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LABOR LAW AND LATCRIT IDENTITY POLITICS: Familiar Connections: A Personal Re/View of Latino/a Identity, Gender, and Class Issues in the Context of the Labor Dispute Between Sprint and La Conexion Familiar

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BIO:

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SUMMARY: ... Although she had been in the employment law class for only a short time, she already knew that any unusual reaction would attract the harsh and questioning gaze of the professor. ... She had noticed, even before deciding to attend Denver Law, that her labor law professor, Roberto Corrada, was Latino. ... "Yes, that's always seemed obvious to me as well," Corrada replied. ... "He hired a student with a working class, labor union background who had grown up in Boston. ... Corrada seemed almost in a trance reciting background facts about the dispute. ... "The way you just talked about the case is what I might expect from a conservative white male law professor," Tina replied, "someone who didn't or couldn't understand the race, gender, and class implications of the LCF case. ... "They paid me what I asked -- a lump sum reflecting an expert witness fee of \$ 200 an hour," Corrada said matter-of-factly. ... "Well," Corrada added, "any labor law professor in America could have testified the way I did about the law. ... I think you're right, Professor, that only a forum like the one NAFTA provided in the Sprint/LCF case would allow a deeper interrogation of domestic law against a background of internationally recognized principles of fairness and justice," Tina remarked. ...

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Sometimes the governing paradigms which have structured all of our lives are so powerful that we can think we are doing progressive work, dismantling the structures of racism and other oppressions, when in fact we are reinforcing the paradigms. These paradigms are so powerful that sometimes we find ourselves unable to talk at all, even or especially about those things closest to our hearts. When I am faced with such uncertainty and find myself unable to speak, anti-essentialism and intersectionality are to me like life preservers. They give me a chance to catch my breath as the waves come crashing over me and they help me sort through my own confusion about what work I should be doing and how I should be doing it. n1

Tina Romero struggled to relax her face so as not to draw attention to herself. Although she had been in the employment law class for only a short time, she already knew that any unusual reaction would attract the harsh and questioning gaze of the professor. She always arrived prepared, but, like most law students, Tina tended to avoid professor/student dialogue in the large classroom setting. The dialogues were so short and impersonal and often seemed to be orchestrated by the professor to elicit a narrow, technical, fill-in-the-blank response. She tried again to relax, look attentive, and hope for the best.

As the professor droned and her mind wandered, a sense of displacement crept over Tina. How strange for her to be in this classroom in Denver, Colorado. In distance it seemed just up the road from home, [*1066] but was in fact quite far, both in time and culture, from her native Las Vegas, New Mexico. She had completed her undergraduate and postgraduate education at the University of New Mexico, and she deeply missed her old community. Still, Tina knew that to grow she ultimately would have to leave New Mexico (if only for a brief while), because this opportunity to attend the University of Denver Law School would allow her to stretch her legs without wandering too far from her beloved state. It didn't hurt, of course, that she could continue her postgraduate degree in Labor Studies here by concentrating on labor and employment law.

She had noticed, even before deciding to attend Denver Law, that her labor law professor, Roberto Corrada, was Latino. His name had initially sounded familiar, but she gave up trying to place it. She remembered calling him once to inquire about labor law at DU, and had been pleased with the answers she received: both labor professors at DU had an interest in NAFTA, and the school offered opportunities for directed research and internships -- possibly even a field placement in Mexico.

But for Tina, the big surprise at law school was not the labor curriculum; she was, after all, already familiar with many of those topics. The surprise was how little the Latino students there had in common. Tina had dropped out of the Hispanic Law Students' Association simply because of the dearth of Chicanas involved in the organization. And the Law School itself was largely populated with white students from the upper middle class and higher.

Tina had not expected this. She knew it would not be the University of New Mexico, but wasn't Colorado's Hispanic population around 20%? She realized early on she would simply have to stick it out and get her degree, then wait to see what would happen.

"Ms. Romero, how does the systemic discrimination case differ from the ordinary indirect evidence case set out in *McDonnell Douglas*?" asked Professor Corrada suddenly. Jarred violently back to reality, Tina realized she had let herself drift, and the professor had seen his opportunity. "The systemic case is premised on a statistical showing of discrimination," she blurted out.

There was a tense, momentary silence. Then the professor said, "That's exactly right." There was no indication of approval except for this flat, direct statement, and he returned to his lecture.

Tina returned to her thoughts. She had completed the first year of Law School satisfactorily though not without the standard anguish. She could not understand why the process of learning the law had to be so competitive and hostile, almost more like a war than an educational experience.

[*1067] During her second year, Tina dutifully signed up to take employment law with Professor Corrada. After about two weeks of class, she had suddenly recalled why the name seemed so familiar. She had encountered his name in some testimony about NAFTA that she had read in a postgraduate class. She vaguely recalled that Professor Corrada had testified as an expert in a NAFTA case stemming from the labor side accord between the United States and Mexico. While attending law school, Tina had discovered that the proceedings of that hearing (including the testimony) had been reproduced in a book entitled *The Effects of Sudden Plant Closings on Freedom of Association and the Right to Organize in Canada, Mexico, and the United States* (1997), released by the Commission for Labor Cooperation. Two weeks before her employment law class began, she sat down and read the testimony again.

The NAFTA case concerned a dispute between Sprint Corporation and La Conexión Familiar (LCF), a small Hispanic telephone company that Sprint had acquired and converted into a subsidiary. LCF was a niche company designed to market long distance telephone service to Spanish speaking people. Accordingly, most of the company's workers were Latinas who were fluent in Spanish and English. The complaint (the first of its kind under NAFTA) was filed by a Mexican labor union alleging that the United States was not enforcing its own labor laws. The complaint followed determinations by both an administrative law judge and a federal district court judge that Sprint did not violate labor laws when it sold its LCF subsidiary and terminated its employees just before a union election among LCF's workers.

Tina was surprised at Professor Corrada's testimony. Apparently he had testified at a hearing in San Francisco held by the United States Department of Labor as an expert for Sprint, and had maintained that US labor laws had been properly enforced. Tina found it hard to understand how this professor could have testified for Sprint. She tried to think about why she felt this way. After all, she didn't really know the professor very well.

