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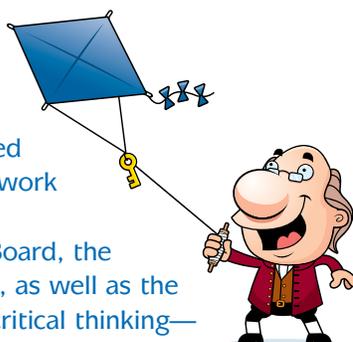
WINTER 2016

## American History— Should We Only Teach the Good Stuff?

by Jodi L. Miller

A famous quote states, “Those who fail to learn from history are doomed to repeat it.” How to teach history has always been greatly debated, as the recent controversy over the revised Advanced Placement U.S. History (APUSH) curriculum framework demonstrates.

The controversy began in 2014 when College Board, the nonprofit company that administers the AP exams, as well as the SAT, revised its APUSH framework to emphasize critical thinking—



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## Keeping America Safe— Balancing Privacy and National Security

by Cheryl Baisden



Chances are you have made a phone call or sent a text to a friend surreptitiously, maybe late at night when you should be asleep, or at an event or in school where casual communication would be frowned upon. Since you haven't been punished for the indiscretion, you probably figure no one noticed. But the truth is, the federal government might just have a record of whom you communicated with and when.

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## DNA Collection— To Swab or Not to Swab

by Barbara Sheehan

We share 99 percent of our DNA with all other humans. It's that last one percent that is distinctly ours, identifying us as unique individuals. Every day, we leave traces of our DNA on many things—from a water bottle we may have used to the sweat on a piece of clothing we've worn.

No doubt, DNA provides an important law enforcement tool to solve crimes and, in some cases, exonerate the wrongfully accused. But can DNA searches by law enforcement go too far, and could they compromise our Fourth Amendment right to privacy?

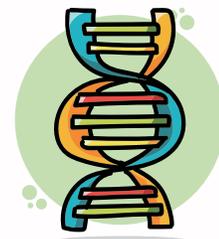
These questions became the focus of the 2013 U.S. Supreme Court case *Maryland v. King*. During oral arguments in the case, Justice Samuel A. Alito Jr. referred to it as, “perhaps the most important criminal procedure case that this court has heard in decades.”

The case involved a man named Alonzo Jay King Jr., who was arrested for assault in 2009 and was required to provide a DNA sample under Maryland law. When King's sample was entered into a DNA database, it matched an unsolved 2003 rape case. King was charged and convicted of that crime.

The primary question that arose next was not whether King committed the rape, but whether the DNA search linking him to that crime violated his Fourth Amendment rights.

### What is the Fourth Amendment?

The Fourth Amendment states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause....”



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# Should the U.S. Supreme Court Be Camera-Ready?

by Phyllis Raybin Emert

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Jodi L. Miller  
EDITOR

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In today's world it's hard to imagine cameras being banned anywhere. One place where you won't see cameras, however, is the U.S. Supreme Court.

Cameras are allowed in the U.S. state court system, with all 50 states allowing them to some degree. The debate today is whether cameras should be allowed at the federal court level, including the U.S. Supreme Court.

The Judicial Conference of the United States, the national policy-making body for the federal courts, began a pilot program to study the issue in 2011. Fourteen federal district courts took part in the study, which concluded in July 2015. Results and recommendations could be released as early as March 2016.

## History of cameras in courtroom

With the 1965 case of *Estes v. Texas*, the U.S. Supreme Court banned cameras from state courtrooms. The Court found in *Estes* that the defendant's 14th Amendment right to **due process** had been violated due to the presence of cameras, which the Court deemed intrusive. According to court transcripts, the pretrial and trial coverage included 12 still and television photographers, three microphones on the judge's bench alone, along with others aimed at the jury box and the attorney's table.

"It is said that the ever-advancing techniques of public communication and the adjustment of the public to its presence may bring about a change in the effect of telecasting upon the fairness of criminal trials," the Court's opinion stated. "But we are not dealing here with future developments in the field of electronics. Our judgment cannot be rested on the hypothesis of tomorrow but must take the facts as they are presented today."

Sixteen years later, with the 1981 case of *Chandler v. Florida*, the Court would essentially **overturn** *Estes*, allowing broadcast and still

photography coverage of criminal trials at the state level.

