The Accidental Crit III: The Unbearable Lightness of Being ... Pedro?

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The Accidental Crit III:
The Unbearable Lightness of Being ... Pedro?*

By Pedro A. Malavet**

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I. Introduction: Names, Titles and Academic Survival

This is my third use of the “Accidental Crit” moniker† to describe my “reluctant, difficult and ultimately accidental

* See Milan Kundera, THE UNBEARABLE LIGHTNESS OF BEING—A NOVEL 4 (Harper Perennial Olive Editions 2009) (“This reconciliation with Hitler reveals the profound moral perversity of a world that rests essentially on the nonexistence of return, for in this world everything is pardoned in advance and therefore everything cynically permitted.”).

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Draft: Do not quote without express, written consent.
gravitation towards LatCrit theory,”2 as well as other types of Critical Race Theory.3 These writings are part of my process of coming to terms with the promotion and tenure process that I endured through a type of scholarly catharsis; in this essay I review my continued presence in the legal academy from the safety of post-tenure academic life, but while immersed in the openly racist climate of the presidency of Donald Trump.

A few years ago, when I had started the earlier draft of this piece, a professor who had been denied tenure shot six of her colleagues at the University of Alabama at Huntsville.4 Three survived. The three who died, “Gopi K. Podila,


3 I like this definition of the general field of which LatCrit is a part:

Critical Race Theory is the most exciting development in contemporary legal studies. This comprehensive movement in thought and life —created primarily, though not exclusively, by progressive intellectuals of color— compels us to confront critically the most explosive issue in American civilization: the historical centrality and complicity of law in upholding white supremacy (and concomitant hierarchies of gender, class, and sexual orientation).


4 See Shaila Dewan, Stephanie Saul and Katie Zezima, For Professor, Fury Just Beneath the Surface, THE NEW YORK TIMES A-1 (February 20, 2010). The killer, Amy Bishop, pleaded guilty to the crimes and was convicted by a jury in a mini-trial required despite the plea because she was charged with capital murder. She was sentenced to life in prison. The victims who died were all faculty of color. Robin Wilson, Amy Bishop Is Sentenced to Life in Prison, Bringing Legal Case to an End, THE CHRONICLE OF HIGHER EDUCATION (September 24, 2012), https://www.chronicle.com/article/Amy-Bishop-Is-Sentenced-to/134624 (last visited March 30, 2018).
department [of Biological Sciences] chair, and Maria Ragland Davis and Adriel D. Johnson Sr., both associate professors,” were persons of color. The metaphorical use of the terms “safety” and “survival” together with “tenure” might seem ironic in the context of American gun violence, especially given the discussion following the massacre of students at Marjory Stoneman Douglas High School and the consciousness-raising of Black Lives Matter. But, luckily, metaphor it is.

This article began as a draft of a book chapter for a planned anthology that was unfortunately never published. After putting down the original manuscript for a number of years, I have now converted it into a law review article. It is fascinating to come back to a project like this after so long. The experiences that I detail here seem very distant to me now as I well into my twenty-third year of teaching here at the Levin College of Law at the University of Florida. Nevertheless, I am glad that I wrote about these experiences and that they should be published. The timing comes in two rather different contexts. First, it now follows the very interesting discussion generated by the anthology “Presumed Incompetent: The Intersections of Race and Class for Women in Academia.” This book led to

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5 Remembering the Victims of a Deadly Rampage in Huntsville, Ala., THE CHRONICLE OF HIGHER EDUCATION (February 10, 2010), https://www.chronicle.com/article/Remembering-the-Victims/64199?cid=rclink (last visited April 4, 2018) (the story has links to short obituaries of each of the deceased that include their photographs).

6 I am, however, very grateful to Angela Onwachi-Willig, then of the University of Iowa College of Law, and Karla Erickson, of the Department of Sociology at Grinnell College, for inviting me to join the project; especially to Dr. Erickson for providing me excellent comments on that early draft. Dr. Erickson is currently Professor of Sociology and Associate Dean at Grinnell College. Professor Onwachi-Willig is currently the Dean of Boston University Law School. https://www.bu.edu/law/about/meet-the-dean/ (last visited October 1, 2018).

7 PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutierrez y Muhs, Yolanda
multiple panels at the AALS Annual Conference and was also featured in a panel discussion at the LatCrit Conference in 2017, and a second volume is now being planned. The second context of course is the Trump Presidency and its empowerment of quite overt American white racism.

The subtitle of this article describes the complex constitutive principle of my academic experience, that I will endeavor to illustrate for the reader: regardless of phenotype, if your name is “Pedro,” you cannot be white in the racial scale of the normative United States generally and of law schools in particular. This is especially true in the Age of Trump, where all Latinas/os have been essentialized by a toxic political discourse into the simple stereotype that we are all undocumented Mexican immigrants, despite the fact that two out of three Hispanics in the U.S. are native-born citizens and a majority of the rest are naturalized citizens or documented permanent residents. Paradoxically, colleagues have

Flores Niemann, Carmen Gonzalez, Angela P. Harris, eds., The University Press of Colorado 2012).

8 Normative means the dominant societal paradigm, i.e., what is considered “normal” in a given sociological context. See Berta Esperanza Hernández-Truyol, Borders (En)gendered: Normativities, Latinas and a LatCrit Paradigm, 72 NYU L. REV. 882, 891 (1997) Since “knowledge is socially constructed,” therefore, the “normative paradigm’s dominance” defines “normal”.

9 I purposely continue to use “Latina/o” instead of what appears to be current cutting-age term, “Latinx.” For a definition of “Latinx,” see https://en.oxforddictionaries.com/definition/latinx (last visited March 28, 2018). I intend no commentary on the new term and I certainly do not wish to be interpreted as disapproving of it. I simply prefer to continue to use the language that I have used for years now. I am just too old and curmudgeonly to change quickly. I need time to adjust.

10 The total “Hispanic” population in the 50 states and the District of Columbia is estimated at 56.6 million in a report by the U.S. Census Bureau dated June 23, 2016. http://www.census.gov/newsroom/press-releases/2016/cb16-107.html (last visited September 20, 2018). At that time, the population of Puerto Rico was roughly 3.4 million. As of 2017, the U.S. census estimated that there were over 3.3 million people on the
occasionally classified me as “Caucasian” in discussions of race at my school, in an ignorant or cynical attempt to deny that I am the subject of discrimination; but I would always become a “minority” when illustrating our law school’s “diversity” and the general absence of racism. Perversely and hypocritically, a few might view my Latino identity, my CRT scholarship, and my allegiance with African American colleagues as a type of racial betrayal—the rejection of the modest amount of white privilege that they might have been willing to grant me at their convenience and for their own purposes—making me deserving of the punishment due a “race traitor.”¹¹ ¡Ay bendito! (Oh Lord!), I do not think I can win here.

Imagine the following scene: You are being addressed by a student, a secretary or someone who works in the mailroom at the law school at which you work as a professor while you are in the company of colleagues. The students walk by and say, “Hello, Professor Smith,” “Hello, Professor Johnson,” “Hello, Mr. Malavet.” The secretaries and other staff will address the same group of faculty by saying, “Hello, Professor Smith,” “Hello, Professor Johnson,” and “Hello, Pedro.” At the doctor’s office in the University’s home town, the receptionist calls out the names of the next patient that the doctor will see: “Ms. Johnson,” “Mrs. Smith,” “Mr. Jones,” “Mr. Brown,” and “Pedro.” Even at Sam’s Club, where cashiers are clearly trained to address people by their last name, the same thing happens.

¹¹ See infra notes 49 and 57 and accompanying text.
“Malavet” becomes unpronounceable when preceded by “Pedro.”12 These daily micro-aggressions are merely an illustration of the racialization—the process of becoming the “other”13—faced by a Latino law professor in a small southern college town.

These appear to have only become worst in the Age of Donald Trump who seems to have encouraged and indeed, at least for himself, created a world in which racist, misogynistic, religiously-intolerant public expressions are entirely acceptable. As I sat in a medical waiting room a few months ago the nurse assistant called my name. When I walked towards her and asked if she had called the name Malavet, an older white female retorted, with a rather exasperated tone, that “Pedro, Pedro, she called Pedro.” She made my name sound very much like the epithet that she seemed to regard it as.

The micro-aggressions are accompanied by a constant petty hostility, displayed or delivered with surprising discipline, such as colleagues who never acknowledge your presence in the public spaces of your schools, or addressing you without ever

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12 Astonishingly, this has happened to me with the staff at the offices of two doctors both of whom are Latinos. I occasionally conduct the experiment of using my last name and initials when filling out the sign-in sheet. This usually results in the easy pronunciation of “Mr. Malavet.”

13 In general, as used herein, “Other” and “othering,” i.e., to be “othered,” mean to be socially constructed as “not normative.” See, e.g., Cathy J. Cohen, Straight Gay Politics: The Limits of an Ethnic Model of Inclusion, in ETHNICITY AND GROUP RIGHTS 580 (Will Kymlicka & Ian Shapiro eds., 1997)

Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as ‘other.’ Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group.

Id. (citing Erving Goffman, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (1963).
using your name. Allow me just one example: a senior colleague walks by when I am speaking to another person in the hallway. I say “Hello [name]”; he does not acknowledge my greeting and walks on, but then turns around and says “Hello, [name]” (using the name of the person with whom I was speaking, with heavy emphasis on her name, apparently to highlight that he is ignoring mine).

The more serious aggressions are the organized attacks on your very survival in the legal academy, often led by senior colleagues and often aided, with more or less intent, by the law school or university administration. The atmosphere created by this conduct is debilitating and can be quite purposely career-ending— not to mention soul-crushing. Luckily, I have survived such conduct by colleagues, many of whom are now retired, and several administrations, to achieve the rank of full professor and tenure status. Reaching these milestones, and the accompanying experiences, have taught me to enjoy the many benefits and opportunities afforded by the full-time legal academy and to learn to keep the negatives at bay. No crushed soul here, but rather a lot of experience in the politics of legal academia.

