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### LatCrit Praxis to Heal Fractured Communities

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#### Recommended Citation

Laura M. Padilla, *LatCrit Praxis to Heal Fractured Communities*, 2 Harv. Latino L. Rev. 375 (1997).

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# LatCrit Praxis to Heal Fractured Communities

Laura M. Padilla\*

## INTRODUCTION

Much of what LatCrit theorists address in a discussion on pan-ethnicity is relational.<sup>1</sup> In that spirit, allow me to share some of my background. I am a Latina, an activist, a law professor, a daughter, a sister, a wife, and a mother. My maternal grandfather is from Texas. He had a rough childhood -- his mother died when he was a baby and his father, who was married to another woman when my grandfather was born, was abusive. My grandfather was shy and spoke little English. He thought it was a heavenly blessing when he met my grandmother, a Nueva Mexicana,<sup>2</sup> in Los Angeles where they then lived. He suffered so much discrimination,<sup>3</sup> including language discrimination, he vowed not to teach his children Spanish.<sup>4</sup> My maternal grandmother is a spitfire. She always knew

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\* Associate Professor of Law, California Western School of Law; J.D. Stanford Law School, 1987; B.A. Stanford University, 1983. I am grateful to my California Western School of Law colleagues, Gloria Sandrino and Frank Valdes, for co-chairing this symposium. I also thank the symposium participants for committing themselves to the birth of LatCrit Theory. Finally, I thank my grandparents, Manuel and Mary Armendariz, for their superb role modeling and for leading lives of dignity.

1 This symposium was envisioned in part to address the existence of a Latino pan-ethnicity. In the first plenary panel, Professors Castro and Espinoza specifically addressed this in the context of histories and conditions that unite and divide the various Latino communities.

2 A Nueva Mexicana is a female native of New Mexico.

3 On my grandfather's daily walk in the early morning hours to the Wonder Bread factory where he worked, policemen frequently verbally and physically harassed him. (Hate crimes were not yet recognized.)

4 I have taken many years of Spanish courses but I am not a native Spanish speaker, nor am I bilingual. My grandparents did not want their children or

that a woman's place was wherever she wanted to be, and she taught me that no goals are too lofty. My grandparents hoped to buy a home for their young family in Los Angeles, but were told that the owner could not sell them the home they wanted to buy because they were Mexicans.<sup>5</sup> They could not advocate for themselves and no one else fought on their behalf. Sadly, this experience is not confined to the past -- I see people today who remind me of my grandfather and they motivate me to engage in LatCrit practice.

Before turning to LatCrit practice, let me offer a preliminary observation that many Latinos are troubled by leading divided lives in fractured communities.<sup>6</sup> This is exacerbated by social conditioning which encourages Latinos, as well as other outsiders, to fragment their identities.<sup>7</sup> One of the benefits of LatCrit theory is that it encourages the process of working toward wholeness. At a recent conference<sup>8</sup> which looked at the courage of those who have decided to live lives divided no more, Parker Palmer, the plenary speaker, suggested that the spark which causes people to decide to live divided no more is the understanding that "[n]o punishment can possibly be more severe than the punishment that comes from

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grandchildren to experience the same pain and language discrimination to which they were subjected. Not to say that I have not been discriminated against, but at least it is not with respect to my accent.

5 While my grandparents could not purchase an existing home, they were eventually able to buy a piece of raw land in Hillside Village, a neighborhood in El Sereno (Los Angeles), where they built a home and still reside today. For a detailed discussion of restrictive devices used to preserve white residential neighborhoods, see C. ABRAMS, *FORBIDDEN NEIGHBORS* 224-225 (1955).

6 See generally Parker J. Palmer, *Divided No More: A Movement Approach to Educational Reform*, *CHANGE*, Mar.-Apr. 1992, at 10 (discussing the negative effects of leading divided lives).

7 For example, as a woman of color, I am frequently asked to self-identify by race or gender. For a general discussion of this false either/or dichotomy, see Laura M. Padilla, *Positionality and Intersectionality: Situating Women of Color in the Affirmative Action Dialogue*, 66 *FORDHAM L. REV.* (forthcoming 1997).

8 Confronting Issues of Faith in the Workplace, Kanuga Conference Center, Hendersonville, NC (Apr. 28-30, 1996).

conspiring in the denial of one's own integrity.<sup>9</sup> That is a very powerful realization. Many of us have experienced situations where we are asked to choose to conspire in our own diminishment -- for instance, by recognizing only one of our many identities, while disregarding others. One of the tasks of LatCrit practice is to work towards rebuilding the wholeness of the Latino community. To say no when people ask us to live divided, fractured lives by insisting, for example, that we not speak Spanish, even if we do not know any other language.<sup>10</sup> We must fight persistent efforts to silence us. If

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9 This reflects part of the speech made by Palmer at the Kanuga Conference; it is quoted from his recent article. Palmer, *supra* note 6, at 13. Palmer gives the example of Rosa Parks deciding one day that she would not give up her seat at the front of the bus. At that moment, she realized that any punishment she received for that act could not possibly be worse than the punishment of conspiring in her own diminishment. *Id.* at 12-13.

