

2010

# Outsiders Inside the Beltway: Latcrit XIV - Critical Outsider Theory and Praxis in the Policymaking of the New American Regime

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## Recommended Citation

Varona, Anthony E. "Outsiders Inside the Beltway: Latcrit XIV - Critical Outsider Theory and Praxis in the Policymaking of the New American Regime." *American University Journal of Gender, Social Policy and the Law* 18, no. 3 (2010): 367-392.

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18 American U. Journal of Gender and Social Policy 367-392 (2010)

## FOREWORD

### OUTSIDERS INSIDE THE BELTWAY: LATCRIT XIV

### CRITICAL OUTSIDER THEORY AND PRAXIS IN THE POLICYMAKING OF THE NEW AMERICAN REGIME

ANTHONY E. VARONA\*

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\* Professor of Law and Associate Dean for Faculty and Academic Affairs, American University Washington College of Law; Chair, LatCrit XIV Host Committee. The author thanks those who reviewed drafts of this foreword and offered helpful comments and edits. The American University Washington College of Law would not have been able to host and devote so many resources to LatCrit XIV were it not for the generosity and dedication of Dean Claudio Grossman to innovative scholarly engagement. The other members of the WCL Host Committee also were instrumental in planning and executing what turned out to be a successful and memorable conference. They were Janie Chuang, Mary Lee Clark, Jennifer Dabson (whose events team did an extraordinary job in managing the logistics of the conference), Angela J. Davis, Mary Fan, Dean Claudio Grossman, Heather Hughes, Darren Hutchinson, Meetali Jain, Ediberto Roman, and Ezra Rosser. The WCL Host Committee thanks the LatCrit Steering Committee and Board of Directors for the privilege of hosting LatCrit XIV, and for providing key advice and assistance along the way. We also thank the Host Committee for the Seventh Annual LatCrit/SALT Faculty Development Workshop for crafting an excellent preconference workshop for junior faculty colleagues. Dean's Fellows Kathryn Coniglio, Samuel Pearson-Moore, and Karla Torres provided extensive logistical and research support throughout the conference planning and staging phases. The editors and staff of the *American University Journal of Gender, Social Policy & the Law* deserve great praise for coordinating the submission and selection of symposium essays with great efficiency, and editing them with skill and thoughtfulness. Finally, LatCrit XIV would not have been nearly as engaging, dynamic and memorable a conference if it were not for the superb community of scholars and activists that joined us in Washington for four days early in the fall of 2009. We owe much of the success of the conference to them.

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### I. INTRODUCTION

The Fourteenth Annual Latina/o Critical Legal Theory Conference (LatCrit XIV) and, consequently, this symposium edition of the *American University Journal of Gender, Social Policy & the Law*, were conceived in a time of what many considered to be significant political progress, and what others more cautiously characterized as a time of progressive *promise*, in the United States.<sup>1</sup> The January 2009 inauguration of President Barack H. Obama, a biracial constitutional law professor raised by a single mother and known for his progressive views provided a fitting environment for the first gathering Inside the Beltway for LatCrit, a scholarly community committed to its focus on outsider<sup>2</sup> and “outcritical” scholarship and praxis.<sup>3</sup> Fitting, too, was the good fortune of having the conference hosted

1. See, e.g., Matt Bai, *Democrat in Chief?*, N.Y. TIMES MAG., Jun. 13, 2010, at 34 (discussing the negative reactions of some Americans and lawmakers to President Obama's administration thus far); Chris Cillizza, *5 Myths About a President's First Year*, WASH. POST, Dec. 27, 2009, at B02 (naming progressive bills that President Obama enacted while cautioning that setbacks still plague the administration).

2. Mari Matsuda, of course, pioneered the “outsider jurisprudence” in an expansive body of work that has informed many “OutCrit” scholarly movements. See, e.g., Mari J. Matsuda, *Public Response to Racist Speech Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323-24 (1989) (discussing outsider jurisprudence and scholarship); Mari J. Matsuda, *When the Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297, 298 (1992) (outlining the beliefs and characteristics of “outsiders”); see also John Hayakawa Torok, *Anti-Subordination and the Legal Struggle Over Control of the “Means of Communication”: Finding the Me in LatCrit Theory: Thoughts on Language Acquisition and Loss*, 53 U. MIAMI L. REV. 1019, 1026 (1999) (noting that Prof. Matsuda “conceptualized outsider jurisprudence.”); Lani Guinier, *Introduction of Professor Mari Matsuda*, 3 TEMP. POL. & CIV. RTS. L. REV. 3, 6 (1993) (characterizing Prof. Matsuda as “a legal pioneer” for being “one of the first to introduce the stories of outsiders into law review articles.”). Prof. Elvia Arriola observes that “[t]he term ‘outsider’ has been adopted to refer to critical scholarship deemed outside of the white, male mainstream of academia.” See Elvia R. Arriola, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 1819 CHICANO-LATINO L. REV. 1, 3-5 (1998), citing, e.g., Jerome McCristal Culp, Jr., *Telling a Black Legal Story: Privilege, Authenticity, “Blunders,” and Transformation in Outsider Narratives*, 82 VA. L. REV. 69 (1996) (describing ‘outsider’ as a reference to scholarship of those outside the white male mainstream of academia and revisiting experiences with LatCrit's devotion to these topics); Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683, 687 (1992) (stating that the feminists and racial minorities, particularly those involved in Critical Race Theory, are more likely than their counterparts to produce outsider scholarship).

3. See Arriola, *supra* note 2, at 3 (characterizing LatCrit as a “new brand of ‘outsider scholarship’”); Margaret E. Montoya & Francisco Valdes, *“Latinas/os” and Latina/o Legal Studies: A Critical and Self-Critical Review of LatCrit Theory and Legal Models of Knowledge Production*, 4 FLA. INT'L L. REV. 187, 231-47 (2008); Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1 (1997).

by the American University Washington College of Law, a law school founded in the late 1890s as an outsider institution by two women, Ellen Spencer Mussey and Emma Gillett, committed to creating “the first law school established by and for women in the United States.”<sup>4</sup>

In March 2009 the LatCrit XIV Call for Papers publicized a conference theme that emphasized the exciting opportunities presented to us by the fortuitous confluence of timing and geography. The LatCrit XIV Host Committee, in partnership with the national steering committee, settled on the theme: “Outsiders Inside: Critical Outsider Theory and Praxis in the Policymaking of the New American Regime.”<sup>5</sup> We hoped that the theme would be broad enough to encompass a wide spectrum of proposals, while suggestive enough to invite specific inquiries.<sup>6</sup> Following is an extended excerpt from the conference theme narrative as it appeared in that Call for Papers:

In October 2009, LatCrit will meet inside the Beltway for the first time in its history amidst a tectonic shift in American government. With the January inauguration of President Barack H. Obama, the nation’s first “outsider” president, we also saw the ascendance of a new progressive governance philosophy in Washington. As a biracial former law professor with working class and immigrant roots and an international and multicultural upbringing, Mr. Obama ran a progressive campaign that echoed many core LatCritical values, including internationalism and global-mindedness, the valorization of human rights and

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(discussing throughout the centrality of outsider critical theory and praxis to the LatCrit mission in foreword to LatCrit I symposium book).

4. See Mary Lee Clark, *The Founding of the Washington College of Law: The First Law School Established By Women for Women*, 47 AM. U. L. REV. 613, 614-15 (1998) (acknowledging that, despite this distinction, “WCL’s progressivism with respect to gender was not mirrored in its treatment of race” since “there were no African-American students at WCL before 1950.”). We also were very fortunate to have recruited the *American University Journal of Gender, Social Policy & the Law* (AU JGSPL)—a publication committed to exploring important issues of subordination, marginalization and law reform—as our symposium partner. The AU JGSPL very much fits the ideal of the LatCrit symposium publisher characterized by Professors Montoya and Valdes, insofar as it is an “alternative law [journal] devoted to issues of difference (for example, race, ethnicity, gender, and other axes of identity) used in law, policy, and society to generate both privilege and oppression.” Montoya & Valdes, *supra* note 3, at 238.

