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PERFORMING LATCRIT: Literature and the Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production: The Confessions of an Accidental Crit n1

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BIO:

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SUMMARY: ... In Part II, I will discuss the substantive content of the Arts Panel by describing each presentation in detail. ... Music, for example, has a much wider and current impact than literature in popular culture because it is more accessible. ... All these stories show a vibrant Latina/o popular culture that is not "somewhere else" but is firmly here in the United States. ... Two commentators, Adrienne Davis and Elvia Rosales Arriola, both law professors, reacted to the panelists' presentations. ... His description promised a fascinating look at Jamaican popular culture, through its music. ... Davis focused on the issues of race and sexual discrimination. ... Here was our most clear example of a form of popular culture that reflects the very worst of our society. ... I look forward to the day when, enlightened by her theory of viewing, those of us who disapprove of the content will be able to see and expose the offending material, and thereby retake the stories that are being fabricated therein. ... n105The panel focused on popular culture, which has both good and bad elements. Popular culture can be a powerful form of resistance to oppression on the one hand. ...

HIGHLIGHT: Nuestra pobre America, que comenzo a rezar cuando ya eran prehistoria los viejos testamentos . . . cuando la historia estaba llena de guerreros, el alma llena de misticos, el pensamiento lleno de filosofos, la belleza llena de artistas, y la ciencia llena de sabios

Todo lo que cruzaba el mar era mejor y, cuando no teniamos salvacion, aparecio lo popular para salvarnos.

-- Homero Manzi n2

[*1294]

I attend LatCrit conferences n3 to be educated on what I regard as the most exciting legal scholarship being produced today. Therefore, I naturally jumped at the opportunity to help organize the Fourth Annual LatCrit Conference and to chair one of its Plenary Panels. n4I have penned this Essay for the purpose not only of joining Critical Race Theory ("CRT") n5 discourse, but also to create a recorded history of LatCrit travels.

Before I move on to develop some preliminary thoughts on art, law and critical theory, I want to share some of my views on language, which, of course, are a predicate foundation of and for my [*1295] analysis. Initially, I must apologize for my ignorance. Pomo n6 is not yet a language in which I can speak, let alone claim fluency. n7 Therefore, until today, I had never in my entire life used the terms "anti-essentialism" or "antinormative" or "praxis" in a written sentence. n8 I am fairly certain that I had never used essentialism or praxis in any way in my entire life. I think, however, that it is possible that I may have used the words "essential" and "normative" in otherwise "normal" uses of language. But of course, I am being essentialist in saying that there is such a thing as normal language (oh, and pronormative as well). Which leads me to the mental exclamation of: !Ay Dios, quien me manda a meterme en estos lios! n9 But, I have come to the realization that, though perhaps difficult, the challenge of critical language will enrich my scholarship.

However, reaching the proper balance between the critical exploration of language and the abuse n10thereof requires a lot of energy from me, because I have an almost pathological aversion to abusing language. Critical scholars have often been accused of language abuse. n11 While I realize that the attacks on CRT all too often are essentialist attempts to silence different voices, n12 some of the charges regarding the form of critical speech, when coupled to my own aversion to language abuse and experience with a few intemperate bits of discourse, give me great pause. I find that the [*1296] intentional misuse of language simply for the sake of showing off or of being exclusionary is very elitist. For example, abuse of language can be nothing more than a self-indulgent attempt to develop a secret speech that sets your little clique apart, both in private and in public. Or, it can be the forced use of overly complicated language simply for the sake of making an exaggerated pseudo-intellectual display, rather than to write effective scholarship.

Of course, a demanding use of language is essential to critical scholarship. More generally, mastering language is an essential skill for a lawyer or academic, and challenging the language skills of our audience can have strong pedagogical effects. But as a teacher and scholar, I am offended by the notion that simple language is a sign of simple-mindedness. For example, as I will discuss in detail below, the objects of the Arts Panel, illustrate how popular cultural narratives, may sometimes be spoken in plain and simple language, and are still perfectly able to transmit complex ideas that constitute antisubordination praxis. n13 Additionally, the capacity to present complex concepts in language that make them accessible to students and to persons outside our field takes a great deal of talent. Moreover, making our work accessible to uninitiated audiences is part of our educational mission.

In the LatCrit context, deconstructionist postmodern analysis clearly demands a careful approach to language that allows scholars properly to explore the hidden complexities of our subjects. n14 The LatCritical n15 use of language in legal scholarship is thus exciting, intellectually stimulating, and effective. I hope that in my new LatCritical travels, I am consistently able to reach the necessary [*1297] balance to use language for proper critical analysis, and avoid the misuse thereof that I find so distasteful.

In Part I of this Essay, I will describe the process that led the Planning Committee to include the Literature and Arts as Antisubordination Praxis: n16 LatCrit Theory and Cultural Production ("Arts Panel") on the program, as well as the selection of the participants. In Part II, I will discuss the substantive content of the Arts Panel by describing each presentation in detail. In Part III, I will give my own reactions to the presentations and will seek to place them within the planned description and the written questions submitted to the panel. I conclude by discussing my own, reluctant, difficult and ultimately accidental gravitation towards LatCrit theory generally.

I. The Planning Process

Very early in the preparation for LatCrit IV, Planning Committee member, Professor Roberto Corrada, suggested that we include a panel on "Literature and the Law." He wanted it to focus on the use of narrative in legal scholarship. n17 I joined Roberto in strongly [*1298] supporting this plenary because of my personal experience with the rich diversity in Latina/o narrative form. Therefore, my main suggestion with

regard to the inclusion of the Arts Panel was that we include a broad artistic spectrum that focused on popular culture. In other words, I urged that the Arts Panel discuss storytelling in literature as well as in music, dance, painting, performance art, and theater. n18

I made these suggestions on the study of narrative while fully conscious of the attacks leveled against CRT generally, and against the use of narrative in particular. n19 Storytelling, when used by scholars of color, is ultimately attacked as being dishonest and failing to meet the objective standards of a methodological quality required of academics. The exchange between Mark Tushnet and Gary Peller, n20 the sustained critique by Richard Posner, n21 and the [*1299] strongly worded attacks of Daniel Farber and Suzanna Sherry, illustrate the increasingly bitter nature of the reactionary culture war that has overtaken the legal academy. n22 Discrediting outsider jurisprudence and outsider storytelling could prevent people of color from meaningfully participating in the legal discourse about civil rights in this nation. The suppression of the voices of scholars of color would again create the incongruity identified by Richard Delgado in the *Imperial Scholar*, n23 that the civil rights discourse in legal scholarship is being dominated by the normative voices of white males and, thus, is fundamentally incomplete. n24 Reserving [*1300] the discourse for white males only would deprive the aggrieved groups a voice in the civil rights debate, which is antidemocratic, n25 and preserves the "perpetrator perspective" in the legal discussion of equal rights. n26 Such a result would be particularly dangerous in this era of backlash when racism is being publicly denied, but empirical evidence shows that bigotry in fact remains alive and well. n27 The retrenchment of existing hegemony must be resisted and storytelling is essential ammunition in the culture wars over civil rights generally and over critical theory in the legal academy in particular. Of course, understanding why we cannot abandon the field of civil rights discourse to white academics requires an understanding of the concept that "truth" is not colorblind, n28 especially legal [*1301] truth, n29 which in this context is more often than not socially constructed as a result of normativity n30 and essentialism. Berta Esperanza Hernandez-Truyol defines essentialism in her contribution to this symposium as follows:

The concept of essentialism suggests that there is one legitimate, genuine universal voice that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group -- be it women, Blacks, Latinas/os, Asians, etc. Feminists of color have been at the forefront of rejecting essentialist approaches because they affect erasures of the multidimensional nature of identities and, instead, collapse multiple differences into a singular homogenized experience. n31

Minority and subordinated communities utilize narratives to counter the "singular homogenized experience" produced by the essentializing of identities imposed by majority society. Narrative, thus, is a vehicle to speak the truth to the "power" n32 -- the domi [*1302] nant American society. n33 LatCritters n34 embrace and celebrate the narrative. n35 More specifically, LatCrit scholarship must and does include storytelling, because it is both antinormative and anti-essentialist. In fact, our failure to use narrative would contribute to the preservation of privilege and, thus, to normativity and essentialism. n36

However, the embrace of storytelling must be undertaken on many levels, including the inner safety of the Annual LatCrit Conference. At our conference, we should explore its alternative forms and complexities. Learning how to tell narratives from a panel of interdisciplinary academics, will help to enrich our scholarship in two ways: first, it will prevent us from making ourselves vulnerable to attack by making our storytelling better, n37 and second, it will expose us to different forms of storytelling. n38 [*1303]

Storytelling can be used to fill historical gaps. Historians provide perspective on world and local events, but legal academics need specific facts that we can then tie to legal authorities. Historical analysis takes a macro-view of events, whereas, we in the law, particularly in Anglo-American law, need to take a micro-view of factual particulars from which we can make general policy. Storytelling, particularly by outsiders, provides a balanced historical view, ensuring that the particulars of stories about minority communities are not suppressed because of the silencing of all but "normative" voices, thus avoiding essentialism.

Popular culture, n39 and its many forms of narrative expression, can fill in the gaps left both by historical analysis and by the enforced homogeneity of essentialism, by showing scenes from every-day life. Thus, popular culture provides insights into the ambiente, the daily environment, passions and customs of a particular segment of our society. Music, for example, has a much wider and current impact than literature in popular culture because it is more accessible. n40 Music makes ideas accessible to the masses who have fallen through the huge cracks of the educational system and have failed to acquire the skills to read, or to those who simply do [*1304] not or perhaps would not read the literature. For instance, in Puerto Rico the declamador n41 Juan Boria, and the album by singers and artists Lucecita Benitez and Alberto Carrion, who turned the poems into lyrics, introduced many of us to the AfricanCaribbean poetry of Luis Pales-Matos and Fortunato Vizcarondo. These poems are an all too rare, honest, and extended discussion about the African in the Puerto Rican. n42

Additionally, music can easily cross borders and be listened to by immigrants and/or adopted by the dominant culture. Therefore, the influence of their own traditional music within immigrant communities in the U.S. is profoundly self-empowering. One poignant example of such an occurrence took place in the 1950s, Felipe Rodriguez (La Voz), one of Puerto Rico's most famous singers, packed them in at the Teatro Puerto Rico in New York with his boleros, slow songs that told a story, a la Frank Sinatra. n43 Rodriguez told stories about daily life, and about love and loss in Puerto Rico and in the Latin American world generally. n44 Finally, the stories can crossover to the dominant culture. In the 1920s and 30s, tango music brought Spanish to an entire generation of "sophisticated" Americans and Europeans. Those who bothered to understand the lyrics would have found poignant descriptions of life in the slums of Buenos Aires at the beginning of the twentieth century. n45 [*1305] Even more recently, new hip-hop stars and darlings of MTV include Ricky Martin and Jennifer Lopez. n46

Others tell stories in different media. Picasso's "Guernica" is probably one of the most powerful anti-war statements ever made, n47 and the murals of Diego Rivera often focused attention on the plight of workers everywhere. n48 More recently, Leguizamo's (John, not Irineo) n49 "Freak," which aired on HBO, presented an incredibly disturbing and uncompromising look at growing up Latino in New York City. This one-man theater show, which HBO taped live, was a raw portrayal of a poor, Latina/o immigrant family. n50 All [*1306] these stories show a vibrant Latina/o popular culture that is not "somewhere else" but is firmly here in the United States.

For me, as a Puerto Rican, popular culture takes on added political significance because Puerto Ricans have endured five hundred years of colonial rule. The first colony, the Spanish colony, lasted from 1493 to 1898. The second colony, the American colony, endures today. In that context, the affirmation that there is a Puerto Rican popular culture means, in part, that there is a social consciousness distinct from that of our colonial rulers. Puerto Rican culture is the culture of a people who had a distinct consciousness before the first estadounidense (citizen of the United States) came ashore in Guanica on July 25, 1898. Puerto Rican culture is not the culture of the taino natives who greeted Columbus in the Caribbean, it is not the culture of the Africans, free n51 and enslaved, who came or were brought to the island. Puerto Rican culture is not the culture of the conquistadores, Spanish or American. Puerto Rican culture is rather, a combination of all those influences that has produced a culturally separate people, even if we do not have political or territorial sovereignty. n52 [*1307]

II. The Arts Panel n53

Each presenter discussed a different form of grass-roots popular cultural expression. Nicholas Gunia, a student at the University of Miami School of Law, focused on Jamaican Music. His contribution to our discussion was based on his work while earning a Degree in Arts from Dartmouth College. n54 Dr. Lillian Manzor, an Associate Professor at the University of Miami's Department of Foreign Languages and Literatures, n55 addressed the transformative power of performance art, by examining the intersections of latina-ness, race, and sexuality. The last presenter was Filmmaker Celine Salazar Parrenas, n56 of the

Modern Thought and Literature Department [*1308] ment at Stanford University, whose talk analyzed video verite pornography, in the context of Southeast Asian prostitution. Two commentators, Adrienne Davis n57 and Elvia Rosales Arriola, n58 both law professors, reacted to the panelists' presentations.

