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LABOR LAW AND LATCRIT IDENTITY POLITICS: The Labyrinth of Solidarity: Why the Future of the American Labor Movement Depends on Latino Workers *

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BIO:

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SUMMARY: ... When a strike by 185,000 sorters, loaders, and drivers shut down the nationwide operations of United Parcel Service during the summer of 1997, I received inquiries from a number of news organizations whose reporters inevitably posed the same two questions: (1) how long is the strike going to last, and (2) does the union's victory signal the resurgence of the American labor movement? ... Is the labor movement is back? A better question would be, who's backing the labor movement? ... This essay makes the case that the future of the American labor movement will depend on its ability to harness Latino organizing power. ... Having established this, I now turn to the proposition that, if the workforce of America's future has a brown face, then the American labor movement of the future (if it has one) must have the same. ... Against the backdrop of somnambulance projected by so much of the mainstream labor movement, however, the Latino labor movement is projecting dynamism. ... Los Angeles can serve as a successful proving ground of the labor movement's ability to organize whole industries, geographic areas and communities at once. ... Some Challenges Facing a Latino-Led Labor Movement ... At least three serious challenges confront the labor movement in general and a Latino-led labor movement in particular. ... Even the brightest lights in the labor movement don't yet know. ... For me, this dispute signaled the great potential of the new American labor movement, and with it, the important role that Latino workers are destined to play. ...

[*1089]

Modern man never surrenders himself to what he is doing.

A part of him - the profoundest part - always remains detached and alert.

- Octavio Paz n1

Introduction

When a strike by 185,000 sorters, loaders, and drivers shut down the nationwide operations of United Parcel Service during the summer of 1997, ⁿ² I received inquiries from a number of news organizations whose reporters inevitably posed the same two questions: (1) how long is the strike going to last, and (2) does the union's victory signal the resurgence of the American labor movement?

I hesitated to answer these questions, but for different reasons.

The first question, which did not fall within my expertise as a labor law professor, was both timely and of great practical importance. Unfortunately, not even the combatants can accurately predict when a given labor dispute will end. Eventually, UPS would take two weeks to agree to the Teamsters' settlement terms before regular deliveries resumed. ⁿ³

The second question, which did fall within my expertise, was superficially appealing but ultimately beside the point. Every industry, ^[*1090] every employer, and every workforce is different; it is all but impossible to draw any meaningful conclusions about whether and how the resolution of particular grievances in a single confrontation will affect labor relations generally. ⁿ⁴ What's truly important in a labor dispute, I thought, is who the parties are, and what resources they bring to the battle. Is the labor movement is back? A better question would be, who's backing the labor movement?

Today, in more American workplaces than ever before, the answer to my question is the same: women and men of Latin origin. While organized labor as a whole is desperately struggling to avoid becoming irrelevant, ⁿ⁵ Latino workers as a group are enjoying unprecedented successes in forming new labor organizations, breathing life into old unions, and winning generous contracts. Largely overlooked during the UPS labor dispute was the fact that so much of the company's workforce, especially in the big cities of the Southwest, consists of Latinos. ⁿ⁶ In Southern California alone, at least half of the package delivery giant's 15,000 employees were of Hispanic heritage - a fact that could not be missed on television. Local news channels broadcast pictures of pickets at the company's downtown Los Angeles distribution facility, where the faces of all but a handful of the rank-and-file belonged to brown people. ⁿ⁷ When Teamster-represented employees won their key demand - 10,000 more full-time jobs for UPS' heavily part-time workforce ⁿ⁸ - Southern California Latinos were among the primary beneficiaries.

Just a year earlier, in a local precursor to the UPS dispute, Latino truck drivers represented by the Teamsters had won a smaller-scale, but equally impressive, victory. The drivers, who eked out a minimum-wage living delivering fresh tortillas sold in Los Angeles County retail ^[*1091] food stores under the Mission and Guerrero labels, took on mighty Gruma Corporation, the U.S. subsidiary of one of Mexico's biggest food processors. Following an extensive community-based campaign, which included pledges from prominent Anglo and Latino officials to join a boycott against the company's products, ⁿ⁹ drivers persuaded the company to sign a new collective bargaining agreement granting substantial pay and benefit increases. ⁿ¹⁰

Due to a growing, and until now, mostly low-wage Latino workforce coveted by employers, Southern California has become "ground zero" for labor organizing during this decade. ⁿ¹¹ Since 1990, three of labor's biggest organizing victories - wherein previously non-union workers chose union representation and then successfully negotiated a first contract - have been scored among Latinos there: 1,500 foundry workers, who joined the International Association of Machinists, at American Racing, Inc., in Long Beach; 3,000 drywall installers, who joined the United Brotherhood of Carpenters, in the home construction industry stretching from Santa Barbara to San Diego; and 1,000 janitors, who joined the Service Employees International Union through its "Justice for Janitors" campaign, at high-rise office buildings in Century City on Los Angeles' Westside. ⁿ¹² And this winter saw the addition of the largest organizing prize in

modern labor history: 74,000 low-wage, government-paid home care workers, who joined the SEIU in Los Angeles County. n13

Southern California is also home to some high-profile union organizing that has yet to bear fruit, at least in the form of new members or new contracts. Periodically, independent truck drivers working the internationally-important Ports of Los Angeles and Long Beach, respectively, have staged wildcat strikes in support of their demands to join the Communication Workers of America. n14 Porters and chambermaids at the New Otani Hotel in Los Angeles' Little Tokyo - a lodging frequented by Asian business travelers - continue to make claims, before both the National Labor Relations Board and the international court of public opinion, in support of their demand to be represented by the Hotel Employees and Restaurant Employees Union. n15 Even gardeners who maintain the yards of well-to-do neighborhoods have captured public attention through a campaign opposing local ordinances that ban the use of their ubiquitous gas-powered leaf-blowers, a cause championed by the Association of Latin American Gardeners of Los Angeles. n16

Southern California, however, is not the only place where Latinos are forming and joining labor unions. Since 1990, over 20,000 mostly Hispanic immigrant workers have walked off their jobs, or participated in organizing campaigns, across the country. n17 Mexican and Central American culinary workers in Las Vegas, n18 Guatemalan and Salvadoran custodians in Maryland, n19 Mexican poultry processors in Missouri, n20 and Dominican and Puerto Rican health care workers in New York n21 are among the growing ranks of Latinos who are demanding the chance to [*1093] bargain for better wages and working conditions. Their appearance on the national scene is hardly surprising; by the middle of the next decade, Latinos are expected to become the largest non-White segment of the American workforce. n22

This essay makes the case that the future of the American labor movement will depend on its ability to harness Latino organizing power. I address the subject in three parts. Part I traces Latinization of the U.S. workforce. Part II discusses what Latinos have to gain from unionism, and what unionism has to gain from Latinos. Finally, Part III summarizes the challenges that a Latino-led labor resurgence faces, and how successfully meeting these challenges can benefit workers of all races.

I. The Latinization of the American Workforce

The 1990s could be remembered as the decade in which the "sal sification" of the American diet was completed. n23 Since 1991, combined yearly sales of salsa and picante sauce have outstripped those of the all-American flavor-enhancer, ketchup. After climbing at an annual rate of eight to 12 percent, retail salsa and picante sales reached \$ 940 million in 1994 and are projected to top \$ 1.5 billion in 1999. The meteoric growth of salsa and picante sales tracks the retail sales record of Mexican food in general, which reached \$ 2.4 billion in 1994, and is projected to top \$ 3.4 billion in 1999. n24

Why is salsa beating ketchup? Certainly, it's not because salsa is something new; chiles and herbs native to the New World, salsa's key ingredients, have been centuries-long staples in the diets of many people who trace their roots to Mexico, the Caribbean, and South America. n25 Although the reasons for salsa's success are probably complex, observers are tempted to reach for pat answers. According to the president of a food marketing firm quoted in one acclaimed cook book, the key factor (besides the burgeoning presence of Latinos on the U.S. side of the Latin American border) is the perception that Mexican food, unlike French or Japanese cuisine, is "idiot-proof." n26 He added: "Mexican food is pretty tasty, no matter what you do to it." n27

[*1094] Of course, not all Latinos are Mexicans, and not all Mexican food is "idiot-proof." n28 But the marketing president's simplistic understanding of salsa's popularity should caution us to avoid some common misperceptions held by non-Hispanics about Latino workers - for example, that Latinos are "new" to the U.S.; that the terms "Latino" and "Mexican" are synonymous, referring mainly to the farm workers

whose cause was taken up by the late Cesar Chavez in California; or that Latinos will remain loyal workers, "no matter what you do to [them]."

Nevertheless, if the 1990s are remembered for the "salsification" of the American diet, then the 2000s will be remembered for the "Latinization" of the American workforce - even though Latino workers have toiled in the United States for a long time.

