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**SCHOOL
OF LAW**

**SMALL SCHOOL.
BIG VALUE.**

SPEECH

UN/BRAIDING STORIES ABOUT LAW, SEXUALITY AND MORALITY

MARGARET MONTOYA*

I. INTRODUCTION

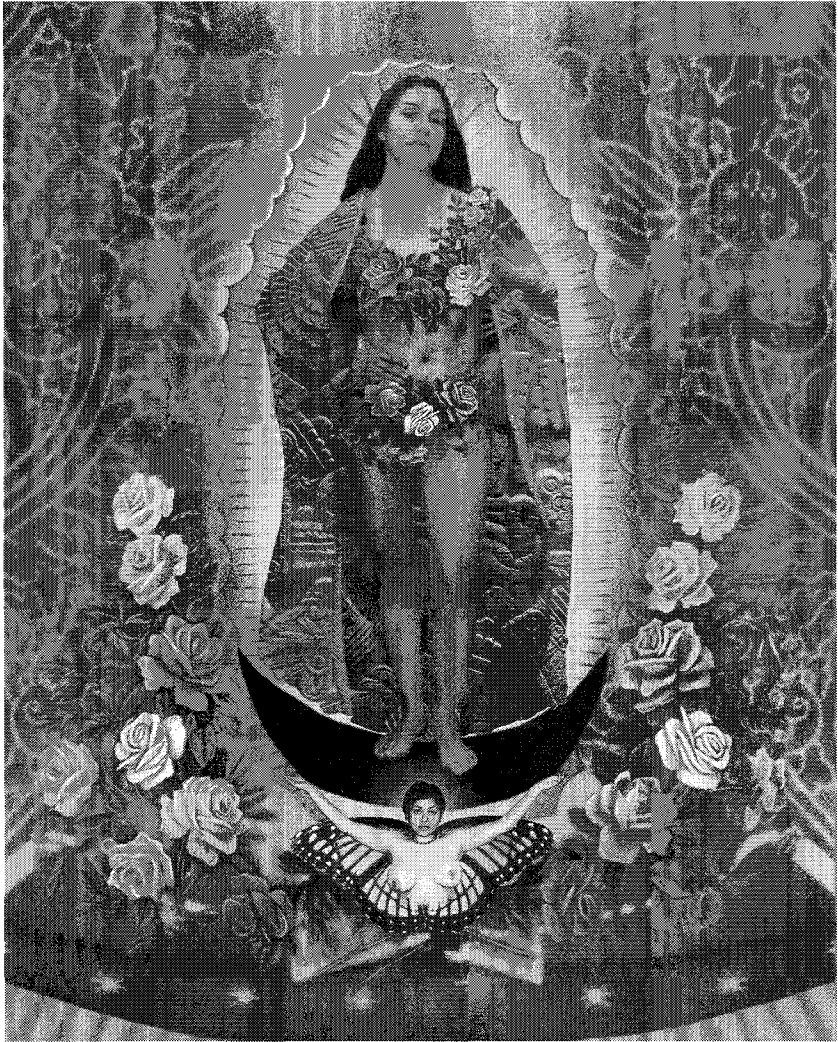
In March 2002, I was honored to be invited to be a member of the Chicana Caucus Plenary at the annual meeting of the National Association of Chicana/Chicano Studies (“NACCS”) held in Chicago, Illinois. The panel, entitled “*Destejiendo Pasiones: Speaking Desires*,” also included Alma López, the Los Angeles artist; Professor Aida Hurtado was invited but was unable to attend. The panelists were asked to talk about sexual identity and sexuality. The following is an essay based on the talk I presented.

This essay was inspired by the controversy that embroiled the exhibition of Alma López’ painting of *Nuestra Señora de Guadalupe*, in which she is shown wearing undergarments of roses and held up by an angel with prominent breasts. The exhibit at the Museum of International Folk Art in Santa Fe, New Mexico, was called “*Cyber Arte: Tradition Meets Technology*.” It opened on February 25, 2001 and was curated by Tey Mariana Nunn, one of the few Chicana museum curators in the country, and included the artwork of four Chicana artists.