10 Jordania Reed was fired from a job as a nurse's aide for speaking Spanish "in a community that's mostly Hispanic." See *English-Only Rules Have Become a Problem in the Workplace*, CINC. POST, Apr. 10, 1995, at 8-B. Evette González's former employer, The Salvation Army, forbade her from speaking Spanish at work, even though her language ability contributed to her initially receiving the job. See *Paranoia on Parade*, SEATTLE POST-INTELLIGENCER, Jan. 19, 1996, at D-1.

On a related note, the House recently discussed a measure that would eliminate bilingual election assistance. See Dori Meinert, *House Bill Seeks to Erase Bilingual Election Assistance*, SAN DIEGO UNION & TRIB., July 17, 1996, at A-10. This could diminish or take away the franchise altogether for those Latinos who speak only Spanish.

At a more frightening level, courts have entered the sacrosanct area of the home in the English-only frenzy. In a custody hearing, Texas State District Court Judge Samuel C. Kiser ordered a Mexican native, Marta Laureano, to speak English as well as Spanish to her daughter. Judge Kiser told Laureano that speaking only Spanish at home was equivalent to mistreating her daughter. He stated, "[i]f she starts first grade with the other children and cannot even speak the language that the teachers and the other children speak, and she's a full-blooded American citizen, you're abusing that child and you're relegating her to the position of a housemaid." *Judge Orders Hispanic Woman to Speak Some English to Daughter*, ASSOCIATED PRESS, Aug. 28, 1995, available in 1995 WL 4403760. While Judge Kiser later apologized for the comment about the housemaid, he

Spanish is part of our identity, we should not be asked to mask that identity or to fragment it by deleting that part. We cannot and should not leave our race or ethnicity behind. Thus, we need to work toward rebuilding wholeness and leading lives of dignity, *con respeto* (with respect).

### PRACTICING LATCRIT THEORY

As academics, we sometimes get so caught up in the ivory tower that we forget about community generally, and our communities specifically. Some of us spend much time thinking and writing about our communities, but we are not actively engaged as change agents. We cannot afford to be disengaged. Practicing LatCrit theory is critical for the Latino community. Why? We are still saddled with oppression, racism and white supremacy. In San Diego County, "a group calling itself the U.S. Citizens Patrol has been roaming Lindbergh Field looking for illegal immigrants."<sup>11</sup> You can guess the profile of those the Citizens Patrol is hunting down - they tend to have darker skin, hair and eyes.<sup>12</sup> In some parts of the country, Latinos cannot even shop at Wal-Mart if they are "Mexicans."<sup>13</sup> Latinos are clearly still not equal citizens. We have

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stuck with his order to Laureano to speak to her daughter in both languages. See *Judge Regrets 'Housemaid' Remark, He Tells Hispanics*, ORLANDO SENTINEL, Sept. 10, 1995, at A-26.

11 Leonel Sánchez, *Citizens Keep Eyes on Airport; Patrol Group Seeking to Deter Illegal Immigrants*, SAN DIEGO UNION & TRIB., May 15, 1996, at B-1.

12 As someone who fits this profile and flies about 50,000 miles a year, this is not good news.

13 Attorneys for eleven Latino migrant workers circulated a plea to concerned citizens. They explained that the Latino workers "were shopping at a Wal-Mart store in Amory, Mississippi, and were told that they could not shop there because they were 'Mexicans.'" They then returned to Wal-Mart accompanied by Bo Robinson, a public official in the state of Mississippi. "Much to his surprise, they were again refused the right to shop because of their ethnicity." Letter from Filemon B. Vela, Jr., Esq., *Constant & Vela, Attorneys at Law*, as posted on the Internet and then hard copied to the author (July 12, 1996) (on file with author).

not achieved equality in the areas of education, employment, compensation, and housing, among others. LatCrit practice may be utilized to address these inequalities.

The remaining sections of this essay will address strategies for deploying LatCrit Practice. Effective change agents must collaborate in their efforts to wipe out those vestiges of oppression which many in the dominant culture continue to practice, both unintentionally and intentionally.<sup>14</sup> Some of the tools they can use include LatCrit scholarship, LatCrit advocacy and LatCrit practice.

### *A. LatCrit Scholarship*

Scholarship is important insofar as it allows us to identify problems, sources of those problems and solutions. LatCrit scholarship is particularly important in this regard because it understands the interconnected and three-way relationship between law, race and ethnicity which Professor Haney López has described

