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Challenging a Tradition of Exclusion:  
The History of an Unheard Story at Harvard Law School  

*Luz E. Herrera*  

The objective of enhancing the diverse quality of our faculty with the addition of a Hispanic professor must surely be one which is shared by the Dean, the faculty and all students so concerned. This must not be held to be a Hispanic objective aimed at meeting a Hispanic need. It must be a Harvard Law School objective aimed at meeting a Harvard Law School need.¹  

—Anonymous Author  

In a series of lectures at Harvard University, Professors Lani Guinier and Gerald Torres posited that people of color are the "miner's canary" in American society.² Guinier and Torres argue that pursuing color blindness policies is dangerous because it ignores racial differences that affect every aspect of our society. According to Guinier and Torres, like the miner's canary that uses a call of distress to warn the miner of the hazardous atmosphere in the mine, the critiques people of color offer our institutions are warning signals to alert us to the presence of more systemic problems. Instead of relegating the voices of minorities to the complaint category and relegating it as race-specific, we must look at those critiques as a reflection of what is not working in our institutions. Guinier and Torres insist that using "political race" to forge cross-racial coalitions can be effective tools in exposing and demolishing embedded hierarchies of privilege in American institutions which endanger everyone.

Like the miner's canary,³ for almost thirty years, Latino⁴ students at Harvard Law School have been telling a story that warns the institution

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¹ Anonymous Author, On the Congruence of Diversity, Quality and Greatness, Spring 1989 (on file with author).
³ For centuries miners took canary birds down to their mines to warn them of dangerous toxins and a diminishing oxygen supply. The canary will be the first to react to the hazardous environment because of their size. The canary saved the lives of many miners by alerting the miners of underground dangers.
⁴ I will use the word "Latino" to describe men and women of Latin American ancestry
of a poisonous element. The story is one about education, training, fairness, representation and merit—a story that the miners do not seem to understand. Their story addresses the need for mentors, role models, curriculum development and institutional support in an institution that prides itself on excellence. At the heart of this story is a critique of legal education. Through numerous forms of protests, students have attempted to dismantle the prevailing story told in legal academia. To the master storyteller, however, the dominant story seems fair, regardless of whom it excludes. When the task of persuasion is borne by law students and the world they wish to move means changing tradition, bias, and bureaucracy, the story becomes not only a critique but a necessary tool for the canary to exit the mine alive and with health.

This Article provides an historical account and analysis of student efforts to pressure Harvard Law School to hire Latino faculty. Part I is an account of three generations of storytellers who have struggled to deliver a sound critique of legal education. Part II evaluates the soundness of the messages delivered. It suggests that the story be broadened to have the greatest long-term effect. Part III critiques the criteria Harvard Law School employs to determine who is “qualified” to teach there. It argues that the factors used to hire faculty are subjective stories told to discredit the experiences of others. Finally, Part IV recommends options for future efforts. Although, this Article focuses on events at Harvard Law School, the author hopes that it will also serve to help or inspire students at other law schools in their future efforts.

who permanently reside in the United States and share the experience of being a minority group. In this context, my use of the word “Latino” does not include Spanish or Latin American students or professors. Despite the masculine term, “Latino” is meant to encompass women also. “Hispanic” has the same meaning as “Latino” and is sometimes referred to when quoting others.

Not every Latino student at Harvard Law School has participated in the storytelling. Some have disagreed with the manner in which the story was told or presented. At every step, Latino students have seen internal conflict on strategy, but generally, the majority agrees with the goal. Mexican American students have led the campaigns for Latino faculty, however, Puerto Rican, Cuban, and other Latino students have also actively participated. In the 1998-99 school year, there were eighty-nine students enrolled at Harvard Law School who identified themselves in their admissions application as Latino, Hispanic or Chicano. Approximately sixty percent of those students have in some way or another participated in one of the activities organized by Latino students. In a survey that probed the preferences of active students, all respondents said that Harvard Law School should have at least one Latino professor on its faculty. Only fifty percent of those who received the survey responded but they were an accurate representative sample of the different Latino ethnic groups at Harvard Law School.

See Richard Delgado, Storytelling for Oppositionist and Others: A Plea for Narrative, 87 Mich. L. Rev. 2411 (1988) (arguing that stories are used by outgroups to create a counter-reality established by ingroups who see their privileged position as natural).
I. History

The transition from the Southwest to the Law School can be overwhelming to anyone and even more so for Chicanos. Being placed in an alien environment with no support whatsoever has proven to be destructive to the many Chicanos who have decided to leave, to say nothing of the impact on those remaining.

—Chicano Law Student Association, Harvard Law School, April 29, 1977

A. Establishing a Presence: The Link Between Theory and Practice

The history of Latinos at Harvard Law School is not a long one. Harvard Law School did not have a significant presence of Latino students until the fall of 1970, when for the first time more than a handful of Chicano students were admitted. According to Russell Simpson, Harvard Law School’s dean of admissions from 1966 through 1974, prior to 1968 the Latinos at Harvard Law School were “occasional rich students from Puerto Rican families of lawyers.” The number of Latino students at Harvard grew as a direct result of active recruiting efforts and affirmative action policies instituted to attract more black students to the Law School. Harvard Law School extended recruitment efforts to include Chicanos in the Southwest.

7 See Memorandum to Dean Saks from the Chicano Law Students Association regarding a proposal for a Chicano Resident Student Counselor, Apr. 29, 1977 (on file with author).
8 Telephone Interview with Russell A. Simpson, Dean of Admissions at Harvard Law School from 1966 to 1974 (Mar. 23, 1999). The Office of Admissions at Harvard Law School could not provide the correct figure of how many students enrolled as first-year students at Harvard Law School prior to 1975. However, the Harvard Law School Alumni Association list of Latino alumni indicates that thirty Latinos (all men) graduated from the Law School between 1936 through 1972. According to Jaime Cervantes ’72 and Joaquin Avila ’73, the first significant group of students entered Harvard Law School in the fall of 1970. Alumni records indicate that nine Spanish-surnamed students graduated in 1973, more than in any previous year. Telephone Interview with Jaime Cervantes ’72 (Mar. 27, 1999). Telephone Interview with Joaquin Avila ’73 (Mar. 28, 1999).
9 Beginning in the summer of 1965, Harvard Law School began an eight-week summer program for black college students to introduce black students to law study. The summer program was made possible with the assistance of an $87,500 grant from the Rockefeller Foundation. For a discussion of Harvard Law School’s efforts to recruit blacks and other minorities in the 1960s See JOEL SELIGMAN, HIGH CITADEL 111-14 (1978). Recruiting efforts included trips by faculty members and admissions officers to colleges and universities with sizable populations of minority students. Telephone Interview with Russell A. Simpson, supra note 8.
10 Chicanos, a group identity with which Mexican Americans identify, were targeted in part due to the Chicano Movement of the 1960s, whose message was one of inclusion in American society. In addition, Mexican Americans, have always been the largest group of Latinos in the United States and have a long history in the United States territory, which predates the founding of the United States. For more on the history of Chicanos and the
By the fall of 1970, there were enough Chicanos at Harvard Law School to form the Chicano Law Student Association (CLSA).\textsuperscript{11} Although CLSA's main goal was student recruitment, the issue of Latino faculty and curriculum dealing with issues of importance to Chicanos was important to CLSA's members.\textsuperscript{12} Most CLSA members at that time came from areas with large Chicano populations, where people talked about improving the economic, social, and political status of Chicanos.\textsuperscript{13} Most of these students were products of the Chicano Movement and went to law school to be better advocates for their communities.\textsuperscript{14} The absence of discussion in the classroom regarding issues affecting the communities to which the students were to return, was a sign that something was missing from their education. One of these students later explained the experience of these students at Harvard Law School:

We realized that we were not just unhappy but in many ways unchallenged. Unchallenged by a place that had no idea about, and apparently little interest in, how to design its curriculum to systematically expose students to the complex lives of people like those with whom I had grown up.\textsuperscript{15}

Perhaps the first effort to draw attention to Chicano issues was a student proposal for a research seminar in which students could pursue issues of interest to Chicanos.\textsuperscript{16} The administration rejected the research seminar idea but later agreed to help the students sponsor a symposium to bring Chicano attorneys to discuss issues of interest to Chicanos such as

\textsuperscript{11} Telephone Interview with Jaime Cervantes, \textit{supra} note 8.

\textsuperscript{12} See Ian Haney-López, \textit{Community Ties and Law School Faculty Hiring: The Case for Professors Who Don't Think White}, in \textit{Beyond A Dream Deferred} 100, 109 (Becky W. Thompson et al. eds., 1993). The Black Law Students Association was also founded largely on the need to have a more organized way to lobby the administration to hire black professors. According to Reginald Gilliam, the first chair of the Black Law Students Association, "the issue of getting black professors on the faculty was what led to the organization of BLSA." Student protests, including the occupation of an administrative office and a six-day strike resulted in the hiring of Derrick Bell in 1971.

\textsuperscript{13} Id.

\textsuperscript{14} Conversation with Margaret Montoya '78, in Lake Tahoe, California (May 1, 1999).


as U.S. immigration policy, legal barriers to education, voting rights, disparate application of criminal laws, among others. The administration would not agree to a student-lead course but suggested that a faculty member lead the seminar. The students feared that accepting the administration's idea would become another barrier to hire a Chicano so they rejected the proposal.\footnote{Telephone Interview with Jaime Cervantes, \textit{supra} note 8.}

In March 1971, CLSA sponsored a symposium dealing with issues affecting Chicanos. Chicano lawyers gathered at Harvard Law School to talk about how Chicano rights related to legal institutions. At the same time, the symposium also aimed to educate the Law School community about issues relevant to Chicanos.\footnote{Five of the speakers were: Cruz Reynoso, director of the California Rural Legal Assistance; James DeAnda, a school desegregation litigator in Texas; Vicente T. Ximenes, commissioner of the Equal Employment Opportunity Commission; Mario Obledo, general counsel of the Mexican American Legal Defense and Educational Fund; and William Higgs, Mr. LeFes López Tijerina's lawyer. \textit{See} Lavell L. Jackson, \textit{HLS Hosts Chicano Symposium}, \textit{Harv. L. Rec.}, Mar. 18, 1971, at 5.} A similar symposium took place in the fall of 1974 featuring Chicano alumni who discussed their career choices.\footnote{Carlos Alcala '73, spoke on school integration. Joaquin Avila '73 spoke on State Supreme Court Clerkships. Roy Cazares '73 spoke on public defenders. Jaime Cervantes '73 spoke on community politics. J. Youngblood Henderson '74 spoke on Indian Legal Problems, and Jorge Rangel '73 spoke on the role of Chicano corporate lawyers. \textit{See Chicano Symposia Study Role of Minority Lawyers}, \textit{Harv. L. Rec.}, Oct. 11, 1974, at 3.} The symposia occurred only once a year but afforded Chicano students the opportunity to get a glimpse of how their legal education could be used to affect change in their communities. The symposia were also opportunities to develop relationships with Chicano lawyers throughout the country—many that practiced in communities where students were from.

Chicano students continued to concentrate on recruitment, and to a lesser extent they also informally pressed for Latino faculty. The students divided the list of faculty members and made appointments to talk with them about hiring Latino faculty.\footnote{Telephone Interview with Joaquin Avila, \textit{supra} note 8.} In their meetings, students explained to professors that there was critical subject matter that was not being addressed in the classroom.\footnote{Telephone Interview with Walter J. Leonard, Assistant Dean of Admissions in the late 1960s (Mar. 30, 1999).} They argued that the composition of the United States was changing and that the Law School needed to adjust its curriculum to account for those changes.\footnote{Id.} The faculty's response to these students was that there was not a pool of qualified Chicano candidates to teach at Harvard. At the time, the number of Latino faculty was small and students had little hope of getting a Chicano professor. In the early 1970s, the pool of Latino candidates was indeed small. Between 1966

\footnote{Id.}
and 1976 there were only ten Latinos who entered law teaching. By 1980, the number had only increased by five.23

Instead of waiting for Harvard to hire Chicanos the students took it upon themselves to learn about subject matter that was relevant to the communities from where they came. Some Chicano students joined the *Harvard Civil Rights-Civil Liberties Law Review* because it provided a forum in which to bring forth issues of concern to Chicanos and to the entire legal community.24 Chicano students' attempts to include Chicano legal scholarship in the leading progressive journal in the country were not always successful.25 Nevertheless, the *Harvard Civil Rights-Civil Liberties Law Review* continued to serve as a vehicle for bringing attention to matters of interest to Chicano scholars and practitioners. Other students tried to fill the gaps in their legal education by developing an alternative Ames Moot Court case focusing on situations related to those common in Chicano communities, to use in the first-year competition.26 The "Ames Alternative" allowed Chicano students to deal "with issues of racial and national origin discrimination and related Chicano legal problems."27

In the fall of 1974, after much lobbying by Chicano students, Harvard Law School hired Mario Obledo as a teaching fellow. Obledo was an activist lawyer who worked for the Mexican American Legal Defense and Educational Fund and had a distinguished career of legal work in the

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23 Data on the number of Latino faculty have only recently began to be kept by organizations like the Association of American Law Schools and the American Bar Association. The numbers provided are from a handout for a panel at a LatCrit III conference on May 7, 1998 and are kept by Professor Michael Olivas at the University of Houston School of Law. See Michael Olivas, *The Education of Latino Lawyers: An Essay on Crop Cultivation*, 14 CHICANO-LATINO L. REV. 117, 130 (1994).


25 See Kermit Kubitz, *Chicano Members Pull-Out of Civil Rights Law Review*, HARV. L. REC., Apr. 12, 1974 at 1. A group of Chicanos lead a walk out of minorities in the *Civil Rights-Civil Liberties Law Review* because the board refused to adopt their proposal for a minority-dominated policy board through which minority students would have greater input on the type of articles published. According to Articles Editor Chris J. Lucero, the reason this policy board was proposed was because some members of the journal felt that "[t]here was no strong commitment to the ideas of civil rights and civil liberties' from non-minority editors, and he believed that because "[o]ne of the major functions of that kind of review is expounding on the legal role of minorities. There should be strong minority input." See id. at 2. See also Chicano Boycott Provokes More Comments, HARV. L. REC., Apr. 26, 1974, at 12-13.


27 Id. Some of the issues covered in Ames Alternative cases included: political asylum and withholding of deportation hearing, legality of methods used by the Immigration and Naturalization Services in their workplace raids, right to education for undocumented children, and school desegregation.
Southwest. Walter J. Leonard, assistant to University President Derek Bok, was instrumental in bringing Obledo to Harvard. Obledo was hired as a teaching fellow to teach an introductory Constitutional Law course to a group of thirty students. Although there was no institutional commitment to assure the presence of someone with a Chicano perspective on the faculty, Obledo represented the first effort to give a Chicano a teaching opportunity at Harvard. Talent like Obledo, however, was in demand. Three months after he arrived at Harvard, the new Governor of California, Edmund G. "Jerry" Brown, Jr. offered Obledo the opportunity to head the state Department of Health and Welfare. Obledo left the ivory tower of Harvard to serve the people of California, a decision that the students applauded.

Before leaving Obledo stated that he had a good experience at Harvard "but [it was] hard to believe that more minority faculty members can’t be recruited for a school of this caliber.”

