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

"Rural Rhetoric"
UC Davis Legal Studies Research Paper No. 77
Connecticut Law Review, Forthcoming

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ABSTRACT: This article investigates law's constitutive rhetoric about rural people, places, and livelihoods. Specifically, it considers five categories of judicial opinions that discuss the legal relevance of rurality: judicial self-identification of a jurisdiction as rural; statutory and judicial definitions of rural; judicial line-drawing between rural and urban; taking judicial notice of rural characteristics; and idealized portrayals of rural places and those who inhabit them. Viewed together, these clusters of opinions reveal a comprehensive - if not entirely coherent - judicial portrait of rurality. They also provide an overview of the many instances when a rural setting is legally relevant to the outcome of a case. Implicated are issues of tort, property, criminal, and constitutional law, among others.

This collection of judicial narratives reveals that law's portrait of rurality has been greatly influenced by popular perceptions of the rural that persist in our national consciousness, including nostalgia for our nation's rural past.
Such nostalgia is reflected, for example, in judicial assumptions that rural areas are safe and that rural people are neighborly.
It is also evident in the idyllizing rhetoric about rural places.
Finally, the long-standing notion that law should play less of a role in rural livelihoods persists, apparently based on notions that rural people are self-sufficient, rural communities self-contained.

The cases surveyed illustrate not only how legal rhetoric constitutes, maintains, and transforms the rural, but also how this rhetoric demonstrably influences outcomes. With respect to some issues, law's rhetoric - and therefore law itself - lags behind reality, due in part to out-dated assumptions about rural communities. Other legal rules have evolved to reflect rural realities, changed as they are in recent years.

Finally, this article lauds courts for the attention they have paid to geography - to the dimension of place - in legal analysis. Nevertheless, it argues that judges should be more careful not to rely on stereotypes in making and applying the legal rules that shape rural people's lives. Judges should pay closer attention to rural realities, including the differences among the many places and people they label rural.

"Advisory Counterparts to Constitutional Courts"
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Duke Law Journal, Vol. 56, 2007

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ABSTRACT: In recent years, constitutional scholars have paid a great deal of attention to the emergence of constitutional courts and judicial review in democracies worldwide, yet an intriguing parallel development in democratic constitutionalism has gone largely unnoticed: the establishment of independent bodies which, like constitutional courts, are concerned with foundational commitments of liberal democracy, but which advance these commitments mainly through investigations and advice-giving.
Lacking authority to block the implementation of unconstitutional laws and policies, the new advice givers instead make their contributions ex ante, identifying problems that warrant legislative attention and helping to craft laws and regulations that respond to foundational aspirations. This Article surveys the emergence of these advisory counterparts to constitutional courts and offers an account of their comparative advantage, relative to constitutional courts, as guardians of liberality.
The Article also presents an initial treatment of the advisory counterparts' characteristic limitations and dangers, and explores some associated questions of institutional design.

"Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking"
UC Davis Legal Studies Research Paper No. 79
Fordham Law Review, Vol. 74, p. 2977, May 2006

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ABSTRACT: Over five years have passed since the passage of the Trafficking Victims Protection Act (TVPA), more than two years have passed since its expansion and reauthorization, and millions of dollars have been spent to achieve the Act's stated goals of protecting trafficking victims, prosecuting traffickers and preventing human trafficking. In spite of apparent widespread political support and seemingly ample funding, the TVPA's success has been modest. Domestically, the number of cases prosecuted have been few and the number of trafficked workers in the U.S.
who have been assisted by the program has been a small proportion of the estimated number of such workers in the U.S.

In order to understand why the TVPA has fallen short of its goals, the Act must be analyzed in the context of its legal
antecedents: the labor, immigration and sex trafficking laws that existed prior to the TVPA and that form the bulk of the Act's substantive provisions. This article demonstrates that long before the TVPA was enacted, legal and policy decisions were made in each of these three areas that continue to exacerbate the domestic manifestations of problem of human trafficking and the related exploitation of undocumented migrant workers.

Unfortunately, Congress did not systematically revisit these laws when passing the TVPA. In fact, the TVPA incorporates many provisions of these laws with only minor changes, and fails to address many of the perverse structural incentives that the laws create. Border interdiction strategies, restrictive and

punitive immigration policies and insufficient labor protection for migrants interact in ways that leave exploited workers in the United States at the mercy of traffickers and abusive employers, notwithstanding the TVPA.

Furthermore, the narrow understanding of trafficking that dominates domestic TVPA enforcement efforts has created an over-emphasis on anti-prostitution efforts to the exclusion of broader issues of worker exploitation, and has also resulted in racially biased understanding and enforcement of anti-trafficking laws within the United States. Unfortunately, some of the worst impulses of U.S. anti-trafficking strategies have also been incorporated into the U.S. government's international anti-trafficking strategies. In short, as currently enforced, the TVPA exacerbates many of the negative effects of pre-existing laws, even as it alleviates some of the political pressure to address human exploitation.