The reasons pored forth easily. Not only did this type of corporate testimony seem at odds with his character generally, Tina had noted several times his decidedly progressive stand on race and employment. On one occasion he had even indicated that he was co-counsel in an ACLU case, and Tina had learned that he was currently Chair of the Board of the ACLU of Colorado. In her conversation with him prior to attending law school, she found out that he was intimately involved with the Colorado Hispanic Bar Association, and had been chair of its public policy committee. In this role, he had become a staunch defender of affirmative action and bilingual education. Tina wondered how someone who was so devoted to the Latino community could testify for a large U.S. corporation against the better interests of Latina blue-collar workers.

Maybe, she thought, his background was elite, upper class Hispanic. And wasn't he Puerto Rican? Tina noted that Professor Corrada was fairly light-skinned. She entertained the thought that he was perhaps one of those paternalistic old-party Democrat Hispanics who thrived on the subordination of other Latinos because it served to lift them to positions of leadership within the community and allowed them to feel they truly knew what was best for the greater Latino population.

As the class wound to an end, Tina realized she could not stand to merely speculate about these issues. After all, if she was going to work closely with this professor on a directed research project she should learn about his perspective and his thoughts on Latino subordination in this country in advance. She would not compromise herself for academic opportunity.

As Tina watched the last of the students file out of the classroom, she resolved to ask the professor about his testimony in the LCF matter; after all it was a matter of public record. He was almost to the door when she gained his attention: "Professor Corrada, may I ask you a question that's not really related to the class?"

"Sure, go ahead," he said.

"Well, I don't know if you recall my background, but I have a Master's Degree in Labor Studies with an emphasis on NAFTA."

"Sure I remember," he said, nodding assuredly. "We get so few students with an actual academic grounding in labor policy. Say, this isn't about a possible directed research project is it?"

"Not exactly," Tina replied. "In my studies I came across some testimony you apparently gave on behalf of Sprint Corporation in a labor dispute involving La Conexión Familiar."

Professor Corrada suddenly looked annoyed. "Yes—what about it?"

"Well," Tina continued, trying to keep a nervous flutter from her voice. "I wanted to know whether it was really you who had testified."

"Well," he said, "Roberto Corrada is not a very common name. In fact, my father says all Corradas in the world are related. Yes, it was me." He paused for a moment and set his books on a desk. The scowl disappeared from his face. "Do you find that surprising?"

"I do find it somewhat surprising given that everything I know about you suggests that it should have been more likely that you would have," she got courageous, "that you should have testified on the other [*1069] side, and not for Sprint." She folded her arms in an act of unintended defiance.

Corrada put his hand on his chin and stared at her. Tina couldn't tell if his look was approving or disdainful.

"It's true," he said. "My general predilections are in favor of work ers and certainly the Latino community, but it's not as easy as that."

"What do you mean?" Tina asked.

"It's kind of a complicated story," he replied, the scowl returning to his face. "But look, I'm not doing anything for the next hour and a half, and I'm famished. This class really takes it out of me. If you have a minute to get a bite at the cafeteria, I'll explain what I mean."

Tina's classes were completed for the day, and although she had wanted to get a head start on tomorrow's tax reading, she simply had to hear the professor's story. "I guess I could use some coffee," she said.

As they walked to the cafeteria, Tina wondered how much of Cor rada's explanation would be self-justification. She simply wanted to know the truth about the situation. Maybe he was not proud of what he'd done. If that were the case, she was probably about to hear a series of half-baked rationalizations. She had seen this before in some Hispanics in Colorado and New Mexico who seemed unable to reconcile their upper-class Mexican roots with their strong feelings for their subordinated brothers and sisters in this country. How many times had she witnessed these Hispanics (who were usually lighter-skinned) run for statewide office, begin their campaign with a heavy message of eco nomic justice for Latino blue collar workers, only to have the message become diluted and then fade altogether when they became politically successful. This success meant more money from outside sources and outside consultants who advised that strong stances, in this day of the moderate voter, were political suicide. "After all," the consultants would say, "the people in your community will vote for you no matter what."

Tina bristled at the thought, but chastised herself for her own strongly held stereotype. She shouldn't fall into the majority trap of making such generalizations on the basis of the color of one's skin. There were plenty of light-skinned Latinos in both Colorado and New Mexico who were among the strongest supporters of the community. Nonetheless, she feared that she might have struck a chord that Professor Corrada may have preferred not to hear.

As they waited in line, Professor Corrada began to talk. "Did you know I'm Puerto Rican?" he asked.

"Yes, I had heard that you are," Tina replied.

"I think a lot of Chicano students come here and see there's a pro [*1070] fessor named Roberto Corrada, but when they meet me they don't know what to make of me. I think they think I'm from Spain or South America," Corrada said.

"You could be of Mexican descent or from Latin America," Tina replied. "I think most of us know not to decide simply on the basis of color," she indicated somewhat hesitantly.

"Some people have even said to me, you don't look Puerto Rican, but I am Puerto Rican, proudly, and my family goes back for generations on the island."

"No lo crees," joked Guillermo the grill chef, as if on cue. Guil lermo was from Mexico, and he obviously enjoyed teasing Professor Corrada about almost anything, at any opportunity. Today he was in a particularly jovial mood, but it was clear that he didn't know what Cor rada was talking about.

"Quiero queso americano hoy, no el provolone!" yelled Corrada over the sizzle of the patties on the grill. He then glanced back at Tina and said "What was I talking about?"

"Proudly Puerto Rican," Tina remarked.

"Oh yes. Right. But clearly of Spanish descent. That was always important in my family. Everyone in my father's and mother's families were intimately familiar with Spain and its culture. My father could trace his roots to the town of Infiesto in Northern Spain, and, in fact, I've been told that if you go to that town and say that you're a Corrada the townspeople will welcome you back as if you're long lost family. My mother is less clear about her roots, but apparently her mother's family comes from around Barcelona."

"I don't mean to interrupt, Professor," Tina said delicately, "but what does all this have to do with your testimony at the NAFTA hearing?"

Professor Corrada looked seriously at Tina and said, "Everything. I learned very early that my family was considered to be, at least some what, among the island's elite. My great grandfather, Jose del Rio, had a hand in founding the Statehood Party, one of the island's big political parties. My uncle Baltasar served as Resident Commissioner of Puerto Rico-the nonvoting representative to the U.S. Congress-in the 1970s. My uncle Alvaro is a bishop on the island, and seemingly always in the news trying to quell some controversy or another for the Catholic Church."