Since 1848, when the Treaty of Guadalupe Hidalgo ended the Mexican-American War, turned half of Mexico into the Southwestern United States, and transformed some 120,000 Mexicans into Mexican-Americans, Latino workers have played vital roles in the U.S. economy. ⁿ²⁹ Initially, these first U.S. Latinos worked in copper mines and steel mills, and on farms and ranches; eventually, they worked in oil fields, garment sweatshops, and tire factories, on loading docks and auto assembly lines, and in restaurants, hotels, offices, and stores. ⁿ³⁰ They were, and are, both native-born and immigrant, documented and undocumented. Employers prized Mexicanos, like many Latinos after them, "because we can treat them as we cannot treat any other living man." ⁿ³¹ And not infrequently, Latinos responded to the severe discrimination that they faced by forming and joining labor unions. ⁿ³²

[*1095] Indeed, the only thing truly "new" about Latino workers in the United States today is their sheer number. ⁿ³³ In 1980, the U.S. Census reported that the civilian workforce totaled 106.1 million people, of which 85.2 percent were White, 10.2 percent were Black, 5.7 percent were Hispanic, and 2.6 percent were Asian or Pacific Islander. ⁿ³⁴ But by 1990, the civilian labor force numbered 125.2 million people, of which 82.1 percent were White, 10.7 percent were Black, 8.1 percent were Hispanic, and 2.9 percent were Asian or Pacific Islander. ⁿ³⁵ As Table 1 indicates, the number of Latinos working in the U.S. grew by 75.4 percent from 1980 to 1990, making them the fastest-growing segment of the American workforce:

Table 1 ⁿ³⁶ Growth of U.S. Labor Force 1980-1990 (By Race)

[SEE TABLE IN ORIGINAL]

Moreover, according to the Statistical Abstract of the United States, Latinos made up 9.3 percent of the civilian workforce in 1995, and are **[*1096]** projected to reach 11.1 percent in 2005. ⁿ³⁷ As Table 1 also indicates, sometime during the middle of the next decade, as one in nine U.S. workers becomes Hispanic, Latinos will surpass African Americans as the country's second largest racial and ethnic working group.

Nowhere are Hispanic workers more important to the economy than in Los Angeles County, which serves as Southern California's economic engine. In 1980, the California Census of Population reported that Los Angeles County's civilian workforce consisted of 3.7 million people, of which 71.2 percent were White, 24.5 percent were Hispanic, 11.1 percent were Black, and 6.4 percent were Asian or Pacific Islander. ⁿ³⁸ By 1990, the County's labor force reached 4.6 million people, of which 59.6 percent were White, 34.5 percent were Hispanic, 10.8 percent were Asian or Pacific Islander, and 10.1 percent were Black. ⁿ³⁹ As Table 2 indicates, Latino labor grew at a rate of 73.4 percent during the decade, a substantial increase that was surpassed only by Asians and Pacific Islanders, whose whopping 107.3 percent gain reflected their comparatively small absolute numbers:

Table 2 ⁿ⁴⁰ Growth of L.A. County Labor Force 1980-1990 (By Race)

[SEE TABLE IN ORIGINAL]

Although Hispanic workers are found in a wide range of jobs throughout the County, they are highly concentrated in the area's vital manufacturing sector ⁿ⁴¹ - a fact that places them in the driver's seat of one of North America's most important economic vehicles.

[*1097] For all of Los Angeles' importance as America's entertainment capital, n42 the region is even more important as the country's manufacturing capital. n43 Manufacturing is still critical to the area's economic well-being, and is still growing, despite the continued downsizing of Southern California's once-vaunted aerospace and defense industries. This unheralded manufacturing sector consists of two components: the highly-visible "durable goods" portion, in which transportation equipment, aerospace and defense instruments, fabricated metal products, machinery, electronic goods, furniture, metals, stone and glass, and lumber products are produced; n44 and the less-visible "non-durable" goods sector, in which apparel, printing, food products, rubber and plastics, chemicals, paper, textiles, petroleum, and leather are made. n45 The contrast between the durable and non-durable goods components can be seen in the industries affected by some of the labor disputes recounted above: under the heading "fabricated metal products," the durable goods sector took center stage when foundry workers organized a union at American Racing Equipment; under the heading "food products," the non-durable goods sector came to the fore when truck drivers delivering Mission- and Guerrero-label tortillas took on Gruma Corp.

Not surprisingly, immigrant Latinos hold down half of Los Angeles County's estimated 700,000 manufacturing jobs n46 - a figure that gives the region roughly 50 percent more manufacturing positions than its nearest rival, Chicago-Cook County, Ill. n47 And half of these manufacturing jobs are geographically concentrated along the so-called "Alameda Corridor," a 20-mile strip linking a vast district of production and distribution facilities located to the northeast of downtown with the Ports of Los Angeles and Long Beach located to the south. n48 About 300,000 new manufacturing jobs are expected to be created there during the next decade, and Latinos are expected to fill most of these too. n49 This expansion will be fueled by three enormous regional construction [*1098] projects: a \$ 8 to \$ 12 billion plan to increase the capacity of Los Angeles International Airport; a \$ 1.9 billion plan to connect the manufacturing district to the Ports of Los Angeles and Long Beach by building a high-speed, subterranean commercial rail line in the Alameda Corridor; and a \$ 650 million plan to overhaul Los Angeles Harbor. n50

In sum, Latino workers, long important to the U.S. economy, are quickly becoming essential to it. Having established this, I now turn to the proposition that, if the workforce of America's future has a brown face, then the American labor movement of the future (if it has one) must have the same.

II. Why Organized Labor and Latino Workers Need Each Other

A. What Organized Labor Can Do for Latino Workers

As Professor Juan Gomez-Quiñones has noted, Latino workers, beginning with Mexicans in what is now the Southwestern U.S., have toiled in North America since before the establishment of the United States. n51 Although, until recently, labor historians have paid little attention to this community, "few southwestern U.S. capitalists have ignored Mexican resources or the Mexicano laborer. Indeed, when the hours were long and the pay short, business interests explicitly sought out Mexicanos." n52

Unfortunately, for too many Latinos, the hours are still long and the pay is still short.

For the past three decades, although the U.S. median annual household income earned by Latinos has surpassed that earned by African Americans, it has consistently fallen short of the income earned by Whites. In 1980, Hispanic households earned 76.3 percent of what White households did; n53 in 1990, the figure was slightly higher at 76.8 percent. n54 The pattern persisted at the local level, including Los Angeles County. In 1980, Hispanic households there earned 76.9 percent of what [*1099] Whites earned; n55 in 1990, the figure dipped to 70.9 percent. n56 Undercutting this decline further was a one-two punch that the Census Bureau's 1990 figures were collected too early to detect: the end of the Cold War, and the consequent elimination of about half of Southern California's 400,000 aerospace and defense jobs; n57 and the Los Angeles civil disturbances of spring 1992, which drove capital out of the County's industrial

heartland. n58 These events seriously damaged the durable-goods component of the region's manufacturing sector, where, as noted above, roughly half of the workers are Latinos.

Following the 1992 civil disturbances, a group of seasoned academic and labor leaders worried that, if nothing were done to improve the economic position of immigrant Latinos, a "permanent underclass" of Latinos would be created. n59 Among other things, these leaders found that, in communities of Los Angeles County having a poverty level of 20 percent or higher, over 15,000 manufacturing firms were generating annual revenues of over \$ 54 billion, due largely to the low-wage labor of 357,000 Latino employees. n60 Could anything be done to help Latino workers share more equitably in this ample wealth, and thereby raise themselves out of poverty and into a social and political stake in their communities?

The answer, according to these academics and labor leaders, was to undertake a major "economic upgrading" of Latino household income. n61 In 1995, they christened their initiative "LA MAP," or the Los Angeles Manufacturing Action Project. By combining the organizing talents and resources of 15 separate labor organizations, researchers in UCLA's Department of Urban Planning and its Center for Labor Research and Education, and other community groups, LA MAP hoped to raise \$ 3 million and coordinate the organization of up to 717,000 mostly Latino immigrant workers. n62 According to a mission statement published by LA MAP:

Economic and social stability can be achieved in L.A.'s immigrant [*1100] communities by increasing manufacturing wages and offering a selection of comprehensive employer financed benefits, including family health insurance. This economic upgrading can be accomplished without destroying the competitiveness of the Los Angeles manufacturing complex. Unionization helps workers achieve economic upgrading and a voice in their workplace and their communities. n63

Would LA MAP's plan to spread the gospel of unionism to Latino workers actually improve their economic fortunes? The overwhelming empirical evidence is that it would.