After Obledo’s departure, students continued to talk to the administration and professors about hiring Chicano faculty. Since the administration offered no responses that satisfied the students’ needs for Chicano mentors and role models, they looked to attorneys outside of the Law School to provide the training and guidance they sought. In 1976, Chicano students founded the Committee on Chicano Legal Issues (CCLI) “to provide needed legal assistance to litigators and researchers working on topics of particular importance to the Chicano community.” CCLI was also established “to afford law students relevant opportunities to develop and refine legal research and writing skills.” Students involved with CCLI called and sent letters to attorneys at Chicano organizations and offered their research skills. This arrangement proved beneficial to

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28 Mario Obledo was one of the founders of the California Rural Legal Assistance and the Mexican American Legal Defense and Educational Fund. He unsuccessfully ran for governor of California in 1982 and was National President of the League of United Latin American Citizens from 1983 to 1985. He is a former chairman of the Rainbow Coalition and received the Presidential Medal of Freedom Award in Jan. 1998. Telephone Interview with Mario Obledo (Apr. 1, 1999). See Phil Heagney, Obledo Appointed Health and Welfare Head, HARV. L. REC., Jan. 31, 1975, at 1, 9, and 15. Obledo graduated from the University of Texas in 1957 and received his LL.B. from St. Mary’s University in 1960.

29 Leonard met Obledo one summer when they were both teaching at the University of California at Davis at a minority recruitment program. Telephone Interview with Walter J. Leonard, supra note 22). According to Russell A. Simpson, Leonard along with Derrick Bell were the foremost proponents of diversifying the faculty. See Black Dean Plows Tough Row to Obtain Law School Position, HARV. L. REC., Oct. 9, 1969, at 4. Leonard and Bell continuously pressed the administration to hire more minority faculty. See also HLS Conference Studies Minority Law Professors, HARV. L. REC., Sept. 20, 1974, at 3.

30 Telephone Interview with Mario Obledo, supra note 28.

31 See Phil Heagney, Obledo Appointed Health and Welfare Head, HARV. L. REC., Jan. 31, 1975, at 1. Although Obledo felt bad that he would leave Chicano students without a Chicano role model and mentor, the job offer was too great to pass up. Id. at 15.


33 The organizations included the Mexican American Legal Defense and Education Fund, the League of United Latin American Citizens, and the Southwest Voter Registration Education Project.
both the civil rights organizations and the students. The community benefited from the students’ research\textsuperscript{34} while students found the role models and mentors who were otherwise absent at Harvard.\textsuperscript{35} In addition to the clinical component, CCLI continued earlier efforts to create an alternative moot court case. Issues in the Ames alternative case usually grew out of a request for research from a Chicano practitioner working on a novel question of law. Students started CCLI with the hope that the organization would ultimately lead to the creation of a journal dedicated to issues relevant to Chicanos because they wanted to create a forum to tell the stories of their communities and their experiences.\textsuperscript{36}

In light of Harvard Law School’s resistance to hiring someone to fill the need of Chicano students, the students decided that the best strategy to pursue was to increase the number of Chicano admitted students. The students “thought that as the number of Chicano students increased, the more would become faculty members by default and we would then have qualified candidates to teach at Harvard Law School.”\textsuperscript{37} To many, the possibility of getting a Latino on the faculty was remote.\textsuperscript{38} There were not many Latino faculty members or students in the late 1970s and students thought foremost about surviving their legal education. Despite make-shift student-initiated support, the absence of institutional support spoke clearly in the issue of retention. According to a memo dated April 29, 1977, to Dean Saks from CLSA, many Chicano students admitted did not graduate with their class or at all. The entering classes of 1972, 1973, and 1974 lost three, six, and three of its students, respectively.\textsuperscript{39} The memo criticized Harvard for not providing Chicanos with the needed resources to succeed at the institution. It noted that “[w]ith no Chicano professors, no Chicano administrators, and no Chicano counselors to provide at least role models, it is surprising more Chicanos have

\textsuperscript{34} Research topics included: immigration issues, health care for indigent clients, educational desegregation, challenges to state bar exams, and voting rights. See HARV. L. SCH. 1976 Y.B., at 202.

\textsuperscript{35} Some alumni remembered that Vern Countryman was a supportive faculty member and seen by some students as a mentor and friend. Interviews with Gilbert Vazquez, San Antonio, Tex. (Mar. 24, 1999) and Margaret Montoya, Albuquerque, N.M. (Mar. 16, 1999)

\textsuperscript{36} Telephone Interview with Gilbert Vazquez, supra note 35.

\textsuperscript{37} Id.

\textsuperscript{38} Margaret Montoya ’78, now a tenured professor at the University of New Mexico School of Law, remembers:

\textsuperscript{39} See Memorandum to Dean Saks from the Chicano Law Students Association regarding Resident Student Counselor, Apr. 29, 1977 (on file with author).
not left. The memo reveals that these students believed Chicano professors would help provide the appropriate support to enable them to cope with the pressures of law school.

In 1978-79, the CLSA and the CCLI joined the Third World Coalition. The Third World Coalition (TWC) was founded "in order to provide students of color an opportunity to coordinate efforts in addressing issues of common concern, and in particular, the continued oppression and exploitation of people of color." The first three agenda items for the TWC were recruitment of more minority students, faculty and administrators. Chicano students continued to lobby faculty and administrators on the issue of Latino professors but found they were not going to bring about systemic change on their own. Instead, they looked to a coalition of minorities as a way to amplify their concerns. During this time, the Chicano organizations underwent some important changes when non-Chicano students began to press the organizations to be more inclusive and to change the organizations' names to reflect the diversity of the Latinos at the Law School. In 1979-80, the CCLI changed its name to Alliance on Latino Legal Issues (ALLI) and the following year both CLSA and ALLI merged to form La Alianza. Given the internal conflict between Chicano and Latino students, a coalition was forged to engage the question of faculty diversity. At the brink of a new decade and after more than ten years of lobbying the administrators and faculty, the prospect of getting a Latino faculty member to Harvard still seemed bleak. Latino students realized that their story could have a greater effect if it was more inclusive. The canary looked for a more effective melody to convey the message.

B. Searching for a Collective Voice: The Politics of Coalition

The 1980s were a period of coalition building for Latino students. The canary realized that to be heard it needed to amplify its voice. With-
out faculty and administrators lobbying on behalf of Latino faculty, it was better to join umbrella efforts aimed at reaching similar goals. Despite the benefits that collective efforts presented, they also had their drawbacks. Given the number of students and the institutional support, coalition efforts would be led by a black student agenda. Since the Law School was much more open to claims made by black students, concerns of Latino students disappeared into those of black students or a less defined "minority" category.

The TWC became an active force in the early 1980s after Professor Derrick Bell left Harvard to become dean of the University of Oregon School of Law. After more than a decade of lobbying the administration to hire black professors, Professor Clyde Ferguson, Jr., was the only minority professor on the Harvard Law School faculty. There was no one qualified at Harvard to teach Bell's popular course, "Constitutional Law and Minority Issues." The TWC sought reinstatement of the course and requested that a black professor teach the course. In response to the dismal numbers of minority professors, the TWC submitted a proposal calling for the creation of a standing search committee to seek minority candidates. They also lobbied for the adoption of a permanent policy to hire at least two visiting minority scholars a year who would be seriously considered for tenure-track positions. The TWC argued that the problem was not a lack of qualified people, but the biased criteria that Harvard employed in hiring decisions. They asked the faculty to consider different, not lower criteria. In the spring of 1982, students submitted a list of about 30 black lawyers who students believed were qualified to teach at Harvard Law School. Instead of hiring a minority professor to

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43 Derrick Bell was on leave from Harvard Law School in the 1979-80 school year while he was a visiting professor at the University of Washington. While at Washington, Bell announced his resignation from the Harvard Law School faculty effective January 1981 to become dean at the University of Oregon School of Law. Before departing to Oregon, Bell returned to Harvard to teach his civil rights course, "Constitutional Law and Minority Issues" in the fall of 1980. See Laura Taylor, Prof. Bell Named U. of Oregon Law Dean, HARV. L. REC., Mar. 14, 1980, at 1.


46 Dean Vorenberg responded to the request by asking "if they would not prefer 'an excellent white professor' to 'a mediocre black one.'" See Dave Horn, Third World Coalition Renews Support for Course Boycott, HARV. L. REC., Sept. 17, 1982, at 3.


48 Id. Harvard Law School’s criteria for hiring was based mainly on grades, law review membership, faculty recommendations and scholarship. For a more complete discussion of Harvard’s hiring criteria, see infra Part III.C.

49 Id.

50 Shortly after, the Law School announced the appointment of ten white professors and with that student frustration grew. Dave Horn, Third World Coalition Renews Support
teach the course, Dean James Vorenberg met with the Black Law Student Association (BLSA) to tell them that a class on Racial Discrimination and Civil Rights would be offered in the winter of 1983. The course instructors were Jack Greenberg, and J. LeVonne Chambers, director-counsel, and president of the National Association for the Advancement of Colored People Legal Defense and Educational Fund. Upset that Vorenberg did not hire a minority professor to teach the course, BLSA immediately agreed to boycott the course. BLSA also authorized its president, Muhammed Kenyatta, to write a letter to Vorenberg explaining that they believed a full-time tenured black professor should teach the course. In addition to expressing BLSA's preference, Kenyatta's letter stated that Mr. Greenberg was not a good representative of black students' interests. Mr. Greenberg was opposed in part for expressing "hostility toward historically predominantly Black educational institutions, an adamant refusal to relinquish directorship of the NAACP Legal Defense Fund to a Black attorney, and opposition to Black student associations on predominantly white campuses."

On May 24, 1982, the TWC joined BLSA in boycotting the course. Their protest focused on the Law School's inadequate attempts to hire minority scholars. The Third World Coalition felt that the professor teaching such a course should be a person of color, because he/she could identify with the experiences of the Third World community. The TWC's position was that the Law School could do more to find a minority professor to teach the course. They alleged that the institution employed inadequate methods for searching for minority faculty, including biased criteria that served as a proxy for exclusion of many minority candidates. In a letter dated May 24, 1982, to the Harvard Law School Community the Third World Coalition said, "[t]he lack of Third World professors at Harvard Law School is not due to a vacuum of qualified Third World legal professionals, but rather to the institution's inadequate search methods and of the biased criteria it uses to judge prospective Third World faculty candidates."

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51 Professor James Vorenberg was dean of Harvard law School from 1981 to 1989.
52 Dean Vorenberg had initially asked only Chambers to teach the course, but Chambers recognized that he could not devote three weeks to the course, so he asked Greenberg to assist him in teaching. Dave Horn, Charges Fly Over BLSA Course Boycott, HARV. L. REC., Sept. 10, 1982, at 6.
53 Id. at 6. See also Dave Horn, Third World Coalition Renews Support for Course Boycott, HARV. L. REC., Sept. 17, 1982, at 3.
55 Letter to the Harvard Law School Community from the Third World Coalition on May 24, 1982 (on file with author).
56 Id.
57 Id.
That summer, the canary received an important singing lesson. In an effort to fully inform returning students of the controversy surrounding the new course, Vorenberg mailed Kenyatta’s letter, the course instructors’ letter, and his own cover letter to returning second- and third-years students.\textsuperscript{58} Ruth Marcus, a second-year student, was working for the \textit{Washington Post} when she received the letters.\textsuperscript{59} Marcus interpreted the boycott to mean that the course was being boycotted solely because of Greenberg’s race and reported it as such.\textsuperscript{60} Marcus’s article sparked a series of criticism of BLSA and the TWC in the national press.\textsuperscript{61} The editorials accused the organizations of practicing reverse discrimination. BLSA and the TWC received much criticism for its call to boycott the course and students who supported the boycott felt that the press had discredited their concerns by alleging reverse discrimination.\textsuperscript{62} Consequently, attention was drawn from the lack of minority faculty at Harvard Law School. The story set forth by BLSA and the coalition was misinterpreted and misappropriated. The story changed, depending on who told it.

Although the focus of this controversy involved Black students, La Alianza supported the boycott despite some reservations.\textsuperscript{63} Joseph Garcia ’83, president of La Alianza and active member of the TWC, expressed disapproval of the boycott. “The problem with the boycott is that it’s fuzzed the issue. The issue has become the reverse racism of minority students at Harvard,”\textsuperscript{64} he said. “It’s made people think the problem is with minority students rather than an administration that deals in bad faith.”\textsuperscript{65} Garcia, who was pushing the administration to hire Latino faculty felt that Vorenberg was not listening and let students down by using Kenyatta’s letter to draw attention away from minority faculty hiring.\textsuperscript{66} Nevertheless, La Alianza joined BLSA and TWC in its call to boycott the

\textsuperscript{58} Dave Horn, \textit{Charges Fly Over BLSA Course Boycott}, \textsc{Harv. L. Rec.}, Sept. 10, 1982, at 7 (“it seemed ... unfair to expect them to come back and sign up for courses without any information on the boycott. I think it’s a very important issue, and one that the student body ought to discuss”).

\textsuperscript{59} \textit{See Dave Horn, Third World Coalition Renews Support for Course Boycott, Harv. L. Rec.}, Sept. 17, 1982, at 3.

\textsuperscript{60} Id.


\textsuperscript{62} \textit{See Blind Pride at Harvard, N.Y. Times}, Aug. 11, 1982, at A22; \textit{A Misguided Protest by Blacks at Harvard, N.Y. Times}, Aug. 17, 1982, at A26. In a poll conducted by the \textit{Harvard Law Record} on Oct. 8, 1982, 71% of the respondents disagreed with the boycott. There were 162 students surveyed, or approximately 9% of the student population. Those surveyed were selected at random. \textit{See Dave Horn, Students Express Opinions on Boycott, Harv. L. Rec.}, Oct. 8, 1982, at 3.

\textsuperscript{63} Joseph Garcia, \textit{Letters to the Editor, Harv. L. Rec.}, Sept. 24, 1982.

\textsuperscript{64} Dave Horn, \textit{Charges Fly Over BLSA Course Boycott, Harv. L. Rec.}, Sept. 10, 1982 at 7.

\textsuperscript{65} Id.