The editors of the intended but unpublished anthology put together a series of provocative and insightful questions in order to guide the essayists in producing their narratives about academic survival. The use of an article rather than a book chapter allows me to expand the content beyond the usual limitations of edited anthologies. Nevertheless, the questions were well-thought-out, and the remainder of this article is dedicated to answering them by narrating my personal travels through the academic tenure track. I have divided the questions into two sections that address two fundamental inquiries: first, how did I get to my current position at my school? and, second, why did I stay? The first and more substantial section addresses how I was hired onto the tenure-track and how I navigated the

\[\text{14 For a thorough review of reported cases involving denials of tenure, see Michael A. Olivas, Reflections on Academic Merit Badges and Becoming an Eagle Scout, 43 Houston L. Rev. 81 (2006).}\]
promotion and tenure process. The second section discusses why I chose to remain in spite of the significant pain and suffering inflicted by the process.

II. How did you get to your current position?

As my introductory paragraphs suggest—although now long behind me—the tenure process, for me, was difficult and painful. This will eventually lead me to address the frequently asked question that will become the primary focus of this section: How did you survive in such a hostile atmosphere?15 But I will first explain how my academic travels started with great enthusiasm and belief in my future life in the “family business” of law teaching and scholarship.

I pursued a degree in law because my father is a lawyer and I am the eldest son who always wanted to be like papi (daddy)—especially professionally. It all started in my hometown of Ponce, Puerto Rico, where I attended a Catholic private school from kindergarten to the start of the eleventh grade. Family needs then led to my relocation to Atlanta, Georgia, where I finished high school and attended Emory University. Because Puerto Rico is a territory of the United States, and its people are citizens of the United States, the process of moving was legally simple.16 But this trip entailed a difficult

15 For a wonderfully insightful and funny use of the “frequently asked questions” idea in legal discourse, see Juan F. Perea, Suggested Answers to Frequently Asked Questions about Hispanics, Latinos and Latinas, 9 LA RAZA L.J. 39 (1996).

16 See generally, Pedro A. Malavet, AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO (NYU Press 2007) (a detailed study of the legal relationship between the United States and Puerto Rico and the citizenship status of Puerto Ricans). The reality of the flawed relationship that I chronicle in my book has been underscored by the disarmingly racist response by the Trump Administration to the ongoing catastrophe caused by Hurricane Maria in Puerto Rico. See, e.g., Danny Vinik, How Trump favored Texas over Puerto Rico: A POLITICO investigation shows a persistent double
cultural migration from a Spanish-language-dominant culture in Ponce to the English-language-dominant Atlanta. This was my first experience with the concepts of culture difference and shock, outside of class and politics.\footnote{17}

After finishing college and the first phase of my cultural migration in Georgia, I moved to Washington, D.C., to attend Georgetown University Law Center. Although my college GPA was not especially impressive, I scored in the 98\textsuperscript{th} percentile on the Law School Admissions Test (LSAT), which is obviously a very good score in general, but it is very unusual for a Puerto Rican. According to the Law School Admissions Council (LSAC), which administers the LSAT, Puerto Ricans as a group have the lowest mean score in the LSAT of any of the racial or ethnic groups tracked by the LSAC.\footnote{18} It is hard to conceive how my credentials would be evaluated in today’s U.S. News and World Report-obsessed admissions process.

After graduation, I returned to the island, passed the bar exam, and, following a two-year federal judicial clerkship,\footnote{19} joined my father’s law office. While I was working as an attorney with my dad, I was invited to teach at the law school from which he had graduated in 1964, and at which he started

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\begin{itemize}
\item \textit{See generally}, Malavet, \textit{Accidental Crit I} at 1324-1331 (including a narrative of this transition and a description of my minority status in Puerto Rican politics and occasional class outsider).
\item I clerked for the Honorable Raymond L. Acosta, Judge of the United States District Court for the District of Puerto Rico. \textit{See} 28 USC § 119.
\end{itemize}

his teaching career a few years after graduation: the Pontifical Catholic University of Puerto Rico’s School of Law. Perhaps because my dad is a lawyer and law professor, and because my mother has a degree in education and worked as a grade school teacher before becoming a full-time homemaker, law teaching seemed like the family business to me.

I expected to be a practicing lawyer and part-time law professor, because the economic realities of law teaching in Puerto Rico are more like those of Latin American and some European countries than those that prevail in the rest of the United States. Few, if any of the members of the faculties there are really full-time academics. Indeed, the salary of a so-called full-time faculty member, even at the highest rank of full professor, is likely to be substantially less than half the net income earned by that person in the course of a year. When one accounts for the fact that many such academics are also at the top of professional practice in their field, the discrepancy between faculty salary and law-practice income becomes even greater. There is, to be sure, goodwill value that the professional derives from his or her status as an academic that contributes to increasing income earned as a professional. This puts a lot of pressure on professors to balance time spent on money-making client services, against the hours dedicated to low-paying but highly-rewarding teaching. Merryman describes the “professional schizophrenia” generated by this duality as follows:

20 See generally John Henry Merryman, David S. Clark and John O. Haley, THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA AND EAST ASIA 896-897 (The Michie Company 1994) (“The professor is not full-time and is not expected to be.”); John Henry Merryman and Rogelio Perez-Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America 108 (3rd Ed. Stanford University Press 2007) (“in many civil law nations professors are not excepted to spend all, or even a major portion, of their time at the law school. In Latin America, in particular, their rates of compensation reflect this assumption…”). On Latin American legal systems more generally, see Angel R. Oquendo, LATIN AMERICAN LAW (Foundation Press 2006).
As a lawyer, he will be pragmatic, concrete, and result-oriented. He will follow the problem where it leads him, regardless of boundaries between fields of the law. He will be fact-conscious. He will seek and cite judicial decisions. He will be a tough, partisan advocate. As a professor, he will write and teach in the prevailing doctrinal style, working in the central tradition of legal science. Both his writing and his teaching will prominently display the academic characteristics typical of legal scholarship in the civil law world, and he may even exaggerate such characteristics to overcompensate because he is also a practicing lawyer. He becomes aggressively academic, as a kind of reaction against his practical work as advocate. His life is divided into separate halves, and he adopts a different professional personality for each.21

I observed my father struggle with this balance his entire professional and adult life up until his recent retirement. He managed to become a very successful attorney and a law professor, and the author of dozens of books.22 But the toll on

21 The Civil Law Tradition, supra note 20, at 897.
22 See, e.g., Pedro Malavet-Vega (hereinafter I will not repeat the author’s name as all the books in this note are authored solely by my dad), Manual de Derecho Notarial Puertorriqueño (1987); La Vellanera Esta Directa: Felipe Rodríguez (La Voz) y los Años Cincuenta (1987); Navidad Que Vuelve (1987); Del Bolero a la Nueva Canción (1988); Historia de la Canción Popular en Puerto Rico: 1493-1898 (1493-1898) (Corripio 1992); Las Pascuas de Don Pedro (1994); Manual de Derecho Penal Puertorriqueño (Corripio 1997); Evolución del Derecho Constitucional en Puerto Rico (Ediciones Lorena 1998); De Las Bandas al Trio Borinquen: 1900-1927 (Ediciones Lorena 2002); Derechos y Libertades Constitucionales en Puerto Rico (Ediciones Lorena 2003); El Derecho Notarial en Puerto Rico (Ediciones Omar 2010); La Violencia Doméstica en la Ley 54, la Literatura, la Canción y el
his time was considerable and the accompanying frustrations many. When I saw myself reflected in that mirror, I decided that the law schools on the other side of the Atlantic might be a better choice.

I wanted to be a full time academic. That was not possible in Puerto Rico, so I left the island to pursue a Masters Degree in Law (an LL.M.) by returning to Georgetown. I was not then entirely sure that my trip would lead to a full time teaching career in the “states,” but I explained in my application for the masters program that I was interested in teaching and had some experience in the field. Luckily, the Director of Admissions at Georgetown noted my interests, and offered me a fellowship for future law teachers that gave me the education and mentoring to pursue a career here as a law professor.

After earning my LL.M., and realizing that a Puerto Rican law professor in Ponce, Puerto Rico, was not anything particularly unusual, but that a Puerto Rican law professor in the fifty states was a real oddity, I became determined to take

[CINE (EDICIONES OMAR 2011); EL SISTEMA DE JUSTICIA CRIMINAL EN PUERTO RICO (Ediciones Omar 2012); SALE, LOCO DE CONTENTO … LA CANCIÓN POPULAR EN PUERTO RICO DE 1927 AL 1950 (2015).

23 I distinguish the U.S. territorial possessions from the fifty U.S. states by referring to the latter as the “states.” See generally The Story of Downes v. Bidwell: “The Constitution Follows the Flag ... But Doesn’t Quite Catch up With It,” in RACE LAW STORIES (Rachel Moran and Devon Carbado, eds., Foundation Press 2008) (a study of the principal decision of the Insular Cases of 1901, which has provided constitutional authorization for the U.S. territorial empire for over a century. The cases were most recently referenced by the U.S. Supreme Court in its 2008 opinion in Boumediene v. Bush, 553 U.S. 723 (2008), but, strangely, not in the most recent opinions from that court that affect Puerto Rico that are discussed infra note 106.