Nicholas Gunia based his presentation in the Arts Panel on his thesis, *Half the Story Has Never Been Told: A Popular History of the Jamaican People*. He scrutinized song lyrics that embodied the mindset of the masses in Jamaica, as a primary source of history or historical narrative. His description promised a fascinating look at Jamaican popular culture, through its music. n59 However, to my surprise, it was the presenter himself who started my educational experience. Initially, for what I now confess are reasons that reveal the influence of essentialism and stereotypes on my own perceptions, I convinced myself that Gunia was not Jamaican, because he simply neither looked nor sounded Jamaican to me. n60 However, embarrassed at my own reflexive reaction to the exclusion of all our LatCrit talk, though I do the walk, I quickly learned that he was Jamaican. While he orally described his presentation the day before the panel, he burst into song that was warmly bathed in his [*1309] Jamaican accent. Gunia's performance was transformative in the two most literal of ways. First, he became clearly Jamaican right before my eyes. Second, I realized that I was being essentialist about what constitutes Jamaican. n61

Mr. Gunia himself addressed the issue of being Jamaican, but under the essentialized lens perhaps not looking or sounding Jamaican, during his talk. He self-mapped as Jamaican of Arab descent and explained that position within the Jamaican racial hierarchy, which, like so many other Caribbean models, privileges persons based on skin shades, favoring the lighter hues.

Having traveled through the issue of race, Gunia then captured the purpose of our panel in his presentation. Initially, he described how popular music is a narrative form that chronicles the struggles of the storytellers and their audience. It becomes an important part of praxis because it serves to establish a historical record of events, feelings, and conditions that otherwise would remain invisible and unheard. n62 Gunia also explained that "music is perhaps the most effective and accessible medium for communicating and promoting values, ideas and beliefs [in Jamaica]," because of its accessibility to the masses. In addition to its educational value, in the Jamaican Babylon system, n63 music is an expression of political resistance to dominant structures, thus becoming a widespread "forum for dialogue." n64 [*1310]

Finally, Gunia noted how Jamaican music reflects not only the good and bad aspects of popular culture but also serves as a vehicle for cultural changes. For an example of how music can reflect negative cultural tropes, he explained that sexism, even to the extreme of violence against women, is sometimes matter-of-factly described in popular songs. n65 On the other hand, as an indicator of music's value in providing a platform for change, he also commented that the women are now beginning to sing back to the Jamaican men. The women have started to make it clear, by way of song, that they will neither tolerate nor submit to violence. The women's choice of media proves its power. Their antiviolence songs are certainly a reflection of the growing social consciousness of the society in its music, because music is the natural forum that Jamaican society uses for cultural expression.

Gunia's talk also pointed out the difference between true popular culture, i.e., the culture from and of the people, and the pop tunes imposed by capitalistic corporate music business and payola-driven record distribution. Mostly because of time constraints, he did not have the opportunity to develop the latter theme.

The next presenter was Dr. Lillian Manzor, who titled her talk: "¿De Donde Vengo? and Where Can We Go From Here? Tropicana's Milk of Amnesia/Leche de Amnesia." She focused on how artists "address performatively intersections between gender and ethnicity, sexuality and national identity, and between language and political action." n66 By way of introduction, she explained that Tropicana was not a reference to the famous Havana night club, but rather to Carmelita Tropicana, the stage name of a Cuban-American lesbian performance artist from New York. The performance art, [*1311] storytelling of Carmelita was yet another powerful example of how outsiders present their own stories. Even the choice of

the name Carmelita has hidden significance, since the word *carmelita* refers to the color brown, thus, a hidden reference to race. n67

Dr. Manzor explained the relevance of narratives to the LatCrit exploration by establishing that Carmelita Tropicana's performance constituted the redeployment of autobiographical memory or narrative to initiate a dialogue between contradictory histories of cultural assumptions, presumptions, and imposed normativities. She illustrated her presentation with a video of one of Carmelita's shows. Carmelita Tropicana appears dressed in a white guayabera, black pants and a straw hat, smoking a big cigar. The artist's appearance, combined with her voice, was essential to the power of her presentation, thus the medium of her storytelling became very important. Finally, Dr. Manzor explained this effect of narrative by noting that Carmelita Tropicana, as a cubana, challenged Angla/o essentialist notions about Cuban Americans, and, as a lesbian, challenged Cuban American essentialist notions about themselves, particularly on matters of politics, race and gender.

Thus, Dr. Manzor explained, Latinas/os' "parodic reappropriation" becomes a means of tactical intervention that counters Angla/o constructions of Latin(a)ness, as well as Latina/o essentialism, in the visual arts. Performance art, she concluded, is an alternative practice that allows Latinas, specifically, to intervene and subvert a representational system that is an accomplice of a repressive social order prevalent in the U.S.

The last presenter was filmmaker Celine Salazar Parrenas, of the Modern Thought and Literature Department at Stanford University. Just reading her title sent shivers down my spine: "Little Brown Fucking Machines Powered By Rice": Recalcitrant Bodies in Southeast Asian Sex Tourist Videos.

Parrenas explained that the phrase "Little Brown Fucking Machines Powered by Rice" is a U.S. military cliché applied to women from Southeast Asia. In her view, this unfriendly appellation reflects the attempt "to naturalize Southeast Asian women's biologic drive for deviant sex and cultural propensity for pathologic hypersexuality." She also noted that johns in the Southeast Asian sex-tourist trade made the videos about their personal encounters [*1312] with the prostituted women. However, she added that these "private" videos are often publicly distributed in video rental stores. n68

In her description, Parrenas explained that, in the films, the johns constantly hide their faces while they show their bodies when they speak into the camera. The johns' bodies are of all shapes and sizes, but the women are uniformly very thin and frail. Sometimes, the johns order the women to take the camera and "direct" their filming; however, the men react violently when the women accidentally or intentionally point the camera in their direction. In fact, Parrenas observed that the control over the storytelling was part of the johns' sexual gratification. Specifically, the "sexual representations of racial bodies" was part of the johns' self-indulgent power trip. They wanted to show these were hypersexual Southeast Asian women, who wanted to participate in the videos, "not for the money, but for the love of good hot sex."

Parrenas, who described herself as a Filipina American, admitted that it was difficult to witness "explicit sex acts by and of Southeast Asian women as 'Little Brown Fucking Machines Powered by Rice.'" She made herself nevertheless witness these representations precisely in order to develop a "theory of viewing" that would allow her to cope with exposure to such offensive material. n69 If the audience looked at them through the lens of this new theory of viewing, she argued, the sex videos would be turned into political praxis. Parrenas's purpose is to find the women in the videos to see if their real stories can be told as part of her research. Moreover, she wants to expose this material to critical viewers, rather than racist, self-indulgent eyes. n70 Through uncritical viewing, she told us that these videos "presumably recruit witnesses complicit to [*1313] male domination through generating pleasure from the experience of viewing." Parrenas, in so doing, is herself transforming critical theoretical methodology. For example, her approach challenges the traditional feminist tendency "to condemn visibility and visibility, especially in porn." n71 She further critiques the propensity "in racial discourses of representation to flee from the complexity netted by sexual representations of racial bodies." n72 [*1314]

Parrenas concludes by observing that "in what I will call the 'recalcitrant body' in Southeast Asian sex tourist porn, I Parrenas argue that there is something to be seen in the image of the Southeast Asian woman prostitute in her (and our) experience of pleasure and pain. [Viewing the prostitute's image of pain] is an experience that counters the narration offered by the john." n73 Therefore, even though difficult, the product of Parrenas' research, both a powerful and important new theory of viewing, will convert gonzo pornography into praxis. n74

The commentators, Professors Adrienne Davis and Elvia Rosales Arriola, reacted to and contextualized the panelist's presentations to LatCrit. n75 Davis focused on the issues of race and sexual discrimination. n76 Arriola focused on latina-ness and on matters of sexuality and gender. Arriola illustrated her presentation by reading two poems: Judith Ortiz Cofer's *The Latin Deli: An Ars Poetica*, n77 and Sandra Cisneros' *Loose Woman*. n78 Both Davis and Arriola developed the intersectionalities between the narrative described in the three presentations and LatCrit theory. n79 [*1315]

III. My LatCritical Viaje (Trip) Through the Arts Panel

Caminante, son tus huellas

el camino y nada mas;

caminante, no hay camino,

se hace camino al andar

-- Antonio Machado n80

In this Part of the Essay, I will first give my own reaction to the presentations. Then, I will provide my own musings about the substantive description and how the presentations generally fit therein and within LatCrit discourse.

Nicholas Gunia's description of music as historical chronicle resonated with me. n81 But also, as his presentation had suggested, music can describe economic struggle. I realized that this was not a foreign concept to me. In *Navidad que Vuelve* (Christmas Returns) my father examined the song *Los Reyes No Llegaron*, n82 (The Wisemen/Kings did not Arrive) which was a perfect description of the level of poverty in Puerto Rico in the 1950s. *Los Reyes* tells the [*1316] story of a young orphan who thinks that the wisemen have forgotten him, because they did not bring him a present. n83 More recently, the maddening *Crucible of Empire*, n84 a PBS special, depicted the transmission by song of a more political message. The *Crucible* effectively used songs to explain the contemporary views in support of the Spanish-American War. The producers studied songs like *Brave Dewey* and *His Men* to show how popular sentiment was manipulated to favor military intervention. n85

Additionally, music can overcome many challenges, sometimes plainly containing political subtexts such as education. Gunia described how music can be a teaching tool that allows the singer to bypass society's problems, such as illiteracy, and still manage to educate. In Puerto Rico, the use of song is similar to the Jamaican model. Sadly, in 1951 on my isla (island), a high illiteracy rate made it difficult to educate people on how to vote. Consequently, the government and political groups produced songs to instruct people on how or why to fill out the ballot, which used colors and graphic signs to help the illiterate use the forms. For example [*1317] "*Referendum, referendum, referendum quiere decir . . . / la consulta que se le hace al pueblo*" is a song explaining that the referendum is a consultation of the people by ballot. This song was commissioned by the Popular Democratic Party and used in support of the approval of the Puerto Rico Constitution of 1952 by popular ballot. n86

Gunia also talked about music transmitting values, including cultural values. My first memories of rap music were of listening to two hugely successful songs on Puerto Rican radio that depict the "transmission of values" possibilities of song. The first one, titled *La Escuela* (the school), asked kids to stay in school.

The other one, titled *La Abuela* (the grandmother), extolled the values of the grandmother raising her grandchildren.

Finally, Puerto Rico also shows parallels with the Jamaican experience because popular music, which can be orally passed along from person to person, is very difficult to suppress and, thus, is an important form of anticolonial praxis in a repressive colonial society. Moreover, in the colonial context, cultural expression takes on the added dimension of political self-awareness and assertiveness. In Puerto Rico, this has happened during both colonies. During the Spanish colony, for example, the song *El Ciclón*, ("the Hurricane") was in fact a reference to Spanish colonial rulers. The author described how the singing birds in their cages, a reference to the many persons put in jail by the new government imposed by Spain, stopped singing when the *Ciclón* was coming. n87 Songs also recognized our wish for independence and accompanying self-awareness as a people. *El Grito de Lares/ se ha de repetir/ y todos sabremos/ vencer o morir* (The Cry of Lares/ shall be repeated/ and we all shall know how/ to win or to die) is part of song remembering the attempted anti-Spanish revolt in Lares, Puerto Rico on September 23, 1868. n88 And *Lola Rodríguez de Tío* provided us with a call to arms in the revolutionary version of *La Borinquena*, our national anthem (now with different lyrics). The opening lyrics of the Rodríguez de Tío version of *La Borinquena* called on Puerto Ricans to fight for independence: *!Despierta boriqueno,/ que han dado la señal!/ !Despierta de ese sueño,/ que es hora de luchar!* (Wake up bori [*1318] queno n89/ the signal has been given!/ Wake up from that dream/sleepiness/ that it is the time to fight!). n90 Compare those fiery words to the completely submissive text of the current official version, which opens as follows: *La Tierra de Borinquen,/ donde he nacido yo,/ es un jardín florido/ de mágico primor . . .* (The land of Borinquen/ where I have been born/ is a flowery garden/ of magical beauty . . .). Understandably, her contemporaries described *Dona Lola* as a *polvora* (explosive black powder). n91

But we have also engaged in the use of song as an anticolonial praxis with our second colonial rulers. The *musica de protesta*, music of political protest, in Puerto Rico in the late 60s and 70s, includes a heavy dose of pro-independence sentiment. n92 *Andrés Jiménez*, "*El Jibaro*," demanded that we stand up to the American tyranny, by exclaiming: *!Cono, despierta boricua!*, loosely translated into "damn, wake up people of Puerto Rico." n93

In his choice of popular music as a medium for narrative, *Gunia* captured my attention because he was speaking of a familiar musical narrative form. In contrast, my reaction to *Dr. Lillian Manzor's* presentation was more to the content of the story that she was describing, than to the medium by which it was expressed.