On the federal level, however, the 1946 Federal Rule of Criminal Procedure 53 still stands. That rule prohibits photographs and radio coverage of federal criminal proceedings. In 1972, the rule was expanded to also prohibit television broadcasts.

## Pros and cons

Federal trials are open to the public, but only about 250 people, many of whom wait in line for hours or even days, especially at the U.S. Supreme Court level, can secure a seat in the courtroom. Supporters of cameras at the federal level want to bring the trial experience to the entire public. Those supporters include members of the media, Congress and some lawyers.

Those against allowing cameras in federal courts include judges and defense lawyers, who fear it will infringe on a client's right to a fair trial.

In an article for the *Arizona State Law Journal*, Professor Nancy S. Marder wrote, "Proponents of cameras in federal courtrooms focus mainly on the need to educate the public and to make judges accountable, whereas opponents focus predominantly on the ways in which cameras can affect participants' behavior and compromise the dignity of the court and the fairness of the trial..."

Federal judges and U.S. Supreme Court justices, however, are appointed for life. They don't have to be accountable to the public—only to the law and the U.S. Constitution. Supporters claim that cameras today are small and not noticed by participants at the trials. After a few minutes, people in the courtroom tend to forget they're being filmed. But, according to Professor Marder, "Cameras shape what an audience sees." The lighting, the focus, the close-ups, the angles, all affect the participants and the action in the

courtroom, which, in turn, may influence viewers' opinions.

In her article, Professor Marder, who is the director of the Justice John Paul Stevens Jury Center at Chicago-Kent College of Law, explained that opponents of cameras believe witnesses may not want to testify if they are being filmed, or jurors may be distracted or worried if their faces are shown. Professor Marder points out that judges “worry... about protecting the privacy interests of parties, victims, witnesses, and jurors.” Opponents also argue, “cameras will compromise the dignity of the courtroom,” the fear being that lawyers and even judges might play directly to the camera, becoming “dramatic...[or] long winded.”

### Public access or entertainment

The media wants to make government open to the public, but at the same time, they want to entertain their viewers. Opponents argue that television networks, like C-SPAN, which televises court proceedings, are essentially businesses that provide entertainment.

In her article, Professor Marder explained that judges worry about “public misperceptions about courts and the judicial system as a result of too much or too little coverage.” She cites the 2011 Florida state court trial of Casey Anthony, who was accused of killing her two-year-old daughter. The public, who had been following televised trial coverage, took to Twitter and Facebook to express their outrage when she was **acquitted** “even though the jurors explained that the state had failed to prove its case **beyond a reasonable doubt.**”

### At the Supreme Court level

A Congressional Research Service (CRS) report notes that oral arguments, which consist of an attorney from both sides arguing (and sometimes being grilled by the justices) for 30 minutes each before the Court, “constitute only a small portion of the decision-making process. The Justices do most of their work in solitude—reading, writing,

considering voluminous documents—before deliberating with the other Justices in conference.”

According to Professor Bernard W. Bell of Rutgers Law School—Newark, “Currently, oral arguments before the Supreme Court are published extensively...Reporters in the courtroom report on the details of oral arguments and the Court itself releases transcripts. These developments have had few, if any, negative impacts.” Professor Bell says, “Providing video recordings of oral arguments is not significantly more intrusive than the access to



oral arguments currently provided... Allowing the public to see the oral arguments might contribute to public understanding of the process...the concerns about cameras...have in actuality largely been proved to be unfounded, so there is no reason to think that the presence of cameras in the Supreme Court will have the dire effects some fear.”

Professor Bell does concede, however, there are reasonable arguments for banning cameras at the Supreme Court.

“The written opinion for the court, and any concurring and dissenting opinions should speak for themselves and serve as the complete record of the courts' determination and the reasons for it. The opinions themselves are ‘the law’ coming from the case, and should not be undermined by questions or comments Justices make from the bench,” he says.

### Legislating the issue

The Sunshine in the Courtroom Act, which was introduced in March

2015, is **bipartisan** legislation that would “authorize the presiding judge of a U.S. appellate court (including the Supreme Court) or U.S. district court to permit photographing, electronic recording, broadcasting, or televising to the public of court proceedings over which that judge presides, except when such action would constitute a violation of the due process rights of any party.” So far, Congress has taken no action on the legislation.

