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Dedication of "The Scholar: St. Mary's Law Review of Minority Issues"

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FOREWORD

DEDICATION OF "THE SCHOLAR: ST. MARY'S LAW REVIEW OF MINORITY ISSUES"

KEVIN R. JOHNSON*

I am honored and privileged to write this foreword to the inaugural issue of *The Scholar: St. Mary's Law Review on Minority Issues*. There are many, many law reviews but only a handful that address issues of special importance to people of color and other subordinated peoples in the United States. We need more scholarship, more analysis, more intellectual energy, and more dedicated scholars and students devoted to this all-important project.

The student pioneers who worked to establish *The Scholar* and publish its first issue, especially the editorial board of Maria Montoya Chavez, Isabel de la Riva, Antonio Fernández Rivera, Denise Y. Mejía, Tamara Pitts, and Sonia M. Rodríguez, should be commended for taking the time from their law school studies and other activities to engage in this worthwhile endeavor. The administrators and faculty who supported these students also deserve our encouragement and support, especially the faculty advisors, Deans Yvonne Cherena Pacheco and Jose Roberto Juárez, Jr. and Professors Amy H. Kastely and Reynaldo A. Valencia. It often is all-too-easy to become enmeshed and embroiled in our daily routine and fail to offer the support that law students need to thrive. In my estimation, all these people unquestionably have made a difference.

The Scholar could not have come at a better time. Times are tough for minorities. As the century closes, racial minorities have seen previous civil rights gains eliminated. In Texas and California, affirmative action in

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higher education has come and gone.¹ Radical reforms to the immigration and welfare laws make life much more difficult for immigrants in the United States.² Heightened enforcement along the U.S./Mexico border, with more Border Patrol officers on patrol than there were U.S. soldiers who invaded Mexico in 1848, has meant increasing numbers of deaths of desperate Mexican citizens seeking nothing more than better lives. In addition, the U.S. government's virtually unbridled fervor to curtail undocumented immigration has resulted in civil rights violations of minority citizens and lawful immigrants.³ The ever-popular English-only and anti-bilingual education laws effectively discriminate against national origin minorities.⁴ Hate crimes against gay men and lesbians occur much too often, with the much-publicized murders of two gay men in 1998 and 1999 unfortunately representing just the tip of the iceberg. Women, especially women of color, also continue to face uphill battles in their fight for equal rights.

St. Mary's School of Law for many reasons is ideally situated for the creation of a new, innovative journal of minority issues. Texas has a long history of racial tensions and conflict between African Americans, Mexican-Americans and Mexican immigrants, and Anglos.⁵ Matters have become even more complicated with Asian migration to the region.

Moreover, St. Mary's as a law school has a stated commitment to a social justice mission.⁶ Professor Jon Dubin has articulated how this mission animates the law school's much-admired clinical programs.⁷ Former

1. See *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), cert. denied sub nom., 518 U.S. 1033 (1996); *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir.), cert. denied, 118 S. Ct. 397 (1997).

2. See, e.g., Nora V. Demleitner, *The Fallacy of Social "Citizenship," or the Threat of Exclusion*, 12 GEO. IMMIGR. L.J. 35 (1997); Cecelia M. Espenosa, *Crimes of Violence by Non-Citizens and the Immigration Consequences*, COLO. LAW., Oct. 1997, at 89; Lee Teran, *Defending Foreign Nationals Convicted for Illegal Entry: The "Aggravated Felony" Issues*, 8 FED. SENTENCING RPTR. 270 (1996).

3. See, e.g., *Hodgers-Durgin v. de la Vina*, 165 F.3d 667 (9th Cir. 1999) (reversing dismissal of class action claiming that Border Patrol routinely stops persons of Hispanic appearance without reasonable suspicion).

4. See generally Jose Roberto Juárez, Jr., *The American Tradition of Language Rights, ¡Que Viva Texas!: The Forgotten Right to Government in a "Known Tongue"*, 1 THE SCHOLAR: ST. MARY'S L. REV. ON MINORITY ISSUES (forthcoming Spring 1999).

5. See generally NEIL FOLEY, *THE WHITE SCOURGE: MEXICANS, BLACKS, AND POOR WHITES IN TEXAS COTTON CULTURE OF CENTRAL TEXAS* (1997) (examining this history).