First, in my continuing process of using *LatCrit* for self-analysis, listening to *Manzor's* description of her subject *me di cuenta que yo conozco a Cubanas lesbianas* (I realized that I have some friends who are Cuban lesbians), and it also reminded me how I have moved away from my homophobic upbringing, a staple of *la cultura latina*. I now can not only listen to but also appreciate stories by and about lesbian Latinas, without either ignoring or devaluing the story-teller, or tuning out the story. [*1319]

My old ways would not have allowed me to notice that there was something very familiar about *Milk of Amnesia*. The Cuban and Puerto Rican experience have many parallels, our relationships to our Spanish and American colonial lords probably being the most important. Unfortunately, outside our respective islands, attitudes toward socialism and the politics of privilege often divide our communities. But that is never present in the *LatCrit* context, which is why *Leche de Amnesia* seemed so natural. I was also captured by *Carmelita Tropicana's* rather subversive n94 perspective on the Cuban American experience. I am an exile from my island and relate to the critical frame of reference that *Carmelita Tropicana's* exile illuminates, n95 not the least of which is the shared pain of feeling like an outsider both in exile and upon our occasional return. n96

Furthermore, I was struck by how the content of *Carmelita Tropicana's* performance showed the power of outsider stories within our communities. She was presenting a queer vision in a patriarchal and sexist society, re-introducing blackness into the Cuban experience, and presenting a liberal political vision

opposed to the "conservative-Republican" stereotype of Cubans. *Carmelita Tropicana* challenged the notion of a single-minded, conforming, Cuban-American community, thus adding depth and dimensionality to a Latina/o story in the United States. In her use of music, and style, I also saw the parallels between Cuban and Puerto Rican cultures, specifically, the affinity that makes our communities so very similar.

Going from the familiar, powerful, but lighthearted tragicomedia of *Carmelita Tropicana*, to "Little Brown Fucking Machines Powered by Rice," the intensely negative and painful portrayal of women in the works that filmmaker Celine Parrenas studied, was a difficult change of pace. When I read Parrenas's title, I knew that this presentation was going to be completely different in tone from Gunia's and Manzor's presentations. It would be simple hypocrisy [*1320] if I said that all forms of sexually explicit media are bad. n97 But it was not difficult to understand what was wrong with these depictions of American men traveling to Southeast Asian countries to hire prostitutes and videotape their encounters from their dominant, racist perspective. Moreover, I could easily imagine how difficult it must be for anyone to study these videos, but it must be especially challenging for a Filipina American, as Parrenas describes herself.

I saw in her description incredible dehumanization, in yet another medium for storytelling. Here was our most clear example of a form of popular culture that reflects the very worst of our society. In this painful and offensive form of storytelling, it was the white, male American who was trying to control his telling of the women's stories. Unlike the Jamaican Babylon music, which was music by Jamaicans about Jamaicans, or *Carmelita Tropicana*'s retaking of the telling of her own stories, the johns manufactured the Southeast Asian women's stories in the works that Parrenas studied. While this is an extreme example of a dominant culture stealing the power of storytelling away from the legitimate subjects of the stories, it is certainly not the only one. But the contrast between this and the presentation about Jamaican music and Latina lesbian performance art makes the point that by taking control of the storytelling we -- people of color -- engage in praxis.

When the panel members met the night before the plenary, I was taken aback by the strong emotion evident in Parrenas's discussion of her research. At times, she was almost on the verge of tears, angry or sad, perhaps both, when she talked about the videos and the process in which they were made. n98 Studying these sexually explicit videotapes was obviously painful research, since she had to view the degrading scenes in order to expose and study them. I had initially thought that it was "lucky" that Parrenas had chosen not to show any of the videos. But viewing, rather than banning the work, was precisely Parrenas's suggestion, provided that the viewer was equipped with a new theory of viewing. She has not yet articulated what this theory entails, rather, she is developing it through her research. I look forward to the day when, enlightened by her theory of viewing, those of us who disapprove of the content [*1321] will be able to see and expose the offending material, and thereby retake the stories that are being fabricated therein. Consequently, even though difficult research, Parrenas's new theory of viewing, will convert gonzo pornography into praxis. As I realized these things, I muttered to myself, "Ok, I think that I am beginning to get it." n99

Initially, it might appear that the Arts Panel completely ignored the title "Literature and the Arts." But, while the presenters focused on art forms not traditionally viewed as literary, the law professors discussed narrative in legal scholarship and in literature more generally. Additionally, the audience, composed mostly of law professors, will use the presentations to inform their scholarship, thus turning any art form into written narrative. Below, I will discuss how the entire panel addressed the three categories that the substantive description invited us to cover.

The description first directed the panelists and commentators to answer: "Why narrative." n100 But the panelists first answered the follow-up question of how narratives are presented. This was the natural result of the purposeful choice of nonlawyer scholars. But our scholars told us about stories in evaluative, not in simply descriptive terms. In doing so, they impliedly answered the question of why narrative. By indicating how powerful stories about ourselves and outsiders are when presented in narrative form, and by exploring

their meaning and impact, we know why narratives are important and essential contributions to legal scholarship.

My personal process of understanding the stories, illustrates how the narrative educates and enlightens. The narratives about Puerto Rico that I described above are my narratives, they are my [*1322] context, my normativity, and I must use them, if I am to tell my legal scholarship story.

The second major category of discussion was the affirmation that culture is politics, particularly in communities of color. "Critics of postmodern theory complain that cultural politics has replaced real politics with 'the representation of politics.'" n101 By culture I mean popular culture, the cultural production by and of the people, in fact, the genuine storytelling of the people. This popular narrative, when genuine, culturally and politically relevant, is inherently hortatory and, therefore, constitutes praxis, not a "pseudo alternative of virtual participation in politics through the deployment of symbols rather than the organization of protest." n102 The symbols of the nondominant culture become praxis when wielded by the real parties in interest against the dominant culture.

In the context of the United States, where Latina/o culture is still a minority culture, or perhaps more accurately, outsider culture, narrative is the voice of the excluded. n103 In the Jamaican context, on the other hand, the dominant popular culture may not be the dominant political culture, perhaps a result of postcolonialism. In Puerto Rico, where the dominant popular culture of Puerto Ricans is subject to the colonial domination of the United States, [*1323] maintaining our cultural identity is an exercise in anticolonial praxis against the American empire. n104

The third series of questions asked the panelists to explore the links between "Capitalist Power and Cultural Production." n105 The panel focused on popular culture, which has both good and bad elements. Popular culture can be a powerful form of resistance to oppression on the one hand. However, on the other, it can reflect a cultural power hegemony, enforcing all the biases and forms of privilege and subordination native to that community. Additionally, capitalism, and the media business more specifically, has the capacity to impose or to dictate pseudo-popular culture. Unlike this pseudo-popular culture, the panelists described true popular culture, which comes from the people, not what is imposed on them. n106

Parrenas, in contrast, exposed an offensive form of storytelling that is increasingly popular, or at least commercially viable through video rentals. Although not expressly addressed, capitalistic corporate radio and music retail operations can package the product to [*1324] the exclusion of much worthy work. For example, payola n107 can also distort the true popularity of music. The law has an important role to play in preventing the formation of monopolies or oligarchies on the one hand, and in uncovering and punishing payola on the other. But this discussion is for another occasion.

IV. Conclusion: Mi propia version (My own version) Mapping Consciousness

Tantos que dicen tener un pasado y tantos que creen que el amor han logrado.

Pero definir el amor, es dificil la ecuacion.

Todos tenemos que dar nuestra propia version.

-- Sylvia Rexach n108

Despite its many shortcomings, I love the law. I found law practice to be fun, especially because I was practicing it with my father. Like my papito (daddy) before me, I jumped at the opportunity to teach and write about the law. When I first came into legal education, I naively expected to write about comparative law, civil procedure, and other fields of interest to me. n109 Constitutional law and CRT were never areas in which I was especially interested, or so I thought. In fact, before my involvement with the Annual LatCrit Conference, I knew very little about CRT, except perhaps the essentialist critiques of it that I heard in faculty lounges. Moreover, I resented any pressure to work in these areas, especially when it came from

my fellow professors of color. This view of the world was the natural result of my personal experiences and biases. I had [*1325] grown up normative, and in my initial experiences in the U.S., I had bought into the notion of the inherent fairness of American society. Yes, I had swallowed this mythical notion hook, line, and sinker. The beauty of the liberal myth of meritocracy is that it feeds the healthy egos of those of us who have achieved some level of success. Oh yes, I was an arrogant little brat who saw myself as having an equal shot at the proverbial "American Dream." However, notwithstanding my epiphanies about meritocracy, I still live along a critical fault line. I have a nation in which I am *normativo* n110 because I grew up in Puerto Rico, where I was neither ethnically nor racially excluded from anything. But, on the other hand, I am an outsider everywhere I travel, to my *isla* or in these borderlands, at work and play, at all of my homes (professional, social, and personal).

Even though I grew up as normative it has taken me a long time to understand my non-normativity within these borderlands. Paradoxically, however, I should have had a clue about my non-normativity. I have always been a political outsider in my island, which is why I proudly and accurately describe myself as a "subversive." n111 But my personal experience and education had not really [*1326] sensitized me to issues of race, sex, sexuality, and gender and their centrality in the proper study of law. n112 I suppose that I had not really been exposed to, or frankly accepted, outsider stories, except for those of the political stripes that I had readily embraced. This is clearly the result of the insulation that I enjoyed as the child of a lawyer and a teacher. My status in my *isla* as an outsider *subversivo/independentista* was a matter of class and politics. My family had solid financial means, but we were not of the "first families" n113 of Ponce. We were political outsiders because my father supported independence and put his law practice at the service of persons who needed it, regardless of their politics.

However, not until I moved to the states did I really understand how much of an outsider I really could be. Here, the status of outsider is based on what I am, rather than on who I am. Let me illustrate with a short narrative.

I started my teaching career at the Pontifical Catholic University of Puerto Rico. I was recruited to teach by its then Dean, Carlos Rivera Lugo. This was a terrific opportunity for me, since at that time I was working with my dad, Pedro Malavet Vega, and with my *padrino* (godfather), n114 Jose Enrique Ayoroa Santaliz, in their law firm. I was, thus, a second-generation lawyer. I was also about to become a second-generation law professor, since my father started [*1327] his law teaching career at the Catholic University of Puerto Rico n115 just a few years after he graduated from that very same law school. I was the only lawyer in my firm that had not taught law courses. Therefore, *Profesor* (Professor) Malavet was a pretty natural step although I grew a beard in an attempt not to look as young as my students (I was then 29).

When I first heard the phrase "people of color," I did a doubletake, because it was being used by an African American colleague at the University of Florida. For me "*personas de color*," the literal Spanish translation of "people of color," was a very offensive reference to blackness and to *mulatez* (mulatto) that was used in my community on the *isla*. *Personas de color* reflected racial bias in that the speaker purposely avoided even the use of the word *negro* (black), rather they euphemistically said *negrito* (the diminutive of black, which is used to refer to adults who are black) or *persona de color*. Then, I learned that "person of color" was a term adopted by people interested in diversity to refer to the many nonwhite hues in the American diaspora. What I had not learned until recently, is that when a white American looks at me, he or she sees a *persona de color* -- and it sure is not a statement in favor of making the diaspora normative. Dad has "*pelo malo*" ("bad hair") n116 and I am sure that he will understand, but how will I break it to *mamita* (mommy) that I am colored?

As one of seventeen Puerto Rican law professors in the *Estados Unidos de Norteamérica* n117 (obviously excluding my friends on the Island, which is a U.S. "territory," n118 and where Puerto Rican law professors are *choretos*, meaning, there are a whole lot of them, all over the place), I have been slowly

learning the importance of our [*1328] sider jurisprudence and of CRT, after what at best was rather lukewarm initial interest. I now realize that the sophistication and incredible relevance of CRT provides me with a solid philosophical foundation for my legal scholarship.