The CRS report noted that “some believe the decision whether proceedings should be televised should be a decision for the Supreme Court to make—not one that Congress should legislate.” Supreme Court Justices Anthony Kennedy and Clarence Thomas have, according to the report, “expressed concerns about the possible effect of such a **mandate** on separation of powers” between the judicial and legislative branches of government.

Professor Bell says, “The key ‘separation of powers’ concerns raised by congressional legislation regarding courts are threats to judicial independence and removal of cases from the jurisdiction of the courts... the issue does seem largely internal to the judicial system, and Congress can assert little compelling reason for legislating on an issue, since it has little to do with the balance of power between the three branches of government.”

### What the justices say

Most of the current U.S. Supreme Court justices don't favor allowing cameras in the U.S. Supreme Court.

Justice Antonin Scalia expressed his opinion on the matter in 2005, stating, “I wouldn't mind having the proceedings of the court, not just audioed, but televised, if I thought it would only go out on a channel that everyone would watch gavel to gavel. ...what will happen is for every one person who sees it on C-SPAN gavel to gavel so they can really understand what the court is about, ...10,000 will see 15 second takeouts on the network news, which I

Under the Patriot Act of 2001, passed in response to the terrorist attacks of September 11, the National Security Agency (NSA) began gathering phone and Internet data on millions of foreigners and Americans. While the NSA surveillance program has not focused on collecting the actual *contents* of the electronic communications, it has gathered detailed activity records from the largest phone companies and, through a computer network called PRISM, tracked emails, Internet searches and credit card transactions through services such as Google, Facebook and Apple.

The secret surveillance programs came to the public's attention when former CIA employee and government contractor Edward Snowden disclosed to the media classified documents related to these and other programs in 2013. Snowden is presently in exile in Russia, and faces charges of spying in the United States.

While public outcry over the programs has been strong, the balance between privacy and national security is far from clear-cut, according to Woodbridge attorney Darren Gelber, who practices criminal and cyber-related law.

In fact in May, the Pew Research Center reported that 54 percent of surveyed Americans said they opposed the government collecting phone and Internet records, and 74 percent said they would not give up their privacy in exchange for safety. At the same time, 49 percent felt the nation's antiterrorism policies have not gone far enough to protect them.

"This is an issue on which many people may have complicated feelings," Carroll Doherty, Pew director of political research, told *The New York Times*. "They simultaneously worry about the government collecting personal data and that the government's policies might be inadequate to protect them from terrorism."

### The surveillance programs

The phone data surveillance program was instituted through the Patriot Act's Section 215, which allowed the government to obtain secret court orders from the Foreign Intelligence Surveillance Act Court (FISA court) that required phone carriers and other third parties to turn over any records the NSA felt might be relevant to terrorism investigations.

In 2008, Congress amended the Foreign Intelligence Surveillance Act, and under Section 702 authorized the "targeting of [non-United States] persons reasonably believed to be located outside the United States" for a period of up to a year to acquire "foreign intelligence information," which spawned PRISM.

A 2011 FISA court report revealed the NSA collected over 250 million Internet

communications a year, 91 percent through PRISM, and that the NSA was unable to filter domestic data out of the collection system.

"For the first time, the government has now advised the court that the volume and nature of the information it has been collecting is fundamentally different from what the court had been led to believe," wrote the court's chief judge, John D. Bates, in the report.

"By expanding its [FISA] Section 702 acquisitions to include the acquisition of Internet transactions through its upstream collection, NSA has, as a practical matter, circumvented the spirit of [the law]," Bates wrote. "NSA's knowing acquisition of tens of thousands of wholly domestic communications through its upstream collection is cause of concern for the court."

Bates temporarily stopped PRISM until the government provided a plan it said would better weed out U.S.-based data, and the court ordered records be kept for two rather than five years.



### Constitutional concerns

Those opposed to the NSA surveillance programs cite the Fourth Amendment to the U.S. Constitution, which prohibits unreasonable search and seizure. Under the Fourth Amendment, the government is prohibited from searching for and collecting information on an individual without a warrant and "probable cause" that the person has committed or will commit a crime.

Concerns surrounding the First Amendment are also raised in this context, said Gelber, since it guarantees citizens freedom of expression and assembly. "It is one of our most basic rights," he explains, "giving us the right to free speech and freedom to associate with whomever we wish to, without undo influence. These surveillance programs certainly seem to infringe on those rights."