24 The “Future Law Professor Research Scholar” fellowship has now become the Georgetown Law Research Fellowships “for emerging scholars who seek to pursue a law teaching career.” https://www.law.georgetown.edu/academics/academic-programs/fellowships/research-fellowships (last visited July 25, 2017).]
my chances at the largest law faculty hiring conference.25 My law school *alma mater*, Georgetown University Law Center encouraged and even paid for me to attend the conference as part of my fellowship. Georgetown also gave the critical opportunity to develop a scholarly agenda and one major project, to conduct “mock” interviews and “job talks” —the scholarly presentations that are required of any candidate for faculty appointment. This kind of preparation and mentoring has often been lacking for candidates of color, but it is now increasingly available either through LL.M. programs such as the one at Georgetown,26 or through the mentoring work of a critical mass of law professors of color.27 A more recent innovation is the position of Visiting Assistant Professor (“VAP”) that has become common in many law schools. While these are often used to fill particular academic or administrative needs, such as accommodating a faculty member’s so-called “trailing spouse”28—a member of an academic couple who

25 The Association of American Law Schools’ is the primary organization joining law schools in the United States. See generally, http://www.aals.org (last visited, April 4, 2018). The AALS sponsors an Annual Faculty Recruitment Conference. http://www.aals.org/services/recruitment/conference/ (last visited April 4, 2018). This meeting is often known among law faculty as the “meat market”.

26 The oldest such program of which I am aware is the William H. Hastie Fellowship Program at the University of Wisconsin School of Law. See http://www.law.wisc.edu/grad/fellow_hastie.html (last visited July April 4, 2018).

27 For example, LatCrit and the Society of American Law Teachers (SALT) co-sponsor an annual junior faculty development workshop that mentors new teachers and encourages students and practitioners to consider academic jobs. See http://www.latcrit.org (search under “Core Projects” for the most recent junior faculty programs (last visited April 4, 2018); see also https://www.saltlaw.org/ (last visited April 4, 2018)).

28 At the University of Florida this is now generally known as “Spouse or Domestic Partner Hire.” http://aa.ufl.edu/media/aaufledu/policies/Waiver--Rev-July-2017.pdf (last visited October 2, 2018). “The Dual Career Academic Hire process applies
would not have been hired alone—they can occasionally be used to allow practitioners or younger academics to develop their teaching and research skills, while in a mentoring law school faculty atmosphere.

I had a lot of interviews at the conference (over two dozen). Now that I have been on both sides of the law faculty hiring process, I know that my resume included three important markers for a viable candidate: (1) graduating from a sufficiently-elite law school; (2) grades that placed me in the top ten percent of my J.D. class as well as membership in the Order of the Coif, the law school “honorary scholastic society”; and (3) a federal judicial clerkship.

The fourth most commonly sought marker is being on the editorial board of a law review. This one is often interchangeable with grades, but law review editing provides valuable experience on the management of article submissions and editing that are critical to scholarly productivity. Unfortunately, as a student I was unaware that law review was especially important to a future in law teaching. This is a good example of the need to mentor students who may become law professors, and a special challenge to students of color who may not have the depth of educational experience that would allow them easily to identify these benchmarks for academic potential.

Returning to the hiring conference, with the benefit of hindsight I now realize that a few of the interviews were simply
cynical attempts by certain law schools to interview a person of color that they had no intention of hiring. One school made it particularly obvious by sending an untenured faculty member and a visiting professor to “interview” the candidates. I wondered why the person who left the interview room as I was entering looked so angry. The animosity and rudeness displayed by the member of the faculty—to the apparent embarrassment of her visiting colleague—should have explained it. But honestly, I failed to realize what was really going on until years later. This is part of the dangers of ego that I discuss later in the article. I was so comfortable in my conviction that I belonged there, that I failed to notice that at least a few of the people who were interviewing me thought quite differently. My arrogant naïveté led me to ignore that I was being “raced.”

Nevertheless, the majority of the meetings were serious and I was asked to visit several campuses for more in-depth interviews and to deliver a job talk at several widely dispersed law schools. The University of Florida Levin College of Law, the institution that is still my academic home, made the best offer and was the better choice for me at the time (and it did not hurt that I traveled from Detroit, Michigan, to Gainesville, Florida, in the middle of Winter!).

At the time of my hiring there were four persons of color on the Levin College of Law tenure-track faculty, including one Latino law professor. My relationship with my senior colleagues of color varied according to the individual. Each was very much its own. Happily, most of my contact and

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31 As the term is used here, “raced” is a verb meaning that a person or group is being racially stereotyped by an individual or group and that determines, indeed defines, the nature of the interaction between them.

32 However, I had been most impressed by the law school that I visited in Detroit, the old Detroit College of Law, which has now become the Michigan State University School of Law at its East Lansing, Michigan campus. [http://www.law.msu.edu/about-msu-law/history.html](http://www.law.msu.edu/about-msu-law/history.html) (last visited April 4, 2018). The collective enthusiasm for the law school’s mission among students, faculty and staff was obvious and I fondly remember my visit to this day.
collaboration with my colleagues of color is evidence of very good personal and professional relationships. In addition to the senior faculty, I was hired with two African American entry-level colleagues. These two colleagues and friends were a great source of support during my early years on the tenure-track, but, unfortunately, they moved to other law schools soon after their promotion to Associate Professors, just four years or so after we were hired. Their departure, together with the experiences of an African American colleague as Associate Dean, lead to a series of newspaper articles that painted an unfavorable picture of the racial climate at the law school.\textsuperscript{33} This was followed by the hiring of a consultant to address the issue of climate.\textsuperscript{34}

A major change in the diversity of and climate within my faculty came as a result of the hiring of senior faculty members. Unlike “entry-level” hires who start on the tenure-track, “lateral” hires are persons who already hold at least the rank of

\textsuperscript{33} In the Fall of 2000 and the Spring of 2001, there were multiple newspapers articles reporting on the racial climate at my law school. Most of the articles focused on the resignations of the two African American Professors and one African American administrator, and a few discussed student attitudes and perspectives. \textit{See, e.g.}, William Glaberson, \textit{Accusations of Bias Roil Florida Law School}, \textit{The New York Times} A-12 (October 30, 2000); Karla Schuster, \textit{Law Schools Struggle To Diversify Staff}, \textit{Ft. Lauderdale Sun-Sentinel} (October 15, 2000); Barry Klein, \textit{Diversity Debate Rolls UF Faculty}, \textit{St. Petersburg Times} (September 20, 2000); Stephen Kiehl, \textit{Minority UF Students Contend Racist Roots Run Deep At School}, \textit{Palm Beach Post} (December 16, 2000); Gavin Burgess, \textit{Mediator’s report condemns U. Florida law school culture}, \textit{The Independent Florida Alligator} (March 29, 2001).

\textsuperscript{34} Then Interim Dean Jon R. Mills issued a memorandum on October 3, 2000, indicating that the law school was “seeking the services of a consultant to assist and advise us in achieving our goal of a high quality and diverse faculty.” John E. Sands, Esquire, an experienced Arbitrator and Mediator from New Jersey was hired. \textit{See} John E. Sands, Consultant’s Report at 1 (March 27, 2001) (copy on file with author) (hereinafter “Sands Report”). Ironically, I have twice been asked to serve on College of Law “climate” committees beginning in 2006.
Associate Professor—rather than the starting rank of Assistant Professor—as well as those who are hired at the rank of Professor with tenure status. The hiring of senior white women and persons of color at my faculty was an important factor in creating a new, more supportive atmosphere for me at the law school, as well for creating a more active critical mass of professors of color.

But there are always some problems. There are many reasons for any two human beings to not get along. One pitfall that is especially dangerous for junior faculty of color is the “head [person of a particular group of color] on campus” phenomenon.35 Rather than developing a collegial, respectful, mentoring relationship between senior and junior colleagues, the senior colleague demands allegiance and obedience of junior faculty members who self-map as persons of color, particularly if they belong to the racial or ethnic category of the senior person, or if the senior persons themselves adopt racialized hierarchies. At the very least, this can be a demanding distraction that keeps the junior member from having an independent scholarly voice. But when the senior member develops the perception of being disobeyed, he or she can become one of the worst enemies that a faculty member of color can have in the academy. Nevertheless, these dangers must be counterbalanced against the junior faculty member’s lack of experience with the realities of racial dynamics within that particular faculty, that the senior faculty member may well know from painful personal experience and is simply trying to share with the junior person.

Another pitfall in the relationship between faculty colleagues of color is solely the result of the ignorance and ego of the junior faculty member. I was ignorant about the dynamics of race in the U.S. legal academy generally and at my faculty in particular. When this was combined with my unwavering belief that I “belonged” because I was used to

35 I have heard this put in much cruder terms that are only used in the privacy of close friendship and understanding, as well as behind closed doors.
being a member of the dominant cultural group, it produced a type of internalized oppression\(^{36}\) and feeling of racial superiority over other persons of color that I now realize was simply adopting the prevailing institutional racism. Oliva Espín explains the paradox of a group that is the object of discrimination marginalizing members of its own community:

> The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These “two mountains” reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized. ...\(^{37}\)

I was guilty of that in my early months (years?) in the legal academy. This is part of the “seduction of being special” that I discuss further in the next section.\(^{38}\) My slow realization of my mistake was the start of my understanding of the racialization process being performed within my faculty regarding me. I generally describe this process as “getting over myself.”

My relationships with my white colleagues have ranged even more widely than those with colleagues of color. A very

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\(^{36}\) The internalization of oppression occurs when a group that is oppressed by the normative society replicates some forms of oppression to marginalize members of its own community along lines of discrimination that parallel those of the normative group. For example, women might be subordinated by the men within the group, and among African Americans, lighter skin hues are considered more desirable.


