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***SI SE PUEDE? CHICAGO LATINOS
SPEAK ON LAW, THE LAW SCHOOL
EXPERIENCE AND THE NEED FOR
AN INCREASED LATINO BAR***

JUAN CARLOS LINARES*

When I arrived home that night, I found my mother sobbing uncontrollably on the floor. She collected herself enough to tell me that they had taken Augie, my younger brother, away in handcuffs; that he was a suspect in a murder. I was a freshman in college at the time. I didn't know what to do. I didn't know whom to turn to. We were powerless in enforcing our rights or Augie's rights, and we were at a complete loss for words.¹

Latinos are invariably affected by many of the same legal issues that arise among the U.S. population at large. Indeed, in 1994, Augustin Torres-Linares was arrested and criminally prosecuted under procedures that most defendants and their families face in similarly-situated cases. Yet, the experience affects the Latino individual, and especially the Latino family, in ways it generally does not affect the American mainstream.

The legal system is currently being tested through its response to the growing needs of the Latino population, particularly in the Chicago metropolitan area, where there has been an unan-

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¹ Interview with Monica Torres-Linares, Staff Attorney, Legal Assistance Foundation of Metropolitan Chicago, President, Hispanic Lawyers Association of Illinois, in Chicago, Ill. (Mar. 10, 2008).

ticipated recent surge in immigration and Latino residency. For example, language barriers obstruct proper communication between officers of the law and Latinos in need of assistance. Similarly, deportation concerns frustrate well-intentioned immigrants from seeking various protections under the law.

Members of mainstream society, including those in law enforcement, the judicial system and the political process, remain unsympathetic to the unique problems facing the Latino community when it comes to legal issues. Accordingly, these real-world dilemmas present opportunities and challenges that are perhaps more capably, if not also more passionately, met by lawyers with Latino-ethnic backgrounds.

This article illuminates the need for significantly more Latino lawyers in the Chicago area by illustrating the increased population of Latinos and describing the unique circumstances they face within the legal system. Part I defines the “Latino” population and presents statistical evidence of a swelling Latino client-base. Part II of this article further examines the language barriers inherent in Latino interactions with the legal system and issues particularly consequential to Latinos, like immigration and criminal justice. Part III of this article highlights possible barriers to increasing the Latino Bar. Particularly, it scrutinizes the law school experience, which is, at times, foreign to students of all backgrounds, but is especially harrowing for Latino students for whom the circumscribed, institutional customs reflect a break from the expected norms and community-oriented behaviors of Latino cultures. Part III also describes conditions in law school, such as the lack of class discussion of Latino legal issues and the pressure for law graduates to choose careers with substantial earnings that deter Latino lawyers from addressing many of the problems inherent in the Latino community. Part IV concludes that increasing the presence of Latino lawyers in the Chicago area is a challenge that can and must be met in the near future.

I. DEFINING THE POPULATION THAT NEEDS TO BE SERVED

In order to properly serve the population in question, we as lawyers and legal scholars must ask ourselves: Who or what exactly are Latinos? Are we defined by race or by the myriad of skin tones? Is it the Spanish language that bonds us as a community, or is it the Latin American countries from which we and our ancestors have traveled?

These questions are, and have always been, difficult to answer in short. What follows are my conclusions based upon historical analysis, statistical research and personal experience.

A. *Latinos: Who Are We?*

The 1848 Treaty of Guadalupe Hidalgo, which ceded much of Mexico to the United States, guaranteed the first Mexican-Americans “the enjoyment of all rights of citizens of the United States and according to the principles of the Constitution”² Puerto Ricans were granted U.S. citizenship under the Jones Act of 1917, 19 years after initial U.S. conquest of the island via the Spanish-American war.³ What ensued was the type of discrimination, intolerance and inequity that African-Americans experienced in the Jim Crow South.⁴ Signs with slogans such as “No Mexicans or Dogs Allowed” were ubiquitous in the southwest.⁵ Segregated Puerto Rican infantry groups served in World War II, only to return to poverty in the island or mainland enclaves.⁶

It was not until 1954 when the Supreme Court case *Hernandez v. Texas*, a key precursor to *Brown v. Board of Educa-*

² REYNALDO ANAYA VALENCIA ET AL., *MEXICAN AMERICANS AND THE LAW* 3 (Adela de la Torre ed. Univ. of Az. Press 2004).

³ JUAN GONZALEZ, *HARVEST OF EMPIRE: A HISTORY OF LATINOS IN AMERICA* 60, 62 (Penguin Books 2000).

⁴ VALENCIA, *supra* note 2, at 8.

⁵ *Id.*

⁶ GONZALEZ, *supra* note 3, at 86.

tion, held that Latinos, specifically Mexican-Americans, constituted an identifiable class under the Fourteenth Amendment of the U.S. Constitution, thus requiring protection under the law.⁷ The plaintiff in the case sued the state of Texas, alleging that Mexican-Americans were systematically excluded from serving as jurors in the county where the plaintiff lived, despite the fact that there were fully qualified Mexican-Americans living in that county.⁸ His initial burden was proving that Mexicans “constituted a separate class, distinct from whites.”⁹ Although the state argued that the Fourteenth Amendment contemplated only two classes, “white and Negro,” the Court held that “[t]he Fourteenth Amendment is not directed solely against discrimination due to a ‘two-class theory’—that is, based upon differences between ‘white and Negro.’”¹⁰ The Court’s reasoning was based, in part, upon a factual showing of the community’s own attitude toward persons of Mexican descent. County residents admitted to distinctions between the whites and Mexicans, whites and Mexicans were segregated into separate schools, and signs announced “Hombres Aqui” at the courthouse itself.¹¹

A decade later, the Civil Rights Act of 1964 was implemented to ensure the rights of women and minorities against segregation and discrimination.¹² But then, in the 1970s, when the U.S. Census Bureau began counting the population by race, the controversy regarding the white-versus-black paradigm resurfaced.¹³ The term “Hispanic” did not appear on the census form until 1980, and all people with Spanish surnames were deemed His-

⁷ 347 U.S. 475, 480 (1954).

⁸ *Id.* at 476.

⁹ *Id.* at 479.

¹⁰ *Id.* at 477-78.

¹¹ *Id.* at 479-80.

¹² Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

¹³ Jana Kasperkevic, *Latino v. Hispanic: Battle of Synonyms?*, TICKER, Oct. 31, 2005, <http://media.www.theticker.org/media/storage/paper909/news/2005/10/31/News/Latino.Vs.Hispanic.Battle.Of.Synonyms-1781241.shtml> (last visited Nov. 7, 2008).

panic.¹⁴ In its latest questionnaire for the year 2000, the U.S. Census form began its categorization by race or ethnicity at Page 1, Question 7.¹⁵ It asks, “Is Person 1 Spanish/Hispanic/Latino?”¹⁶ This can be interpreted both as respect by the U.S. government toward an increasingly important cultural group and as an admission that “Hispanic/Latino” does not fit into the customary racial paradigm. Indeed, it is the next question on the form, Page 1, Question 8, that subsequently asks “What is Person 1’s race?”¹⁷

The language of the 2000 Census form may have been a response to the 1990s debate within the Latino community about its own identity. The term “Hispanic,” a construct of the U.S. government, could be interpreted to include individuals of Spain, Spanish-speaking countries and even places with links to Spain, like the Philippines.¹⁸ This seemed like a superficial, if not far-fetched, connection to peoples in established Chicago communities like Mexican-American Pilsen and Puerto Rican Humboldt Park, whose only tangible bond to Spaniards is the Spanish language. During this period, the term “Latino” gained strength as not only a more accurate description of the subgroup but also as an expression of self-determination such that today, “Latino” is defined by Webster’s Dictionary as “a person of Latin-American origin living in the United States” and is the term used in this article.¹⁹

¹⁴ *Id.*; see also Minnesota Population Center, IPUMS USA, 1980 Census: Instructions to Respondents, <http://usa.ipums.org/usa/voliii/items1980.shtml> (last visited Nov. 7, 2008)

¹⁵ United States Census 2000, Form D-61A, <http://www.census.gov/dmd/www/pdf/d61a.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ RICHARD DELGADO & JEAN STEPHANIC, *THE LATINO CONDITION* 52 (New York University Press 1998); Luis Angel Toro, *A People Distinct From Others: Race And Identity In Federal Indian Law And Hispanic Classification In OMB Directive No. 15*, 26 TEX. TECH. L. REV. 1219, 1246-1252 (1995).

¹⁹ Merriam-Webster Online, <http://www.merriam-webster.com/dictionary/Latino> (last visited Nov. 7, 2008).

