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## ARTICLES

### Edict v. Dicta: Rolling Back Rights in the Second Circuit Under the Clearly Established Clause of the AEDPA Amended Habeas Statute

Aron E. Goldschneider..... 1

*This article, through a close critical analysis of two recent habeas corpus decisions by the Second Circuit Court of Appeals, shows how appellate courts, under § 2254 of the AEDPA amended habeas statute, are methodically erasing venerable and well-considered federal habeas precedents that formerly protected state defendants' rights. In the process of examining these Second Circuit decisions' impact on two discrete areas of criminal trial procedure, the article exposes the way in which habeas review under the AEDPA too often becomes a formalistic yet undisciplined exercise that turns away from the crucial question that should be at the heart of the habeas inquiry—whether or not the defendant was accorded a fair trial under our nation's Constitution.*

### How We Got Where We Are: A Look at Informed Consent in Colorado—Past, Present, and Future

R. Jason Richards ..... 69

*This article examines the historical development of the doctrine of informed consent in this country, paying specific attention to its evolution in Colorado. In doing so, the author examines the two theories of patient disclosure that have emerged over time—the “professional standard” and the “reasonable patient standard.” The article analyzes the legal and practical justifications of each approach in light of the contemporary doctor/patient relationship and concludes that the best way to protect patient autonomy rests with informed decision-making, which can only be accomplished by adopting the reasonable patient standard of disclosure in Colorado.*

### Article I Courts, Substantive Rights, and Remedies for Government Misconduct

David A. Case ..... 101

*This article argues that Article I courts can use equitable principles to provide individuals who have been victimized by corrupt behavior of government attorneys with a remedy. Article III courts have*

*struggled to define the powers of Article I courts in a way that does not do violence to the petition clause, the appropriations clause, or the takings clause, sometimes concluding that petitioners were entitled to no relief when the government had violated some right of the petitioners. After tracing the development of claims against the government in general, and in the extant Article I courts, the article employs Professors Hart and Sacks' rights and remedies dichotomy to show that Article I courts may use equitable doctrines to provide private litigants with a remedy for government attorney misconduct.*

## COMMENTS

### Brave New School: A Constitutional Argument Against State-Mandated Mental Health Assessments in Public Schools

Jennifer H. Gelman ..... 213

*This comment examines the constitutionality of emotional health assessments in public schools. Despite the Supreme Court's recognition nearly a century ago that parents have a right to control the education of their children, American courts have grown increasingly hostile to parental interests in conflicts between parent and school. The author explores the possibility that the Court's reaffirmation of parental rights in *Troxel v. Granville* (2003) could be invoked in certain cases to reverse that trend. It is argued, in particular, that parental objections to school involvement in emotional health determinations ought to merit some form of heightened scrutiny.*

### The Federal Common Law of Foreign Relations

Joel M. L. Huotari ..... 247

*This comment asserts that mere foreign policy implications should not be enough to establish federal jurisdiction over the litigation of an otherwise exclusively state law claim, as some circuits have allowed. The Second, Fifth and Eleventh Circuits have allowed such state law claims to be removed to the federal courts. The Ninth Circuit, however, rejects the proposal that the federal courts are somehow better equipped to hear cases which implicate foreign policy concerns. Questions of foreign policy are generally not the subject matter of the judicial branch, but of the legislative and executive branches. Members of Congress and of the State Department should be fielding the complaints of affected foreign nations, not the federal judiciary. Neither vigorous objection from a foreign sovereign, nor the threatened economic impact on that foreign country's gross domestic product should determine the jurisdiction of a case. Judicial presumptions of what the United States' interests might be in the realm of foreign relations should not be the dispositive factor for establishing federal jurisdiction. Out of deference to the separate branches of government and their respective roles, the federal judiciary should narrowly restrict the use of the federal common law of foreign relations as a jurisdiction-granting tool.*