"Taking the 'Garbage' Out in Tulia: Racial Profiling and the Taboo on Black/White Romance in the 'War on Drugs'"
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Wisconsin Law Review, Forthcoming

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ABSTRACT: In July 1999, Tulia, Texas hit the national headlines and became the poster child for the discriminatory impacts of the "war on drugs." In a sting operation, a corrupt undercover officer framed a substantial percentage of African Americans in a small Texas Panhandle town. Tried, convicted, and sentenced to decades in prison, the group ultimately was released as a result of the monumental efforts of a group of attorneys, led by a young lawyer from the NAACP Legal Defense Fund.

Part I of this essay offers a capsule summary of the Tulia sting.
Part II analyzes one of the most fascinating angles of the case, which was largely ignored in the press coverage and kept under wraps by the attorneys who successfully vindicated the Tulia defendants. A careful study of the cases reveals that the defendants arrested in the sting came predominantly from a discrete sub-section of the African American community - those who were in, or had been in, interracial relationships with whites.

A unanimous Supreme Court decided Loving v. Virginia (1967), which struck down Virginia's anti-miscegenation law, forty years ago, which helped inspire this retrospective symposium. However, despite improvements in the nation's racial sensibilities and increasing acceptance of interracial relationships, Black/white intimacy remains off-limits in Tulia, just as it is in much of the United States. Consequently, Blacks who were romantically involved with whites were among the least popular, and most marginalized, of all African Americans in town. As such, they were easier than almost any other population sub-group to convict on trumped-up charges. Ultimately, the Tulia case represents one more example of the falsity of the claim that an increasingly multiracial United States has ended the disfavor of Black/white relationships. This, of course, undermines the claim that we live in a color blind society.

Part III contends that the Tulia case, with its extraordinary facts, is not an outlier unlikely of repetition but simply a clear example of the racially disparate impacts of the enforcement of the criminal laws that occur

regularly, although generally more subtly, throughout the United States. Racial profiling, a variation of which occurred in the case, in law enforcement is one symptom of the disease that deeply afflicts the entire criminal justice system. In Tulia, law enforcement targeted the defendants because of race, with their race contributing to their convictions and long sentences.
Importantly, the round-up directly resulted from the full court press for drug convictions - and the allocation of financial resources based on convictions - that is part and parcel of the nation's long-running "war on drugs."

Increasing the likelihood of an incident like that which occurred in Tulia, the Supreme Court over the last several decades has steadily afforded greater discretion to law enforcement. The dangers of the expansion of law enforcement authority are starkly revealed in the Tulia case. A lone drug enforcement officer, with much authority and precious little supervision, combined with incentives for arrests and convictions, placed the machinery in motion for a massive - and legally and factually wrong - shakedown of the African American community. Once the process was set in motion, it proved to be incredibly difficult to stop and to make the corrections necessary to ensure that full justice was done.

From a criminal justice perspective, what is most telling, as well as troubling, about the Tulia story is that one corrupt white police officer - the proverbial "bad apple" - was able to start the ball rolling so that so many innocent people were sent to prison based on virtually no evidence. Tulia is uncomfortably reminiscent of the lynching of African Americans based on the - too often false - word of a single white person in the hey-day of Jim Crow. The public as a whole never questioned the guilt of the defendants; not a single jury acquitted any of the 47 Tulia defendants. The gravity of the injustice hints at the deep and enduring institutional problems existing in the criminal justice system. Such problems obviously must be corrected to avoid such travesties of justice in the future.

The question is what can be done, as well as how it could be implemented, to reform the criminal justice system.
Unfortunately, despite considerable publicity over the Tulia case, there is no reform proposal on the table that comes close to solving the deep systemic problems in the U.S. criminal justice system. Indeed, less attention has focused on the excesses of the drug war since the "war on terror" commenced after the tragic events of September 11, 2001, which, at least for the time being, supplanted the war on drugs and resulted in its own controversial excesses.

"Data Gaps in Natural Resource Management: Sniffing for Leaks Along the Information Pipeline"
UC Davis Legal Studies Research Paper No. 83

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ABSTRACT: Despite wide recognition that natural resource management decisions are heavily dependent on the supply of scientific information, little attention has been paid to the processes by which that information is supplied. This paper lays out the key steps of the information supply pipeline, which include exploration, extraction, refining, blending, distribution, and consumption. Leaks in the pipeline can occur at any of these steps, interrupting the supply of information to decisionmakers. Because information supply is contextual and complex, no universal fix can address all information shortfalls.

Nonetheless, several general recommendations emerge. First, decisionmakers must recognize the limits of scientific information, both in terms of the degree of precision and certainty attainable, and in terms of the need for other inputs into decisions. Second, priorities should be more consciously set, both on the broadest level across multiple resource demands and for specific problems. Third, freewheeling creative exploratory research needs to be better encouraged. That will require more than increased funding; the training and cultures of both managers and researchers also need to be addressed. Fourth, the production of available information must keep up with theoretical advances. Targeted funding, incentives for information production, and institutions with an information production mission are all needed to ensure that extraction keeps pace. Fifth, collaboration needs to extend across traditional disciplinary, political, and institutional boundaries. Finally, once information is produced it needs to be archived in locations and formats that make it both accessible to and useful for future researchers and managers. Focusing on the information supply pipeline helps move the discussion beyond the simplistic dichotomy of precaution versus certainty to the ways we can improve the information base for decisions and the value of those improvements.

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