\textsuperscript{66} Id.
winter course in September of 1982. In a letter to the Harvard Law Record, Garcia wrote:

The administration has given us no reason to be optimistic that anything will change without strong and unified action on the part of minority and white students . . . . I think it can be safely be said that virtually all of the students participating in the boycott regret that they must give up an opportunity to take a course which we feel it is the responsibility of this school to offer. It is unfortunate that this school’s refusal to hire minority faculty, for whatever reason, has left us little choice.67

Like Black students, Latino students had ongoing conversation with the administration and the faculty to hire more minority professors. The level of interest for Bell’s class was so great that students felt this show of support for a more diverse curriculum would signal to the administration the need for faculty diversity. Students hoped that the faculty would use such student interest to invite less traditional faculty to teach at Harvard Law School and in that way show its commitment to hiring a more diverse faculty.68

The issue of faculty diversity was also important to non-minority students. In the fall of 1982, a multi-racial group of students formed the Affirmative Action Coalition to further “the purposes of affirmative action.”69 The group discussed the possibility of filing a federal claim against Harvard Law School for illegal discrimination in faculty hiring.70 In November 1982, the Law School Council (LSC) conducted a referendum to show that attention should not be focused “on the tactic of the boycott but dedicated to the central issue—how to increase the number of women and minorities on the faculty.”71 More than half of the Law School’s 1500 students voted in the referendum, and seventy-nine percent of those students agreed “that the goal of increased representation of women and minorities should be a primary consideration in all future appointments and tenure decisions.”72 Despite the strong support for

68 Telephone Interview with Joseph Garcia (Mar. 29, 1999). In October 1982, at the request of the Harvard Law School administration, Greenberg and Chambers met with students to try to lend support for the course. The TWC coalition agreed to meet with the instructors but noted that “they did not desire [the meeting], since the teachers were not the issue and should not be made to seem the issue.” See Roland Monson, Boycotted Profs Meet with Students, HARV. L. REC., Oct. 22, 1982, at 1.
70 Id.
72 See Andrea Hartman, Students OK LSC Hiring Resolution, HARV. L. REC., Nov. 19, 1982, at 12. See also John Morris, Faculty Discusses Hiring, HARV. L. REC., Dec. 3, 1982,
TWC's position, not everyone boycotted the winter class. In January 1983, Greenberg and Chambers's class had forty-three students enrolled—all were white.73

On January 5, 1983, the TWC organized a peaceful silent vigil outside of the Chambers/Greenberg class.74 Once the class began the group of about forty-five protesters marched to Vorenberg's office, where Garcia read the TWC's Affirmative Action Proposals.75 Garcia then proceeded to the steps of Langdell, where he presented to reporters the TWC's demands for increased minority admissions and recruitment of minority faculty and administrators, in addition to the development of courses on minority issues.76 The students announced that they planned to organize an alternative course in the spring.

After realizing that their advocacy was not producing the desired results, students enlisted outsiders to help them tell their story. TWC members organized a fourteen-week alternative civil rights course entitled, "Racism and the American Law." The course was conceived and sponsored by the TWC and "was designed both to show the HLS administration that talented and qualified minority legal scholars [did] exist and to enable interested students to learn about racism and the development of civil rights litigation."77 The lecturers were prominent minority law professors and attorneys including Richard Delgado, Neil Gotanda, Linda Greene, Charles Lawrence, and Mari Matsuda.78 Every organization involved in the TWC donated their speaker series funds to sponsor the lectures of prominent minority professors and practitioners.79 The class was held when other classes were not in session and despite the fact that it was not offered for credit, the class averaged approximately fifty students per week.80 Students used the visits of minority faculty to learn

74 Jim Chudy, Peaceful Protesters Demand Faculty Changes, HARV. L. REC., Jan. 21, 1983, at 1.
75 Id.
76 Id. at 8.
77 The primary text was Derrick Bell's Race, Racism and the American Law, which was supplemented by multilith materials and on reserve readings. See Joseph Garcia, T.W.C. Alternative Course, Raza Review: Newsletter of the Chicano and Latino Community at Harvard Law School, Spring 1983; see also Brad Hudson, TWC Offers Alternative Spring Course, HARV. L. REC., Jan. 21, 1983, at 1.
79 See T.W.C. Alternative Course, supra note 77. La Alianza contributed the resources to bring Richard Delgado, then a professor at UCLA School of Law and Lizette Cantres, an attorney at the Puerto Rican Legal Defense and Educational Fund.
80 Id. The course was divided into three parts. The first part of the class concentrated in providing a historical context to civil rights. The second part focused on modern civil rights developments. The last part discussed developing a critical perspective on past and present litigation strategies and alternatives to litigation. See also Steve Cowan & Andrea Hartman, TWC Alternative Course Opens to Student Plaudits, HARV. L. REC., Feb. 11, 1983, at 1.
about civil rights issues and to bring these professors to the attention of the hiring committee.81

In an effort to further engage professors on the issue of hiring a more diverse faculty, the TWC made a presentation at a faculty meeting in early February,82 and then organized a faculty-student forum.83 At the faculty meeting, students criticized a resolution adopted by the faculty on December 1, 1982, which called for "special and extended efforts to seek out faculty prospects amongst minorities and women."84 The TWC student representatives responded by saying that their demands were "not subject to that kind of tokenism."85 Students wanted substantive changes, not merely Band-Aids. Following the student presentation, the faculty debated whether to discuss the students' criticisms and concerns. Although, several faculty members wanted to discuss the issue, Vorenberg asked them to postpone the discussion to a future meeting.86 The response to the students' presentation ended with a promise of a discussion.

Students continued to press the faculty at a forum on March 9, 1983. At the forum, students criticized the faculty for its efforts to hire minorities. In response, Chairman of the Faculty Selection Committee Alvin Warren insisted that the committee had been trying for at least fifteen years to hire more minorities but that "the size of the pool of applicants [had] frustrated their dedicated efforts to find qualified minority candidates."87 Students, however, insisted that stronger recruitment efforts would yield the appropriate candidates and that the Law School was not doing enough in this area.88 Student frustration grew when, in response to a question about what faculty members were doing to educate themselves regarding the needs of minorities and women, Professor Philip Heymann stated, "No one ever told you to come to Harvard Law School to learn how to be a woman or to learn how to be a Black . . . . Those are terribly important things in life, but this isn't the place for you to come learn them."89 For many students, there was no separation between life, law,
and being a minority. Statements such as Heymann's were a reaffirmation of the faculty's misunderstanding of the problem of minority hiring. Most students go to school not to learn who they are but to learn how to be effective advocates for themselves, their families, or their community, given who they are. The fora provided the space for each group to share its story, but they did not necessarily result in mutual understanding or agreement.90

C. All Is Fair in Love and Faculty Wars

Students' skepticism about the faculty's efforts to recruit minority professors was due in large part to gridlock between the faculty on the issue of "qualified candidates." On Monday, April 25, 1983, about fifty students demonstrated outside of Vorenberg's office before the Appointments Committee met. The students were there to urge the committee to recommend a tenured offer to Professor Charles Lawrence of the University of San Francisco who had visited in the 1979-80 academic year.91 A few days later, the demonstration continued. With all the attention on minority faculty hiring, the faculty could no longer ignore the debate. A week later at a faculty meeting, a number of professors expressed their dissatisfaction with the pace and process of hiring minority candidates. The meeting began with a presentation by the Appointments Committee, which refused to recommend Lawrence and another minority professor for tenure to the faculty.92 The faculty meeting intensified when one white, tenured professor accused the faculty of practicing institutional racism.93 Professor Christopher Edley went further to criticize specific individuals when he noted, "I think that 'racism' is too provocative a label, and it focuses on the institution, diverting attention from the role of particular individuals in shaping and implementing appointments policy. Instead, we should ask whether their personal actions and values are impediments."94 Edley left the meeting in protest after Vorenberg praised the Appointments Committee for its efforts in minority recruiting efforts. Edley, the only black assistant professor, stated that the faculty's inaction on faculty hiring made him feel uncomfortable with his colleagues and he thought of requesting a leave of absence. As a result of the faculty's deadlock on minority issues, Edley stayed true to his promise to "with-
draw as much as possible from faculty politics," by taking a couple of leaves of absence in the next decade.55

In the 1983-84 academic year, Professor Gerald P. López, '74, from the University of California at Los Angeles, became the first Latino visiting professor at Harvard Law School. He taught first-year contracts and a course on civil rights. For Latino students, López was an ideal faculty candidate. He was born and raised in Los Angeles, where he attended the University of Southern California. After graduating from Harvard Law School, López clerked with the Honorable Edward J. Schwartz of the Southern District of California and then opened his own law office with a friend in San Diego.56 His community oriented work focused mainly on civil rights cases.57 López "fell into" teaching at a small private law school in San Diego and in 1978 went to UCLA as an assistant professor.58 He had been one of the students admitted to Harvard Law School in 1970, and his connection to the Law School made him more sympathetic to the needs of all students. During his time as a Harvard Law School student, López took a semester leave after second year because he was so dissatisfied with his legal education. During his break, López volunteered for a political campaign and traveled in Europe.59

López’s willingness to help students at the Law School was evident when he organized a session entitled "Coping at HLS as a Third World IL"100 Juanita Hernández ’85, an active member of La Alianza and the TWC, remembers, "It was a tremendous difference to have Jerry on the faculty. He made a huge difference for us."101 Another student commented, "Professor López really cares about students and puts a great deal of effort into helping students learn."102 López’s popularity among Latino students was in large part due to his strong ethnic identity.103 López was strongly connected to the experiences that most Latinos in La

55 Interview with Christopher Edley, Cambridge, Mass. (Apr. 8, 1999).
56 Id. López set up a law practice with fellow Harvard alumnus, Roy Cazares ’73. The practice was focused on helping Chicanos and the poor.
61 Telephone Interview with Juanita Hernández (Mar. 23, 1999).
63 Id. (“It is important to bring Chicano experiences to bear in the classroom . . . [and] to make our experiences more relevant”) (quoting Gerald López).
Alianza understood. One student pointed to López’s unique teaching style as another reason why he was so popular:

Professor López conducts his class with a level of enthusiasm and interest which succeeds in stimulating . . . he encourages the class to contribute to the discussion, reminding us that all comments merit thought and analysis. This open and congenial atmosphere leads to questions and opinions that are rarely brought up in other classes . . . . At last we hear someone talk about the cultural aspects of law and community and how the two assume equal importance in resolving civil rights disputes. The professor, in this case, is not patronizing or condescending when addressing issues of race or sex, and that, too, feels good.¹⁰⁴

With López at Harvard, students finally had someone who heard and understood their story. Yet, despite López’s presence, the issue of faculty diversity continued to be an issue for Latino students because they wanted a more permanent commitment from the Law School.¹⁰⁵

In the second annual Student-Faculty Open Forum, students continued to communicate that solely inviting minority visiting professors and lecturers was not enough.¹⁰⁶ Professor Clyde Ferguson’s death a few months before meant that there were no tenured minority professors at Harvard Law School.¹⁰⁷ The main topics slated for discussion at the forum were faculty hiring, curriculum development, admissions recruitment and financial aid.¹⁰⁸ At the forum on February 22, 1984, TWC presented a proposal urging, “...the dean and the rest of the faculty to expand immediately the model used to identify and recruit candidates for tenured and tenure-track faculty positions.”¹⁰⁹ The TWC’s proposal


¹⁰⁵ Another Latino, Mario Baeza, was also invited to visit at Harvard in 1983–84, but he chose to accept under lecturer status. Baeza, a partner at Debevoise and Plimpton, a New York firm, commuted to Cambridge once a week to teach a course on New Technology and the Law. Baeza was born in Cuba and identifies strongly with his racial and ethnic origins. He graduated in 1971 from Cornell and in 1974 from Harvard Law School. His main interest area was corporate finance. He was one of the leading experts in new technology in the mid-1980s. Baeza was the first black male and first Latino to make partner at any New York law firm.


¹⁰⁹ Third World Coalition, “A Statement by the Third World Coalition of Harvard Law
identified criteria they believed was essential to being a Harvard Law School faculty member and demanded that Harvard "throw out the discredited model and seek out the many Third World professionals who have long demonstrated their abilities." TWC members argued that adherence to such a model was "wrong, narrow-minded and contrary to the best interests of most members of the Harvard Law School community." Instead, the TWC identified four areas that the administration could focus on to increase the numbers of minority scholars on the faculty. First, TWC recommended that Harvard seek out Third World legal scholars in non-Ivy League schools and in the legal profession to increase the pool of qualified candidates. Second, TWC insisted that the administration offer minority scholars more flexible appointment packages and make tenure-track offers to reduce the level of uncertainty that many face in making their decisions. Third, TWC concluded that more efforts to express support and reduce the alienation of minority faculty members were needed. Finally, TWC argued for the inclusion of student input in the search and appointment process.

The Student-Faculty forum gave everyone the opportunity to tell their story, but again, it did not achieve the goal of creating greater understanding between the two groups and in fact, may have caused a wider rift. For example, at the forum Professor Lloyd Weinreb, head of Affirmative Action Sub-committee on faculty hiring, referred to minority faculty candidates as being unlike 'ordinary people.' Whatever Professor Weinreb meant by that comment, the students were insulted. The forum moderator, Juanita Hernández, explained, "One may infer by this phrase that he meant that men who are Ivy League law school graduates, law review editors, and Supreme Court clerks are really the ordinary people. This was precisely one of TWC's major criticisms, that the procedure and criteria used for hiring minority faculty members was inadequate and [had] produced no fruits . . . ." In a letter, Vorenberg replied to TWC's four demands but did not adopt any of their recommendations. Regarding the first recommendation, Vorenberg stated that the search for minority faculty had not been restricted to any particular field of law. He

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Footnotes:

10 The three criteria were: a degree from one of the most prestigious law schools in the country (Harvard, Yale, Columbia, Chicago, Stanford), law review membership, and a Supreme Court clerkship. Third World Coalition, "A Statement by the Third World Coalition of Harvard Law School Expressing Dissatisfaction with Law School Policies and Issuing Proposals to Change Those Policies," Feb. 22, 1984.


stated that the search was broad and inclusive. On the second point, Vorenberg said that he did not know of any situations where an offer for a visiting professorship had deterred a candidate from visiting. Vorenberg emphasized his support for visiting professor status. On the third point, Vorenberg claimed that it was not true that Harvard’s environment made visiting professors of color and their families feel unwelcomed. Finally, Vorenberg said there was no need for student input and he doubted that students on the hiring committees would add anything significant from what already existed. He assured students that they were doing their best to increase faculty diversity and that they were moving on the issue with ‘deliberate speed.’

Despite the administration’s assurances, students grew anxious, especially in light of the widening gap between faculty members surrounding faculty appointments. Since 1979, Harvard Law School had invited approximately four black minority professors to teach as lecturers of law but had only hired Christopher Edley as an assistant professor after Bell’s departure. However, students of color were clear that they wanted nothing less than tenured professors. In a letter to Vorenberg, students expressed their frustration:

Over the past year, we have tried to get you to listen to our concerns. We have submitted proposals. We have met with professors and committees. We have sponsored school-wide forums and tried to initiate dialogue . . . . Presently . . . . There are no tenure-track women of color, Latino, Asian or Native American professors on this campus . . . . We want you to know that these problems are at the root of our dissatisfaction and alienation. Your general unresponsiveness and insensitivity to the concerns of Harvard Law School students is a failure of the educational mission of this institution.

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115 Letter from Dean Vorenberg to Ibraham Gassama, Juanita Hernández, Douglass Woo, and the Third World Coalition, dated March 29, 1984, responding to a March 6, 1984 letter that was a reflection of the proposal presented at the Student-Faculty forum on February 22, 1984.
116 Id.
117 Id.
118 Id.
120 David Nelson, Harry Edwards, Rudolph Pierce, and Levonne Chambers, were the four black lecturers of law.
122 Memo to Dean James Vorenberg from TWC, A.B.L.E. (Alliance for a Better Legal Education), and concerned students at HLS, dated May 3, 1984.
In a letter to the *Harvard Law Record*, students wrote:

[W]e are not satisfied, because short-term and part-time appointments do not change the complexion of the Law School's tenured faculty. We are acutely aware that short-term palliatives simply do not resolve the fundamental problem of the legacy of *de facto* racial exclusion in *tenured* faculty appointments at Harvard and most other law schools.\(^{123}\)

It seemed that the faculty was willing to make offers for professors of color to visit Harvard for a year but those professors were never deemed qualified enough to teach on a permanent basis.