5. See *LatCrit XIV: Fourteenth Annual LatCrit Conference Call for Papers and Panels*, LATCRIT, [http://web2.uconn.edu/latcrit/documents/latcrit\\_xiv\\_call\\_for\\_papers\\_and\\_panels\\_final\\_march9.pdf](http://web2.uconn.edu/latcrit/documents/latcrit_xiv_call_for_papers_and_panels_final_march9.pdf) (last visited Aug. 13, 2010) [hereinafter *Call for Papers*].

6. See Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in LatCrit Coalitional Imagination*, 33 U. MICH. J.L. REFORM 203, 214 (2000) (providing an example of such an inquiry by contending that “[t]he LatCrit imperative of multidimensional analysis and action is presaged by early outsider insights, such as intersectionality and multiplicity, because these twin concepts demand more than single-axis, or unidimensional, analysis of socio-legal conditions”).

multidimensional diversity, the centrality of antidiscrimination work, a commitment to rigorous interrogation of longstanding dominant assumptions and norms, and a preference for discourse and dialogue over militarism. Notably, President Obama's *Yes We Can!* campaign slogan has its roots in the *¡Si Se Puede!* rallying cry coined by Dolores Huerta of the United Farm Workers movement and invoked in more recent progressive and mostly Latino/a political actions.

The new Presidential administration and enlarged bicameral Democratic majority in Congress account only for part of the historic paradigmatic transition in American national government. The ongoing deterioration of the American and world economies also has catalyzed an aggressive reassessment by moderate and even some conservative thinkers of the wisdom of the Reagan Revolution's *uber alles* dependency on the private marketplace for the realization of the public good—an antiregulatory disposition that dominated federal government through the last seven presidential administrations. In the United States, the failure of the government's dominant antiregulatory disposition to prevent the ensuing economic meltdown has catalyzed a new, aggressive Federal response in the form of much more statist economic interventions, including the *de facto* nationalization of key economic components. To add irony, it was the administration of President George W. Bush—the loudest in exalting the power of unbridled private marketplaces to regulate themselves—that laid the foundation for the national takeover of large sectors of the financial services and banking industries.

These quantum changes in the leadership and driving philosophies of American government present unique and in some cases unprecedented opportunities for scholars engaged in critical outsider scholarship to influence and inform national policy and legislation. The new executive and legislative branch incumbents have telegraphed early receptivity to the instantiation of LatCritical and other progressive theories and principles in the tangible products of Federal government (*i.e.*, legislation, regulation, presidential directives, and, of course, case law). As President Obama's aspirational campaign continues to transition into the *nouveau regime* at the helm of the most powerful government on Earth, millions of Americans expect the vague *Yes We Can* promise to become the *Yes We Are* reality.

But with these openings come potential pitfalls. Although the ascendance of a putatively progressive president and likeminded Congressional majority indeed may open up new opportunities to bridge the theory/praxis chasm, it also may pose serious challenges to the independence and even legitimacy of progressive critical theory movements. Should the cooption or even distortion of conservative theory by militaristic, extremist partisan politicians serve as a cautionary tale in the formation of new relationships between the progressive government and outsider critical theorists? More specifically, what if the

first year in office of the *Yes We Can* presidential candidate unfolds into more of a *No We Won't* disappointment? What if the exigencies of governing to and from the middle—which many pundits insist is the *sine qua non* for reelection viability—result in the sacrificing of Obama's progressive promise? What roles should outsider critical legal scholars and their scholarship assume then? More generally, what should the incarnation of progressive theory in the new American regime look like? And what prevents that theory from being co-opted and corrupted by the corroding influences of insider power?

The LatCrit XIV Host Committee invites the submission of proposals for panels and papers related to this open-textured theme and encompassing the fullest array of theoretical and doctrinal topics and approaches. Because we will be in Washington, DC, we encourage the submission of paper and panel proposals propounding prescriptive critiques of discrete areas of law, policy and regulation of specific relevance to outsider communities, including (but by no means limited to) economic justice, international and comparative law, criminal law and the death penalty, civil rights and constitutional law (including gender and LGBT equality, reproductive and disability rights), feminist legal theory, immigration, political and electoral (dis)enfranchisement, communications policy and intellectual property, healthcare, education, employment, tax policy, and the environment. We also, of course, welcome proposals for more theoretical panels and papers, particularly (but not exclusively) in areas linked to the challenges posed by progressive governance and the ascendance of outsiders to positions of ultimate authority.<sup>7</sup>

To the delight of our Host Committee, the Call for Papers struck the proverbial nerve of many outsider and outsider-allied scholars throughout the United States and in other nations. Submissions included nearly 300 proposals for panels, panel contributions, work-in-progress presentations and stand-alone papers. LatCrit XIV accommodated almost all submissions. The final conference program featured the most speakers, panels and work-in-progress colloquia in the history of the LatCrit annual conferences: 225 speakers in 85 panels and colloquia.<sup>8</sup> Panels and works-in-progress addressed issues in a multitude of areas, including international and comparative law, trade law, criminal and economic justice, education law, employment and labor law, family law, immigration, gender and sexuality law, corporate law and financial reform, critical race theory, sociology and law, the freedoms of speech and religious expression,

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7. *LatCrit XIV: Fourteenth Annual LatCrit Conference Call for Papers and Panels*, *supra* note 5, at 1.

8. *See generally* LatCrit XIV Program Schedule, LATINA & LATINO CRITICAL LEGAL THEORY, INC., Oct. 4, 2009, <http://www.law.du.edu/latcrit/AnnualConferences/ACXIV/LatCrit-XIV-Conference-Schedule-revised-final-version.pdf>.<sup>8</sup>

communications law, environmental law, and other areas.<sup>9</sup>

The variety, quantity and quality of the responses was highly satisfying for those of us on the LatCrit XIV host committee. Most notably, these circumstances allowed us to craft a conference program that touched upon virtually all of the key LatCrit founding principles<sup>10</sup> while—consistent with the more practical aims of LatCrit—helping to “elucidate and disseminate suppressed knowledge that can help to facilitate . . . social justice action.”<sup>11</sup> The diversity and selection of speakers also helped us design encounters throughout the conference program that were in furtherance of LatCrit’s “big tent” and “safe zone” approaches, as well as supportive of LatCrit’s aspiration of integrating theory with community and praxis.<sup>12</sup>

In addition to the many concurrent panels and colloquia, LatCrit XIV presented several plenary events featuring speakers who provided the meta-framing for the conference’s “outsiders inside” theme. This foreword provides excerpts<sup>13</sup> of some of these presentations in the following pages for the benefit of scholars, activists and community members not able to participate in person at LatCrit XIV, but also to memorialize these important contributions to the LatCritical conversation in a lasting manner.<sup>14</sup>

9. *See id.*

10. *See* Francisco Valdes, *Rebellious Knowledge Production, Academic Activism, and Outsider Democracy: From Principles to Practices in LatCrit Theory, 1995 to 2008*, 8 SEATTLE J. FOR SOC. JUST. 131, 134 (2009) (listing intergroup justice, antisubordination, anti-essentialism, multi-dimensionality, praxis/solidarity, community-building, critical/self-critical, ethical, transnational, and interdisciplinary as LatCrit principles). Prof. Valdes, one of the founders of LatCrit, noted that from its inception LatCrit has endeavored to pursue the following “LatCrit principles” in the organizations scholarly and practical work: “intergroup justice, anti-subordination, anti-essentialism, multi-dimensionality, praxis/solidarity, community-building, critical/self critical, ethical, transnational, interdisciplinary.” *Id. citing* First Annual LatCrit Planning Retreat, substantive transcription at 3 (2001), available at <http://www.latcrit.org> (in “Miami (2001)” hyperlink under “Annual Planning Retreat”).

11. Montoya & Valdes, *supra* note 3, at 197.

12. *See id.* at 223, 231 (situating LatCrit within the democratic “big tent” model of scholarly engagement) and 222-23 (and explaining that “[f]rom its inception, the LatCrit project exhibited a multifaceted focus, as reflected in the four inter-related ‘functions’ or goals of LatCrit work proposed at the very outset of this jurisprudential experiment – a focus aimed to integrate (1) ‘theory’ with (2) ‘community’ expressed or performed as (3) ‘praxis.’” [internal footnote omitted.]); *See also* Francisco Valdes, *Afterword: Theorizing ‘OutCrit’ Theories: Coalitional Method and Comparative Jurisprudential Experience—Race Crits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265, 1301-04 (1999) (outlining the overall goals and aspirations of LatCrit scholarship); Francisco Valdes, *Under Construction: LatCrit Consciousness, Community, and Theory*, 85 CAL. L. REV. 1087, 1092 (1997).

