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Que Viva The Scholar!

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FOREWORD

¡QUE VIVA *THE SCHOLAR*!

BILL PIATT*

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INTRODUCTION

Congratulations to *The Scholar* on its 20th anniversary! It is indeed an honor to teach at St. Mary’s University School of Law (St. Mary’s) and to work with you as Co-Chair of *The Scholar’s* faculty committee. Thank you for giving me this opportunity to reflect on our shared history and offer some perspectives that I hope will be of assistance, encouragement, and guidance as we continue this journey together.

St. Mary’s offered me the opportunity to serve as Dean from 1998 to 2007. The chance to work at a Catholic, Marianist institution¹ focusing

* Former Dean (1998–2007) and Professor of Law at St. Mary’s University School of Law.

1. Members of the Society of Mary or the Daughters of Mary Immaculate are known as Marianists. *The Marianists*, ST. MARY’S UNIV. <https://www.stmarytx.edu/campuslife/spiritual/marianists> [https://perma.cc/2RRF-LU3D] (last visited Oct. 11, 2017). In May of 1852, at the

on social justice, with well-developed clinical and international programs,² among various other programs, was very exciting. However, there seemed to be some challenges and opportunities. One of those opportunities presented itself soon after my arrival.

Associate Dean David Lopez brought to my attention that a group of students had written some papers they wanted to publish. Although St. Mary's has an excellent journal, the *St. Mary's Law Journal*, that Journal, like most, publishes student notes selected from its own members and would not have room to publish pieces from other St. Mary's students. I met with several faculty members who shared an interest in obtaining the publication of these monographs. Their thought was that this would be a one-time publication and the printed articles would be mailed out to law schools and community organizations. Their request was modest yet incredibly significant.

I do not believe there are coincidences in life. As I reflected upon my own perspectives on legal writing and legal education, the enthusiasm of these students and professors, and the Mission of the law school³ that had just adopted me, it seemed that it might be even more appropriate to “swing for the bleachers” and consider creating a second journal at St. Mary's. In that way, the scholarship proposed in these monographs would become a permanent fixture at our school. Publishing these

Request of Galveston Bishop John May Odin. brothers from the Society of Mary founded St. Mary's University in the spirit of the “Marianist ideals of academic excellence, ethical commitment[,] and service to the community.” *History in a Timeline*. ST. MARY'S UNIV., <https://www.stmarytx.edu/about/history-in-a-timeline> [<https://perma.cc/56EF-D1KK>] (last visited Oct. 11, 2017).

2. St. Mary's School of Law offers the Civil Justice Clinic-Consumer Protection, Civil Justice Clinic-Family Law, the Immigration and Human Rights Clinic[,] and the Criminal Justice Clinic course programs. *Clinical Program*. ST. MARY'S UNIV., <https://law.stmarytx.edu/academics/special-programs/center-legal-social-justice/clinical-program/#civiljustice> [<https://perma.cc/JD2J-3PYZ>] (last visited Oct. 11, 2017). Additionally, the Law School provides study abroad programs in Austria covering international legal issues, and in China covering international business law. *Innsbruck, Austria Summer Study Abroad Program*. ST. MARY'S UNIV., <https://law.stmarytx.edu/academics/special-programs/austria> [<https://perma.cc/RU7Q-2XLN>] (last visited Oct. 11, 2017); *China Summer Study Abroad Program*. ST. MARY'S UNIV., <https://law.stmarytx.edu/academics/special-programs/china> [<https://perma.cc/3P29-4SSA>] (last visited Oct. 11, 2017).

3. The Law School is committed to providing a powerful curriculum, a diverse community of learners and distinguished mentors, a world-class international program, and a nationally acclaimed advocacy program. *About St. Mary's Law*. ST. MARY'S UNIV., <https://law.stmarytx.edu/academics/about> [<https://perma.cc/N411N-6MD6>] (last visited Oct. 11, 2017).

monographs in a formal journal, it seemed to me, would also give more prestige and readership potential to them. I proposed that we seek faculty and university approval for the creation of a second journal. The reaction from my colleagues was concern that neither approval would occur and the writings would die on the vine if not published right away in monograph form. I promised to pursue both. Spoiler alert: *The Scholar* came into existence! (That's not much of a spoiler—you wouldn't be reading this if our efforts had failed!).