For the past quarter century, labor economists representing a range of conservative to liberal economic philosophies have published a rich scientific literature documenting a positive, statistically significant relationship between the extent of unionization and employees' wages. Put more simply, the earnings of employees working for union firms are significantly higher than the wages of employees working for their non-union competition. n64

Some comparisons of the wages earned by non-union and union workers will illustrate the magnitude of this wage gap. In 1986, the U.S. median weekly earnings of the typical non-union worker were \$ 325; by contrast, the weekly earnings of the typical union worker were \$ 439. n65 By 1996, the median weekly earnings of the non-union worker had grown to \$ 462; by contrast, the weekly earnings of the union worker had grown to \$ 610. n66 This wage gap, which is now about 32 percent, n67 has not only held firmly but also widened steadily. As Table 3 indicates, during the ten-year period from 1986 to 1996, the typical non-union employee could expect to find about \$ 110 to \$ 150 less in her weekly paycheck than her union counterpart:

[*1101]

Table 3 n68 Union vs. Non-Union Median Weekly Earnings Gap 1986-1996 (All Races)

[mg f:[data.m.mia.53-4]mia41303.eps',w25.,d14.] When analyzed by race, the union wage gap becomes even more pronounced. For example, in 1996, the U.S. median weekly earnings of the typical non-union worker were, for Whites, \$ 480; for Blacks, \$ 356; and for Hispanics, \$ 319. n69 But in the same year the median weekly earnings of the typical union worker were, for Whites, \$ 630; for Blacks, \$ 502; and for Hispanics, \$ 482. n70 As Table 4 indicates, although the wage gap between non-union and union workers in each race category was huge, it was by far the widest for Hispanics:

[*1102]

Table 4 n71 Union vs. Non-Union Median Weekly Earnings Gap By Percent, 1986-1996 (All Races)

[mg f:'[data.m.mia.53-4]mia41304.eps',w22.5,d13.5] From a strictly economic viewpoint, then, every worker (especially the worker of color) realizes tremendous benefits from unionization, but none more than the Latino worker. Whereas union Whites and Blacks earned 31.3 percent and 41.0 percent, respectively, more than their non-union counterparts, union Hispanics earned a whopping 51.1 percent more than non-union Hispanics. n72 As Table 5 indicates, during the ten-year period from 1986 to 1996, union Latinos consistently benefitted from a wage gap in the 50 percent range:

Table 5 n73 Union vs. Non-Union Median Weekly Earnings Gap By Percent, 1986-1996 (Hispanics)

[mg f:'[data.m.mia.53-4]mia41305.eps',w20.,d11.] Of course, at \$ 482, even a 50 percent boost in the weekly paycheck **[*1103]** of the typical Hispanic worker isn't going to make her rich; in fact, it's only \$ 2 more than the weekly paycheck of the typical non-union White worker. But given a choice, who wouldn't rather make an extra \$ 163 per week?

In sum, no group of workers has more to gain from the labor movement than Latino workers. By any measure, the tangible economic benefits for individual workers, their families, and their communities would be substantial.

B. What Latino Workers Can Do for Organized Labor

After peaking at 38 percent in 1954, private sector, non-agricultural union density - the percentage of workers represented by labor unions - fell to 13 percent in 1993 and is barely 10 percent today. n74 Although during the past three years the AFL-CIO has spent millions of dollars and launched a number of high-profile organizing initiatives designed to turn these numbers around, n75 it may be some time before any measurable improvement occurs. n76 Part of the problem is that changing the culture of any established institution is enormously difficult. For years, labor suffered from a "bunker" mentality; it was too afraid of losing ground to attempt to gain any. "They're all wearing the same uniform, all reciting the right passages from the prayer book," says a union representative familiar with the rhetoric of new organizing efforts in Boston. "But absolutely nothing has changed. They're the walking dead." n77

Against the backdrop of somnambulance projected by so much of the mainstream labor movement, however, the Latino labor movement is projecting dynamism. Paced by major organizing victories in Southern California, over 20,000 mostly immigrant Latinos have walked off their jobs or participated in other organizing activities across the country since 1990. n78 Their efforts are producing new adherents, more job security, and better pay and benefits. How are they managing to do it?

[*1104] At least three types of strategies are responsible for Latinos' organizing success and ought to be studied. To be sure, the AFL-CIO, under the leadership of president John Sweeney, has been exploring and exploiting many of these elements since the mid-1990s, but the value of considering them systematically should not be underestimated. They include (1) building organizing efforts from the grass-roots level, but with the financial and technical support of organized labor; (2) drawing on the expertise of sympathetic members of the academic community; and when all else fails, (3) trying assorted remedios caseros, or home remedies, culled from Latino folk traditions.

1. Bottom-up organizing, top-down support.

In a number of successful cases, Latino workers took the first steps toward forming or joining unions by organizing from the bottom-up, rather than by being organized from the top-down. By using what Professor Kate Bronfenbrenner of Cornell University calls "union building tactics," these workers dramatically increased their chances of winning organizing campaigns. n79 At American Racing, Inc., in Long Beach, Calif., 1,500 Latino and Black foundry workers demanding better pay and working conditions conducted their own five-day strike in 1990. n80 This happened before organizers from the International Association of Machinists got involved by helping to consolidate support for the union and negotiate a first contract. And in the Southern California home building industry stretching from Santa Barbara to San Diego Counties, 3,000 Mexican drywall hangers all but shut down new home construction on their own in 1992 and 1993 by walking off the job and by driving en masse to job sites throughout the region to persuade co-workers to do the same. n81 This happened before the United Brotherhood of [*1105] Carpenters began lending logistical support and helped negotiate a first contract. These examples stand in contrast to the longstanding approach of AFL-CIO-affiliated unions, which for decades have tended to target shops or industries for organizing campaigns first from the outside before attempting to gain adherents on the inside n82 - if they have both erred to try to organize them at all.

A lot of the work of organizing Latinos was accomplished in safe, familiar settings away from the workplace. Workers discussed their situations, and their desires to do something about them, in meetings held in homes, churches, and social clubs consisting of immigrants who maintained strong ties to their home state or village in Mexico or Central America. n83 In this respect, the workers' status as recent immigrants was advantageous; outsiders in the community at large, they enjoyed the solidarity of insiders in the mostly Hispanic communities along the Alameda Corridor. They lived and worked together, and they sought out familiar institutions to help them make the tough decisions and stick by them. For example, a priest who lent his visible support to a union campaign could not only reinforce an activist's resolve but also transform a Catholic fence-sitter into a union adherent. n84 And a patriarch or matriarch who lent his support, especially if s/he commanded respect in the village back home in Mexico, could boost the solidarity behind a given strike, boycott, or job action in the U.S. n85 During the Pacific drywall strike, union activists were aided by the fact that most of them hailed from same handful of villages and towns in Mexico, where the strike had gained support. n86 When truckloads of striking drywall hangers [*1106] appeared at a targeted job site to exhort other men to walk off the job, inevitably one or more of the workers would turn out to be an uncle, cousin, or family friend of one of the strikers. Family and peer pressure usually prevailed, and another job site would be shut down. n87

Equally important to the success of these grass-roots efforts, however, was the involvement of official labor, but in a supporting rather than a leading role. For example, the Machinists lent bilingual organizers and business agents to the foundry workers' campaign at American Racing; the Carpenters offered use of their union hall and the advice of their legal counsel to the dry wall hangers' campaign in the Pacific home building industry. During the "Justice for Janitors" campaign at high-rise office buildings in Century City, the SEIU, one of the few big unions with proven a track record of successfully organizing low-wage workers of color, played a greater role in directing the concerted activities of custodians, but still depended on the initiative of the thousands of marchers whose street rally brought business in normally efficient Century City to a standstill. Later, the SEIU offered legal assistance to workers who were arrested and in some cases injured by police during the rally.

A case study of a successful drive to unionize Latinos at a Los Angeles waterbed manufacturer illustrates why established labor organizations, for all the technical and financial assistance that they provide, still need the support of bottom-up efforts to succeed: on the one hand, unless the workers see themselves as having a stake in the union, a short-term organizing victory might turn into a long-term defeat at the bargaining table; on the other hand, if workers lay their jobs on the line only to find that union professionals don't care about what happens to them, then they will feel betrayed. A professional organizer

recalled a meeting at which one of the shop's workers, a man respected by his peers, asked him a number of questions on behalf of the group:

"Could we be fired?" I said, "Of course." "What will the union do if they fire us?" I remember saying that the union would not do any thing for you or anyone if you're fired. [Instead, I asked:] What are you going to do for yourself? How are we going to work together? First, we have to identify who the union is. If we're going to identify the union as this building or me, it's better that we don't do anything. You want to organize the company. What are you going to do for him or him for you if you're fired? What we can provide is a lawyer and the experience we have on how to minimize the risk. If there is a firing, try to win it. That's all [a union can do]... "How are you going to guarantee that you don't sell out?" They had to insure that some idiot like me didn't [*1107] sell out. The best way was for them to take the reins of the campaign in their own hands. They wanted me to promise that they would get certain wages and benefits, but I said I couldn't promise it. n88

In an age when so many other U.S. workers seem reluctant to embrace unionism, it is remarkable that an historically outsider group of working people have managed not only to choose collective representation, but also to achieve tangible progress with it.

2. Ivory tower expertise.

The professionals who lent their expertise to successful Latino organizing campaigns included not only veteran labor organizers but also academics who wanted to make a difference. In Southern California, much of the strategic groundwork that made it possible to finish the job that Latino workers had started was laid by economics and urban planning professors associated with UCLA's Community Scholars Program. The Community Scholars, who were organized by Professor Gilda Haas, were drawn from two institutions affiliated with UCLA: the university's School of Urban Planning and its Center for Labor Research and Education. n89

The Community Scholars undertook the research necessary to target particular industries for organizing. For example, a document entitled *Manufacturing in Los Angeles: Opportunities for Organizing*, n90 published by LA MAP, attempted to make the case why organizing Latino manufacturing workers in the Alameda Corridor was not only feasible but also necessary to the community's economic health. The twenty-four charts and graphs attached to the document were produced by Professor Goetz Wolff. Professor Wolff's extensive research showed, as noted above, that the region's manufacturing sector is thriving; that low-wage Latino labor produce its profits; and that by carefully targeting certain types of businesses, especially in the non-durable goods segment, unions could successfully organize their workers without driving the businesses away to other communities or other countries.