LatCritical studies have enticed me to explore the literature of disciplines such as philosophy n119 and cultural studies. n120 This interdisciplinary contemplation is an exciting challenge, and it creates a link to my comparative work. For example, with his article *Philosophical Considerations and the use of Narrative in Law*, n121 philosopher George Martinez educated and challenged me on the "philosophical/jurisprudential issues" raised by the use of narrative in legal scholarship. Although, I am uncomfortable with his statement that narrative is not reason, n122 because I still cling to the belief that storytelling is at least an attempt at rational thinking, I now know that this is wishful thinking, as Professor Martinez shows in his publication.

Nevertheless, because I am a comparativist, I still see narrative as essential to the scientific discussion of the law. n123 Law is a living, [*1329] breathing, sentient organism, not an automaton. n124 As such, the law must be studied within its habitat or context, which is precisely what comparativists do. We study foreign legal systems in their proper context, and try to present them to our domestic audience in ways that make sense from within our own contextual frame of reference. n125 Comparativism also allows me to engage in LatCritical praxis. The compelling link between CRT and comparative schol [*1330] arship is that the analysis of foreign systems enables us to see and expose the hidden assumptions of our own legal system. Therefore, by confronting the policy decisions founded upon unintentional essentialist notions, comparativists can ensure that the results of our laws are intended. Moreover, comparativistic analysis can also expose unconscious or intentional biases, and permits us to correct the mistakes produced by misguided or purposeful attempts at normativity. These juridical mistakes are based on essentialist visions of the law, rather than on a proper evaluation of what the law really can and should do for a multicultural society.

Additionally, CRT scholarship has given me a factual grounding that has been eye opening. Many of these facts come from, or have been illustrated by, narratives. I can now look at American law, as I look at the law more generally, contextualized by a newly informed perspective because of narrative. CRT is giving me the intellectual tools to become a more effective legal scholar and law teacher, n126 and narrative has been an essential part of that experience. [*1331]

The time for me to develop intersectionalities and to map mi propia version of the law has come. The Annual LatCrit Conference is an essential guide in my new scholarly camino (path), which is why it was my great privilege to learn at LatCrit IV.

FOOTNOTE-1:

n1 The title is a combination of the title Plenary Panel III at the LatCrit IV conference and an obvious play on the title of Anne Tyler's book, *The Accidental Tourist*. See generally Keith Aoki & Garrett Epps, *The Accidental Law Student: A Graphic Introduction to Law School* (1999).

n2 Hector Gagliardi, *Por las calles del Recuerdo* 5 (1970). Author's translation:

Our poor america (meaning the continents, not the one country), which started to pray when the testaments where pre-history . . . when history was full of warriors, the soul full of mystics, thinking was full of philosophers, beauty was full of artists, and science was full of wise men . . .

. . .

Everything that crossed the sea was better and, just when we were beyond salvation, the popular culture appeared to save us.

Id. I realize that this quote is told from an Eurocentric perspective that might be read to exclude the Native American contribution, but the Native American contribution is a crucial element in the Latin-American popular culture that distinguishes us from the conquistadores peninsulares (peninsulares is a reference to persons born on the Iberian Peninsula).

n3 The first LatCrit meeting I attended was the preparatory conference titled the Colloquium on Representing Latino/a Communities: Critical Race Theory and Practice, held during the Law Professor's meeting concurrent to the 1995 Hispanic National Bar Association ("HNBA") Annual Convention in Dorado, Puerto Rico, from October 13-14, 1995. See generally Colloquium, Representing Latina/o Communities: Critical Race Theory and Practice, 9 *La Raza L.J.* 1 (1996). My second was the Colloquium on International Law, Human Rights & LatCrit Theory, also held concurrent to the HNBA Annual Convention, October 4-5, 1996 in Miami Beach, Florida. See generally, Colloquium, International Law, Human Rights, and LatCrit Theory, [28 U. Miami Inter-Am. L. Rev. 177 \(1997\)](#). I had missed the First Annual LatCrit Conference in La Jolla, California, May 2-5, 1996. See generally Symposium, LatCrit Theory: Naming and Launching a New Discourse of Critical Legal Scholarship, [2 Harv. Latino L. Rev. 1 \(1997\)](#). I also missed the Second Annual LatCrit Conference, held in San Antonio, Texas, May 1-4, 1997. See generally Symposium, Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory, [19 Chicano-Latino L. Rev. 1 \(1998\)](#). I returned to LatCrit with the Third Annual LatCrit Conference, Comparative Latinas/os: Identity, Law, and Policy in LatCrit Theory, held in Miami Beach, Florida, May 7-10, 1998. See generally Symposium, Comparative Latinas/os: Identity, Law, and Policy in LatCrit Theory, [53 U. Miami L. Rev. 575 \(1999\)](#). I then became a member of the Planning Committee for the Fourth Annual LatCrit Conference (LatCrit IV). See generally Symposium, Rotating Centers, Expanding Frontiers: LatCrit Theory and Marginal Intersections, [33 U.C. Davis L. Rev. 751 \(2000\)](#); see also Symposium, LatCrit Theory: Latinas/os and the Law, [85 Cal. L. Rev. 1087 \(1997\)](#), [10 La Raza L.J. 1 \(1998\)](#).

n4 See generally Fourth Annual LatCrit Conference, Substantive Program Outline, (visited Apr. 10, 2000) <<http://nersp.nerdc.ufl.edu/malavet/latcrit/lcivdocs/lcivsubs.htm>> (on file with author) [hereinafter LatCrit IV Substantive Program Outline].

n5 While definitions are often dangerous, if not impossible, see Francisco Valdes, Under Construction: LatCrit Consciousness, Community, and Theory, [85 Cal. L. Rev. 1089, 1089 n.2 \(1997\)](#) [10 La Raza L.J. 3, n.2 \(1998\)](#) (noting that defining LatCrit is difficult), I like this one:

Critical Race Theory is the most exciting development in contemporary legal studies. This comprehensive movement in thought and life -- created primarily, though not exclusively, by progressive intellectuals of color -- compels us to confront critically the most explosive issue in American civilization: the historical centrality and complicity of law in upholding white supremacy (and concomitant hierarchies of gender, class, and sexual orientation).

Cornel West, Foreword to Critical Race Theory: The Key Writings that Formed the Movement xi (Kimberle Crenshaw et al. eds., 1995) [hereinafter The Key Writings].

n6 "Pomo" is short for postmodernism, the current philosophical age. Although I find his treatment of postmodernism overly harsh, David West provides some helpful descriptions. See David West, The Contribution of Continental Philosophy, in *A Companion to Contemporary Political Philosophy* (Robert E. Goodin & Phillip Pettit eds., 1993). West wrote:

Postmodernism proposes a last desperate leap from the fateful complex of Western history. Anti-humanism, with its critique of the subject and genealogical history, has shaken the pillars of Western political thought. Heidegger's dismantling of metaphysics and Derrida's deconstruction carry the corrosion of critique to the fundamental conceptual foundations of modernity.

Id. at 64. West also commented that: "Postmodernists seek to disrupt all forms of discourse, and particularly forms of political discourse, which might encourage the totalitarian suppression of diversity." Id. at 65.

n7 Spanish is my vernaculo, my native first language, English, my necessary second language, and French, my chosen third language, which I studied in college.

n8 See *infra* note 16 and accompanying text (defining "praxis"); see also *infra* note 30 and accompanying text (defining "normativity").

n9 Author's translation: "Oh Lord, who [the heck] tells me to get into these problems!"

n10 By abuse of language I mean its use in hurtful and negative ways.

n11 Compare Dennis W. Arrow, Pomobabble: Postmodern Newspeak and Constitutional "Meaning" for the Uninitiated, [96 Mich. L. Rev. 461 \(1997\)](#), with Ronald J. Krotoszynski, Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption, [77 Tex. L. Rev. 321 \(1998\)](#).

n12 See *infra* notes 19-38 and accompanying text (discussing debate over narrative).

n13 I do not mean to imply that popular culture is always "plain and simple" in language. In fact, popular culture is incredibly complex and textured. However, on occasion, the popular artist uses plain and simple language to make very complex messages accessible to everyone in their community.

n14 For example, until LatCrit scholarship challenged the traditional civil rights discourse in law, no one had explored the weaknesses of the black/white binary paradigm. See Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, [85 Cal. L. Rev. 1213 \(1997\)](#), [10 La Raza L.J. 127 \(1998\)](#); Juan F. Perea, Ethnicity and the Constitution: Beyond the Black and White Binary Constitution, [36 Wm. & Mary L. Rev. 571 \(1995\)](#); see also Rachel F. Moran, Neither Black nor White, [2 Harv. Latino L. Rev. 61, 68-69 \(1997\)](#) (finding that Latinas/os are not adequately represented in American civil rights debate).

n15 "LatCritical" is a term that I believe aptly captures LatCrit's scholarly approach. I was introduced to the term by Berta Esperanza Hernandez-Truyol.

n16 Francisco Valdes has written about praxis in the LatCrit enterprise:

Following from the recognition that all legal scholarship is political is that LatCrit scholars must conceive of ourselves as activists both within and outside our institutions and professions. Time and again, the authors urge that praxis must be integral to LatCrit projects because it ensures both the grounding and potency of the theory. Praxis provides a framework for organizing our professional time, energy and activities in holistic ways. Praxis, in short, can help cohere our roles as teachers, scholars and activists. The proactive embrace of praxis as organic in all areas of our professional lives thus emerges as elemental to the initial conception of LatCrit theory. Praxis therefore serves as the second LatCrit guidepost.

Francisco Valdes, *Poised at the Cusp: LatCrit Theory, Outsider Jurisprudence and Latina/o Self-Empowerment*, [2 Harv. Latino L. Rev. 1 \(1997\)](#). I read Frank's definition after finding this one: "Praxis: doing, action, to pass through; practice, exercise or practice of an art, science or skill, customary practice or conduct." Webster's Collegiate Dictionary 924 (9th ed. 1983).

n17 Corrada suggested an approach similar to the 1998 conference entitled *Temas de Justicia: Latino/a Literature & The Law*, which was sponsored by the University of Denver College of Law. I would translate the Spanish part of the title as "themes" or "subjects" of justice. The pamphlet for the Denver Conference, described it as follows:

This conference brings together Latino/a authors and law professors (and some who are both) to learn about the different ways in which messages about Latino/a Justice and Injustice in this country can be conveyed, both to inspire the community and to change the system.

In particular, the conference seeks to explore how narratives can be used to bring greater humanity and sensitivity to the system of American Justice.

Temas de Justicia: Latino/a Literature & The Law (pamphlet on file with author). At this conference, Richard Delgado and Kevin Johnson presented their papers. See Richard Delgado, *Making Pets: Social Workers, "Problem Groups," and the Role of the SPCA -- Getting a Little More Precise About Racialized Narratives*, 6 *Tex. L. Rev.* 1571 (1999); Kevin R. Johnson, "Melting Pot" or "Ring of Fire"? Assimilation and the Mexican-American Experience, [85 Cal. L. Rev. 1259 \(1997\)](#), [10 La Raza L.J. 173 \(1998\)](#).

n18 I thus suggested the following panel description, based upon the description of the Denver symposium:

LATINA/O ARTS AND THE LAW PANEL

This panel brings together scholars to discuss the different ways in which messages about Latino/a Justice and Injustice are and can be conveyed by the arts. In particular, the panel seeks to explore how narratives can be used to bring greater humanity and sensitivity to the system of Justice. Narratives come in many forms, but, at their best, these cultural images educate, enlighten and provoke. Narratives can help us to remember martyrs and protest injustice; they can become insightful and powerful social, political and legal commentaries.