Great, Tina thought, he's a light-skinned Hispanic whose family is among Puerto Rico's elite and so it was easy to testify in behalf of a major U.S. corporation. Could it be as easy as that?

"So," Tina interrupted softly, "your family's elite status has some thing to do with your connection to Sprint?"

[*1071] "No, of course not. Again, it's not that easy," replied a somewhat frustrated Corrada. "First of all, I didn't say they were among the elite, I said somewhat in the elite. Believe me there are some very wealthy, incredibly influential old-time Spanish families on the island. I wouldn't say we're quite in that league, although we certainly seem to have had some influence. But my family history is not as simple as all that, which makes things all the more confusing." Tina resolved not to interrupt Cor rada again during his recital of family history. Corrada continued, "My family's history contains some harrowing stories of difficulty and hard ship as well. Both of my grandfathers worked very hard for what they got. My father's father was a farmer, growing sugar cane and tobacco, among other things. My father never really had very much growing up because he had thirteen brothers and sisters. Fortunately, the one thing valued in his family above virtually everything else, except perhaps reli gion, was education."

"My mother's father grew up poor. His childhood playmates were poor sons and daughters of Chinese immigrants. He struggled and saved and ultimately built a successful business."

Corrada suddenly stopped. "I'm sorry Tina, I didn't mean to be short with you a second ago, but you've hit on matters that are very close to my heart. Family stories are difficult to verify. I'm sure what I've just said is not completely accurate, but it's what I have in my head," he continued, gazing through the cafeteria window. "I have always been conflicted in some way about my class and racial roots in Puerto Rico. For example, despite stories of hardship, all of my father's and mother's siblings went to college. And while everyone knows that the Spanish came to Puerto Rico and over the years intermarried with African and indigenous peoples or Tainos who were subordinated first by the Spanish and then by the Americans, does this description of inter marriage leading to racial assimilation encompass my family?" Corrada shrugged. "I'm not so sure. It's true that my great grandfather, Candido, was a captain of the Spanish militia in Morovis during the Spanish- American war. His brother, Rodrigo, I am told, fought against Teddy Roosevelt in Cuba. But there seems to have been a lot of intermarriage within the family itself. My parents are second cousins; they share a maternal great grandmother. My father's parents are first cousins; they received a special dispensation from the Pope in order to marry. As far as skin color is concerned, I'm fairly

light-skinned, and some of that seems to have been engineered, more or less. I'm Puerto Rican and have always identified that way, but I have always felt myself to exist on some kind of race border."

Tina was slightly taken aback by the professor's frankness about [*1072] his background. "I really had no idea, Professor," she said thoughtfully. "But I suspect strongly that a lot of that goes on in Mexico where my antepasados are from. All you have to do is look around. If social conventions did not discourage racial intermarriage, I suppose everyone would look more or less the same by now. I also think it's no coincidence that the whites are in the elite class governing Mexico, while the darker-skinned Mexicans are, by and large, in the worker class."

"Yes, that's always seemed obvious to me as well," Corrada replied. "For example, all of the Governors of Puerto Rico have been light-skinned Spanish men. But as I'm discovering as I get older, it's really not as simple as all that. I vividly remember conversations with my father about my heritage and how intermixed we Puerto Ricans are culturally," Corrada said. "On several occasions my father told me not to forget that we are an African culture. Our poetry, music, and dance are mixtures of Spanish and African, heavily favoring African rhythms. Everyone in Puerto Rico dances; they all know the same dances and songs, and that knowledge does not appear to vary according to class like it does in the United States." Corrada hesitated and looked at Tina as if he were conveying information that it would be almost impossible for her to understand.

"What I mean," he said to Tina, "is that race and class relations in Puerto Rico are in some ways the same, but also in some ways very different from the way they're viewed here in the United States." He thought for a moment then continued, "I'll give you another example. Growing up, my idol, and I really had only one, was Roberto Clemente. One of the greatest baseball players to ever play the game, Clemente was a legendary hitter who could hit for both average and power. But as good a hitter as he was, it paled in comparison to his ability to play the field. He could catch the ball from virtually anywhere in right field and had a cannon for an arm—both powerful and accurate. And Clemente was black, but honestly I didn't know that. It's not that I was not cognizant of his being black and my being white, but we were both Puerto Rican. Puerto Ricans had been excluded from major league baseball and were relegated to the Black Leagues. One of the greatest baseball players ever—possibly better than Clemente—was a Puerto Rican named Pancho Coimbre. The exclusion of Coimbre from the Major Leagues is an injustice that every Puerto Rican feels regardless of color. In that sense both white and black Puerto Ricans are and have been raced and erased," Corrada exclaimed.

"Of course, I have not lived my life exclusively in Puerto Rico. My father was in the Air Force, and so we've lived all over, but only occasionally in Puerto Rico," Corrada said. "That served to accentuate my [*1073] internal conflict regarding class and race. On top of the conflict related to my race and class roots in Puerto Rico, there is a more supreme conflict involving whether I'm more American than Puerto Rican."

"You know you might be both," Tina said, a hint of compromise in her voice. "Aren't all Puerto Ricans citizens of the United States? Why should you be any more conflicted than me, for example? I'm both Chicana and American."

"Exactly," agreed Corrada. "You have a double consciousness because of your identification as an American and as a Chicana—two different communities and two different perspectives. But you live more or less comfortably in both communities. For example, you know American norms and customs because you grew up here. Also, you're comfortable in the American Chicano community because you all share a common bond of both race and place identity within that community. What I'm talking about is different. What if your entire family was in Mexico, meaning all of your family stories were about Mexico? But then, say, your immediate family moved to Boston, then Chicago, and then Dallas, but you still spent about roughly one third of your life in Mexico. This kind of existence, trust me, leads to a truly bordered identity construct accompanied by a hypersensitivity to similarities and differences between cultures," Corrada concluded.

"What my straddling of Puerto Rican and American homelands has done for me is make me feel ill at ease in both places - uncomfortable both in the United States or in Puerto Rico," he said as a deep frown spread across his face. "Of course, the constant kidding I took from two of my "Independentista" aunts - Panchy and Ita - didn't help. They sometimes affectionately called me "pitiyanqui," a term of derision for Puerto Ricans who buy into imperialist American ideas, because of the various U.S. influences in my life."