Among other things, Professor Wolff believed that certain types of manufacturing businesses are extremely sensitive to their locations; that [*1108] is, they cannot easily pack up and move away to avoid a union without jeopardizing their access to important markets for their manufactures. He identified nearly 400,000 manufacturing jobs falling into eight clusters of business types as being location-sensitive to Los Angeles County. They included apparel and textiles (112,000 jobs); printing (50,700 jobs); trucking and warehousing (49,200 jobs); fabricated metal products and auto parts (64,300 jobs); food and kindred products (43,000); furniture and fixtures and lumber and wood products (32,900 jobs); miscellaneous plastics products (24,000) jobs; and paper and allied products (15,900 jobs). n91

Professor's Wolff's research was quickly put to the test. During the summer of 1996, Latino truck drivers went on strike against Gruma Corp., a U.S. subsidiary of Mexican food giant Grupo Maseca, S.A., for higher wages and more generous reimbursements of the expenses they incurred while delivering Mission- and Guerrero-label tortillas to super markets and restaurants. n92 The success of the strike, which involved only 170 workers, depended on a community boycott of the company's popular tortillas, which

accounted for 60 percent of the huge Los Angeles market. n93 According to the executive director of LA MAP, the strategy behind the boycott, based on Professor Wolff's research, was that Gruma could afford neither to wait out a long boycott nor to import tortillas from its facilities outside the region. n94 Waiting out the boycott could cause the company to lose market share to other local manufacturers; importing tortillas could alienate picky Southern California consumers - especially Latinos - who demand that their tortillas be fresh. The reason why Gruma had located its state-of-the-art tortilla plant in East Los Angeles in the first place was to be able to deliver fresh tortillas to area consumers. n95 After seven weeks, the strike and the boycott ended with a new contract providing substantial increases in drivers' pay and benefits.

In sum, academics like Professor Wolff have played a key role in Latinos's successful organizing efforts. Law professors would do well to emulate their activism.

[*1109]

3. Home remedies.

In the health-conscious 1990s, unconventional therapies for chronic illnesses are gaining widespread acceptance, especially among urban, educated, Anglo professionals. n96 A path-breaking study published by the *New England Journal of Medicine* in 1993 revealed that America's commitment to unconventional forms of therapy is nearly as deep as it is to conventional ones. n97 The study estimated that 34 percent of all United States residents use one or more of sixteen different forms of alternative therapy each year. n98 Tellingly, among patients using unconventional therapy in 1990, nearly two-thirds did not bother to visit an alternative care provider. n99 But the one-third who did made 425 million visits to such care providers at total cost of \$ 13.7 billion. n100 Of this sum **[*1110]** about three quarters - \$ 10.3 billion - was paid out of pocket. n101 By contrast, the general public made 388 million visits to primary care physicians, and for the conventional hospitalizations ordered by those physicians, paid \$ 12.8 billion out of pocket. n102 Remarkably, patients tended to seek out unconventional and conventional treatments together, usually unbeknownst to their traditional primary care physicians. n103

Of course, many Latino households have never given up the old *remedios caseros* - home remedies - of our ancestors to cure the common afflictions of human kind. The rich literature available today on home remedies and how to use them owes much to Latino folk traditions, especially those of Mexican-Americans. n104

Why do unconventional therapies continue to flourish alongside the conventional ones embraced by modern medical science? Often, it is because the intervention of Western healing practices alone has failed. "Many of us are searching for a cure, and we take it wherever we can get it - and that is not entirely with traditional medicine," explained a reader who had devoured the *Journal's* study. n105

Like conventional medicine, conventional labor law often fails the very patients that it is supposed to help. The debilitating "on the job" injuries from which so many workers, especially Latinos, suffer - low pay and anti-democratic working conditions - resist the twin conventional cures that the American legal system offers: enacting new laws and bringing legal actions. As suggested by both labor law scholars n106 **[*1111]** and legal commentators, n107 the notion that workers' rights can be vindicated primarily by resort to lawmaking and adjudication is belied by the facts. In their book *Failed Revolutions*, n108 Richard Delgado and Jean Stefancic have identified the source of such failures of law and legal institutions as a defect not in our wills but in our imaginations: "the array of preconceptions, meanings, and habits of mind that limit and frame the horizon of our possibilities." n109 Limitations of imagination necessarily impose limitations on action, whether we are doctors or lawyers, labor leaders or elected officials, legal scholars or society at large.

Organizing among Latino workers has been successful in part because it has not been confined within the conventional limits of labor's imagination. Three strategies have been particularly useful: (a) undertaking

large-scale organizing efforts, (b) pressuring employers through non-traditional self-help tactics, and (c) steering clear of official legal institutions, especially the National Labor Relations Board ("NLRB") and the law it administers, the National Labor Relations Act ("NLRB").

(a) Large-scale organizing efforts. Organizing is expensive, for employers as well as unions. Facing the wage pressures that unionization entails, most employers are understandably resistant to relinquishing any competitive edge in labor costs to their competition by becoming unionized and are willing to spend great effort now to avoid having to spend more on wages and benefits later. ⁿ¹¹⁰ Facing such resistance, unions are understandably reluctant to commit scarce resources to difficult organizing campaigns. The result is piecemeal organizing. Unions tend to organize on a "shop by shop" rather than on an "industry by industry" basis, and to focus on so-called "hot shops" - places where in-plant organizing is already underway - when they do make a move.

Although shop-by-shop organizing has its place, too often it is ineffective compared to industry-wide organizing. Pacific drywall hangers working in Southern California homebuilding and janitors embracing the "Justice for Janitors" campaign were successful largely because they gained adherents and demanded a place at the bargaining table by ^[*1112] attacking all employers in the target industry at once. When an entire industry can be shut down, employers take notice. As LA MAP strategists put it:

Los Angeles can serve as a successful proving ground of the labor movement's ability to organize whole industries, geographic areas and communities at once. Single shop by shop organizing does not generate the energy and excitement necessary to create the momentum needed to make the labor movement the instrument it can become in the lives of workers and their families. This kind of "scale" organizing is necessary ... ⁿ¹¹¹

In this respect, labor is returning to its roots; industry-wide bargaining is the paradigm attached to traditional federal labor law, especially in the years after World War II. Once an entire industry (or at least, a critical mass of it) is organized, labor costs for each employer in the industry can be equalized. Theoretically, no single employer need compete for the consumer's dollar based on the cost of labor once each employer must pay the same price for it. ⁿ¹¹²

The main problem with this paradigm is that industrial unionism is dead or dying in industries that are global in nature. ⁿ¹¹³ As physical and cultural barriers to the movement of capital have fallen, the potential labor markets of many industries have grown. In these industries, the labor pool now includes low-wage, non-union workers abroad. Many of these workers are desperate for any work at any wage. Unless these workers are successfully organized, and unless their wages are substantially raised, even successful large-scale organizing of workers unions in discrete parts of the U.S. economy could be for naught.

(b) Non-strike alternatives. Traditionally, workers dissatisfied with terms and conditions of employment imposed by an employer resorted to their economic weapons of self-help, especially the strike and the picket line. But the harsh realities imposed by the global marketplace for wage labor in so many industries today means that neither the strike nor the picket line poses the economic threat it used to. ⁿ¹¹⁴ More than ever, these are weapons of last, and sometimes futile, resort. Alternative self-help tactics, however, have been developed, and ^[*1113] labor's experimentation with them over the past ten to fifteen years has been promising.

For some time, unions have successfully undertaken a variety of "campaigns" designed "to challenge management in the workplace, in the community, in the board room, and on Wall Street." ⁿ¹¹⁵ In a corporate campaign, consumers may be urged to boycott the employer's products and take other actions aimed at influencing corporate shareholders; sometimes, union members buy stock in a company solely for the purpose of gaining a forum at shareholders' meetings. In a community campaign, members of churches and temples, civic organizations, and other community groups may be urged to contact the employer to express

their concern about its labor relations policies and to participate in rallies and other public events designed to draw unfavorable attention to the employer's behavior. And in a traditional advertising campaign, members of the public at large may be urged to see things the union's way through radio and television spots.