In fact, Judge Richard Leon of the Federal District Court for the District of Columbia ruled in 2013 that the NSA program did violate the Constitution.

"I cannot imagine a more 'indiscriminate' and 'arbitrary' invasion than this systemic and high-tech collection and retention of personal data on virtually every single citizen for purposes of querying and analyzing it without prior judicial approval," he wrote in his 68-page ruling.

Judge Leon also questioned the program's effectiveness, noting the government failed to cite "a single instance in which analysis of the NSA's bulk metadata collection actually stopped an imminent attack, or otherwise aided the government in achieving any objective that was time sensitive."

Coinciding with the court ruling, a White House task force report suggested changes were needed in the program. According to the task force: "We cannot discount the risk, in light of the lessons of

our own history, that at some point in the future, high-level government officials will decide that this massive database of extraordinarily sensitive private information is there for the plucking. Americans must never make the mistake of wholly ‘trusting’ our public officials.”

As a result, in June 2015 the Senate approved the USA Freedom Act, which changed the Patriot Act to prohibit bulk collection of phone data by the NSA. As of December, data collection is now in the hands of the telecommunications companies, and can be requested by the NSA on a case-by-case basis with approval from the FISA court.

Section 702, however, still remains in place. Unless legislative action is taken, the provision is set to expire in 2017.

### Newest wrinkle

The Senate is presently revising the proposed Cybersecurity Information Sharing Act (CISA), which would encourage technology and manufacturing companies to share information with the Department of Homeland Security and, ultimately other government agencies, according to Khizar Sheikh, a Roseland attorney whose practice focuses on privacy and cybersecurity.

“Proponents argue that more sharing is needed to reduce cyber threats, and privacy impacts are small since

some personal information gets removed during the sharing procedure,” he says. “Opponents question its value since the law shifts some responsibility over consumer information from private businesses to the government, potentially increasing vulnerability of personal information as it may be dispersed across several agencies, including the FBI and NSA.”

### Emotions run high

Anytime there is an act of terrorism—such as the recent attacks in Paris, the Russian airline disaster and, on U.S. soil, the shootings in San Bernardino—people tend to be willing to relinquish some of their constitutional rights, notes Gelber. But that loss of liberty is tempered by the knowledge that in America there are counterbalances in place to protect citizens’ rights.

“We all realize we can’t ask intelligence agencies to protect us and not give them the tools they need to do so,” he explains. “But we also have a strong network in place through the Constitution, the Democratic political process, a free press and the courts to keep our freedoms intact. In general, there have been cycles where we have given up and regained aspects of our privacy throughout our history. And that will probably always be the case.” 

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## DNA Collection CONTINUED FROM PAGE 1

Historically, the U.S. Supreme Court has upheld the right of law enforcement to conduct warrantless searches when they are “reasonable.” For instance, if a police officer makes a lawful arrest, he or she may search the arrestee’s clothing and surrounding areas without obtaining a warrant.

What about searches involving arrestees’ DNA? Is it reasonable to collect and search their DNA samples before they are convicted? And, should the search results be used to solve old, unrelated crimes?

The Maryland Court of Appeals said no and **reversed** a lower court ruling that allowed the DNA evidence to be used during trial. In its decision, the appeals court concluded that King’s “expectation of privacy is greater than the State’s purported interest in using King’s DNA to identify him.

### U.S. Supreme Court says...

The state of Maryland appealed that ruling to the U.S. Supreme Court,

which **overturned** the Maryland Court of Appeals decision, considering Maryland’s DNA search constitutional.

In issuing its decision, the High Court focused on the reasonableness of DNA searches. In the **majority opinion** of the Court, Justice Anthony M. Kennedy wrote, “When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee’s DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.”

In a sharply worded **dissenting opinion**, Justice Antonin Scalia wrote, “Today, it can fairly be said that fingerprints really are used to identify people—so well, in fact, that there would be no need for the expense of a separate, wholly redundant DNA confirmation of the same information. What DNA adds—what makes it a valuable weapon in the law enforcement arsenal—is the

ability to solve unsolved crimes, by matching old crime-scene evidence against the profiles of people whose identities are already known. ...Solving unsolved crimes is a noble objective, but it occupies a lower place in the American pantheon of noble objectives than the protection of our people from suspicionless law enforcement searches.”