As Corrada paused briefly, Tina took another sip of her now luke warm cup of coffee. I wonder what all of this has to do with Sprint and La Conexion Familiar. Is it that the professor had no appreciation for the race and class aspects of that dispute? That would be hard to believe regardless of all the deep culture and identity clashes in his own back ground. Still, maybe that's what he's getting at, she thought.

Tina's momentary attention lapse must have been detected by the professor because he then said, "I realize our time is getting short, so let me skip ahead a little to show you how this identity conflict has played out in my professional life. I entered law school in the early 1980s thinking that I would like to become a labor lawyer. I was on the debate team in college, and had twice debated topics having to do with labor unions or unemployment. I found the field of labor relations interesting. [*1074] My sympathies were generally progressive and so I thought that I might work for a labor union. But, of course, I had no family history of union activity. None of my relatives had, to my knowledge, been in a union. In addition, I myself had very little, actually no, experience with labor unions. In college, I had floated from one minimum wage job to another and was never presented with an option to join a union," Corrada recounted as he stared forlornly at his long-cold cheeseburger.

At least the professor was on the East Coast, Tina thought. If it hadn't been for a close uncle of mine who left New Mexico for a job in Los Angeles, where he ultimately became a shop steward, I, too, would not have ever thought about the field of labor relations. "But surely there were professors at your law school who knew about unions," Tina asked.

"Oh, yes, in fact the professor who taught labor at my law school had substantial ties to unions. I applied to be his research assistant toward the end of my first year," Corrada replied.

"Well, what happened?" Tina asked.

"He hired a student with a working class, labor union background who had grown up in Boston. As I asked fellow students about their summer jobs, I discovered that most of those with paid clerking positions or with summer internships with labor unions were from families with long ties to the various unions headquartered in Washington, D.C. It was easy for me to stereotype labor unions as places where white kids from working class families with union ties went for jobs. In fact, I cannot recall ever seeing a person of color in a position of authority in a labor union the entire time I was in law school."

"Wait a minute," Tina interrupted, "surely you're not going to suggest that a management labor job was easier for you to find than a labor union job."

"In a way it was easier to find a management job," Corrada replied conspiratorially, "because it looked easier. Think about it. The big firms come to campus every fall to interview. You don't have to know anyone or ask anyone for an interview. You simply dump your resume in a pile, and, if selected, you interview with firm representatives on campus. It's the same process that occurs here at DU, but I was applying for labor jobs in the mid-1980s, the golden era of law firm hiring. I had done well enough (earning high grades and membership on the law review) after my first year to secure a number of interviews. I'm sure I also benefited from some affirmative action. Although my resume did not indicate that I was Puerto Rican, my name and fluency in Spanish was probably enough to get me the benefit of the doubt."

"I remember that the interviewer from one of the large firms at [*1075] which I interviewed was a light-skinned Hispanic woman. A partner in the firm, she actually knew more about Puerto Rican politics than I

did. It turned out her husband was a lawyer at another large firm and he apparently did a lot of work for the government of Puerto Rico," Corrada recounted.

"So you thought that large corporate law firms had more Latinos in them than did labor unions," Tina remarked. Surely Corrada could not have been that naive!, she thought.

"No," replied Corrada, "but people are swayed by their actual experiences, and I couldn't help but be impressed by a large firm with a Latina partner. Our talk about Puerto Rico was an unexpected surprise and made me feel very comfortable in the interview. When the firm offered me a job as a summer associate, I quickly accepted it. I eventually accepted a permanent offer from the firm." The seduction of the large corporate law firm, Tina thought. She had heard about it, but had managed to circumvent it herself by eschewing the on-campus interview process.

"I thrived as a management labor lawyer. I especially enjoyed the advice side of the practice," Corrada continued. "There were the difficult times as well, but for the most part it was a good experience. I felt that the firm partners with whom I worked cared about me as a person and about my development as an attorney. Even though I was a member of the Hispanic National Bar Association, I basically forgot that I was Hispanic at all," Corrada recalled. Tina nodded, so Corrada went on: "So I wasn't particularly suspicious when I was asked to be an expert witness for Sprint Corporation in December 1995. I remember asking what being an expert witness would entail? I was told that it was relatively straightforward because the issue in the hearing was whether U.S. labor laws had been enforced. I found out that the hearing was being held by the U.S. National Administrative Office because a Mexican labor union had filed a complaint pursuant to the NAFTA labor side accord."

Tina looked at Corrada eagerly -- this was finally what she had been hoping to hear about.

"I said I would review all available material in the matter to determine whether I would be comfortable serving as an expert witness at the hearing. A few days later I reviewed some briefs filed by both sides in the case as well as copies of an injunction decision by a California federal district court judge and a decision on the merits by an administrative law judge (ALJ). According to all of the documents, Sprint purchased an entity called La Conexion Familiar, (LCF) in 1992. LCF was a tele [*1076] communications reseller that had been based in San Rafael, California," Corrada said.

"I thought LCF was based in San Francisco," Tina said.

"No. Sprint moved LCF to San Francisco," Corrada answered. "According to the ALJ decision, Sprint wanted to expand LCF and wanted to be closer to a large labor market of Spanish speakers who could be trained as telemarketers. The decision also noted that at about this time, Sprint discovered that fifty employees, a large majority of the workforce, were undocumented immigrants. Sprint instituted a rescission lawsuit to stop the sale of the business. They eventually completed the purchase, but paid substantially less money. In addition, because of the lawsuit, which was a dispute with the former owners of LCF who had been retained by Sprint, Sprint cancelled the employment agreements it had with the former owners and replaced them with Sprint managers."

"So, what happened to the undocumented workers after all that?" Tina asked.

"I don't know," said Corrada, "the documents didn't discuss the issue any further."

"You know, a cynic might suggest that Sprint used the issue of the undocumented workers to get a better deal and to create an opening for them to dismiss the former owners in favor of their own internal managers," Tina stated wryly.

Corrada winced slightly. "I suppose someone could possibly infer that from the facts, but it did not seem to be a contended issue, and there was no direct evidence."