\(^{38}\) As I explain in *Accidental Crit I* at 1325, “The beauty of the liberal myth of meritocracy is that it feeds the healthy egos of those of us who have achieved some level of success.”
precious few are professionally and personally good and rewarding. Many, perhaps most, are polite and outwardly friendly, but often patronizing. A few are hostile. My experience is not unique. “One departed minority faculty member described warm and supportive treatment by about ten percent of the faculty, no relationships with forty percent, and treatment by the remaining half that ranged from mildly negative to outright uncivil.”39 Identifying the patronizing attitudes of white colleagues who, for lack of a better phrase, claimed they “wanted to feel my pain” was my first clue to the type of promotion and tenure process that I would undergo at my home institution. Frankly, the patronizing attitudes, which are, in the final analysis the result of ingrained beliefs in hierarchies of race, are more dangerous for persons of color in the academy than the “honest bigots.” Columnist Gregory Rodriguez put it thusly:

Sometimes racism is linked to hostility or antipathy, but not always. You can think and act on the idea that someone is inferior without hating him or her. For that matter, you can hate someone without feeling superior. Although the latter is harmful to society, it’s not as insidious and difficult to identify as true attitudes of racial superiority. Personally, I’d rather know that someone hates me outright for my background than suffer the treacly dishonesty of racial condescension.40

Hence the title of my Keynote Speech during the Hispanic Student Assembly at the University of Florida in the Fall of 1997: “The Value of a College Education, the Pitfalls of Liberal Condescending Supremacy and the Complexities of Latino-Latina Self-Identification.”41 The open hostility,

39 Sands Report, supra note 34, at 22.
40 Gregory Rodriguez, Don’t Sweat the Buffons, The L.A. Times (March 8, 2010).
41 Pedro A. Malavet, Assistant Professor, “The Value of a College Education, the Pitfalls of Liberal Condescending Supremacy and the
however, is more likely to spill over to the students, sometimes quite publicly. At my school, around the time of my hiring, at least “two senior faculty members who had unsuccessfully opposed hiring certain minority candidates apologize[ed] to large classes of students for the faculty’s having hired unqualified, affirmative action candidates.” Students were told that “their education would suffer” as a result. I suppose that this explains—in every possible respect—why when I first started teaching at my current school my students would come to class with written questions that I suspect they had not authored and that they would read to me during the lecture.

The problems generated by these faculty and student attitudes were often promoted or allowed to exist by administrative action or the lack of it. The level of understanding of the special obstacles that law faculty of color face displayed by “administrations” at my law school is generally determined by the individual administrators. I have not found an institutional ethos in this regard, at least at my home school and university. Each of the six deans under whom I have served has generated a different atmosphere by controlling, discouraging, ignoring or encouraging the worst institutional behavior among the faculty, students and staff. With the wrong dean, the atmosphere can be almost unbearable,

Complexities of Latino-Latina Self-Identification,” Keynote Address, Hispanic Student Assembly, University of Florida (Fall 1997).

42 Sands Report, supra note 34, at 22 (emphasis added; I would have put the words in italics within quotation marks). See also Michael A. Olivas, The Education of Latino Lawyers: An Essay on Crop Cultivation, 14 CHICANO-LATINO L. REV. 117, 132-33 (1994) (“the credentials of Latino law professors exceeded those of all other faculty hired during the same period [1986-92]”).

43 As reported to the New York Times by my former colleague Charles Pouncy, one of the two African-American professors who left the law school in 2000. William Glaberson, Accusations of Bias Roil Florida Law School, THE NEW YORK TIMES A-12 (October 30, 2000).

44 See, e.g., Sands Report, supra note 34, at 22 (“Past management had made no coordinated effort to ensure a welcoming environment for newly hired minority faculty.”).
especially when the dean is a leader in or encourages the hostility. Others are well-meaning, even supportive, but uninformed. Others are well-meaning and supportive on an individual basis, but continuously reward bad actors. It puzzles and dismays me that some bad actors on the faculty are greatly rewarded and very good actors are not. For example, I find that some of the selections of faculty for chairs sometimes send the wrong message about what constitutes good faculty behavior.45

Administrations often compound the problems of faculty of color by making or permitting excessive demands in the least-rewarded standard for promotion. “Service” is one of the three areas considered in the promotion and tenure process, and in the evaluation of faculty performance after tenure. Teaching and scholarship are the other two. Service is the least important of the three, and, when one first joins a faculty, it is very easy to overdo it. The administration often wants to put a brown face or a different name forward to improve its image (a process that I have often heard described as “pimping” a faculty member of color when it is done cynically). For example, my friend and colleague Kenneth R. Nunn explained his resignation as Associate Dean thusly in 2001: “I did not want to serve as window dressing to make it seem there was a concern for diversity that I did not think was present.”46 On the other hand,

45 During a faculty retreat in 2016, our dean sought candid opinions using a system that accepted anonymous input sent via text messaging. One of the sentences caught everyone’s eye: “No chairs for assholes.” In his 2001 report John E. Sands described this kind of conduct:

There has been a history of past management’s tolerance of non-collegial conduct and actions disruptive of the law school’s stated policy favoring recruitment and retention of a high quality and diverse faculty. In the past, those perceived as “bad actors” guilty of non-collegial behavior have received discretionary benefits and financial advantages; and past management explained away their misconduct as reflecting “attitudes” that cannot be changed.

Sands Report, supra note 34, at 20.

we want to be good role models for all students, most especially for our students of color. The conventional wisdom is that these matters should be strictly controlled until after tenure. I agree, but strategic participation to develop a support group and to maintain your own sense of self-worth is also important.

During my early years in teaching, I enjoyed good relationships with students, especially with Latina/o students, and that was a great source of strength. I have always liked to teach, and having students who were willing to learn, and especially eager to learn from me, was a great source of positive support. Indeed, my biggest frustration over the past few years has been failing to “connect” with students, especially the students of color, in the way I did when I started teaching. I really cannot explain exactly why this has occurred, although generational changes in the student body, as well as the growing generational gap between me and those students are probably contributing factors.47

Nevertheless, almost immediately after I arrived at the law school I was asked to become faculty advisor to the oldest Latina/o group at the College of Law, called SALSA, and served in that capacity almost continuously for a dozen years. The students from those early years still send me pictures of their children and let me know how they are doing professionally. I was especially heartened that the students reached out to me, even though they were aware that we had

47 We have recently been having much discussion in my faculty about the so-called millennials and the general teaching challenges that they present. Compare, Ruth Vance & Susan Stuart, Of Moby Dick and Tartar Sauce: The Academically Underprepared Law Student and the Curse of Overconfidence, 53 DUQUESNE LAW REVIEW 133 (2015) (a sober and in my view realistic assessment of the special challenges of teaching law to millennials) with Emily Benfer & Colleen F. Shanahan, Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law, 20 CLINICAL LAW REVIEW 1 (2013) (counselling a more proactive approach to doing something about educating millennials accompanied by an optimistic view of those students’ ultimate capabilities and willingness to learn).
political differences. Back then, the majority group was Cuban-Americans, who might consider me the *Comunista de Ponce* (the Communist from Ponce), because I favor Puerto Rican independence. But this did not deter them from asking me to be their faculty advisor and actively involving me in the activities of the organization for many years to come. The leaders of SALSA pointed out that the organization’s president had complained to the administration that the number of Latina/o students at the College of Law did not reflect the diversity of the state of Florida, ten years before I was hired. The percentage of Latina/o students in the class had remained unchanged in the intervening decade, so I decided to volunteer as a member of the Admissions Committee. This was the best time of my educational career when it came to student-mentoring, even in spite of the hostility promoted by some faculty in their classrooms.

Unfortunately, sometimes the students of color are the problem. A Mexican-American friend and fellow law professor puts it like this: “Sometimes you are just not *raza* enough for the students.”

I personally have gone from having a great relationship with the Latina/o students, the ones that still write me and send me baby pictures, to having almost no relationship at all with the Latina/o students, even though, or perhaps because, Latinas/os are now the largest minority group at the law school. Some of my African American colleagues felt strongly let-down by the African American students at certain critical times as well, so sadly this does not appear to be a unique phenomenon. And, another advantage of working on this over such a long period of time, perhaps as a result of the shared experiences of hurricanes Irma and Maria, I am noticing renewed contacts from Latina/o students in recent weeks.

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48 “Raza” is Spanish for “race.” Real Academia Española, *Diccionario de la Lengua Española* 1731 (21st ed. 1992). The word is commonly used by Mexican Americans to self-map as U.S. Latinas and Latinos of Mexican descent.

49 I made no secret of the fact that after Hurricane Maria hit Puerto Rico on September 20, 2018, I was worried sick about my father, who had
Student hostility and strategic behavior in teaching evaluations are also matters of concern. While my peer-review evaluations from class visits are quite good, my student evaluations have never been great. I am very demanding about timely, regular attendance and about class-preparation. Early in my career, students wrote that I treated them like children. This led me to explain to my classes that I expected them to behave like adult students at a professional school, and to give them the example that when an attorney is late to court he or she may face the imposition of sanctions and even the possible dismissal of their client’s case (and that I had seen this happen in open court when I practiced). This explanation of my expectations appeared to have been helpful. But I found so many of the written comments in the evaluations so insulting that I stopped reading them long ago. Having someone else read the written comments, however, may produce some useful feedback and help to put the numbers in context.\(^5^0\) I also pay attention to the basic evaluation numbers. In the past, the students may have rated me low on “respect for students,” but they always gave me high marks on class preparation, enthusiasm for and knowledge of the course (these three questions are particular to the law school’s teaching evaluations).\(^5^1\)

50 When I was up for tenure, one of my senior colleagues read several years’ worth of teaching evaluations. This was one of nicest, most selfless things that a colleague ever did for me. He concluded that there was clear racial animus directed at me, but he gathered some useful notes about how better to approach the students. He was also in a position to talk about my teaching during the promotion discussion. The written comments—which are not always preserved unless the professor requests it—can provide a great lens through which to view the raw numbers, especially at the time of a promotion and tenure vote.