Accordingly, for the purposes of this article, the term “Latino,” both in the individual and collective meaning, refers to immigrants or descendants of immigrants from the Spanish-speaking countries and territories of North, Central and South America and the Caribbean.²⁰ Included in this definition are Brazilians or descendants of Brazilians who, though Portuguese speakers, share many of the cultural, social and political values that Spanish-speaking Latinos accept as normative.

B. The Surging Latino Population

I’ve lived in Chicago since 1999, and when I arrived, I was surprised to see so many Latinos in so many established neighborhoods. Not only that, but when I do periodically return to the Quad Cities, I see a visible increase in the Latino population there as well.²¹

The above observations made by Monica Torres-Linares, a Chicago attorney and local Latino-rights advocate, are bolstered by statistics. According to the latest figures, Latinos account for 14.5% of the U.S. population, at 44.3 million people.²² Latinos form the largest minority group in the country, a group that is still growing rapidly. In fact, projections show that Latinos will constitute nearly one-quarter of the U.S. population by 2050.²³

²⁰ These countries include Mexico, Guatemala, Belize, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Ecuador, Venezuela, Peru, Chile, Bolivia, Argentina, Uruguay, Paraguay, the Dominican Republic and Cuba. The territory of Puerto Rico is also included.

²¹ Interview with Monica Torres-Linares, *supra* note 1.

²² U.S. CENSUS BUREAU, HISPANIC POPULATION OF THE UNITED STATES, http://www.census.gov/population/www/socdemo/hispanic/hispanic_pop_presentation.html (follow “Hispanic Population: 2000 to 2006 .xls” link) (last visited Nov. 25, 2008).

²³ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 19 tbl.19 (1999).

Interestingly, by 2020, Latino growth will stem mainly from the second generation, rather than immigration.²⁴

The Chicago area has been largely shaped by this demographic phenomenon. At 1.7 million people, 20% of Metropolitan Chicago's population is Latino, comprising the "region's largest racial/ethnic minority."²⁵ The Chicago area has the 15th largest Latino population in the United States, and the Chicago Latino population by itself is as large as the entire populations of metropolitan San Antonio or Indianapolis.²⁶ As the area-wide population is projected to increase to 1.6 million people by 2030, one-third of that growth will be Latino.²⁷

As a significant number of Latinos have called Chicago home for more than 80 years, Latinos truly have "deep roots in the area."²⁸ From this author's viewpoint, some neighborhoods, like Pilsen, Little Village and South Chicago to the south, and Logan Square and Humboldt Park to the west and north, have maintained a dominant Latino presence and cultural environment for decades. One need only visit the Mexican-themed entrance gate at 26th Street in Little Village or the 59-foot high twin Puerto Rican flags on the *Paseo Boricua* of Humboldt Park to recognize that Latino influence is robust and energetic.²⁹

Amazingly, as a result of immigration and domestic births, from 1970 to 2004, Latinos have made up 96% of the metro re-

²⁴ Liwen Mah, *The Legal Profession Faces New Faces: How Lawyers' Professional Norms Should Change To Serve A Changing American Population*, 93 CAL. L. REV. 1721, 1737 (2005).

²⁵ BERENICE ALEJO & SYLVIA PUENTE, INST. FOR LATINO STUDIES, UNIV. OF NOTRE DAME, FORGING THE TOOLS FOR UNITY: A REPORT ON METRO CHICAGO'S MAYORS ROUNDTABLES ON LATINO INTEGRATION 7 (2007) (citing U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY (2006)).

²⁶ *Id.*

²⁷ *Id.* See TIMOTHY READY & ALLERT BROWN-GORT, INST. FOR LATINO STUDIES, UNIV. OF NOTRE DAME, THE STATE OF LATINO CHICAGO: THIS IS HOME NOW 3 (2005).

²⁸ *Id.* at 1.

²⁹ Puerto Rican Cultural Center Website, Fiesta Boricua, http://prcc-chgo.org/?page_id=55 (last visited Nov. 12, 2008).

gion's growth.³⁰ Dispelling the critics' community concerns of excess immigration is the fact that 72% of Latino's *recent* population growth is actually from "the local maternity ward."³¹ Moreover, two-thirds of the Latinos in the Chicago region are citizens.³² Interestingly, 55% of Chicago-area Latinos currently reside in the suburbs.³³

Illinois could have lost a Congressional seat in the latest congressional redistricting were it not for its Latino population growth.³⁴ Economically, Latinos account for 15% of the region's work force and are responsible for 50% of the increase in owner-occupied homes.³⁵ As such, "Latinos [in Illinois] have regional household income in excess of \$20 billion," and have contributed to the rise of Mexico as the state's second largest trade partner.³⁶ As one commentator puts it, "[I]f they fail, the region fails, so it's in everyone's best interests to work together."³⁷

This explosion of the Chicago Latino population increases the likelihood that attorneys will come into contact with Latino clients.³⁸ As a result, it is imperative that Chicago area attorneys can identify the unique legal challenges facing Latino communities, not merely to competently serve this client base, but also to avoid the disillusionment of Latino clients who will avoid legal assistance if they feel there are no empathetic, competent attorneys available to them.³⁹

³⁰ READY & BROWN-GORT, *supra* note 27, at 5.

³¹ *Their Future, Our Future*, CHI. SUN TIMES, Nov. 26, 2007, at 27.

³² READY & BROWN-GORT, *supra* note 27, at 21.

³³ ALEJO & PUENTE, *supra* note 25, at 7.

³⁴ *Id.* at 3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Their Future, Our Future*, *supra* note 31.

³⁸ Mah, *supra* note 24, at 1721.

³⁹ *Id.* at 1722.

II. IDENTIFYING THE LEGAL ISSUES UNIQUE TO LATINO COMMUNITIES

Some of the most salient issues affecting the Chicago Latino community include immigration, the dilemma of a language barrier, and the omnipresent danger of crime and criminal prosecution. This section confronts each issue in turn.

A. *Issues in Immigration*

On May 1, 2006, in one of the largest rallies in the country, almost half a million people marched through downtown Chicago in solidarity against legislative measures aimed at curtailing the employment and rights of undocumented immigrants.⁴⁰ Notwithstanding the broad array of flags waved in the march and the scattered ethnicities found throughout the crowds, the overwhelming presence on the street was Latino.⁴¹ This scene was nearly duplicated a year later, exhibiting not just the strength of Chicago immigrants in numbers, but the magnitude of the immigration issue itself.⁴²

Statistically, immigration to Chicago peaked in 2000 at an unprecedented 40,000 new immigrants.⁴³ Today, of 740,000 foreign-born Latinos in the region, an estimated 200,000 to 250,000 are undocumented.⁴⁴ Lucia Velazquez, a second year law student at DePaul University, lived in the United States with her family as an undocumented resident for over 15 years.⁴⁵ Born in Medellin, Columbia, it was not until her sophomore year as an undergrad-

⁴⁰ Michael Martinez, *Rallies draw over 1 million; Economic impact not clear, but businesses note worker shortages*, CHI. TRIB., May 2, 2006, § 1 at 13.

⁴¹ *Id.*

⁴² HispanicTips, *150,000 March on Chicago*, <http://www.hispanictips.com/2007/05/02/150000-march-chicago-crowd-exceeds-expectations-many-participants-cite-last-weeks-little-village-raid/> (May 7, 2007).

⁴³ ALEJO & PUENTE, *supra* note 25, at 6.

⁴⁴ *Id.* at 10.

⁴⁵ Interview with Lucia Velazquez,* law student, DePaul University College of Law, Chicago, Ill. (Feb. 29, 2008) (student was in first year of law school at

uate at Northeastern Illinois University that she went through the naturalization process.⁴⁶ She describes her response to the naturalization process as follows: “I was weirded out by questions regarding my loyalty to the U.S. - I had been living here since I was six years old!”⁴⁷

This heightened notion of patriotism, combined with the current economic downturn and election year frenzy, led to “an increasing disconnect between law and reality,” resulting in “immigration policies [that] hamper, rather than encourage economic growth,” labor mobility and community unity.⁴⁸ Illegal immigration benefits government revenue more than legal immigration. The Social Security program’s trustees noted in their 2008 annual report “that growing numbers of ‘other than legal’ workers are expected to bolster the program over the coming decades.”⁴⁹

Many undocumented workers pay an assortment of taxes while working in the United States but will never collect the benefits.⁵⁰ This windfall is expected to shore up 15% of the Social Security system’s projected long-term deficit, roughly equal to a 0.3% increase in the payroll tax.⁵¹ Moreover, undocumented workers, who are entering the United States at ever younger ages, are contributing to a substantial increase in working-age taxpayers, but only a minimal increase in retirees receiving benefits.⁵²

the time this article was written). *Pseudonym used to protect student privacy.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ ALEJO & PUENTE, *supra* note 25, at 10 (citing Chicago Council on Foreign Relations 2 (2004)).