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14 Oppression occurs, for example, through hate crimes against Mexicans -- a common occurrence in San Diego County. See, e.g., Greg Moran, *Youth, 17, Won't Be Tried As an Adult in Attacks on Migrants; D.A. May Appeal*, SAN DIEGO UNION & TRIB., Apr. 24, 1996, at B-3 (Youth was "accused of shooting at migrants with a pellet gun after luring them out of an encampment ... with shouts of 'Work! Work!' in Spanish."); Leonel Sánchez, *Horrors of Attack Haunting Migrants; Some of Defendants Given Probation in Brutal Alpine Attack*, SAN DIEGO UNION & TRIB., Dec. 13, 1995, at B-1 ("Three years ago in Alpine, a group of men brutally beat Mendoza and two other Latino migrant workers with baseball bats and other weapons in an attack that prosecutors say was racially motivated."); *Man Charged in Shooting Spree*, SAN DIEGO UNION & TRIB., Sept. 29, 1994, at B-2 ("A Carmel Valley handyman has been charged with six counts of attempted murder -- each charge carrying an additional allegation of a hate crime -- for a shooting spree in which a migrant worker was critically wounded along Black Mountain Road."); Leonel Sánchez, *Migrant Camp Raid Probed by Officials; Men in Camouflage Storm Site; Knock Man Unconscious*, SAN DIEGO UNION & TRIB., Aug. 10, 1994, at A-1 ("a Mexican migrant worker was kicked in the head and knocked unconscious by . . . attackers, who stormed the camp saying they were immigration officers.")

so eloquently.<sup>15</sup> Our Latino-ness impacts the way we view the law. For example, many Latinos are frightened of the law because it has frequently been used as a sword against Latinos, to wit, the involuntary repatriation of United States non-citizens and citizens alike during the great depression,<sup>16</sup> and the intolerance of vigilante-like groups of U.S. citizens patrolling Lindbergh airport in San Diego, searching for illegal immigrants (read, anyone who looks Mexican or Latino).<sup>17</sup> In other words, because of the way the law has been utilized against Latinos, many Latinos fear the law.

Likewise, the law impacts how we view our Latino-ness. For example, California lawmakers and voters, respectively, drafted and passed Proposition 187,<sup>18</sup> which prohibits undocumented immigrants from receiving many public benefits.<sup>19</sup> California legislators and

15 See IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

16 For a general discussion of repatriation, see FRANCISCO E. BALDERRAMA AND RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930s* (1995).

17 See *supra* text accompanying note 11.

18 California Proposition 187: Initiative Statute--Illegal Aliens--Public Services, Verification, and Reporting, 1994 Cal. Legis. Serv. Prop. 187 (West 1994). The passage of Proposition 187 had the effect of amending many different California codes. For a discussion of the impact of Proposition 187, see Lolita K. Buckner-Inniss, *California's Proposition 187--Does it Mean What it Says? Does it Say What it Means? A Textual and Constitutional Analysis*, 10 GEO. IMMIGR. L.J. 577 (1996). Proposition 187 was propelled, in part, by issues of race and ethnicity.

One need only ponder the divisive campaign waged over 187, with its overtones of hostility against Latinos, Asians and other state residents who look or sound like 'apparent illegal aliens,' to get a sense of how difficult ethnic relations could become in the aftermath of the initiative's approval." Opinion, L.A. TIMES, Oct. 2, 1994. An unfortunate by-product of the campaign was that many Latinos were assumed, because of their appearance, to be illegal immigrants, and treated as if they were less than human. For a discussion of some other forces which prompted the passage of Proposition 187, see Kevin R. Johnson, *Fear of an "Alien Nation": Race, Immigration and Immigrants*, 7 STAN. L. & POL'Y REV. 111 (1996).

19 See CA. Prop. 187, *supra* note 18.

voters also respectively drafted and approved the California Civil Rights Initiative ("CCRI"),<sup>20</sup> which amends the California constitution to prohibit both discrimination and preferences on the basis of race, ethnicity, gender and national origin in public education, state contracts and employment.<sup>21</sup> This, of course, has the effect of eliminating public affirmative action in California, the nation's most populous state.

Each of these legislative acts attempts to imbue Latino-ness with dirtiness, impurity, illegality and undesirability. LatCrit scholarship must counteract these misconceptions. But it should go beyond repairing false images; it should also re-imagine the relationship between law, race and ethnicity. One LatCrit project should be the reconstruction of this legal relationship so it has concrete benefits,<sup>22</sup> instead of simply answering the current backlash, an approach which is taking a disproportionate amount of our time and resources.

### *B. LatCrit Advocacy*

Advocacy is also an important tool. Fortunately, groups like MALDEF<sup>23</sup> work on behalf of Latinos. To the extent LatCrits have

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20 CAL. CONST. art. 1, § 31(a) (1996).

21 *See id.*

22 For example, Latinos or other outsiders can use the law for their benefit, similarly to how insiders use the law to promote their interests. One effort LatCrits can make is to ensure the continuation of affirmative action, in the same way insiders use legacies to ensure their representation in higher education. I realize that this is a slippery analogy but, to date, legacies have typically not favored people of color.

23 MALDEF stands for Mexican American Legal Defense and Education Fund. According to its mission statement,

Its principal objective is to secure the civil rights of Latinos living in the United States. It is particularly dedicated to securing such rights in employment, education, political access, immigration, language assistance, and access to justice.

MALDEF's goals are: (1) to foster sound public policies, laws, and



expertise or knowledge, we should be teaming with advocacy groups such as MALDEF to work for the elimination of oppression and racism, and for the construction of equality of opportunity. For example, LatCrit scholars should be involved in the fight against CCRI.<sup>24</sup> As another example, we should be at the forefront of the affirmative action debate.