For example, Teamster delivery drivers at Gruma Corp. used variants of both the corporate and community campaigns - the former, by appealing to consumers to boycott Mission- and Guerrero-label tortillas; n116 the latter, by recruiting and deploying a group of UCLA students to go into the Hispanic communities of East and South Central Los Angeles to build support for the boycott. n117

Moreover, taking a cue from members of academia, some unions are reaching across borders to build solidarity abroad for labor disputes having effects at home. For example, at the New Otani Hotel in Los Angeles' Little Tokyo, officials of the Hotel Employees and Restaurant Employees Union traveled to Japan to rally support among Japanese labor leaders and demonstrate against Kajima Corp., the hotel's owner. n118 It was a small step, but an important one. As long-time California labor leader Jack Henning put it: "The only answer to global capitalism is global unionism." n119

(c) Avoiding official legal institutions. Latino workers have overcome tremendous legal obstacles to form and join their unions. The [*1114] built-in shortcomings of federal labor law in the late Twentieth Century have been well-documented; it hardly needs to be pointed out again that the structure of the National Labor Relations Act itself often stands in the way of the effective enforcement of the very employees' rights that the law is supposed to protect. n120 Moreover, up to half of Latino workers are recent immigrants; it is no secret that the entry, residency, and citizenship requirements of the Immigration and Naturalization Act, not to mention their unforgiving application, place high hurdles between Latinos and the jobs they seek to gain and maintain in the United States. n121 Whether documented or undocumented, the choice by so many Latino workers to take up union activism defies the conventional wisdom that immigrants tend to avoid getting involved in workplace or community affairs for fear of deportation, calling unwanted attention to themselves, or both. n122

Instead, what these workers avoided was getting involved in the government bureaucracies that administer federal labor and immigration law. As to labor law, organizers of Latino workers consciously preferred to place their hopes in self-help tactics rather than in the NLRB. LA MAP made this "non-NLRB" strategy an explicit organizing principle. n123 As to immigration law, there is little organizers could do to influence the policies and enforcement practices of the Immigration Naturalization Service. But they could recognize that, despite the formidable barriers posed by the statute and the INS, Latino workers inevitably come to the U.S. and find work here. n124 The very fact that Latino immigrants come in spite of everything done through legal institutions to deter them from doing so suggests the strongest desire to improve their own lives, and the potential for doing so without official government assistance.

[*1115]

III. Some Challenges Facing a Latino-Led Labor Movement

For everything promising that I have mentioned about organizing among Latinos, there is much that is unsettling. At least three serious challenges confront the labor movement in general and a Latino-led labor movement in particular.

First, the arduous task of labor organizing has a long, long way to go before it is in a position to help even half of the low-wage workforce, whether in Los Angeles County or across the United States, whether Latino or otherwise. At barely 10 percent of the private sector non-agricultural workforce, the labor movement remains on the margins of the working lives of most Americans and is likely to remain so for some time to come. Although the AFL-CIO and its affiliated unions have made real progress under John

Sweeney, "the road ahead remains unsure and bumpy. And the residual weight of decades past makes the ultimate success of Sweeney's project anything but certain." n125

Indeed, there are already significant casualties. Only a few years after it started, LA MAP is all but dead, mortally wounded by the inability of disparate Southern California unions to put aside their parochial interests in order to pursue the broader organizing agenda conceived by its framers. n126 So notwithstanding the contributions of Latino organizing successes, labor's first, and perhaps overwhelming, challenge will be merely to sustain the modest momentum it has achieved during the 1990s.

Second, to be truly successful, labor has to be inclusive; that is, it must build coalitions among all workers, not just Latinos (and for that matter, not just workers living in the U.S.). As Professor Rudy Acuña and others have noted, even in Los Angeles County, the longstanding tensions between Latinos and Anglos are now supplemented by potentially greater tensions between and among Asians, Blacks and Latinos. n127 These tensions show up in many places, including the struggle by poor people for decent jobs at decent wages. Indeed, one of the greatest challenges facing communities of color, including Latino communities, is how to achieve "interracial justice" in an era when their growing influence causes other such communities of color to feel displaced. n128 A Latino-led labor movement that improves the lives of [*1116] Latino workers at the expense of, or at the perceived expense of, other "others," is doomed to suffer the same insularity that the Anglo-led labor movement has.

Finally, labor's toughest challenge is not organizing workers, but rather, organizing a new vision of social justice. Once labor recruits all the new members it now plans to get, what is it going to do with them? n129 The tension is age-old. During the Nineteenth Century, organized labor saw itself as a means toward the end of civic republicanism, and for a time, the end of capitalism itself; during the Twentieth Century, it saw itself as means toward "business unionism," working in partnership with the owners of capital. n130 It remains to be seen whether, during the Twenty-first Century, labor will be about more than the pursuit of bigger paychecks and better benefits. As one observer has put it: "Are you organizing workers to empower themselves and confront employers or just building dues-paying units and looking for a seat at the table?" n131

Even the brightest lights in the labor movement don't yet know. "It's too early to devise a strategy," explains SEIU President Andy Stern. "First you've got to get people into the boat and get them rowing. We still don't have the hundreds of organizers we need going out every night; still don't have our pension plans where they should be; still don't have enough experience in winning strikes with community support." n132

But if the beginning of a new era is too soon to develop a new vision of social justice, when will it be? If the heyday of Cesar Chavez and the United Farm Workers is any indication, there is some reason to believe many people at the core of labor's new movement, especially Latino workers, hunger for more than business unionism; they also want justice, morality, and spirituality. n133 It would seem that the time to discuss organized labor's role, if any, in pursuing these goals is now.

Conclusion

I began this essay by discussing the significance of the UPS strike during the summer of 1997 for Latino workers. For me, this dispute signaled the great potential of the new American labor movement, and with it, the important role that Latino workers are destined to play. Like the other great organizing victories of the 1990s, the UPS strike demonstrated not only that Latino workers have much to gain from the labor movement, but also that the labor movement has much to gain from Latino workers. Octavio Paz says that modern man "never surrenders himself to what he is doing," and that "the profoundest part" of him "always remains detached and alert." n134 As a law professor who has the luxury of examining "the profoundest part" of women and men at work, I am finding that there is no better place to study the interdependence of

Latino workers and the labor movement than Los Angeles, where experiments in the future are being conducted every day.

FOOTNOTE-1:

n1. Octavio Paz, *The Labyrinth of Solitude* 204 (Grove Weidenfield ed., 1985, trans. Lysander Kemp).

n2. See, e.g., Karen Kaplan, *Teamsters Strike UPS*, L.A. Times, Aug. 4, 1997, at A-1.

n3. See, e.g., Jube Shiver, Jr., *UPS, Teamsters Reach Accord*, L.A. Times, Aug. 19, 1997, at A-1.

n4. Occasionally, however, a labor dispute is so momentous that it is credited with redefining labor relations for the generation in which it occurs. During the early 1980s, the mass firing of striking air traffic controllers by President Ronald Reagan, see, e.g., Samuel Estreicher, *Labor Law Reform in a World of Competitive Markets*, in Matthew Finkin, *The Legal Future of Employee Representation* 13, 19 (1994), and the plunging of Continental Airlines into bankruptcy by carrier chief Frank Lorenzo, see, e.g., Ray Scippa & Myrtle Davidson Malone, *Point to Point: The Sixty Year History of Continental Airlines* (1995), fit this bill because each event ended the long-term careers of thousands of unionized employees.

n5. Once a pillar of American industry, labor unions now face irrelevance, if not extinction. From their peak in the fifties, when they signed up roughly one in three American workers, unions now represent only one in six. Not counting public sector employees, the figure is closer to one in 10. If private sector unions continue to decline at the present rate, they will represent less than 5 percent of the workforce by 2005.

Sean Reilly, *The Case for Unions*, Wash. Monthly, July/Aug. 1995, at 26.

n6. See Christopher David Ruiz Cameron, *New Face of American Labor*, J. Comm., Aug. 29, 1997, at 8A.

n7. See *id.*

n8. Shiver, *supra* note 3, at A-1.

n9. See, e.g., Dan Weikel, *Labor Day Rally Backs Drivers' Strike*, L.A. Times, Sept. 3, 1996, at B-1 (noting that then U.S. Secretary of Housing and Urban Development Secretary Henry Cisneros, U.S. Reps. Esteban Torres and Maxine Waters, California Lt. Gov. Gray Davis, state Sens. Richard Polanco and Tom Hayden, and L.A. Dist. Atty. Gil Garcetti had each signed such a pledge).

n10. See, e.g., *L.A. Union Organizing Project Gets Funding from Teamsters*, 1996 Daily Lab. Rep. (BNA) No. 190, at D-11 (Oct. 1, 1996); see also Nancy Rivera Brooks, *Hard Pressed: Truckers' Strike Has Some Areas Low on Tortillas*, L.A. Times, Aug. 8, 1996, at D-1 (detailing effects of Teamsters' strike against Gruma Corp.).

n11. *Multi-Union Organizing Effort in Los Angeles Aims at Immigrant Workers*, 1995 Daily Lab. Rep. (BNA) No. 166, at A-5 (Aug. 28, 1995) (remarks of AFL-CIO California Immigrant Workers' Association Organizer Joel Ochoa).

n12. See, e.g., Los Angeles Manufacturing Organizing Project, *Organizing the Future 2* (July 20, 1995) (on file with author) [hereinafter LA Map, *Organizing the Future*]; Mary Helen Berg, *Labor Leaders Aim Efforts at Immigrants*, L.A. Times, City Times, Oct. 30, 1994, at 1, 19.