51 In the last couple of years I have noticed an extreme downward trend even in these numbers, which is worrisome, given that my class...
The problems with teaching evaluations appear to have become worst in the age of electronic evaluations. Since we went to online-only evaluations, there is a noticeable disinhibiting effect in the commentary over the old paper evaluations system. The use of social media by students to coordinate how they wish to express their displeasure with a particular professor seems to only increase the vitriol. For example, one student once described how she and her classmates had used a class Facebook page to coordinate their scathing criticism of a visiting professor.\footnote{For a recent discussion of the topic, in electronic form, see, e.g., Lawprofblawg, \textit{Weaponizing Student Evaluations: Biases in student evaluations are used to reinforce the biases of departments seeking to deny tenure to professors who aren’t white males.} \url{https://abovethelaw.com/2018/09/weaponizing-student-evaluations/} (last visited September 26, 2018).}

Gender bias in evaluations is unfortunately common. The co-authors of one recently published study note that:

\begin{quote}
We found that a male professor was more likely to receive comments about his qualification and competence, and that refer to him as “professor.” We also found that a female professor was more likely to receive comments that mention her personality and her appearance, and that refer to her as a “teacher.”\footnote{Kristina Mitchell, \textit{Student Evaluations Can’t Be Used to Assess Professors: Our research shows they’re biased against women. That means using them is illegal}, Slate, March 19, 2018, \url{https://slate.com/human-interest/2018/03/student-evaluations-are-}}
\end{quote}

preparation has not changed. I am skeptical that it is entirely the result of changing student demographics, but there has been a lot written about the current crop of students, the so-called “millennials.” For an interesting case study and a review of the literature, see Kenneth Stewart, \textit{Lessons from teaching millennials}, \textit{57 College Teaching} 111 (March 22, 2009) (“concludes that meaningful learning is best served by maintaining academic standards —even when there is some lessening of student and teacher comfort levels” which, among other reactions, produced lower teaching evaluations).
Student evaluations of professors of color are generally lower than those of other faculty. A report finding that Black male and female faculty received lower ratings than their white counterparts from undergraduate and graduate students, summarized the earlier literature in this field as follows:

There is relatively little empirical, quantitative research on the intersection of race and gender regarding course evaluations (Huston, 2005). The possibility of race bias is a relatively new area of inquiry, which contributes to its shortage in the literature (Huston, 2005). Few studies were found that dealt with course evaluations and gender and race. Anderson and Smith (2005) and Smith and Anderson (2005) compared Latino and Anglo faculty in their studies on course evaluations and found that among all groups of faculty female Latino faculty received the lowest course evaluations. Hamermesh and Parker (2005) found faculty of color, which included Latino rather than Black faculty, received lower course evaluations than White faculty. Hamermesh and Parker also found that non-native English speaking female faculty received higher course evaluations than non-native English speaking male faculty. Of the three groups of faculty (Hispanic, Asian-American, and White) included in the DiPietro and Faye (2005) study, Hispanic faculty received the lowest course evaluation ratings. Asian-American faculty received slightly better course evaluations than their Hispanic colleagues, but their

scores were still lower than the scores of White faculty. The number of African-American faculty in DiPietro and Faye study was too small to draw any conclusions.54

The widely cited Huston report provides a detailed analysis of the available data student evaluation bias in both pedagogical literature55 and legal scholarship.56

Student attitudes generally have an important effect on our lives. There are many stories, such as study groups being created to challenge the intelligence of professors of color57 (as I mentioned earlier, when I first started teaching at my current

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54 Bettye P. Smith, Report: Student Ratings of teaching effectiveness based on race and gender, 129 EDUCATION 615 (June 22, 2009).


56 I will not attempt to review the entire literature here. A fine and succinct example of the discussion is Sylvia R. Lazos, Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of “Doing” Gender and Race in the Classroom, in PRESUMED INCOMPETENT, supra note 7, at p. 164.

57 For a widely read account see Pamela J. Smith, Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority, 6 WM. & MARY J. WOMEN & L. 53 (1999).
school, students would come to class with written questions; some of these, I suspect, were supplied by other members of the faculty). Being well-prepared for each class is of course the easy solution to these questions. But knowing the entire course is very important, and this is where the instructor has a clear advantage over the student. Many times the students are asking questions that are not relevant to the course, or simply asking about material that will be covered later in the course, and telling them that their question is beyond the scope of the course (and the exam), or that it will be addressed in depth later and referring them to the specific section in the text, is very effective with, and I think appreciated by, the students. My dad, who had been teaching for decades, gave me great advice when I started teaching: if you don’t know the answer, say so; but know all about it by your next class if the material is relevant to the course. Classroom conduct and the reception of knowledge may also be “colored” and “gendered” by the source. The concept of the “withholding of assent to learn” has been recognized in pedagogical literature and may be summarized thusly: “students can and do withhold assent to learn what they are being taught, and they can and do grant such assent.”

Some of my students, for example, seem to believe that lex loci delicti and lex loci contractus are phrases in Spanish, and that this language has no place in the classroom.

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59 For a dated but thorough review of substantial literature on the experiences of academics of color, including Latina/o academics, see Michael A. Olivas, Race, Raza and Ruins, 24 J. COLL. & UNIV. L. 123 (1997).
Paradoxically, one relatively recent psychological study found that the students may well be acting against their pedagogical self-interest when they allow bias, express or implicit,60 to color their evaluations. This study concludes that the most effective teachers get the worst teaching evaluations.61

Indeed, the most gratifying student comments for me come from former students, who, after a few years in law practice, drop me an email to let me know that they had just done something important in their professional lives that they felt I had helped them to prepare for with the demands of my class. One particularly happy encounter was a hallway chat with

60 Implicit, or unconscious, bias has increasingly become a subject of academic study. For example, Project Implicit, one of the oldest and broadest ongoing research studies in this area, “is a non-profit organization and international collaborative network of researchers investigating implicit social cognition —thoughts and feelings that are largely outside of conscious awareness and control.”
https://www.projectimplicit.net/index.html (last visited October 3, 2018). As part of their research at the time of this writing, the Project allows individuals to self-assess with fourteen (14) tests for implicit biases.
https://implicit.harvard.edu/implicit/selectatest.html (last visited October 3, 2018). This has also become a matter of concern in law. At least one U.S. District Court now requires potential jurors to review a video presentation about implicit bias before appearing for jury duty and has specific jury instructions about it that are used during their trials.

61 Nate Kornell & Hannah Hausman, Do the Best Teachers Get the Best Ratings?, FRONTIERS IN PSYCHOLOGY,
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4842911/ (last visited 26 September 2018), reporting that:

Two recent studies found that when learning was measured as performance in subsequent related courses (i.e., when deep learning was measured), teachers who made relatively large contributions to student learning received relatively low teacher ratings …. If a college's main goal is to instill deep, long-term learning, then teacher ratings have serious limitations.

(internal references omitted).
a student who told me that she was working with the State Attorney’s office. She was assigned to write a motion *in limine* addressing an evidentiary issue. When she asked how to do it, she was told: “You had Malavet for evidence didn’t you? You do it exactly how he told you.”

Faculty and student politics generally are complex, particularly in the promotion and tenure process. Race, racialization and racism only make things worse. I write “racialization” because Latinas and Latinos are not a “race”, but we are subjected to a process of racialization in the United States in which groups that are very diverse in terms of race or national origin are nonetheless commingled into a single homogenized mixed “race” that is naturally inferior to whites. Where we might self-map as Chicanas/os (Mexican-Americans), *Boricuas* (Puerto Rican Americans), Cubanas/os (Cuban-Americans), etc., all these ethnic sub-groups are characterized by the dominant white culture as a single “race.”

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62 The motion *in limine*, like the one for reconsideration, is not expressly mentioned in the Federal Rules of Evidence. It is, however, a commonly used practice document to bring evidence matters to the attention of the court prior to a trial. For example, in Davis v. Washington, the U.S. Supreme Court stated that

> Through *in limine* procedure, [trial courts] should redact or exclude the portions of any statement that have become testimonial, as they do, for example, with unduly prejudicial portions of otherwise admissible evidence.


63 Writing a basic legal document related to the subject is a typical assignment in my courses. Since 2001, students enrolled in my Evidence class have been required to draft a motion *in limine* in which I use the fact pattern from the exam from the prior term to require students to argue for or against the admissibility of certain evidence. The project for the fall of 2017 is posted here:


64 “*Boricua*” is a Spanish term used by Puerto Ricans to self-identify. Real Academia Española, *Idioma de la lengua española* 313 (21st Ed. 1992).
In constitutional law, the U.S. Supreme Court has gone from invalidating the improper exclusion of Mexican-Americans from jury service in Texas, without recognizing it as racial discrimination, in 1954,65 to allowing a convicted defendant to challenge the anti-Mexican “racial” bias of a juror involved in his conviction, in 2017.66

The so-called “Latina/o” or the more commonly used “Hispanic” racial category encompassing people of white, indigenous, and African heritage misses the point that Latinas and Latinos are not a race but are a cultural/ethnic group encompassing persons of many different races.67 Some Latinas/os are phenotypically or anthropologically white, black, indigenous, something else, or of mixed heritage. I nonetheless acknowledge that Latinas/os, embrace the concept of a sociedad o raza india, española, y africana (an Indian, Spanish, and

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66 Peña-Rodríguez v. Colorado, 580 U.S. ___(S.Ct. March 6, 2017). In this case, a 5-3 majority of the court rules that the Federal Rule of Evidence 606(b) jury inquiry privilege must give way to the 6th Amendment right to an impartial jury because “A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after the verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right.” Slip op. at 17 (Kennedy, J). The possible bias consisted of anti-Mexican statements by a member of the jury.

Shockingly, the three dissenting justices appeared to equate “animosity toward the defendant because of his race” to “animosity toward the defendant because he was wearing the jersey of a hated football team.” Slip op. at 18 (Alito, J., dissenting). They also wrote that if a juror stated that “he had a lot of experience with ‘this macho type’ and knew that men of this kind felt that they could get their way with women,” this would be “somewhat ambiguous,” and not a reference to the Hispanic defendant’s “race or national origin.” Slip op. at 19 (Alito, J., dissenting).