A vocal portion of the local Catholic community in Santa Fe called the painting “an abomination” and “a sacrilege.”¹ Virtually all of the protesters self-identified as Chicanos/as or as *hispanos/as*, the local term for ethnic/racial identity. Alma López was excoriated by the local Archbishop who claimed that the Virgin Mary was depicted as a “tart” and described her garment as a

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1. See Anne Constable, *Catholics Protest Our Lady’s Depiction of the Virgin Mary*, THE SANTE FE NEW MEXICAN, Mar. 24, 2001, at A1, available at <http://www.almalopez.net/news/010324sfnm.html> (last visited on May 9, 2002).



Alma López, *Our Lady*, Los Angeles Visual and Public Artist

“bikini.”² Backed by the Archbishop, the local people organized large protests against the decision to include Alma’s painting in the exhibit, sought the resignation of the museum directors, asked for a public apology and initiated legal and political challenges to the exhibition. Eventually, several state legislators made statements threatening the funding of the museum.

2. See *Museum to consider withdrawing collage of midriff-baring Virgin Mary*, THE DAYTONA BEACH NEWS-JOURNAL, April 5, 2001, available at <http://www.alma-lopez.net/news/010405dbnj.html>.

Three named plaintiffs, all men, sued under the state Open Meetings Act demanding an injunction to force the museum to remove the exhibit.³ They alleged that “both the decision to display the exhibit by the curator and the decision not to remove the exhibit by the Sensitive Materials Committee were in violation of the [Act].”⁴ Specifically, the plaintiffs were alleging that the decisions were made without notice to the public and an opportunity to be heard. Judge James A. Hall of the First Judicial District Court in New Mexico concluded that the curator’s decision is not a policy decision covered by the Open Meetings Act but the Sensitive Materials Committee is a “delegated authority” and therefore must comply with the Act.⁵ However, the relief requested — the injunction — was not available under the Act and so the matter was dismissed.⁶

The first part of the essay examines sexual identity as an issue for political organizing within law schools. I describe the politicization that has occurred in law schools regarding the U.S. military’s continued discrimination against gay, lesbian, bisexual and transgendered students, and the organized responses within law schools to these practices and policies (such as the responses to the so-called Solomon Amendments). I also use some stories from my law school and my classrooms to examine issues relating to sexual identity. The second part of the essay is a defense of Alma López and her art.

II. *NUESTRAS HISTORIAS TEJEN EXPERIENCIAS SEXUALES CON CREENCIAS SAGRADAS*

Mil gracias por invitarme a participar en ésta conferencia y especialmente a participar en éste intercambio entre Chicanas. It’s a significant honor for me to be here on this panel today. I regret that Aida has been unable to join us. I am delighted to be on this panel with Alma whose work has inspired many of us who have been her defenders.

It was difficult to decide what I would talk with you about, what the tone and the message should be. So I have decided to do two things today. I will begin in my academic voice to talk with you about the law and specifically how the entanglement of the law with the issue of sexual orientation is being experienced in law schools. It’s an issue that has moved many students and some faculty to action and I thought it was important to talk

3. See Final Order, Trujillo et al. v. Museum of New Mexico et al., (D-0101-CV-200102307).

4. *Id.* at 2.

5. *Id.* at 3.

6. *Id.*

about that. But much of my scholarship is about the way that power is distributed in the form of laws or rules or official mandates, and how the law is used by the dominant culture to maintain control over racialized populations in this society and specifically over Chicana/o communities. My work explores how the law functions, at times, to deform our individual and our collective identities, to restrain our autonomy and to subordinate us and conversely how the law operates, at times, to create mechanisms for liberation and autonomy. It's this duality, these contradictions that inform my scholarship. My work is focused on unmasking those effects of the law on our communities. The epistemology for my work is a bilingual, bicultural approach that is grounded in personal experience and framed by an understanding of theories of white supremacy and other theories about the disparities of power.