"What were you thinking when you read this?" Tina asked, shifting the conversation away from uncomfortable ground.

"Well, like you, I was concerned about this first part. I knew from a colleague of mine, Cecelia Espenoza, that the prohibitions on the hiring of undocumented workers were often manipulated by companies to the detriment of these workers, but I continued reading anyway," said Corrada. "The ALJ's opinion recounted some basic facts. Essentially, LCF was a "niche" telemarketing business which targeted the Latino community and attempted to sell long distance service to recent immigrants who spoke only or primarily Spanish and who frequently made long distance calls to family or friends in Mexico. LCF was advertised and marketed as a business "by Latinos for Latinos," and was designed to appeal to customers who felt more comfortable communicating by telephone in their native language. Thus, its telemarketing and customer service representatives spoke entirely Spanish. The customers' bills were also in Spanish. Based on the influx and the expected continuation [*1077] of a pronounced increase in the migration of Spanish speaking immigrants into the United States, Sprint management predicted growth in LCF's operations."

Corrada seemed almost in a trance reciting background facts about the dispute. "In early 1994, LCF started to perform below projected levels financially and Sprint became concerned about the profitability of the enterprise, but at about the same time the Communications Workers of America started to receive complaints about LCF including allegations of unfair treatment and failure to pay promised sales commissions. The union began an organizing campaign and there were instances of interrogation and threats of plant closure."

Tina shook her head. "Didn't this bother you, Professor? You're so adamant in your labor law classes about interrogating employees and threatening plant closure."

"Yes, that's right, although you well know there are exceptions to those rules. There are times when you can poll employees anonymously and even times when you can predict plant closure, but I was concerned about whether those exceptions were applicable in this case. However, the ALJ did conclude, based on this evidence, that Section 8(a)(1) of the NLRA, preventing employer interference with union organizing, had been violated, and therefore, issued a cease and desist order. This seemed proper if the activity was widespread and encouraged by management. Remember, my task as an expert was to testify whether U.S. labor laws were enforced. I remember thinking to myself, so far so good."

"But wait a minute, Professor," Tina said, "I thought the ALJ had ruled in favor of Sprint."

"That's right, he did," Corrada replied, leaning over the table, "but on the bigger issue involving whether Sprint had violated Section 8(a)(3) of the Act which prohibits discrimination in terms and conditions of employment based upon union activity. This is the section of the law that prevents an employer from discharging employees because of their involvement with a union. In certain circumstances, this part of the law prevents employers from making business decisions based on union organizing activities. Since Sprint closed LCF in July of 1994, this part of the Act was much more important to the union," emphasized Corrada.

"Wouldn't the evidence of threats of plant closure be enough to support a finding of a violation?" Tina asked.

"Not necessarily," replied Corrada, "despite such evidence, the ALJ must determine whether the employer would have done the same thing even absent union activity. In this case, a substantial amount of evidence existed showing that LCF was losing an enormous amount of [*1078] money. For example, instead of turning a projected profit of some \$ 12 million, LCF lost several million by early March 1994 and was projected to lose several million more by year's end," Corrada emphasized.

"But isn't it true that Sprint has no unions and that it's been relatively aggressive in trying to maintain a nonunion work force," Tina pressed.

"I had heard that, Tina, but had seen no evidence in NLRB or court decisions," answered Corrada, "and in any case taking a stance against unionization is not unlawful."

"Yes, but if Sprint didn't like unions wouldn't that diminish their incentive to prop up a failing division? Couldn't the discrimination have been that Sprint didn't approach LCF the same way it would have approached a losing division with potential that wasn't the target of a union organizing drive?" Tina queried.

"That's a really good point and it certainly would have been relevant in this case," said Corrada, warming to Tina's enthusiasm, "but while the union alleged this, neither the union or the NLRB presented much evidence of it. Admittedly, though, that type of intent is almost absurdly hard to prove. In addition, Sprint submitted a lot of evidence regarding exploration of alternatives that would have helped LCF, including a sale to another company and possible relocation."

"Surely some of the evidence caused you concern on the merits," Tina insisted.

"Yes," replied Corrada, "I became concerned when I found out that a Sprint labor relations manager had postdated a letter to make it look like a particularly critical economic decision had occurred sooner than it actually did. In addition, when LCF was closed, part of its customer database was transferred to Dallas, Texas where additional Spanish speaking telemarketers were hired to handle the influx. But you should remember what I had been asked to testify about, whether U.S. labor laws had been enforced."

"I understand," Tina said, "but isn't that all wrapped up with the decision on the merits of the dispute?"

"Yes, of course," replied Corrada, "but I was very focused at the time. I had not been asked how I would decide the dispute; rather, my role was to be a judge more or less, one who would give no real deference to the ALJ or the federal district court judge who had actually decided aspects of the dispute on the merits. So, for example, could I say that a reasonable decisionmaker would reach the same result that the ALJ and the district court judge did in this matter? But my charge was also broader. I wasn't asked simply to review what the judges had ruled in the matter, but I was asked to discuss whether U.S. labor laws had [*1079] been enforced. That meant I would have to review the National Labor Relations Board's approach to the case. I had to ascertain whether they had prosecuted the case in their usual manner or if they were dogging it, merely going through the motions."

"So what was your view, then, of the NLRB in this case?," Tina asked.

"Well the General Counsel of the NLRB was Fred Feinstein. In prior administrations and with prior General Counsel (GCs), I certainly would have had grave concerns about enforcement. Indeed, under some GCs an enforcement action in this case may have never even been brought. However, under Feinstein, the NLRB prosecuted this case heavily, including seeking a 10(j) injunction in federal district court, which is an extraordinary move in any NLRB case."

"So, based on all of this, you agreed to testify as an expert?" Tina asked. Tina tried to mask her disappointment. She thought staring out the window might help, but she found herself saying, "I guess I'm a little disappointed."

"Really, why's that?" Corrada asked.

"The way you just talked about the case is what I might expect from a conservative white male law professor," Tina replied, "someone who didn't or couldn't understand the race, gender, and class implications of the LCF case. But I would expect more from you. Why didn't you pass this up? Was it the money? Surely they paid you plenty," Tina said accusingly.