13. The excerpts from the presentations at the LatCrit XIV plenary sessions throughout this Foreword are from transcriptions of recordings of the various gatherings, edited lightly for publication (to improve clarity and flow) both by the author of this Foreword as well as, in some cases, by the respective speakers.

14. It bears noting that this intention is in harmony with a longstanding LatCritical practice to disseminate the substance of conference proceedings in order to “provid[e]

## II. THE OPENING ROUNDTABLE—OCTOBER 2, 2009

Consistent with the tradition at past LatCrit conferences, we designed our Opening Roundtable in a manner that introduced the “Outsiders Inside” theme in the form of short and interactive talks by an assortment of community leaders, activists and scholars with diverse experiences in areas related to the theme. Their remarks and interactions with other speakers, as well as with the community at large during the questions-and-answers session, enabled us to open the conference with a variety of thought-provoking questions that catalyzed discussion and debate in many of the subsequent concurrent panels and roundtables.

The lead speaker at the Opening Roundtable was the Hon. Congresswoman Linda Sánchez (D-CA), who delivered a greeting as well as a substantive talk drawing upon her personal experiences as an “outsider inside” the corridors of power in Federal government. Congresswoman Sanchez represents California’s 39<sup>th</sup> Congressional district, and is the first Latina in history to serve on the House Ways and Means Committee and the House Judiciary Committee. She was also the first woman to serve as chair of the House Judiciary Subcommittee on Commercial and Administrative Law.<sup>15</sup> Congresswoman Sánchez spoke in very personal terms about her everyday life as a Latina lawmaker. She said, in part:

When I first got elected to the Congress, I was 33 years old. Each Member of Congress, when they become Members of Congress, is given a special Congressional pin that identifies them as a Member of Congress. It’s a credential to get through the halls of the Capitol without having to stop and go through the metal detectors every time you’re going across to the Capitol to vote. With that pin, you can bypass the long lines of tourists and visitors who come in and out of the buildings every day. Well, when I first got elected and I proudly put my member pin on my lapel and walked across the street to go vote in the Capitol inevitably I would get stopped by the Capitol Police and asked to show an additional staff ID. I would point to my member pin and say, “No, I’m a Member—you know, a Member of Congress—I work under the big white dome. I’m a Member.” And I’d have to say that a few times. OK, maybe it’s a little bit flattering because I may look young. And OK, they may think I’m Staff. But after you’re trying to get through to go vote, and you’re standing with a group of colleagues who are all men, all

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an opportunity for scholars unable to participate in person to access the substance of our academic events.” See Berta Hernandez-Truyol et al., *LatCrit X Afterword—Beyond the First Decade: A Forward-Looking History of LatCrit Theory, Community and Praxis*, 17 BERKELEY LA RAZA L. J. 169, 199-200 (2006) (noting that commitment to LatCrit publication is still prevalent for multiple reasons).

15. See About Linda—Biography, Website of Congresswoman Linda Sánchez, [http://lindasanchez.house.gov/index.php?option=com\\_content&view=article&id=16&Itemid=5](http://lindasanchez.house.gov/index.php?option=com_content&view=article&id=16&Itemid=5) (last visited Aug. 15, 2010).



older, all white, and they're being waived through and you're being stopped, the message that you are getting is that you don't belong here and somehow they do. Well, I got a little tired of that after the, oh, seventh or eighth time of being stopped. I've even had a Capitol policeman stop me when I showed my Member pin and ask me to produce my Member voting card to prove that I was a Member of Congress. I got a little tired of that. So I went down to the Sergeant-at-Arms' office and said, 'look man, I'm not asking to be treated better than my peers. I'm just asking to be treated as an equal. I won an election, as did they. I represent 650,000 constituents, as do they. And I think I'm entitled to the same respect that they're accorded every day when they walk across to vote.' I think I must have come across as not taking no for an answer because a funny thing happened. Suddenly I wasn't being asked for my Congressional ID. I later found out that weekly, ever week, the Capitol Police have a briefing in the morning and they distributed my picture and said "if she walks through, let her go," and it changed. Their idea of what a Member of Congress should look like changed when a small brown Latina from California came to Washington.<sup>16</sup>

Speaking next was Christine Griffin, former Commissioner of the Equal Employment Opportunity Commission (at the time of LatCrit XIV), and now Deputy Director of the U.S. Office of Personnel Management (US OPM).<sup>17</sup> A noted women's rights and disability rights advocate, Commissioner Griffin spoke about her experiences as an outsider inside the Bush Administration and how those experiences compare to her day-to-day experiences now in the more progressive Obama Administration. Commissioner Griffin shared her perspectives on what can reasonably be expected of "outsiders inside" positions of authority in governance, and how she—as such an outsider inside—maintains accountability for herself and for others.

Caroline Fredrickson, the executive director of the American Constitution Society for Law and Policy and formerly the director of the American Civil Liberties Union's Washington Legislative Office,<sup>18</sup> continued the thread on how outsiders inside should be held accountable, both by other outsiders inside government and by activist groups outside of government. She said, in part:

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16. LatCrit XIV Opening Roundtable Transcript, pp. 5-6 (Oct. 2, 2009) (on file with author) [hereinafter Opening Roundtable Transcript].

17. News Release, *Christine Griffin Appointed as OPM Director*, U.S. OFFICE OF PERS. MGMT. (Jan. 4, 2010), available at <http://www.opm.gov/news/christine-griffin-appointed-as-opm-deputy-director,1499.aspx>.

18. Biography, *Caroline Fredrickson Biography*, Executive Director, American AM. CONSTITUTION SOC'Y, available at <http://www.acslaw.org/about/staff/fredrickson> (last visited Aug. 15, 2010).

I think what's really important is not to cut too much slack for the outsiders who are on the inside. There's a certain amount of understanding of politics and how things do take time and there are barriers that are internal and there are barriers that are external that they have to work with. But I think it's really important to remember that it's people on the outside who create the climate. It's the work that you're all doing that those people who are on the podium hear and read about. What everybody is doing to create the conditions that provide the impetus for change. So it is sort of that inside-outside tension. [. . .]

When I was at the ACLU it was just the outside-outside tension against the Bush Administration and there was really . . . there weren't a lot of people who were very interested on the inside about hearing what I or any of you probably had to say about much of anything. So now we're in a different situation, and that situation is one where we continue to create the coalitions, to create the intellectual content, to create the political movements to get these things done. [. . .]

And I speak from the inside perspective too, since I worked on the Hill for nine years and I worked in the White House in the Clinton Administration. You know, there has to be a pressure on the one side because there are lots of pressures on the other side. As Congresswoman Sanchez said, the health insurance industry has plenty of pressure going on, so the people who want to have a different kind of health care system in America have to be out there talking about it. Now that I'm at the American Constitution Society, I think that's really what we're trying to do: to continue to produce the intellectual content. It provides the basis, it provides the substance for the policymaking that we would all like to see happen and it also gives that content to the Administration to work with. Puts a little pressure on them, but it also gives them material to work with. And we're also very conscious of building our networks and communities so that they keep talking about these issues and relating back to those people they know who are on the inside. You have a sort of inside-outside dialog constantly going on, both the content of your work but also the community that you build.<sup>19</sup>

Robert Raben, founder and president of the Raben Group, LLC (a prominent Washington legislative consultancy and lobbying practice) and formerly U.S. Assistant Attorney General for Legislative Affairs (in the Clinton Administration),<sup>20</sup> returned the discussion to the question of what expectations would be reasonable to impose on outsiders inside governance. As someone who has been on both sides of the fence in Washington, Mr. Raben offered interesting perspectives on the realities of

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19. Opening Roundtable Transcript, *supra* note 16, at 14-15.