So I am going to begin by speaking as a law professor about gays in the military and the response of law schools to employment discrimination on the basis of sexual orientation. Then I am going to speak in a more personal voice about female sexuality from my perspective as a Chicana with strong ties to the Catholic Church.

Let me begin with a plug for LatCrit, which is the counterpart to NACCS within law schools. LatCrit, one of the offshoots of Critical Race Theory, has been sponsoring annual meetings for the past six years. Those of us who work within this academic community called LatCrit and who are producing race-based scholarship about the uses, misuses and abuses of law within the Chicana/o and other Latina/o communities acknowledge that we stand on the shoulders of Chicano and Chicana scholars. We know that NACCS history informs LatCrit history. We have been fortunate to have scholars associated with NACCS present at prior LatCrit meetings: such luminaries as Antonia Castañeda, Mary Romero, Tomás Almaguer, and Rudy Acuña.

I am circulating information about LatCrit and the [then] upcoming meeting in Portland to be held from May 2 – May 5, 2002. You can register for the conference until May 10th by visiting our website at www.latcrit.org. I think it's time we began planning a conference that would be jointly sponsored by NACCS & LatCrit.

I want to describe some of the activism that is going on within law schools on issues of sexual identity and then I want to talk about what doing that work means for those of us who are straight and therefore come to this issue from a position of power and privilege.

Let me describe briefly how the issue of gays in the military has provided us a vehicle for politicizing the legal academy on issues of sexual orientation and gender identity. *Nuestro objetivo en estos esfuerzos que voy a describir siempre es en profundizar nuestra concientización.*

I will touch very briefly on the military's "Don't Ask, Don't Tell" policy and the response of law schools to this form of discrimination by the military. Then I will tell a story about a successful intervention in the politicization of gendered spaces by a transgendered University of New Mexico law student.

Why should we care about the "Don't ask, don't tell policy?" Because it is the only law that *authorizes* an employer to fire someone for being gay, lesbian or bisexual.⁷ I hope you will hear that I didn't mention transgendered persons — they have much greater difficulty getting into the military so they don't even have the chance of being thrown out. "Don't ask, don't tell" is the only law that punishes people for coming out. This policy means that GLB's can't talk about their sexuality to their friends, their families, their psychiatrist, their colleagues; they can't even tell their diaries. On the other hand all of us are asked about our sexual orientation everyday in a dozen ways: Are you married? Who are you dating? Whose picture is that on your desk? What are you doing this weekend? This policy requires that people lie, evade and dissemble. Under this regulation, three to four service members are fired every day for being gay. In 2000, there were 1,250 discharges under this policy — by Department of Defense figures. The Clinton administration's policy is only the most recent iteration of a regime of legal discrimination against sexual minorities.

In 1990, the American Association of Law Schools (AALS) amended its by-laws to prohibit discrimination on the basis of sexual orientation, and then further added that employers who discriminate cannot be allowed to use the facilities of law schools to recruit future employees. Law schools are professional schools and one thing we do well is provide employers with the chance to interview and hire law students. Most law schools quickly banned the military from recruiting on campus. Then Congress passed a series of laws (known as the Solomon Amendments) requiring law schools to allow the military to recruit or risk losing all federal funding, including financial aid funds. This continues to be the law. Because most law school faculties, in-

7. Materials and information distributed by Dixon Osborn, Executive Director of the Service Member's Legal Defense Network. This information on "Don't Ask Don't Tell" was presented at a panel organized by the Section on Gay and Lesbian Legal Issues of the Association of American Law Schools (Jan. 6, 2002) (on file with author).

cluding UNM's, have now capitulated and allowed the military on campus, the AALS now requires law schools to engage in what is known as "amelioration." Law schools that allow the military on campus are supposed to educate their constituencies — students, staff and employers — about discrimination on the basis of sexual orientation. This has meant that many schools now have regular programming and regular demonstrations with picket signs, teach-ins, and other interventions focused on this issue.