"They paid me what I asked -- a lump sum reflecting an expert witness fee of \$ 200 an hour," Corrada said matter-of-factly. "Certainly the money was good, but could I have passed it up if I had problems agreeing to serve as an expert? I like to think so. It's certainly true that I would not have been an expert witness

without the pay, but in my mind, while the money was necessary, it was not the only factor in my agreeing to testify," Corrada stated.

"You hit on the harder question, Tina. The fact that this dispute impacted Latino workers had not completely escaped me. I had some inkling that I was called to be an expert at least in part because I was Latino," Corrada continued. "I certainly did not want to play into that too much. In fact, I remember resenting it when I was invited to inter view at some law schools who apparently only wanted me on their list so that they could say they had interviewed a Hispanic candidate," Cor rada said firmly.

Surely the professor knew he was being used, thought Tina. She tried hard to temper the question that followed. "Do you think you would've been called if the dispute involved no Latinos?," Tina asked.

[*1080] "I might have been. Remember, I had been a management labor attorney, and there aren't very many with that background in academia," Corrada remarked. "But I concede your point. It's probably true that I would not have been called to testify in a non-Latino matter. That's why I thought I was reviewing the facts carefully before agreeing to testify. As I read the relevant documents I discovered that there were Latinos on both sides of the dispute. The President of the LCF subsidiary, for example, was Maurice Rosas. Many of the managers involved in the dispute, including those who made threats of plant closure during the organizing campaign, were Latino and Latina. And, of course, the workforce was largely Latina. So I felt at least on a superficial level that the dispute was not about race in that it did not involve whites against Latinos. Rather, I viewed the dispute almost as being one among Lati nos," Corrada concluded.

Tina's face clouded over. How could she even begin to respond to such an absurd conclusion, she thought. The professor stumbled quickly on. "I know what you're thinking, Tina," he said, "but let me finish. I'm only telling you about my thoughts at the time of the dispute. My thinking has evolved, to say the least."

Tina relaxed as she took another sip of her bitter and cold coffee. "Okay, continue," she mouthed as Corrada once again took up his explanation.

"It's hard, even now, to analyze and deconstruct the real reasons why I agreed to testify as an expert in this matter. Maybe I didn't think through the ramifications much at all, but only in retrospect have tried to give some meaning to my decision. Possibly, it was because I was up for tenure here at DU and testifying as an expert is generally considered to be prestigious. Other members of my faculty had been experts in various disputes and this had seemed to be encouraged by the adminis tration. Maybe I did it out of a sense of obligation or loyalty to my old law firm. And, as I mentioned, the money was good. All of those things may have been involved, but looking back, I think two things, on a con scious level anyway, served to help me rationalize my decision to agree to testify. The first related generally, but substantively, to NAFTA itself. I remember thinking that it seemed absurd for a Mexican labor union to file a complaint about the enforcement of U.S. labor laws. The NAFTA labor side accord, after all, was pushed by American labor not Mexico or Mexican labor. As I recalled, U.S. unions were concerned that American companies would quickly move their operations to Mex ico to take advantage of cheap labor because they had no import barriers on goods coming from Mexico."

[*1081] "A fairly biased view of another country's legal structure, don't you think?," chimed Tina wryly.

"True to a point," replied Corrada. "It's not that Mexico's labor laws are necessarily deficient, but that enforcement of those laws leaves more than a bit to be desired. Thus, the labor side accord explicitly discusses enforcement. In the Sprint/LCF case, the Mexican labor union complained that the United States failed to enforce its own labor laws in a circumstance involving an enterprise made up of immigrant workers from Mexico. This is theoretically parallel to American labor concerns in Mexico, but it seemed arrogant and nonsensical to me that anyone could question U.S. enforcement of its own labor laws, especially under a generally pro-labor Clinton Administration, and also, especially, when the General Counsel of the NLRB was Fred Feinstein," Corrada added.

"That's a very narrow view, Professor. Moreover, it assumes that our system is flawless," said Tina. "The labor side accord is really nothing more than a political tool. As such, it should not come as a surprise that it would be used by Mexican as well as American labor workers," said Tina very matter of factly.

Corrada's face lost its twisted intensity and softened as he continued. "Be that as it may, Tina, I still remember feeling a great surge of nationalism at the time. I really don't usually have such jingoistic feelings, and so I was surprised by my strong reaction in this case. In the past any feelings of nationalism have arisen only in the context of Puerto Rican Olympic teams and Puerto Rican baseball players," Corrada sighed. "The second thing that I remember crossing my mind when I was thinking about testifying for Sprint was related to my tendency to go against the grain. I dislike stereotypes about viewpoints of people of color. Many African-Americans and Latinos expect that other group members will toe the same line or express similar opinions," Corrada stated.

"That's a rather conservative viewpoint, Professor," Tina remarked. "Stephen Carter writes about this same kind of stereotyping in his book, *Reflections of An Affirmative Action Baby*. The view, however, is much too narrow and individualistic. The point is that blacks and Hispanics in this country have a common base of experience. You can not be black in this country and hope to somehow dodge race discrimination or the country's history of slavery - it's there always - an imposed constant. Is it too much to ask, then, that members of a subordinated group, especially the leaders among them, speak out against oppression and subordination every opportunity they get?" Tina questioned.

"It's a good point Tina, and I'm not quite sure how Carter would [*1082] answer, except possibly to disagree," Corrada said, "but I part company with Carter and other race neo-conservatives. I believe, for example, that minority viewpoints and voices should be sought out for their own sake, but not necessarily because of the substance they will articulate. Rather, a minority viewpoint is important because of the different perspective it invariably brings to any given issue. Subordinated peoples have a perspective that is not generally given any account, and therefore should be sought out in all cases. I remember thinking that when people saw a Hispanic testify, for Sprint, this would serve to dash their pre-existing stereotypes. I thought that my testifying as an expert for Sprint might serve to further diffuse race as an issue. Remember, at the time I had rationalized the point that race was not an issue in the dispute," Corrada concluded.

So far the professor has rationalized his decision quite nicely, Tina thought, even if he seems more than a bit defensive about it. "You seem to have resolved the issues in your mind about testifying quite adequately," Tina found herself saying.