To really engage in a dialogue on affirmative action and education, we need to reframe the issues to get away from the narrow, exclusive lens which focuses on color-blindness and meritocracy. Instead, we should look at the institutional causes of poorer quality education from kindergarten through high school for many ethnic minority students, which in turn results in lower standardized test scores. Latino and African American students still disproportionately attend segregated schools.<sup>25</sup> This is in large part because of white flight -- the phenomenon of white families abandoning cities for the suburbs, leaving the cities comprised

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programs which safeguard the rights of Latinos; and (2) to expand the opportunities of Latinos to participate fully in American society and to make a positive contribution toward its well-being.

Mission Statement Memorandum from MALDEF (Feb. 25, 1997) (on file with author). For a more detailed discussion of MALDEF's goals and its strategies for attaining those goals, see Rachel F. Moran, *Of Democracy, Devaluation and Bilingual Education*, 26 CREIGHTON L. REV. 255, 291-92, 302 (1993).

24 We do not necessarily need to be primary organizers, but we should be involved in advocacy efforts related to CCRI. Regrettably, just before this article went to print, the 9th Circuit upheld the constitutionality of CCRI against an attack under both the equal protection clause and the supremacy clause. *Coalition for Economic Equity v. Wilson*, 1997 WL 160667 (9th Cir. (Cal.)).

25 See Northwest Regional Educational Laboratory, *Bridging the Achievement Gap in Urban Schools: Reducing Educational Segregation and Advancing Resilience-promoting Strategies*, NORTHWEST POLICY (visited Mar. 5, 1997) <<http://www.nwrel.org:80/newsletters/prev/nwpolicy/aug95/index.html>. See also CHICANO SCHOOL FAILURE & SUCCESS: RESEARCH AND POLICY AGENDAS FOR THE 1990S 3-26 (Richard R. Valencia ed. 1991) [hereinafter CHICANO SCHOOL FAILURE & SUCCESS].

primarily of minority residents.<sup>26</sup> These inner-city schools receive fewer resources than schools in higher-income, suburban areas.<sup>27</sup> Moreover, teachers "have routinely shifted white children into gifted programs while ignoring blacks and Hispanics."<sup>28</sup> To the extent the gifted white children are transferred to predominantly white schools, this has the effect of exacerbating disparate funding patterns and exaggerating existing patterns of segregation. Students in inner cities who are predominantly from low-income families,<sup>29</sup> attend

26 See James S. Kunen, *The End of Integration: A Four-Decade Effort is Being Abandoned, As Exhausted Courts and Frustrated Blacks Dust Off the Concept of "Separate but Equal,"* TIME, Apr. 29, 1996, at 38. "Like most urban systems, the Kansas City, Missouri, School District . . . has lost white students to the suburbs in droves. . . ." As a result, nationally, "a third of black public school students attend schools where the enrollment is 90% to 100% minority." At a local level, San Diego's inner-city elementary schools are comprised of 56.26% Latino students and 21.79% African-American students—clearly a significant majority. Telephone interview with Dr. Peter Bell, Director, San Diego City Schools, San Diego, Cal. (Aug. 14, 1996).

27 See Marc Ramírez, *This is the School That John Built*, SEATTLE TIMES, Sept. 5, 1993, at Pacific Sec. 10. "[I]nner-city schools often are poor compared with their suburban counterparts. Staff frequently are uninspired and without hope, and many environments would frighten most families away." See also *Equal Opportunity Act of 1995: Hearings on H.R. 2128 Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 103rd Cong., 76-95 (1995) (statement of Deval L. Patrick, Assistant Attorney General, Civil Rights Division), available in 1995 WL 10889551:

[O]ver one-half of all African-Americans live in inner-city neighborhoods where schools are starved for basic resources. And yet, in 1993, a cash-poor district spent a million dollars to expand an all-white elementary school rather than send white students to a predominantly black school that was one-third empty and only 800 yards away from the white school.

28 Clemence Fiagome, *In Miami, Who's Gifted Hinges on Money, Color*, CHRISTIAN SCIENCE MONITOR, Oct. 4, 1995, at U.S. 3.

29 The composition of inner-city schools consists primarily of students of color, in part because of the white flight trend described in note 26, *supra*. Also, there are more Latinos who are low-income than non-Latino whites. In 1993, only 9.9% of non-Latino whites lived below the poverty level compared with 30.6% of Latinos. NATIONAL ASSOCIATION OF HISPANIC PUBLICATIONS, HISPANICS-

schools with much higher student-to-teacher ratios than students in the suburbs from middle-and upper-income families.<sup>30</sup> Furthermore, Latino and African American students:

lag four years behind their Anglo counterparts in having access to computers in school. Because of their parents' low incomes and limited educations, young Latinos are less likely than young Anglos to have access to a computer at home; only one Latino household in eight has a home computer, half the number in non-Hispanic white households.<sup>31</sup>

In the aggregate, these education-related factors not only disadvantage students of color while still in elementary, junior and high school, these factors also limit the students' future career options. At a threshold level, the combination of these factors may explain why there are disparities in average SAT scores for white testers and minority testers.<sup>32</sup>

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LATINOS: DIVERSE PEOPLE IN A MULTICULTURAL SOCIETY 24 (1995) [hereinafter DIVERSE PEOPLE].