See generally *Temas de Justicia: Latino/a Literature & The Law*, supra note 17.

n19 See Richard Posner, *Overcoming Law* 368-84 (1995); Daniel Farber & Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (1997); Mark Tushnet, *The Degradation of Constitutional Discourse*, [81 Geo. L.J. 251 \(1992\)](#).

n20 One very strong early attack came from the perhaps unexpected quarters of an icon of the Critical Legal Studies ("CLS") movement. Professor Mark Tushnet's broadside on the use of narrative, by Critical Race and Critical Feminist Scholars, charges them with a "lack of integrity" in their storytelling. See Tushnet, supra note 19, at 251. A careful reading of the piece, in my view, discloses that he simply does not like the stories being told, and their contribution to American legal discourse. His attempt to dress that up as an analysis of "missteps" in narrative that fail to connect the particular to the general, rings rather hollow. Professor Gary Peller, in a sharply worded response to Tushnet, in my view, correctly charges that Tushnet's stated conclusion that the narrative works of critical scholars, the overwhelming majority of whom were persons of color, lacked "integrity" was driven not by objective cultural review, but rather by conservative political bias. See Gary Peller, *The Discourse of Constitutional Degradation*, [81 Geo. L.J. 313 \(1992\)](#); see also Mark Tushnet, Reply, [81 Geo. L.J. 343 \(1992\)](#) (accusing Professor Peller of misreading his article and failing to understand its

intellectual complexity, and of betraying his scholarly class). See generally Mark Kelman, *A Guide to Critical Legal Studies* (1987) (providing background of CLS); West, *supra* note 5, at xxii-xxvii (outlining background on initial relationship and eventual split of CLS and CRT).

n21 Less unexpected attacks came from those already identified with the political right. See, e.g., Posner, *supra* note 19, at 368-84 (illustrating one particular example of narrative that Posner described as "the methodological signature of Critical Race Theory" to make general point that black scholars' storytelling is one-sided, and "questionable by the conventional standards of scholarship"); see also Richard Posner, *The Problems of Jurisprudence* 393-419 (1990) (criticizing "radical communitarians").

n22 See Farber & Sherry, *supra* note 19, at 133-37 (describing CRT, or as authors label it "radical multiculturalism," as analogous to mental disease of paranoia and representing abandonment of moderation and dearth of common sense). In addition, the authors assert that narratives used by "radical multiculturalists" lack scholarly analytical frameworks, are exclusionary even to the point of racism and anti-Semitism, and ultimately "prove" untruthful. See *id.* But see Kathryn Abrams, *How to Have a Culture War*, [65 U. Chi. L. Rev. 1091, 1126 \(1998\)](#) (responding that "Farber and Sherry's flawed and inflammatory critique moves us in precisely the wrong direction"); Richard Delgado, *Chronicle: Rodrigo's Book of Manners: How to Conduct a Conversation on Race Standing, Imperial Scholarship and Beyond: Beyond All Reason*, [86 Geo. L.J. 1051, 1072 \(1998\)](#) (arguing that narratives are fact-patterns that illustrate discussion, and that "the scholarly community should be less concerned about scholarship that fails to state a claim in the most familiar manner . . . and receptive to the newer modes of scholarship, such as the Essay and chronicle, which may be full of analysis and new ideas and, in that sense, even more useful than the usual fare"). For more general illustrations and explanations of the use of narrative in legal scholarship, see, for example, Kathryn Abrams, *Hearing the Call of Stories*, [79 Cal. L. Rev. 971 \(1991\)](#), Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, [87 Mich. L. Rev. 2411 \(1989\)](#), Charles Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, [65 S. Cal. L. Rev. 2231 \(1992\)](#), and Carrie Menkel-Meadow, *Excluded Voices: New Voices In The Legal Profession Making New Voices In The Law*, [42 U. Miami L. Rev. 29 \(1987\)](#).

n23 See Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, [132 U. Pa. L. Rev. 561 \(1984\)](#).

n24 Professor George Martinez has explained why white scholars cannot speak for communities of color:

The fact that minorities have a different conceptual scheme from whites makes it plausible to suppose that there is a distinctive voice of color which is based on that distinctive conceptual scheme. It also explains why whites cannot write in the voice of color. They cannot speak in the voice of the outsider because they have a different conceptual framework.

George A. Martinez, *Philosophical Considerations and the Use of Narrative in Law*, 30 *Rutgers L. Rev.* 683, 689 (1999).

n25 In his conclusion, Delgado cited the following case excerpt, which now reads like a chilling warning:

To leave non-whites at the mercy of whites in the presentation of non-white claims which are admittedly adverse to the whites would be a mockery of democracy. Suppression, intentional or otherwise, of the presentation of non-white claims cannot be tolerated in our society. . . . In presenting non-white issues non-whites cannot, against their will, be relegated to white spokesmen, mimicking black men. The day of the minstrel show is over.

Delgado, *supra* note 23, at 577-578 (citing [Western Addition Community Org. v. NLRB](#), 485 F.2d 917, 940 (D.C. Cir. 1973) (Wyzanski, J., dissenting), *rev'd*, 420 U.S. 50 (1975)); see also Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outside Writing Ten Years Later*, 140 Pa. L. Rev. 1349 (1992).

n26 In addition to the defects identified by Richard Delgado, depriving persons of color of voice in the debate preserves the "perpetrator perspective" in civil rights scholarship. See Allan D. Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, in *The Key Writings*, *supra* note 5, at 29 (stating that "fault" and "causation" are "central to the perpetrator perspective," i.e., conscious and intentional are only illegal types of discrimination, which allows "aloof" whites to preserve privilege by simply denying culpability); see also Charles R. Lawrence, III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, in *The Key Writings*, *supra* note 5, at 235 (finding that intent requirement in civil rights cases means that "the legal establishment has not responded to civil rights claims that threaten the superior societal status of upper and middle class whites.").

n27 See Joe R. Feagin & Hernan Vera, *White Racism: The Basics* (Routledge 1995) (providing sociological study of current and enduring presence of racism in American society).

n28 Cf. Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 Va. L. Rev. 539, 548 (1991) ("Whenever one raises the question of . . . the personal experiences of people of color, one hears the response by many that color does not and cannot matter to the legal discourse. 'Truth is colorblind,' is the unstated, but assumed, premise that undergirds the discussion in this area.").

n29 As a teacher of Civil Procedure, I emphasize to my students that the judicial resolution of disputes requires that all parties to a case be afforded due process of law. See [Fuentes v. Shevin](#), 407 U.S. 67; 92 S. Ct. 1983 (1972) (holding state prejudgment property seizure procedures subject to Due Process Clause of 14th Amendment); [International Shoe Co. v. Washington](#), 326 U.S. 310 (1945) (finding state exercise of personal jurisdiction over nonresident defendant subject to Due Process Clause of 14th Amendment). The Due Process Clause therefore requires that the judge base his or her decision on the "truth," which in this context means the "legal truth" that is established in court, on the basis of applicable rules.

n30 See Richard Delgado, *Legal Storytelling for Oppositionists and Others: A Plea for Narrative*, in *Critical Race Theory: The Cutting Edge* 305 (Richard Delgado ed., 1995) (finding that if discussion comes from dominant group, it will suffer from form of "shared reality in which its own superior position is seen as natural"); Richard Delgado, *Norms and Normal Science: Toward a Critique of Normativity in Legal Thought*, 139 U. Pa. L. Rev. 933, 935 (1991) (constructing critical review of normative jurisprudence); Linda S. Greene, *Multiculturalism as Metaphor*, 41 De Paul L. Rev. 1173, 1174 (1992) (noting that "normative vacuum" produces lack of Supreme Court enforcement of true equality); Berta Esperanza Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 NYU L. Rev. 882, 897 (1997) (stating that "knowledge is socially constructed," and therefore, normative paradigm's dominance defines normal).

n31 Berta Esperanza Hernandez-Truyol, *LatIndia II -- Latinas/os, Natives, and Mestizajes -- LatCrit Navigation of Nuevos Mundos, Nuevas Fronteras, and Nuevas Teorias*, 33 U.C. Davis L. Rev. 851, 862 n.26 (2000) (citations omitted).

n32 The title "Speaking Truth to Power" was made famous by Professor Anita Hill's book of that title, in which she describes her experience during the confirmation hearings for Supreme

Court Justice Clarence Thomas, but it had been used before. See Anita Hill, *Speaking Truth to Power* (1997); Manning Marable, *Speaking Truth to Power: Essays on Race, Resistance, and Radicalism* (1996); Aaron B. Wildavsky, *Speaking Truth To Power: The Art and Craft of Policy Analysis* (1979).

n33 In fact, it has been done for a very long time in the context of the American debate over race. See, e.g., Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave, Written by Himself* (B. Quarles ed., 1967) (1845).

n34 The term "LatCritic" -- to the best of my knowledge -- was coined by Professor Celina Romany during her Closing Keynote at LatCrit IV. It has now become a part of the LatCrit lexicon.

n35 I can only describe my experience with storytelling in legal scholarship as a personal and professional epiphany. Although it may unconsciously have started earlier, a very clear moment of discovery was my reading of Kevin Johnson's contribution to the special joint symposium issue published by the *California Law Review* and the *La Raza Law Journal*. See Johnson, *supra* note 17. I read this article on the plane ride back from attending LatCrit III in Miami. I found the piece so powerful that I drove from the airport to my office so that I could send a note to Kevin telling him how I had been so moved by his piece. Another piece that really resonated, because the experience was so very familiar, was by Berta Esperanza Hernandez-Truyol. See [HernandezTruyol, supra](#) note 30. There are of course many others in LatCrit scholarship and in CRT scholarship more generally. See Richard Delgado, *The Rodrigo Chronicles* (1995) (discussing confrontations between people of different races in American society); Patricia Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (1991).

n36 See, e.g., Culp, *supra* note 28, at 546-47 ("When we leave out the personal in the realm of the law, what is left out is the truth of the experiences of black people in American society.").

n37 I do not mean to imply that narrative scholarship suffers from the errors argued by the opponents of storytelling, I am simply saying that we can always work to improve our methodology. Interdisciplinary discussion is especially important in this regard, because many of us in the legal academy lack formal training in some of the fields that can enrich our scholarship.

n38 I should confess a predisposition to the use of many narrative forms in serious scholarship partly because I have edited several books in Spanish that use storytelling to make historical, political, cultural, sociological and legal commentary. Most of the books were authored by my father, Pedro Malavet-Vega. There are several law books. See Pedro Malavet-Vega, *Manual de Derecho Notarial Puertorriqueno* (Corripio 1988); Pedro Malavet-Vega, *Manual de Derecho Penal Puertorriqueno* (Corripio 1997); Pedro Malavet-Vega, *Evolucion del Derecho Constitucional en Puerto Rico* (Corripio 1998). The others are sociological, historical and cultural studies. See Pedro Malavet-Vega, *Navidad Que Vuelve* (Corripio 1987) [hereinafter Malavet-Vega, *Navidad*]; Pedro Malavet-Vega, *Del Bolero a la Nueva Cancion* (Corripio 1988) [hereinafter Malavet-Vega, *Bolero*]; Pablo Marcial Ortiz-Ramos, *A Tres Voces y Guitarras* (Corripio 1991); Pedro Malavet-Vega, *Historia de la Cancion Popular en Puerto Rico (1493-1898)* (1992) [hereinafter Malavet-Vega, *Historia*]; Pedro MalavetVega, *Las Pascuas de Don Pedro* (Corripio 1994).

n39 By popular culture, I mean the culture of the people, by the people, for the people, not commercially-imposed mass-distribution. I also distinguish it from folklore. See generally Pedro Malavet-Vega, *La Vellonera Esta Directa: Felipe Rodriguez (La Voz) y Los Anos Cincuenta 27-30* (Corripio 1987); Malavet-Vega, *Historia*, *supra* note 38, 37-49.

n40 Pablo Milanes, Silvio Rodriguez and Iraquere, the Cuban Jazz group, send powerful messages about the Cuban Revolution. Andres Jimenez, Antonio Caban Vale, Roy Brown, Lucecita Benitez and the group Haciendo Punto en Otro Son, used their songs to transmit a message of pride in Puerto Rican culture in a more or less subversive manner. The salsa of La Sonora Poncena and El Gran Combo has often offered a paradoxical mix of cultural and racial pride with misogyny and racial denial. The Dominican group Juan Luis Guerra y 4:40 shot to the top of the Latin pop charts with merengue that did not talk exclusively about sex, but rather about social justice, for example songs like "El Costo de La Vida," and the song about helping students learn, rather than spending money on the Columbus Lighthouse, which cost millions of dollars and displaced hundreds of poor people, who were mostly replaced by upper-middle-class condo owners. Ruben Blades's album *Buscando America* has many songs with powerful social content and covers themes of violence and repression in Latin America. Joan Manuel Serrat has introduced several generations to the poetry of Antonio Machado, for example, *Cantares*, about Machado and his famous poem, and to causes like protecting the Catalan language from Spanish influence and environmental activism (*El Mediterraneo*).

n41 While the English language has a word that includes in its definition the term "a reader of poetry" ("bard"), I find it amazing that there is no generally used specialized verb in English for the reading or telling of poetry, in Spanish, "declamar," which, out loud, is never really "read" is it? I say generally used, because if you look it up in the dictionary, you will find the verb "to declaim," which I cannot recall ever hearing, whereas "declamar" is a very commonly used term in Spanish. See Webster's Collegiate Dictionary 930 (9th ed. 1983).

n42 One of them asks: "why are you hiding your black grandmother in the kitchen." Fortunato Vizcarrondo, *Y tu aguela a'onde ejta, Dinga y Mandinga (Poemas) 77* (Instituto de Cultura Puertorriquena 1983). The poem is titled, using an affected dialect, *Y tu aguela a'onde ejta?* See *id.* A favorite of mine is *Majestad Negra* by Luis Pales Matos. The album by Carrion and Benitez is titled *Paloma*.