Before continuing and filling in the gaps, however, I would like to back up a bit. To have a better grasp of the significance of *The Scholar's* importance and accomplishments, it might help to briefly examine the purposes of our legal scholarship. Then, we will consider more of the history of the development of *The Scholar*. We conclude with an outline of how we can continue to grow and nurture *The Scholar* for the future of legal scholarship concerning race and social justice.

A. *Why Write?*

Everyone who has ever undertaken to write a scholarly piece has their own motivations. The motivation that has served me over the last forty years, and *The Scholar* for twenty, seem parallel: to deliver a message that otherwise might go undelivered. Perhaps better stated as adopted by the early promoters of *The Scholar*: “To give a voice to the voiceless.” Let me explain by sharing some personal experiences.

Law school was very attractive to me and to others who, in the late '60s and early '70s, saw the law as a vehicle for the advancement of civil rights and public service. I pursued those goals after graduation. I soon learned that while I could obtain assistance for people on an individual basis, there were so many others with potentially similar problems who I could not assist. Teaching gave me the opportunity, through clinical and classroom work, to assist in the training of students who might carry on similar work. Still, except in the relatively rare law reform matters, the needs of individual clients could be met through legal representation of them, but the larger issues lingered.

Writing became the obvious mechanism to address a potentially broader audience on the larger issues. While I continued my individual

law reform litigation⁴ and my teaching, I undertook to write about certain issues with the hope of making a greater impact. Before coming to St. Mary's, I published books and articles on civil rights topics, including language rights,⁵ immigration,⁶ and race relations.⁷ During my deanship, time constraints limited my scholarship. However, upon completion of my nine-year term as dean I resumed my writing. Today, *The Scholar* and I both continue to address civil rights topics concerning immigration⁸ and other related issues such as gender equality,⁹ religious

4. I served as counsel for Plaintiffs in several law reform cases. *E.g.*, *Fuentes v. White*, 709 F. Supp. 1926 (D. Kan. 1989).

5. Bill Piatt, *Linguistic Diversity on the Airwaves: Spanish-Language Broadcasting and the FCC*, 1 LA RAZA L.J. 101 (1984); Bill Piatt, *Spanish on the Job: Business Needs and Employee Rights*, LA VOZ DEL LLANO (KAN. ADVISORY COMM. ON HISP. AFF.), July 1986, at 1, 8; Bill Piatt, *Toward Domestic Recognition of a Human Right to Language*, 23 HOUS. L. REV. 885 (1986); Bill Piatt, *Attorney as Interpreter: A Return to Babble*, 20 N.M. L. REV. 1 (1990); Bill Piatt, *Of Pigeonholes and Prospective Jurors*, 14 CHICANO-LATINO L. REV. 61 (1994); Bill Piatt, *The Confusing State of Minority Language Rights*, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY (James Crawford, ed. U. of Chicago Press 1992); Bill Piatt, *Attorney As Interpreter*, in THE LATINO/A CONDITION: A CRITICAL READER (Richard Delgado and Jean Stefancic, eds. N.Y.U. Press 1998); BILL PIATT, ¿ONLY ENGLISH? LAW AND LANGUAGE POLICY IN THE UNITED STATES (U. of New Mexico Press 1990); BILL PIATT, LANGUAGE ON THE JOB: BALANCING BUSINESS NEEDS AND EMPLOYEE RIGHTS (U. of New Mexico Press 1993).

6. BILL PIATT, IMMIGRATION LAW: CASES AND MATERIALS (1994); Bill Piatt, *Born as Second-Class Citizens in the USA: Children of Undocumented Parents*, 63 NOTRE DAME L. REV. 35 (1988).