30 Benjamin Chavis of the NAACP described this educational and resource imbalance as follows:

African-Americans and Latinos are disproportionately isolated in underfunded school systems and sub-standard schools. Wealthier school systems provide their mostly white students with experienced teachers, modern technology, more extensive curriculum, better libraries, better facilities and lower student/teacher ratios.

*Does 'Brown' Still Matter?; Brown v. Board of Education of Topeka, Kansas*, NATION, May 23, 1994, at 718.

31 Frank Del Olmo, *All It Takes Is a Glimpse of Possibilities; NetDay; Hats Off to the Computer Enthusiasts for Helping Minority Kids Prepare for the 21st Century*, L.A. TIMES, Mar. 11, 1996, at B-5.

32 See Pamela Brogan, *Education Reports Show Gap Continues Between Blacks, Whites*, GANNETT NEWS SERV., Aug. 21, 1995, available in 1995 WL 2904236:

Last year, white high school seniors heading for college earned an average score of 443 on the verbal portion of the Scholastic Aptitude Test. African-Americans scored 352. Whites also fared better than

Unequal educational opportunities are undoubtedly part of a complex problem. It is disingenuous and over-simplistic to point to merit as measured by a standardized test score as proof that Latinos are intellectually inferior to whites, instead of undertaking the more difficult task of determining *why* there are disparities in test scores.<sup>33</sup> With advocacy, LatCrits can challenge these assumptions. It is certainly an uphill battle when, to quote Ana María Loya, "[w]e have gotten to the point where *Bakke* is beginning to sound like left politics."<sup>34</sup> But LatCrits cannot turn away from battles where

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Mexican-Americans (372), Puerto Ricans (367), other Hispanics (383), Asian-Americans (416), and American Indians (396).

In math, white high school seniors scored 495 on average, . . . ahead of blacks at 388, Mexican-Americans at 427, Puerto Ricans at 411, other Hispanics at 435, and American Indians at 441.

In other standardized tests, minorities and students from low-income families also perform below the average levels of white students and students from middle- and upper-income families. "Austin is an extreme example of a problem facing schools throughout Texas: Minority students do much worse than whites on the TAAS, which measures reading, math and writing skills. And low-income students do much worse than their more affluent classmates." A. Phillips Brooks, Jeff South and Linda Latham Welch, *The Widening Gap: While Overall Passing Scores on the State's Basic Skills Test are Rising, the Disparity Between Minority and White Students in the Austin School District Continues to Increase*, AUSTIN AM.-STATSMAN, Aug. 27, 1995, at D-1.

33 For a general discussion of what standardized tests do measure, see Leslie G. Espinoza, *The LSAT: Narratives and Bias*, 1 AM. U. J. GENDER & L. 121 (1993).

34 Ana María Loya, MALDEF, Address at the Western Law Teachers of Color Conference, Santa Cruz, Cal. (March 22-24, 1996). To explain the irony of this quote, in *Regents of University of California v. Bakke*, a medical school applicant who was denied admission, brought suit against the Regents of the University of California ("UC"), claiming that UC's special admissions policy discriminated against him on the basis of his race. 438 U.S. 265, 277-78 (1978). The Supreme Court held, with some reluctance, that race could be considered a positive factor in medical school admissions. *Id.* at 320. This produced a guarded victory for affirmative action. In a more recent federal affirmative action case, white law school applicants who were denied admission to the University of Texas School of Law brought suit against the law school, claiming that they had been

fundamental rights to equal opportunities are at stake. Litigation and legislation have to be part of the strategy to achieve equality and eliminate racism.

### C. LatCrit Practice

Another tool for improving the lives of Latinos is LatCrit practice. While research and writing are essential and satisfying, they do not always result in tangible change at a quick enough pace to be satisfactory. In truth, LatCrit theory needs a practical component to be effective. Practicing LatCrit theory takes place on many levels. At one level, we can utilize LatCrit practice through the community itself. At other levels, we can put LatCrit theory into practice through teaching and bar groups.

There are so many ways in which Latinos are being discriminated against that it would be impossible to try to list them all here. One critical area that is inextricably intertwined with the others is education. Latino students are failing at a greater rate than ever, and at a higher rate than any other ethnic group.<sup>35</sup> Education is a key to power, respect, and upward mobility.<sup>36</sup> This key has remained elusive for Latinos. "As of 1991, only 9.7% of Hispanics 25 years and older had completed four or more years of college, compared to 22.3% of non-Hispanics."<sup>37</sup> This means that it is at

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discriminated against on the basis of their race. *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996). In a victory for the plaintiffs, the *Hopwood* court stated that "the law school may not use race as a factor in law school admissions." *Hopwood*, 78 F.3d at 935. Hence, the reference to *Bakke* as left politics.

