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Introduction

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INTRODUCTION

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Welcome to the Seattle Journal for Social Justice's Spring Edition. We are honored to present this array of articles from a diverse group of authors.

Justin Loveland does not shy away from the challenges our current Administration poses to the security of human rights nationally and abroad. He boldly demands the ratification of the American Convention on Human Rights. Noting that, despite our signature, we have yet to ratify, adopt, or accept the jurisdiction of the Inter-American Court over our conduct, acts or omissions in our jurisdiction. Loveland recognizes that ACHR ratification is vital to increasing human rights protections in our country and region. Loveland thoroughly examines the social and political challenges to ratification, but in *40 Years Later: It's Time for US Ratification of the American Convention on Human Rights*, Loveland nonetheless maintains a compelling case for Congress's adoption.

In *Theorizing Racial Microaffirmations as a Response to Racial Microaggressions: Counterstories Across Three Generations of Critical Race Scholars*, Lindsay Pérez Huber, Daniel G. Solorzano, and Layla Huber-Verjan follow the Critical Race tradition of counterstorytelling. They tell three stories from across three generations of Critical Race Scholars in Education. In each story, they explain how they came to research microaggressions and how that work led to their present-day understandings. In response to racial microaggressions, the authors theorize racial microaffirmations. Microaffirmations are defined as subtle verbal and non-verbal strategies People of Color consciously engage (with other People of Color) that affirm each other's values, integrity, and shared humanity. Initially, this piece was scheduled for publication in the 2017 LatCrit Symposium. Unfortunately, the article was not published in that edition

because of mistakes on the part of *SJSJ*. *SJSJ* is very excited to continue working with the authors to publish their work.

In *"Who is a LatCrit?" Jerome Culp and Angela Harris Provide Answers and Ways of Being*, Margaret Montoya discusses LatCrit Storytelling and, particularly, the life and achievements of Jerome Culp. Professor Montoya focuses on how Jerome put the "me" in scholarship and his teaching. She writes about how the stories that form the body of LatCrit scholarship are like fractal fragments, like a generational shorthand. Professor Montoya spends the second half of her article celebrating her colleague Angela Harris's incredible scholarship and prodigious publication track record. She concludes the paper with a poignant poem. This paper originally appeared in *SJSJ's* 2017 LatCrit Symposium but has been reprinted in this edition because of errors in the original version. *SJSJ* is incredibly grateful to Professor Montoya for having had the opportunity to correct its earlier mistake.

Two of our featured articles address vitally timely issues—the right of protest, and the right to vote. Constitutional rights take center stage for Annie Barouh, who tackles the latter. In *A New Old Solution: Why the United States Should Vote By Mail-in Ballot,* Barouh proposes that mail-in ballot legislation be enacted throughout the nation, after examining the vulnerabilities of our current voting system from external and internal sources such as Russia and on-site voter intimidation tactics. Moreover, as some states continue to place burdens on voting—from requiring picture ID, to closing polling and registration sites, to purging voter rolls—the picture has long been clear of the intent, if not the effect, of these efforts: to discourage or curtail the right of black and brown citizens to vote. Barouh sets out what such legislation would look like, and its processes. Deftly, Barouh addresses some of the main objections to mail-in ballots, including the fraud canard, and highlights the experiences of Washington and Oregon mail-in voting systems as successful models.

In *Anti-Masking Statues and Anonymous Protest In the Age of Surveillance*, Nic Doherty explores the historical and legal dimensions of anti-masking statutes. Doherty urges the importance of anonymity to exercise First Amendment freedoms and asserts that general masking statutes impose undue infringements. As current events of protests in the wake of police-involved deaths or pandemic emergency orders, public demonstrations are of vital importance to a democratic society. To incentivize the repeal of state anti-masking statutes, Doherty proposes the disbursement of crime prevention grants available to the federal Justice Assistance Grant Program. Doherty's novel idea entails giving monies to state and local governments that repeal or refuse to enact general anti-masking statutes. Examining some of the more obvious objections, *e.g.*, how groups like the Ku Klux Klan have used anonymity as a weapon to terrorize, Doherty makes a case that such use of federal funds to ensure a more robust exercise of First Amendment rights would outweigh any possible detriments.