At my law school, the students have organized to have a strong presence each time the military comes to recruit. The law school is papered with statistics on "Don't Ask, Don't Tell"; we have had a teach-in in the fall; and the GLBT students sign-up for most of the interview slots in order to make their views known to the military recruiter.

The Society of American Law Schools ("SALT") under the leadership of Professor Francisco Valdes (Miami) prepared and distributed a pamphlet on amelioration to every law professor in the country. Why do I use my time with you to talk about this issue, especially when many of us don't want to encourage folks from going into the military, especially now when this administration is hell-bent on pursuing a war with an obscenely bloated budget and policies that damage everyone's civil rights and liberties? Discrimination must be attacked on many fronts and with many strategies. However, for those of us in the legal profession, the legal architecture of discrimination — the laws, regulations and official policies that *sanction* discrimination — must be a primary focus. Therefore, legal institutions such as the courts, Congress and law schools are an important battlefield in this struggle against overt subordination. So military recruitment in law schools has become a site of contestation — legal and ideological.

Let me tell you another story, a small-scale story about personal activism and courage. In 1999 a student transfixed the attention of the entire UNM law school on what she called "sex/gender fascism." Every once in a long while, we teachers are blessed with a student who changes our lives, our thinking, *nuestra concientización*. For me, Kim Coco Iwamoto was one of those students. I hated to see her go when she graduated in 2000.

Coco is a transgender person who identified in the law school as female; she was also Japanese-American. One day a brochure appeared in all mailboxes. This is what s/he wrote:

Once upon a time . . . the entire UNM Law School community was just one gender: "MALE." The lavatories re-

flected the needs of the population at the time; they were all MEN'S rooms.

One day, a differently gendered student body arrived at the law school. In order to accommodate these new students, some of the MEN'S restrooms underwent sex-changes and became WOMEN'S restrooms.

Despite the success of these sex-changes, there were still other student bodies that did not fit into these lavatories; so the restrooms underwent further reconfiguration and were made wheel chair- accessible.

Since then, transgender bodies have arrived at the law school; these bodies do not always fit in to the MEN'S room or the WOMEN'S room. Because of our law school's commitment to diversity, yet another change must be made to accommodate the vast array of gendered and non-gendered bodies

Just like "MEN" and "WOMEN," differently-gendered and non-gendered people *do* go out in public and, *yes*, they may also find the need to use a lavatory. Public restrooms separating "MEN" and "WOMEN" automatically create a site of oppression for transgender person; the harassment of transgender people using a MEN'S room or a WOMEN'S room is still legally sanctioned. Therefore, we must expand our facilities to create a safe space for people of ALL gendered experiences.⁸

Through her activism and her courage, Coco changed the law school — we now have one non-gendered restroom — one restroom that can be used by persons of any gender. By creating this option, Coco reconfigured the physical space of the law school but she also reconfigured the attitudes of those around her.

My purpose in sharing these stories with you about the particular struggles around sexual identity within law schools is to highlight the privilege and the challenge that I have experienced in being a straight person in alliance with GLBT's on the issue of sexual identity. I have much to thank Chicana lesbians and others in the Queer Theory movement for — I have a better understanding of my sexuality and of sexual desire as a result of Queer Theory. I have a better understanding of race and ethnicity as a result of Queer Theory. I am particularly indebted to Frank Valdes, Robert Westley, Elvia Arriola, David Cruz, Berta Hernandez-Truyol and others who are exploring the intersections among law, race/ethnicity, gender and sexual identities. My work has also benefited from the insights and the boldness of Gloria Anzaldúa, Cherríe Moraga, Deena Gonzales and other lesbians in Chicana Studies.