The student protests and lobbying caused a lot of faculty tension. Faculty appointments became a public political struggle. Charles Nesson explained, "The fear on the right is that people will be appointed to the faculty because they will add to the political strength of the left and not because of any outstanding potential for scholarship."\(^{124}\) Another faculty member commented, "The fact that bloc voting is going on indicates that it is less of an intellectual debate than the left would have students and alumni believe."\(^{125}\) Professor Duncan Kennedy explained the faculty voting process as "bloc voting along a left/right continuum where the role the middle and the administration play is not dynamic but passive and reactive."\(^{126}\) The deep divide between faculty members was based on faculty members who associated with and opposed the Critical Legal Studies (CLS) school of thought\(^{127}\) and those who opposed it. CLS scholars sought to change the law not interpret it. Faculty members involved with the CLS movement began to vote on tenured candidates based on their affiliation with CLS, opposing those that were not so affiliated. The political tension made it more difficult for students to be included in the process.\(^{128}\)


\(^{125}\) Id. at 6.

\(^{126}\) Id.

\(^{127}\) Critical Legal Studies was the name of a group of legal scholars, lawyers, law students, and social scientists that believed that law was not neutral, rational, or scientific. Instead, when judges interpreted the law they looked at economic, social and political factors. In addition, CLS thought said that law was an "instrument of social, economic and political domination" furthering the 'interest of the dominators' and 'legitimating the existing order.' See ELEANOR KERLOW, *POISONED IVY* 36 (1994) (quoting from a Letter from the Organizing Committee, Jan. 17, 1977). CLS supporters were considered left-wingers, and CLS critics were considered right-wingers.

\(^{128}\) The Law Student Council submitted to the faculty a proposal to include students in the faculty hiring process, but their proposal was rejected at a faculty meeting on April 18, 1984. See Michael Malamut, *Faculty Says No To Council*, *Harv. L. Rec.*, Apr. 20, 1984, at 1.
The presence of Professor López at Harvard Law School had given Latino students hope that they would finally have one permanent Latino professor. In the spring of 1984, La Alianza wrote a letter to the administration asking that they seriously consider making a permanent offer to López. In its alumni newsletter, La Alianza urged alumni to write to the administration and express the need for a tenured Chicano faculty member. The school year came to a close, and López left without a permanent offer from Harvard Law School. Despite the split within the faculty, in October 1984 the faculty agreed to make Gerald P. López an offer of tenure at Harvard. Five days later, Stanford Law School, where López was a visiting professor, also made him a permanent offer. López opted out of Harvard’s offer when he accepted the position at Stanford several months later. Students were greatly disappointed by López’s decision but understood too well the reasons why he made it. The reasons López gave for rejecting Harvard’s offer were based on family considerations and his desire to work in a community with a significant Chicano population. When asked about his decision, López said, “What was lacking was an institutional awareness or curiosity of the issues that affect Latinos in this country—of Chicano life, of Puerto Rican life, of the active and ongoing cultural and political impact of Latinos and how that interfaces with legal issues. That is a tremendous price to pay for an institution that holds itself out as a national and international leader.”

Vorenberg remembers, “Jerry López absolutely broke my heart” when he did not accept the offer. Vorenberg suspected that in addition to wanting to be “in a setting where there where more Hispanic students, faculty and people who lived in the neighborhood,” the fact that López would have been the only minority with tenure on the faculty was probably also a factor in his decision. Others speculate that the “year-away” rule—Harvard’s policy that a visiting professor be considered for tenure a year after vis-

130 The decision to offer López a tenure offer was made in light of a policy change that only tenured faculty would vote for tenured professors. To accept a candidate, the new policy required a two-thirds vote of all tenured faculty members. See Miguel Rodriguez, Appointments Procedure Splits Faculty, HARV. L. REC., Vol. 79, No. 7, Nov. 30, 1984, at 1. See also Letters to the Editor: TWC Slams New Tenure Policy, HARV. L. REC., Oct. 19, 1984, at 9. Steve Cowan, López Offered Tenured Position, HARV. L. REC., Nov. 16, 1984, at 1.
131 See Javier Avitia-Chavez, Miembro De La Comunidad, Raza Review: Newsletter of the Chicano and Latino Community at Harvard Law School, Spring 1985 (“The offer to López was not just an offer to a Chicano, it was an offer to all the Third World peoples of the U.S. . . . I’m sure Professor López thought about this when he made his decision. He also realized that he would be the only tenured minority faculty member at HLS if he accepted the offer”).
iting—was to blame for Lópezs refusal of tenure at Harvard. Had López received the offer while still in Cambridge, he and his family may have had a greater incentive to stay. It may also have been easier for faculty members to lobby López and his family to accept the offer from Cambridge. Once López was already at Stanford, the idea of moving again probably was not enticing, especially when Stanford offered the support of a larger Latino community. According to Vorenberg, López was given an open invitation to reconsider the offer.\textsuperscript{135}

After López's tenure offer, Dean Vorenberg continued to keep an eye out for promising Latino faculty. On one of his visits to California, alumni told him that Rachel Moran, a law professor at the University of California at Berkeley, was someone he should recruit to Harvard.\textsuperscript{136} Moran graduated with distinction from Stanford University in 1978 and received her law degree from Yale Law School in 1981. While at Yale, Moran was an editor of the \textit{Yale Law Journal} and upon graduation clerked for Chief Judge Wilfred Feinberg of the United States Court of Appeals for the Second Circuit. After clerking, Boalt Hall hired Moran as a tenure-track professor.\textsuperscript{137} In 1987, Rachel Moran received an offer to visit Harvard.\textsuperscript{138} At the time she received the offer, Moran had already committed to visiting the University of California at Los Angeles in 1988 and Stanford in 1989. After her two years of visits, she "needed to pay back [her] visits to Berkeley (an amount of time equivalent to that spent away)."\textsuperscript{139} Moran could not visit Harvard in 1990 or 1991 without special permission from Boalt Hall. Although Harvard left the offer open for a period of time, Moran says the offer eventually lapsed because the "institution's needs change over time."\textsuperscript{140} Moran returned to Boalt Hall in January 1990 and was there until August 1996. From 1996 through 2000, Moran spent time as visiting faculty at New York University School of Law, University of Miami School of Law, and the University of Texas Law School.

The TWC continued to push for faculty diversity but its loose organizational structure\textsuperscript{141} and the graduation of its leaders led to the fading

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\textsuperscript{135} \textit{Lopez Declines HLS Offer}, HARV. L. REC., Mar. 1, 1985, at 2. López is currently a Professor of Clinical Law at New York University School of Law.

\textsuperscript{136} Interview with James Vorenberg, \textit{supra} note 134.


\textsuperscript{138} Electronic correspondence of Rachel Moran, in Berkeley, Cal. (Mar. 26, 1999) (on file with author).

\textsuperscript{139} \textit{Id.}

\textsuperscript{140} \textit{Id.}

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of student activism under TWC. In addition to organizing course boy-
cotts, demonstrations and student-faculty forums, TWC also sponsored
lectures designed to "educate people so they can make their own deci-
sions about where they stand." The last of the student-faculty forums
sponsored by TWC was held on Wednesday, April 10, 1985. "Unlike its
antecedents, . . . [the] forum was a relatively peaceful review of problems
in the HLS' faculty appointments process. The questions and answers,
however, were remarkably similar to those in the [previous] two years.
The atmosphere of the forum was less confrontational, and the faculty
and students were less engaged in the conversation. One dissatisfied stu-
dent said, "I'm a 4L and I've been listening to the dean's very reason-
able statements for a long time. But I have to ask how many years of ef-
fort without any result will it take before this process orientation will
change. . . . [I]sn't (sic) the real problem that you're not giving enough
offers to people of color?" An editorial in the Harvard Law Record
noted the absence of faculty at the third annual forum when it asked the
faculty to explain, "why an atmosphere of hell breaking loose brings so
many faculty forward while a conciliatory one is virtually ignored." The
1985 forum marked the last great effort organized by the TWC but it
would not be the last of coalition efforts or student activism calling for
faculty diversity. Students grew tired of the faculty's story. The canary
had breathed too many toxins; it was ready to de-tox.

The faculty debate that centered around Critical Legal Studies was at
its height in the mid 1980s. In 1985, the Federalist Society, a conserva-
tive student group at Harvard sponsored a debate at the Harvard Club in
New York City where Professor Robert Clark for the first time publicly
criticized the CLS professors. Following his public condemnation,
Clark led a crusade to counteract the CLS professors' power in faculty
hiring. He gathered enough professors to vote on his side to prevent any
faculty candidate from getting a two-thirds vote needed for an offer. The
division among Harvard's faculty was so great that late in 1985, Voren-
berg wrote a letter to alumni telling them that the debate over Critical
Legal Studies had not made Harvard Law School an "unbearable place to
teach but rather . . . made it more exciting and intellectually challeng-
ing."

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142 Id.
143 See Steve Cowan, TWC Forum: Same Questions and Answers, HARV. L. REC., APR.
19, 1985, at 3.
144 Id.
146 KERLOW, supra note 127, at 50 (1994).
147 See James Hoffman, Vorenberg Letter Discusses HLS Schisms, HARV. L. REC., JAN.
16, 1986, at 3.
ommend visiting appointments to the Governing Board of the University, without the approval of the full faculty.

The CLS debate had many casualties, but the main one was probably Professor Clare Dalton. Dalton became an assistant professor in 1981 and seemed like a promising candidate for tenure. In 1985, the Appointments Committee could not agree to recommend her for tenure, so a two-year extension for tenure consideration was granted. Dalton received the highest ratings for her work by almost all of the members of an external review committee but two years later, the faculty could still not agree to offer Dalton a full professorship. Derrick Bell protested the faculty's vote on Dalton by staying in his office for eighty hours during the Commencement period. Clark was one of the most vocal opponents of Dalton's appointment. Vorenberg and about eighteen other professors asked President Bok to review Dalton's case. On March 10, 1988, Bok announced that he would not intervene in the faculty's decision to deny Dalton tenure, despite her threats to sue the university. Several weeks later, Dean Vorenberg announced his decision to step down as dean, a decision allegedly motivated by pressure from conservative faculty.

Between 1985 and 1988, while the faculty conflict was at its height, student efforts to diversify faculty continued but there was not a strong coalition pressing for faculty diversity. During this time, minority student organizations evaluated their efforts and re-assembled in a broader-based

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148 In addition to causing many faculty members to disengage from the Law School community, there was at least one faculty member, Professor Paul Bator, who cited to the faculty wars as reasons for leaving the institution. See James Hoffman, Vorenberg Letter Discusses HLS Schisms, HARV. L. REC., at 3. Cf. Andrew Pollis & Jeff Gershowitz, Jack-

149 son Fleeing Faculty Turmoil?, HARV. L. REC., Apr. 15, 1988, at 4 (Thomas H. Jackson denying his decision to leave Harvard Law School as motivated by the faculty wars).

149 On April 10, 1985, the Appointments Committee divided equally into three groups, one who voted to offer her tenure, another who voted to deny tenure, and the third that voted to offer her a two-year extension. See Vincent Chang, Dalton Gets Two More Years, HARV. L. REC., May 10, 1983.

150 Kerlow, supra note 127, at 51.

151 The faculty voted 29 to 20 to give Dalton tenure but that fell four votes short of the two-thirds necessary for approval.

152 Bell was also protesting Bok's blocking of visiting professor, David Trubek's appointment. Trubek had received the necessary support of the Law School faculty. David Snouffer, Bok Vetoes Trubek, Reviews Dalton Bid, HARV. L. REC., Sept. 18, 1987, at 1.

153 Clark told the Boston Globe that Dalton's work did not "meet the standards that we ought to have." See Steve Curwood, A Tenure Battle at Harvard Law, BOSTON GLOBE, July 19, 1987. In an interview with The National Law Journal, he added that Dalton was not a "very good teacher[ ]" nor had she "demonstrated publishing excellence." See David Kaplan, Battle at Harvard Law Over Tenure; So-called Crits v. Traditionalists, NAT'L L.J., June 22, 1987, at 3.


155 Id.

156 See David Snouffer, Reminiscences on Term In Office, HARV. L. REC., Apr. 29, 1988, at 1. See also Greg Herbert & Chris Crain, Pressure From Right Is Alleged, HARV. L. REC., Apr. 29, 1988, at 1.
coalition. A loose alliance of progressive organizations, like the Student Coalition for a Diverse Faculty,\(^\text{157}\) broadened its focus from solely ethnic and racial organizations to include women and gay student groups. In a memorandum to all students on behalf of the coalition, the organizations asked others for help in identifying prospective minority and women teaching candidates. The goal was to complete a list of candidates' names to forward to the faculty hiring committee. In addition to soliciting names of minority candidates, the coalition also wrote to a number of professors encouraging them to hire a more diverse faculty.\(^\text{158}\) Student efforts to press the faculty were mostly individual organization meetings and not coalition efforts that garnered much attention. Without a strong umbrella organization to coordinate efforts, the organizations continued to lobby for faculty diversity on their own.\(^\text{159}\)

In the fall of 1986, the Committee on Student Services and Quality of Life was created "to investigate and report on a broad range of student concerns." \(^\text{160}\) A subcommittee on Discrimination and Administrative Matters was formed to investigate discrimination at Harvard Law School. The subcommittee conducted a survey of students in the Spring of 1987 and reported that "[m]any students, especially women and minorities, continue to raise the importance of creating greater diversity in the faculty as a way to strengthen a climate of tolerance. We do not see a quick or easy way to resolve this issue as it concerns the tenure and tenure-track appointments processes, but we do suggest that the School give more attention to these matters in the non-tenure appointments—visiting professorships and lectureships. For students, appointments of more women and minorities to these positions would add a significant degree of diversity to the faculty and would be an important short-term response to a larger problem."\(^\text{161}\)

On May 11, 1988, after a number of meetings and continuous dialogue that produced no concrete results, BLSA held a study vigil to pro-

\(^{157}\) The coalition included: Asian American Law Students Association (AALSA), the American Indian Law Student Association (AILSA), the Black Student Law Association (BSLA), the Women Law Association (WLA), and the Committee on Gay and Lesbian Legal Issues (CGLLI). It was formed in April 1988 to represented the shared interests of the six member organizations. See Sung-Hee Suh, *Coalition for Diverse Faculty*, HARV. L. Rec., Oct. 21, 1988, at 4.


\(^{159}\) "HLS lack of Hispanic professors is a hot issue for the group. Students have unsuccessfully pressed the school to hire a Latino ...." See Ann Malaspina, *Legal Eaglets*, VISTA, Summer 1988, at 6.

\(^{160}\) See Memorandum to James Vorenberg From Committee on Student Services and Quality of Life, Re: A Final Summary of the Committee’s Work, July 22, 1988, at 1.