"Sometimes maybe we're all a little bit too smart for our own good," Corrada mused. "Anyway, I prepared my testimony, I attended the hearing in San Francisco and testified. I began to realize the gravity of my mistake, however, when I sat down and listened to the testimony of the person who spoke after me. Her name was Dora Vogel. She was one of the Latinas who had been employed at LCF and she testified in Spanish. She spoke about terrible working conditions. She testified that workers had not been allowed to use the restroom except on breaks. She talked about how commissions were not paid by the company due to sudden and arbitrary changes in sales quotas. She recalled how LCF supervisors changed schedules to require employees to work evenings and Saturdays. She spoke about Latina workers who had been summarily and arbitrarily discharged. Dora also talked about how the workers felt relieved when they thought a union might be able to help them. Finally, she testified about the plant closure and the effect on her family," Corrada emphasized sorrowfully. "I had been so focused on law, I thought, that I didn't think enough about the true impact of this entire situation on the lives of the workers involved in the struggle. And, I slowly realized right at that moment, with Dora Vogel testifying, that I had thought too much about whether I could testify and too little about whether I should testify."

"What do you mean by that?" Tina asked, now riveted by what the Professor was saying.

"Well," Corrada added, "any labor law professor in America could have testified the way I did about the law. The truth is that the technical [*1083] application of the law allows for a large degree of subjectivity on the part of the decisionmaker. What I mean by the "could/should" statement is that the ability to rationalize the correctness of the legal result should not end the inquiry. I should have interrogated myself at a deeper level, somewhat like what I am now doing. I should have thought more about the context of the dispute. I should have thought more about people, and less about law," Corrada surmised.

"It sounds like you've done quite a lot more thinking about this since your testimony in San Francisco," Tina noted, trying consciously to ease the Professor's disappointment.

"I certainly have," Corrada replied. "This experience triggered my own identity crisis. When I returned to Denver, I became more interested in writings about law and identity, especially Latino and Latina Critical Theory, and I started reading some of the groundbreaking work in critical race theory. I even began teaching a class on critical race theory. As a result, I've developed a few insights into the LCF matter and my rationalizations regarding the dispute."

Tina relaxed a bit as the Professor recollected his path of discovery regarding race matters. She began to understand now the reasons for Corrada's testimony and his passion for civil rights today. Corrada continued the discussion: "The first of these insights is that I have seen myself too much as an outsider. In being so bordered - existing on race, national, and political borders - I have found that I tend to focus too much on difference and not enough upon similarity. The majority of people, on the contrary, don't exist on these same borders and tend to think their experiences are common. They have the opposite problem. They think everyone should be the same and do not appreciate important and meaningful differences among people. However, as I stated earlier, because I tend to focus on difference, I distance and disaggregate myself from communities to which I belong. For example, I think that deep down, possibly because of some internalized classism or maybe the gender difference, I saw myself as different from the Latina workers at LCF. When I was at the hearing, however, I realized that I connected with the workers on many levels, not the least of which was fluency in Spanish. Language is a strong access point, and I remember having the feeling as Dora Vogel testified that she was talking directly, and only, to me," Corrada emphasized.

"It's probably more or less true," Tina stated, "most of those at the hearing must have been supportive of the LCF workers and the union. You were probably one of only a handful there who Dora could possibly sway by her compelling testimony." Tina knew she had hit the mark with this comment as Corrada nodded his agreement. Corrada paused [*1084] briefly to think about Tina's observation, but then hurriedly continued with his own reflections. "I don't know how familiar you are, Tina, with the critical notion of 'essentialism.'" Tina gave no reply. "Very simply it means to try to capture, maybe with even one word or idea, someone's essence based simply on their physical features or based on one feature of their personality. The most classic essentializing would be, for example, labeling someone as being "good" or "bad" because he is African American or Hispanic or because she is a woman. As we know, people are very complex - there is good and bad in everyone and thus it is invariably inaccurate, despite people's propensity toward it, to label some one as "evil" or "virtuous" based simply on their physical or cultural makeup."

"I committed the error of "essentialism" in this Sprint matter. I essentialized Latinos in this dispute. Remember I had resolved that the dispute did not involve race because there were Latinos on both sides. I therefore looked for the easy marker of Latino identity. In so doing, I ignored meaningful differences between and among the Latinos and Latinas involved. Those important differences included class and gender, for example. I had been so focused on race that I could not see those other lines of oppressive pressure. My failure to recognize inter sections like gender and class along race lines caused me to essentialize race. Making race predominant over the confluence of gender and race, or race and class, essentializes race even while attempting to deal with race in a non-stereotypical way. In other words, while my intentions were good, I was entirely off the mark," Corrada remarked.

"The path to hell is paved with good intentions," Tina blurted out. "Sorry, but it's one of my favorite Anglo expressions, Professor. I agree with what you're saying and I appreciate it. It's extremely hard not to generalize or synthesize what we learn from our own experiences and question whether those experiences or beliefs are properly applied in another context. As I listened to your description of the Sprint/LCF dispute I could clearly see all the implications involved in the matter - race, gender, and class. So I did not understand your race-only perspective. It's certainly true, though, that my understanding and consciousness comes from my additional perspectives as a woman from a blue-collar background," Tina added.

"Exactly," said Corrada, "I can only understand those other perspectives by learning them from others, but there's more to the essentialism I embraced in assessing the dispute. In my haste to essentialize or generalize about race I accepted a particular context. I absolutely assumed that the dispute occurred in only one entity, LCF, making it easy to dismiss as a dispute between and among Latinos. Why shouldn't [*1085] I have viewed it instead as a dispute between Sprint, a largely white company made up of mostly white senior management, and La Conex ion Familiar, a mostly Latina operation? It is no less a white versus Hispanic dispute or a male versus female dispute just because a largely white, male senior management is orchestrating a conflict played out between Hispanics or women in the trenches," Corrada stated.

"It seems like there really can be no end to essentialism," Tina remarked, "it is a potent urge seemingly embedded in the human psyche."

"I agree," said Corrada regretfully, "you can know not to essentialize and still engage in the practice with fervor," Corrada emphasized. "Yet it's not even as easy as just being on guard against essentializing, because if you carry that defense to an extreme you can get caught in a trap of anti-essentialism."

"What do you mean?" asked Tina.