7. BILL PIATT, BLACK AND BROWN IN AMERICA: THE CASE FOR COOPERATION (N.Y.U. Press, 1997).

8. Bill Piatt, *Immigration Reform from the Outside In*, 10 SCHOLAR 269 (2008); ; Bill Piatt, *Border Wars & the New Texas Navy: International Treaties, Waterways, and State Sovereignty after Arizona v. U.S.*, 15 SCHOLAR 535 (2013); Bill Ong Hing, *The Failure of Prosecutorial Discretion and the Deportation of Oscar Martinez*, 15 SCHOLAR 437 (2013); Alejandra Martinez, Comment, *Veteran's Banished: A Fight to Bring Them Home*, 19 SCHOLAR 321 (advocating for the rights of deported veterans, including legislation that would allow honorably discharged veterans to return to the United States).

9. Bill Piatt, *Gender Segregation in the Public Schools: Opportunity, Inequality, or Both?*, 11 SCHOLAR 561 (2009); Susan Estrich, Reflection, *Bridging the Gender Gap*, 3 SCHOLAR 153 (2001); Yvette Aguilar, Comment, *Gagging on a Bad Rule: The Mexico City Policy and Its Effect on Women in Developing Countries*, 5 SCHOLAR 37 (2002).

freedom,¹⁰ and human trafficking.¹¹ The promoters of *The Scholar* in 1998, along with our students and faculty who have been involved with *The Scholar* over the last twenty years, exemplify the commitment and hope, in which I share, that providing a scholarly, analytical framework for addressing civil rights issues will afford encouragement and motivation for those who might help implement the necessary changes.

Back now to the meetings with faculty and students in 1998 who wished to publish monographs. Those students and faculty members wanted to reach an audience that could possibly effectuate change with the individual monographs. I believed that rather than utilizing a one-shot approach, we could continue to encourage others far into the future by institutionalizing these efforts through the creation of a second law journal dedicated exclusively, in the words of the founding members to “continue the difficult conversations, to hear those voices which are muted by mainstream society, and to examine the law as it impacts disenfranchised groups.”¹² It was not clear that this approach would succeed, and it was frustrating to the promoters to have to wait to see if we could create another journal.

B. *Why a Second Journal?*

I did not believe that it would be difficult to obtain faculty approval. But I knew concerns would be raised when we sought University approval, as discussed below. In preparing to seek formal approval, I examined (and later presented across campus) a series of explanations on why the creation of a second journal focusing on civil rights would be an

10. BILL PIATT, CATHOLIC LEGAL PERSPECTIVES (2d ed. Carolina Academic Press, 2015); Bill Piatt, *Catholicism and Constitutional Law: More Than Privacy in the Penumbra*, 7 VILL. J. CATH. SOC. THOUGHT 337 (2010); Bill Piatt, *State Bar Efforts to Deny Accreditation to Faith Based CLE Ethics Programs Sponsored by Religiously-Affiliated Law Schools*, 29 REGENT U. L. REV. 293 (2016–2017); David L. Abney, *Religion and Housing for the Homeless: Using the First Amendment and the Religious Land Use Act to Convert Religious Faith Into Safe, Affordable Housing*, 8 SCHOLAR 1 (2005).

11. CHERYL PAGE & BILL PIATT, HUMAN TRAFFICKING (2016); Elizabeth Kaigh, Comment, *Whores and Other Sex Slaves: Why the Equation of Prostitution with Sex trafficking in the William Wilberforce Reauthorization Act of 2008 Promotes Gender Discrimination*, 12 SCHOLAR 139 (2009) (discussing the necessary distinction to be made between sex trafficking and prostitution under the context of the federal Victims of Trafficking and Violence Protection Act).

12. *Reflections of the Founding Members*, 5 SCHOLAR 1 (2002) The founding members of *The Scholar* were Maria Montoya Chavez, Denise Y. Mejia, Tamara D. Pitts, Isabel de la Riva, Antonio Fernandez Rivera, and Sonia M. Rodriguez.

important addition to our law school. Here is a brief summary of them. They are perhaps even more important today.

Legal writing during law school helps students develop the analytical skills they will need as students, and later, as practitioners.¹³ When a law school supports a law journal, there is an institutional benefit as well. Faculty and students have a forum for publishing their works, and the institution benefits from the resulting prestige and publicity the publication might attract. The legal system benefits from the shared wisdom contained in these journals.¹⁴ But merely addressing the generic and traditional individual and institutional benefits of the publication of a law journal did not completely explain the need to institutionalize a commitment to civil rights scholarship. The *St. Mary's Law Journal* had room for this type of writing. However, adding a second journal would double the institutional opportunities for a journal-type writing experience, while at the same time, doubling or tripling the amount of scholarship published at St. Mary's—but this time, devoted exclusively to civil rights issues.

