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SPEECH

UNIENDO COMUNIDADES BY LEARNING LESSONS AND MOBILIZING FOR CHANGE

MARGARET E. MONTOYA*

Muy buenas noches. Gracias por invitarme a participar en su conferencia. Gracias to Seattle Mayor Greg Nickels for lending the support of his office, to the conference sponsors, especially to Seattle University and University of Washington, to the conference organizers — David Mendoza, Brandy Schwartz, Emma Zavala-Suárez, and Martha Sandoval — to all of you who did the thankless and often invisible work that it takes to pull off a national conference of this magnitude. Gracias a los meseros, a las cocineras, a los bailarines, a los músicos, a todos los trabajadores que nos hacen de comer y que nos limpian estos espacios, ellos nos apoyan de lejos. Mil gracias to Antonio “Moe” Maestas, Miguel Velasco, and Brenda Williams for your clear vision, moral courage, and inspiring leadership in birthing this organization.

I regret not being here from the time the conference began but balancing family and work requires difficult choices. The choices are hard even when our work is wrapped up in family and community values and commitments. My work with you has that quality of being, at once, about professional commitments and personal values. I see me in you and you in me, the law student and law professor, the insider and outsider are all wrapped together in complex ways. I am simply delighted to be here.

I cannot believe it has been ten years since the first National Latina/o Law Student Conference. Last weekend I was in Las Vegas, Nevada for the Eleventh Annual LatCrit Conference.¹ LatCrit stands for Latina/o Critical Legal Theory; we are a multi-

* Professor of Law, University of New Mexico School of Law. This Speech is a lightly edited version of the keynote address delivered by Professor Montoya at the National Latina/o Law Student Conference (NLLSA) on October 14, 2006.

1. See *LatCrit XI Working and Living in the Global Playground: Frontstage and Backstage Program*, at the Williams S. Boyd School of Law, University of Ne-

racial, multiethnic group of progressive law professors who work to understand how race and law maintain, contain, sustain, and sometimes subvert power hierarchies. In calling this talk, “*Uniéndo Comunidades* by Learning Lessons and Mobilizing for Change,” I am borrowing the conference theme. My remarks this evening are inspired by the talk given by Professor Francisco (Frank) Valdés from the University of Miami Law School at the LatCrit meeting. I will begin with a few words about unifying Latina/o communities, about *uniéndo comunidades*. This I consider an organizational objective, one that endures from year to year. I am treating the other part of your theme, “Learning Lessons and Mobilizing,” as methods toward that end.

I. *UNIÉNDO COMUNIDADES*

Building community, that is, sustaining our connections to family and our ancestry is often hampered by going to law school. Law schools are highly adept at assimilating you into a profession and a worldview that can be at odds with who you were and how you saw the world before you began law school. Unfortunately, in order to fit in, it can seem advantageous to forget *tus raíces*, your roots.

Hanging around other Latinas/os, telling personal stories, being active with your Latina/o organization can combat the bleaching effects that law school can have on your identity, your commitments and your goals. It can take time and effort to participate in, support, and lead organizations with other Latina/o students. It can sometimes seem futile, especially as you struggle to reconcile disputes and manage the conflict that we engender among ourselves. Becoming adept at maneuvering through and rising above dissension, above *los chismes y mitotes*, is an ongoing task in all of our groupings and organizations and one that will serve you well in venues other than law school.

As you are attending to community on the small scale by participating and supporting your local Latino law student organization, you are also faced with large scale issues. One is informing yourself about the public policies being implemented along the United States-México border. It is likely that the outstanding panelists here at the conference have already analyzed with you the issue of immigration; the ludicrous minimization in many descriptions of the benefits that flow to this country in terms of human and cultural capital; the addictive availability of cheap labor and cheap products; the demonization and degradation of people who cross the border to do difficult and thankless work.

Over the decades, concerns with the border have hatched plans ranging from so-called repatriation programs to fortified fences, militarized patrols, and digitized forms of identification. Talk about sending Mexicanos back is not recent nor is it speculative. In the 1920s and 30s, about one million Mexicans were deported at an estimated cost of some 25 million dollars.² Again, in the mid 1950s, Operation Wetback deported, according to the PBS website, 3.8 million people of Mexican ancestry.³

Latinas/os are at the center of this debate. We can show leadership by bringing sensitivity towards other workers and other racial groups to the discussions about migration, immigration, and foreign workers. For example, in the United States we are *not* all immigrants. Native peoples were here long before there were borders. Africans were brought here in chains and Chinese and other Asians were barred from entering our borders. The contemporary effects of immigration are complex and the burdens sometimes fall on other low income workers. For example, we should acknowledge that some African-Americans are displaced by undocumented workers. In a related vein, there are no jobs that are done only by Latino immigrants. We Latinos must bring a nuanced inter-group analysis to the issue of immigration. We can and should avoid minimizing the problems faced by many working or unemployed folks, and we should advocate for better working conditions for workers generally.