In summarizing his dissent from the bench, Justice Scalia referred to our Founding Fathers. “The proud men who wrote the charter of our liberties,” he said, “would not have been so eager to open their mouths for royal inspection.”

### New Jersey law

All 50 states require the collection of DNA from those convicted of a felony; however, laws that allow for the collection of an arrestee’s DNA vary from state to state.

In New Jersey, the law requires that every person arrested for serious crimes,

**CONTINUED ON PAGE 7**

essential for success in college—instead of straight memorization of historical facts and dates. The revision was undertaken by a group of high school history teachers and university professors. In an open letter, published after the framework became controversial, the professionals stated that they had two goals in mind when revising the framework.

“One was that the course meet the expectations of college and university history departments, so that the hard work of AP students on the AP Exam would continue to be rewarded with college credit and placement. The other was that the course and exam allow teachers to go into depth about the most significant concepts of the course.”

### Sparking controversy

Retired New Jersey history teacher Larry Krieger immediately criticized the revised framework. “As I read through the document, I saw a consistently negative view of American History that highlights oppressors and exploiters,” Krieger told *Newsweek*. Krieger took issue with what was left out of the framework, too, including mentions of Thomas Jefferson, Benjamin Franklin, James Madison and Martin Luther King Jr., as well as the heroism of American soldiers.

The authors of the framework pointed out that the course is advanced and wouldn't be the students' first exposure to U.S. History. In other words, these college-bound students would already be familiar with the narrative of U.S. History and important historical figures.

In August 2014, the Republican National Committee (RNC) took up Krieger's cause, adopting a resolution condemning the new framework, claiming it “reflects a radically revisionist view of American history that emphasizes negative aspects of our nation's history while omitting or minimizing positive aspects.” The RNC asked Congress to “investigate the matter” and withhold funding to College Board until it was resolved.

### States balk

The new framework sparked controversy in several states, with the state legislatures in Oklahoma, Georgia and Texas introducing bills that threatened to ban the course. With more than 460,000 students taking the AP exam yearly to earn college credit, banning the test would have meant lost dollars and the opportunity for advanced college placement for many.

A committee of the Jefferson County School District in Colorado determined that all AP materials should “promote patriotism” and “respect for authority,” and “should not

encourage or condone civil disorder.” This mandate inspired a walkout by students, who were afraid that if put into place, the course would not adequately prepare them for college.

The National Coalition Against Censorship, along with six other organizations, took action in the Colorado case, writing a letter to members of the Board of Education to express their concerns with the framework's review in Jefferson County.

The letter stated: “Terms like citizenship and patriotism are subject to multiple interpretations, as evidenced, for example, by the public debate about whether civil disobedience can be an act of patriotism. Indeed, it would be nearly impossible to teach US history without reference to ‘civil disorder,’ which is appropriately discussed in connection with the American revolution, the labor movement, civil rights, voting rights protests...and countless other significant events in US history.”

Joan Bertin, executive director of the National Coalition Against Censorship, says that the situation in Colorado seemed “particularly **egregious** and political,” which is why the New York-based organization became involved. “Legislators don't have any business deciding what is included in education, because then it becomes political, not educational,” Bertin says. “Politicians are not allowed to interfere in curriculum to promote the ideas they like and quash ideas they don't.”

That is exactly what the First Amendment protects against, she notes, and when it is violated her organization gets involved. “We don't pass judgment on what's good or bad in education. We tell people what they can't do, not what they should do.”

The state school board in Colorado ultimately rejected the resolution to censure the framework.

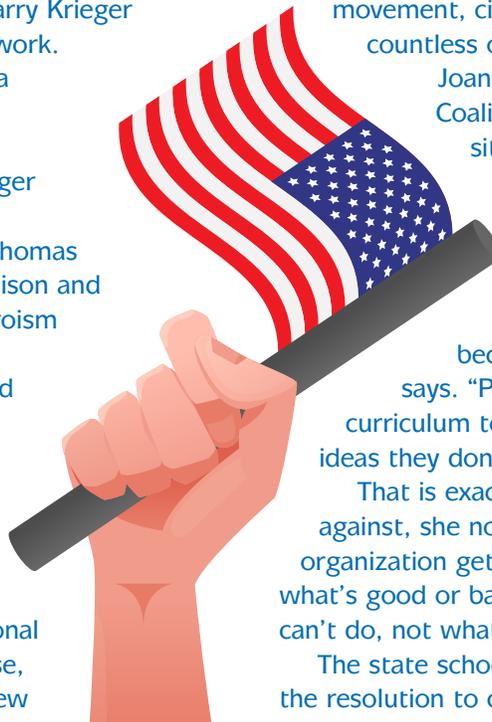
### Revised again

For their part, College Board accepted public comment on the APUSH framework from teachers and the general public beginning in October 2014. They issued a re-revised framework in July 2015 that addressed critics' major concerns. The re-revised framework was implemented with the 2015-2016 school year.