I also pointed out that by creating a second journal, St. Mary's would be following the tradition of other great law schools that have created a specialty journal.¹⁵ I would note, by the way, that these journals

13. See Joshua D. Baker, *Relics or Relevant?: The Value of the Modern Law Review*, 111 W. VA. L. REV. 919, 929 (2009) (discussing the opportunities for more legal training and preparation for a career beyond law school that come from participating on a law review); LAWRENCE J. TRAUTMAN, *THE VALUE OF LEGAL WRITING, LAW REVIEW, AND PUBLICATION* (2014) (opining that legal research and writing is the foundation for a successful career in the law); see also Menachem Wecker, *Law Review Leads to Legal Jobs, Recruiters Say*, U.S. NEWS (Jan. 19, 2012, 9:00 AM), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/01/19/law-review-leads-to-legal-jobs-recruiters-say> (explaining staff writers “represent the most highly sought combination of the brightest and most hard working students,” which is precisely what law firms look for).

14. See Mary Garvey Algero, *Long Live The Student-Edited Law Review*, 33 TOURO L. REV. 379 (2017) (identifying law reviews as a vital role in the development and publishing of legal scholarship); Richard A. Wise, *Do Law Reviews Need Reform? A Survey of Law Professors, Student Editors, Attorneys, and Judges*, 59 LOYOLA L. REV. 1, 26 (2013) (explaining law review membership gives students the credentials that improve their job prospects, including federal judicial clerkships and associate positions); G.M. Filisko, *Law Review: Will it Open Doors for Your Career?*, ABA (Mar. 1, 2014), <https://abaforlawstudents.com/2014/03/01/law-review-will-open-doors-career> [<https://perma.cc/X9A2-ULRP>](stating the skills learned as a staff writer are the “hardest to learn and speak the loudest to employers”).

15. Among the more widely known secondary journals focusing exclusively on civil rights issues are the *Columbia Human Rights Law Review* at Columbia Law School, founded in 1968; the *Harvard Human Rights Journal*, at Harvard Law School, established in 1988; the *Yale Human*

celebrate milestones, as is *The Scholar*, by publishing essays similar to this one,¹⁶ or by press releases¹⁷ Because *The Scholar* editors have shared my concerns for civil rights scholarship, I have been honored to have published some of my works in *The Scholar*.¹⁸

The most important argument in urging the approval of a second law journal was that this new journal would assist in the fulfillment of the mission of St. Mary's University by addressing contemporary civil rights issues, providing a forum in the future for such scholarship, and encouraging a substantial number of students and faculty to participate in this process and specialized concentration. Catholic, Marianist legal education means a commitment to this type of writing.

C. *Of Budgets and Bureaucracies*

Law schools accredited by the American Bar Association are required to adhere to certain norms.¹⁹ One important requirement is faculty governance.²⁰ While a dean at St. Mary's could likely authorize the expenditure of limited funds to publish monographs on a one-time basis, creation of a second law journal required initial approval by the faculty of the law school. Then, in the St. Mary's hierarchy, it required the

Rights and Development Law Journal, at Yale Law School, established in 1998; and the *Northwestern Journal of Human Rights*, formerly *Northwestern Journal of International Human Rights*, Northwestern University School of Law; established in 2003. Other important secondary journals focus on Hispanic issues: *La Raza Law Journal* at The University of California at Berkeley, and the *Chicano-Latino Law Review* at the University of California at Los Angeles.

16. E.g., Angela Walker, *Foreword: Reflections on the 10th Anniversary of the Journal of International Human Rights*, 10 NW. J. OF INT'L HUMAN RIGHTS 1 (2011).

17. E.g., *IU Maurer School's Indiana Journal of Global Legal Studies Turns 25*, INDIANA UNIV. BLOOMINGTON (MAR. 20, 2017), <http://archive.news.indiana.edu/releases/iu/2017/03/global-legal-studies.shtml> [<https://perma.cc/W5YA-ZQL5>].