20. Biography, Robert Raben Biography, The Raben Group, LLC, *available at* <http://www.rabengroup.com/people/rraben.html> (last visited Aug. 15, 2010); About the Raben Group, The Raben Group, LLC, <http://www.rabengroup.com/about-raben-group> (last visited Aug. 23, 2010).

governance as an outsider. He also offered his perspectives on what outsider constituencies can reasonably demand of outsiders in government and the need to manage or modify expectations in light of the compromises necessitated by the tensions and exigencies of government. He said:

The only reasonable expectation on outsiders that go on the inside is an integrity to the communication in-between. They're coming from a community of scholars or constituencies and they're going to maintain those relationships and we're going to work together—those and we outsiders. And the only reasonable expectation is that they be straight with you throughout as they confront the legitimate and sometimes illegitimate challenge as they have to implement promises that they made. What happens is that, if you haven't been in government before, you go to the Department of Justice, or Commerce, or Interior, or the EEOC, and within a couple of weeks, once you figure out your password and where the bathroom is, you are confronted with very hard work and really smart attorneys and sometimes non-attorneys who say—"yeah, I know you promised that you were going to open up the website with all of the brownfield sites around the country, but it's our experience that we have these folks with bad intentions who rely on those sites to know what to target when harming Americans." And on and on and on. Once you grab the reins of power you are confronted with critical challenges that are legitimate. I won't talk about the illegitimate things that you hear. All of a sudden you're at a campaign rally in Wisconsin saying insipid things like, "We are the ones we've been waiting for." But you're having to make really hard decision about why we aren't inspecting every container that comes through the port of Houston. "Well we don't have the money for that." Well why don't you have the money for that? "Because we said we were going to put these schools over here." Well why are we building schools and not inspecting cargo ships in the Port of Houston? And on and on and on.

And so the reasonable expectation for those of us who maintain a relationship with friends and co-workers and board colleagues and whatever it is, who go on to take these jobs . . . . The reasonable expectation is that they keep a line of communication open and continually explain to you where they are on judicial appointments, what we're looking for, what we're not looking for, why we're going slow, why we're going fast. Just explain to your friends and people who want to support you what the decision-making process is.<sup>21</sup>

Jarrett Tomás Barrios spoke next. As president of the Gay and Lesbian Alliance Against Defamation (GLAAD) and the first Latino as well as the first openly gay man elected to the Massachusetts State Senate,<sup>22</sup> Mr.

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21. Opening Roundtable Transcript, *supra* note 16, at 15-16.

22. Biography, *President Jarrett Tomás Barrios Biography*, GLAAD, <http://www.glaad.org/jarrettbarrios> (last visited Aug. 15, 2010).

Barrios has experience as an outsider activist working from both within and outside government. He continued Mr. Raben's discussion of the compromises that are necessitated by government leadership, and—in light of that reality—what expectations would be reasonable to impose on such outsiders inside:

When I was first elected to the Massachusetts State Senate in 2002—actually it was the week after I was elected—I was invited by SEIU Local 615, the janitors' union, to join in a protest. The janitors were negotiating a contract for office cleaning downtown. And all of the Latino and African-American legislators had been standing in solidarity, not surprisingly, because the 6000 janitors were mostly African-American and Latino. So I, in my exuberance, showed up, got arrested, went to jail and showed up two months later when I was sworn in to the Senate, met by some of my fellow minority legislators who promptly said: "you didn't have to do that." Those words stayed with me for a long time. Something in me really thought I *did* have to do that, and what I learned in that moment was that there is some kind of *kabuki* theater that happens in politics where what you say and what you mean are often two different things. Publicly, they were all supportive, but in private some of them were—or, at least, these colleagues—were rolling their eyes. By the way, the day after we did our protest, they settled and 700 of my constituents got their health coverage, so my evaluation of my actions were that it was worth my while.

For outsiders looking in, there is good reason to expect a lot of colleagues who have gone "inside" still hold the ideals because they continue to profess them publicly. Privately, what's real is that those gone inside often view these public professions with skepticism.

After two months into my job in the Massachusetts Senate, I was feeling like the shoe was on the other foot. There was a ballot initiative to repeal bilingual education in Massachusetts and I alone with a colleague of mine in the House—the first Asian-American elected to any legislature anywhere in the United States—attempted to amend the voter-passed law to repeal bilingual education. The vehicle for that, as it turned out, was Governor Romney, a Republican. You guys remember Romney? He'll be back, don't worry. So he wanted to do a big reform package and positioned himself against the legislature . . . "You're a bunch of hacks," "You're a bunch of Democrats," "I'm a clean outsider."

I found myself publicly supporting his reform because it was my way of holding up something Democratic leaders in the House wanted—and by holding it up, it improved my negotiating position on overriding parts of the ballot initiative that repealed bilingual education. But to the outside world, it sort of looked like I had become a Republican and I was part of the problem. There was no way I could talk about that. So the lessons of both of those together mean that as an outsider, you don't always know what's going on for the insider in government. Maybe they are rolling their eyes while they're on the phone with you saying, "Yes, I

understand . . . I feel your pain.” Maybe they really don’t care. Maybe they are self-interested to the point of only being focused on their reelection. Or maybe something you just don’t know is part of a larger strategy that’s absolutely consistent with your values and what you would want as an outsider.

So . . . when we ask whether it is fair for us to expect more from an outsider now inside the Administration, I have to say the answer to that is yes. I think it clearly is. Not because of results that are not yet forthcoming, but for the way in which a candidate with a narrative that is authentic to all of us gets articulated. I have a lot more expectations of this Administration than I would have had for John Kerry, had John Kerry been elected President, because of how this person got elected and how he spoke to us, and what he ultimately promised to us, not about results but about how he was going to get us there. That was what I believe directly connects with my ability to trust him when I did not know all of what is going on inside.<sup>23</sup>

Finally, Professor Jenny Rivera, Professor of Law at the City University of New York School of Law and Founder and Director of the Center on Latino and Latina Rights and Equality (CORE) at the law school,<sup>24</sup> spoke *inter alia* about the need to empower outsiders inside government and other positions of authority to better embrace and exercise their identities as outsiders from inside the corridors of power:

I too share some of these concerns and agree with many of the comments that have been made. A couple of points come to mind. One is the point about access to people. It’s a reasonable expectation to want to know more, and to want access to the ear of those who we elect or who are in these policymaking positions. So I agree with Robert and Jarrett. I do think that there are times when more information results in us being stubborn, or when we appear unbending and inflexible, when we may indeed be unwilling to compromise or think about ideas different than the ones we have been promoting. I think it’s reasonable for us to push for the programs and values we believe in. However, with access to information and people comes an opportunity to rethink our approaches to implementing a progressive agenda and to come up with new strategies to achieve our goals. I also think that it’s reasonable to ask for help when we need it, so in that sense I think it’s totally reasonable to sound unreasonable if it helps to destabilize political entrenchment. There is something to be said for insisting that our elected officials and their staff and appointees achieve and maintain progressive values. Many of us in this room are in a privileged place, as academics, and we may view some demands of progressive activists as outrageous, totally

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23. Opening Roundtable Transcript, *supra* note 16, at 17-18.

24. Biography, *Prof. Jenny Rivera Biography*, CUNY SCH. L., <http://www.law.cuny.edu/faculty-staff/JRivera.html> (last visited Aug. 15, 2010).

unreasonable. We might tell them “you could not possibly say that.” But I think that we have a responsibility to help amplify all voices. There is something very positive in doing that, and we learn, in part because we are not privy to what other more progressive voices may know. So we, as part of a progressive movement, should feel comfortable in making demands that others might consider to be unreasonable.