In a statement, College Board said the new framework will “clarify and encourage a balanced approach to the teaching of American history, while remaining faithful to the requirements that colleges and universities set for academic credit.”

Among the changes to the framework was the addition of a section on “American exceptionalism.” According to James Grossman, executive director of the American Historical Association in Washington, DC, not much changed between the two versions of the framework.

“Mostly it was a matter of clarifying **CONTINUED ON PAGE 7**



some things that were muddy,” Grossman says. “That final revision process identified necessary changes along various lines of the interpretive spectrum.”

Asked if he thought the 2014 version showed bias, Grossman says, “The crucial issue when asking about ‘bias’ is to remember that no book, no test, no lecture, can cover everything. If someone tells me I have 90 pages, or I have three hours for a test, then I have to decide what goes in and what doesn’t. So, my notion of what is ‘important’ is going to shape the work. The historians who advised on this framework made those decisions in the same way that a physician decides what is important about your health when different issues are on the table.”

### Why so touchy?

So, why did the teaching of history become such a hot button issue? Bertin believes it is because parents “care passionately about what their kids are learning” and some politicians try to capitalize on that to mobilize their voters.

Grossman says it is because “the history we teach implies definitions of what our nation is and what it stands for. This is all about history, and how historical developments have shaped what it means to be an American and the meaning of patriotism,” Grossman says. “To some people, patriotism is a matter of cheerleading and celebration. To others, patriotism means doing all one can to make the United States a great nation—which requires attention to what has been done well, and to what has not been done well.”

### Warts and all?

Grossman warns there is a danger in only teaching the positive aspects of history. “If a student emerges from school thinking that all of US History is an unbroken narrative of progress and liberty, what happens when

that person begins to read about Jim Crow, McCarthyism, lynching, nativism, etc.?,” he asks. “Everything becomes a lie, and it becomes harder to trust public institutions and public culture. It is more important for students to understand the past than to celebrate it.”

Should the teaching of history promote patriotism and educate about American exceptionalism?

“To celebrate change, we must appreciate its necessity: Neither democratic institutions nor individual great men and women emerged fully formed,” Grossman says. “They evolved.” To understand that evolution, he says students need to understand its context.

“If students don’t study the hierarchical nature of New England towns and the worldviews of Virginia slaveholders, they can’t understand the ideological origins of the American Revolution,” Grossman says. “If they don’t learn about the actual dynamics of chattel slavery—the buying and selling of human beings—then Lincoln’s warning in his Second Inaugural that ‘every drop of blood drawn with the lash shall be paid by another drawn with the sword,’ reads as mere **rhetoric**.”

The disagreement Grossman has with critics of this way of teaching “is not whether history education should be patriotic, but rather about what constitutes patriotism in a nation founded in dissent and notable for its deep and vibrant traditions of activism and debate from every corner of the country and political spectrum.”

As for “exceptionalism,” Grossman contends “all nations are exceptional in some ways and less so in others. Some things did originate here in the late 18th and 19th centuries, and the framework highlights those things,” he says. “But, the U.S. is also different from other places relating to aspects of our history that we are less proud of.”

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## DNA Collection CONTINUED FROM PAGE 5

including murder, sexual assault and kidnapping, provide a DNA sample for purposes of DNA testing prior to release from custody, explains New Jersey Certified Criminal Trial Attorney Kimberly A. Yonta. In addition, every juvenile arrested for an act, which if committed by an adult would constitute one of these offenses, must also provide a DNA sample prior to the juvenile’s release from custody.

### A delicate balance

Like so many legal matters, DNA profiling tests the balance between protecting individual rights and safeguarding public interests.