8. KIM COCO IKAMOTO, WHAT RESTROOM DO YOU USE? WHAT RESTROOM DO I USE?, (undated) (on file with author).

When I was invited to participate on this panel, I was concerned that I might be displacing other voices. We – certainly in LatCrit and I will assume here too at NACCS – haven’t spent enough time listening to the stories of GLBT’s. Straight Chicanas have to be more self aware of when we are reproducing the behaviors that silence and marginalize and subordinate other women and men who have different desires. I think straight Chicanas need to be more strategic about when we claim heterosexuality and when we blur that distinction. For example, I have a different effect on students when I talk about my partner rather than referring to him as my husband. I also know that at times we can appropriate space and time in ways that disrupt conventional norms about gender and sexuality. We can use our classrooms as places where gender and sexual identities will be experienced in less exploitative ways. I was teaching a case last fall in employment law having to do with medical benefits for an HIV positive employee who had lost his health insurance. I asked the class whether this employee could have done anything differently so as not to disclose his condition. One student joked that the employee should have avoided Rock Hudson’s parties. It was an off-the-cuff remark, but it got a laugh from some of the students. Next day I went back to class and asked the students to consider the use of humor, especially identity-based humor, in the workplace and how would they advise an employer to deal with the “Rock Hudson” remark in a jurisdiction that prohibits discrimination on the basis of sexual orientation. We had an interesting discussion about why humor is important and why “you people can’t take a joke” is not satisfactory legal advice. The students were definitely uncomfortable during this exercise but I tried to use their discomfort to help them think about how they might talk about this issue with clients.

I have been talking about the strategies straight Chicanas can use in situations in which they/we derive power and privilege from our heterosexuality. Displacements of sexual minorities, misallocations and appropriations of time and space, claiming and disclaiming normative sexuality are all strategies for disrupting this power and privilege. Finally, voice and silence are two other important strategies and tactics. Deciding to speak truth to power and speaking truth to people can be an indispensable technique for allying ourselves with GLBT’s; often, however, the best thing we can do is be quiet. Using silence strategically is an under-utilized form of expression. Despite considerable work on “silence and silencing,” I must admit that I haven’t conquered the impulse to make noise rather than to be silent. [HOLD SILENCE.]

Finally, I want to spend just a few moments going where Alma López has gone. I want to use images of Lady of Guadalupe to think critically about what's moral or immoral and what's good or evil.

Alma's courageous art has caused an impassioned but truncated debate among Catholics in New Mexico and, more importantly, her work has sparked important conversations within our *familias, entre nuestras tías y sus comadres*. Chicano Catholics in Santa Fe vilified Alma and Tey Mariana Nunn, the curator of the museum exhibit for including Alma's painting in an exhibition at the Museum of International Folk Art in Santa Fe, New Mexico. Some members of the Chicana/o community claimed that those of us Chicanas who are educated and those of us who defend Alma's art have broken our ties with the community. They assert that we don't speak for the Chicana/o community. I think we need to confront this charge.

The debate becomes one about ownership: whose icon is she and who can control how she is represented? Who can lay claim to *Nuestra Señora de Guadalupe*? The institutionalized church says we Chicanas can't have her, and we certainly can't have her if we dare envision her as fully woman. We must submit to the idea that she is not anatomically correct; she has no breasts, no nipples, no pubic hair, no vagina, and no erogenous zones. Under that *túnico* she wears, some would have us believe that she has the body of a Raggedy Ann.

Alma's work insists upon a spirituality that is animated by transgression. Her work makes us come to terms with different forms of repression. Here is the representation of a *Guadalúpana*, who having emerged out of colonialism, offers us a clear choice: she has been and is, for the patriarchal, colonizing Church, a figure of docile and silent submission. Or she can be, for us, a survivor, a woman of experience who understands and values autonomy, agency and desire because these values are hard-won. Alma's art is an act of resistance, an envisioning of an icon consistent with Alma's life experiences. We too must resist the Church's attempt to re-colonize this iconic figure.