Federal immigration policy-makers have always depended on those in our communities who favor closed borders and oppose granting citizenship to undocumented workers. Take Professor George I. Sánchez, from the University of Texas at Austin, the most important intellectual in the Mexican-American Civil Rights movement from the 1930s through the 1960s. Sánchez made many significant contributions but had very conservative ideas about citizenship. He — and both the League of United Latin American Citizens and American G.I. Forum — rejected citizenship for migrant workers and helped develop the idea that only certain Mexicans could be assimilated, and therefore, those who could not be assimilated, should not be eligible for citizenship. Such policies were connected to appeals to “whiteness,” an anti-discrimination strategy that categorized Mexicans and Mexican-Americans as racially white. The ramifications of these policy choices are still felt today. Progressive Latinas/os with an objective of *uniendo nuestras comunidades* must be at least minimally

2. FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, *DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930s* 121-22 (1995).

3. Public Broadcasting Service, *The Border: History*, <http://www.pbs.org/kpbs/theborder/history/index.html> (last visited May 22, 2007).

informed about the border and the history of immigration within our communities.

Let's for a moment broaden our focus to take in all of América Latina because it is undergoing a dramatic political shift. The economies of the important democracies are strong and vibrant: GDP growth (Growth Domestic Product) is above 3% and Argentina, Venezuela, and Chile are at 5.5%; compare this with 2.6%, the average over the last quarter century. To give you a point of comparison, the U.S. GDP is currently growing at about 2.6% and China's is 10.8%. Inflation in Latin America is below 5% except for Argentina and Venezuela. Because of this robust economic growth and the accompanying opportunities for foreign investment, the growing power of the leftist parties is causing great consternation, especially among multi-national corporations. Some of this was manifested when Hugo Chávez spoke at the United Nations this year. Chávez in Venezuela, Evo Morales in Bolivia, Luis Inácio Lula in Brazil are solidly against U.S. market reforms and Néstor Kirchner in Argentina, Michelle Bachelet in Chile, Alan García in Peru all lean left but are considered moderates in comparison to Chávez or Morales. México just had a contested election in which the leftist Andrés Manuel López-Obrador failed to win the presidency in light of widespread concerns of electoral corruption. I hear from Mexicanos that President-elect Felipe Calderón is met with showers of raw eggs wherever he appears in public.

Poverty and inequality, government ownership and control of land, water, mines, oil and gas reserves, women's rights, especially the right to contraception, legal identity of indigenous individuals and tribes — all of these issues are undoing the political compromises of the past. *Y por eso, uniéndo* our communities here in the U.S. will mean understanding the forces that are uniting and disuniting América Latina.

Our work always requires hard choices as we balance the demands on our time. How do we not feel overwhelmed and immobilized? How do we keep our everyday duties (exams, paper deadlines, jobs, caring for our families, finding healthy foods, exercising, hanging out) from blinding us to the historic issues of the day?

Building community, *uniéndo comunidades*, implicates what has been called the "glocal" — the global and the local — as an interlocking position, two views of the same goal or issue. Building community is a glocal task. We must attend to the tasks that surround us (the local) but we should occasionally use a wide angle lens to focus on issues of great importance to Latinas/os everywhere (the global). Doing so means searching out news

about the border and América Latina. There are terrific Latina/o bloggers in Spanish and English. Spend a few minutes each day reading about the world of Latinos at and beyond the border.

II. LEARNING LESSONS AND MOBILIZING FOR CHANGE

You happen to be law students at a time when the winds of change are blowing throughout the land. As Frank Valdés reminded us at LatCrit, historic times present both a tremendous opportunity and create a weighty responsibility for us. We in Lat-Crit, like you, have constructed an identity for ourselves as a group of progressive activists — you as law students and we as law professors.

We are living in an era in which the executive branch is consolidating power in an unprecedented manner. Wars are being waged in order to obfuscate the drastic changes that are being made to fundamental functions within our political, electoral, economic, religious, and social structures. From my point of view, the rule of law has been severely breached with horrifying consequences for those without power. These are historic times. I too went to law school during historic times: Vietnam, Watergate, the Nixon impeachment, and the *Bakke*⁴ decision were just some of the events that buffeted us as we tried to make sense of the law and our place in it. I became the news junkie that I am today.

At LatCrit, Frank analyzed a series of what he called “Big Lies” that have been used to consolidate political power. Frank described how such concepts as original intent, strict construction, patriotism, and majoritarianism, have been ripped from their usage and meaning in the judicial opinions and materials where they first appeared and have been applied in ways that entirely contradict their original significance. For example, mindless obedience and unquestioning loyalty towards government are today widely associated with patriotism rather than the armed revolution against tyranny that was the original notion about patriots.