The last point I want to make is that we should start thinking about ways in which outsider ideas may be more easily adopted as insider ideas, and I’m talking about ways of thinking about what may now be treated as outside the realm of possibility as something that an insider, whether as a former outsider or someone who has seen themselves as a progressive, can embrace as part of a political, regulatory or legislative agenda. We need to find ways to make those outsider ideals and outsider approaches very much palatable to these insiders who govern. Let me give you an example. During the confirmation hearings for Justice Sotomayor, I was not so much struck by the zeal of the Democrats on the Senate Judiciary Committee who touted the benefits to all Americans of the historic moment of the confirmation of the first Latina on the Supreme Court, as I was appalled by the Republicans who had been quite abrasive during the confirmation hearings. They had made some outrageous remarks before and during those confirmation hearings. Yet, they would begin their comments by talking about how diversity is alive and well, and America is a new place, and the land of opportunity regardless of race. I was struck by that tone, and doubted the genuineness of the sentiment. I believe they felt that they could not lose politically by saying these things. Somehow this was useful to the agenda they had at that moment in the confirmation process. One of the Senators, in fact, on the last day of the confirmation hearings, confessed—I felt like I was in a confessional listening to him—how when Republicans get together they air their anxieties because they don’t want to look like they are the party of “short white men.” His words not mine. And that, yes, they think about race. He said, “I want to get to a place where we don’t think about it and that that’s what we do, that’s the reality.” I was struck by the candor of this confession, which I thought was the oddest thing I’ve heard from a Republican in a confirmation process. But it is instructive to us. It is instructive in helping us push some of our outsider ideas in a way that is palatable for insiders. To get us to a point where our issues are at the center, where they need to be. Not to be used in an exploitative fashion, but to become part of what an insider can adopt and promote.<sup>25</sup>

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25. LatCrit XIV Opening Roundtable Transcript, 19-20.

III. THE FIFTH ANNUAL JEROME MCCRISTAL CULP, JR. MEMORIAL  
LATCRIT LECTURE

On October 2nd, the Fifth Annual Jerome McCristal Culp Memorial LatCrit Lecture, which “is presented at the Annual LatCrit Conference to remember, honor, and further”<sup>26</sup> the work of the late Professor Jerome Culp, was delivered by Tanya Katerí Hernández, Professor of Law at Fordham University. Professor Hernández’s Culp Lecture was entitled “Identity Practice in Praxis: Scholarship and Political Engagement in the Post-Racial Obama/Sotomayor Era.” In it, she discussed the significance of President Obama’s election to the notion of colorblindness, the role colorblindness played in the nomination and confirmation hearings of Justice Sonia Sotomayor, and how we can learn from Professor Culp’s scholarship in analyzing these recent events. Professor Hernández also spoke of her own “*sin verguenza*” approach to being an outsider scholar. These are a portion of her remarks:

Electing our first Black president and then in turn watching him nominate our first Latina Supreme Court Justice, has persuaded many that the post-racial era has arrived. Thus, in addition to the community of persons that have long advocated for color blind legal approaches to racial equality, we now have a growing group of people who believe we already live in a color blind world. Particularly disturbing to me is the seeming political need for the objects of color blindness to negate the realities of racialized constructs. By this I am referring to what appears to be the political necessity of President Obama and Justice Sotomayor to deflect from the analytical salience of race in order to garner broad-based support. I will concede that I am making the presumption that both Obama and Sotomayor are savvy public figures who do understand and appreciate the salience of race but have recently felt the pressure to deny the importance of it when confronted with the challenge of political consensus building. I believe that a review of their pre-national figure work histories does show them to be racial realists and at times even race critics. Yet when Sotomayor was repeatedly asked by the Senate in her confirmation hearings whether her ethnic background and experiences would influence her judging, she adamantly declared that they would not, just as if she had always been a color-blindness advocate.

I will admit that I prefer to think that she was “finessing” her perspective under oath, rather than conclude that her testimony showed her to have shifted to being a color-blind jurist. As the daughter of a wise Latina, I refuse to believe that such a wise Latina could be so naïve about the influence of racial experiences in forming perspectives and understandings. Similarly, when President Obama denied that the

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26. *Call for Papers*, *supra* note 5, [http://web2.uconn.edu/latcrit/documents/latcrit\\_xiv\\_call\\_for\\_papers\\_and\\_panels\\_final\\_march9.pdf](http://web2.uconn.edu/latcrit/documents/latcrit_xiv_call_for_papers_and_panels_final_march9.pdf) (last visited Aug. 13, 2010).

violent discourse of a segment of the anti-national healthcare lobby has been influenced by his racial identity—that to me reeked of political expediency and not racial reality. If Jerome were here to hear the racial denial of both of them, I imagine that he would say “hogwash.” Well, not exactly “hogwash,” but certainly some colorful exclamation of incredulity much more elegantly phrased. His artful version of the exclamation would be rooted in his conviction that deflections from race are detrimental to the cause of racial equality. His scholarship consistently emphasized that resorting to color blindness ultimately reinforced racial privilege. And here I quote him:

[The presumption that finding] the color-blind solution will then [make] race as an issue go away is a powerful story because it does not require any change.<sup>27</sup> [It requires no change because] neutral positions enforce the existing power of the white majority to dominate.<sup>28</sup> [Thus,] legal analysis that leaves out the history of people of color cannot create change,<sup>29</sup> [because] race is not equivalent to poverty or class. The suggestions by the Supreme Court or others that racial problems can always be cured by addressing poverty or class concerns are wrong.<sup>30</sup> Colorblindness serves to enforce the racial present.<sup>31</sup>

So my point here is that the value of Jerome’s scholarship is that it elucidates how while color blindness may feel more polite or community building, it is not an effective path to racial justice. But when political figures like Obama and Sotomayor are politically boxed in from speaking the racial truth, then we are even more called upon to do the race talk for them. [ . . . ]

Which brings me to the topic of racial identity practice in praxis. Many of our clinical colleagues already know what it means to do praxis work. Praxis is the work of connecting theory and practice, aimed at transforming concrete social institutions. Getting our scholarship to be heard outside of the law review editorial offices, to me that’s a form of race praxis work. Jerome said that “what race stories are told to judges and juries, matters to racial justice.”<sup>32</sup> I ask you, what race stories does

27. Jerome McCristal Culp, Jr., *You Can Take Them to Water But You Can’t Make Them Drink: Black Legal Scholarship and White Legal Scholars*, 1992 U. ILL. L. REV. 1021, 1028-29 (1992).

28. Jerome McCristal Culp, Jr., *Black People in White Face: Assimilation, Culture, and the Brown Case*, 36 WM. & MARY L. REV. 665, 677 (1995) [hereinafter Culp, *Assimilation*].

29. Jerome McCristal Culp, Jr., *Latinos, Blacks, Others, and the New Legal Narrative*, 2 HARV. LATINO L. REV. 479, 481 (1997).

30. Culp, *Assimilation*, *supra* note 28, at 682-83.

31. Jerome McCristal Culp, Jr., *Colorblind Remedies and the Intersectionality of Oppression: Policy Arguments Masquerading as Moral Claims*, 69 N.Y.U. L. REV. 162, 171 (1994).

32. Jerome McCristal Culp, Jr., *Neutrality, the Race Question, and the 1991 Civil Rights Act: The “Impossibility” of Permanent Reform*, 45 RUTGERS L. REV. 965, 1006



your scholarship tell and who is getting to hear them. I have a simple strategy for the telling of race stories and getting people to listen to them. Be a *sin vergüenza*. To be a *sin vergüenza* is to be a person without shame. Now that can take on a lot of connotations, probably better left to the post-dinner party conversations, but for scholarly purposes I use *sin vergüenza* to refer to the shameless discussion of your ideas and the courage to raise the issue of race wherever and whenever you can. I have found that the *sin vergüenza* model has organically brought racial praxis projects my way that I could never have envisioned sitting by myself, alone, comfortable in my little carrel in the library. Now let me be very concrete here. Being a *sin vergüenza* scholar, I have shared my race ideas with practically anyone who would listen. My poor kids and husband are quite happy for me to take this outside of the home. So I share my ideas with not only my law colleagues and the world through article reprint distribution, op-ed writing, blogging, but with my students because those students go out into the world and tell other people about my ideas, who then circle back to me for political engagement. So I say yes when asked to participate in student events. I say yes to meeting requests from students who want ideas about what to write about, what events to plan, and what guest speakers to invite. That takes time away from my writing, but at the same time broadens the audience for the ideas I think are important. [. . .]