n13. See, e.g., Nancy Cleeland, *Home Care Workers Vote for Union a Landmark for Labor*, L.A. Times, Feb. 26, 1999, at A-1; Tom Gilroy, *Los Angeles Home Care Workers Vote for Service Employees, Union Announces*, 1999 Daily Lab. Rep. (BNA) No. 38, at AA-1 (Feb. 26, 1999).

n14. See, e.g., Stuart Silverstein, *Undaunted by Setbacks, Truckers Look to Union*, L.A. Times, Feb. 17, 1997, at A-1 [hereinafter Silverstein, *Undaunted*]; Jeff Leeds, *What's Up, Dock? Trucking Dispute Prompts Changes at Local Ports*, L.A. Times, May 21, 1996, at D-1; Stuart Silverstein & Jeff Leeds, *Independent Truckers, Union Form a Convoy*, L.A. Times, May 11, 1996, at D-1.

n15. See, e.g., Tom Gilroy, *ALJ Rules in Favor of New Otani Hotel in Long-Running Fight with HERE Local*, 1997 Daily Lab. Rep. (BNA) No. 157, at D-13 (Aug. 14, 1997); *International Group Calls for Boycott of New Otani Hotels*, 1997 Daily Lab. Rep. (BNA) No. 129, at D13 (July 7, 1997); Harry Bernstein, *Hotel Needs to Deal Straight with Workers*, L.A. Times, Dec. 19, 1996, at B-9.

n16. See, e.g., Jill Leovy, *Leaf Blower Ban Takes Effect Today*, L.A. Times, Feb. 13, 1998, at B-1; Bettina Boxall, *Leaf Blower Issue a Clash of Expectations, Realities*, L.A. Times, Jan. 11, 1998, at A-1.

n17. See, e.g., David Bacon, *Unions and the Upsurge of Immigrant Workers*, dbacon@igc.apc.org (Dec. 3, 1997) (on-line labor column).

n18. See, e.g., Marc Cooper, *Labor Deals a New Hand*, Nation, Mar. 24, 1997, at 11-12 (remarks of AFL-CIO President John Sweeney) (describing Las Vegas as "the hottest union city in America") [hereinafter Cooper, *Labor Deals*].

n19. See, e.g., Scott Wilson, *Hispanic Community Supports Custodians in Labor Dispute*, Wash. Post, Nov. 7, 1997, at B-5 (describing union drive by 11 maintenance workers at 590-unit apartment complex in Prince George's County as response to employer's having both made them clean sewers without protective gear and failed to grant pay raise in at least 2 years).

n20. See, e.g., Bill Lambrecht, *Influx of Hispanic Workers Alters Culture of Small Southwestern Missouri Towns*, St. Lou. Post-Dispatch, Dec. 28, 1997, available in LEXIS, News Library, Slpd File (estimating 60% to 65% of workforce at 2 Hudson Foods, Inc., plants in Noel, Mo., to consist of recent Mexican immigrants).

n21. See, e.g., Sam Roberts, *A New Face for American Labor*, N.Y. Times Mag., May 10, 1992, at 15 (profiling Dennis Rivera, head of Local 1199 of Drug, Hospital and Health Care Employees Union).

n22. See, e.g., Howard Fullerton, *Labor Force 2006: Slowing Down and Changing Composition*, summarized in 1997 Daily Lab. Rep. (BNA) No. 233, at D-24 (Dec. 4, 1997) (excerpting Bureau of Labor Statistics' November 1997 Monthly Labor Review) (projecting Hispanics to become second-largest racial group in workforce by 2006); [Hispanic Workers Could Soon Outnumber Blacks, 156 Lab. Rel. Rep. \(BNA\) 501](#) (Dec. 12, 1997) (same).

n23. Victor M. Valle & Mary Lau Valle, *Recipe of Memory: Five Generations of Mexican Cuisine* 172, 175 (1995).

n24. See id. at 172.

n25. See *id.* at 41-42.

n26. See *id.* at 173.

n27. See *id.*

n28. See, e.g., Laura Esquivel, *Like Water for Chocolate* 45-46, 49-50, 52-53 (Carol Christensen & Thomas Christensen trans., 1992) (sharing complex recipe for quail in rose petal sauce).

n29. See, e.g., Juan Gomez-Quiñones, *Mexican American Labor: 1790-1990* 39 (1994); Rodolfo F. Acuña, *Occupied America: A History of Chicanos* 141 (3d ed. 1988); Christopher David Ruiz Cameron, "Friends" or "Enemies"? The Status of Mexicans and Mexican-Americans in the United States on the Sesquicentennial of the Treaty of Guadalupe Hidalgo, 5 *Sw. J.L. & Trade Am.* 5, 13 (1998).

n30. See Gomez-Quiñones, *supra* note 29, at 3.

n31. We want the Mexicans because we can treat them as we cannot treat any other living man. We can control them at night behind bolted gates, within a stockade eight feet high, surrounded by barbed wire. We make them work under armed guards in the fields.

Gomez-Quiñones, *supra* note 29, at 3 (quoting agricultural employer) (citation omitted).

n32. See, e.g., Gomez-Quiñones, *supra* note 29, *passim*. A rich literature documents the place of Latino workers, especially Mexicanos, in the U.S. economy. For examples focusing on agricultural workers, see, e.g., Mark Reisler, *By the Sweat of Their Brow: Mexican Immigrant Labor in the United States, 1900-1940* (1976); Carey McWilliams, *Factories in the Fields* (1939); Dennis Nodin Valdes, *Betabeleros: The Formation of an Agricultural Proletariat in the Midwest, 1897-1930*, 30 *Lab. Hist.* 536 (1989). For an example focusing on domestic workers, see Mary Romero, *Maid in the USA* (1994).

n33. Of course, Latino workers are not a homogeneous group. In 1980, the Census Bureau reported that the Hispanic workforce consisted of 6.1 million people, of which 57.4% were Mexican, 11.8% were Puerto Rican, 6.5% were Cuban, and 22.9% were "other" Hispanics. In 1990, the Hispanic workforce consisted of 10.1 million people, of which 59.4% were Mexican, 10.9% were Puerto Rican, 5.9% were Cuban, and 24.8% were "other" Hispanics. See Matthias H. Wagener, *Survey of U.S. Hispanic Labor* 17 (Aug. 1997) (compiled from U.S. Census Bureau, U.S. Statistical Abstract, and California Census of Population data) (on file with author) [hereinafter *Survey of U.S. Hispanic Labor*].

In fact, the broad coverage of the term "Hispanic" explains why in both text and tables my percentages of workers, as identified by race, add up to more than 100%. In relying on data compiled by the U.S. Census Bureau, I am compelled to rely also the Bureau's definition of the term "Hispanic," which refers to individuals of Latin origin of any race. This means, for example, that an individual who is both Black and Puerto Rican would be counted twice: once as "Black," plus once as "Hispanic."

n34. See [Survey of U.S. Hispanic Labor](#), *supra* note 33, at 15.

n35. See *id.* at 14.

n36. See *id.* at 66 (graph).

n37. See *id.* at 66-67 (compiled from U.S. Statistical Abstract data).

- n38. See *id.* at 55 (compiled from California Census of Population data).
- n39. See *id.* at 54-55 (compiled from California Census of Population data).
- n40. See *id.* (construct graph from bar charts).
- n41. See Los Angeles Manufacturing Action Project, *Manufacturing in Los Angeles: Opportunities for Organizing* 14-15, 18 (June 24, 1994) (on file with author) [hereinafter *LA Map, Organizing Opportunities*].
- n42. For example, whereas in 1993 the motion picture industry accounted for 3% of all jobs in Los Angeles County, the manufacturing sector accounted for 19% of all such jobs. See [LA Map, Organizing Opportunities, supra](#) note 41, at 6.
- n43. See [LA Map, Organizing Opportunities, supra](#) note 41, at 4-5; [LA Map, Organizing the Future, supra](#) note 12, at 2; see also, e.g., Berg, *supra* note 12, at 19 (describing Los Angeles County as "industrial heartland" of U.S.).
- n44. See [LA Map, Organizing Opportunities, supra](#) note 41, at 12.
- n45. See *id.*
- n46. See *id.* at 15, 18; [LA Map, Organizing the Future, supra](#) note 12, at 2.
- n47. See [LA Map, Organizing Opportunities, supra](#) note 41, at 5.
- n48. See Berg, *supra* note 12, at 1; James Flanigan, *Remaking L.A. into the New City of Big Shoulders*, *L.A. Times*, Nov. 15, 1995, at D-1.
- n49. See *Forecast Predicts Manufacturing Jobs in Los Angeles Area Topping 1 Million Mark*, 1997 *Daily Lab. Rep. (BNA)* No. 124, at D-20 (June 27, 1997) (reporting prediction that manufacturing employment in 5-county Southern California area will reach 1,075,700 by 2000).
- n50. See, e.g., Jim Newton, *3 Huge Projects Could Define 21st Century L.A.*, *L.A. Times*, Dec. 14, 1997, at A-1, A-44.
- n51. See Gomez-Quinonez, *supra* note 29, at 3.
- n52. *Id.*; see also Rodolfo F. Acuna, *Anything But Mexican: Chicanos in Contemporary Los Angeles* 109 (1996) ("What many Euroamericans regarded as the 'Great American Desert' was thus transformed by Mexican labor although Euroamericans remember only the role played by North American irrigation and drainage technology").
- n53. See [Survey of U.S. Hispanic Labor, supra](#) note 33, at 20.
- n54. See *id.* at 19.
- n55. See *id.* at 58.
- n56. See *id.* at 57.
- n57. See, e.g., [LA Map, Organizing Opportunities, supra](#) note 41, at 9-11; Elizabeth Douglass, *Northrop to Lay Off 2,700 in Downsizing*, *L.A. Times*, Aug. 25, 1998, at A-1, A-15.
- n58. See Berg, *supra* note 12, at 19.
- n59. See *id.* (remarks of then-AFL-CIO Regional Director and LA MAP Co-Founder David Sickler).
- n60. See [LA Map, Organizing the Future, supra](#) note 12, at 2.

