# Foreword

***By Judge Damon J. Keith***

It is truly an honor to introduce the first issue of the Midwest Law Journal for the Black Law Students Association. I applaud the editorial board, led by Karissa Holmes, who have worked tirelessly to make their vision of creating this journal a reality. Their work has ensured that a new forum will be present in the halls of academia – one that will highlight issues of race and the law from a Midwestern perspective.

As I reflect on the creation of this journal and what it means for the cause of equal justice under law, I remember the words of Justice Blackmun, who recognized that: "In order to look beyond race, we must first take account of race."[1] Nearly 150 years ago, in 1857, Chief Justice Roger Taney wrote, in the infamous Dred Scott case,[2] that "Negroes were regarded as beings of an inferior order; and altogether unfit to associate with the white race; either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect."[3]

Judge Taney's Dred Scott decision, and the expressly racist views woven throughout his opinion, was rebuked in 1865 by the Thirteenth Amendment to the United States Constitution, which abolished slavery, and by the Fourteenth Amendment, which recognized that African Americans should be allotted equal treatment under the law. But a written law requiring equality does not ensure justice if it is not adequately enforced. In the years following the enactment of the Civil War amendments, African Americans watched in despair as Jim Crow laws were enacted to segregate and oppress our community.

One of these laws, mandating that African-Americans ride in separate trains in Louisiana, was challenged as unconstitutional by a multiracial citizens committee that raised money to mount a legal battle that went all the way to the United States Supreme Court.On May 18, 1896, Supreme Court Justice Henry Billings Brown, a Midwesterner and a resident of Michigan, authored the opinion in the case, *Plessy v. Ferguson*, upholding the separate but equal doctrine.[4] Brown asserted that the validity of segregation laws depended upon their "reasonableness" and contended that the Framers "could not have intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality." Brown argued that "if one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

One lone Justice - John Marshall Harlan – dissented.[5] In his dissenting opinion, now more widely cited than the majority, Harlan argued that the Louisiana segregation law was in clear conflict with the Thirteenth and Fourteenth Amendments. He famously claimed that "in the eye of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste here. Our

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1. University of California v. Bakke, 438 U.S. 265 (1978) (Blackmun, J. concurring).
2. Dred Scott v. Sanford, 60 U.S. 393 (1856).
3. Id at 407.
4. Plessy v. Ferguson, 163 U.S. 537 (1896).
5. Id. at 552-64 (Harlan, J. dissenting).

Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."[6]

Justice Harlan did not have to speak out against the sentiment of oppression and racism that was rampant in the majority opinion. Yet he chose instead to take the difficult path, the courageous path, and shine a light on the injustice inherent in Justice Brown's analysis. Brown and the other Justices were afraid to leave their comfort zones, afraid to stand up for what was just and right. Harlan followed the courage of his convictions, and history has rewarded him. History has always rewarded those who have had the strength and courage to do what is morally correct.

Our country's history is marked by a stain of inequality. Silencing the truth of that history only deepens the stain. But it is through efforts such as the creation of this journal that we can shine a light on the effects of this stain and publish scholarship that will empower men and women throughout the legal world to question norms, to go against the fray, and to rise above the tide, all in the name of furthering equal justice under law.

As attorneys, our work is to seek truth and justice. The law is the vehicle that we use to accomplish this task. But like all things, the law is subject to being influenced by corrupting influences – fear, arrogance, pride, ignorance. It is in part through the publication of research and writings that seek to promote truth and justice that our legal community can move closer to achieving those ideals.

The subject matter of the essays and notes selected to appear in the first volume of this new journal underscores the power of this academic space to bring to light injustice and present solutions to achieving a society that reflects its ideals of equality. In *The Effects of Brownfield Policy and Development: Disparate Impacts and the Midwest*, David Hill writes to illustrates the racial and economic impacts of brownfield policy and suggests that the current system does not adequately protect against discrimination within classes of lower income, minority populations, particularly in Midwestern cities. Charles Nellari's essay, *Human Rights Issues of Migrant Workers in GCC Countries*,[7] highlights the treacherous conditions of millions of migrant workers throughout the world. Another piece, entitled *Religious Discrimination in the Workplace*, examines the effectiveness of current protections for religious diversity emphasizes how groups suffering the brunt of the unequal treatment in the workplace are those who are the least empowered.

Other pieces propose new solutions to longstanding problems. In *Race, Diversity, and Opportunity: Opening the Pipeline,*[8] for example, Angela Laughlin analyses and ultimately promotes a program designed to encourage the enrollment of students of color in law school. Scholarship like this is crucial to ensuring that our legal community continues to explore methods to pry open the doors of access to power that were closed for so long to people of color.

These pieces are at once novel and courageous. They remind me of a quote I often turn to for inspiration, from Dr. Martin Luther King, a man who emerged from the struggle for civil rights by enunciating the beliefs and emotions of a people long denied equality. King famously challenged all of us to remember:

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6. Id. at 559.
7. 1 M.W. BLSA L.J. 15 (2008).
8. 1 M.W. BLSA L.J. 1 (2008).

Cowardice asks the question, is it safe?

Expediency asks the question, is it politic?

Vanity asks the question, is it popular?

But conscience must ask the question, is it right?

These essays and notes, and those yet unwritten that will undoubtedly follow this inaugural issue, illustrate the power of writing about what is "right." They instruct us that we must not sacrifice our goal of pursuing truth and justice simply because doing so may go against the dominant values of present day society. Instead we must use our voices to shine a light on injustice anywhere and everywhere. Because, in the words of Edwin Hall, we must realize that:

I am only one, but still I am one.

I cannot do everything, but I can do something.

And because I cannot do everything, I will not refuse to do what I can.

I thank the founders and editors of the Midwest Law Journal for the Black Law Students Association for taking a stand, and doing what they can to help eliminate the social injustices that beset us and to help make the goal of "equal justice under law" a reality for all Americans.

Judge Damon J. Keith
U.S. Court of Appeals, Sixth Circuit