\(^{161}\) See Memorandum to James Vorenberg from Quality of Life Subcommittee on Discrimination and Administrative Matters, Re: Information from Quality of Life Survey on Discrimination and Administration, Dated July 19, 1988, at 10–11. See also Memorandum to Dean Vorenberg and Members of the Quality of Life Committee from Luke Cole, Re: Addendum to Discrimination Memorandum, May 17, 1988 (on file with author).
test minority and female faculty hiring.\textsuperscript{162} Robert Wilkins, BLSA president, said that "[t]he faculty representatives did not appear to have any specific plans, projects, visions or goals to solve the faculty hiring problem. In fact, Vorenberg and others refused to admit that the problem [was] serious, or set any goals for increasing minority hiring, instead he praised Harvard Law School's 'great progress' and assured us that they were 'committed' to solving the problem." BLSA issued a list of demands to Dean Vorenberg where they asked the faculty to hire a Black female tenured or tenure-track professor to begin teaching by the fall of 1989.\textsuperscript{163} They demanded an increase of twenty tenured faculty members of diverse backgrounds within four years and wanted student participation on the appointments and search committees. Finally, students asked for the creation of a fellowship program geared for minority students who are interested in a career in law school teaching.\textsuperscript{164}

\textbf{D. Turning on the Spotlight: Latino Students on the Offensive}

While BLSA took a more activist route, La Alianza opted to work within the system. In the fall of 1987, forty-two Latinos enrolled as first-year law students at Harvard Law School, making it the largest class of Latinos in the history of the Law School.\textsuperscript{165} Most of these students came from areas with vibrant Latino communities where the legal system affected Latinos in a more practical matter than the abstract theories recounted in law school.\textsuperscript{166} In an effort to create a forum for a discussion of

\begin{footnotesize}
\textsuperscript{162} \textit{Black Students Occupy Harvard Law School Dean's Office Protesting Faculty Hiring Practices}, May 10, 1988 (on file with author).
\textsuperscript{163} James Vorenberg announced on April 25, 1988, that he would leave the post of dean and return to teaching but he would remain another year in his position to allow time for a search of a new dean. \textit{See} David Snouffer, \textit{Reminisces on Term in Office}, \textit{Harv. L. Rec.}, Apr. 29, 1988, at 1. \textit{See also} Greg Herbert & Chris Crain, \textit{Pressure From Right Is Alleged}, \textit{Harv. L. Rec.}, Apr. 29, 1988, at 1. It was not until 1998 that the first woman of color professor, Lani Guinier, began teaching at Harvard Law School.
\textsuperscript{164} Some of the student activism that occurred late in the spring of 1988 is attributed to efforts at other law schools to diversify faculty. That same spring, approximately thirty-five protesters occupied Dean Jesse Choper's office for more than six hours at Boalt Hall. Twenty-eight of them were arrested and cited for trespassing after refusing to leave. There was also a day-long boycott of classes organized by the Boalt Coalition for a Diversified Faculty who was promoting more minority and women professors. Approximately eighty percent of the students boycotted their classes. At time Boalt had only one black and three women professors of the forty-five tenured professors. \textit{See} Debra Levi, \textit{28 Arrests in Boalt Hall Sit-In Over Bias}, \textit{S.F. Chron.}, Mar. 23, 1988, at B-1; Roland De Wolk, \textit{Students Protest Shortage of Minorities and Women on Boalt Hall Faculty; 28 Arrests}, \textit{Trib.}, Mar. 23, 1988, at B-1.
\textsuperscript{165} According to Law School Admissions figures, the largest class to enter prior to 1987 was in 1980 with thirty-four students (numbers on file with author).
\textsuperscript{166} Students were used to seeing Latino-focused magazines and media images. Reading about issues affecting Latinos was common. Telephone Interview with Nancy Ramirez '90 (Apr. 5, 1999).
\end{footnotesize}
issues affecting Latinos, the students attempted to create a law journal focused on legal scholarship pertinent to Latinos.167

Students met with administrators Vice-Dean David Smith, Dean of Students Sarah Wald, and Director of Publications, Deborah Gallagher about creating a journal.168 The students were discouraged from starting a journal focusing on Latinos and instead were told to look to the Civil Rights-Civil Liberties Law Review and the Human Rights Journal as vehicles to talk about Latino issues.169 The students wanted their own journal because the existing journals already had structures for article and editor selection that were unlikely to change at the request of La Alianza.170 Furthermore, they felt Latino issues were important and relevant.171 Shortly after the conversations with La Alianza, Vorenberg declared a moratorium on all new journals “pending the evaluation of ‘the role of journals in the Law School’s educational program.”172 The action was taken in response to proposals submitted by Latino students and four other student groups; however the official reason given was cost and space concerns. Vice-Dean David Smith explained, “we are concerned about cost, but primarily in the context of the question: ‘Is this a good educational use of money? Would the money be better spent on nonjournal work or, in the context of the journals, would it make more sense for people who are interested in, for example constitutional law work within the context of an existing journal?”173 Traditionally, journal policy was that new journals had to be supported principally by outside funding. However, Smith’s comments suggest that it was a subjective evaluation that the law review proposed was not a good investment of Harvard Law School’s resources. The moratorium marked the beginning of an eighteen-month evaluation to determine the “educational impact of the journal.”174 That moratorium prevented Latino law students from starting their own journal until 1994.175

La Alianza, upset about the obstacles set up for them to establish a journal, continued to push the administration by lobbying the administration to fund La Alianza’s efforts to bring Latino faculty to Harvard.176

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167 Id.
168 Id.
169 Id.
170 The Black Letter Law Journal was founded in 1983 as an internal publication of the Black Law Students Association.
171 Id.
172 Id.
173 The proposals were for journals on law and economics, American Indian Law, sports and entertainment law, a graduate student journal, and one on legal issues relating to Latinos. See Dorothy Mitchell, Vorenberg Imposes Moratorium On Journals, HARV. L. REC., Jan. 15, 1988, at 3. See id.
174 See id.
175 See infra Part I.F.
176 Memorandum to Dean Vorenberg from La Alianza, May 16, 1988 (on file with author). The requests were motivated to a large extent by the frustration students felt after
One of the funding requests was to support La Alianza's attendance at the National Hispanic Bar Association's (HNBA) annual conference. The organization wanted to send at least one member of the organization to the conference to identify Latino lawyers to teach at Harvard. The second request asked for funds to create a database of qualified Latino scholars and lawyers who could teach at Harvard Law School. Students were convinced that there were in fact qualified Latinos to teach at Harvard but they needed the evidence to support their story.

Dean Vorenberg agreed to fund a student to go to the HNBA conference but felt that compiling "[a] massive list in which the truly exceptional are indistinguishably mingled with the ordinary able will so overload our abilities to make inquiries as in the end to not yield results." Instead, Vorenberg suggested that the organization should focus on hosting a symposium on legal issues of special relevance to the Hispanic community. Vorenberg's letter added, "if we ask people to come and give a talk in that setting, it will give us a chance to meet them without suggesting in any overt way that any particular person is being considered for an offer here." The letter's language suggested to students that the administration was not willing to make any substantial efforts to identify Latinos to teach at Harvard. Since these projects were elaborated at the end of the school year, much of the energy around faculty diversity dissipated over the summer.

Even though energy dissipated at semester's end 1988, the spring of 1989 marked the beginning of the most active period of student activism for Latino students. Latino students were always active in student efforts to diversify the faculty, the issue of hiring Latino professors was always shadowed by demands for black faculty members. Latino students did not want their voice drowned by a broad-based agenda so they sought to create an educational campaign focusing on the absence of Latino faculty not receiving approval to start a law journal dealing with legal issues affecting Latinos. "We thought they have so much money, let's tap into it," to bring attention to Latinos and issues affecting Latinos said Nancy Ramirez, supra note 166. The request for funding totaled over $10,000 (on file with author).

The proposal had three stages: (1) the search; (2) information solicitation; and (3) the publication of computerized data on qualified Hispanic legal professionals. La Alianza wanted to limit its search to 3000 Latinos in the legal profession from which 400 candidates would be selected. A couple of mailings to those 400 would be sent and calls would be made asking each person to fill out a questionnaire that would identify their qualifications to teach. More specifically, students wanted to inquire about each "candidate's publications, legal honors, teaching experience, education and other relevant biographical data." Once this information was collected La Alianza would hire a software company to develop a program to input all the information and then bound the results of the research (request on file with author, at 3).

Letter to La Alianza from Dean Vorenberg, June 14, 1988 (on file with author).

"In the course of organizing such a symposium, there would have to be a substantial search for legal talent, but the focus of putting together a program and presenting it is more definite and less diffuse, than getting together a list of qualified individuals." Id.
members. La Alianza prefaced their campaign in a letter to Dean Clark stating:

Our organization has identified a need to share our concern over the lack of a Hispanic professor with the rest of the faculty and with the student body. To that end we are embarking on an awareness campaign to focus the attention of the HLS community on the absence of a Hispanic-American on our faculty. In the next several weeks flyers, posters and other media will be used to raise awareness over this concern. . . . the awareness effort is a carefully-tailored educational effort relating to this long on-going concern of many present and past HLS students.\(^{182}\)

La Alianza amplified its voice by writing messages on chalkboards, posting leaflets throughout the school and printing literature that read, “Tenured Hispanic Faculty, Harvard Law School 1817–1989, 172 Years of Tradition.” The slogans were usually accompanied by an empty picture frame to represent the faculty portraits displayed in the halls of Pound Hall or by a picture of the front steps of Langdell Library, where the annual faculty picture is taken.\(^{183}\) The campaign was strengthened on March 22, 1989, when La Alianza staged a protest outside of a faculty meeting.\(^{184}\) La Alianza’s co-chair, Ana Maria Salazar explained, “It’s a matter of trying to highlight the fact that there are no Hispanics in the faculty. The message is, ‘It’s okay for Latinos to be students, but they are not good enough to be professors.’”\(^{185}\) La Alianza announced that it would participate in a national minority group protest calling for faculty diversity.

The Nationwide Law Student Strike, initiated by Boalt Hall’s Coalition for Diversified Faculty, was scheduled for April 6, 1989. The strike called for law students throughout the country to boycott “classes to protest discrimination based on race, gender, economic class and sexual orientation within America’s law schools.”\(^{186}\) Over thirty law schools

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182 Letter from La Alianza to Dean-designate Robert C. Clark on Feb. 28, 1989 (on file with author). The meeting with Clark occurred sometime in March and students reported that “the message had definitely gotten through and even mentioned some professors he had in mind.” See Tara A. Nayak, *J25 HLS Students Demand Diversity*, HARV. CRIMSON, Apr. 7, 1989, at 5 (quoting Glenda Martinez ’90).

183 See copies of fliers and T-shirt and a letter from La Alianza to Members and Friends, Mar. 9, 1989 (on file with author).

184 See Tara A. Nayak, *HLS Students Protest Lack of Hispanic Profs*, HARV. CRIMSON, Mar. 23, 1989, at 6. The faculty meeting was held to discuss the promotion of Randall Kennedy and Kathleen Sullivan to tenure-track positions. The fact that La Alianza choose this meeting to make their point was central to the message that hiring only Black and women professors was not enough. See Tara A. Nayak, *Law Faculty Approves Two Tenure Bids*, HARV. CRIMSON, Mar. 23, 1989, at 1.


186 Letter from Boalt Coalition for Diversified Faculty to law students participating in
participated in the strike, including Stanford, UCLA, UC Davis, Hastings, the University of San Diego, the University of San Francisco, Chicago, Michigan, Harvard, NYU, Cornell, Wisconsin, UT Austin, Northwestern, Yale, USC, University of Alabama, University of New Mexico, University of Colorado, Brooklyn, Fordham, University of Nebraska, and the University of Illinois. At Harvard, approximately 125 students and three professors took part in a “study-in” at Langdell Hall organized by the Coalition for a Diverse Faculty. The assembly was peaceful, and Dean Vorenberg was supportive when he said, “I recognize why you are here and the message you want to send to the Law School and the Law School Faculty. And I want to thank you for carrying on this forum in an extremely considerate and careful way. It adds to the strength of what you have to say.” The day of the strike, La Alianza released a statement to the press that read:

La Alianza, has met periodically over the last two decades with the law school administration to express its concern over the lack of Hispanic faculty. This year La Alianza has continued to make strenuous efforts to communicate to the administration its frustration with this ongoing problem. Time and again the students of La Alianza have received verbal commitments that the law school will make a meaningful effort to recruit Hispanic professors . . . . It is difficult to believe that Harvard Law School is seriously committed to recruiting Hispanic faculty when over the past twenty years they have done virtually nothing to address this specific concern . . . . we can only conclude that their inaction amounts to a policy of conscious exclusion.

In addition to the familiar role model arguments, the students’ message also articulated the position that Harvard was not a participant in important scholarly debates over legal issues affecting Latinos.

La Alianza’s campaign had effectively drawn attention to the absence of Latinos on the faculty but it soon became apparent that their efforts were insufficient when in the fall of 1988, an opening to teach the

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187 See letter from Renee Saucedo of the Boalt Coalition for Diversified Faculty to nationwide participants, Mar. 16, 1989 (on file with author).
188 The professors that participated in the sit-in were Bell, Randall Kennedy, and Gerald Frug. See Tara A Nayak, 125 HLS Students Demand Diversity, HARV. CRIMSON, Apr. 7, 1989, at 1. See also Simon Mendelson, Students Stage ‘Study In’ for Faculty Diversity, HARV. L. REC., Apr. 14, 1989, at 1.
189 See Tara A Nayak, 125 HLS Students Demand Diversity, HARV. CRIMSON, Apr. 7, 1989, at 1.
190 Harvard Law Students Protest Lack of Women and Minority Professors, Lack of Hispanic Faculty a Particular Concern, Press Release, Apr. 6, 1989 (on file with author).
Government Lawyer course emerged.192 Deborah Ramirez '81, an Assistant U.S. Attorney in charge of the Drug Task Force Unit, was responsible for multi-agency narcotics, wiretap and money laundering investigations and has prosecuted cases involving bank robbery, tax and financial fraud, racketeering and firearm offenses.193 Ramirez was teaching the clinical component of the Government Lawyer and the Federal Litigation courses so she used her knowledge of the course to draft a proposal that filled the gaps left by the first-year criminal law courses. Ramirez submitted a course proposal to the faculty hiring committee that described a clinical criminal procedure course with a class component. La Alianza members wrote and talked to members of the faculty to garner support for Ramirez.194 Professor Charles Ogletree, who taught the Trial Advocacy Workshop with Ramirez in the winters of 1988 and 1989, recommended her for the position after observing her trial work, her classroom performance, and receiving positive student reports.195 Bancroft Littlefield, who previously taught the course, also recommended Ramirez for the post.196

On April 13, the Law School’s student newsletter announced that the traditional Government Lawyer course would not be taught and instead that Gary Katzmann would teach a similar course. Neither Ramirez nor La Alianza wished to attack Katzmann’s selection,197 but they were concerned with the selection process.198 One student asked, “[h]ow are we ever going to get more Latinos on the faculty if they change the rules of the game when a good prospect comes along?”199 The concerns about the selection process were based principally on the shift in focus of the course from a practical to a theoretical orientation.200 There had been no discussion about the change of focus before the decision was made and the difference in descriptions between Littlefield’s course and the new course were not great.201 Katzmann had neither taught a class nor supervised a clinical course. However, Katzmann was a Yale graduate who clerked for two federal judges and was a research associate at Harvard

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192 The course focused on the role of lawyers working in the state or federal government.
194 Id.
196 Id.
197 Id. A member of La Alianza did criticize Katzmann’s selection based on his lack of teaching experience and trial work. See Rudy Rodriguez, HLS Misses Chance to Appoint Hispanic Woman Prof, HARV. L. REC., Apr. 21, 1989, at 6.
198 See La Alianza Challenges Hispanic’s Appointment Denial, supra note 195 at 1.
199 Id. (quoting Ana Maria Salazar ’89).
200 Id.
201 Rudy Rodriguez, HLS Misses Chance to Appoint Hispanic Woman Prof, HARV. L. REC., Apr. 21, 1989, at 6.
Challenging a Tradition of Exclusion

Law School's Center for Criminal Justice. Katzmann was also an Assistant U.S. Attorney where he served as the Deputy Chief of the Criminal Division and served as a Chief Appellate Attorney. Ramirez explained, "I am a practitioner and not a scholar, but they told me they wanted someone with more teaching experience." To add to Ramirez's frustration, Vorenberg never talked to Richard Stearns, who supervised both Ramirez and Katzmann. Ramirez stated that it was important to hire Latino faculty because "[t]he school is neglecting to participate in an important debate." She added, "For the school to say there is no Hispanic qualified in the country to teach at Harvard Law School is insulting."