⁴⁹ Editorial, *How Immigrants Saved Social Security*, N.Y. TIMES, Apr. 2, 2008, at A26, available at <http://www.nytimes.com/2008/04/02/opinion/02wed3.html?th&emc=th>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

Despite these advantages, Sheila Maloney, a U.S.-born Brazilian-American with dual citizenship, thinks the media storm surrounding the immigration debate causes a further rift and inter-ethnic tension amongst the poor or uninformed populace, who she believes “should be working together to resolve common legal issues.”⁵³ This mainstream push to force immigrants to abide by “American” customs and norms has led to, in this author’s opinion, extreme positions, such as the building of a border fence or the restricting of health care services for undocumented immigrants. One result is that Latinos have looked inward to retain “social norms that do not conform to the traditional American melting pot metaphor.”⁵⁴

In cities like Chicago, the concentration of Latino immigrants with similar norms has made avoiding outsiders nearly effortless, especially in regard to professional services.⁵⁵ When Lucia Velazquez’s family went through the naturalization process, they contracted an unlicensed facilitator she deemed “uncaring and wholly concerned about money,” leading Velazquez to label the process “a questionable practice.”⁵⁶ The use of unlicensed facilitators may seem like a dodgy proposition in mainstream communities, but it is due in part to the legal profession’s inability to adapt itself to the norms of the Latino community. The result is latent distrust of the legal institution, which has effectively deterred the Latino community from confidently seeking a lawyer’s services.⁵⁷ Indeed, immigrants who are used to life without relying on lawyers or the legal system may see the retention of legal services as unnatural and the bureaucratic court system as unwelcoming.⁵⁸ As such, unlicensed facilitators and

⁵³ Interview with Sheila Maloney, Assistant Director, Program on Negotiation and Mediation, Northwestern University School of Law, in Chicago, Ill. (Mar. 15, 2008).

⁵⁴ Mah, *supra* note 24, at 1734.

⁵⁵ *Id.* at 1736.

⁵⁶ Interview with Lucia Velazquez, *supra* note 45.

⁵⁷ Mah, *supra* note 24, at 1748.

⁵⁸ *Id.* at 1748-49.

other unregulated paraprofessionals are able to thrive, and even become cultural institutions in concentrated Latino neighborhoods, regardless of quality or standards.⁵⁹

While the legal system has been slow to respond to Chicago's ever-increasing immigrant communities, local community organizations have traditionally served as social benefactors for the betterment of Latino communities. For example, the Chicago Community Trust grants for Latinos at the local level and the New Americas Initiative assists in the pursuit of citizenship.⁶⁰ Even former Illinois governor Rod Blagojevich signed an executive order establishing an Office of New Americans Advocacy and Policy.⁶¹ But all is not lost when it comes to enforcing the legal rights of immigrants. Besides Chicago community organizations, the National Immigrant Justice Center provides direct legal services to undocumented immigrants and immigrant refugees in their asylum petitions before federal asylum officers and up through the Seventh Circuit Court of Appeals.⁶²

On a national level, the rights under the Equal Protection Clause of the children of undocumented immigrants have been recognized by the Supreme Court in *Plyler v. Doe*.⁶³ The Court held, by a narrow five-to-four majority, that an attempt to deny the children of undocumented immigrants the benefits of a public education violated the Equal Protection Clause of the Fourteenth Amendment.⁶⁴ The Court recited the Fourteenth Amendment, emphasizing that “[n]o State shall. . . deprive any person of life, liberty or property, without due process of law;

⁵⁹ Interview with Monica Torres-Linares, *supra* note 1.

⁶⁰ Chicago Community Trust, *Nuestro Futuro – Our Future*, <http://www.cct.org/page30296.cfm> (last visited May 19, 2009); Resurrection Project, *New Americas Initiative Citizenship Workshop*, <http://www.resurrectionproject.org/calendar.aspx?pointer=4810&view=past> (last visited May 19, 2009).

⁶¹ ALEJO & PUENTE, *supra* note 25, at 9.

⁶² Nat'l Immigrant Justice Ctr., <http://www.immigrantjustice.org/about/> (last visited Nov. 15, 2008).

⁶³ 457 U.S. 202 (1982).

⁶⁴ *Id.* at 224-25.

nor deny *any person within its jurisdiction* the equal protection of the laws.”⁶⁵ *Plyler*, argued by attorneys from the Mexican American Legal Defense Fund (MALDEF), exemplifies improvements that have been made to bridge the gap between the legal profession and the Latino community. *Plyler* shows that lawyers who empathize with or attempt to understand the clients’ backgrounds will successfully break through to clients and, in the process, will also dispel misperceptions of lawyers as “cold, uncaring, uncommunicative, [or] disinterested in anything but the ‘relevant facts’”⁶⁶

In essence, a culturally aware attorney can effectively inform Latino immigrant clients of the decision-making process and educate them about the benefits of the U.S. legal system.⁶⁷ As one lawyer emphatically states, “It is the responsibility of lawyers to understand these cultural norms and to devise new legal norms that will better serve the diverse populations of this country.”⁶⁸ The nation as a whole will benefit when Latinos “gain greater appreciation and awareness of American law and norms.”⁶⁹ Correspondingly, Latino immigration, which has indeed benefited this nation socially, politically and economically, should be cultivated and encouraged.⁷⁰

⁶⁵ *Id.* at 210. See *Lau v. Nichols*, 414 U.S. 563, 566 (1974) (explaining that “[T]here is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”).

⁶⁶ Mah, *supra* note 24, at 1750 (quoting Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U.L. REV. 1337, 1411-12 (1997)).

⁶⁷ *Id.* at 1757.

⁶⁸ *Id.* at 1772.

⁶⁹ *Id.* at 1764.

⁷⁰ The Statute of Liberty-Ellis Island Found., *The Peopling of America 1820-1880*, http://www.ellisland.org/immexp/wseix_5_2.asp (last visited Nov. 15, 2008).

B. Issues with the Language Barrier

There was a time in the past when immigrants were expected to give up their identity in the process of becoming “American.” Elizabeth Gutierrez, formerly an attorney for the City of Chicago Department of Law, remarks that her grandparents “took pride in learning English and fitting into society.”⁷¹ Monica Torres-Linares observes that her adopted grandmother’s family, arriving from Jalisco, Mexico to Moline, Illinois in the 1920s, “learned English to survive as they were the first of a very small population.”⁷² But today’s culture is such that Latinos are in no hurry to lose their language.⁷³ In the Chicago area, over three-quarters of Latino households use both English and Spanish.⁷⁴ In essence, Latinos in the Chicago area “are both becoming ‘American’ and retaining a strong ethnic identity.”⁷⁵

Spanish-speaking Latinos, however, have historically faced an uphill battle in effectively communicating with the court system, either through lawyers or interpreters. They run the risk of becoming “uninformed observers, possibly understanding less about their own trial than anyone else in the courtroom.”⁷⁶ This condition subjects Spanish-speaking Latinos to severe discrimination in both courtrooms and the political process, as some minimal knowledge of English is considered necessary to understanding one’s rights.⁷⁷ Unlike immutable characteristics like race and gender, or even physical disability, the lack of English fluency is regularly blamed on the speaker.⁷⁸ Arizona’s prohibi-

⁷¹ Interview with Elizabeth Gutierrez, former Assistant Corporation Counsel, City of Chicago Dep’t of Law, in Chicago (Apr. 10, 2008).

⁷² Interview with Monica Torres-Linares, *supra* note 1.

⁷³ ALEJO & PUENTE, *supra* note 25, at 6.

⁷⁴ *Id.* at 7.

⁷⁵ *Id.* at 6.

⁷⁶ Daniel J. Rearick, *Reaching Out to the Most Insular Minorities: A Proposal for Improving Latino Access to the American Legal System*, 39 HARV. C.R.-C.L. L. REV. 543, 543 (2004).

⁷⁷ *Id.* at 544.

