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Chicana/o Latina/o Law Review

Title

Foreward: Latinos in the Law: Meeting the Challenge

Permalink

<https://escholarship.org/uc/item/8901h31k>

Journal

Chicana/o Latina/o Law Review, 6(0)

ISSN

1061-8899

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Publication Date

1983

DOI

10.5070/C760020940

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**LATINOS IN THE LAW:
MEETING THE
CHALLENGE**

**FOREWORD: LATINOS AND LATINO
LAWYERS***

*Gerald P. López***

1.

Whenever Latinos gather to talk about "where we are and where we should be going," yet another scene unfolds in the larger political drama. In this drama we seek faithfully to understand ourselves and to have the world understand us as we would have ourselves understood. Whether we like it or not and for better or worse, lawyers are central characters in this drama. They represent us in and to the outside world. They serve as intermediaries between our feelings, needs and concerns, and the institutional responses we seek.

While lawyers are seemingly everywhere in this drama, Latinos often feel ambivalent about those who represent them. Latinos cannot decide whether to trust or be suspicious of these intermediaries and typically find themselves doing both. Lawyers for Latinos often feel, in turn, confused and frustrated by this ambivalence. Trust and suspicion combine in a mysterious way to generate an equivocal, frequently unstable, and underachieving relationship. The relationship does not get any simpler, even if it is potentially warmer and more productive, when Latino lawyers

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represent Latinos. Latino lawyers sense, accurately I think, the intensely conflicted feelings that Latinos can have about them. Latino lawyers know best how much it hurts to be at once trusted and suspected, and how unsatisfying representing one's own people can be under these conditions.

The ambivalent relationship between Latino lawyers and the Latinos they represent is seldom publicly acknowledged. The almost unbroken silence perhaps signifies a pact not to reveal our internal divisions and antagonisms. Or perhaps the silence simply reflects how overwhelmed we all are just trying to get by from day to day. In any event, the silence disserves us. Lawyers play too inevitable and significant a role to permit unexamined feelings to undermine their effectiveness, and, therefore, our demands for change. We must break that silence if we are to begin to understand what our representatives do and what might account for our feelings about their place in our lives.

2.

All lawyers are problem-solvers. Perceiving that the world as it is varies from the world a client needs or desires, a lawyer will try to persuade others to act in ways that will change the world into something closer to what the client wants. To do that, lawyers must translate, and, if necessary, transform, the story a client is living (a client's needs, concerns, and wishes) into a story that some audience (be it a legislature, a court, a social agency, a landlord, an employer or the like) can identify, believe, and find compelling. These translations and transformations are necessary because the legal institutions to which a lawyer must appeal and in which a lawyer must operate have over time developed their own cultures, their own languages, and their own conventions and values. A court, for example, will only pay attention to a client's story if it contains certain required features and is cast in certain language. If a lawyer tells a court, "*Pues, Juez*, listen to this story about my client being hassled by *la migra*," the court will respond, "Counselor, I am sorry, I cannot listen to that story—you have not described something that states a cause of action or a claim for legal relief." But if a lawyer tells a court, "The INS has, without probable cause, violated my client's Fourth Amendment rights," then the court will respond, "Counselor, that's a story I can listen to—tell me more." In the second story, unlike the first, the lawyer has translated the client's story into a reasonably recognizable one. The court is able to identify the story and, therefore, is willing to get on with the business of determining what happened (whether the story is believable) and what the events mean in light

of relevant constitutional decisions (whether the story compels the remedy sought).

The lawyer must also translate the audience's stories into stories the client can understand. If a federal court is unwilling to issue a preliminary injunction against allegedly abusive police practices because *Rizzo's*¹ interpretation of both section 1983 and "our federalism" counsels against such an intrusion by the courts, a lawyer must find a way to tell the client what this all means. Repeating the court's language will likely be met with an understandably blank expression. Near the other extreme, simply telling the client "The court said no" hardly reflects the political subtlety and sensitivity a client deserves. An effective translation requires care and patience: the task of interpreting another culture's conventions and values is difficult and often involves painstaking trial and error. If in approaching a court (or any audience) a lawyer is saying, "This is my client's story in terms you will understand and hopefully find compelling," then in talking to a client a lawyer is often saying, "This is how your story looks or will look in the eyes of the court." Just as the lawyer represents the client to the outside world, so the lawyer must represent the outside world to the client.

To represent well, lawyers must be able and willing to think like insiders in both the client's and the legal world; in a very real way, the lawyer must be bicultural and bilingual. How else can one hope to determine a client's needs and concerns except by being able to get inside the client's way of seeing, talking about, evaluating and responding to life's activities? Needs and concerns are locked into the very way a client interprets the world; they are, by their very nature, culturally defined and expressed—and, of course, therefore hidden from all but those who can see the world in the same way. Similarly, how else can a lawyer anticipate and help create what a legal audience needs to see and hear to respond favorably to a client's request except by being able to get inside the audience's way of interpreting the world? Legal institutions live through people who, like the rest of us, interpret in order to give the world meaning. A lawyer who cares about an institution giving a particular meaning to a client's story must be able to see potential stories through the eyes of the institutional actors. How do they talk? dress? tell stories? make arguments? What values and conventions inform their way of seeing the world? One cannot translate stories from culture to culture without being at once an insider and an outsider; one cannot mediate well between client and audience without being able, nearly at will, to invoke and abandon different cultural interpretations of the same world.

1. *Rizzo v. Goode*, 423 U.S. 362 (1976).