When La Alianza met with Vorenberg to discuss Ramirez's appointment, he assured them that there were two or three Latinos who could teach at Harvard Law School in the next two or three years. The meeting with Vorenberg was somewhat emotional for some students. In a letter apologizing for the tone used during the meeting, Jorge Ramirez wrote:

There exists an anger that somehow we have been betrayed; there exists a frustration that no one really cares about or even understands our concerns; there exists the disappointment that all our work and efforts to bring about changes have failed; and finally there exists the pain we feel from the sharp blow which we perceive has been directed not only at us but our people. I make no excuse for these emotions, for to do so would be to deny that a problem exists at this law school.

That same student remembers feeling that "the faculty was playing us for fools because they were pretending to listen and understand our arguments, yet they were the same arguments presented years before; and yet no movement had ever been made on the issue of diversifying the faculty."

Even though Harvard's rejection made her question her status as a legal scholar, Ramirez is exactly that. She is currently a professor at Northeastern University who teaches Criminal law, Advance Criminal Procedure, Evidence, Professional Responsibility, and a seminar on Race, Gender, Juries and Justice. She has served as a consultant to the U.S. Department of Justice, Suffolk County and the Boston Police Department on

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202 Also, while Ramirez had tried twenty trials, Katzmann had tried only four. See Liz Askey, La Alianza Challenges Hispanic's Appointment Denial, HARV. L. REC., Apr. 21, 1989 at 1.

203 Id. at 16.

204 Id.

205 From student notes of April 20, 1989 meeting with Dean Vorenberg (on file with author).

206 Letter to Dean Vorenberg from Jorge A. Ramirez, Apr. 21, 1989 (on file with author).

issues of racial profiling and is one of the leading experts on the subject. Professor Ramirez has served on the Massachusetts Executive Judicial Nominating Commission and the Federal Judicial Selection Commission and has chaired the Massachusetts Hispanic Advisory Commission. For many, it is unclear why someone with Professor Ramirez’s experience and scholarship would not be deemed valuable for the consumers of Harvard Law School.

For months, La Alianza members were communicating with Latino alumni to draw their support and to create a committee of Latino alumni who would facilitate communication between them. On April 14 and 15, 1989, La Alianza hosted a conference for Latino alumni to talk about how they could coordinate efforts. One of the topics of discussion was the lack of Latino faculty, and specifically, Ramirez’s appointment. The alumni present met the following day to write a letter asking the administration for an explanation about Ramirez’s situation. The letter read:

The students raised disturbing questions regarding the candidacy of Deborah Ramirez, ’81, for a full-time, one year, faculty position as a visiting professor from practice that, by implication, relates to the Law School’s commitment to appointing a Latino to the faculty. We would appreciate your views on this matter and request that you provide us specific information to inform our judgment on this critical issue.

As in previous years, student activism dwindled with the arrival of final exams and summer vacation. However, getting Latino faculty at Harvard Law School was a priority for the organization’s new leadership who was committed to continuing the dialogue.

In the fall of 1989, La Alianza continued to voice their concerns to faculty members, the administration and alumni. In a meeting with Dean Clark, he promised to extend offers for visiting professorships that year and reminded the students that there was an outstanding offer to Rachel Moran. The students also meet with Professors Randall Kennedy and

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208 Telephone Interview with Gloria Ybarra ’78 (Mar. 23, 1999).
210 Letter to Dean Designate Clark from the Latino Committee of the HLS Alumni Association, Apr. 16, 1989 (on file with author).
211 See Alain Kodsi, La Alianza Continues Drive for Faculty Seat, HARV. L. REC., May 5, 1989, at 1.
212 Professor Robert C. Clark became Harvard Law School’s Dean in the fall of 1989.
213 La Alianza met with Dean Clark on October 11, 1989. See La Alianza Newsletter, Oct. 17, 1989, at 2 (on file with author). In a December 27, 1989 letter from Dean Clark to Rudy Rodriguez, Academic Affairs Coordinator for La Alianza wrote: “As you know, we have worked for some time to attract Hispanics to our faculty. Some years ago we offered a tenured professorship to an Hispanic who decided, after considerable thought, not to move to Cambridge. We have more recently made an offer of a visitorship to an Hispanic, and
Martha Minow, in order to get an idea about how the faculty hiring process worked and how they could best affect it. They encouraged students to put together a list of candidates for the hiring committees. They were also encouraged to push for a mentoring program that would nurture graduates to go into law teaching. Other ideas offered were to negotiate with the Civil Rights-Civil Liberties Law Review to devote one publication to Latino issues and to find a course that needed to be taught and identify Latino candidates to teach it. In conjunction with gathering information about the process, the students wrote to alumni encouraging them to pressure Clark to hire Latino faculty. One alumnus wrote:

As a law student, I was active in voicing this concern to Dean Albert Sacks, and I was aware of the efforts made with Dean Vorenberg by the students who followed me. We are now on our third Dean since my graduation, and the interest and hope that the goal can be accomplished has not diminished.

... Harvard Law School finds itself in a position to have a positive impact on the legal profession. I predict that Hispanics on the faculty will result in many more Hispanics opting for a teaching career, and the shortage of Hispanic law professors will come to an end.

Other alumni wrote and expressed similar concerns over Harvard’s inability to hire Latinos. Some submitted their names or other lawyers’ names as candidates to teach at the Law School. Clark assured the alumni that the Law School was “working hard in [their] efforts to recruit Hispanics to the faculty” and mentioned that there was an outstanding offer for a professor to visit, referring to Rachel Moran. Although pre-
vious commitments made it difficult for Moran to accept Harvard's 1987 invitation to visit, Harvard did not try to recruit her again. Since that time, Moran has spent time visiting the law schools of New York University and the University of Miami.

La Alianza's campaign appeared to have results. In February 1990, Clark announced that Professor Gerald Torres had accepted an invitation to visit Harvard the following academic year.\(^{219}\) Torres was at the time a professor and associate dean at the University of Minnesota Law School.\(^{220}\) Torres grew up in San Bernardino, California. He had graduated from Stanford University in 1974, received his J.D. from Yale Law School in 1977 and completed a L.L.M. degree from the University of Michigan Law School in 1980.\(^{221}\) After law school Torres spent a year working for the Children's Defense Fund and taught in various capacities at the University of Michigan, the University of Pittsburgh, and the University of Vermont.\(^{222}\) Like López, Torres was deeply rooted in Latino culture and politics. He was the type of role model Latino students wanted. Clark's announcement seemed to be a great accomplishment for many in La Alianza, while others were cautious to claim victory. One co-chair of La Alianza remarked, "All of the members are really ecstatic. We highly praise the faculty and Clark but it is just the initial step."\(^{223}\) Another co-chair commented, "I don't think this is a moment to celebrate; this is good, but there is such a long history behind this."\(^{224}\) In light of the announcement, La Alianza members disagreed about what to do with the campaign they were engaged in.\(^{225}\) Latino students enthusiastically welcomed Torres, but most agreed that a one-year visiting profes-

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\(^{219}\) See Erick Hachenburg, Clark Announces Visiting Professorship For Torres, HARV. L. REC., Feb. 9, 1990, at 1.

\(^{220}\) Id.


\(^{222}\) HARV. L. SCH. 1976 Y.B., at 48.

\(^{223}\) Erick Hachenburg, Clark Announces Visiting Professorship For Torres, HARV. L. REC., Feb. 9, 1990, at 1 (quoting Loretta Martinez '91).

\(^{224}\) Id. (quoting Ivette Peña '90).

\(^{225}\) Id. ("[S]ome members want to continue ‘to hit the administration very hard on retention and multiple offers’ and others are ‘fairly satisfied and want to turn their energy to other efforts.’") (quoting Loretta Martinez '91).
sorship was not enough to reflect the growing relevance of Latino perspectives to legal academia.\

E. Putting the Citadel to Shame: The Consequences of Activism

Both student activism and apathy on faculty diversity issues were at their most extreme in the 1990s. In March 1990, La Alianza decided to be more proactive when it joined other student organizations to form the Harvard Coalition for Civil Rights (CCR). Unlike the previous coalitions, CCR was prepared to take more drastic steps to pressure the administration.

On April 5, 1990, CCR began a series of protests with a teach-in where it presented its demands. CCR asked Clark to make a hiring decision on Regina Austin, a black female visiting professor, before the end of the academic year. The group wanted Harvard Law School to hire a woman of color by the fall of 1990. In addition, students asked the administration to do away with the year-away rule. After the teach-in, about 100 students marched to Clark’s outer office in Griswold Hall. Clark offered to meet with students but they refused and instead about 20 decided to stay the night and wait for his return the following day. Security guards secured the building after 5:00 P.M. but allowed most students to come and go. That day the students gave Clark a deadline of Monday, April 9, 1990, to respond to their demands. On Monday, Clark’s office handed CCR representatives a letter from Clark where he

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226 See La Alianza, La Alianza Commends Faculty Choice, HARV. L. REC., Mar. 2, 1990, at 4 (“We are satisfied that our efforts have finally elicited a response from the administration. Still it is important that the hiring of Prof. Torres be recognized for what it is: the first step towards the achievement of our ultimate goal, which is the reflection on the HLS faculty and in its curriculum of the growing strength and influence of Latinas and Latinos in the United States”).

227 The student organizations involved in the formation of CCR were La Alianza, the Black Law Students Association (BLSA), the Asian Pacific Law Students Association (APALSA), the Native American Law Students Association (NLSA), the Women’s Law Association (WLA), the Committee on Gay and Lesbian Legal Issues (COGLLI), the National Lawyer’s Guild, and the Disabled Law Students’ Association. See Morris Ratner, New Civil Rights Group Will Host Teach-In, HARV. L. REC., Mar. 16, 1990, at 1. See also Linda Killian, Harvard Law Students Stage Sit-in Over Hiring, BOSTON GLOBE, Apr. 6, 1990, at 17.

228 A boycott of classes also took place but most classes were unaffected. These activities were part of the same national strike day effort that occurred the previous year and was coordinated by Boalt’s Coalition for a Diversified Faculty. Harvard Law School’s alumni weekend was on Apr. 6-7. CCR distributed packets with information about the protest and the demands to the alumni. See Memorandum to All HLS Alumni from CCR, Apr. 6, 1990 (on file with author).

229 Id. See also Linda Popejoy, Students Protest Dean On Diversity, HARV. L. REC., Apr. 11, 1990, at 1.

230 Id.

231 Id.

232 Id.

233 Memorandum to Dean Clark from CCR, Apr. 6, 1990 (on file with author).
said he shared their belief in the importance of diversity but he did "not condone the use of sit-ins that have the effect of disrupting normal law school operations and intimidating law school personnel." Clark did not agree to meet the students’ demands and shortly after Clark’s response was received about 150 students rallied in protest in front of the Harkness Commons. Afterwards, students marched into Pound Hall, where admitted students were having lunch with professors. The protesters chanted for Clark until he was forced to exit and head to his office. At his office, 100 students staged another sit-in outside of Clark’s office in Griswold Hall. Approximately 80 students spent the night in Griswold, after security guards locked them out of Clark’s office and Harvard police sealed the building. Unlike the first sit-in, supporters were not allowed to enter the building with food, blankets, medicine or water and students did not have telephone contact.

In response to the protests, Clark scheduled a meeting for the entire Law School community. In preparation for the meeting, CCR members drafted proposals to recruit women and minorities. The principal proposals were: “involving students in the decision-making process; forming a body of students to sell HLS to minorities and women who have been given offers permitting visiting professors to choose when they will be reviewed for tenure, and encouraging more women and minorities to enter the teaching profession.” The proposals intended to aid the Law School in recruiting more minorities but they were not meant to replace the demands made earlier. Jan Michele Lemon ’91 and Jorge Ramirez ’90 represented CCR at the full-house forum in the Ames Courtroom. At the meeting Clark said that academic excellence and subject matter needs could not conflict with the goal of faculty diversity, as important as it may be. Students blamed the faculty for not recognizing non-traditional legal scholarship and blamed them for being prejudiced against non-traditional candidates. Students’ main criticism was the year-away rule, requiring visiting faculty to leave the school before they were evaluated for tenure. While some students agreed that the meeting

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235 See also Linda Popejoy, Students Protest Dean On Diversity, HARV. L. REC., Apr. 11, 1990, at 1.
236 Id.
237 Id.
238 Id.
240 Id.
241 Id. at 12.
242 Id.
243 Clark received a permanent tenure offer while he visited the Law School in 1978. Id.
attention from the real source of those concerns . . . .” After all the discord, CCR tried to reach an agreement with Clark by asking Reverend Jesse Jackson to mediate a conversation but Clark refused to get a public figure outside of the Law School involved. Clark was unwilling to get outsiders involved and make the discussion more public.

The call for Latino faculty was immediately lost in the coalition effort. Since Gerald Torres was going to be a visiting professor the following year, La Alianza’s advocacy simmered and was replaced by a call for a black woman faculty member. However, La Alianza continued to push for Latino professors. On April 6 and 7, 1990, the group sponsored the first Latino Alumni Conference in an effort to rally more alumni support. In addition, members of La Alianza were key leaders in CCR. However, the media events and focus on a black woman contributed to burying La Alianza’s message. At the same time, CCR’s action created a greater opportunity for La Alianza to continue talking about faculty diversity.

Unlike other years, where the end of the academic year pacified student activism, this year protests continued until graduation. For the Law School’s graduation ceremonies, students signs on black balloons filled with helium that said, “Harvard Diversify Now.” Some graduating students also presented the administration with a letter asking for faculty diversity as they were handed their diplomas. Other students, not participating in the ceremonies, unfurled a sign from Langdell Hall calling for faculty diversity. To add to the event, the student speaker, Laurence Taylor and two members of La Alianza wrote a speech criticizing the Law School’s inability to hire a diverse faculty.