⁷⁸ *Id.* at 560.

tion on non-English communication, discussed in *Yniguez v. Arizonans for Official English*, is the best evidence of this attitude.⁷⁹

In November of 1988, 50.58% of Arizona voters approved Article XXVIII of the Arizona Constitution, which amended the document to read that the “State and all . . . political subdivisions [of this State] . . . shall act in English and in no other language.”⁸⁰ The Court of Appeals for the Ninth Circuit struck down the constitutional article, noting:

[u]nder Article XXVIII, of course, the state is not singling out one word for repression, but rather entire vocabularies. Moreover, the languages of Cervantes, Proust, Tolstoy, and Lao-Tze, among others, can hardly be described as “scurrilous.” In this case, therefore, the Court’s admonishment that “in a society as diverse and populous as ours” the state has “no right to cleanse public debate” of unpopular words, rings even truer While Arizonans for Official English complains of the “Babel” of many languages, . . . this “verbal cacophony is . . . not a sign of weakness but of strength.”⁸¹

Regrettably, the Ninth Circuit Court of Appeals later reversed the ruling *en banc*.⁸² The Arizona Supreme Court eventually struck down the article as violating the First and Fourteenth Amendments of the U.S. Constitution.⁸³ But the language of the original decision points to a larger central theme, which recognizes that legal solutions to official language barriers require the full participation of the legal profession to “actively seek out

⁷⁹ 42 F.3d 1217, 1220 (9th Cir. 1994).

⁸⁰ *Id.* at 1221.

⁸¹ *Id.* at 1232.

⁸² *Yniguez v. Arizonans for Official English*, 69 F.3d 920 (9th Cir. 1994).

⁸³ *Ruiz v. Hull*, 191 Ariz. 441 (1998).

means of providing higher quality services to those who do not speak proficient English.”⁸⁴

Other federal circuits have also confronted the issue of language barriers to Latino immigrants. In *Negron v. New York*, the Second Circuit held that the Sixth Amendment right to confront adverse witnesses guarantees criminal defendants the right to use an interpreter in court proceedings against them.⁸⁵ The *Negron* Court reasoned that to the non-English speaking defendant, “the trial must have been a babble of voices,” and thus lacked the basic fairness required by the Due Process Clause of the Fourteenth Amendment.⁸⁶ The court found that “[n]ot only for the sake of effective cross-examination, . . . but as a matter of simple humaneness, Negron deserved more than to sit in total incomprehension as the trial proceeded.”⁸⁷

Eight years after *Negron*, Congress passed the Court Interpreters Act of 1978.⁸⁸ Under the Act, non-English speakers have a right to an interpreter, but only when defending against a U.S. government-initiated suit in the federal courts.⁸⁹ Even then, “the decision to provide an interpreter is left to the discretion of the judge, who must decide whether a party or witness ‘speaks only or primarily a language other than English.’”⁹⁰ Federal courts have not always ruled in favor of Spanish-speakers challenging language barriers. In the context of the workplace, courts have ruled that “the language a person who is multi-lingual elects to speak at a particular time is by definition a matter of choice,”

⁸⁴ Rearick, *supra* note 76, at 551.

⁸⁵ 434 F.2d 386, 389 (2d Cir. 1970).

⁸⁶ *Id.* at 388-89.

⁸⁷ *Id.* at 390.

⁸⁸ *See generally* 28 U.S.C. § 1827 (1996).

⁸⁹ § 1827(a); *see also* Rearick, *supra* note 76, at 552.

⁹⁰ Rearick, *supra* note 76, at 554. As a former volunteer interpreter in Urbana, Illinois, the author of this article notes that, at the state court level, the quality of interpreters varies noticeably.

and that rules mandating English in the confines of the work place and during work hours pass constitutional muster.⁹¹

Interestingly, Canada has struggled with the issue of language equality for decades. Some Canadian practitioners believe that a requirement of “bilingualism in all its practitioners” is necessary because Canada holds court proceedings and publishes its court records and decisions in French as well as English.⁹² In 50 years, the United States’ Latino population may equal, if not exceed, Canada’s current population levels of French-speakers.⁹³ Many regions of the United States, perhaps even within Chicago, are already becoming Spanish-language dominant.⁹⁴ Realistically, however, with English firmly entrenched as the legal, political and educational language of the nation, few people advocate for jurisprudential precedent in two languages.

In truth, few Americans have attempted to learn another language, and lawyers are no exception.⁹⁵ Although the perceived value of proficiency in Spanish has increased in recent years,⁹⁶ the most immediate gains to the Chicago Latino community would come from an increased availability of Latino lawyers in the area and not just an increased interest in the language. Latino attorneys, primarily from first and second generation families, can not only communicate more efficiently with an increasing number of Spanish-speaking clients but can also perhaps sympathize with the alienation a client feels when dealing with what amounts to a foreign legal system.

⁹¹ See *Garcia v. Gloor*, 618 F.2d 264, 270 (5th Cir. 1980); see also *Garcia v. Spun Steak Company*, 998 F.2d 1480, 1490 (9th Cir. 1993), cert. denied 512 U.S. 1228 (1996) (company that fired workers for failing to comply with English-only rule on company property did not violate Title VII).

⁹² Rearick, *supra* note 76, at 575.

⁹³ *Id.* at 571.

⁹⁴ *Id.* at 570-71.

⁹⁵ *Id.* at 557.

⁹⁶ *Id.* at 580 (stating that “[t]he number of college students studying Spanish has increased substantially from a low of 362,200 in 1974 to 658,600 in 1998.”).

Moreover, the mere presence of Latino attorneys in courtrooms and boardrooms, which are viewed generally as cold and transactional, can have the effect of changing the cultural perspective of the legal system. If the goal is to ease the expected anxiety and apprehension that, at times, prevents Latino clients from enforcing their rights or showing up to a courtroom at all, we must encourage and facilitate the advancement of talented, Spanish-speaking Latinos entering into the practice of law.

C. *Issues in Criminal Justice*

Jonathan Arias, like many urban Latinos, experienced gang violence, random shootings and even police persecution as a youth in his south side Chicago neighborhood.⁹⁷ Without a doubt, crime and violence are perennial problems that have consistently challenged all Chicago communities. During one recent weekend alone, 32 people were shot, seven fatally, in what became a sobering national news headline.⁹⁸ Now a third-year law student at The John Marshall Law School, Jonathan saw law school as a potential vehicle to correcting the social ills endemic to the Chicago inner city.⁹⁹ He resolved early on to pursue a career in criminal prosecution and perhaps seek a future appointment or election as judge, because both positions exercise “the power to determine the process and outcome for the accused.”¹⁰⁰

Chicago Latinos, especially immigrants, perceive that the criminal justice system is biased against them. This fear is bolstered by mainstream opinions that reject any special or preferential treatment to immigrants. One journalist summed up the clash of cultures Latino immigrants experience as: “You [immi-

⁹⁷ Interview with Jonathan Arias, third-year law student, The John Marshall Law School, in Chicago, Ill. (Apr. 9, 2008).

⁹⁸ Rummana Hussain & Lisa Donovan, *Weekend of Rage*, CHI. SUN-TIMES, Apr. 21, 2008, at 3.

⁹⁹ Interview with Jonathan Arias, *supra* note 97.

¹⁰⁰ *Id.*

grants] come here hoping to be respected for your traditions and customs, but you also have to respect the traditions here.”¹⁰¹ Yet, it is exactly this clash of customs and the resulting lack of cultural understanding that puts Latinos in a perilous position vis-à-vis law enforcement.

As it happens, two of the seminal cases in criminal procedure jurisprudence involve Latinos as the defendants. The first, *Escobedo v. Illinois*, concerned, as the Court put it, “a 22 year-old of Mexican extraction.”¹⁰² Held at the former Chicago police headquarters at 11th and State, he was refused an opportunity to consult with his counsel after several requests and was not notified of his constitutional right to keep silent.¹⁰³ In holding that Escobedo had been denied the assistance of counsel in violation of the Sixth and Fourteenth Amendments, the Supreme Court noted:

Petitioner, a layman, was undoubtedly unaware that under Illinois law an admission of “mere” complicity in the murder plot was legally as damaging as an admission of firing of the fatal shots. . . . The “guiding hand of counsel” was essential to advise petitioner of his rights in this delicate situation.¹⁰⁴

As penetrating as *Escobedo* was to the criminal justice system, the effects of the next case on police procedure, not to mention popular culture, have outlasted many constitutional scholars’ expectations of that era. In *Miranda v. Arizona*, the Latino defendant was arrested by the police and taken to a special interrogation room.¹⁰⁵ There, he signed a confession containing a typed paragraph stating that the confession was made

¹⁰¹ Vanessa Bauza, *Study aims to aid Latino immigrants*, CHI. TRIB., Nov. 19, 2007, Metro, at 1.