In *The Balance of Safety and Religious Freedom: Allowing Sikhs the Right to Practice their Religion and Access Courthouses*, Karamvir Dhaliwal writes on the highly relevant topic of religious freedom. Dhaliwal writes to raise awareness of the various places Sikhs are excluded in American society and to propose solutions that will allow them to exercise their rights without compromising their religious beliefs. She argues that Sikhs should be allowed to wear Kirpans without suffering discrimination. Dhaliwal recommends that Washington State, and particularly its courthouses, adopt the Federal Protective Services policy, which would allow Sikhs to carry Kirpans under 2.5 inches to enter without any issues and would allow requested exceptions for Kirpans over 2.5 inches. She also acknowledges that community engagement and education are crucial components. Dhaliwal recognizes that even if her suggestions were implemented, Kirpan-carrying Sikhs would still have to wait longer than the average court attendees and would likely be questioned about their religion at relevant security checkpoints. However, they would not face a moral dilemma everytime they participate in court.

Walter I. Gonçalves, Jr., examines racial and ethnic bias in lawyering in *Narrative, Culture and Individuation: A Criminal Defense Lawyers Race Conscious Approach to Reduce Implicit Bias for Latinx*. Beginning with the fact that Latinxs represent a population of over 54 million and are over 17 percent of the United States national total, media persist in framing Latinx in adverse stereotypes. These media representations, Gonçalves argues, have a demonstrable and pernicious impact upon the absence of justice within criminal institutions and client representation. Gonçalves makes several thoughtful and important proposals to reduce the existence of explicit and implicit bias in the system, which starts with enhancing the cultural competence of the criminal defense bar. He urges attorneys to become much more adept at understanding culture and the ability to construct appropriate and compelling positive narratives on behalf of their Latinx clients. Gonçalves goes further to articulate the methods by which judges and juries may be educated, and processes which can be applied consistently across cases to mitigate bias. Those methods involve both education on media bias and anthropological, social, and socio-economic data to assist in reducing the opportunity of stereotype bias to effect decision-making.

In 2018, the Washington State Supreme Court charted a ground-breaking course regarding criminal justice and juveniles. In *State v. Bassett: Washington Courts Can No Longer Sentence Juveniles to Die in Prison*, author Carrie Mount recounts the court's decision. In setting forth the United States and Washington State jurisprudence surrounding juvenile criminal sentencing of life without parole, Mount explores the nuances of those decisions, which came to bear in *Bassett*. The sharply divided court (it was a 5-4 decision) surfaced the ways in which the time-worn principles of judicial discretion in considering youth-based mitigating factors in criminal sentence reposed with the trial courts continues to do injustice in some cases—so much so as to violate Washington State's Article 1 Section 14 constitutional edict against cruel punishment.

The presence or absence of justice underlying the death penalty is the topic of Michael Conklin's review of Austin Sarat's 2019 book *The Death Penalty on the Ballot*. In his book, Sarat analyzes United States death penalty ballot initiatives over the last century, of which the vast majority were successfully passed into law. In doing so, Sarat surfaces the common themes of the ballots' texts and those of the tactics associated with the initiatives' advocacy and resistance. Conklin critiques the historian's analysis, finding specific concerns with his over-amplification (if not insufficient evidence) of racial motivations behind the support for the death penalty, as well as with the manner in which Sarat conflates or elides the distinction between wrongful-conviction determinations of defendants and "true" innocence. Yet, even as Conklin also chides Sarat's apparently inconsistent position that death penalty ballot successes are also undemocratic, he lands on the position that Sarat's book is both informative and insightful.