In reaching its decision in *King*, the U.S. Supreme Court considered

other previous Fourth Amendment cases and noted: “A suspect’s criminal history is a critical part of his identity that officers should know when processing him for detention. It is a common occurrence that ‘[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals. A DNA profile is useful to the police because it gives them a form of identification to search the records already in their valid possession.’”

South Brunswick Police Chief Raymond Hayducka, a spokesman for the New Jersey State Association of Chiefs of Police, emphasized that DNA sampling in New Jersey is done only for arrests involving serious

crimes, and it is a non-obtrusive process that takes just a matter of seconds. It’s really no different than fingerprinting somebody or taking a photograph, he says, except that it’s more sophisticated.

### Too much power?

“Even though the swabbing of the inside of the mouth may not seem intrusive, a person is innocent until proven guilty, and having this information could lead to many problems for innocent people. Just as police need a warrant to draw blood from the body, police should get a warrant to take a buccal [DNA] swab from someone who is only

**CONTINUED ON PAGE 8**

## DNA Collection CONTINUED FROM PAGE 7

arrested,” says Yonta, who is a former New Jersey prosecutor. “Justice Alito is right that this may be ‘the most important criminal procedure case that this court has heard in decades’ because DNA can be found on many common items, including cigarette butts on the ground or cups and utensils left at a restaurant after a meal. Giving police this expansive police power at the time of arrest erodes the protections of the Fourth Amendment.”

### What's next?

According to the Electronic Frontier Foundation, the Federal Bureau of Investigation's Combined DNA Index System (CODIS) contains more than 11.4 million DNA

profiles, largely due to the inclusion of arrestee DNA. One concern voiced by opponents is that DNA profiling could be extended to include even more people.

“Key language in the Supreme Court decision to uphold the Maryland law could lead to new laws in New Jersey and other states allowing the collection of DNA in all juvenile and adult arrests,” Yonta notes.

Seven states, in fact, allow the collection of DNA samples when arrested for certain **misdemeanors**. Another concern is that law enforcement or the government might use DNA samples to find out personal

information, like medical history.

Dr. Howard Baum, director of the New Jersey State Police Office of Forensic Sciences, explains that DNA samples obtained by law enforcement in New Jersey are used strictly for identification purposes and do not have any physical or health traits associated with them. Profiles, he says, are identified solely with a



number, not a name or photo. A second database stores the actual names that match with the numbers as an extra security measure to protect people's identities. There are strict policies and procedures governing the handling and release of DNA profiles, and Dr.

Baum says that if he violated these procedures, he would go to jail.

The Maryland law provides that if the arrestee is not convicted of the crime the sample is destroyed; however, most states put the burden on the arrestee to initiate that process. Arrestees in New Jersey whose charges are dropped may petition to have their DNA profiles removed from the system, Dr. Baum says. Otherwise it is stored indefinitely.

Ironically, as Justice Scalia mentioned in his dissent, because King was convicted of the assault, his DNA would have been collected

and stored anyway with no Fourth Amendment issue. “So the ironic result of the court's error is this: The only arrestees to whom the outcome here will ever make a difference are those who have been acquitted of the crimes of arrest,” he wrote. 



**acquitted**—cleared from a charge.

**beyond a reasonable doubt**—must believe to a moral certainty in the guilt of the accused. This is the highest standard required in a criminal case.

**bipartisan**—supported by two political parties.

**dissenting opinion**—a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

**due process**—legal proceedings, such as a trial, which enforce and protect our rights.

**egregious**—unusually bad or blatant.

**majority opinion**—a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

**mandate**—an authoritative order or command.

**misdemeanor**—a lesser crime, usually punishable by a fine or short jail term.

**overturned**—in the law, to void a prior legal precedent.

**probable cause**—a law enforcement official has good reason to believe that evidence of a crime will be found or a person should be arrested or searched.

**reverse**—to void or change a decision by a lower court.

**rhetoric**—pretentiousness or long-windedness.

## Camera-Ready CONTINUED FROM PAGE 3

guarantee you, will be uncharacteristic of what the court does. So I have come to the conclusion that it will misinform the public rather than inform the public to have our proceedings televised.”

Professor Marder believes there may be a place for cameras in the court at the federal level, but that time is not now. “It might be that a new generation of federal judges, who grew up on YouTube and Facebook, will not have the same reservations as today's federal judges about cameras in the courtroom, and at that time the new media could have a new role to play in federal courtrooms,” she wrote. 