I have learned important lessons through sexuality, lessons about good and evil, about passion and compassion, about humanity and divinity, about the secular and the sacred. My most important moral dilemmas often centered on my sexuality.

Many of us have had to learn painstaking lessons about loyalty, secrets, boundaries, health and sickness, fertility, life and death through our sexuality and desire. Many of us have faced sexual assault or sexual abuse, unwanted pregnancies, abortions, miscarriages, sexually transmitted diseases, sexual harassment and every form of dysfunctional relationship, whether hetero- or same sex. Those of us who are older admit to a wisdom that has been won, to a significant extent, through sexual experience. My self-esteem, always fragile, has been paid for by hard lessons of the heart and of the soul and of the body.

Alma's representation of a *Guadalúpana* with a woman's body allows for a spirituality and a religiosity that integrates our sexuality with our morality. A mature sexuality is not one-dimensional, regardless of our orientation. Our lives are not a continuum from child *virgens* to chaste mothers to de-sexed *abuelas*. For me, Alma's art confronts and challenges this myth maintained by the organized Church.

Theorizing a coherent code of mature and moral sexuality is an urgent concern for us as Chicanas. Many, if not most of us, have been raised in families with ties to Catholic beliefs, especially those teachings about what it means to be a good girl and a good woman. From my experience the educational and professional success of Chicanas, whether straight or queer, depends on coming to terms with our sexuality. Many Chicanas decide to leave school all along the pipeline from middle school to doctoral programs because we as a community have failed to deal in a mature way with sexuality. Chicanas are left to their own devices to deal with unplanned pregnancies, abortions, contraception, STD's, and for our lesbian sisters all of the pitfalls of coming out to families and friends. How many of us who are now professors haven't listened to the stories and wiped the tears of our Chicana students whose graduate studies are complicated or interrupted or disrupted because of issues around sexuality. Mostly we all deal with these issues with heavy silences and whispered solutions.

We must break this silence. We should initiate an ad campaign that identifies those of us who have had abortions, those of us who have survived sexual abuse or sexual assaults, those of us who love other women. This ad campaign should emphasize that our responses to sexuality are moral ones. Good and moral women have abortions, good and moral women experience and sometimes overcome sexual exploitation, good and moral women use contraception, good and moral women enjoy sex with other women. In the past, we have surrendered this debate about good

and evil to the organized Church and we must reclaim it. That is the power of Alma's art.

Coming to terms with my sexuality has been a difficult struggle for me personally. It's been a collective struggle for LatCrit and for NACCS as academic communities and it continues to be an issue as well for the society in which we live. How sexuality is negotiated is an important measure of an individual's, a community's and a society's maturity. The Catholic Church has some growing up to do with respect to sexuality and the current scandals over the widespread child abuse in the Church is evidence of that.

Concientización — there is no adequate translation for this concept. For me it has meant developing a consciousness about the inequalities of power — whether racialized, gendered, or monetized. Today I am calling on us to develop *una concientización sexual* — a mature morality that integrates our sexuality.

Traditional doctrine insists that we tame sexual desire by pretending that goodness and Godliness is defined by celibacy and abstinence, but the Church is simply wrong to insist that we accept a theology that negates and silences and suppresses a central part of our lives. To the extent that we believe in a life after death, many of us have won a chance at Heaven not by denying and suppressing our sexuality but by struggling to develop our capacity to experience joy through sexual desire and to honor the responsibility of not generating misery for ourselves and others through that capacity.

The genius of Alma's art is that it suggests that we can be saved through our sexuality not in spite of it. That is at the heart of the controversy. Thank you, Alma, for vindicating our struggles and for representing *la Guadalúpana* in a way that links our sexuality with beauty and joy here on earth and with redemption in the Hereafter.

Mil gracias