As I listened to Frank and the many others at the LatCrit conference, you were on my mind. I wished that you students could have heard Frank’s eloquence and his compelling analyses. As I looked over the conference program for your conference, I wished that Frank and I and other LatCrit professors could have attended many of the sessions you worked so hard to organize. Isn’t it time that we start coordinating our conferences so that you in NLLSA can support our LatCrit work and we can support yours in more immediate and direct ways? Shouldn’t we meet as

4. Board of Regents v. Bakke, 438 U.S. 265 (1978).

progressives with shared goals to identify the areas of mutual interest and then strategize to find ways of creating synergy in order to maximize our scarce resources?

My hope is that NLLSA and LatCrit can develop a strategic alliance. In the meantime, I have two specific areas that I think require our best learning and optimal mobilization: I am talking about the Get Out The Vote efforts for the next election and the upcoming decision from the Supreme Court in the K-12 affirmative action cases.

Some of you may know that I was very involved in the *Grutter*⁵ litigation. I was a witness for the student intervenors. Also, under the auspices of SALT, the Society of American Law Teachers, I helped organize a march in the streets of San Francisco in January of 1998 and another one in Washington D.C. on April 1, 2003, in support of affirmative action in student admissions.

Since celebrating our collective victory in *Grutter* and *Gratz*,⁶ I have been working to make sure that our law school's policy was amended to include race as one of the factors to be considered in the application review process. The attacks on affirmative action had caused retrenchment at the University of New Mexico (UNM) and many other schools. *Grutter* allowed us to reclaim an emphasis on racial inclusivity and new insights into diversity.

The attacks on affirmative action — through litigation, initiatives, and referenda — made those of us who sought to support the policy think seriously and deeply about such issues as the educational benefits that flow from a diverse classroom. What benefits? What evidence? Many of us struggle to realize those benefits by altering and adjusting our teaching techniques as we try to involve all students in classroom dialogue in order to expose and alter the dynamics that privilege some students and disadvantage others.

Students, especially students of color, were at the forefront of the responses to these attacks on affirmative action. Students gained priceless experience in legal analyses, community organizing, and working with the media. *Grutter* taught us all important lessons about law, race and power and about building coalitions with schools, business, and the military. As affirmative action comes under attack, many law schools, including UNM, have begun to work with the public schools to improve educational outcomes and enhance college readiness. These “pipeline programs” are not new; medical schools have been working with public

5. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

6. *Gratz v. Bollinger*, 539 U.S. 244 (2003).

schools in federally funded partnerships for more than ten years. The American Bar Association, the American Association of Law Schools, the Law School Admission Council are creating incentives and compiling know-how in order to persuade deans and law professors to get involved in K-12 schools.

This is an issue of enormous importance to our communities. For example, in New Mexico two thirds of all public school students are already students of color — specifically, fifty three percent are Latinas/os and eleven percent are Native American students. We continue to have astoundingly high drop out rates. The crucial times are between ninth and tenth grades and again from second to third semester in college. This is a national issue. Large percentages of Latinos, African-Americans and Native American students are undereducated; some are functionally illiterate and unemployable. You law students — with your proven capacity to think critically, write competently and easily in a variety of formats, to organize and manage groups of people and to raise financial resources, and to design programs and projects — are perfectly positioned to take the lead on developing and expanding partnerships with public schools.

We can use the tremendous resources in the legal academy, especially your talents and skills, to have a direct and positive impact on public education. Schools need you. Your imagination and collective energy are the foundation for these programs. Abundant information now exists to help you develop such outreach, mentoring, tutoring, and parental involvement initiatives. Regardless of what the Supreme Court decides in the upcoming affirmative action cases, those of us with knowledge, credentials, experience, and skills must repay the sacrifice that others made for us. We can do so by strengthening public education. What is it going to take? *Ganas*.

A persistent feature of low performing schools is residential segregation. Typically large urban centers have disproportionately high rates of students of color and suburbs have disproportionately high rates of white students. The school board in Seattle voted to integrate schools with a program called “managed choice” in which families and students would be given their choice of school unless the school was over-subscribed. Then, a series of tiebreakers were used considering the following factors: 1) keeping siblings together; 2) race (the objective was to bring schools to a 40-60 mix with 40% white and 60% minority); 3) proximity between home and school; and 4) a lottery.