35 See *id.* See also CHICANO SCHOOL FAILURE & SUCCESS, *supra* note 25.

36 "The marketplace has tended to reward highly educated workers while punishing less-skilled workers." BOB EDWARDS, *Morning Edition: The Growing Inequality of Incomes in America* (National Public Radio broadcast, part 3, segment 13, show 1813, Feb. 28, 1996).

37 RAUL YZAGUIRRE, STATE OF HISPANIC AMERICA 1991: AN OVERVIEW, NATIONAL COUNCIL OF LA RAZA 9 (Feb. 1992) [hereinafter STATE OF HISPANIC AMERICA]. I do not like to use the term Hispanics and am only using it in the text

least twice as likely that non-Latinos have four or more years of college than Latinos. Furthermore, Latino adults are almost eight times as likely as non-Latino adults to be illiterate.<sup>38</sup> The need for greater educational opportunities for Latinos should be apparent. Nonetheless, the Supreme Court has made it clear that affirmative action is a limited remedy to rectify past discrimination,<sup>39</sup> a federal court recently held that race cannot be considered as a factor in law school admissions decisions;<sup>40</sup> and Californians voted to eliminate affirmative action.<sup>41</sup> This nationwide trend indicates that affirmative action may soon be obsolete and it will be even more difficult for Latinos to access higher education.

Without degrees from four-year schools, Latinos are not getting good jobs and in many cases, Latinos are not getting any jobs.<sup>42</sup> That leaves many Latinos stuck in a perpetual economic underclass and makes it nearly impossible to get into positions of power where

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here because that is the term used in the statistics. Aside from the implications of "his panic" which Professor Gerald Torres alluded to at the conference underlying this symposium, as a LatCrit feminist, the term Hispanic is less than ideal to me because it perpetuates male domination and does not allow for references to Latinas to be female specific.

38 See *id.*

39 See, e.g., *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995) (holding that all governmental racial classifications, including those within affirmative action programs, are subject to the strictest judicial scrutiny).

40 See *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied*, 116 S.Ct. 2581 (1996), *supra* note 34, (holding that state university law school's admissions program violated equal protection clause by giving substantial racial preferences to minority applicants).

41 See CAL. CONST. art. 1, § 31(a), *supra* note 20.

42 Latinos sixteen years and older are more likely to be engaged in low-paying, less stable and more hazardous occupations (such as fabricators, laborers and in service occupations) than their non-Latino peers, who are more likely to be in professional or managerial occupations. See *DIVERSE PEOPLE*, *supra* note 29, at 17. While the unemployment rate has vacillated for Latinos as it has for the rest of the population, it has consistently been higher for Latinos than for other ethnic and racial groups. For example, in 1994, the unemployment rate for Latinos was 11.1%, as compared to 5.7% for non-Latino whites. See *id.* at 20.

Latinos can make policy and institutional change. LatCrit theorists are not necessarily typical Latinos, nor are we typical law professors.<sup>43</sup> Because of our unique position, we have a moral obligation to use our "elite status" to enhance opportunities for, and transform the lives of, all Latinos. This can be challenging because sometimes we are so far removed from our communities that we forget our obligations.

Following are some concrete steps we can take to make a difference in our communities, starting with efforts that anyone can make with no training and minimal time commitments. First, meet with students of all ages. Every city has a partnership in education type of program. Sign up as one of its speakers. Talk to students from grammar school through high school about the value of education, about staying in school, and about going to law school. Many Latino students have never met lawyers other than defense attorneys representing family members. Their view of the law should be broader than that. Let them see someone who looks like them, who went to college, and who went on to law school. At every school where I have spoken, students remarked that they had never met a Latina lawyer. If you touch only one person per presentation, your efforts will be rewarded.<sup>44</sup>

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43 This is not to say either that there is an essential Latino or that LatCrits are superior in any way. I make this point only to demonstrate that not many Latinos are law professors, and certainly not many law professors are Latino. For instance, statistics from Fall 1995 for the 179 ABA-approved law schools in the United States show that approximately ten percent of full-time law faculty were non-white, and of that ten percent, approximately twenty-seven percent were Latino; hence, only 2.7% of all full-time law faculty in Fall 1995 were Latino. VI CONSULTANT'S DIGEST 4 (Dec. 1996). Even fewer law faculty are Latina--there were only 81 full-time Latina law professors in Fall 1995, less than 1% of all full-time law faculty. *Id.* at 5.

44 I recently spoke at an elementary school, together with California Western La Raza students, Lisa Maldonado and Guillermo Uriarte. Among the approximately thirty thank you cards we received was the following note: "Dear Professor Padilla, Thank you for coming to our school.... I'm glad you came. I want to be a doctor when I grow up. I learned to stay in school. Don't worry.

Second, be involved in local schools or school boards.<sup>45</sup> It is amazing how one Latino lawyer can change the dynamics at school or school board meetings. Even if you do not speak, your presence will impact what others will and will not say and do. Imagine the possibilities when you actively participate and direct or influence change and policy. Hold schools and school boards accountable.