Now you all know better than I ways to conduct praxis to get our law review articles read: by writing op-ed news articles, blogging, testifying before Congress, and writing *amicus curie* briefs. But sometimes race praxis work is done behind the scenes, without the ego boost of seeing your name glorified. I recently found out that one of our colleagues has been, over the years, taking the time to prepare nominations for scholars of color to be appointed to the American Law Institute. That colleague alone has been responsible for the election of sixty-three scholars of color to the organization that influences law all over the country, with its drafting of the restatement, the UCC, and the model penal code. We have slowly been infiltrating the inner-sanctum of legal power—now I sound like some plot line in a Stephen Carter novel. But I am sure you can appreciate how significant this tedious work of preparing nomination petitions can be without the benefit of a publication by-line or some other glory, or at least a line in your dean's report. Or as our law firm friends would say, those are non-billable hours. But if those sixty-three members of color now nominate their own set of sixty-three members of color, who then nominate another sixty-three, and so on, the ALI will never be the same again. Less dramatic, but equally important is the invisible work of acting as a peer-reviewer for the book proposals of our colleagues. In order for them to get their race stories out to a broader public we need to support them by agreeing to do the non-billable work

of reading and reviewing their book proposals and books. Together we can make an intervention into a nation that wants to view itself as post-racial amidst continuing racial privilege and disparity.

This era of color blindness during a leadership of color means that we have to be even more proactive and engaged. As news commentator Earl Ofari Hutchinson has said, “Obama can’t talk about race even if he wants to. If Obama ran around and talked candidly about race or tried to spark a dialogue on race as some clamor, it would turn his administration into a referendum on race. This would set the GOP counterinsurgency on fire.”<sup>33</sup> “Politics hinder Obama and Sotomayor from being candid about race right now so we must be even more adamant about raising the issue wherever we can, however we can, and entrench our race stories in the history of structural racism. For as Jerome said, “our failure to appreciate our history allows us, like a racially dysfunctional family, to ignore the racial reality that exists.”<sup>34</sup> Let’s be a community of *sin vergüenzas* that forces this racially dysfunctional family to get real about race.<sup>35</sup>

#### IV. COMMUNITY LUNCHEON—DECANAL AND KEYNOTE ADDRESSES

At the LatCrit XIV Community Luncheon on October 3, 2009, the conference attendees heard the contributions of two distinguished speakers on the “insiders outside” theme of the conference: Dr. Claudio Grossman, Raymond I. Geraldson Scholar for International and Humanitarian Law and Dean of the American University Washington College of Law, provided the Decanal Address, and the Hon. Ricardo M. Urbina, a judge on the U.S. District Court for the District of Columbia, provided the keynote.

Dean Grossman’s remarks focused on his efforts to bridge theory and praxis in the Inter-American system for the protection of human rights. He said, in part:

The theory of the Inter-American system of protection of human rights has been the language of rights—civil and political rights, economic and social and cultural rights, and group rights—embodied in the American Declaration and the American Convention on Human Rights (Pact of San Jose). Those of us who have worked in the system, as Commissioners or lawyers, always had the perception that there is a tremendous gap between theory and practice in the protection of human rights in the region, and in the realization of the ideals and guarantees embedded in these conventions. A friend of mine used to say that if a thousand years

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33. Earl Ofari Hutchinson, *Obama Can’t Talk About Race Even if He Wants To*, MMEGI ONLINE (Sept. 24, 2009), <http://www.mmegi.bw/index.php?sid=2&aid=37&dir=2009/September/Thursday24>.

34. Jerome McCristal Culp, Jr., *Reply: “Real” Men and History*, 26 CONN. L. REV. 297, 302 (1993).

35. Prof. Tanya Hernandez & Jerome McCristal Culp, Jr., Memorial LatCrit Lecture Transcript 1-5 (Oct. 2, 2009) (on file with author).

from now some explorers would exhume the constitution of some countries in the hemisphere, they would say, "Oh, what a pity I did not live a thousand years ago because everyone there was equal before the law, there was no discrimination against anyone, and everyone had the liberty to develop themselves to the limits of their potential." The truth is that often in the Hemisphere reality has had very little to do with the world of constitutions and norms.

In this context, the Inter-American system plays an important role in bridging the gap between theory and *praxis*, attempting to realize the rights that may transform and improve society. Three historical moments could be identified that highlight the contributions of the system. These moments are interconnected and, depending on the country, show some of the prevailing characteristics of the specific historical periods.

The first period was the struggle against dictatorship. Until the 1980s, most of the countries in the region had no elected government. The main purpose of the Inter-American system, therefore, was to fight dictatorship, denounce disappearances, torture, secret detention facilities and other mass and gross violations of human rights. With the advent of elected governments all over the region, except in Cuba, in the second period (from the 1980s and beyond) the context changed. The challenge in this new context was how to change the legacy of dictatorship, since in this stage it was crucial to fight impunity, and reject amnesty laws so that truth, justice and reparation for the victims could be possible. At the same time the system sought to repeal contempt laws (that criminalized speech) as well as to support processes to restore and develop due process rights and independent judiciaries, essential institutions for newborn democracies. The third historical period has been dominated by the need to support democratic change. In a hemisphere with widespread poverty and the existence of vulnerable groups (for example, indigenous populations, women, and children), it is crucial to promote change based in the expansion of democracy and human rights, challenging attempts to resort to different forms of authoritarianism or populism, alternatives that led to the concentration of power in the hands of charismatic leaders with grave consequences for the protection of human rights. The Inter-American system contributes in this new context by reaffirming the value of both human rights norms, and the international procedures (petitions, country reports, etc.) that contribute to their realization and achieve democratic and participatory change.

In all of this work, it has been impressive to see the effects of the work of progressive lawyers, scholars, jurists and elected officials bringing to fruition the otherwise unrealized promise of formal legal equality and justice. Without the creative, courageous and passionate engagement of lawyers and activists in achieving true *praxis*, we would not be progressing towards the realization—the achievement—of (the

theoretical) equality, human rights, and social justice.<sup>36</sup>

Judge Ricardo Urbina spoke very personally, and humorously (to the great delight of the attendees), about his experience as an “outsider inside” the Federal judiciary in his keynote address. Following is a large portion of his remarks.

Perhaps I should start by creating a frame of reference, so that some of the impressions I impart have some context. When my parents got here from Puerto Rico and Honduras they had a dream. They had three sons they brought into this world; I was the youngest, and they worked very, very hard to do what many of us know parents do, and that is to create opportunities for their children. I spoke Spanish before I spoke English, and I was born on 108th Street and Lexington Avenue in New York City, for those of you who are from there.

We moved to Queens when I was about nine, but I spent a lot of time in the City because that is where my grandparents were. I also spent a lot of time in Catholic schools and although I liked to make jokes about the nuns and the priests, they did a pretty good job at keeping me out of trouble. They and fear of my father, I should say. When people used to say, “Hey you used to hang out in one of the worst areas in New York City so how come you never got in trouble?” I used to say that that was because I was more afraid of my father than I was of the police and if I would have ever got caught doing anything I would have asked the police to execute me on the spot. But I had a great life, and I must say I led what most people today would call an extraordinarily blessed life when I was very young. [. . .]

Having had friends that went to law school, I decided to go to law school. Upon getting close to my law school graduation I had, again, the good fortune of being recruited by the then director of the Public Defender Service, Barbara Babcock, who took me under her wing and taught this kid how to try a case, and what the law actually meant as one applied it to the human drama called life. You know, that is one of the things law schools frequently fail to do. There is this whole body of facts that students are required to apply or students are caused to assume are the basis for whatever controversy is somehow resolved by appellate decisions and other scholarly pieces of work. I know that when I got out of law school it was a real shock to understand where facts come from. Where do facts come from? I thought you walked in, you get the facts given to you, and you go from there. It doesn’t work that way. I learned that quickly.

I was the only Spanish speaker at what was transitioning from Legal Aid to the Public Defender Service, and although there was not a great volume of cases that involved Spanish speaking individuals, there were enough to keep me busy and to give me an up-close and personal look

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36. Claudio Grossman et al., LatCrit XIV Community Luncheon Address 3-5 (Oct. 3, 2009) (on file with author).

at some of the issues that have today taken on a national scale. In terms of youth, the adverse effect of poverty and all the other conditions that prevent our young people from reaching their potential—there but for fortune. Having that exposure was great. I cannot say enough about the influence being a defense attorney at the Public Defender Service had for me. I tried my first two murder cases when I was 25 years old, and I had a series serious of felony trials after that. So after my two-and-a-half year tenure there, I felt myself experienced enough to go into the world and do other things.