6. As articulated by Dean Barbara Aldave, "[i]f any one thing should be of central importance in a Catholic law school, it is a commitment to justice – not only justice under the law, but justice and fairness in society." Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 MARQ. L. REV. 291, 294 (1995).

7. See Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1483-1505 (1998).

Dean Barbara Aldave demonstrated St. Mary's commitment to social justice by staunchly resisting the *Hopwood* vanguard.⁸ I was pleased to see that the stated goals of *The Scholar* are fully consonant with the law school's social justice mission. Its devotion to "justice" includes "[t]he collective courage to acknowledge, present, and discuss the difficult issues that face our community and the generosity to become a part of the process for change and improvement." In that vein, *The Scholar* is dedicated to creating "diversity," specifically creating "[a] forum in which the often-silenced individuals will have a voice in today's world and will share their ideas, pain, struggles, joys, and achievements."

These are important, laudable goals. The following pages, which include important scholarly contributions on education, family (*familia*), domestic violence, education, employment, immigration and immigrants, and language rights, all contribute to a much-needed national dialogue on these important issues. For all too long, the most victimized in this society have been the most silenced. Not until relatively recently in U.S. history have immigrants, battered women, racial minorities, and gays and lesbians been "discovered" in our public and legal discourse.

Not until the 1990's, for example, did legal scholarship begin to acknowledge, much less study, the subordination of Latina/os in the United States. Until that time, legal analysis of civil rights concerns in effect ignored the fact that Latina/os live and work in the United States and that many have ancestors who were in the Southwest long before, through conquest, it became part of the nation.⁹ Unfortunately, Mexican-Americans in the Southwest have long known how the law frequently fails to protect their rights.¹⁰ St. Mary's has played a central role in the emerging analysis of legal issues that concern the Latina/o community. The law school hosted and sponsored the second annual critical Latina/o (LatCrit) theory conference in 1997.¹¹ LatCrit theory endeavors to explore the

8. See Barbara Bader Aldave, *Affirmative Action: Reminisces, Reflections, and Rumination*, 23 S.U. L. REV. 121 (1996); Barbara Bader Aldave, *Hopwood v. Texas: A Victory for "Equality" that Denies Reality—An Afterword*, 28 ST. MARY'S L.J. 147 (1996).

9. For a notable exception, see Yvonne M. Cherena Pacheco, *Latino Surnames: Formal and Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname*, 18 T. MARSHALL L. REV. 1 (1992).

10. See generally George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994).

11. The proceedings to the conference were published as a Symposium entitled *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998). Among the contributors affiliated with St. Mary's were Elvia R. Arriola, *Foreword: March!*, 19 UCLA CHICANO-LATINO L. REV. 1 (1998); Emily Fowler Hartigan, *Disturbing the Peace*, 19 UCLA CHICANO-LATINO L. REV. 479 (1998); Ana R. Novoa, *American Family Law: History – Who Story*, 19 UCLA CHICANO-LATINO L. REV. 265 (1998); Reynaldo Anaya Valencia, *On Being an "Out" Catholic*:

unexplored legal issues concerning the Latina/o community and how it fits into other forms of subordination.

During the next century, we will need more scholarship analyzing the civil rights of disenfranchised peoples in the United States. As the nation's racial demographics change, race relations will as well. We must endeavor to do our best to ensure that we constructively, and peacefully, address conflict and respect difference. As the fracas over the multiracial category proposed by the Bureau of the Census suggest, racial mixture promises to exacerbate the complexity of the issues. Journals like *The Scholar* hold the promise of adding much to our understanding of race and race relations in the twenty-first century.

The next century almost certainly will be a tumultuous journey for minorities in the United States. A constructive national conversation, including discussion of possible multiracial coalitions,¹² and the development of mutual understanding is what is needed.¹³ We should congratulate the students who have founded this new publication to engage these issues. We should celebrate their energy, enthusiasm, and commitment. The future, as we know, is with them.

Contextualizing the Role of Religion at LatCrit II, 19 UCLA CHICANO-LATINO L. REV. 449 (1998).

12. See, e.g., BILL PIATT, BLACK AND BROWN IN AMERICA: THE CASE FOR COOPERATION (1997).

13. For an example of scholarship designed to promote such understanding, see Amy H. Kastely, *Out of the Whiteness: On Raced Codes and White Race Consciousness in Some Tort, Criminal, and Contract Law*, 63 U. CIN. L. REV. 269 (1994).