Third, assess the problems in your community. For example, look at whether Latino students are failing more often, or progressing more slowly, than their white peers. If they are, find out why. If it is because of language differences, then determine whether there are adequate bilingual or language facilities. Yes, Latino students should learn English - after all, it is a prerequisite to success in the United States. But no, they should not be asked to forget or forfeit their language. We are entering the 21st century and there is no question that this is an increasingly global society. In spite of what many nativists insist, we cannot go back.<sup>46</sup> This is home. Latinos should not give up our culture or language. To the contrary, we should be encouraged to keep our culture and language, both to preserve wholeness and in order to be better situated to take advantage of opportunities in a global market and society.

The National Council of La Raza has noted that "Hispanics suffer from substantial levels of discrimination in education,

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I'm going to college and I'm not being a drop out. Sincerely, (name deleted for privacy reasons)." Letter from student (Jan. 10, 1997) (on file with author).

45 Ed López recently won a seat on the board of the San Diego Unified School District. See *Election 1996 Winners*, SAN DIEGO UNION & TRIB., Nov. 6, 1996, at B1. Mr. López is the first Latino ever to be elected to the school board, and this is in a city with a large Latino population.

46 See Kevin R. Johnson, *Free Trade and Closed Borders: The North American Free Trade Agreement and Mexican Immigration to the United States*, 27 U.C. DAVIS L. REV. 937, 949-50 (1994). In this article, Professor Johnson described an incident at a conference on NAFTA's Effect on Human Rights, where an audience member challenged a fifth generation Chicano presenter to "go back to Mexico." *Id.* For a discussion of who is really an immigrant, see RODOLFO ACUÑA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* (3d ed. 1988).



employment, and housing, yet receive minimal attention from federal civil rights enforcement agencies."<sup>47</sup> If you are aware of discrimination in education, employment, or housing, utilize LatCrit practice to eradicate that discrimination by, among other actions, bringing that discrimination to the attention of enforcement agencies, filing lawsuits, writing amicus briefs, testifying, and publicizing.

The State of Hispanic America reports, "Hispanics have the lowest levels of educational attainment of any major population group, but are under-represented in pre-school programs and other education programs designed to help at-risk students."<sup>48</sup> This under-representation is not for lack of interest by Latinos. Our students are simply not getting proportional educational benefits. If we do not raise our voices through LatCrit practice, these injustices will continue.

LatCrit practice can also be incorporated into teaching. For example, Professor Gloria Sandrino from California Western School of Law takes students from her International Business Transactions class to visit a maquiladora plant.<sup>49</sup> Through this experience, her students are able to personally get a sense of issues related to labor, business, and environmental law from both employers' and employees' standpoints.<sup>50</sup> Latinos are humanized when their faces

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47 STATE OF HISPANIC AMERICA, *supra* note 38, at Executive Summary 2. For a discussion of some of the reasons that courts and agencies are more lax in enforcing national origin discrimination claims, see Juan F. Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, 35 WM. & MARY L. REV. 805, 822-30, 846-50 (1994).

48 STATE OF HISPANIC AMERICA, *supra* note 38, at Executive Summary 1.

49 See Ozzie Roberts, *Pair Cares; That's What Links Them*, SAN DIEGO UNION & TRIB., Feb. 24, 1997, at E-1. "Under the maquiladora system, large transnational corporations, many from the United States, have set up satellite companies on the other side of the 2,000-mile U.S.-Mexico border, from San Diego to Texas."

50 One writer described the allure of maquiladoras for businesses, and the downside for low-level employees as follows: "In Mexico, the economy is depressed, labor is cheap and business regulation is lax. Unscrupulous

are attached to concepts that students have been studying. This is important because in law school we frequently get away from the fact that real people are behind the cases we read and that their lives are impacted by the outcomes of the cases. Furthermore, it is important to use our teaching to sensitize students about issues impacting oppressed communities.

A final change we can make in the teaching arena is to include Latino names in hypotheticals and examinations beyond the criminal context where we are currently most likely to see Latino surnames.<sup>51</sup> We should also teach about racial injustice not just in the past tense, but in terms of what is happening today.<sup>52</sup>

LatCrits can further engage in LatCrit practice through local bar groups. For example, La Raza Lawyers of San Diego has organized Community Law Schools. We focus our efforts on the low-income Latino community, with the Community Law School meeting once a week for six to eight weeks. Each week, the school covers a different substantive area, typically starting with the United States Legal System and continuing with classes ranging from landlord-tenant law, to domestic violence, to immigration. The group does not use a clinic format. Instead, it uses an empowerment model, where students learn how to use the law as a tool to improve their lives, not merely as an enemy from which they are trying to protect themselves. Philosophically, we are trying to impart lifetime skills which students will be able to use on a long term basis, rather than trying to solve a single problem. As the saying goes, "If you give people fish, you feed them for a day; if you give them fishing nets,

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[maquiladoras] . . . use the situation to exploit workers, disregarding labor and human rights laws that hold them accountable in this nation." *Id.*

51 For example, in a prominent Criminal Law case book, there are thirty-five cases with defendants who have Latino surnames. See RONALD N. BOYCE & ROLLIN M. PERKINS, CRIMINAL LAW & PROCEDURE (7th ed. 1991). By contrast, in a Contracts case book, there are eight cases with Latino surnames. See E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, CONTRACTS (5th Ed. 1995).