18. See *supra* notes 9–11.

19. See generally SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B., AMERICAN BAR ASSOC., ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018 (2017) https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf [<https://perma.cc/7RMZ-BQFF>] (outlining the accreditation standards required: general purposes and practices; organization and administration; program of legal education; the faculty; admissions and student services; library and information resources; and facilities, equipment, and technology).

20. See *id.* at 27–30 (2017) (delineating the faculty's obligations as conducting scholarly research, participating effectively in the governance of the law school, and providing service to the legal profession and the public).

approval of Academic Council (the governing body of deans and the Vice-President for Academic affairs), the Executive Council (all of the Vice-Presidents), and finally, the President of the University.

The faculty promoters of what was to become *The Scholar* reluctantly agreed to trust me to pursue faculty approval for the second journal concept. I discussed these matters with several faculty members. I learned that Professor Aloysius A. Leopold, a St. Mary's University School of Law graduate,²¹ had made the motion at a faculty meeting in the Fall of 1967 to create the *St. Mary's Law Journal*. Al is a very conscientious teacher, and a scholar with a deep commitment to St. Mary's and its Catholic, Marianist traditions. Indeed, one of his sons is a Catholic priest. Al listened to my concerns and enthusiastically agreed to make the motion before our faculty to create the second journal. It passed unanimously.

Another hurdle then presented itself. The creation of a second journal would require commitment of substantial resources. Among others, this included office equipment and supplies, secretarial assistance, costs of publication, and student stipends. Faculty time would be diverted away from other classes, and office space would need to be identified and adapted to the functions of a law journal. The University would have to approve all of this.

At the time of my arrival, St. Mary's had the second highest law school tuition, and the second lowest bar passage rate in the state of Texas. There was concern across campus of whether it was appropriate, under these circumstances, to commit resources to a second journal. The thinking was that monies poured into a new journal would be monies unavailable for bar passage efforts. It was a difficult sell; the university-wide concerns had a great deal of merit. They, and I, also worried we might be distracting our students away from bar studies. After all, the reason most of our students attend St. Mary's is to practice law. One cannot practice law in Texas without obtaining a law license, which means passing the bar exam. One cannot advocate as an attorney for social justice if one is not licensed to practice.

21. Al received his J.D. from St. Mary's in 1962 and subsequently obtained a Bachelor of Arts degree in history in 1970. He started teaching at St. Mary's University School of Law in 1967. *Aloysius A. Leopold*, ST. MARY'S UNIV., <https://law.stmarytx.edu/academics/faculty/aloysius-leopold> [<https://perma.cc/B8ZZ-QG9F>] (last visited Oct. 13, 2017).

I was required to give repeated assurances that we would not be distracted from our bar passage efforts in this endeavor. I took the view that commitment to racial and social justice and the ability to pass the bar exam were not mutually exclusive concepts. Both, however, required more effort and resources. Both required the commitment, not only of the handful of students who initially would be writing for what was to become *The Scholar*, but would also require the support of the entire law school community. I was able to convince the University that helping these students implement their scholarly writing proposals would improve writing skills and provide additional motivation toward law school success and bar passage. In other words, it would minimize the bar risk and at the same time allow students to focus on fulfillment of the mission of our school.

Ultimately, the University agreed to take the longer view, the view absolutely consistent with the mission of the university. All levels of university administration agreed to fund a second journal dedicated exclusively to issues related to racial and social justice concerns.

There were growing pains. We did not have the resources to fund the fledgling *Scholar* at the same level as the *Journal*. I had to promise the funders across campus the growth of *The Scholar* would be incremental, depending upon continuing student and faculty interest, and simultaneously demonstrate our bar passage efforts were bearing fruit. That incremental approach frustrated the very passionate faculty members who were most directly involved with *The Scholar*. Legitimately, they were concerned our progress was so slow that good students would become dissuaded from *Scholar* participation.