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255 La Alianza hosted a welcome reception to honor Professor Gerald Torres who they brought in to participate in the conference. Gerald López delivered the keynote address and talked about the importance of hiring Latino scholars and promoting Latino-focused legal scholarship. Panelists talked about career opportunities, recent Supreme Court decisions and the Latino agenda for the 90s. See Historic Conference for Latino Alumni, HARV. L. BULL., Summer 1990, at 35.
256 Jorge Ramirez was one of the two representatives of CCR at the forum and continued to be vocal on the issue of Latino faculty.
257 See Recent Events in the Search for Hispanic Faculty, supra note 245 ("While La Alianza was actively involved in the coalition, we risked the possibility of our message being drowned out in the hyped up media events") (quoting Juan Zuñiga) (on file with author). Juan Zuñiga’s notes from May 2, 1990 meeting with the Faculty Appointments Committee (on file with author).
258 Telephone Interview with Nancy Ramirez ’90, supra note 166.
259 Id.
260 Electronic correspondence of Jorge Ramirez ’90, in Antigua, Guatemala (Mar. 26, 1999) (recalling that the banner ended up falling right behind the graduation ceremony podium) (on file with author).
261 Id. Ramirez says he helped write an outline of the speech but says that Alfredo
was a good forum for students and faculty to talk about the issues; others felt that "the open forum was simply a politically expedient way for the Dean to diffuse the issue of diversity." On April 24, 1990, CCR held a rally where Derrick Bell announced he would take an unpaid leave of absence until a woman of color was tenured. Bell stated, "I cannot in good conscience continue in a role that limits rather than expands faculty diversity." News of Bell's announcement made the national press. Clark was not present at the rally but instead issued a letter that called Bell's possible absence "unfortunate" and said he was proud of the Law School's recent appointments. At the rally, CCR also announced the creation of an alternative alumni investment fund that would solicit financial donations and pledges from Law School alumni and hold them in escrow until a woman of color was hired and a plan to diversify the faculty was initiated. Clark replied that "appointments decisions should be made on the basis of relevant factors. These include excellent scholarship while giving some weight to diversity." Since the protests focused on getting a tenured woman of color on the faculty, Regina Austin became the center of student and media attention. In a letter to the Harvard Law Record, Austin wrote that she had not publicly objected to the use of her name in connection with the student activism because she agreed with CCR's goals, however, she felt her silence may have hurt the students' message. Austin's letter read: "The agenda the students are promoting extends far beyond any petty narrow or personal interest in my appointment . . . Any emphasis on my appointment trivializes the genuine concerns of the students and diverts

244 Id. ("[T]t was good that faculty and students got [to] air their views") (quoting Jan-Michele Lemon).
245 See Recent Events in the Search for Hispanic Faculty, LA ALIANZA REPORT, Spring 1990, at 2 (on file with author).
247 Id. Bell also made an implicit comment about Randall Kennedy who he said "looks black and talks white" which caused some controversy. See Matt Kairis, In Defense of Randall Kennedy, HARV. L. REC., May 4, 1990, at 4. See also Brian Timmons, Fraudulent 'Diversity,' NEWSWEEK, Nov. 12, 1990.
249 See Letter from Dean Robert Clark to the Coalition for Civil Rights, Apr. 24, 1990 (on file with author).
graduation activities, La Alianza members agreed to divide the work of identifying Latino professors and collecting enough information on them to be able to present them intelligently to the faculty. Although some people told them that it was not their duty to do this type of search, the students felt that it was possible this would make a difference. One student recognized that “[t]his type of search properly belongs to the faculty. However, if we would leave the Hispanic faculty search to the faculty, it may be another ten years before an appointment is made.”

The students hoped the story he and his colleagues were piecing together would convince the faculty that there were Latino professors qualified to teach at Harvard Law School.

Students continued to advocate their agenda through numerous gatherings “to show that [the students’] dedication to diversity was not a passing fad.” CCR members also met with Dean Clark to talk about faculty diversity. When CCR felt it was not getting any results, it invited Clark to defend the Law School’s hiring record during a mock trial. Clark declined the invitation saying that the format was too adversarial to be productive.

Clark explained, “mock trials by their nature are backward looking, and I’m more interested in the future.” The students argued that the trial would provide the Dean with a “dignified forum in which he would feel comfortable presenting his arguments.” Instead of proceeding with the mock trial, CCR filed a complaint in Massachusetts Superior Court at the Middlesex County Courthouse on November 20, 1990. The lawsuit sought to enjoin Harvard Law School from using the same hiring criteria alleged to have a disparate impact on women and minority candidates.

The students’ complaint alleged injury to women and minority students because of the absence of diverse viewpoints and

Gomez and Lawrence Taylor wrote “what I thought ended up being an incredible speech.”

See Juan Zuñiga, Recent Events in the Search for Hispanic Faculty, LA ALIANZA REPORT, Spring 1990, at 2 (on file with author).


See id. at 8 (quoting Laura Hankins).


Id.
the denial of role models and prayed that Harvard Law School institute an affirmative action plan.\textsuperscript{270}

CCR's lawsuit marked the beginning of a long legal battle. In January 1991, Harvard filed a motion to dismiss the case for lack of standing and the following month a Middlesex Superior Court judge upheld the University's argument.\textsuperscript{271} In addition, fifty students formed Students for Constructive Diversity (SCD), a new group that filed a motion to intervene in CCR's lawsuit saying that the suit did not have merit.\textsuperscript{272} The lawsuit continued to grow as several national organizations, including the Lawyers' Committee for Civil Rights Under Law, and students at other law schools filed an amicus brief in support of CCR.\textsuperscript{273} CCR filed a notice of appeal and a motion asking the court to reconsider.\textsuperscript{274} As the lawsuit was underway, CCR continued planning protests in support of faculty diversity.

The Third Annual National Law Student Strike Day was scheduled for April 4, 1991. In an effort to curtail CCR's events, Clark sent letters to all students and faculty discouraging them from participating in the day's boycott and activities that he described as a "disruption of the educational process" and "a disservice to other students and their teachers."\textsuperscript{275} Instead, Clark proposed that students attend a forum on diversity and legal education that he scheduled for the same afternoon that CCR planned its protest.\textsuperscript{276} Clark invited CCR to take part in this event but the group refused because they were not included in the planning of the event, which coincided with their activities. The setbacks CCR faced were not enough to stop the planned protests.

On April 4, 1991, more than 300 students boycotted their legal education at Harvard Law School. Some professors voluntarily canceled their classes in support of the protest.\textsuperscript{277} The day began with a teach-in to...
discuss diversity issues, hiring criteria, and scholarship and led to a march to President Bok's office. University police prevented students from meeting with Bok, and the building was secured to prevent students from entering. After the students left the yard, they continued their protest in Clark's office, where they sat-in all night until news of Professor Mary Joe Frug's death caused them to stop. CCR had scheduled a meeting with Clark the next day but decided to contact the dean of students, Sarah Wald, to postpone the meeting. Instead of meeting with Clark on the scheduled day, CCR staged another sit-in. This time about forty-five students blocked all entrances to Dean Clark's office during business hours. Vice-Dean David Smith warned students that they were breaking the law and would face serious consequences if they did not stop the protest by 4:00 P.M. At about 2:15 P.M. security guards arrived with cameras to take pictures of the student protesters. Shortly thereafter the students ended their protest. At the end of the day, the students held a victory rally outside of Griswold Hall. Dean Clark did not enter his office nor met with students to discuss their demands. Clark explained that he was away from the office in the morning and "in the afternoon [he] did not think it appropriate to meet with the students as they demanded. After all, [they] had a perfectly appropriate and orderly meeting scheduled; that meeting was canceled by [the students]; the demonstration was a violation of University rules; and the prospects for free discussion were not promising." Following the sit-in, Clark sent

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278 At the teach-in a first-year student, Jon Garcia, suggested that CCR members considered the real value of Strike Day. He criticized some of the diversity efforts as unproductive and expressed the view that the faculty diversity issue was not an injustice so great as others in society. See Robert Arnold, 'Dean Clark Is Not George Wallace,' Harvard Law School, Apr. 12, 1991, at 1. Dean Clark scheduled a panel discussion on Strike Day to encourage discussion on diversity, but CCR boycotted the event, which 150 students attended, because they were not involved in its planning. Id. See also Dolly Smith, Law Students Rally at Harvard, Demand Diverse Faculty, Boston Globe, Apr. 5, 1991, at 19.


282 Id.


284 Id.


286 Letter from Dean Clark to All Students, Apr. 22, 1991 (on file with author). Clark also wrote that "efforts to impose one's views on others in the community through interfer-
students a letter telling them that they would be disciplined if they continued to disrupt the "normal function" of the university.\textsuperscript{287}

The administration's warnings had little effect on the activism. CCR responded to Dean Clark's letter by accusing him of attempting to "chill voices of dissent," "intimidating students into silence," and exceeding his "disciplinary authority."\textsuperscript{288} Two weeks later, CCR was at it again, when fifty students picketed outside Clark's office for faculty diversity.\textsuperscript{289} Before the year came to an end, CCR asked students to talk to alumni over the summer to contribute to the Endowment for Diversity Fund and write to Clark expressing their dissatisfaction with the faculty's composition.\textsuperscript{290}

Activism continued at Harvard the following academic year. In November 1991, CCR's suit reached the Massachusetts Court of Appeals but the students sought to bypass this court and filed a motion for direct appeal review with the Supreme Judicial Court of Massachusetts. They claimed the issue raised was a "novel question of law" and an "issue of public interest." Again, a number of national civil rights organizations including MALDEF, the National Council of La Raza, the Center for Constitutional Rights, Lambda Legal Defense Fund, the Massachusetts Chapter of the National Conference of Black Lawyers, the Massachusetts Chapter of the National Lawyers Guild, the National Rainbow Coalition and the Society of American Law Teachers, supported the CCR suit by filing an amicus brief with the Supreme Judicial Council, defending their right to sue.\textsuperscript{291} In a rare move, the Supreme Judicial Court agreed to grant direct appellate review of CCR's lawsuit to decide if students had standing to challenged Harvard Law School's hiring process.\textsuperscript{292} On March 3, 1992, approximately 150 Harvard Law Students attended the oral argument where CCR argued their standing to a panel of five judges.\textsuperscript{293}

As CCR prepared for oral arguments, Clark announced that the majority of the faculty had voted to extend tenure offers to four white male professors.\textsuperscript{294} Students were outraged at this decision because the "year-
away” rule that was continuously invoked by the faculty as an obstacle to grant minority visiting faculty a permanent offer, was changed to make this hiring decision.295 One student criticized the decision, saying, “While we continue to criticize the policy, we want to know why it can be waived for three (sic) White men, yet strictly applied to the detriment of minority candidates.”296 Clark defended the decision saying there was no such policy as the “year-away” rule. Clark explained that the policy was designed to protect candidates from feeling uncomfortable by knowing that their colleagues where discussing them at faculty meetings. Clark said the rule only meant that the candidate could not be on the premise when the decision was made.297 In addition, Clark pointed to faculty support of relaxing the “not on the premises rule.”298 John Bonifaz ’92, an active member of CCR, disagreed with Clark’s explanation in a statement to the Harvard Law Record. He explained:

In the three years that I have been here, three qualified minority candidates have been denied consideration for faculty positions because, the school said, ‘its policy prevented it from reviewing candidates while they are teaching;’ yet, if the policy changed last spring, why were Professors Anita Allen and Gerald Torres not considered at that time?299

At the same meeting where the four white men were hired, the faculty passed a resolution asking the Appointments Committee to bring to their attention by the fall of 1992, a number of “promising candidates who are not white males” regardless of the Committee’s recommendation.300 Students, however, were not satisfied by this action and were further disappointed to hear that the focus of the search would be on hiring women and not necessarily women of color.301

Mar. 6, 1992, at 1. Before the faculty’s decision was made public, BLSA in conjunction with La Alianza, AALSA, the Federalist Society, Harvard Law Students for Life, the HLS republicans and the WLA sponsored a panel discussion on faculty diversity. See Francis Phillip, Divergent Views Expressedit on Faculty Diversity at Forum, Harv. L. Rec., Mar. 6, 1992, at 5. The four individuals who received tenure offers were Henry B. Hansmann of Yale, Robert H. Mnookin of Stanford, Joseph W. Singer of Boston University, and Joseph H. H. Weiler of Michigan. CCR wrote each a letter asking them to postpone accepting their offers until women of color and minority professors are also invited to join the faculty. See Lisa Zornberg, Tenure Candidates ID’d,” Harv. L. Rec., Mar. 20, 1992, at 1.

295 Id. at 3.
296 Id. (quoting Charisse Carney ’92, BLSA President).
297 Id.
298 Id.
299 See id. (quoting John Bonifaz ’92, CCR leader and member of La Alianza).
300 Office of the Dean, Faculty Resolution on Diversity in Appointments, Feb. 28, 1992 (on file with author).
301 See Robert C. Arnold, Students Say Announcement Violates Policy, Harv. L. Rec., Mar. 6, 1992, at 3. See also Memo to La Alianza Members from Lisa Otero (“On Monday Dean Clark called an emergency meeting with the co-chairs of WLA to assure them that there s[t]ill be some appointments of (white) women ‘soon’”) (on file with author).
On April 4, 1992, CCR organized another and wrote Clark a letter asking for a detailed plan designed to hire more minorities. Students asked Clark to submit the plan to the students within a week. The students began a countdown to "Day Zero," when students "threatened unspecified action and protests if Clark [did] not take action which adequately respond[ed] to their demands." At the rally, Bell announced that he would not return to Harvard Law School because a woman of color had not been hired and that he had filed a complaint against Harvard with the Department of Education for violation of Title VI of the Civil Rights Act of 1964. The following day, CCR met with Harvard University's President Rudenstine for an emergency meeting to discuss the recent hiring decisions. At the meeting, Rudenstine agreed to meet with Clark and ask for an explanation of the decisions, including a written clarification of why the "year-away" rule was waived. Students pointed to the faculty's use of the "year-away" rule to postpone action on Torres and Anita Allen, both visiting professors of color the previous year. The day before Day Zero, Clark responded to the students' demand in a two-and-one-half-page letter defending the faculty's hiring record. Clark reminded students that compared to other schools, Harvard had a better record of minority hiring. Clark also pledged that the faculty would consider minority professors for tenure and would reconsider the women professors who had visited over the past ten years. For the students, Clark's promise was not enough. A student exclaimed, "They get four white males, and we get a piece of paper. This is nothing to the vast majority of students at Harvard Law School."

Day Zero arrived on March 12, 1992, and Clark was greeted by fifteen CCR members outside of his house at 8:50 A.M. Students then
walked with Clark to the Law School, where about thirty other students joined them in a meeting. At the students’ request, Clark agreed to hold an emergency meeting with faculty later that afternoon. At 2:00 p.m. the faculty meeting that Clark promised took place with more than 200 students and faculty in attendance. Although the faculty did not agree to include student representatives on the Appointments Committee, they did agree to hold meetings on a regular basis with students concerned about diversity. Again, the meeting was only a forum for discussion, not resolution.

A week later, fifteen students expressed their dissatisfaction when they walked into Professor Charles Fried’s office and staged a silent vigil. When Fried tried to address the students, one held up a sign that read “Don’t talk to us, talk to Dean Clark.” Immediately Fried called on the administration to get the students out. Vice-Dean Smith and Sarah Wald responded to Fried’s call. When Fried saw Smith and Wald, he yelled, “You get them out of here. If they’re not out of here, I’m calling the police. I’m going to report these students to the bar authorities too.” He demanded that Wald assure him that disciplinary action would be taken against the students. Instead of giving Fried any guarantees, she talked to the students in private, asking them to consider the professional consequences of their actions. Wald left the students to call the police. Upon her return, the students were gone. The next day, students walked into the office of Professor Reinier Kraakman, who told the students that if they were not willing to talk, he would leave his office. Kraakman left to prepare for his class, and students remained only half an hour longer.