52 See *supra* notes 11, 13, 18-21 and accompanying text. See also Kevin R. Johnson, *supra* note 47, at 943-50.

you feed them for a lifetime."

Community law schools are great projects to undertake with Latino law students for a number of reasons. For example, community law schools bring law students together as a group, they allow students to connect with local bar groups and with practicing attorneys, and they give students a chance to work on a worthwhile project and experience the joys of volunteerism. It is crucial to give law students a stake in organizing the project so they have ownership, and to give the local residents who will take the classes a stake in designing the program, particularly the classes offered, so they will also have ownership. We typically have a graduation ceremony at the end of the course, which provides an opportunity for participants and their families to celebrate culture, good food, and a sense of accomplishment together. It is significant that many students receive their first diplomas at the ceremony.

#### *D. Funding*

Normally, we do LatCrit or activist work on a completely pro bono basis. While this no doubt will continue, there are many sources which can fund various activities. For example, the W.K. Kellogg Foundation administers and funds the Kellogg National Fellowship Program ("KNFP"),<sup>53</sup> through which fellows can pursue

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<sup>53</sup> The KNFP is a three year leadership development program. Forty to fifty people from all professions throughout the United States are selected annually as fellows. Because fellows are chosen from many different fields, the fellowship offers tremendous vitality, a true inter-disciplinary sense of problem-solving, and a cross-fertilization of ideas. When applying to the program, applicants typically identify a social problem and how they might utilize a Kellogg fellowship to address that problem. There is a wrinkle insofar as the identified problem cannot be in an applicant's primary area of expertise. The reasoning is that the fellowship is designed to broaden one's perspective about social issues and problems and to assist fellows in developing greater interdisciplinary skills. To apply for the KNFP (which is changing its name to the Kellogg National Leadership Program), request an application in writing from: Kellogg National Leadership Program, W.K. Kellogg Foundation, P.O. Box 5196, Battle Creek,

a variety of service projects.

The W.K. Kellogg Foundation also funds significant lawyering projects for social change. To maximize its impact, the Foundation targets its grants toward specific programming priorities. It understands that certain groups of people presently face particular barriers that block them from reaching their full potential. Thus, it attempts to support projects that serve groups such as people with disabilities, the elderly, women, and minorities. The Foundation is particularly interested in grant proposals for programs which are designed to help people help themselves. Some programming areas for grant proposals include those related to: integrated, comprehensive health care systems; rural development; water resources; higher education; youth development; efforts to increase philanthropy and volunteerism; and efforts to develop leadership. The Foundation typically provides seed money only for projects which have the capacity to sustain themselves beyond the initial grant period.<sup>54</sup>

The W.K. Kellogg Foundation is just one resource available to fund projects that particularly impact communities of color. There are several other foundations and resources,<sup>55</sup> and LatCrits should be tapping into them for many reasons. First, it is better that we access them than other constituencies whose interests may be

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MI 49016-5196.

<sup>54</sup> Thus, if you want to put together a project which provides legal assistance to AIDS patients in low-income, primarily ethnic areas, the project could fit the profile. Likewise, a project which explores the benefits of bilingual education, followed by implementation of a program utilizing bilingual education for underserved populations, may also fit the profile. If you are interested in this type of general grant, you do not need to complete an application form. Simply write a short letter describing the basic problem you are concerned with and a plan for its solution. The letter should be addressed to: Manager of Grant Proposals, W.K. Kellogg Foundation, One Michigan Avenue East, Battle Creek, MI 49017-4058.

<sup>55</sup> See, e.g., THE INTERNATIONAL FOUNDATION DIRECTORY (6th ed. 1994). In addition to the foundations cited in this directory, major businesses and employers in many cities have local foundations which try to fund local projects.

opposed to our own. Second, to the extent that we are doing service work anyway, we should get outside sources of funding for that work. Third, we can make wonderful contacts who may be able to assist with future LatCrit projects. Fourth, and most importantly, LatCrit theorists are unique and valuable resources and to the extent that these resources can be improved, we will all be better prepared to serve our communities in the future.

## CONCLUSION

In summary, one of our tasks is to make our homes and communities more hospitable and less toxic. Through LatCrit praxis, we can advance the healing of fractured and unhealthy communities, thus better equipping Latinos to be healthy and vital community members. As healthy community members, we can improve our own lives and contribute to a multiplier effect,<sup>56</sup> through which we can improve our neighborhoods, cities, counties, states, countries and world.

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<sup>56</sup> Dean Paul Brest and Miranda Oshige have discussed the myriad benefits which can accrue to communities of color through the progress and promotion of a single person of color. See Paul Brest and Miranda Oshige, *Affirmative Action for Whom?*, 47 STAN. L. REV. 855, 868 (1995).