n43 See Malavet-Vega, *supra* note 39. Rodriguez passed away recently.

n44 In a study of 50 songs that Felipe Rodriguez included in his repertoire, Malavet-Vega found that most of them discussed male-female relationships. See *id.* at 395. But in the text of the songs there are other important themes as well, such as the family, the home, work, children, childhood, church or religion, history and social or political facts, weddings, illness, God or Jesus, and death. See *id.* at 405. Another exponent of this genre was the Trio Los Panchos, one of the most popular Latin American musical groups of all time that toured every place that afforded them a Spanish-speaking audience including many locations in the United States. In fact, the group was formed in New York City in 1944. See Ortiz-Ramos, *supra* note 36, at 143.

n45 Many tangos, while written in Spanish, are nonetheless full of words in lunfardo, a Spanish dialect that was the language of the streets of Buenos Aires and the Provincia Oriental del Uruguay at the beginning of the twentieth century. It is not surprising that the authors would use this "unseemly" language, since tango was born in the academias or whorehouses of the two capitals on opposite banks of the River Plate (Buenos Aires, Argentina and Montevideo, Uruguay). Tango dancing was considered so unseemly that only men danced it. See Pedro Malavet-Vega, *El Tango y Gardel 157-72* (Zip Editora, S.A. 1975) [hereinafter Malavet-Vega, *El Tango y Gardel*]; see also Pedro Malavet-Vega, *Cincuenta Anos No Es Nada (Corripio 1986)*.

n46 Martin was born and raised in Puerto Rico. Lopez is the daughter of Puerto Rican parents and was born in New York. Both have been nominated in multiple categories in the MTV

Music Video Awards. See MTV Shows (visited Sept. 3, 1999), <<http://www.mtv.com/sendme.tin?page=/mtv/tubescan/vma/>> (on file with author). Both Martin and Lopez are currently singing in English, which might appear to distinguish them from the tango example. However, it was never really the Spanish language in the tangos which crossed over to Anglo audiences, rather, it was the Latin beat.

n47 The painting returned to Spain in 1981 and was displayed behind 15 mm. of bullet-proof glass until its recent relocation to the Reina Sofia Museum in Madrid. Picasso had forbidden its return from the New York Gallery of Art to Spain until Spaniards lived under a democratic government. See Picasso Virtual Museum at Texas A&M (visited Sept. 21, 1999), <<http://www.tamu.edu/mocl/picasso/>> (on file with author).

n48 See The Virtual Diego-Rivera Web Museum (visited Sept. 3, 1999) <<http://www.diegorivera.com/biogra.htm>> (on file with author) (including illustrations of Rivera's work and biographical information). In 1993, Rivera was commissioned to paint a large mural at the RCA building in New York. See *id.* After the mural was painted, Nelson Rockefeller demanded that the portrait of Lenin that Rivera had included in it be replaced. See *id.* Rivera refused, but offered to put a group of American figures opposite Lenin. See *id.* Rivera was dismissed. See *id.* In 1934, the mural was painted over. See *id.* Rivera was then commissioned to paint a smaller version of the RCA mural at the Palacio de Bellas Artes in Mexico City. See *id.*

n49 Irineo Leguizamo, a jockey in Argentina, was a favorite of Carlos Gardel, the most famous tango singer of his day. See MalavetVega, *El Tango y Gardel*, *supra* note 45. John Leguizamo is an actor.

n50 The author made reference to problems of racism, xenophobia, alcoholism, family violence, and gender identity. The one moment that stands out in my mind, was when the author and performer saw his father, whom he thought was the Maitre'd at a restaurant, working his real job as a dishwasher there. The show made the audience laugh, cry, and quietly think about the meaning of the story being told to them in the theater. His performance was rewarded by an Emmy award. See *Emmy Awards* (CBS television broadcast, Sept. 12, 1999).

n51 The first black person in Puerto Rico was a free African, Angolan-born Juan Garrido, who sailed with Juan Ponce de Leon. See Federico Ribes Tovar, *A Chronological History of Puerto Rico 19-20*, 29 (1973) (stating that first black slaves arrived in 1510).

n52 See generally, Malavet-Vega, *Historia*, *supra* note 38 (discussing development of Puerto Rican culture during four hundred years of Spanish rule); see also Jose Luis Gonzalez, *El Pais de Cuatro Pisos, y Otros Ensayos* (Huracan 1981) (challenging traditional views on Puerto Rican identity).

n53 After substantial discussion, designated members of the Planning Committee, took over the difficult task of writing the overall program. The Substantive Program Outline described the panel as follows:

Literature and Arts as Antisubordination Praxis: LatCrit Theory and Cultural Production

This plenary is designed to begin a dialogue about the value of including the arts in the LatCrit enterprise and to theorize about whether LatCrit should be expanded in such a way. This plenary panel brings together scholars, writers and artists to discuss the different ways in which messages about subordination and injustice can be communicated to as broad an audience as possible. In particular, the panel seeks to explore how narratives can be used to bring greater humanity and sensitivity to the system of Justice. Narratives come in many forms, and Latina/o communities have been particularly creative in incorporating justice issues into a wide array of

artistic formats -- from social protest music to poetry, to movies and the plastic arts. At their best, these forms of cultural production become powerful social, political and legal commentaries that serve to educate, enlighten and provoke in ways that would be otherwise impossible given elite monopolization of the means of communication. By the same token, Louis Armstrong was once asked, "what is jazz?" His response: "I can't really tell you, but if you don't know what it is, don't mess with it." He may have a point. In exploring the question whether LatCrit scholars should "mess" with narratives (and/or other forms of artistic expression), participants in this panel are invited to address the following themes:

[1] Why Narrative?

[2] What are "the Stakes" in LatCrit Legal Scholarship.

[3] Capitalist Power and Cultural Production.

See LatCrit IV Substantive Program Outline, *supra* note 4.

n54 Mr. Gunia earned his B.A. from Dartmouth in 1997 (resume on file with author).

n55 Dr. Lillian Manzor graduated magna cum laude in 1977 from the University of Miami. She obtained her Masters in 1982 from the University of Southern California. She received her Ph.D. in 1988 from the University of Southern California. Her specialties include contemporary Latin American theater, the Boom In/exclusions, and Caribbean women writers.

n56 Celine Salazar Parrenas works as a filmmaker, film curator, and is a Ph.D. candidate in Stanford University's Modern Thought and Literature Program. She focuses on interdisciplinary film studies. She received her B.A. in Ethnic Studies from U.C. Berkeley and her M.F.A. in Film Directing from U.C.L.A. She has taught in the American Cultures Program and Ethnic Studies at U.C. Berkeley and is a part-time instructor of Cinema Studies at San Francisco State University.

n57 Adrienne Davis is a Professor of Law and Co-Director of the Gender, Work, & Family Project at the Washington College of Law at American University. She joined the faculty in 1995. Prior to that, she taught law for four years in California. Professor Davis's scholarship examines the interplay of property and contract doctrine with race, gender, and sexuality in the nineteenth century. Drawing on legal, literary, and historical sources, Professor Davis's work shows how property and contract law incorporate and influence social norms. She is the recipient of a grant from the Ford Foundation to research meanings and representations of black women and labor. She teaches property, contracts, and a variety of advanced legal theory courses, including courses on law and literature, race and the law, and reparations. She will be a co-editor on the second edition of West's casebook on Feminist Jurisprudence, due out in fall of 2000.

n58 Elvia Rosales Arriola is currently a Visiting Professor of Law at DePaul University College of Law. She taught at the University of Texas from 1991 to 1999. She is a former New York Assistant Attorney General for Civil Rights and Karpatkin Fellow at the National Headquarters of the American Civil Liberties Union. Her scholarly works, which typically include historical, personal and literary narratives, range broadly in the area of feminism, gender and sexuality, and Latina critical legal theory.

n59 Mr. Gunia sent me a written description of his presentation via electronic mail several weeks before the conference. See E-mail from Nicholas Gunia to Pedro A. Malavet, Apr. 23, 1999 (on file with author) [hereinafter Gunia E-mail].

n60 The LatCrit Conference has always been a place for me to grow and to deal with my own "issues," which usually revolve around sex and gender, but sometimes also around matters of race. I had jumped to a lot of incorrect conclusions based on looks. Shame on me. This was yet another reminder about how respect for diversity requires constant vigilance and the avoidance of quick judgments.

n61 I am describing two things: first, my own realization that Gunia was Jamaican, and second, that I had clear markers of who and what I constructed as Jamaican. Interestingly, I should not have found it surprising that Gunia could speak English with two different accents. I speak Spanish one way when I am speaking to a non-Puerto Rican Spanish speaker, and in a very different way when I speak to Puerto Ricans.

n62 See

Gunia E-mail, *supra* note 59. Gunia put it this way:

The vast body of Jamaican music can be collectively viewed as a narrative of the struggles of the Jamaican people against various subordinating forces, which range from such antiquated institutions as slavery and colonialism to such contemporary problems as gender inequality and the escalation of drug/gun violence. Merely by chronicling these struggles for the enrichment of future generations and other cultures, Jamaican music functions as a valuable form of anticolonial praxis.

Id.

n63 Gunia explains the Babylon system in his own contribution to this symposium. See Nicolas Gunia, *Half the Story Has Never Been Told: Popular Jamaican Music as Anti-Subordination Praxis*, [33 U.C. Davis L. Rev. 1333, 1335 \(2000\)](#).

n64 Gunia E-mail, *supra* note 59. Gunia wrote:

Furthermore, music provides a critical forum for dialogue, wherein injustice is exposed and power relations are negotiated, within and among various groups in society. In my presentation, I will illustrate these functions, as well as some of the contexts in which they operate, by drawing upon Jamaican music, and more specifically song lyrics, as a primary source. In doing so, I hope to shed light on the unique role of music in Jamaican society and show how music may serve in the actualization of LatCrit Theory.

Id.

n65 In *La Vellonera Esta Directa*, my dad included a study of 50 popular songs in Puerto Rico. See Malavet-Vega, *supra* note 39, at 393-410. He found 45 of the 50 songs made references to love -- in the context of heterosexual relationships -- and that of those, 82.2% described love as doomed, sad or bitter. See *id.* at 397. The songs, written almost exclusively by men, described the majority of relations as being terminated by the women. See *id.* at 498. References to violence were made in six percent of the songs; all of them acts of violence by the man against the woman and/or her new lover. See *id.*

n66 E-mail from Lillian Manzor to Pedro A. Malavet, Apr. 26, 1999 (on file with author).

n67 Carmelita, when used as a reference to skin tone, means cinnamon brown. See 1 *Diccionario de la Lengua Espanola* 417 (Real Academia Espanola 1992)

n68 This kind of video product is referred to as a "hard core gonzo."

n69 This theory is not yet articulated. As Professor Parrenas herself explained it to me recently:

The difficult theory of viewing experience that I am currently formulating so as to counter the speaking-for that occurs in these productions. A speaking for that I plan to confront carefully without resorting to it myself! This is crucial in the context of sexual domination in the Southeast Asian sex tourist scene that cannot be underemphasized -- it is a tourist practice that sells the narrative of these women's natural propensity, desire, choice and will for sex -- as precisely the thing that men buy.

E-mail from Celine Salazar Parrenas, to Pedro A. Malavet, Sept. 7, 1999 (on file with author) [hereinafter Parrenas E-mail, Sept. 7, 1999].

n70 For a similar expose, see Anthony Paul Farley, *The Black Body as Fetish Object*, [76 Or. L. Rev. 457, 476-80 \(1997\)](#).

n71 The debate in feminist scholarship over censorship of pornography is too extensive to detail here. However, Andrea Dworkin and Catharine MacKinnon are the two feminist scholars most associated with the procensorship position. See, e.g., Andrea Dworkin, *Pornography: Men Possessing Women* (1981) (labeling pornography as form of slavery); Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 214 (1989) ("On the surface, both pornography and the law of obscenity are about sex. But it is the status of women that is at stake"); *In Harm's Way -- The Pornography Civil Rights Hearings* (Catharine A. MacKinnon & Andrea Dworkin eds., Harvard Univ. Press 1997) (essays and transcripts of hearing in support of antipornography legislation); Catharine MacKinnon, *Pornography, Civil Rights, and Speech*, 20 *Harv. C.R.-C.L. L. Rev.* 1, 9-21 (1985) (advocating censorship of pornography). There are also anti-censorship feminists. Most visibly, Nadine Strossen, current president of the American Civil Liberties Union, has consistently taken on Dworkin and Mackinnon on this issue. See Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, [79 Va. L. Rev. 1099, 1140-71 \(1993\)](#) (asserting that censoring pornography would hurt women's rights); Nadine Strossen, *Hate Speech and Pornography: Do We Have to Choose Between Freedom of Speech and Equality*, [46 Case W. Res. L. Rev. 449, 458-77 \(1996\)](#) (arguing that censoring hate speech, including pornography, would be unconstitutional and counterproductive). Other feminists have done so as well. See, e.g., Judith P. Butler, *Excitable Speech* 127-63 (1997) (discussing "implicit censorship" and pornography suppression scholarship). Some feminist scholars even defend prostitution. See, e.g., Martha Craven Nussbaum, *Sex and Social Justice* 27698 (1999) (arguing that all persons sell their bodies for money, in one way or another, and that we should be allowed to do so, including renting our bodies for sex).