3.

It may appear paradoxical, if not downright wrong, to suggest that Latinos often feel ambivalent about Latino lawyers. After all, who better to translate and transform a Latino's needs and concerns into conventionally acceptable legal stories and a legal audience's stories into comprehensible Latino versions? Who better to represent Latinos to the outside world and the outside world to Latinos than another Latino? We need our own representatives—all people do. And our wishes and concerns often entail being "truly" described to the outside world, a storytelling role for which other Latinos are particularly well-suited. Yet it may be that a lawyer's role itself embodies symbolic contradictions in the evolving political drama that, at least for now, can, and perhaps inevitably, lead to conflicted feelings about those Latinos who fill it.

Historically, legal institutions in this country have hardly been a refuge for Latinos. When these institutions were not mysterious and inaccessible, they were systematically insensitive and often hostile. Latinos learned not only to live without the "help" of these institutions, but to avoid all but the most mandatory contact with them. Over time, we turned even more inward, more toward those in our own communities, because that was the only place we regularly found people willing to care and to respond to our needs. And we passed along to new arrivals the hard-earned wisdom about legal institutions in this country: **DON'T TRUST THEM OR ANYBODY WHO WORKS WITH OR FOR THEM.**

It is not surprising that when legal institutions made their modern overtures to minorities toward the middle of this century that most Latinos generally disregarded the implied promise of a new and sustained responsiveness. We had been promised many things many times before (healthy and safe working conditions, police protection, the possibility of electing and being tried by our own and blah blah blah) and by that time only the newest among us were inclined readily to believe. If at any time we had been an unsuspecting people, our spirit had been transformed. What is surprising, however, is that so many Latinos retained the capacity to believe again or at all in legal institutions and institutional players like lawyers. And yet the Latino response to the invitations authored principally by the Warren Court and the Kennedy/Johnson Administration is testimony to that capacity. Perhaps we responded because others did first; perhaps we needed publicly to believe a little again; or perhaps we sensed finally an opportunity to shape our future. Whatever the reason, a more or less collective decision made some twenty years ago began what is

now an obviously differently constituted—though still inadequate—relationship between Latinos and legal institutions.

If we decided to work through lawyers and in legal institutions, it was not without considerable reservation and some fairly vocal dissent. We were newly conscious and so, too, would be our relationship to legal institutions. Latinos seemed to say to one another, "Remember and make them remember." In some circles, it became quite nearly a Latino loyalty oath to disrespect and openly scorn the legal institutions in which one was working and the lawyers through whom one was acting. However necessary both then and now, these politics can be spiritually confusing and even shackling over the long-run. Who does one trust? What does one believe in? For most Latinos the choices were not so extreme, but the injunction to remember and make them remember rang true nonetheless. They concluded, with reason and with wisdom, that to be wary was to be politically savvy in the modern drama. "Remember, yeah," Latinos intoned, "and make them remember."

4.

Enter Latino Lawyers. Discouraged from applying to and excluded from law schools for decades, they have entered the profession in significant numbers only in the past ten years or so. They were anxious to represent Latinos and Latinos were anxious to be represented by them. "Finally, some of our own," a community organizer once said to me as we worked together in an empty garage mapping out strategies to block the threatened termination of funds for a local agency. The union seemed so natural and felt so right.

What neither of us had anticipated was how deeply skeptical Latinos had become of anyone who stepped into the lawyer's role. And why not? While Latinos had decided to use legal institutions and lawyers, they had not yet developed trust in the system or its representatives. And after all, how should a Latino feel about anyone, Latino or not, who travels freely and confidently between two so historically different cultures? Shouldn't a Latino suspect anyone who knows how to talk and act and dress and operate effectively in a world that has for so long seemed foreign and, in fact, been so insensitive? Is it possible for another Latino to know how to think like an insider in the legal world and still be loyal to us? "Being a lawyer" threatened at times to out-symbolize "being a Latino": Latino lawyers found themselves, on some occasions, being treated by other Latinos as neither-nors. To be wary proved to be a difficult posture for Latinos to assume only some of the

time and as to only some lawyers. Like every other emerging people in history, we were trapped as well as enabled by our politics.

5.

Our feelings about our Latino representatives are perhaps not so extreme these days. Time has helped. So, too, has the sheer frequency with which Latinos fill the lawyer's role for Latino clients. "What is familiar is more trustworthy," a friend recently reminded me, "Thesis, Antithesis, Synthesis and all that." Well, maybe. Perhaps we should all simply play out our roles and let matters evolve.

Yet I remember a student asking me as this symposium was being planned, "How many non-lawyer Latinos come to these things?" And I remember thinking, "How often are they invited?" Or for that matter, just how often do Latino lawyers even invite Latino clients to talk about the "outside world," about the legal institutions that shape and control so much of Latino life? If a client's job is to teach a lawyer about her needs and concerns, a lawyer's job is to teach the client about how the legal culture thinks about and responds to those needs. How else can the lawyer truly help the client make decisions about the problems in her life? Latino lawyers may too often exclude Latino clients from an insider's view of legal institutions; acting too much like most other lawyers, they may unwittingly contribute to ambivalent feelings about their role as representatives and to an underachieving lawyer-client relationship. Our politics have not been as genuinely transformative as we would like to think.

So here we are, the silence broken, however much with a whisper. "Remember and make them remember," still rings true. But we should remind ourselves to reflect and to imagine too. After all, the political drama that we are living will have the look that we collectively give it.