African society or race). Of course, these shifting meanings of *Latinidad* (Latina/o-ness) only help to reinforce what LatCrit and Critical Race Theory have taught me: that race is a social construct and, as such, varies according to the viewer. In other words, we construct our own identity, but the dominant culture imposes its own self-serving vision(s) of who you are supposed—or allowed—to be.68

Understanding this process, and how it played out in the legal academy, was critical to my successful navigation of the tenure track. While I self-map as a Boricua in the legal academy, which of course made me normative in my Puerto Rican context, in the U.S. context I was being “raced” differently by the dominant group. Latinas/os are racialized as a mixed, nonwhite race, and as it does with African Americans, this results in our social marginalization.69 The social construction of a Latina/o “race” is not primarily based on or motivated by ethnicity and xenophobia but, rather, by race and racism. This is not to suggest that culture, ethnicity, and “foreignness” are not a part of this device but to emphasize the social construction of race(s). Ian F. Haney-López observes that “race is social, in the sense that the groups commonly recognized as racially distinct have their genesis in cultural practices of differentiation rather than in genetics, which plays no role in racial fabrication other than contributing the morphological differences onto which the myths of racial identity are inscribed.”70

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These racist stereotypes today find their biggest advocate in the President of the United States, Donald J. Trump, to whom we all are “bad hombres,” Mexican “exports” consisting of “rapists” and “criminals.” This, in his view, requires increasing deportations, including mandating that each immigration judge “clear” 700 cases per year, and deploying military units to the U.S.-Mexico border. It is especially despicable and inhumane that immigrant children have become special targets in this process.

The current hateful rhetoric, and many actions, are a painful reminder of a tenure process for me was hurtful and hostile primarily because of the manner in which these social stereotypes are perpetuated and reinforced.

71 Janell Ross, From Mexican rapists to bad hombres, the Trump campaign in two moments, The Fix, THE WASHINGTON POST (October 20, 2016).


73 Although the President said this while the Secretary of Defense was sitting beside him, the White House later “clarified” that this meant the National Guard. Julie Hirschfeld Davis, Trump Plans to Send National Guard to the Mexican Border, Politics, THE NEW YORK TIMES (April 3, 2018).

74 The New York Times reports that thousands of immigrant children have been moved in the middle of the night into a tent city in Texas where they have no access to education or to their legal representatives. Caitlin Dickerson, Migrant Children Moved Under Cover of Darkness to a Texas Tent City, THE NEW YORK TIMES (September 30, 2018) The story notes that: “Until now, most undocumented children being held by federal immigration authorities had been housed in private foster homes or shelters, sleeping two or three to a room. They received formal schooling and regular visits with legal representatives assigned to their immigration cases.”

construction processes played out within my faculty and home institution, back then. I successfully managed the tenure-track because I knew the rules and played by them, even when the administration did not wish it. The rules of the tenure track at my university are clearly written, but often go unread. Indeed, my university amended its tenure rules soon after I joined the faculty. When I read the new rules, I realized that the advice I was receiving from my then dean about the “need” to accelerate the process of promotion and tenure was wrong. Accordingly, in spite of a relatively-short delay in my promotion to Associate Professor and Professor, I chose to take advantage of the new university rules that gave me a full six years to prepare for tenure. Whether I survived the administration that seemed so intent on having me speed through a process in which the dean was not a supporter should be described as good Karma\textsuperscript{75} or sheer luck is not really important.

Another reason for my success on the tenure-track was that I developed critical mentoring relationships within and outside of my faculty. It is not enough for your work to meet the standards for promotion and tenure, there has to be the subjective acceptance by your voting faculty that your work meets those standards. The perception of compliance is a subjective and highly localized process, at least to the extent that it is a human enterprise. You need champions within your faculty to plead your case and look out for your interests at those meetings —official and not— to which you are not invited. You need outside mentoring to provide a fresh outlook and to assist with a broader scholarly vision, especially when you belong to a relatively-small group of scholars. You also need to make a mark outside your faculty to ensure that your absence would not go unnoticed. I found this scholarly home at the Annual LatCrit conferences, and by reconnecting with colleagues at the AALS Annual Conferences.

\textsuperscript{75} There is a nice tradition in my faculty in which a senior colleague delivers “Karma Happens” hats to those of us who have been recently tenured. I still have mine in my office.
I endured and I had allies. Now, hallelujah, I have arrived at the promised … rank?76

I am a tenured professor of law. That means that I am no longer subject to the organized hazing that characterized the tenure track for me. This hazing was a combination of patronization and outright hostility. While some of those attitudes may remain, the persons responsible are quite well aware that there is nothing they can do about it now, except perhaps be rude or contribute to a hostile working environment. The latter, generally, is only mildly irritating and largely manageable post-tenure, unless it comes from the administration.

Rank and tenure have given me great freedom and stability in and outside of the classroom. Additionally, at my school, salary increases are tied to faulty rank, of which there are four: Assistant Professor, Associate Professor, Professor and Eminent Scholar (this last rank has now been eliminated but several currently-serving faculty members still hold it throughout the university).77 Most persons at my university are promoted to Associate Professor at the time tenure is granted, and only a few ever seek or receive the rank of “full” Professor, let alone Eminent Scholar. However, the law school operates differently, and most us will reach the rank of Professor with or soon after tenure.78 I am often surprised when I serve on

76 I reached the rank of Professor in 2004.
77 Because we are a public institution, the salaries of all employees at the University of Florida that are paid from university funds and endowments are publicly disclosed in a yearly report. While this can be uncomfortable, it can also serve to identify salary disparities that are potentially unfair. The current report for my university, as of October 2017, may be found here: https://ir.aa.ufl.edu/media/iraufl.edu/V-14_SALARIES.PDF (last visited April 4, 2018).
78 The AALS reported that as of 2008, 1,158 persons held the rank of Assistant Professor, 1,595 held the rank of Associate Professor and 5,675 held the rank of Professor in U.S. law schools. Association of American Law Schools, Statistical Report on Law Faculty 2007-08, pp. 18-20 (Pati Abullina, ed. 2009) (hereinafter “AALS Statistical Report”).
doctoral dissertation committees that very senior colleagues from other colleges only hold the rank of Associate Professor, even though they have been tenured for decades. This has taught me to appreciate the law school system.

The rewards that one would get post-tenure, at least at my school, are principally the status and money that accompany the academic chair. Some chairs are just a name and rather insignificant monetarily, but for many academics chairs are the only path to substantial post-tenure salary increases. Chairs are very often well-earned rewards for a career of productive scholarship and teaching. But, as I discuss above, choosing the wrong person for these awards can send the wrong message. At my school, chairs are unilaterally assigned by the dean under our faculty rules.

I must also acknowledge that another way to improve your condition within the faculty, financial or otherwise, is to take on administrative work. I was appointed the Associate Director of the LL.M. in Comparative Law program at the college of law in the fall of 2010 and I became its director in the fall of 2011 and held that position until the spring of 2016.

The reports are no longer available at the AALS website http://www.aals.org/ (last visited April 4, 2018). When I inquired why the report was no longer available, I was informed that the AALS was concerned that the available data might not be sufficiently reliable and, pending a review of the data-collection process, the organization would not publish new data.

There are over 20 professorship endowments for the College of Law that are managed by the University of Florida Foundation. They used to be listed online at this page https://www.uff.ufl.edu/FacultyEndowments/ProfessorshipsByUnit.asp?Unit=LW (last visited September 14, 2017). But the last time I tried the link, it was not working and I could not find the information in the newly-edited pages. The Audited Financial Report of the Foundation for 2016 indicates that the endowments range from $251,859 for the Sam T. Dell Term Professorship to $2,872,436 for the Huber C. Hurst Eminent Scholar Chair. The net income available to fund the chairs is generally a little over 3% of the endowment principal per year. http://www.fa.ufl.edu/wp-content/uploads/ga/2016_UFF_Audited_FS.pdf (last visited April 4, 2018).
administrative “stipend” that supplemented my 9-month salary was substantial, and I gladly accepted that compensation during the time I held that position.

There are many other “goodies” that are used as incentives in the academic world. I sometimes think that administrators seem to “miss” me when making special assignments for which I might be a very good curricular fit. My father, with whom I often share my professional frustrations, once asked me if I thought that the administrators who engage in these kinds of conduct hated me. I have to say, no, I do not believe that they hate me. While there is open hostility in some quarters, as I have already discussed, the phenomenon of academic rewards going to other faculty, even to persons who may not display the best academic conduct or represent the ideal curricular “fit” for a particular program, may be the product of many complexities. However, administrators should be aware that a particular danger for faculty of color is the result of the patronizing views of racial inferiority that are often held by a broad spectrum of the faculty: the colleagues of color may be personally “liked” but are professionally invisible. One of my former African American colleagues, for example, who was a widely liked person among our fellow professors, was horrified during a faculty meeting when a committee reported that they polled all professors teaching a particular class, because she had taught that course every year she had spent at the law school, and no one had bothered to talk to her. Professional and curricular invisibility, accompanied by outward politeness, even apparent warmth, is frankly more difficult to take than outright hostility some times.

Cronyism makes things worse when academic rewards are treated as entitlements for the chosen few and are thus often distributed not in recognition of achievement, but rather as rewards for or conduits to loyalty to a particular individual or clique. This favoritism is demoralizing for the broader faculty. Additionally, even when this conduct is not driven by sexism or racism, or a conflict of interest, it will usually have a disproportionate effect on women and persons of color, who represent small and relatively recently-hired and recently-
tenured minorities in the legal academy. These are matters in which the attention and leadership of the Dean are especially important.

That being said, one good friend has always warned me that expecting acknowledgement, recognition and rewards, even when they are earned, is a recipe for unhappiness for academics of color. We must be proactive in ensuring that we are evaluated reasonably objectively within the tenure rules. But we must also strive to judge and value ourselves by our own standards, rather than through the approval of others, especially the approval of the dominant group. Ideally, we should stay in the academy because we judge ourselves positively and because the job, even with its frustrations, is personally fulfilling.

III. Why did you stay?

Given the inherent difficulties of the tenure track, and the particular difficulties encountered by persons of color, the next frequently asked question was obvious, occasionally even to me: Why did you stay? Or put another way, how did your soul (or sound mind) survive the process or even wish to do so?

