

FOREWORD

A sense of urgency gripped the members of the Board of the *Chicano-Latino Law Review* on Wednesday, November 9, 1994. The day before, California voters sent shock waves through the Latino community by approving Proposition 187, which aims to deny social services and education to undocumented immigrants. While the pre-election polls showed either a close vote or a narrow victory for the initiative, few of us were prepared for the cold reality that faced us the morning after the election. The only solace we found were the legal actions preventing implementation of the initiative.

What explained this sense of demoralizing defeat? Although not all of us would be personally affected, we took the passage of the initiative personally. For us, the passage of Proposition 187 was more than just bad public policy. Proposition 187 symbolized an attack on our place in American society, regardless of our immigration status. Despite the initiative sponsors' mantra that 187 is "not about race," we knew it was about more than immigration.

We responded to the initiative's passage in a variety of ways. Many of us took to the streets in protest with allies from all racial communities. Through a clinical class at the law school, "Community Outreach, Organizing & Education," some of us worked to disseminate information to the Latino community in Los Angeles about the initiative's stay of enforcement imposed by federal and state courts. Still other staff members were involved in the legal battle against Proposition 187, with organizations such as the Mexican American Legal Defense and Educational Fund (MALDEF) and the American Civil Liberties Union (ACLU).

As a group, the members of the *Chicano-Latino Law Review* decided on the day after the election to devote the next volume of the *Review* to Proposition 187. We began on that day the always long and arduous task of finding authors to write articles for this volume. We continued this process through the summer, and began editing the articles in the fall of 1995. As a result, this volume is as much the work of the 1994-1995 staff of the *Review*, as it is the work of the current year's staff. Despite the changes in the journal's personnel, the sense of urgency that struck us the day after the election has remained remarkably consistent for the

last year, even while Proposition 187 has languished unenforced through continuing legal maneuvering in federal and state courts.

We unabashedly admit that the articles in this volume express a certain viewpoint about Proposition 187 — that it is morally and legally indefensible. This does not diminish the quality of the articles as scholarly pieces, nor is it inconsistent with the *Review's* reputation as a legal and academic journal. It is important to note, however, that the authors and the members of the staff do not all feel *exactly* the same about Proposition 187. Indeed, many in the Latino community, and other racial communities, supported the initiative. We cannot deny the diversity of thought in our community, but in this volume we attempt to explain and influence opinions among Latinos, and to further understanding of Latinos outside of our community. Thus, the Board's heartfelt purpose in this volume is to promote understanding, rather than conflict, through discourse. To that end, we welcome reasoned, scholarly submissions from all sides of this debate for future editions of the *Review*.

This edition explores legal and political challenges to Proposition 187. The first article highlights the importance of these challenges because of the severe impact the initiative has had on the Latino community. The racial divisions that Proposition 187 produced and exacerbated are vividly portrayed in *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*. This piece, written by Nancy Cervantes, Sasha Khokha, and Bobbie Murray, originally appeared as a report of the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). The authors end with several proposals to combat the hate speech and violence encouraged by Proposition 187.

In David Sklansky's *Proposition 187 and the Ghost of James Bradley Thayer*, we find a constitutional response to the cry: "Let the People Decide!" Sklansky gives us a vivid historical account of why the people's will must conform with the Constitution. In so doing, he also gives us a rare and engaging look at the judicial review theories of a scholar best known for his work on evidence—James Bradley Thayer. Legal history thus provides important insights on contemporary issues.

Stuart Biegel in *The Wisdom of Plyler v. Doe*, and Phillip Cooper in *Plyler at the Core*, show the firm legal and doctrinal grounds of *Plyler v. Doe*, the 1982 United States Supreme Court decision that is a cornerstone of the legal challenge to Proposition 187. Cooper examines the history of the *Plyler* litigation, and the Supreme Court conference papers which show it to be the product of long established legal principles and coalition building across the Court's political spectrum, rather than simply

the “half-baked scheme of some liberal judge.” Biegel further shows the vitality of the *Plyler* ruling by applying it to the school choice context. His Article also points out how the savage inequalities in education today, for which some would blame the undocumented, are really a function of the wide income disparities present among citizens and noncitizens in America today.

In *Newly Ratified Human Rights Treaties and the Battle against Proposition 187*, Anne Paxton Wagley offers another legal basis to challenge Proposition 187. By detailing the text and procedures of the United Nations treaties on human rights, to which the United States is a signatory nation, Wagley provides a blueprint for advocates challenging Proposition 187, and other laws and policies violative of the human rights of all those present within the borders of the United States. The importance of spreading the word about these little known treaties cannot be understated, and the *Review* is proud to provide in this volume a forum to spread the news.

Finally, in his Comment *Critical Race Theory and Proposition 187*, Ruben Garcia examines the racial subtexts of Proposition 187 in the face of repeated arguments that the initiative has nothing to do with race. Through analysis of the historical and contemporary rhetoric around immigration law and policy, Garcia shows that concerns over America’s racial future serve as the catalyst for measures such as Proposition 187. Garcia argues that Proposition 187 should be tested under the strictest scrutiny of the Equal Protection Clause, because of the racism that played a part in the initiative’s creation, and the state-sponsored discrimination that will result if it is enforced.

It is important to note the current status of the legal challenge to Proposition 187. In November 1995, United States District Court Judge Mariana Pfaelzer held that Proposition 187 created an impermissible state scheme to regulate immigration. Judge Pfaelzer held that Proposition 187’s provisions for investigation, notification, and reporting of alleged undocumented immigrants constitutes an unlawful state scheme to regulate immigration. Judge Pfaelzer did not invalidate the ban on public college and university education for the undocumented, nor did she throw out the increased penalties for possession of false documents which have been in effect since Proposition 187’s passage. The higher education provisions, however, are still forbidden from taking effect by a state court injunction. The California Attorney General’s office has announced plans to appeal Judge Pfaelzer’s ruling to the Ninth Circuit Court of Appeals, and eventually to the United States Supreme Court, if necessary. To

facilitate discussion of these issues, we have included the full text of Proposition 187 as an appendix to this volume.

We would like to thank the entire 1995-1996 staff, as well as last year's staff, and especially Liliana Gonzalez, the 1994-1995 Editor-in-Chief, for providing the inspired leadership that began this volume. We would also like to thank all of the authors who responded to our call for articles, as well as the faculty and administration of the UCLA School of Law for their support of this volume. Of course, we remain continually indebted to our friends and families, and the *Raza* community for encouragement and support.

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