I lapsed into a lucrative corporate law practice with an old law school friend of mine. However, that just did not hold the challenges that I was looking for. Around that time Howard University's law school recruited me, and I joined the faculty there. I also was able to do a number of things because the deans under whom I served—Herbert Reed, Charlie Duncan, and Wiley Bratton—all were trial lawyers themselves. Therefore, when I went to them and said I would teach these courses, and direct the criminal law clinic, I explained that I would have to try cases as well, because I cannot teach something I am not developing and growing in myself. They said, "Fine." I was permitted one big trial a year and you have all the resources you need and all these anxious law students breathing down your neck. So that entire period, I grew as a lawyer personally and I taught an academic component in the second year of law school and then as a third year they could try cases. But what I really loved to do, in addition to supervising and helping students that were in court trying cases, was to teach Torts.

I loved to teach Torts. Torts was something very real to me. I give someone a punch in the eye; someone falls down and breaks their legs . . . these were facts I could relate to. I was an enthusiastic young teacher with a big afro. So my tradition, not unlike many of you here, was to require that students that were not prepared leave a little note on the podium saying that they were not prepared that day and asking me not to call on them, and that was that. So I came in one day, particularly enthused about the lesson for the day, which was *Palsgraf*. I loved teaching *Palsgraf*, and I loved the dissenting opinion of Cardozo. I really just thrived on that case because it really presented so many images and so many variations.

I came in that day and saw many notes, about four or five, and I proceeded into my lecture. I walked up one aisle and down another, calling on individuals and having that individual argue against someone with a different point of view. Then walking up to the front of the room and gesturing to the third person, and that person would argue Cardozo's position, which was the minority, and then I would call on another person. It was a dynamic class and one I particularly enjoyed. I made the rounds of the room and called on most of the class, but by the time I got back up to the room this young lady was sitting in the front of the room waving a note. So I assumed that she did not want to get called on,

so I ignored her. I keep walking and talking, and calling on people. I walked back to the front of the room, and she waved the note again. Kind of in an exasperated way, I snatch up the note and it says, “your zipper is undone.”

Lessons in humility can come out of anywhere.

I was a confident teacher, and what made me confident was that I thought trial lawyers were natural born teachers. Because, after all, to be in a court room and to teach the jury that your point of view and your position—your recommended outcome—was the correct one, is to me the epitome of teaching. To me it really added to what I thought was a well rounded opportunity to do many things, different things that I enjoyed. So in 1980, President Carter nominated me to the D.C. Superior Court. [. . .] Again it is a matter of creating a dynamic and having a positive frame of mind. Not sitting back, but making things happen for you. That is the kind of dynamic I try to maintain when I teach and even on the bench when I talk to individuals who I have sentenced. Every six months any individual I have sentenced comes back to me, whether they have served time or not. After they are released, they come back to me and I see them every six months in order to monitor how they are doing, to see if they are proceeding along lines that are consistent with the probation or supervised release. I try to share this kind of positive mindset with them, and I’m pleased to say more often than not that works. There are always those disappointments, but more often than not it works.

I am saying all of this because the “outsider inside” thing, really, is a wonderful theme. It is an approach to looking at matters that must be looked at in this day in age. It is interesting, there was a comment earlier about janitors and maintenance people being called into the court room to act as interpreters. When I went to Superior Court as a judge I first had an assignment sitting in the arraignment court, where judges would sit on Saturday duty. It is a very quick court and is a huge court room, for those who are familiar with how things move. All the people locked up from the night before who have been arrested are brought before the judge that morning so that the bail issue or bond issue can be addressed. Maybe Professor [Angela] Davis recalls this but whenever there is a full moon at night, the lock up is always full the next morning. I don’t know why that is.

I noticed that as for the Spanish speakers there were a couple of things happening, one of which was this impromptu direction to have people come in from elsewhere to act as interpreters, of course that rubbed me the wrong way, and in addition to that there was this: Every time a Latino or Latina came up, and the surname was divided up, for example, as Carmen Fernandez also known as Carmen Dario, the court would automatically treat the name as an alias, as if the defendants were trying to hide something—and that is a major factor in making bond determination, so “no bond.” Cultural competence is important as

society is beginning to learn.

Cultural competence. As a lawyer, I had seen the implication and ramification of the system's failure. Now as a Judge I was looking right at it and was the person who was supposed to be responsible for the integrity of these proceedings. I was seeing something that was so out of whack that I finally went to the Chief Judge and said, "Let me explain to you what's going on." I explained the situation, as I've just done, and the first issue that came up was money. The explanation: Interpreters are extremely expensive and we do not have the money. I explained that it should not be a matter of money. How can we have equal protection and due process when a quarter of the people before us have lawyers who are translating for their clients or the janitor is translating, and then people are getting locked up on false premises. That went around and around, and we hit heads for a while. The issue got some publicity in the newspapers, and I got scolded by my Chief Judge, but that's the way it is sometime. Next thing you know there was a system set up by the U.S. Attorney's Office, and the long and short of it is there is a system now called the Office of Interpreters, which was established shortly thereafter and continues to provide services for not only non-English speakers, but also for the hearing impaired.

One thing I have learned as an outsider-insider and especially as a judge is that you cannot evaluate things when you are being influenced by either anger or fear. Anger and fear are toxic to fairness. Look around you, read the paper, see how anger and fear which have influenced policy over the course of many years have been a catalyst for inviting reform coming from the community. When I was nine years old and I was moving from Spanish Harlem to Queens. My parents bought a house and for a while we were still living in this fifth story walk-up, and before we moved into the house in Queens in a nice neighborhood, there was a knock on the door. My father went to the door and there were nine white men that had a petition in their hand asking that we do not move into the neighborhood because the property values would fall.

Well you can image how angry my parents were and how angry I became and what impression that left. But over the years the anger and fear subsided and I took a second look at how things were and are and grew to understand that one needs to incorporate some level of compassion in what one is looking at. Compassion is not sympathy, which means that the conduct was okay, that's something else. Compassion looks at the person's situation through his eyes, albeit the wrongdoer's view. What I tell my students and what I tell myself everyday is you have to incorporate some level of compassion to understand. These people, these 9 white men, were scared and their families were frightened. They were second generation Americans. Their only possessions in life were their homes. What they perceived, albeit wrongfully, was that my family was a threat to them. So, once you examine and reexamine all of this you come to the conclusion that

everything is not always what it seems and reacting to matters simply because there is cause to be angry or fearful is really a surefire way to reach the wrong conclusion on an issue.

These insider or outsider experiences I have had, all of us have had to one extent or another. Whether it is in the court room or the classroom—although I hope none of you have been caught unzipped. That is a fact you do not want to incorporate into your life. But one of the things I try to tell my students is to stay away from labels. It is convenient to have a label sometimes and you can use it. Not only is it convenient sometimes but it creates an impression that you can utilize when you need it. However, limiting your life in order to live up to a label is to substitute that for thinking and using your own judgment. I remind my students that it was nine white men that decided to go clearly and directly against precedent in 1896, when they overturned the institution of separate but equal created by *Plessy v. Ferguson*.

The Supreme Court had said yes to separate but equal. In 1954, that same court, but different human beings of course, overruled *Plessy v. Ferguson* in *Brown v. Board of Education*. These people on the Supreme Court and others on the 5th Circuit—Tuttle, Rives, Brown, and Wisdom—were all white men. Conservative, one democrat, southern aristocracy, who refused to let labels conflict with their sense of moral justice. So these are some of the lessons I have learned from my years on the bench and my “outsider inside” status.<sup>37</sup>

#### V. LATCRIT XIV’S AFTERMATH

In the months following LatCrit XIV, many of the conference participants drafted and submitted thoughtful essays rooted in the discussions and presentations hosted at our gathering in Washington. Some of those excellent essays are included in this Symposium edition of the *American University Journal of Gender, Social Policy & the Law*, grouped within thematic clusters entitled “Structural Barriers: Keeping Outsiders Out,” “The Legal Paradigm: Changes in Law to Help End the *Status Quo*,” and “Outsider Intellectuals: Identity, Responsibility and Method.” The cluster introductions by Professors Luna, Valdes, and Arriola provide framing and context, and offer insightful commentary, for each of the essays in the respective clusters. The Afterword, by Professors González, Reyes, Torres and Venator-Santiago, presents important findings from a self-study performed by the LatCrit board of directors in 2009, as well as recommendations for improvements and reforms to the board structure and overall LatCrit governance.