¹⁰² 378 U.S. 478, 478 (1964).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 486.

¹⁰⁵ 384 U.S. 436 (1966).

voluntarily and with full knowledge of his legal rights.¹⁰⁶ In short, the U.S. Supreme Court reversed his conviction, holding that Miranda's confession was inadmissible because he was not in any way notified of his right to counsel, nor was his privilege against self-incrimination effectively protected in any other manner.¹⁰⁷ In a now infamous passage, the court summarized the rights of the arrested as follows:

He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.¹⁰⁸

Miranda is perpetually in danger of Supreme Court reversal but has mercifully withstood the test of time.¹⁰⁹ Of particular relevance for Latinos, *Miranda* guarantees that regardless of an accused's comprehension of the Constitution or the criminal justice system, safeguards are in place for one's legal well-being.

Yet, having worked as a paralegal at MALDEF for the past two years, Lillian Jimenez vigorously asserts that pressing issues continue to occur in the field of criminal justice, or rather "injustice."¹¹⁰ "The numbers of Latinos entering jails versus those graduating from high school in Chicago show definitively that the lack of education and differences in culture perpetuate insti-

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 499.

¹⁰⁸ *Id.* at 479.

¹⁰⁹ See *Dickerson v. U.S.*, 530 U.S. 428, 445 (2000) (Scalia, J., dissenting) ("One will search today's opinion in vain, however, for a statement (surely simple enough to make) that what 18 U.S.C. § 3501 prescribes—the use at trial of a voluntary confession, even when a Miranda warning or its equivalent has failed to be given—violates the Constitution.").

¹¹⁰ Interview with Lillian Jimenez, first-year law student, DePaul University College of Law, in Chicago, Ill. (Mar. 5, 2008).

tutional racism,” Lillian argues.¹¹¹ National statistics bear out Lillian’s observation. Of the 2.3 million people in the United States behind bars in 2006, Latinos accounted for 20.5%, and this rate is increasing.¹¹² Among Latino men, those aged 25 to 29 were incarcerated at the highest rates (about 2.5%).¹¹³ Moreover, a majority of Latino (54%), as well as black (53%) prisoners were sentenced for violent offenses, compared to about half (50%) of white prisoners, and were more likely than whites to be sentenced for drug offenses (23% of blacks, 21% of Latinos, and 15% of whites).¹¹⁴

As a former assistant public defender, Monica Torres-Linares says that as she surveyed the faces at the Cook County Circuit Courts and jail at 26th and California, she saw “pretty much just blacks and Latinos.”¹¹⁵ Although recent county numbers have not been published, this observation rings true to those who visit the facilities and substantiates the need for additional Latino lawyers, both in the public sector and private practice, to service this subgroup.¹¹⁶

Whether it’s an innocently arrested Latino who lacks English-language capabilities, or a desperate mother whose child has been whisked away by the Department of Children and Family Services, or even a convicted, tattooed gang-member who is looking to reduce a lengthy prison sentence, the Latino client pool is replete with individuals requiring zealous representation, each with a story to share to a sympathetic ear. When it comes to law enforcement, too many in the Latino community are likely to see themselves as criminal defendants, like Danny Escobedo or Ernesto Miranda, than they are officers of the law.

¹¹¹ *Id.*

¹¹² WILLIAM J. SOBOL ET AL., BUREAU OF JUSTICE STATISTICS BULLETIN, PRISONERS IN 2006 6-7 tbl.8 (2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf>.

¹¹³ *Id.* app. at 23 tbl.7.

¹¹⁴ *Id.* app. at 25 tbl.10.

¹¹⁵ Interview with Monica Torres-Linares, *supra* note 1.

¹¹⁶ *Id.*

The legal issues Latinos face require committed, passionate advocacy in steadfast protection of the Latino community, as well as Latino attorney role models to fill these voids where they exist.

III. DECONSTRUCTING THE LACK OF ACCESS TO LAW SCHOOLS

Many barriers stand in between Latino students and the law school experience. The first barrier the Latino community must overcome is its own general view of the legal profession. Mistrust of and general lack of knowledge about the profession put hopeful Latinos at a disadvantage. Similarly, an arduous application process makes access to law schools more difficult for the Latino community.

A. *Latino Views of the Legal Profession*

Back in Columbia, Lucia Velazquez had lawyers in her extended family.¹¹⁷ Living near the notorious drug kingpin Pablo Escobar, her father received countless threats and was forced to move his family around the country and eventually to the United States.¹¹⁸ As a result of her experiences, she easily saw a career in law as “an opportunity to do some justice.”¹¹⁹ Like Lucia, Latino individuals generally have compelling life stories that influence their decision to pursue a legal career. Though the great majority cannot claim to have outrun a foreign drug cartel, the fact remains that merely being a Latino in the United States shapes a unique perspective of law and the legal profession. For Sheila Maloney, a Brazilian-American and Clinical Assistant Law Professor at Northwestern University School of Law, “The

¹¹⁷ Interview with Lucia Velazquez, *supra* note 45.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

expectations of the stereotypical Latina role were unappealing, and I used that as a catalyst to continue my studies.”¹²⁰

For most Latinos, however, there is little to no personal connection to lawyers or the legal profession, so it is undergraduate pre-law counselors, individual research and even popular culture that guide the Latino individual to a law school education. After her own research, Sandy Sobenes, a recent graduate of the University of Minnesota Law School, saw the J.D. degree as “one which could help me achieve many successes in a long career including, but not exclusive to, law.”¹²¹

Even as the potential salaries and distinguished reputation of the profession draw outsiders to aspire to the bar, the academic rigors of law school and niche subjects of real-world practice should give pause to those not fully committed to the study of law. Elizabeth Gutierrez, a graduate of the University of Chicago Law School, advises undecided undergraduates to “get informed prior to deciding upon law school.”¹²² But for Latinos with little exposure to legal professionals, finding out where to get information on law school life can seem as difficult as law school itself. As a result, many talented Latino students “fail to seriously consider legal careers because they lack reliable information about the demands of law school and the legal profession, and confidence in their own abilities.”¹²³ Fortunately, an array of pre-start programs, some described below, have surfaced in recent decades, providing the necessary link between the uninformed, though motivated, law school candidate and the

¹²⁰ Interview with Sheila Maloney, *supra* note 53.

¹²¹ Interview with Sandy Sobenes, law student, Chicago-Kent College of Law, in Chicago, Ill. (Mar. 6, 2008).

¹²² Interview with Elizabeth Gutierrez, *supra* note 71.

¹²³ William Malpica & Mauricio A. España, *Expanding Latino Participation in the Legal Profession: Strategies for Increasing Latino Law School Enrollments*, 30 *FORDHAM URB. L.J.* 1393, 1414 (2002-03) (quoting Mary Kay Lundwall, *Increasing Diversity in Law Schools and the Legal Profession*, 14 *CHICANO-LATINO L. REV.* 147, 153 (1994)).

indispensable knowledge required to make the educated decision to apply to law school.

The most notable of these is the Council on Legal Education Opportunities (“CLEO”) program.¹²⁴ Sponsored by the American Bar Association (ABA), law schools, law firms and corporations, CLEO’s “purpose is to give applicants [to law school], especially disadvantaged ones, a head start.”¹²⁵ In the head start-type program and placement service, CLEO students study for six weeks during the summer and are subsequently evaluated.¹²⁶ Law schools are allowed to review these evaluations and interview students, and most CLEO students attend law school after the program.¹²⁷

Many law schools have devised their own specialized pre-start programs to introduce and train disadvantaged or minority students in legal scholarship. For example, the University of Illinois College of Law customarily administers its Law-Minority Access Program (LawMAP), which was “designed to diversify [the legal] profession by encouraging promising minority undergraduate students to consider a life in the law.”¹²⁸ A summer program, LawMAP accepts 12-15 minority undergraduates to attend uncredited College of Law courses and then arranges four-week externships with reputable Chicago law firms.¹²⁹ Since its inception, “the program has successfully seeded a love of the law in many of its students, a number of whom have stayed to do their law degrees at the University of Illinois, and many of whom have gone on to other leading law schools.”¹³⁰

¹²⁴ Council on Legal Education Opportunities (CLEO) Program, <http://www.deloggio.com/diversty/cleo.htm> (last visited Nov. 24, 2008).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Letter from Heidi M. Hurd, Dean, University of Illinois College of Law, to Students et al., (Mar. 2004), *available at* <http://www.law.uiuc.edu/content/newsletter/2004/march.asp>.

