Evidence rule making

project. The first part of this essay reviews the objectives identified in the committee's report and investigates whether, in the intervening half century, those objectives have been achieved. The essay concludes that in five different respects, the adoption of the Federal Rules of Evidence has made evidentiary doctrines more accessible to federal trial judges and litigators. Although gains have been realized in the past 50 years, the second part of the essay notes that there have been bumps in the road. Some of the problems are traceable to the shortsightedness of the committee and the later Advisory Committee. Other problems were caused by the committees' political naivete. The essay concludes that to maximize the gains from rule making projects, future committees must take a longer view and proceed with greater political caution and sensitivity.

"Sweet Home Alabama? Immigration and Civil Rights in the 'New' South"

Stanford Law Review Online, Vol. 64, p. 22, 2011

UC Davis Legal Studies Research Paper No. 282

KEVIN R. JOHNSON, University of California, Davis - School of Law
Email: krjohnson@ucdavis.edu

The Supreme Court soon will decide whether to review the constitutionality of Arizona's high-profile immigration enforcement effort, known popularly as S.B. 1070. Arizona's law is simply the tip of the iceberg. State legislatures have passed immigration enforcement laws over the last few years at breakneck speed. Controversy has ensued.

Earlier this year, the Alabama legislature entered the fray by passing a tough-as-nails immigration law. The Alabama law builds on the controversial Arizona law but goes considerably further.

This essay contends that the civil rights implications for immigrants and Latinos raised by the state immigration laws are in many respects similar to the civil rights issues raised by Jim Crow for African-Americans. This is true even though the current litigation centers on federal preemption doctrine, as opposed to the Equal Protection Clause of the Fourteenth Amendment. The current state laws eerily bring back memories of the "states' rights" defense of segregation. Congress could measurably help address the civil rights concerns through some form of comprehensive immigration reform. The courts and the public should realize that, until the nation grapples with the civil rights impact of its immigration laws, it will continue to generate the sort of heated controversy that surrounds Alabama's immigration law.

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Northwestern University - School of Law, Northwestern University - Kellogg School of Management, European Corporate Governance Institute (ECGI)


Email: bblack@northwestern.edu

RONALD J. GILSON

Stanford Law School, Columbia Law School

Email: rgilson@leland.stanford.edu

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