The debate over censoring pornography must also be located within the general discussion of hate speech. See Strossen, *supra*, at 450 (noting that procensorship scholars consider pornography "in essence, hate speech against women, promoting discrimination and violence against us."). Hate speech scholarship necessarily brings to mind groundbreaking work by scholars like Richard Delgado and Mari Matsuda. See, e.g., Richard Delgado et al., *Must We Defend Nazis?: Hate Speech, Pornography, and the New First Amendment* 3 (1997) (advocating limitations on hate speech and pornography); Mari J. Matsuda et al., *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* 1-15 (1993) (arguing that First Amendment should not protect racist speech).

Finally, from a gay-legal perspective on the regulation of sexuality, professor David Cole has written that, "those who are critical of the pornographic character of American sexuality -- whether from an aesthetic, moral, or feminist perspective -- may only reinforce that character if they continue to insist on a strategy of suppression." David Cole, *Playing by Pornography's Rules: The Regulation of Sexual Expression*, [143 U. Pa. L. Rev. 111, 116 \(1994\)](#). He concludes

that: "In the end, not only the First Amendment, but sexuality itself, demand more speech, not less." [Id. at 177.](#)

n72 Recently, feminists of color have added their voices to the discourse over gender issues and have provided a definitely different perspective. See, e.g., *Critical Race Feminism* (Adrien Wing ed., 1994).

n73 E-mail from Celine Parrenas to Pedro A. Malavet, Apr. 26, 1999 (on file with author).

n74 Parrenas's work was initially a chapter or a larger manuscript entitled *Specters of Asian Women: Sexuality On Screen and Scene*. "It is research funded by the Social Science Research Council Sexuality Research Fellowship Program." *Id.* In a follow up message, Parrenas explained that she intended to publish her findings as follows: a book chapter titled *Putting MISS SAIGON To Rest: Asian Women as Return of the Repressed*, in *Asian American Genders and Sexualities Anthology* (Thomas Nakayama ed., forthcoming Arizona State Univ. Press 1999), and in *Master-Slave Sex Acts: MANDINGO and The Sexual In/Subordination of Race*, in *UNSCENE FILM* (Graeme Harper & Xavier Mendick eds., forthcoming 2000). See Parrenas E-mail, Sept. 7, 1999, *supra* note 69. The thesis *Little Brown Fucking Machines Powered by Rice* will also be published at a future date.

n75 They were selected because of a general familiarity with the use of narrative, and their command of critical legal scholarship. See, e.g., Elvia R. Arriola, Foreword: March!, [19 Chicano-Latino L. Rev. 1, 1-18 \(1998\)](#) [hereinafter Arriola, Foreword: March!] (calling for LatCritical action and providing compelling narrative about Latinas at LatCrit I); Elvia R. Arriola, LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids, [28 U. Miami Inter-Am. L. Rev. 245, 254-57 \(1997\)](#) [hereinafter Arriola, LatCrit Theory] (including extensive discussion of narrative and LatCrit scholarship); Adrienne D. Davis, Identity Notes Part II: Redeeming the Body Politic, [2 Harv. Latino L. Rev. 267, 269-74 \(1997\)](#) (discussing "metaphors of the body" and LatCrit theory generally).

n76 Reacting to the presentations was a complicated task, because the commentators did not have drafts of papers that they could examine before the conference.

n77 See Judith Ortiz Cofer, *The Latin Deli: Telling the Lives of Barrio Women* 3-7 (1995).

n78 See Sandra Cisneros, *Loose Woman: Poems* 112-15 (1994).

n79 In the interest of length, I will leave it there and limit the content of this Essay to my own observations. However, I would be remiss if I did not point out that Professor Arriola has written on this subject. In *Foreword: March!*, she included a series of personal vignettes about her own Latcritical travels and about her experiences in the legal academy. Arriola, *Foreword: March!*, *supra* note 75. In *LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids*, she wrote:

I suspect that LatCrit theorists will also use storytelling to construct the meaning of identity raised by a scholarship focusing on the social justice issues for Latina/o communities in the United States. I begin my discussion today, therefore, with the story of a movie [John Sayle's film *Lone Star*] which helped me see the complexity of the issues raised for analysis by this emerging commitment to articulate the premises emerging in LatCrit theory.

Arriola, *LatCrit Theory*, *supra* note 75, at 248.

Professor Davis also has covered similar themes in her scholarship. For example, in *Identity Notes Part II: Redeeming the Body Politic*, she discussed how "metaphors of the body

dominate the rhetorical legal landscape" and drew parallels to "charting the . . . body of LatCrit Theory." Davis, *supra* note 75, at 267, 274.

n80 See Author's translation: "Traveler/Walker, it is your footprints/ that make the road and nothing more/ walker, there is no road/ you must make your own as you walk." This poem was made famous for my generation by the song, *Cantares*, a poem by Joan Manuel Serrat. See Joan Manuel Serrat, *Verso a Verso* 128 (Alta Fulla 1985). Serrat explained his dedication to the poeta (poet) Antonio Machado in this book. See *id.* at 31-32.

n81 Recently, historians have used contemporary music to help tell the details of important events. In fact, my own father has written several books about Puerto Rican history in which he uses music, among other things, to describe daily life on the island. For example, he identified products being distributed in Puerto Rico at the end of the nineteenth century, by finding the music that was used to advertise them. The songs were publicly performed in weekly public concerts called *retretas*. See Malavet-Vega, *Historia*, *supra* note 38, at 371-74.

n82 See Malavet-Vega, *Navidad*, *supra* note 38, at 133.

n83 In Puerto Rican culture, Christmas gifts are given to children for the celebration of the Epiphany, the visit by the Three Wisemen of Kings, *Los Tres Reyes Magos*, in Spanish, to the baby Jesus. See generally Malavet-Vega, *Navidad*, *supra* note 38, at 27 (describing Puerto Rico's Christmas traditions). Another poignant example of a song carrying a message of economic hardship is *El Jibarito*, a song that describes the toil involved in a day in the life of a farmer in Puerto Rico at the beginning of the twentieth century.

n84 I found *Crucible of Empire*, a history of the Spanish-American War, maddening not because of its content, which was outstanding, but rather because of the glaring omission of any substantive reference to the Commonwealth of Puerto Rico, which one hundred years after the war that started our second colonial period is still part of the American empire. See *Crucible of Empire* (PBS television broadcast, Aug. 23, 1999).

n85 The producers of *Crucible of Empire* explained their use of music in the film as follows:

During the Spanish-American War era, songwriters played a role somewhat akin to that of the yellow journalists. Just as newspaper stories promoted the war, popular songs celebrated the war by honoring its heroes and victories. Songs like *Brave Dewey and His Men* and *The Charge of the Roosevelt Riders* lauded war heroes Commodore Dewey and Theodore Roosevelt. Other songs, like *Ma Filipino Babe* and *The Belle of Manila*, sentimentalized the struggles abroad and romanticized the idea of intervention. Even songs like *The Black KPs*, which are racist and offensive to modern ears, were intended to rally the U.S. public behind the war effort.

By celebrating characters like Teddy Roosevelt and lamenting scenes like the Maine's explosion, 1890s song brought the drama of the war into living rooms, parlors, and dancehalls across the United States. Ultimately, these patriotic songs made being patriotic popular. Like television today, songs of the Spanish-American War era not only entertained and celebrated, but also shaped popular opinion.

Crucible of Empire, *The Spanish-American War, 1890s Music* (visited June 11, 2000), <<http://www.pbs.org/crucible/frames/film.html>> (on file with author).

n86 See Malavet-Vega, *Historia*, *supra* note 38, at 24. The popular vote for the Puerto Rico Constitution, which became effective in 1952, was held on June 4, 1951. See Federico Ribes Tovar, *A Chronological History of Puerto Rico* 516-17 (Plus Ultra 1973).

n87 See Malavet-Vega, *Historia*, supra note 38, at 352-357.

n88 See *id.* at 265, 273.

n89 Also spelled borinqueno, this is a reference to the inhabitants of Boriquen or Borinquen, a bastardization of the native term for the island today called Puerto Rico.

n90 See Malavet-Vega, *Historia*, supra note 38, at 266.

n91 See *id.* The version *La Borinquena* by Rodriguez the Tio also states in part: *Nosotros queremos la libertad/ y nuestro machete nos la dara*, We want our liberty / and our machetes will give it to us. See *id.* at 266-68.

n92 See generally Malavet-Vega, *Bolero*, supra note 38, at 115-50 (noting theme of protest in Puerto Rican music during 1970's).

n93 Of course, protest can have its costs. In Puerto Rico, pro-independence artists like Lucecita Benitez, Roy Brown, Americo Boschetti, Antonio Caban Vale, Sharon Riley, Andres Jimenez, and others were targeted for surveillance by the police. See Malavet-Vega, *Historia*, supra note 38, at 21. In Argentina, 1.3% of the desaparecidos were artists. See *id.* at 22 (citing *Nunca Mas, Informe de la Comision Nacional Sobre la Desaparicion de Personas, [en Argentina] 296 (1985)*).

n94 For an explanation of the important meaning of the term subversive to me, see *infra* note 111 and accompanying text.

n95 I must confess that this can be a double-edged sword that turns us into outsiders in every one of our communities. For example, because I am a heterosexual male, I am expected to behave in a particular way in my own community. But I am now much more aware of issues of sex and gender that conflict with those essentialist expectations. That makes sexist and homophobic conduct by my own life-long, childhood friends back home in Puerto Rico difficult to take. Enlightenment can be costly and very lonely.

n96 This again divides our communities, since "occasional return" is a lot more practical for me than it is for Carmelita Tropicana.

n97 See supra note 71 and accompanying text (discussing of procensorship and anticensorship debate surrounding pornography).

n98 With the benefit of time, I now question my own "observations", and wonder if I was imposing my own agonizing reaction on her.

n99 I did not get a chance to ask how she coped. No, that is not true. I did not dare to ask the question.

n100 The Substantive Program Outline for the Fourth Annual LatCrit Conference described this category as follows:

Why Narrative? Clearly LatCrit scholars feel a need to adopt modalities other than those used in traditional legal scholarship in order to convey otherwise inexpressible truths about the experience of subordination. Why? It could be that narratives speak for themselves or that the key to them for scholars is the writing, rather than the audience's reception. But what does that mean? How can the image of a scholar "writing just to write" be squared with the already articulated commitments of LatCrit theory to the construction of community and the transformation of material realities? On the other hand, how can LatCrit Theory progress if it is always constrained by the dominant canons of the legal academy?