¹²⁹ *Id.*

¹³⁰ *Id.*

According to some authors, “While pre-start programs have undoubtedly assisted many Latino students in obtaining law degrees, they are not designed to *increase* the pool of qualified minority applicants.”¹³¹ Law students themselves, “uniquely positioned to recruit future law students,” have organized at most law schools Latin American Law Student Associations (LALSA).¹³² According to Monica Torres-Linares, local Chicago LALSA groups conduct regular recruitment programs and outreach to local colleges and high schools, and enlighten students on the law school application process.¹³³ The successful work of the collective LALSA organizations in Illinois has led to the formation of the Illinois Latino Law Student Association (ILLSA).¹³⁴ ILLSA’s yearly event, the Forum, brings together young Chicago Latinos attracted to, though still probing, the law school path. As one lawyer puts it, “The very act of presenting Latino [student] role models helps prospective applicants to envision themselves in the position of [a] law student.”¹³⁵

The stereotypical view of the lawyer’s personality as conservative, rational and objective to the point of being unemotional and impersonal, also contributes to the lack of Latinos in the legal field.¹³⁶ As Oliver Wendell Holmes once observed, “Lawyers are inclined to eliminate the dramatic elements of a client’s story.”¹³⁷ This view of the profession creates a wide chasm between the expected cultural traits of Latinos as familial, affectionate and community-oriented, and the cold, rational attorney. To be sure, the visible absence of Latino lawyers, or lawyers of any minority background, has contributed to the strength of the

¹³¹ Malpica & España, *supra* note 123, at 1413.

¹³² *Id.* at 1414.

¹³³ Interview with Monica Torres-Linares, *supra* note 1.

¹³⁴ Ill. Latino Law Student Ass’n (ILLSA), <http://www.illsa.org/index.php?id=home> (last visited Nov. 24, 2008).

¹³⁵ Malpica & España, *supra* note 123, at 1415.

¹³⁶ Mah, *supra* note 24, at 1727.

¹³⁷ *Id.*

stereotype and has discouraged some talented Latino students from seeking out lawyers as role models.

Caty Bautista, a Mexican-American native of the south side of Chicago, is one such applicant who was initially dissuaded.¹³⁸ Having an older sister who is a lawyer, Caty was exposed to lawyers for the first time when meeting her sister's colleagues.¹³⁹ She was struck by the truth to "the white, upper class stereotype," of attorneys which was truly pervasive amongst the lawyers' backgrounds.¹⁴⁰ Moreover, having participated in a mock trial competition as a student at the University of Illinois-Chicago, she found a clearly identifiable imbalance of students toward conservative ideals, which put her squarely "outside of [her] comfort zone."¹⁴¹

B. The Application Process

"I have to live life in the meantime – that's my biggest barrier to successfully getting through the process."¹⁴² Caty Bautista paid for and attended a commercial preparation course for the Law School Admission Test ("LSAT"), but as a full-time student at the time and leader of a community organization, she found the process excessively time-consuming.¹⁴³ As challenging and rewarding as a law school education can be, the admissions process can seem onerous and, at times, arbitrary. Law schools maintain a restrictive, highly selective admissions process to restrict entry to only the most talented, capable individuals.¹⁴⁴ These conditions at the law school level "do more than simply limit the number of new lawyers – they limit the values, behav-

¹³⁸ Interview with Caty Bautista, Paralegal, Mexican American Legal Defense and Educational Fund, in Chicago, Ill. (Mar. 5, 2008).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Mah, *supra* note 24, at 1725.

iors, and norms” that shape the environments and principles of law schools and the profession.¹⁴⁵ Customary selectivity persists, which has, in part, contributed to the consistently low enrollment of Latino law students. Critics of this process assert that Latinos who enter law schools outperform other groups in matters “central to the legal profession, such as leadership, professional success, public interest and contribution to the community.”¹⁴⁶ Particularly for Mexican-Americans and Puerto Ricans, whose enrollments at law schools nationwide were at respective highs of 2,695 in 2004 - 2005 for Mexican-Americans and of 718 in 1994-5 for Puerto Ricans, the latest figures of 2,498 and 592 students, respectively, illustrate the struggle to maintain increased enrollments for these Latino sub-groups.¹⁴⁷

More often than not, the power of law school admission lies solely with the law school’s dean or chief officer of admissions. Assistant and associate deans interviewed for this article requested anonymity, but consensus arose on two issues. First, law schools use the combination of undergraduate grades, strength of undergraduate program and, most importantly, score on the LSAT to determine the intelligence or competence of a candidate. Secondly, diversity is a useful, though not determining factor, in assessing a candidate’s potential contribution to the entering law school class.

Sheila Maloney took the LSAT twice.¹⁴⁸ With a study partner, she was able to do well enough on her first LSAT to be accepted to some local law schools but decided instead to spend a year as a teacher with Teach for America in Houston, Texas.¹⁴⁹ It was only after her public interest experience that she agreed to pay

¹⁴⁵ *Id.*

¹⁴⁶ Malpica & España, *supra* note 123, at 1404.

¹⁴⁷ Am. Bar Ass’n, Mexican American J.D. Enrollment 1971-2007, *available at* <http://www.abanet.org/legaled/statistics/charts/stats%20-%202014.pdf>, Am. Bar Ass’n, Puerto Rican J.D. Enrollment 1971-2007, *available at* <http://www.abanet.org/legaled/statistics/charts/stats%20-%202015.pdf>.

¹⁴⁸ Interview with Sheila Maloney, *supra* note 53.

¹⁴⁹ *Id.*

\$900 for the Kaplan LSAT preparation course.¹⁵⁰ According to Sheila, “It made me angry to learn the ‘games’ that were necessary to know in order to succeed at the LSAT – it had little to nothing to do with law!”¹⁵¹

Regarding the “intelligence” component, law schools have customarily associated an LSAT score with a student’s probable (or improbable) success in law school. A standardized exam, the LSAT consists of five sections, including three different types of multiple-choice questions.¹⁵² According to the Law School Admission Council:

[t]he LSAT is designed to measure skills that are considered essential for success in law school: the reading and comprehension of complex texts with accuracy and insight; the organization and management of information and the ability to draw reasonable inferences from it; the ability to think critically; and the analysis and evaluation of the reasoning and arguments of others.¹⁵³

Critics, including this author, argue that law schools unduly rely primarily on the LSAT to make admissions decisions. Notably, “the subject matter of LSAT questions, like those of standardized tests generally, contain inherent cultural biases in favor of majority test takers.”¹⁵⁴ Moreover, and true to Sheila’s concerns, “critics note that LSAT scores may be affected by test coaching, which is expensive or otherwise unavailable to lower income students.”¹⁵⁵

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Law School Admission Council, About the LSAT, <http://www.lsac.org/LSAT/about-the-lsat.asp> (last visited Nov. 22, 2008).

¹⁵³ *Id.*

¹⁵⁴ Malpica & España, *supra* note 123, at 1402 (citing William C. Kidder, Comment, *Does the LSAT Mirror or Magnify Racial and Ethnic Differences in Educational Attainment?: A Study of Equally Achieving “Elite” College Students*, 89 CAL. L. REV. 1055, 1074-76 (2001)).

¹⁵⁵ *Id.* at 1403.

Fortunately, as important as the LSAT score is to an admissions officer's decision, there are other, intangible qualities in a student's application that can sway an assessment. Diversity is one of those qualities, and this can include an applicant's geographic domicile, undergraduate major, work experience, age or gender, in addition to race and ethnicity. According to one assistant dean, diversity helps to assemble an entering class of individuals with unique perspectives on life that will contribute to the varied viewpoints in classes and enrich everyone's learning experience.

Recently, however, even the limited use of race in the admissions process has come under attack. The line of cases starts with *Regents of the University of California v. Bakke*.¹⁵⁶ In *Bakke*, the Supreme Court struck down an affirmative action policy where the University of California-Davis medical school had reserved 16 out of 100 seats for "disadvantaged" students.¹⁵⁷ In doing so, the plurality decision concluded that the university had a compelling interest in achieving diversity but not in the form of quotas.¹⁵⁸

Citing heavily to *Bakke*, the U.S. Court of Appeals for the Fifth Circuit concluded in *Hopwood v. Texas* that the University of Texas School of Law could not use race at all as a factor in law school admissions.¹⁵⁹ The following year, the number of admitted African-American students at the University of Texas School of Law fell from 65 to 11.¹⁶⁰

More recently, the Supreme Court re-examined the issue under a tandem of cases. The Court in *Gratz v. Bollinger* struck

¹⁵⁶ 438 U.S. 265 (1978).