- n61. [LA Map, Organizing Opportunities, supra](#) note 41, at 30.
- n62. See [id. at 29-30](#); [LA Map, Organizing the Future, supra](#) note 12, at 4-5. See also [Organizing Effort Aims at Immigrant Workers, 150 Lab. Rel. Rep. \(BNA\) 24, 24](#) (Sept. 4, 1995) (describing Alameda Corridor as "ground zero" for organizing immigrant Latinos who make up most of corridor's 300,000 manufacturing employees) [hereinafter Organizing Effort].
- n63. [LA Map, Organizing Opportunities, supra](#) note 41, at 29-30.
- n64. See Christopher David Ruiz Cameron, The Wages of Syntax: Why the Cost of Organizing a Union Firm's Non-Union Competition Should Be Charged to "Financial Core" Employees, [47 Cath. U.L. Rev. 979, 983-84, 993-96 \(1998\)](#) [hereinafter Cameron, Wages of Syntax].
- n65. See [Survey of U.S. Hispanic Labor, supra](#) note 33, at 9.
- n66. See *id.*
- n67. Although the survey data show the wages of union workers, across all races, to be 32% greater than those of non-union workers, this figure, like the others reported here, does not necessarily mean that unionization is the sole cause of the gap; other variables associated with unionization are also responsible. According to labor economists, the extent of union density does cause higher wages, but the actual differential varies depending upon the particular industry and geographical area. See Cameron, Wages of Syntax, *supra* note 64, at 997-99.
- n68. See [Survey of U.S. Hispanic Labor, supra](#) note 33, at 9 (graph).
- n69. See *id.* at 7.
- n70. See *id.* at 6.
- n71. See *id.* at 11 (graph).
- n72. See *id.* at 11.
- n73. See *id.* at 10 (graph).
- n74. See Cameron, Wages of Syntax, *supra* note 64, at 980 (citations omitted).
- n75. See *id.* at 979 (citations omitted).
- n76. As one organizer has put it, "These things are very slow to turn around, like an ocean liner." Cooper, Labor Deals, *supra* note 18, at 15 (remarks of Communication Workers of America's chief organizer). To his credit, Sweeney has helped stem the longstanding hemorrhage of union membership. A year and-a-half into his presidency, unions had gained more than 50,000 members. *Id.* And in 1998, AFL-CIO unions organized 475,000 new members. Michelle Amber, AFL-CIO Organized 475,000 in 1998, But Net Gain Only 65,000, Sweeney Says, 1999 Daily Lab. Rep. (BNA) No. 33, at A-14 (Feb. 19, 1999). But this good news was tempered by the continuation of both losses among unionized workers and gains among non-unionized workers, which produced a net increase gain of just 65,000 new members. *Id.*
- n77. Marc Cooper, Labor's Hardest Drive: Organizing a New Politics, Nation, Nov. 24, 1997, at 16, 18 [hereinafter Cooper, Labor's Hardest Drive] (remarks of unidentified international union representative).
- n78. See Bacon, *supra* note 17.
- n79. See, e.g., Kate Bronfenbrenner, From the Bottom Up: Building Unions and Building Leaders Through Organizing and First Contract Campaigns iii (Apr. 30-May 2, 1998)

(unpublished executive summary for UCLEA/AFL-CIO Education Conference, San Jose, Calif.) (reporting average win rates as high as 78% in bargaining units with a majority of workers of color where 10 or more "union building tactics" were used).

n80. See [LA Map, Organizing the Future](#), *supra* note 12, at 2.

n81. See, e.g., Bacon, *supra* note 17. According to labor journalist Bacon:

One of the most important of the immigrant rebellions was the yearlong strike by southern California drywallers, who put up the interior walls in new homes. In 1992 and (1993), from the Mexican border north to Santa Barbara, an area of 5000 square miles, these mostly-Mexican immigrants were able to stop all home construction. Workers ran their movement democratically, from the bottom-up. They defied the police and the Border Patrol, blockading freeways when their car caravans were rousted as they traveled to construction sites.

When the drywallers picketed, their lines often numbered in the hundreds, walking onto construction sites and talking non-strikers into putting down their tools.

Id.

n82. The contrast between bottom-up and top-down organizing is portrayed in the film *Norma Rae*, in which the story of a successful drive to unionize a Southern textile mill begins with the arrival of a professional organizer from the big city. He tries to court workers by passing out pro-union literature at the factory gate. The effort is a miserable failure until local resident and mill worker Norma Rae, an acquaintance, develops some interest, and later, a passion, for the union cause. See *Norma Rae* (Twentieth Century Fox 1979) (feature-length motion picture starring Academy Award-winning actress Sally Field in title role).

n83. See [Organizing Effort](#), *supra* note 62, at 24.

n84. See, e.g., Map Notes, July 1, 1995, at 1 (discussing role of Director of Hispanic Ministries for Archdiocese of Los Angeles Father Pedro Villaroya, C.M., "in beginning to place the LA MAP organization inside the Archdiocese of Los Angeles" and "generating a list of 55 Catholic parishes that are situated in the Alameda Corridor"). See also [LA Map, Organizing the Future](#), *supra* note 12, at 3 ("The ethnic composition and geographic concentration of the targeted workforce means that the strategic involvement of community based organizations like the Catholic Church and Mexican State Federations is crucial to a winning combination.").

n85. Conversation with AFL-CIO California Immigrant Workers Association Organizer Joel Ochoa (Mar. 1992). See also, e.g., Nancy Cleeland, Home for the Holidays, *L.A. Times*, Dec. 25, 1997, at A-3 (describing close familial, social, and financial ties between expatriate Mexicans living in Santa Ana, Calif., and the permanent residents of Granjenal, Michoacan).

n86. See Bacon, *supra* note 17.

n87. *Id.*

n88. Hector Delgado, *New Immigrants, Old Unions: Organizing Undocumented Workers in Los Angeles* 37 (1993) (remarks of Amalgamated Clothing & Textile Workers Union organizer Nestor Rivas) (emphasis added) [hereinafter Delgado, *New Immigrants, Old Unions*].

n89. Prominent Community Scholars included UCLA School of Urban Planning Professors Gilda Hass (the Community Scholars' coordinator) and Goetz Wolff and Center for Labor

Research and Education Executive Director Kent Wong. They also served on LA MAP's advisory board. See [LA Map, Organizing Opportunities, supra](#) note 41, at 30.

n90. See [LA Map, Organizing Opportunities, supra](#) note 41.

n91. See [LA Map, Organizing the Future, supra](#) note 12 (attachment 1).

n92. See Brooks, *supra* note 10, at D-10 (before the strike, Gruma Corp. reportedly paid the typical truck driver \$ 500, including commissions, for a 6-day work week against projected sales of about \$ 500 million for the year). Union officials complained that the pay was closer to \$ 200 to \$ 300 per week. See Weikel, *supra* note 9, at B-1.

n93. See *id.*

n94. Conversation with LA MAP Project Coordinator Peter Olney (Aug. 1996).

n95. See Brooks, *supra* note 10, at D-10 ("The East Los Angeles plant is the most technologically advanced tortilla-making facility in the world, churning out over 15 million tortillas a day.").

n96. See David M. Eisenberg, Ronald C. Kessler, Cindy Foster, Frances E. Norlock, David R. Calkins & Thomas L. Delbanco, Unconventional Medicine in the United States - Prevalence, Costs, and Patterns of Use, 328 *New Eng. J. Med.* 246, 248 (1993) [hereinafter Eisenberg, et al., Unconventional Medicine]; see also, e.g., Daniel J. Hufford, Folk Medicine in Contemporary America, in *Herbal and Magical Medicine: Traditional Healing Today* 18 (James Kirkland, Holley F. Matthews, C.W. Sullivan III & Karen Baldwin eds., 1992) ("Patients on unorthodox treatment [for cancer] ... tended to be white ... and better educated ... than patients on conventional treatment.") (quoting Barrie Cassileth, et al., *Contemporary Unorthodox Treatments in Cancer Medicine: A Study of Patients, Treatments, and Practitioners*, *Annals of Internal Med.* 102, 105-12 (1984)).

n97. Eisenberg, et al., Unconventional Medicine, *supra* note 96, at 246.

