

Editors' Note

This year marks the fiftieth anniversary of the landmark 1964 Civil Rights Act, which outlawed discrimination on the basis of race, color, religion, sex, and national origin. Although the Chinese Exclusion Act is long gone and the United States government has admitted the great injustice in interning over 110,000 Japanese Americans, our country still has a long way to go towards fully realized racial, religious, gender, and ethnic justice. After September 11, for example, South Asian Americans, Muslim Americans, and Arab Americans became subjects of an unprecedented level of surveillance and detention, and these groups continue to experience significant discrimination in the workplace and violence in places of worship today. The Civil Rights Act has done so much in eliminating segregation in schools and workplaces; however, in light of the injustices that still exist, we must continue to commit to the work of making our country more just and equal.

The *Asian American Law Journal* commits to this work by giving a platform and voice to issues of marginalization the Asian American community has lived and presently experiences. Asian Americans now make up nearly six percent of the United States population and are the fastest growing racial group, and yet tremendous bias, discrimination, and racial profiling persist. This volume, in particular, reflects articles, essays, and recent developments that ensure that such issues faced by the Asian American community are documented and disseminated.

Our volume begins with an article by Pooja Gehi and Soniya Munshi entitled *Connecting State Violence and Anti-Violence: An Examination of the Impact of VAWA and Hate Crimes Legislation on Asian American Communities*. This article examines how legislation intended to protect survivors of intimate violence and hate crimes can actually criminalize and perpetuate stereotypes for people of color, immigrant communities, and LGBTQ communities. Rather than put these communities at further risk for state-based, institutional violence, the authors propose a shift towards community-based responses.

In *Savagery in the Subways: Anti-Muslim Ads, the First Amendment, and the Efficacy of Counterspeech*, Engy Abdelkader examines various anti-Muslim advertisements that have appeared on government-owned transit systems and the responses to the ads thereafter. After discussing anti-Muslim sentiments after September 11, the author then describes instances of hate advertisements and the First Amendment litigation that followed. Abdelkader analyzes the effectiveness of counterspeech as the

preferred self-help remedy of first instance in order to undermine harmful anti-Muslim hate speech.

Is Diversity Diverse Enough, by Tung Yin, questions the conventional view of diversity used in American law schools, which are 60-70 percent white, and its relationship to “critical mass.” Rather than divide the remaining percentage of student seats among Asian American, African American, Latino/Hispanic American students, along with a handful of Native American students, Yin explores alternatives to achieving critical mass, such as increasing the proportional size of one minority group, even if doing so means having fewer members of other minority groups.

In *Recycled Hate: Tyler Clementi, Dharun Ravi, and Those at the Intersection*, Joseph Bui discusses the public response to Dharun Ravi’s involvement in Tyler Clementi’s tragic suicide in 2011. While acknowledging the significance of this event to the LGBT community, Bui examines how the criminal penalization and potential deportation of the South Asian teen impacts those facing multiple layers of oppression and also cautions the use single-issue rights-based advocacy that may work against marginalized communities.

Victor Bascara’s essay, “*In the future to any third power*”: “*Most favored nations, Personhood, and an Emergent World Order in Yick Wo v. Hopkins*,” suggests that *Yick Wo v. Hopkins* converges claims for equal protection of minority groups and assertions of equality of nations. By examining *Yick Wo* within the history of treaties signed by the United States with China, Bascara argues that the protection of persons under the Fourteenth Amendment aligns with present globalization discourse around “normal trade relations.” Through the convergence of the ideas of personhood and the sovereign nation in this exercise of Fourteenth Amendment protection, Bascara provides a future conception of non-discrimination in a globalized world.

Rachel Roberts, Fatima Iqbal, and Zahra Billoo authored a recent development piece entitled *The Changing Face of the American Worker*. The piece recounts the case of *EEOC v. Abercrombie & Fitch Stores*, involving Hani Khan’s experiences of employment discrimination because her *hijab* did not conform to the look policy of a clothing retailer. The authors touch on what this case means for Muslim Americans who are trying to fight employment discrimination and also provide a fuller picture of the American worker today.

Similar to the themes explored in this volume of the *Asian American Law Journal*, race, class, gender, and identity issues predominated our event programming throughout the academic year. In collaboration with the *Berkeley Journal of Employment & Labor Law* and the Thelton E. Henderson Center for Social Justice, the *Asian American Law Journal* put on a lecture entitled *Breaking Barriers: Low-Wage Workers in the Asian American Communities*. The Journal invited Veena Dubal to share about

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her work examining the San Francisco taxi industry, legal employment identities, and movement building.

Our annual Neil Gotanda lecture, held in conjunction with the *Berkeley Journal of African-American Law and Policy* symposium, discussed efforts to achieve diversity in the wake of *Fisher v. University of Texas*. Meera Deo discussed her work on empirically derived compelling state interests that courts can possibly consider to support affirmative action. Deo then led a separate conversation on the lack of diversity among law faculty and shared theoretical observations on the dearth of Asian American faculty members in particular.

Our seventh annual symposium, *Strangers and Stereotypes*, addressed the lack of representation of Asian Americans and how this has impacted the rights of our communities in law and society. Our lunch speakers, John Tehranian and Rose Cuison Villazor, spoke on topics related to colorblindness and how the legal status of Asian and Pacific Islander Americans have been constructed. Our afternoon speakers, Dr. Hatem Bazian, Stewart Chang, and Madhavi Sunder, discussed how Asian Americans are caught in stereotypes created by the media and how these stereotypes are being broken. Finally, our reception, which concluded the symposium, featured Karima Bennoune, who shared stories on the “invisible war” against fundamentalism.

As we continue to grapple with the present-day challenges related to the discrimination, exclusion, and oppression of the Asian American community, the *Asian American Law Journal* continues to strive to reflect the complexity and intersectionality of these issues. We thank all of our editors, members, and sponsors who make the publication of the journal possible. We especially want to thank the Asian American community, from the Chinese immigrants who challenged discriminatory statutes in the 1800s to present day Arab, Muslim, and South Asian Americans who are targeted by their employers. Their bravery reminds us that our community has a long way to go to achieve equal justice under the law, but it is our imperative to continue the work.

In solidarity,

Naomi Hung and Cristina Sepe
Editors-in-Chief
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Asian American Law Journal

The Asian American Law Journal Mandate

The mandate of the *Asian American Law Journal* is to publish commentary, analyses, and research on the experiences and concerns of Asian Americans. We believe that to advance the Asian American movement, we must recognize the diversity among Asian American communities and cultivate scholarship that promotes understanding and empowerment in order to foster resistance to oppression and the achievement of justice. The movement includes, but is not limited to, the intersections of gender, class, sexual orientation, religion and race. We recognize the histories of Pacific Islanders and support those who choose to maintain distinct community identities. In solidarity with all peoples who have been subordinated, we embrace the opportunity to publish works that address issues relating to all marginalized communities. The mission of our journal is to speak truth to power; to borrow from poet Janice Mirikitani, “We give testimony. Our noise is dangerous.”