Letting go of my anger at the tenure process was not easy, but it was necessary. In addition to my realization that I very much like the fundamental aspects of my job, my success in ridding myself of the bitterness, which, though incomplete is nonetheless reasonably acceptable, was the result of two major epiphanies. First, I have learned that many of the worst actors in the legal academy — those who appear intent on driving the rest of us crazy — make themselves crazy. There is nothing that I can do, beyond existing, that will make their lives any worst. Indeed, if left to their own devices, the people who go out of

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80 The AALS Statistical Report indicates that women represent less than 30% of the Professors, but 46.8% and 53.6%, respectively, of Associate and Assistant Professors. AALS Statistical Report at 18. This same report states that 80.7% or Deans, 80.5% of Professors, 65.9% of Associate Professors and 56.4% of Assistant Professors are white. Id. at 20.
their way to be hostile to others lead angry lives and are their own worst enemies. In the final analysis, my observations of the conduct of these faculty colleagues—even actions directed at me—no longer make me angry, they make me sad. I feel sorry that otherwise capable, intelligent, well-educated persons are so unhappy with their lot in life; they treat others in soul-crushing ways because their souls are crushed. This behavior is sadly pathetic and it should not be emulated. A major achievement in my search for peace and enjoyment in the academic world has been the realization that persons like that only win if I become them, in other words, only if I become as angry and bitter as they are will they have succeeded in crushing my academic soul.

The second epiphany was getting over myself. I have often said that another part of academic survival, especially for persons of color, is to “get over ourselves.” By this I mean that we have to put our own healthy egos in check. We have to accept that we are not entitled to be a chaired professor of law at the Harvard Law School just because we are reasonably capable law teachers.81 We are privileged to work in a job that is increasingly attractive to law graduates, and that is occupied by about one percent of all law-trained people in the United States.82 Would I wish to move my law school to Paris or

81 In my experience, the belief that one is “too good” to be teaching at one’s school—a “big fish in a little pond”—is a generalized problem in the legal academy and it is certainly not limited to persons of color.

82 The total number of full-time academics reported by the AALS is 10,647, which includes administrators who hold faculty rank; of these, 5,675 are professors. Only 172 of those holding the rank of professor self-map as Hispanic or Latina/o, and this number includes the faculty of the three Puerto Rican law schools that hold AALS membership. AALS Statistical Report at18-20. The Bureau of Labor Statistics reports that 792,500 “lawyers” jobs as of 2016; this number does not include academics. https://www.bls.gov/ooh/legal/lawyers.htm (last visited April 4, 2018). The BLS number is smaller than that of persons admitted to the practice of law, which the American Bar Association, as of December 31, 2016, gives as 1,335,963. https://www.americanbar.org/content/dam/aba/administrative/market_rese
Buenos Aires (or Ponce)? Yeah, sure! (Sorry, Gainesville). But it is an imperfect universe, and the law teaching job is a very good one, if we allow it to be. I teach at a good law school within a major public research university that gives me the opportunity to pursue a professionally fulfilling academic life.

Another danger of ego is, in my view, particular to professors of color: the seduction of uniqueness, of being the “special Puerto Rican” in my case. Around the time when I earned tenure, there were only about twenty or so Puerto Rican law professors in the U.S. legal academy (not including those on the island), so “I must be special.” Self-confidence is important to the achievement of any educational or personal goal. But this confidence must be tempered by common sense so that it does not become a self-destructive delusion. And in the particular case of persons of color, we must be weary of the difference between a role model that may be held up or viewed to motivate the younger generation and educate the dominant group, against the use of our personal history as a barrier to admission to whatever exclusive club we may have entered. This latter use is an individualized version of the model minority myth that uses the success of one minority group — or individual— to illustrate that the absence of other persons of color is due to that group or person’s “failure” rather than

[link](archive/National%20Lawyer%20Population%20by%20State%202017.authcheckdam.pdf) (last visited April 4, 2018). The difference between the two numbers is because the BLS tracks those who earn a living as attorneys, and the ABA tracks overall bar membership.


84 So-called “model minority” groups are used to divide outsider communities. However, some critical authors have written persuasively about the need for role models. Enrique R. Carrasco, *Collective Recognition As A Communitarian Device Or, Of Course We Want To Be Role Models*, 9 LA RAZA L.J. 81 (1996) responding to a contrary view by Richard Delgado, see Richard Delgado, *Affirmative Action as a Majoritarian Device: Or, Do you Really Want be a Role Model?*, 89 MICH. L. REV. 1222 (1991).
because of institutionalized racism. The dominant group grants a modicum of white privilege to the model, as long as he or she is willing to acquiesce in being used as such. Conversely, refusal to go along would be treated as a racial betrayal by that same dominant group.

Reading the work of Critical Race Theorists generally, and LatCrit scholars in particular, has been essential to my understanding and surviving the dangers of my tenure process. This literature also gave me voice and agency. It is easy, at least for me, to maintain interest in teaching, but I must confess that maintaining my passion for and desire to publish, and the energy to carry it out, has been my most difficult post-tenure challenge. CRT has helped me here by providing me the opportunity to say something relevant to legal scholarship, and to articulate it in the language of law. As I noted in my initial article “The Accidental Crit I,” I came to CRT by default, almost as reflexive defense against the academic assault that I felt the victim of.85 Now I realize that CRT has given me much more. It has given me another reason to remain in the legal academy: I can now write what I want. So I stay because I have something to say in my teaching and in my writing and my job as a legal academic gives the opportunity to express it. Indeed, this essay marks a return to old ground as part of a scholarly restart of sorts, that is ultimate fun, if also deeply challenging.

Changing one’s entire scholarly focus is hugely difficult and it delays your professional development, but in 1998 that is precisely what I had to do if I had any hope of getting tenure. I was essentially forced to abandon my comparative law writing by hostile internal reviews and attitudes (despite teaching the subject continuously and even developing my own teaching materials for the course, I had never returned to comparative law publishing).86 Although necessary, my turn to CRT

85 Malavet, Accidental Crit I, supra note 1, at 1293-7, 1324-31.
86 I discuss a recent, modest, return to comparative methodology in the conclusion to this article. And I gladly note that these comparative works remain some of my most cited and requested pieces. See Pedro A. Malavet, Counsel for the Situation: The Latin Notary, a Historical and
scholarship also represented a risk because Critical Race Theory was viewed with great hostility by many colleagues. However, because of an internal and external critical mass of persons who work in and respect CRT, those accusations could be met head on. I was no longer alone, I was a member of a community that included persons who were willing to help me write, and who had the capacity to do so because they knew the literature very well and were excellent editors. I found a welcoming and supportive scholarly community in which to mature. I cannot describe how fulfilling I found it when I was asked to produce my first review of someone else’s scholarship as part of a tenure file. With the help of my fellow Critters, I have become a “viejo” (old man), which does have its rewards.

Naturally, the strong influence of scholarship produced mostly by and relating to persons of color, has not been without controversy. The use of narratives, such as many of those included in this anthology, was especially controversial. Psychology has long recognized that narrative is

the primary form by which human experience is made meaningful. Narrative meaning is a cognitive process that


organizes human experiences into temporally meaningful episodes. Because it is a cognitive process, a mental operation, narrative meaning is not an “object” available to direct observation. However, the individual stories and histories that emerge in the creation of human narratives are available for direct observation.\textsuperscript{88}

Thus, peoples’ expressions about themselves —what is identified here as a peoples’ popular cultural narratives— is a lens into their lives. For example, in my scholarship, the Puerto Rican narratives are a lens into the cultural nationhood of the \textit{isla}\textsuperscript{89} and into the Puerto Rican citizenship self-construct.\textsuperscript{90}

Understanding why we cannot abandon the field of civil and human rights discourse to White Angla/o United States academics requires an understanding of the concept that “truth” is not “neutral” —especially legal truth which, in the context of my focus on citizenship, much like in the context of race and ethnicity, is plainly socially constructed as a result of normativity and essentialism. If the discussion comes solely from the dominant group, it will suffer from a “form of shared

\textsuperscript{88} Donald E. Polkinghorne, \textit{Narrative Knowing and the Human Sciences} 1 (1988).

\textsuperscript{89} “\textit{Isla}” is Spanish for island. Real Academia Española, II \textit{Diccionario de la Lengua Española} 1191 (21st ed. 1992).

\textsuperscript{90} \textit{See, e.g.,} Malavet, \textit{America’s Colony}. In the context of the international law debate over the treatment of peoples and cultures, self-determination in mapping cultural nationhood and citizenship is a crucial element in an anti-essentialist process. To the extent that essentialist “othering” links race to ethnicity and nationality, the perspective of Critical Race Theory is needed properly to structure and re/form the doctrine. \textit{See generally,} \textit{The International Covenant on Civil and Political Rights} provides: “[E]thnic, religious or linguistic minorities [have a right] to enjoy their own culture, to profess and practice their own religion, [and] to use their own language.” Art. 27, Section 1, GA Rs. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966).
reality in which its own superior position is seen as natural.”

As the late Jerome Culp explained:

> Whenever one raises the question of including the personal, especially the personal experiences of people of color, one hears the response by many that color does not and cannot matter to the legal discourse. ‘Truth is colorblind,’ is the unstated, but assumed, premise that undergirds the discussion in this area.

Thus, narratives can be and are used by the dominant group to enforce their “truth” and to undermine minority rights. Accordingly, my profession allows me to deploy differently located epistemological narratives that are essential in the culture debates over citizenship and nationhood within legal scholarship in the United States.

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93 See generally Robert S. Chang, *Disoriented: Asian Americans, Law, and the Nation-State* 12 (1999). Professor Chang gives examples of how American popular culture, especially in film, constructed Asian Americans. He presents an excellent comparative analysis of the white American vs. “Other” races constructs in D.W. Griffith’s *The Birth of a Nation*—black bodies “violating” white women are used to play on white Americans’ fear of miscegenation—and Cecil B. DeMille’s *The Cheat*, which portrayed a Japanese man as a “sexual transgressor” in order to play on the miscegenation fears of white Americans. Id. at 12, 13-17.
Academic life allows me to join other minority and subordinated communities to utilize narratives to counter the “singular homogenized experience” produced by the essentializing of identities imposed by majority society. In my case, being a law professor in the states and publishing my scholarship in English, allows me more directly to articulate the power of Puerto Rican cultural nationhood, to use it as a vehicle to speak the truth to the “power”94—the dominant American society.95 Thus, the narrative of Puerto Rican cultural nationhood that I develop in my scholarship serves as an antidote to the normative narrative promoted by the United States.