See LatCrit IV Substantive Program Outline, *supra* note 4.

n101 The Substantive Program Outline for the Fourth Annual LatCrit Conference described this category as follows:

What are "the Stakes" in LatCrit Legal Scholarship. Critics of post-modern theory complain that cultural politics has replaced real politics with "the representation of politics." Rather than engaging in the real material struggles of the times, post-modern theory legitimates the commercialization of politics by offering the oppressed the pseudo alternative of virtual participation in politics through the deployment of symbols rather than the organization of protest. In helping to move legal scholarship toward the narrative, can LatCrit theory effectively distinguish the representation of politics in art from the activation of politics through art? Should it try to make this distinction? Why or why not?

n102 *Id.*

n103 I realize that this would appear to be the summer of Ricky Martin, Jennifer Lopez and Marc Anthony, two ex-Menudos from Puerto Rico, and one Puerto Rican-American from New York. All in all, pretty good. Two clear signs that we are "in," are references to Ricky Martin in the Evening News with Jim Leher on PBS, in an essay by Ann Taylor-Fleming, and an actual story referring to a Puerto Rican in the New York Times Magazine. See Stephen J. Dubner, *Ricky Who?*, N.Y. Times Magazine, Aug. 29, 1999, at 42-46. While I find the success of these young artists very gratifying, I will not claim victory over the dominant culture just yet.

n104 There is a culture war going on in Puerto Rico. In the 1930s, the U.S. officially tried to Americanize the island by imposing English only education. That failed. However, now Puerto Ricans who want to become the fifty-first state see it as in their best interest to Americanize Puerto Rican culture. This entire issue is not long enough for me to explore the complexity of this matter, so I will leave it at that for the moment.

n105 The Substantive Program Outline for the Fourth Annual LatCrit Conference described this category as follows:

Capitalist Power and Cultural Production. Finally, no LatCrit analysis of the transformative power of the arts would be complete without attention to the impact of economic power, profit incentives, and market structures on the production of artistic representations. How does law participate in converting art into "the arts and entertainment industry" and how does the structure of that industry restrict the production and dissemination of authentically transformative cultural forms and events?

n106 I would also point out that I also would avoid the other extreme, the assumption that mass media cannot be popular. To me the difference is simply: is this something that is being artificially imposed and maintained, or is it a mass-media product that has been accepted and adopted by the public? I also think that it is very important not to confuse popular culture with important forms of cultural expression that may nonetheless not be popular. Classical music may have been popular at some point, but it is not today.

n107 Payola refers to payments, bribes, used illegally to promote certain musical artists. See [United States v. Isgro, 974 F.2d 1091, 1092 \(9th Cir. 1992\)](#) (describing bribes to local radio stations).

n108 See Malavet-Vega, *Historia*, *supra* note 38, at 463. Author's translation: "So many people say that they have a past/ and so many believe/ that love they have achieved./ But defining love/ it is difficult this equation./ Each of us has to give/ our very own version."

n109 See, e.g., Pedro A. Malavet, Counsel for the Situation: The Latin Notary, a Historical and Comparative Model, 19 *Hastings Int'l. & Comp. L. Rev.* 389, 389-488 (1996); Pedro A. Malavet, The NonAdversarial, Extra-Judicial Search for Legality and Truth: Foreign Notarial Transactions as an Inexpensive and Reliable Model for a Market-Driven System of Informed Contracting and Fact-Determination, [16 *Wis. Int'l L.J.* 1, 1-60 \(1997\)](#); Pedro A. Malavet, The Foreign Notarial Legal Services Monopoly: Why Should We Care?, [31 *J. Marshall L. Rev.* 945, 945-99 \(1998\)](#).

n110 This use of the term, and the exploration of complexities of the borderlands on which we live, is masterfully explored in Berta Esperanza Hernandez-Truyol's Borderlands piece. See [HernandezTruyol, supra](#) note 30.

n111 I tend to use the term "subversive" often. To me, it means members of the persecuted independence movement in Puerto Rico. The designation was thrust into the legal consciousness of all Puerto Ricans by the Puerto Rico Supreme Court decision in [Noriega-Rodriguez v. Hernandez-Colon. See 122 P.R. Dec. 650, 654-55 \(1988\)](#) (finding practice of opening police files to investigate persons for their political views is unconstitutional); see also *Noriega-Rodriguez v. HernandezColon*, 92 JTS 85 (1992) (finding that files could not be edited to remove names of undercover agents or other informants before being returned to their subjects). Compare [Communist Party v. Subversive Activities Control Bd., 351 U.S. 115, 124-25 \(1956\)](#) (holding that Smith Act activities against communist party were not unconstitutional), with [Laird v. Tatum, 408 U.S. 1, 13 \(1972\)](#) (discussing existence of "data gathering system" in which Pentagon created files on persons it deemed dangerous, and holding it did not unduly chill First Amendment rights subjects of files). Persons were deemed to be "subversive" because they favored the independence of Puerto Rico. I am in the process of collecting many of the so-called carpetas de subversivos (subversive files) that have been returned to their subjects. My father's file number was 31336, and had 60 pages. According to a special form titled Oficina de Inteligencia (Office of Intelligence), the officer put an "x" to indicate that my father was active in a pro-independence movement, but that "no" he was not dangerous. See Carpeta No. 31336, at 55. My godfather's carpeta consists of over 600 pages. My friend Mario Edmundo Velez, showed his carpeta, No. 24844, 247 pages, to a group of friends, myself included, during a luncheon in 1992. All present were pro-independence lawyers. The special form classified him as both active and dangerous. We were horrified to find pictures of our friend with bullet holes on them. The police had used his picture for target practice at the police academy. More disturbingly, they felt empowered to keep a record of such an act in their files. This is why I wear the label "subversive" with pride.

For more on the campaign of repression that produced the files, see Yvonne Acosta, *La Ley de la Mordaza*. For an excellent collection of the legal documents related to the landmark "subversive" files decision by the Puerto Rico Supreme Court, see Ramon Bosque Perez & Jose Javier Colon Morera, *Las Carpetas: Persecucion Politica y Derechos Civiles en Puerto Rico* (1997).

n112 I will explore this more fully in an essay tentatively entitled "The Accidental Crit." I have a feeling that it might read like a narrative.

n113 The term *primeras familias*, first families, is used in Spanish colonial legislation that, for example, prohibited the sale of houses surrounding the Main Square in San German, Puerto Rico, to anyone other than the "first families" of the city. Clearly, this was not an economic prohibition, since the non-first families could afford to purchase the property. In fact, it was racial and religious segregation. See Aida R. Caro Costas, *Legislacion Municipal Puertorriquena del Siglo XVIII* 47 (1971).

n114 The social and cultural institution of the godfather in Puerto Rico, and among latin@s/os more generally, is both very important and complex. Padrinos are referred to by the parents of the child as compadres (godfathers to my child), hence the word compadrazgo, to refer to the parent-compadre relationship. A simple, but telling illustration of the importance of compadrazgo, is the use of the formal "you," in Spanish "usted," when speaking to or about one's padrino/madrina (godfather/godmother) or compadre/comadre (godfather or godmother to my child).

n115 The university was not a Pontifical Institution when my dad taught there. The designation was awarded by the Pope in 1992.

n116 This is a reference to curly or kinky hair, which reflects an essentialist preference for white features. In fact, in Puerto Rico, we used to have the so-called "prueba del abanico" (fan test): if your hair was fanned and it did not move, you could not get into the dance.

n117 These numbers were reported by Professor Michael Olivas during LatCrit III.

n118 See [Harris v. Rosario, 446 U.S. 651, 651-52 \(1980\)](#) (ruling that lower level of reimbursement provided to Puerto Rico under Aid to Families with Dependent Children program did not violate Equal Protection Clause). Congress, pursuant to its authority under the territorial clause of the U.S. Constitution, can make any needful rules that affect the territories. Thus, it may treat Puerto Rico differently from its states if it has a rational basis for its actions. See *id.*; see also U.S. Const., art. IV, § 3, cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular state.").

n119 See, e.g., Douglas E. Litowitz, *Postmodern Philosophy and Law* (1997); Dennis Patterson, *Law and Truth* (1996); *A Companion to Contemporary Political Philosophy*, *supra* note 6.

n120 It has been pointed out to me that Cultural Studies can provide an important scholarly framework for my development of intersectionalities between popular culture and Law, Regrettably, or perhaps excitingly, this must wait for the next installment from the Accidental Crit. But see Will Kymlicka, *Liberalism, Community, and Culture* (1991); Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1995); Martha Craven Nussbaum, *For Love of Country: Debating the Limits of Patriotism* (1996); *Ethnicity and Group Rights* (Ian Shapiro & Will Kymlicka eds., 1997).

n121 Martinez, *supra* note 24, at 685. Martinez wrote:

A scientific revolution occurs when one paradigm is replaced by another. Paradigm shifts cause scientists to view the world in new and different ways. During scientific revolutions, then, scientists experience perceptual shifts. According to Kuhn, the transition from one paradigm to another is a conversion experience that cannot be compelled by logical argument.

Id. at 701 (footnotes omitted).

Therefore, Professor Martinez concluded: "Since racial divisions are founded in something other than reason -- i.e., deeply held prejudices and sentiments -- perhaps it can only be undone by techniques, such as narrative that do not depend on reason." *Id.* at 705 (footnotes omitted).

n123 And in this, Professor Martinez agreed with me, though perhaps he was not as sanguine as I:

[Critics claim that] narrative seeks to change perspectives of the dominant group through stories instead of reason. Thus the use of narrative is anti-reason. This argument is not persuasive. The storyteller's reliance on something other than rational argument to change points of view is consistent with scientific practice. As discussed above, Kuhn has argued that scientific revolutions occur when there is a paradigm shift. During a shift, scientists begin to look at the world in different ways. Such a paradigm shift is a conversion experience which Kuhn contends cannot be produced by rational argument or reason. Thus, the position of the advocates of narrative is at least as strong as actual scientific practice.

Id. at 704 (emphasis added) (footnotes omitted).

n124 A leading comparative law textbook described this as follows:

What is "legal" about a primary legal rule is that it assumes, or calls into play, the law machine. It is the law machine that does the legal work for the society, that consumes the resources, that determines how and to what extent the precept stated in the primary rule shall be translated into social consequences. The primary legal rule is basically a statement of a desired social outcome. The law machine is the mechanism for bringing it about. When we study primary legal rules we are studying what society asks. The mere request will of course affect social behavior to some extent (although we know very little about the nature and intensity of that effect). But if we are really interested in knowing something about the legal system in any society we quickly have to expand our vision to include the law machine -- the complex of legal structures, actors, and processes. We will not get very far in that effort by studying merely the rules of law.

John Henry Marryman et al., *The Civil Law Tradition* 3 (1985). Conservatives attack this approach for being externalist. Regarding externalist approaches to the law, Martinez has written that: "Externalist approaches to legal decision-making seek to appraise legal practice on the basis of criteria or theory external to that practice. In contrast to this approach are internalist theorists. They take the position that judicial decision-making is autonomous from external standards or disciplines." See Martinez, *supra* note 24, at 694-95 (footnotes omitted). Narrative, for example, is a presumably externalist approach to legal scholarship. See *id.* at 696.

n125 See Rudolph B. Schlesinger et al., *Comparative Law* 1 (5th ed. 1988) (footnotes omitted). Schlesinger wrote:

Comparative Law is not a body of rules and principles. Primarily, it is a method, a way of looking at legal problems, legal institutions, and entire legal systems. By the use of that method it becomes possible to make observations, and to gain insights, which would be denied to one who limits his study to the law of a single country.

Neither the comparative method, nor the insights gained through its use, can be said to constitute a body of binding norms, i.e. of "law" in the sense in which we speak of "the law" of Torts or "the law" of Decedents' Estates. Strictly speaking, therefore, the term Comparative Law is a misnomer. It would be more appropriate to speak of Comparison of Laws and Legal Systems. . . .

Id.

n126 CRT has already changed my approach to law teaching, but that discussion will have to wait for another installment in the Accidental Crit series. However, let me give you an example.

At the beginning of my comparative law course I announce to my students that I intend to use the comparison of foreign legal systems to lead them to a better understanding of the

underlying assumptions of the American legal system. In my exam, in the Fall of 1997, I asked my students to write a constitutional amendment regulating the constitutionality of judicial review. The question read as follows:

The United States has often been a model of constitutional democracy around the world. However, you are deeply concerned that at least certain aspects of our system of constitutional judicial review are not expressly included in the Constitution, and you are tired of the endless debate regarding the power of the judicial branch in this regard. After carefully studying our own system, you performed comparative research into the constitutional systems of France, Spain and Germany. These studies have convinced you that it is both possible and desirable to draft clear language in which the meaning of constitutional review is clearly and expressly defined. In your current position as a United States Senator, you want to draft a constitutional amendment entitled: "A Clear System for Constitutionality Review in the United States," in which you will spell out rules that answer the following questions:

(1) What type of body will be responsible for giving the final word on the constitutionality of executive, legislative or judicial action? (You are not changing the organization of our ordinary courts at either the state or federal level. You are merely creating an express system for constitutional review in which you will spell out the role of the Supreme Court or create a new, alternative body to perform constitutionality review, e.g., French Constitutional Council, German or Spanish Constitutional Courts.)

(2) What will be the number, qualifications, length of service and method of selection and appointment of members of this body?

(3) Will the state and/or federal courts be allowed to determine the constitutionality of executive, legislative or judicial action? (Yes or No, as to each category.) If so, how? (e.g., the German Reference Procedure, Spanish Court power to determine constitutionality, subject to appeal, as in the U.S. Keep in mind that you are not changing our ordinary court system.)

(4) How and when will matters be submitted to this body? (e.g., appeal from lower courts, reference procedure, citizen complaint, request for advisory opinion by those with special standing -- like the President, the Speaker of the House, President of the Senate, any number of congressmen and senators).

(5) What will be the effect of the decisions of the constitutional review body when interpreting the Constitution of the United States? (Remember to consider three areas: (1) In the same case, as to courts and parties involved; (2) Within the judiciary generally as "precedent"; and (3) As to the other branches of government (legislative, executive and judiciary).

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