¹⁵⁷ *Id.* at 275, 379.

¹⁵⁸ *Id.* at 314, 320.

¹⁵⁹ 78 F.3d 932, 946 (5th Cir. 1996), *abrogated by* Grutter v. Bollinger, 539 U.S. 306 (2003).

¹⁶⁰ Malpica & España, *supra* note 123, at 1405. Similarly, at the University of California at Berkeley School of Law, the number of admitted African-American students decreased from seventy-five to fifteen between 1996 and 1997.

down the University of Michigan's undergraduate affirmative action scheme whereby "underrepresented" ethnic groups, including Latinos, received an automatic 20 point bonus on a point-system admissions scale.¹⁶¹ In contrast, the Court in *Grutter v. Bollinger* upheld the University of Michigan Law School's scheme for affirmative action, where diversity was a "flexible" and "individualized" consideration of a candidate's possible contributions.¹⁶² The Court found that the law school's interest in obtaining a "critical mass" of minority students was indeed a narrowly tailored use of reaching the compelling interest of diversity.¹⁶³ Interestingly, Justice O'Connor noted that the Court expected that 25 years into the future, racial affirmative action would no longer be necessary in order to promote diversity.¹⁶⁴ But, as mentioned, there is little evidence to suggest that disadvantaged groups, particularly Latinos, will see any sizeable increase in admission to the bar in the near or distant future.

Notwithstanding these aforementioned cases and their attempts to resolve issues of the use of race during the admissions process, there are other pressing issues particular to Latino law school candidates that affect the viability of going through three years of law school at all. First, many Latinos, like Caty Bautista and Sheila Maloney, weigh their decision on whether or not to attend law school after having already joined the full-time workforce. This leaves less time to focus on the application process, which includes LSAT preparation and research into the specializations of the schools themselves. Moreover, when measured against the cost to an entire family, law school can be viewed as a sacrifice, not an opportunity. Studies show that Latinos are less inclined than the mainstream population to take out

¹⁶¹ 539 U.S. 244, 275-76 (2003).

¹⁶² 539 U.S. 306, 334, 343-44 (2003).

¹⁶³ *Id.* at 329, 333.

¹⁶⁴ *Id.* at 343.

loans to pay for education costs.¹⁶⁵ As such, Latinos enroll in part-time law school programs and remain at their jobs full-time at higher rates than other groups in order to finance their education and real-world expenses, like raising a family.¹⁶⁶

Expecting the exorbitant costs associated with attending law school, Sheila Maloney worked as a waitress and a runner at the Chicago Board of Trade to earn a little extra money.¹⁶⁷ Similarly, having worked full-time for the last eight years, Lillian Jimenez started thinking of law school two years ago and admits that “it took a while for [her] to figure it out.”¹⁶⁸ She took the LSAT twice while continuing to work full-time.¹⁶⁹ Happily, she had multiple offers from law schools and is now seeking role models to guide her through what she expects to be a difficult and time-consuming three years at DePaul University College of Law.¹⁷⁰ Like many Latino law students who are beginning law school at older ages, Lillian admits to nerves upon thinking, “How will I relate to these 22 year olds?”¹⁷¹

IV. DROWNING IN THE LAW SCHOOL EXPERIENCE

It had been a good year for minorities. . . . In the America of a decade or fifteen years ago, it is all but certain that many members of my class would not have been there. In the recent past, however, there has been an astonishing rise in the enrollment of women and racial minorities in American law schools. There are three-times more black and

¹⁶⁵ EIRC Clearinghouse on Urban Education, *Latinos in School: Some Facts and Findings*, ERIC Digest 162, <http://www.ericdigests.org/2001-3/facts.htm> (last visited Nov. 18, 2008).

¹⁶⁶ Interview with Monica Torres-Linares, *supra* note 1; Interview with Jonathan Arias, *supra* note 97; Interview with Sheila Maloney, *supra* note 53.

¹⁶⁷ Interview with Sheila Maloney, *supra* note 53.

¹⁶⁸ Interview with Lillian Jimenez, *supra* note 110.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

Spanish-surnamed law students in U.S. law schools . . . and the growth in female enrollment has been kind of a social miracle. . . . As the year had worn on, I had watched with some interest to see how those working their way up from the short end of the stick were doing The answer, in brief, was very well.¹⁷²

A. *First Year Blues and the Clash of Cultures*

On the whole, law schools teach the Anglo tradition of common law, which upholds above all other principles the rights of individuals.¹⁷³ Arguably, this legal principle can foster individualism that may discourage students from too closely involving themselves with future clients, condition them to disconnect the professional role from the personal and demand an unnatural transactional view of clients.¹⁷⁴ The ABA Model Rules of Professional Conduct require that attorneys limit the substantive scope of representation, which can be interpreted, especially by Latino clients, as an unwelcome separation of an emotional nature.¹⁷⁵ To the contrary, Latino individuals seek services that will humanize their circumstances and themselves, and Latino law students transfer this perspective to their legal studies. When law schools emphasize the imperative of impersonal separation and distance, Latinos come across their first emotional conflict. Citing his experience at John Marshall, Jonathan Arias regrets “the lack of humanity, and . . . the [lack of] value placed on diversity at the law school.”¹⁷⁶

This emphasis on independence and individualism at the institutional level trickles down into the classrooms where, as

¹⁷² SCOTT TUROW, ONE L 219 (Warner Books 1988) (1977).

¹⁷³ Mah, *supra* note 24, at 1731.

¹⁷⁴ *Id.* at 1728.

¹⁷⁵ MODEL RULES OF PROF'L CONDUCT R. 1.2(c) (2008), available at http://www.law.cornell.edu/ethics/aba/current/ABA_CODE.HTM#Rule_1.2.

¹⁷⁶ Interview with Jonathan Arias, *supra* note 97.

Jonathan observed, the notions of diversity and cultural awareness took a backseat to that of individual resilience.¹⁷⁷ Referring to his undergraduate experience at the University of Wisconsin-Madison, he asserts, “Coming from that experience, I’m totally dissatisfied with the resources available to students to enhance the learning experience.”¹⁷⁸ Also unique to his, and many Latinos’ experience is the fact that, as a father and a husband, his time is more decidedly spent on family matters.¹⁷⁹ During his classes or study hours, he relies on extended family to aid him through this difficult time.¹⁸⁰ So it was to his surprise that, when seeking guidance for his specific issues on law school acculturation, he had a law counselor tell him to “grow up,” nullifying his expectation of empathy for his cultural and familial status.¹⁸¹

Most first year law students also experience the “Socratic method” for the first time, an ancient form of teaching whereby a professor asks “continual questions until a contradiction [is] exposed, thus proving the fallacy of [an] initial assumption.”¹⁸² In its current form, the Socratic Method aims to induce students to arrive at the heart of a judgment, statute or policy.¹⁸³ Yet, in its application, it can be one of the most stressful events in a law student’s academic life. Stories of law students made to stand in silence or being berated by a wily law professor for several minutes at a time are ubiquitous at law schools. Adding dimension to those experiences is the absence of Latino student peers and openly antagonistic attitudes on race or diversity. The conflu-

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Univ. of Chicago Law Sch., The Socratic Method, <http://www.law.uchicago.edu/socrates/method.html> (stating that “the Socratic Method is a tool and a good one at that used to engage a large group of students in a discussion, while using probing questions to get at the heart of the subject matter”) (last visited Apr. 30, 2008).

¹⁸³ *Id.*

ence of these factors has led to many unhappy experiences for Latino law students.