n98. *Id.* at 248. These unconventional therapies were:

[tdi6m,m'Commercial weight-loss programsx',ql [tcgp1,m'Percent Using in Lastxx',qc] Type of Therapy ++ Percent Using in Last 12 Months Relaxation techniques13% Chiropractic10[sp%'] Massage7[sp%'] Imagery4[sp%'] Spiritual healing4[sp%'] Commercial weight-loss programs4[sp%'] Lifestyle diets (e.g., macrobiotics)4[sp%'] Herbal medicine3[sp%'] Mega-vitamin therapy2[sp%'] Self-help groups2[sp%'] Energy healing1[sp%'] Biofeedback1[sp%'] Hypnosis1[sp%'] Homeopathy1[sp%'] Acupuncture<1[sp%'] Folk remedies<1[sp%'] [tn1,2] ++ Other than exercise or prayer

Id. at 248.

n99. *Id.*

n100. *Id.* at 250; see also Terence Monmaney & Shari Roan, Hope or Hype?, *L.A. Times*, Aug. 30, 1998, at A-1 (describing alternative medicine as "an \$ 18 billion industry edging into the mainstream, with California leading the way").

n101. *Id.*

n102. *Id.* at 251.

n103. *Id.* at 249, 250.

n104. See, e.g., *Guia Medica de Remedios Caseros* (Prevention Magazine eds., 1995); Michael Moore, *Los Remedios: Traditional Herbal Remedies of the Southwest* (2d ed. 1990); *Roots of Healing: The New Medicine* (Andrew Weil & Michael Toms eds., 1997); Annette Sandoval, *Homegrown Healing: Mexican Home Remedies* (1998).

My great-grandmother, Refugio Presa ("Mama Cuca") Ruiz, learned many remedios caseros in her hometown of Aguascalientes, in the Mexican state of the same name, and practiced them while raising her family in Gardena, Calif. For a college project, my cousin Shannon Carr Davey interviewed Mama Cuca and catalogued a number of her remedios caseros, including the use of tomato poultices to cure migraine headaches. My grandfather, Frank X. Ruiz, suffered from severe migraines. He recalled having endured Mama Cuca's treatments, but not having enjoyed them. See Shannon Carr, *Beliefs of Mama Cuca* 3-4 (Spring 1985) (unpublished Folklore 241 term paper, El Camino College, Torrance, Calif.) (on file with author).

n105. Letter to Editor from Diane Korte, 329 *New Eng. J. Med.* 1141, 1200 (1993). To the same effect were the sentiments of a reader of *Consumer Reports*, which in 1994 undertook its own investigation of "homeopathic" medicine: "Homeopathy survives because it works and people want it... I do everything I can to avoid hospitals, chemicals, medicine, and surgery. I see my allopath for medical tests; treatment, when necessary, comes from my licensed M.D. homeopath. God save me from the butchers." Letter to Editor from Name Withheld, *Consumer Reports*, June 1994, at 6.

n106. See, e.g., Paul C. Weiler, *Governing the Workplace* 241-52 (1990) (critiquing merits of last, unsuccessful effort by Congress in 1978 to undertake comprehensive reform of National Labor Relations Act).

n107. See, e.g., Thomas Geohegan, *Which Side Are You On? Trying to Be for Labor When It's Flat on Its Back* 163 (1991) (criticizing "post-strike America" as place where "the rank-and-file stay home and send out their lawyers").

n108. Richard Delgado & Jean Stefancic, *Failed Revolutions: Social Reform and the Limits of the Legal Imagination* (1994).

n109. *Id.* at xvi.

n110. See Weiler, *Governing the Workplace*, *supra* note 106, at 108-14, 238-41.

n111. [LA Map, Organizing the Future](#), *supra* note 12, at 2-3.

n112. See, e.g., Cameron, *Wages of Syntax*, *supra* note 64, at 990.

n113. See, e.g., Michael Gottesman, *In Despair, Starting Over: Imagining a Labor Law for Unorganized Workers*, in Finkin, *supra* note 4, at 62-63.

n114. See, e.g., Michael Bologna, *Unions Pursuing Nontraditional Strategies for Leveraging Labor Peace with Employers*, 1998 *Daily Lab. Rep. (BNA)* No. 3, at D-13 (Jan. 6, 1998) (remarks of AFL-CIO Department of Corporate Affairs Director Ron Blackwell); *Academics, Union Leaders Examine Union Strikes, Contract Campaign Strategies*, 1997 *Daily Lab. Rep. (BNA)* No. 9, at D-13 (Jan. 14, 1997) (remarks of Frank Borgers, labor researcher, University of Alabama, Birmingham).

n115. Bologna, *supra* note 114, at D-13.

n116. See, e.g., *L.A. Organizing Project Gets Funding from Teamsters*, 1996 *Daily Lab. Rep. (BNA)* No. 190, at D-11 (Oct. 1, 1996) (remarks of LA MAP Project Coordinator Peter Olney).

- n117. Conversation with LA MAP Project Coordinator Peter Olney (Aug. 1996).
- n118. See Toshio Aritake, Sweeney Says New Otani Officials in Japan Did Not Engage in Serious Talks on Dispute, 1997 Daily Lab. Rep. (BNA) No. 69, at D-16 (Apr. 10, 1997); Toshio Aritake, Japanese Labor Group Says Dispute at Los Angeles Hotel "Tough to Settle," 1997 Daily Lab. Rep. (BNA) No. 41, at D-14 (Mar. 3, 1997).
- n119. Joyce Cutler, Panelists Say Workers Need to Form Alliances to Prevent Erosion of Wages, 1996 Daily Lab. Rep. (BNA) No. 227, at D-14 (Nov. 25, 1996) (remarks of former California AFL-CIO Executive Secretary Jack Henning).
- n120. See, e.g., Christopher D. Cameron, Why Labor Unions Are Failing, J. Comm., Aug. 10, 1992, at 8.
- n121. See, e.g., Kevin R. Johnson, Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness, [73 Ind. L.J. 1111, 1136-40 \(1998\)](#) (contrasting simultaneous U.S. policies favoring importation of low-wage Mexican labor under Bracero Program and expulsion of same under Operation Wetback).
- n122. For an explanation why the lack of documents did not significantly interfere with an organizing drive among a largely undocumented Latino workforce at a waterbed factory in Los Angeles, see Delgado, New Immigrants, Old Unions, *supra* note 88, at 8-9, 57-99.
- n123. See [LA Map, Organizing the Future, supra](#) note 12, at 3; accord Cooper, Labor Deals, *supra* note 77, at 12 (remarks of Hotel & Restaurant Employees Local 226 Secretary-Treasurer John Wilhelm) (The success of Las Vegas organizing drives is "proof that you do not have to go through the useless N.L.R.B. mess to come out with a victory.").
- n124. For a discussion of the familial and social networks that give many immigrant Latinos a leg up in finding jobs, see Abigail Goldman, A Hidden Advantage for Some Job Seekers, L.A. Times, Nov. 28, 1997, at A-1 (contrasting successful job search of immigrant Mexican Pablo Cifuntas with unsuccessful job search of native-born African-American Flossie Bradford).
- n125. See Cooper, Labor's Hardest Drive, *supra* note 77, at 16.
- n126. See Silverstein, Undaunted, *supra* note 14, at A-1, A-24 ("Last year, [LA MAP] drew notice with its bold proposal to link a coalition of unions in a campaign to organize the hundreds of thousands of immigrant workers in the area along the Alameda Corridor ... When it came time to kick in money, though, most of the support fell apart.").
- n127. See Acuña, Anything But Mexican, *supra* note 52, at 127-33, 149-54.
- n128. See, e.g., Eric K. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering in Post-Civil Rights America, [95 Mich. L. Rev. 821 \(1997\)](#) (discussing suit by Chinese Americans to invalidate San Francisco court-ordered school desegregation program won by NAACP); Eric K. Yamamoto, Conflict and Complicity: Justice Among Communities of Color, [2 Harv.-Lat. L. Rev. 495 \(1997\)](#) (discussing same and suit by Latino and Asian groups to invalidate Oakland affirmative action program favored by Black contractors). See also George A. Martinez, African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition, 19 Chicano-Lat. L. Rev. 213, 215 (1998) (advocating that Mexican-Americans build coalitions with other people of color by rejecting their official legal designation as White).
- n129. See Cooper, Labor's Hardest Drive, *supra* note 77, at 18.
- n130. See, e.g., Christopher D. Cameron, How the "Language of the Law" Limited the American Labor Movement, 25 U.C. Davis L. Rev. 1141, 1147 (1992) (book review)

(identifying the goals of "business unionism" as "'delivering the goods' at the workplace level by providing higher wages and benefits to workers as well as a voice for them at the bargaining table and on the shop floor") (citations omitted).

n131. See Cooper, *Labor's Hardest Drive*, *supra* note 77, at 18.

n132. *Id.* (remarks of Service Employees International Union President Andy Stern).

n133. See generally, e.g., Peter Matthiessen, *Sal Si Puedes: Cesar Chavez and the New American Revolution* (1969).

n134. Paz, *supra* note 1, at 204.