"Well, let's get back to the Sprint/LCF matter. At some point in my consideration of whether to serve as an expert I distanced myself from the Latina workers at LCF, and clearly treated them and their circumstances, at least subconsciously, as 'Other.' I did this by viewing myself either as an entirely independent actor -- too focused on my mechanical and distanced role as a legal expert - or I allowed myself to become sympathetically aligned with management, probably because of class differences between me and the Latina workers at LCF. After all, I had been a management labor attorney and my background was much more similar to the managers than to the workers at LCF. Also, I myself am Latino. While LCF management included Latinas, the workforce was largely Latina, according to what I had read. In retrospect, it seems that I should have essentialized the broad Latino/a experience more than I did. I disaggregated too much with respect to race and class - I distanced myself from the race and class picture even while I was essentializing race and ignoring class and other important race intersections. Here again, I should have been striving to discover and emphasize connections between me and the Latinas at LCF," Corrada concluded.

"And when you heard one of the Latina workers, Dora Vogel, speaking in Spanish at the actual hearing you suddenly realized your common heritage," Tina added.

"That's right," Corrada agreed, "I knew then that I had not properly thought through whether I should testify, or that I had possibly overthought the question. I should probably have tried harder to decide the issue at a more basic level."

Tina sighed and stared into her empty cup. "I guess I practiced a little of the essentialism game with you also, Professor," remarked Tina.

[*1086] "What do you mean, Tina?" asked Corrada.

"Well, I could not, in my mind, reconcile the professor that I had seen in class and what I knew about him, his progressive tendencies, with the professor who testified at the NAFTA hearing. In fact, since there is little consistency in the world, I should not have been so quick to judge," answered Tina.

"Again, I hate to be too Socratic, Tina, but why do you view my NAFTA testimony as inconsistent with what you know about me -- my progressive background, as you say? I know this will sound like a rationalization for my actions, but it is fundamental that the tendency to essentialize frees us to wrongly decide what is consistent and what is inconsistent. My testifying was a mistake, but it did not change my lean ings or my sensitivities. And, although it was inconsistent with who I am, it should not, but probably will, change perceptions about me. My deciding to testify came as a result of both emotional and intellectual errors in essentializing and not essentializing, mistakes that could only have been corrected by interrogating myself at a deeper level of thought and emotion. And those mistakes were not the only personal errors that I made in deciding whether to testify at the NAFTA Hearing," Corrada remarked.

"You mentioned something about regretting your feelings of nationalism," Tina said. "What did you mean by that?"

"That's one of them, Tina, but there's another - let me start with it. Remember I mentioned being upset about the general tendency to attri bute particular points of view to members of minority groups. My view, as you'll recall, was that we should make a special effort to seek out minority viewpoints, not because they'll take a particular substantive position, but because that voice will come at any problem from a differ ent, and important perspective," Corrada explained.

A flash of recollection came over Tina's face. "This is where you part company with Stephen Carter," Tina stated.

"That's right," Corrada continued, "but this Sprint/LCF dispute has caused me to change my position a bit. It seems to me that it still holds true that if a person of color is asked to opine or comment on an issue or is invited to speak or testify in a context that in no way implicates race or color, that they should feel an independence of thought that is differ ent from what society or even members of that group might expect from that person. For example, an African-American or Hispanic scholar should not be expected to espouse a liberal view on any given subject. However, at the same time, and this is where my thinking has changed, if a person of color is asked to opine or comment about a dispute that involves race or color - even if only in seemingly the minutest of ways, [*1087] that person owes some kind of responsibility to the group. The reason is that in those instances, there is a likelihood - possibly even a presump tion - that stereotypical thinking about the group or some sort of race consideration has gone into the decision about whom to invite to speak. In these circumstances, the speaker may have been chosen specifically to articulate a particular substantive viewpoint. In these situations if the person cannot help the group by forwarding the group's progress in this society, the invited speaker should simply pass up the opportunity. That, Tina, is probably what I should have done with respect to testifying at the NAFTA hearing. If I agreed, which I still do, that the appropriate legal test supported what the ALJ and district court judge in the Sprint/LCF matter decided on the merits, I should have declined, as a personal matter, the invitation to testify because of the race dimension of the dispute," Corrada exclaimed.

"You said there was another mistake that you made -- some issue regarding nationalism," Tina inquired.

"Yes," Corrada answered, "I was asked by someone after the NAFTA hearing why I had failed to talk about justice. My response was something like, 'I had not been asked to talk about justice.' The response felt awkward and absurd the moment I uttered it. Was I actu ally saying that law and justice were separate ideas? I've told students not to get so carried away with the rule of law that they lose sight of what justice requires. Yet there I was in San Francisco, stating that I had done exactly that. Obviously, Tina, there is an important lesson in sim ply that one insight. Do not, especially if you are a lawyer, lose sight of justice. That insight, however, led me to another one regarding the nature of international versus national law. I

think American law can often be too hypertechnical. There is so much sheer detail in the various legal structures we erect - especially those that are created by statute. And, although my status as a law professor suggests that I can navigate that detail in an effective way, it seems to me that a lot can be lost wading through those details. International law has often frustrated me because a lot of it, especially public international law, is stated in very vague, general principles. As I learned from testifying in the Sprint/LCF dispute, however, international law can serve as a check on domestic law that is characterized by the hypertechnicality of U.S. law. International law can help to remind us not to lose sight of justice," Corrada emphasized.

Tina's face brightened as the Professor's words sunk in. "I recall that at that very NAFTA hearing there was some testimony regarding whether the legal test you've talked about was a good one for forwarding the general policies of American labor law. You were not asked to [*1088] testify about the propriety of the test itself, but merely whether the law had been properly applied. I think you're right, Professor, that only a forum like the one NAFTA provided in the Sprint/LCF case would allow a deeper interrogation of domestic law against a background of internationally recognized principles of fairness and justice," Tina remarked.

"Oh my gosh, look at the time. I've got to get back to my office for a meeting with the Dean!," Corrada exclaimed.

"Thanks for taking the time, Professor," Tina remarked. "By the way, maybe a comparative analysis involving how different countries' labor laws treat situations like the one presented in the Sprint/LCF case would be a worthwhile directed research project?," Tina inquired.

"Sure, come by my office next week and we'll talk about it," Corrada yelled as he strode rapidly out of the cafeteria.

FOOTNOTE-1:

n1. Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 Berkeley Women's L.J. 16 (1995).