In the nine months since LatCrit XIV took place, we also learned that our “Outsiders Inside” conference theme proved to be a prescient one.

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37. *Id.* at 16-24.



Many of the threads introduced in our Call for Papers/Panels and in the variety of papers and panels presented at the conference, are now at the heart of popular commentary and criticism concerning the Obama Administration.

Although President Obama has made progress in delivering on some of his campaign promises (e.g., in national security, foreign policy, transportation, healthcare and education reform),<sup>38</sup> the media has noted that many other high-profile campaign promises have gone unfulfilled or have been seriously compromised.<sup>39</sup> For example, despite promising during his candidacy that he would close the Guantánamo prison by January 2010, President Obama “[s]tymied by political opposition and focused on competing priorities” has “sidelined” his administration’s early efforts to shut down the facility.<sup>40</sup> Similarly, although he promised to reform immigration laws within his first year in the White House, President Obama failed to do that, leading Jorge Ramos—one of the news anchors on the nation’s most prominent Spanish-language television network to—say that Obama “has a credibility problem right now with LatinosFalse We’ll see what the political circumstances are in a couple of years, but there is a serious credibility problem.”<sup>41</sup> Poll results released by Univision

38. Journalist Jonathan Alter documents that President Obama has kept many of his campaign promises. Since “he had more latitude on foreign policy and national security, Obama kept almost all his promises there,” including withdrawing most forces from Iraq, keeping commitments to veterans, and issuing a ban on torture. JONATHAN ALTER, *THE PROMISE* 425 (2010). President Obama made good on campaign promises concerning high-speed rail investment, renewable energy, and, in part, healthcare reform. *Id.* at 425-26, 431-32. He “kept his commitment to expand AmeriCorp; begin a social investment fund. . .to stimulate nonprofit growth; increase funding for national parks and forests; and boost crime prevention in New OrleansFalse” *Id.* at 426. On the education reform front, Alter concludes that Obama has “overperformed” on his various promises in the area. *Id.*

39. See, e.g., *Promises Broken Rulings on the Obameter*, ST. PETERSBURG TIMES POLITIFACT, <http://www.politifact.com/truth-o-meter/promises/rulings/promise-broken/> (last visited Oct. 3, 2010) (documenting many of President Obama’s broken campaign promises, in areas such as income tax reform, healthcare, lobbying reform, afterschool programs, and federal contracting); *Compromise Rulings on the Obameter*, ST. PETERSBURG TIMES POLITIFACT, <http://www.politifact.com/truth-o-meter/promises/rulings/compromise/> (last visited Oct. 3, 2010) (documenting President Obama’s many significant compromises on initiatives promised during campaign season, in areas including capital gains tax eliminations for small businesses and startups, a National Health Insurance Exchange, collegiate financial aid, immigration reform, and environmental law). Although PolitiFact reports that President Obama has broken, compromised or stalled on many of his campaign promises, it documents that he has made good on many other promises. As of October 3, 2010, it reported that of the over 500 tracked campaign promises made by President Obama, he has kept 122 and 238 are “in the works.” *The Obameter: Tracking Obama’s Campaign Promises*, ST. PETERSBURG TIMES POLITIFACT, <http://politifact.com/truth-o-meter/promises/> (last visited Oct. 3, 2010).

40. Charlie Savage, *Closing Guantánamo Fades as a Priority*, N.Y. TIMES, June 26, 2010, at A13 (noting, too, that the sidelining would make it “unlikely that President Obama will fulfill his promise to close it before his term ends in 2013”).

41. Carrie Budoff Brown, *Hispanic Media Turns on Obama*, POLITICO (Aug. 11,

and Associated Press in July 2010 revealed that only 43 percent of those surveyed believed that President Obama is sufficiently attending to the Latino/a community's needs.<sup>42</sup> In the case of civil rights for gay and lesbian Americans, Candidate Obama promised to be a "fierce advocate" for progress in many areas, including the ability to serve openly in the armed services and Federal employment nondiscrimination legislation.<sup>43</sup> But many in the lesbian, gay, bisexual and transgender (LGBT) community have grown "disenchanted with what they viewed as his foot-dragging" in pushing certain reforms, like the repeal of the military ban on openly gay servicemembers.<sup>44</sup> Similarly, although he promised severe restrictions on the influence of special interests in Washington, President Obama's Administration has been criticized for being amenable to mutually beneficial relationships with special interest lobbyists.<sup>45</sup>

2010, available at <http://www.politico.com/news/stories/0810/40927.html>.

42. *Id.*

43. Sheryl Gay Stolberg, *Obama Pledges Again to End 'Don't Ask, Don't Tell'*, N.Y. TIMES (Oct. 10, 2009), available at <http://www.nytimes.com/2009/10/11/us/politics/11speech.html?scp=1&sq=obama%20promises%20gays%20and%20lesbians%20can%20serve%20openly%20in%20the%20military&st=cse>. See also Louis Jacobson, *Employment Non-Discrimination Act Ready for Consideration in House, Senate*, ST. PETERSBURG TIMES POLITIFACT, <http://www.politifact.com/truth-o-meter/promises/promise/291/expand-the-employment-non-discrimination-act-to-in/> (last visited Aug. 22, 2010) (citing Obama's promise to "place the weight of [his] administration behind . . . a fully inclusive Employment Non-Discrimination Act.").

44. Sheryl Gay Stolberg, *Obama Alters Hospital Rules for Gay Rights*, N.Y. TIMES (April 16, 2010), available at <http://query.nytimes.com/gst/fullpage.html?res=9C07E2DA153BF935A25757C0A9669D8B63> (noting that "Mr. Obama campaigned saying he would fight for the rights of gay men and lesbians, but he has been under pressure since the beginning of his presidency to be a stronger advocate for their issues").

45. See, e.g., Arthur Delaney, *Obama's Anti-Lobbyist Policies Not Pushing Lobbying Underground After All: Report*, HUFFINGTON POST (June 30, 2010, 5:04 P.M.), [http://www.huffingtonpost.com/2010/06/30/obamas-anti-lobbyist-poli\\_n\\_631189.html](http://www.huffingtonpost.com/2010/06/30/obamas-anti-lobbyist-poli_n_631189.html) (discussing report from the Center for Responsive Politics and OMBWatch noting a sharp increase in lobbying activity); see also Eric Lichtblau, *Across from White House, Coffee with Lobbyists*, N.Y. TIMES, June 25, 2010, at A18 (reporting that Administration officials have been meeting with special interest lobbyists at coffeehouses and other sites away from the White House grounds in order to avoid registering the meetings on the White House's visitors' log: "The off-site meetings, lobbyists say, reveal a disconnect between the Obama administration's public rhetoric—with Mr. Obama himself frequently thrashing big industries' 'battalions' of lobbyists as enemies of reform—and the administration's continuing, private dealings with them." The fact that President Obama has fallen short of the lofty rhetoric employed by Candidate Obama has not been lost on his political opponents. Assessing the first year of the Obama presidency, Republican operative Kevin Madden in a column in the Wall Street Journal in January 2010 wrote that: "While candidate Obama promised to govern as an optimistic, post-partisan statesman with a vision to deliver grand achievements, President Obama has revealed himself as a hypersensitive, partisan and conventional political handicapped by an instinctual desire to grab mostly instant political gratification." Kevin Madden, *Promises, Promises*, WALL ST. J. (Jan. 20, 2010), available at <http://online.wsj.com/article/SB10001424052748703652104574652294276097378.html> (writing that "[t]he pursuit of two of [President Obama's] most important domestic initiatives – the economic-

The compromises and disappointments bemoaned by progressive activists, however, should come as no surprise. As discussed by a number of speakers on our Opening Roundtable and throughout the duration of LatCrit XIV, the pressures and tensions inherent in governance add significantly to the challenges borne by outsiders in positions of power. They expose the volatility of “outsider” identities, the complexity of merging the (outsider) personal with the (insider) political, and the need for balancing trust with accountability.

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stimulus bill and health-care reform –are case studies on how a presidency, so far, has fallen spectacularly short of expectations, and why the American public increasingly feels jilted by a president who overpromised and underdelivered.”).