As a first year law student, Lucia Velazquez found law school “too competitive, and somewhat lonely.”¹⁸⁴ With little feedback provided throughout the semester, and with one professor seemingly “taking it out on the students,” the law school culture has clashed entirely with the supportive, nurturing atmosphere that was provided to her and other Latinos and students as an undergraduate at Northeastern Illinois University.¹⁸⁵ But she rejects seeking special treatment as a Latina, as “the circumstances are hard on all students.”¹⁸⁶ Although she finds law school “difficult and stressful,” she expects to persevere.¹⁸⁷

Like many former law students, Sheila Maloney “didn’t like law school.”¹⁸⁸ She states that, “For the first time, I felt socially alienated in an atmosphere where everyone seemed smarter than me. I saw that many of my peers at Northwestern were wealthy and privileged; that some even had a sense of entitlement in coming to learn the law.”¹⁸⁹ Recalling that only about six Latinos, and perhaps three African-Americans, were in her entering class, she stated, “Even amongst the students representing ‘diversity,’ many of those students came from privileged backgrounds as well.”¹⁹⁰

Moreover, attorney Sandy Sobenes feels that, when Latino issues *were* brought up in class, “[she was] representing the entire Latino race.”¹⁹¹ Sandy has the unique experience of having attended two law schools: the University of Minnesota, from which she received her J.D. degree, and Chicago-Kent College

¹⁸⁴ Interview with Lucia Velazquez, *supra* note 45.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Interview with Sheila Maloney, *supra* note 53.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Interview with Sandy Sobenes, *supra* note 121.

of Law, where she was a visiting third-year law student.¹⁹² Sandy notes that although “Minnesota’s academics and student services generally are superior to those of Kent’s, Chicago-Kent has a more diverse, representative student body.”¹⁹³ Chicago-Kent, as with all of the Chicago area law schools, shows its student body as 19% minority, but does not break out the figures specifically by race or ethnic group, at least not for the general public.¹⁹⁴

B. A Lack of Emphasis on Latino Issues

In the late 1980s, “there was perhaps one other Latino in my classes,” at the University of Illinois College of Law, reflected Joseph Torres, a longtime partner at the venerated firm of Winston & Strawn.¹⁹⁵ Latino issues “weren’t even on the radar back then.”¹⁹⁶ Torres noted that today, with “more of a critical mass . . . Latinos are looking for more outreach.”¹⁹⁷ So it is that current students like Lucia Velazquez, who would embrace faculty outreach, has seen “few Latino professors to speak of” developing faculty outreach to Latino students.¹⁹⁸ In her opinion, “Latinos as a group have thus far been ignored.”¹⁹⁹ Similarly, Elizabeth Gutierrez, a 2005 graduate of the University of Chicago Law School, saw “no direct application to Latino issues in classes offered in the curriculum.”²⁰⁰

These observations point sharply to the fact that law schools in the Chicago area and across the country have done little or

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ Chicago Kent Coll. of Law, Student Body Profile, <http://www.kentlaw.edu/students/> (last visited Feb. 20, 2009).

¹⁹⁵ Interview with Joseph Torres, Partner, Winston and Strawn, in Chicago, Ill. (Mar. 28, 2008).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Interview with Lucia Velazquez, *supra* note 45.

¹⁹⁹ *Id.*

²⁰⁰ Interview with Elizabeth Gutierrez, *supra* note 71.

nothing to promote legal issues important to Latino clients and the Latino community. Although street law, immigration law or asylum law classes can be found on most course schedules of Chicago area law schools, more specialized classes like Latinos and the law or Latinos and public policy are relegated to undergraduate political science curricula.²⁰¹ This is to be expected, regrettably, since less than four percent of all U.S. law professors are Latino.²⁰² As professors go, Sheila Maloney suggests that there are too few Latino applicants for positions at Northwestern, demonstrating “a clear supply/demand imbalance amongst professors of color generally at the law school,” resulting in “no leadership for Latino jurisprudence.”²⁰³ As such, “unique mentoring opportunities for Latino students are almost non-existent.”²⁰⁴

The perspectives above indicate that there is a demand, from both students and faculty, for legal courses and counseling services unique to Latino law students. As Chicago and other major cities see a marked increase in the Latino population, law schools should be more swift in heeding these calls, adding law courses and hiring faculty that will not just create awareness of this unique market for its revenue potential, but, more importantly, hasten the training of attorneys that aspire to represent the Latino community. Courses focused on foreign language competency greatly “instill . . . a general sense of service” and

²⁰¹ See, e.g., DePaul Univ. Coll. of Law, Course Descriptions, http://www.law.depaul.edu/programs/course_descriptions.asp (last visited May 19, 2009); Northwestern Univ. Sch. of Law, Course Catalog, <http://www.law.northwestern.edu/curriculum/coursecatalog/alph.cfm> (last visited May 19, 2009); Northeastern Ill. Univ., Schedule of Classes – Fall 2009, Sociology of Latinas at 30, available at http://www.neiu.edu/DOCUMENTS/Admissions%20-%20Docs/Class_Schedule/soc_fall09.pdf.

²⁰² Rearick, *supra* note 76, at 580 (citing Richard A. White, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions* (2001-2002)).

²⁰³ Interview with Sheila Maloney, *supra* note 53.

²⁰⁴ *Id.*

produce skills that are “crucial to the practice of law in America today.”²⁰⁵

C. *Selecting a Career on the Issues*

Recent surveys illustrate that “minority students are three times more likely than whites to state that their goal is to serve poor communities.”²⁰⁶ Accordingly, after having been exposed briefly to the private sector, Lucia Velazquez knows that she is not fit for the competitive practice of the private firms and strives instead for a solid background in international human rights law.²⁰⁷ Similarly, Sandy Sobenes, whose Peruvian father and Ecuadorian mother both worked for the State of Illinois, wants to focus on any practice that deals with disadvantaged peoples.²⁰⁸ Acknowledging that “the diversity of one’s clients is dependent on the type of practice [one] undertakes,” Sandy accepted a position with a local firm serving the Latino community almost exclusively.²⁰⁹

However, not all Latinos strive for a legal career in public interest or government. With the average law student facing a \$70,000 debt burden after graduation, the lure of the large law firm job and its accompanying generous salary is omnipresent throughout a high-achieving law student’s tenure. But for Latino students seeking a practical edge to succeed at the law firms, some law school curricula have left students wanting more. A former law firm associate, Elizabeth Gutierrez views the University of Chicago Law School as a “very intellectual environment.”²¹⁰ That atmosphere, however, “doesn’t lend itself to a vocational-type of training,” as “there were few practical

²⁰⁵ Rearick, *supra* note 76, at 582.

²⁰⁶ *Id.* at 580.

²⁰⁷ Interview with Lucia Velazquez, *supra* note 45.

²⁰⁸ Interview with Sandy Sobenes, *supra* note 121.

²⁰⁹ *Id.*

²¹⁰ Interview with Elizabeth Gutierrez, *supra* note 71.

courses useful for actual practitioners.”²¹¹ Similarly, Sheila Maloney cites the strong relationship Northwestern has with large law firms, which have traditionally recruited heavily from the law school, as influencing the career choices of its students.²¹² Lamentably, this has left public interest work as a secondary option for most students, with many coming to think of public interest practice as “charity work.”²¹³

As a former associate herself, Sheila Maloney is well-aware of the law firms’ problem of not having a large enough pool of minority candidates from which to recruit.²¹⁴ According to Shelia, “the firms create this conundrum by *limiting* the law schools from which they recruit, thereby limiting the pool of qualified associate candidates, and especially minority candidates.”²¹⁵ And even when minorities are able to “get in the door with firms, the attrition rate of associates is very high.”²¹⁶

On an encouraging note for those Latino students who wish to work at a large firm, Joseph Torres has seen “more and more Latinos and African-Americans coming out of law schools today, and the large firms, including Winston & Strawn, are trying to target diverse candidates to practice with the office.”²¹⁷ Moreover, these diverse lawyers are requesting, “more than ever, support from their offices in the form of career resources and development.”²¹⁸

Large law firm jobs, however, are not the only available jobs in the Chicago legal market. Without a doubt, Latino lawyers should seek opportunities where their interests and passions lie, as the ability to choose a practice area, more than once in a career, is a hallmark of the legal profession.

²¹¹ *Id.*

²¹² Interview with Sheila Maloney, *supra* note 53.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Interview with Joseph Torres, *supra* note 195.

²¹⁸ *Id.*

V. MOVING TOWARDS THE FUTURE

Making its way to mainstream relevancy, the Chicago Latino community still faces many barriers in its quest to achieve political, socioeconomic and legal equality. It is up to Latino lawyers to take action as advocates for the voiceless and as first-line defenders of the community. To be sure, wherever the path leads, the sheer presence, not to mention the unique skills and distinct perspective, of an added generation of Latino lawyers to the bar will contribute immensely to the diversity of the profession. One hopes, however, that by increasing the number of Latino lawyers, the legal needs of the Latino community will be much better served. This is the challenge we must confront.

But low levels of Latino representation in law schools, and in the legal profession, threaten the mobility and solidarity of this client population. This can be attributed primarily to the perennial shortage of eligible Latino law school candidates and traditional law school admissions practices.²¹⁹ Efforts must be made today to increase Latino enrollment in law schools and to support the advancement of Latino jurisprudence so that when the next generation of Latino lawyers speak, they will say “¡Si Se Puede!”

²¹⁹ Malpica & España, *supra* note 123, at 1426.