In *Decriminalizing Non-Appearance in Washington State: The Problem and Solutions for Washington's Bail Jumping Statute and Court Nonappearance*, Aleksandria E. Johnson proposes reforms around bail revocations for failure to appear. Johnson advances the argument that criminalizing non-appearances is not just inhumane but is in fact counterproductive and overburdens the system. The most opprobrious aspect of our bail revocation laws is that they primarily serve as a mechanism to add criminal charges against a defendant and compel plea bargains from an increased position of disadvantage. Further, the threat of additional charges for missing a court appearance unfairly compels defendants to enter in plea bargains. Johnson's article explicates that a defendant's failure to appear frequently has less to do with criminal motivation, but legitimate and—for those in poverty—near-universal circumstances owing to financial, transportation, and housing insecurity. Johnson rejects further criminalization of poverty and advocates a more compassionate and cost-effective approach to ensure appearances by defendants.

In her article, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-evidence*, Yu Du compares and analyzes neuroscientific evidence with useful promise in criminal cases. Du explicates the intellectual and pragmatic challenges to such evidence, not the least of which is its cognitive accessibility to attorneys, judges, and juries alike. Du blames the inconsistent application of this evidence in court cases on the lack of appropriate presentation and explication. Du posits a way forward that establishes a standard protocol by which to introduce and publish neuroscientific evidence during proceedings to make it more accessible, understandable, and useful.

The commercial enterprise of youth in advertising and entertainment is the subject of Jordyn Sifferman's *SJSJ* contribution, *Social Responsibility in Advertising: Extending Protections for Children in California's Modeling Industry*. Sifferman reminds us that social justice demands us to ensure that children involved in the advertising industry are protected. Sifferman provides an account of the modeling industry, surfacing the shocking and criminal circumstances in which many youth find themselves. The article exposes how many models become slaves to the modeling agencies to which they are signed, their vulnerability to physical harms such as eating disorders, and the industry's especial sexualization of underage girls specifically in advertising and on-the-job sexual assault. Advancing California laws as worthy of emulation, Sifferman evaluates domestic and foreign laws and policies involving children and proposes legislative changes that could be applied in other states.

Author Adeline Michoud looks at global human rights from a corporate lens in her work, *Can Soft Words Lead to Strong Deeds? A Comparative Analysis of Corporate Human Rights Commitments' Enforcement*. Michoud explores various corporate social responsibility (CSR) polices of international corporations. In doing so, Michoud highlights not only their well-meaning, but duplicitous motives and impacts. Michoud exposes how many CSR policies lack accountability especially as to those they purport to

protect, *viz.* employees and third-party citizens who are often the victims of environmentally, socially, and economically devastating practices. Michoud recommends that CSR codes of conduct better map with human rights mandates of international treaties, and that sovereigns and the corporations themselves implement laws and policies to ensure transparency and accountability.

In *Protecting the Individual Rights of NFL Players as Private Sector Employees*, Frederick Vranizan proposes changes to both the NFL Collective Bargaining Agreement and the structure of rulemaking and enforcement processes to protect individuals from unfair practices that currently exist in the NFL. Vranizan describes how the current rulemaking process and the enforcement mechanisms are dysfunctional. He then explains how the rules are intentionally vague, often leading to violations and inconsistent punishments. Further, Vranizan discusses the Collective Bargaining Agreement's disciplinary process, which frequently falls short of industry standards. Concerned with the fairness of this process, Vranizan urges the NFL to implement sweeping changes to both rulemaking and disciplinary systems, with a mind to protecting players' rights and the integrity of the NFL as a whole.

The need for more stringent protocols to protect consumers' online data is the subject of Neeka Hodaie's article, *Real You Meets Virtual You: It Is Time for Consumers to Regain Power Online*. Hodaie problematizes online data collection and consumers' abject lack of appreciation of its utter scope. Hodaie begins with the critical principle that we all should know what data is being collected about us, and that we must also be empowered to determine what data is in fact collected, how it is being collected and used, and the degree of security of its preservation. Recognizing that businesses lack incentive to be transparent, informative, and accountable for personal data collection and dissemination, Hodaie makes a compelling recommendation: a pre-emptive federal law that allows consumers to opt-in to share data permissions that online businesses currently present. Such a law would also

advance consumers' right against the economic exploitation of their information by allowing greater self-determination as to if, when, and how their personal information is commercially used.

We are very proud to have compiled such thoughtful and forward-looking works.