A group called Parents Involved in Community Schools sued under the U.S. Constitution, Title VI and the state’s Initiative 200 which prohibits preferential treatment on the basis of

race, ethnicity, or gender.⁷ The District Court rejected the suit and parents appealed. The United States Court of Appeals for the Ninth Circuit rejected the school district's policy, which led the school district to drop the racial tiebreaker in 2002. The Ninth Circuit asked the Washington Supreme Court to consider whether the policy violated Initiative 200. The state supreme court concluded that Initiative 200 did not prohibit the open choice plan so long as it was neutral on race and did not promote a less qualified applicant over a more qualified applicant. An en banc Ninth Circuit upheld integration tiebreakers in the Seattle School District's open choice, public high school assignment plan. Four judges took issue with notice that racial diversity serves a compelling state purpose because research is mixed on whether students benefit academically.

Importantly some conservatives, notably Judge Kozinski in the Ninth Circuit and Chief Judge Boudin in the United States Court of Appeals for the First Circuit, have issued opinions approving of these policies. Moreover local politicians often design these policies, and judicial deference is a revered conservative principle that vies in these cases with the importance of color-blind policies.

The companion case is from Kentucky and pertains to the open choice plan in the Louisville schools.⁸ Unlike Louisville, Seattle does not have a history of de jure segregation. It remains to be seen if Chief Justice Roberts can craft a narrow decision that honors *stare decisis* (the ink on Justice O'Connor's opinion in *Grutter* and *Gratz* is still wet on the page) and advances a conservative agenda on affirmative action.

III. GANAS Y CORAZÓN

Let me catch my breath. I began by talking about *uniendo comunidades* as a progressive objective and have been talking about the second part of your conference theme, learning lessons and mobilizing for change, as methods to achieve the objective. I am making a plea that you work more closely with us in LatCrit to create an alliance between progressive law students and law professors that will advance both of our agendas. I use the mobilization around affirmative action as one example. By working closely together we learned invaluable lessons and realized a jurisprudential victory on behalf of our communities. We have that

7. See *Parents Involved in Cmty. Schs v. Seattle Sch. Dist.* No. 1, 426 F.3d 1162 (9th Cir.) (en banc), *rev'd*, 127 S.Ct. 2738 (2007).

8. See *McFarland ex rel. McFarland v. Jefferson County Pub. Sch.*, 419 F.3d 513 (6th Cir. 2005) (per curiam), *cert. granted sub nom. Meredith ex rel. McDonald v. Jefferson County Bd. of Educ.*, 126 S.Ct. 2351 (2006).

opportunity and that responsibility once more as the Supreme Court again considers the racial integration of K -12 systems. LatCrit has begun to think about how we will respond to whatever is decided by the Court. We solicit your help and participation.

Finally, let me turn to one last issue. Over the last year we have seen millions of Latinas/os take to the streets to reject the cynicism, the racism, and the futility of immigration proposals exemplified by the legislation and rhetoric of Representative James Sensenbrenner (R - WI) and Tom Tancredo (R - CO). Signs read and marchers chanted, "*Hoy marchamos, mañana votamos.*" Today we march, tomorrow we vote. "*El voto es nuestra voz.*" Our vote is our voice. If only it were so. Latinos and voters in your age group have historically voted in disproportionately small numbers. Statisticians are reporting that the massive marches did not result in substantial new voter registrations. We have about three weeks before the election — this is a historic election. I implore you to get out the vote. Ensure that your families vote. Get your friends to the polls. Get the voter information maintained by the League of Women Voters. Each one of you has the ability to read, understand, interpret and communicate this information to others. What is it going to take? *Ganas y corazón.*

These are historic times. These are times that make a claim on you and your talents. This afternoon we gathered in a circle of Latinas with a few Latinos. We told personal stories about complicated choices about time spent with family, school or work, about our changing identities and family relationships, about grief and loss, about self-doubt and fear. Institutions such as law schools that conserve and apportion power are institutions that are carefully controlled. Outsiders are pressured to conform. You are tested to see if you are worthy to enter a profession that speaks for, represents, and protects power. Lawyers are problem solvers and power brokers, and law schools are designed to teach you to respect, desire, wield and bequeath power.

Nothing will cure the injuries, abrasions, and bruises to your heart, your soul and your dignity like working with those who have little power, money or prestige. I am not proposing charity. Our communities are filled with people who have little formal education but who know volumes about solving problems, conserving resources, and being inventive and ingenious. They too are problem solvers; they are in your families and in your barrios.

Our future — our community's future — depends on drawing on the talents of educated students such as yourselves. You are scarce and valuable resources. You are the community's treasure. But remember that the talents and competencies of others

who are not formally trained and credentialed are often ignored and trivialized. It is likely that you will be stewards of the nation's treasure. You in this room will be the future policy makers, judges, legislators, and counselors to capital. As I look around, I am very hopeful. What is *uniendo nuestras comunidades* going to take? *Ganas, corazón y suerte. ¿Se puede? Claro que sí. ¿Se puede? ¡Sí se puede!*