However, due to the diligent involvement of those same faculty members and the continuing enrollment of dedicated students in *The Scholar*, bit by bit, *The Scholar* took its place in our community—ultimately resulting in the magnificent publication it has become.²² There are too many people who were involved in this success to mention everyone, and I hesitate to single out some as I do not wish to overlook the efforts of all. Still, in addition to students and faculty, one other group

22. The inaugural issue masthead was comprised of six editorial board members and eighteen staff writers. See 1 SCHOLAR 1 (1999). Ten years later, *The Scholar* was comprised of twenty-eight staff writers and nine editorial board members. 10 SCHOLAR 1 (2008). Today, *The Scholar* is comprised of thirty-two staff writers and nine editorial board members. 20 SCHOLAR (forthcoming 2018).

of people should receive our credit and thanks. All of the great thinking and writing that has gone into *The Scholar* would not have seen the light of day but for the efforts of those who provided the administrative and clerical assistance. In this regard, Maria Vega, Guadalupe Valdez, and Francisca Perez are among those who helped carry the aspirations of our students into publication.

And importantly, the success of *The Scholar* did not come at the expense of bar passage rates. In fact, within the first ten years of the *Scholar*, St. Mary's students exceeded the overall first-time state average nine times, doing so consecutively from the February, 2006 administration through the February, 2009 administration. In fact, the scores on the July, 2004 bar exam were the highest from St. Mary's University School of Law in the preceding eight years. The February 2006 results were the highest in the previous nine years. The July, 2008 bar passage rate was the highest St. Mary's graduates had achieved since July of 1987.²³ While there may be many explanations for the above-average performance, it is my belief that *The Scholar* improved our bar passage rate by providing a high-quality, writing- and research-intense experience for its participants.

D. *Back to the Future*

The reasons *The Scholar* came into existence are just as valid and important today, if not even more so.²⁴ The possibility of a retrenchment

23. See generally *Statistics & Analysis*, TEX. BD. OF LAW EXAMINERS, <https://ble.texas.gov/statistics> (last visited Dec. 18, 2017) for a school-by-school break down of bar exam passage rates organized by month and year of bar administration. See also *In-State Pass Rate Statistics for 1991 to 2002*, TEX. BD. OF LAW EXAMINERS, https://ble.texas.gov/in-state-pass-stats_91 [<https://perma.cc/P9BT-K68B>] (last visited Dec. 18, 2017); *In-State Pass Rate Statistics for 2003 to 2008*, TEX. BD. OF LAW EXAMINERS, https://ble.texas.gov/in-state-pass-stats_03 [<https://perma.cc/E73Q-5GFY>] (last visited Dec. 18, 2017).

24. Dean Kevin Johnson's *Foreword* in the inaugural issue twenty years ago, discussing the regression of civil rights in society, especially in areas that disparately impact minorities, overlays almost perfectly with current social justice issues confronted today. Kevin R. Johnson, *Dedication of The Scholar: St. Mary's Law Review on Minority Issues*, 1 THE SCHOLAR 1, 1 2 (1999) (discussing the diminished effect of affirmative action in higher education, mistreatment of migrants from Mexico and Central America, and overt discrimination and highly visible hate crimes committed against LGBTQ individuals). See Ana M. Novoa, *Count the Brown Faces: Where is the "Family" in the Family Law of Child Protective Services*, 1 SCHOLAR 5 (1999) ("It started out as a brave vision in the minds of six law students . . . in the midst of an aggressive assault on civil rights laws, immigrant laws, and bilingual education, we decided to revive a project begun by students several years before, to create a legal publication which spoke to minority issues.").

in a commitment to civil rights is exactly the reason to write and advocate, and is exactly why we need *The Scholar*. Its success, just as in its formation, depends upon the continuing enthusiasm of students and faculty, and the continuing commitment of the institution to support and encourage it. In this vein, I urge all who read this to celebrate intensely, but briefly, to recommit to the efforts of *The Scholar*, and continue to move this incredible journal forward. I anticipate participating in another milestone celebration in another twenty years. By then, the problems of inequality and injustice *The Scholar* has so effectively addressed over the past twenty years might have been eliminated due in part to the efforts of the students, faculty, staff, and alumni of *The Scholar*. In that case, we will really be able to celebrate! If social injustice remains, people who are now as young as kindergarten age will be moving into the fray serving as writers and editors as *The Scholar* continues on its (our) mission. In the meantime—;que viva *The Scholar*!