I have to confess that I have recently been in a scholarship rut about how to continue my extensive work on U.S. colonialism in Puerto Rico. A few weeks ago, I was asked to revisit one of my early forays into LatCrit theory: *Reparations Theory and Postcolonial Puerto Rico: Some Preliminary Thoughts.*96 It was a gracious invitation to write an online opinion piece to be published by a Latina/o policy and advocacy group and I was excited about it. I failed miserably in my attempt (and the editors were gracious in their rejection). I have become so pessimistic about the realities of the U.S.-

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95 In fact, it has been done for a very long time in the context of the American debate over race. *See, e.g.*, Frederick Douglas, *Narrative of the Life of Frederick Douglass, an American Slave, Written by Himself* (B. Quarles, ed. 1967) (1845).

Puerto Rico legal relationship generally, especially in the ongoing aftermath of the Hurricane Maria catastrophe, that Pollyannaish theory is just not enough to generate the writing passion in me. The recent spectacle regarding the mere counting of how many of my fellow boricuas died as a result of the storm makes by blood boil. The official count given by the government of Puerto Rico remained at 64 for months.97 This despite news reports suggesting that this was wildly under-counting.98 Those reports were followed by statistical analysis by a group of Harvard University researchers who concluded that 4,645 “excess deaths” could be attributed to the hurricane and its aftermath,99 and individual narratives by physicians in

97 As recently as June of 2018, the Puerto Rican daily PrimeraHora.com reported that the Secretary of Puerto Rico’s Department of Public Safety, Hector Pesquera, maintained that he could support the official count of 64. This was in response to the publication of the Harvard study that is referenced below. Pesquera pensó que la gorra de Yulín con el 4,645 era en apoyo a Trump, PrimeraHora.com, June 1, 2018 (http://www.primerahora.com/noticias/gobierno-politica/nota/pesquerapensóquela gorradeyulinc omel4645eraenapo yoatrum p-1285382/?utm_campaign=Echobox&utm_medium=Social&utm_source= Twitter#link_time=1527859327 (last visited October 1, 2018).

98 For example, the Centro Para Periodismo Investigativo (Center for Investigative Journalism) reported that Demographic Registry of Puerto Rico pointed out that its statistics were in conflict with the official death toll as early as the fall of 2017. David Cordero Mercado, Registro Demográfico advirtió a Pesquera sobre incongruencias en número de muertes, July 16, 2018, http://periodismoinvestigativo.com/2018/07/registro-demografico-advirtio-a-pesquera-sobre-incongruencias-en-numero-de-muertes/ (last visited October 1, 2018).

99 The study concludes that between 793 and 8,498 people died for reasons related to Hurricane Maria, with 4,645 being the strongest statistical probability given the available data. Nishant Kishore, M.P.H., Domingo Marqués, Ph.D., et al., Mortality in Puerto Rico after Hurricane Maria, NEW ENGLAND JOURNAL OF MEDICINE, May 29, 2018.
Puerto Rico challenging the accuracy of that count. Most recently, a report commissioned by the Government of Puerto Rico concluded that at least 2,975 people died as a result of the hurricane and the failure to properly manage the emergency that followed. The person most responsible for the failure of the federal response to Hurricane Maria in Puerto Rico, President Donald J. Trump, characterized the reports “as inventing a death toll ‘to make me look as bad as possible.’”

Finishing this article, however, reminds me of the power and potential that legal research and scholarship still hold for me: even if we cannot resolve it, we must be witnesses to injustice, we must record it and its effects, we must publicly expose them for now and for posterity. The availability of cases on the U.S.-Puerto Rico legal relationship in opinions of the Supreme Court issued at the end of last year that I reference below, combined with the anger over the current state of my island and its people are motivating me to write a few more articles, even if I can only memorialize the constitutionally-unequal status of Puerto Rico that leaves my island at the mercy of an uncaring U.S. government, and me in utter frustration that my scholarship cannot change that (the “rut”). I can write these

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100 See, e.g., Registro Demográfico advirtió a Pesquera sobre incongruencias en número de muertes, supra note 98, which includes an interview with Dr. Arturo Torres who reported the death of one of his patients in January of 2018 as hurricane-related, but her death was not included in the “official” count of the Puerto Rico government. Carmen D. Zorrilla, M.D., The View from Puerto Rico — Hurricane Maria and Its Aftermath, NEW ENGLAND JOURNAL OF MEDICINE, November 9, 2017 (generally describing the state of medical services on the island shortly after the hurricane).

101 Milken Institute School of Public Health, Project Report: Ascertainment of The Estimated Excess Mortality from Hurricane Maria in Puerto Rico, August 28, 2018 (available online at the project website https://prstudy.publichealth.gwu.edu/ (last visited October 1, 2018)).

articles about the sad state of my island, as well as other subjects. And I will. Because I am still here.

IV. Conclusion: Reveling in Law Geekness

I was on sabbatical when I came back to work on this article. One of the purposes of a sabbatical is the production of scholarship, which this article of course is. Another perhaps just as important purpose of a sabbatical is to be re-energized. As it turned out, health problems delayed the intended effects of this particular sabbatical. But, I am happy to say that after several months of physical therapy I am feeling much better. Moreover, the time, rest and research that I conducted during that sabbatical have not gone unused. I have written plainly, perhaps bluntly, in many parts of this article not to be shocking, but rather to be honest with myself. As I stated in my introductory paragraphs, this is the continuing process of academic catharsis that I have been undergoing through a series of writings that started ten years ago. I find it enormously liberating and energizing to be able to do so.

I hope that those who come after me will not have it as tough, but if they do, I hope that they will find here a roadmap not just to academic survival, but also for an academic type of the pursuit of happiness. I would also recommend that the reader write as much as possible while maintaining good class preparation. But my most important message is that you must stay in the academy because you like your job.

Quitting a bad job is always an option and during my darkest days I seriously thought about doing so. After all, like most of us who teach law, I am a member of the bar, and going back to the practice of law—which, unlike many others in the academy, I did not hate—was possible. Initially I chose to stay because I would not be run off. I stayed because I did not want “them”\textsuperscript{103} to get away with the hostility, isolation and alienation. I stayed because I knew how to do my job and how

\textsuperscript{103} I have purposefully chosen to use generic references to those who created a hostile atmosphere for me at my law school in this article.
to play by the rules they made for me. But I really stayed because, in the final analysis, I like teaching and writing about the law.

The biggest reward of surviving to tenure and the rank of full professor is that I am allowed to indulge my inner law geek by studying the law at a high level, and I am even able occasionally to impress upon students the importance of doing so. I am able to write about the subjects that really interest me. Academic age, or at least, mileage, also allow me to revisit subjects and themes. This article is an example of a draft that I set aside for a long time and I am now able to revisit and update, with the benefit of the things learned and experienced in the meantime, and the platform to discuss each and every one. My contribution to our Cuba symposium published last year allowed me to link my work on colonialism and culture, characteristic of much of my more recent scholarship, with my very early work on comparative methodology. It also allowed me to write and to deliver my ponencia (prepared scholarly presentation) in Spanish in a conference that allowed me to engage with colleagues in a fully bilingual discussion. It was wonderful!

Simply put, I stayed because I let go of my anger at the tenure process and realized that I enjoyed my job and could do it well. The fact that my very presence is a daily reminder of their failure for those who would have me leave is icing on the cake! But spite should not be a response to spiteful behavior. That type of emotion would only damage you. As a late very

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104 I discuss my early comparative work supra note 86 and accompanying text.
105 My presentation was made during the University of Florida Law and Policy in the Americas Conference at the University of Havana in the summer of 2016. Originally presented in Spanish and then published in Spanish and English. Pedro A. Malavet, Cuba, Puerto Rico, the Civil Code and the Problem of Transculturation, 29 FLORIDA JOURNAL OF INTERNATIONAL LAW 197 (Fall 2017); Cuba, Puerto Rico, el Código Civil y el Problema de la Transculturación, 29 FLORIDA JOURNAL OF INTERNATIONAL LAW 197-S (Spanish) (Otoño 2017).
good friend used to put it in Spanish: *la victoria no te dá derecho a ser canalla* —victory does not give you the right to be despicable (deplorable?)— but you should savor it.

Now it is time to spend my research time on the most recent Supreme Court cases about the legal relationship between the United States and Puerto Rico,¹⁰⁶ and the ongoing catastrophes that are Hurricane Maria, Hurricane Trump and the economic crisis that was already consuming the island before the “storms.”

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¹⁰⁶ The first line of cases addressed Puerto Rico’s lack of sovereignty separate from that of the United States for purposes of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the U.S. Sanchez-Valle v. Commonwealth of Puerto Rico on Thursday, June 9, 2016. (Case no. 15-108, 579 U.S. ___ (2016) (“Puerto Rico today has a distinctive, indeed exceptional status as a self-governing commonwealth” (slip op. at 12) but it lacks the “inherent sovereignty” (slip op. at 8) possessed by states and Indian tribes (slip op. at 9) to prosecute criminal offenses). The second line of cases relate to the crushing debt faced by the island. Commonwealth of Puerto Rico, et al. v. Franklin California Tax-Free Trust, et al. (http://www.supremecourt.gov/opinions/15pdf/15-233_i42j.pdf (last visited January 11, 2018) (Puerto Rico is a “State” for purposes of preemption of its own bankruptcy laws by Federal bankruptcy rules, but that the exception that allows “States” to designate debtors is expressly limited to exclude Puerto Rico).