The sit-ins so angered Fried that he committed himself to stop the students from continuing to disrupt the campus. During spring break, Fried requested that the Administrative Board take action against the stu-
dents who protested in his office. Fried pressured Wald to identify the students involved. Wald, who knew some of the students, identified John Bonifaz, Julia Gordon, and Raul Perez as three of the protesters. A fourth student, Jane Ashley Barr, was also implicated. Upon returning from break, the four students received letters informing them that the Administrative Board was considering taking disciplinary action against them. In his complaint Fried stated that “targeting of individual professors in their work places . . . is a direct offense to academic freedom and the conduct of the university’s work.” Kraakman also wrote a letter to the Administrative Board alleging that the sit-in in his office was “confrontational and disruptive.” Clark issued a letter informing them of pending action against the “Fried Four” and encouraged students not to participate in the boycott of classes on National Strike Day.

Despite Clark’s attempts to pacify student activism, planning for the National Strike Day went forward. A few days later an article in The Wall Street Journal quoted Clark as saying that the series of student protests were sparked by minority students’ own insecurities about the role that affirmative action had played in getting them admission to Harvard Law School. He said minority students needed, “a sense of validation and encouragement” and explained that the fundamental problem was the students’ “need for self-confidence that plays itself out as, ‘why doesn’t Harvard Law School have more teachers who look like me.’” The article applauded Clark’s role in orchestrating the deal that put an end to the gridlock initiated by critical legal scholars. The article said that due to the “courage of Clark’s convictions” it was “safe again to appoint faculty on merit.” Clark’s quote was used to garner support for faculty diversity on April 2, 1992, National Strike for Diversity Day. Approximately 300 law students participated in the class boycott and about 400 students supported the diversity call at a noon rally.

The streak of protests continued four days later when nine students again occupied an area outside of Clark’s office. The students’ supporters

322 Wald was threatened with termination if she did not identify the students she recognized. Letter to Alumni from La Alianza, Apr. 20, 1992 (on file with author).
324 Letter to the Law School Community from Dean Clark, Mar. 31, 1992 (on file with author).
325 Id.
326 Id.
327 Id.
329 Id.
330 Id.
331 Id.
were not allowed to enter the building until the following morning. During their sit-in, security guards prohibited students from leaving the Dean’s office to use the restroom.333 Afraid of disciplinary action, student protesters wore paper masks of Clark to hide their identities. However, as the protest continued, students removed their masks and were photographed by security guards at the request of Smith and Clark. The “Griswold Nine,”334 as the students came to be known, issued a statement explaining that they were sitting in because after “[t]wenty-three years of dialogue with the Harvard Law School Administration” the administration had “only produced a string of broken promises and bad faith negotiations.”335 They dismissed Clark’s warning that the University Statement of Rights and Responsibilities stated that “interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University.”336 The students replied that “there is nothing normal about discrimination” and that the “essential processes” of the Law School would not be served by excluding women and minorities from the faculty.337 Other CCR members organized a rally on Tuesday afternoon to show support for the students who would now face serious disciplinary problems. The Griswold Nine ended their sit-in after twenty-four hours but felt it was successful in getting the Dean’s attention and galvanizing students.338 If the goal was to escalate the struggle, the students were successful.339

A few days later, the Griswold Nine voluntarily came forward and were charged with interference of normal Law School functions. The administration charged students with restricting the staff’s freedom of movement by sitting outside of their office and not leaving when asked to do so.340 The hearing for the students was set one week before finals. Support for the Fried Four and Griswold Nine poured in from faculty and fellow students.341 The same day that the Administrative Board was

333 Id. The Griswold Nine were William Anspach, Charisse Carney, Jodi Grant, Derek Honoré, Lucy Koh, Elizabeth Moreno, Jill Newman, Marie Louise Ramsdale, and Julie Su.
334 See CCR, Why We Must Sit-In Today, Apr. 6, 1992 (on file with author).
335 Letter from Dean Clark to the Law School Community, Mar. 31, 1992 (on file with author).
336 See CCR, Why We Must Sit-In Today, supra note 335.
337 See Kathryn Marchcocki, Harvard Law Students End Sit-In at Dean’s Office, Boston Herald, Apr. 8, 1992.
339 The letter the Griswold Nine received said they were charged with “[i]nterfering with the normal functioning of the Law School and with individual freedom of movement by obstructing access to the dean’s office and related offices for approximately 24 hours, from April 6 to April 7, 1992, and by refusing to leave when requested to do so by officers of the University.” (on file with author).
340 Professors Frank Michelman, Christopher Edley, Duncan Kennedy, and David
scheduled to formally charge the Griswold Nine, a group of student organizations, including the executive board of La Alianza,\(^{342}\) held a press conference calling for Clark's resignation.\(^{343}\) Students identified seven reasons why Clark should step down. Those reasons included: (1) his failure to implement a plan to diversify the faculty; (2) his role in garnering support for hiring the four white men; (3) his comments to *The Wall Street Journal*; (4) creating a hostile climate for minorities and women on campus; and (5) his hasty decision to prosecute the Griswold Nine and the Fried Four.\(^{344}\) The same day, students met with University President Neil Rudenstine, who agreed that a more concrete plan needed to be developed to hire a more diverse faculty.\(^{345}\)

Nothing came out of the students' call for Clark's resignation but it soon became apparent that the events that had transpired caused a number of the Harvard Law School faculty to demand that Clark take greater action to diversify the faculty.\(^{346}\) On April 20, 1992, in an open letter to the Law School community, a number of faculty called for their peers' acknowledgment of their own prejudices in failing to appreciate the need for diversity in legal education.\(^{347}\) The letter asked Clark and the faculty

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Charny, advised students during the protest, see Kerlow, supra note 127, at 209. See John Regis, *Ad Board Moves Against Students*, Harv. L. Rec., Apr. 17, 1992, at 1 (reporting that that “an enormous number of letters” where sent to the Administrative Board, most pleading for leniency with the students). See also La Alianza’s Letters to: Vice-Dean Smith, Apr. 9, 1992; Dean Wald, Apr. 14, 1992; and Latino Alumni, Apr. 20, 1992 (on file with author).

342 The organizations CCR, BLSA, CCR, COGBLI, NALSA, SDR, and WLA, and the executive boards of La Alianza and Asian American Law Student Association, called for Dean Clark's resignation. Only La Alianza's executive board endorsed the boycott because they had to make a decision whether to endorse the call for resignation before the full body had the opportunity to meet. See Memo to La Alianza Membership from Vania Montero, Apr. 14, 1992 (explaining that the executive board endorsed the call for Dean Clark to resign but it was prepared to revoke the endorsement before the press conference if the membership disagreed with their action). Another letter found in La Alianza's files shows there was conflict within the organization about whether to support the call for Dean Clark's resignation. The letters says: “The Board unanimously feels that it would be a tactical error to do this at a time when there is not a specific crisis to which we would be responding. The preservation of our credibility dictates that this is a measure better saved than lightly used. Furthermore, there is a concern that this would be the wrong message to send to dean Clark as the decision to hire Professor Torres approaches.” (on file with author).

343 The press conference was held on April 16, 1992.
"to collaborate in a renewed effort to transform the Law School from a white male preserve that it now is into an institution genuinely committed to welcoming and celebrating diversity."\(^{348}\) They wanted the current Appointments Committee to be replaced by a new group who would focus on creating a diverse and representative faculty.\(^{349}\) Clark, however, did not agree to replace the Appointments Committee. He felt that the "current committee ha[d] worked unusually hard and well to develop recommendations for the appointment of outstanding scholars and teachers, and [was] well along in its task of doing so in a way that increases diversity."\(^{350}\) Twenty-one other faculty members supported Clark and the appointments process. Clark’s supporters noted that the only problem with faculty hiring was "honest disagreement . . . as to just how diversity should be weighed along with other considerations such as scholarly promise and achievement, teaching ability and the law school’s needs in particular fields."\(^{351}\) Clark had enough support to justify not changing a thing. The only action he took was to organize a forum on community building in order to break communication barriers.\(^{352}\)

As the end of the year approached, the Administrative Board delivered its decisions about the student protesters. On April 23, 1992, the Board announced its decision not to pursue disciplinary action against the Fried Four. Jane Ashley Barr proved she did not participate in the sit-in.\(^{353}\) In a letter to the Administrative Board, Barr wrote: "This inaccurate prosecution by the Administrative Board has . . . established a powerful incentive for silence and inactivity among students and seems to have the goal of chilling student engagement with the political process at the university."\(^{354}\) She added, "Although I did not participate in the sit-in, I admire the students who orchestrated this as an example of ‘orderly’ en-


\(^{346}\) Id.

\(^{349}\) A group of professors disagreed with some of the recommendations proposed in the above letter and wrote a separate letter expressing their agreement that Harvard Law School should try to achieve a more diverse group of teachers and scholars. See Letter to the Recipients of the “Open Letter to the Harvard Law School Community,” from William Alford, Richard Fallon, Charles Nesson, Henry Steiner, and Alan Stone, Apr. 20, 1992 (on file with author).

\(^{350}\) See Memorandum to the Law School Community from Dean Clark, Apr. 20, 1992 (on file with author).


\(^{352}\) The forum, “How to Build a Sense of Community at Harvard Law School,” was held on April 29, 1992. See KERLOW, supra note 127, at 277–80.

\(^{353}\) She was in class and then went to lunch with her professor during the time students were sitting in. See John Regis, Ad Board Moves Against Students, HARV. L. REC., Apr. 17, 1992, at 1.

\(^{354}\) See Letter to Members of the Administrative Board from Jane Ashley Barr, Apr. 14, 1992.
engagement with the political process at Harvard Law School.” The Board admitted to misidentifying Barr and eliminated her from consideration for action. The three other students agreed to write a letter acknowledging that they had crossed “a line of acceptable conduct” but reserved the right to future protest. The letter was placed in their files as punishment but no more action was taken against them. The record in their files was to have no effect unless another charge against them was filed with the Administrative Board.

A week later, a public hearing was held for the Griswold Nine. The Nine were represented by Professor Terry Fisher ’82 and student Peter Cicchino ’92, who had to negotiate the details of the hearing, including press coverage, the scope of evidence introduced and the audience. The students wanted a public hearing because they sought prompt “open, honest and full discussion.” One of the Nine, Elizabeth Moreno, struck a bargain the day before the hearing, where she submitted a letter apologizing for the disruption caused in exchange for a warning. The remaining eight went on with the hearing, which lasted two days, eleven hours in all. The students argued that they did not violate the Statement of Rights and Responsibilities because Harvard’s hiring practices were not “normal.” They said the Law School’s policies violated the University’s affirmative action policy and other obligations imposed by the Statement of Rights and Responsibilities. Given all of this, their defense argued, students should not be seen as breaching the obligations imposed by the statement. Although the Board rejected the defenses, it decided to issue the most minor sanction—a warning in the students’ files that would be revoked upon graduation if no further infractions were committed.

355 Id.
357 See id. (describing the letter to the Administrative Board as “the finest non-apology I’ve ever read”).
358 Events as told by La Alianza’s letter to Alumni, Apr. 20, 1992. See also Andy Ward, Fried 4 Absolved, Griswold 9 Hearing Set for Monday, HARV. L. REC., May 1, 1992, at 1.
359 See id.
360 The Administrative Board Hearing was held on May 4, 1992 in the Ames Courtroom. Although all defendants have the right to a public hearing, the Griswold Nine were the first to exercise such a right. Id.
361 Id.
362 Id.
365 Id.
366 Id.
The year closed with much tension and animosity. Students continued their spirit of activism into the commencement ceremonies. CCR members distributed posters and signs with slogans that read "Resign Dean Clark," "Diversity Now," and "Down with Discrimination, Down with the Dean." Peter Cicchino was chosen as one of the three students to speak at the University-wide commencement ceremony. His speech referred to the many controversies that had troubled Harvard Law School during his time there. Cicchino tried to explain why the controversies arose and what there was to learn from them. Cicchino left the podium to a standing ovation, while students booed Clark, some refusing to receive their degrees from him. The wounds were deep and the confidence in the faculty's goodwill was lost. The events of the 1991-1992 school year in the long run did not produce long-lasting results. Despite all the media coverage, Bell's leave of absence was not extended, and his refusal to return to Harvard became a resignation on July 1, 1992. Shortly thereafter, CCR's suit was dismissed, and students' legal recourse disappeared. Wald, who supported and respected students' concern for diversity, resigned at the end of the summer at Dean Clark's request. The Non-Left Coalition formed to encourage students to leave extreme positions and find moderation. The group organized in response to CCR's activities and the members of that organization, which had succeeded in dominating the Law Student Council. The Non-Left Coalition was a sign that the level of tolerance for student action was diminishing, even among students. CCR forged forward with activities but saw slow progress on faculty diversity. Members of CCR continued

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367 Kerlow, supra note 127, at 292.
368 Id.
369 Id. See also Spring of Shame and Pain '92, supra note 345.
372 Wald's resignation was effective on October 15, 1992. She took a newly created position as special assistant to two University vice-presidents. Interview with Martha Minow, Cambridge, Mass. (Mar. 26, 1999).
373 See Tony Chandler, Non-Left Coalition Encourages Students to Move to Moderation, HARV. L. REC., Oct. 2, 1992, at 6 ("The majority of HLS students are not represented by either the extreme left or the extreme right. We want to give a voice to what we see as a majority of the HLS students, the moderates, so we formed this group to be a sort of clearing house for those views.") (quoting Gregory Taxin '94).
374 Marie-Louise Ramsdale, LSC president, was one of the Griswold Nine, and Raul Perez, LSC vice president, was one of the students involved in the Fried sit-in. Id.
375 On October 16, 1992, they held a silent vigil outside of a faculty meeting, again asking them to hire a woman of color. Later that day, CCR met with President Rudenstein to talk about how he could help promote faculty diversity at the Law School. Students expressed concern that Professor Kathleen Sullivan '81, Susan Estrich '77, and Derrick Bell, would not be returning to Harvard. See Rob Weissman, Students Hold Silent Vigil, HARV. L. REC., Oct. 23, 1992. A week later, CCR sponsored a panel during the alumni celebration to discuss diversity concerns with alumni. See Steve Yarian, CCR Holds Meeting with HLS Alumni, HARV. L. REC., Oct. 23, 1992, at 1. See also Toy Chandler, CCR
articulating their story to administrators, professors, students, alumni, and the public.

F. The Results of Advocacy

After the Spring of 1992, the campus climate changed so much that CCR began to play defense, not offense.376 La Alianza was among the first to express discontent with CCR. On April 7, 1992, its membership voted to withdraw from CCR due to “lack of effective communication.”377 A La Alianza co-chair said that the organization was “not often approached for input but simply handed a fait accompli.”378 The discontent stemmed from CCR’s failure to consult with La Alianza about the call for Clark’s resignation and the sit-in in his office a year earlier.379 La Alianza claimed that CCR only contacted them about the resignation a day before the press conference and that no one was ever consulted about the decision to protest in Clark’s office.380 La Alianza members perceived that only a small group of people, who were not accountable to anyone, were making decisions for CCR. Despite their departure, La Alianza emphasized that it wanted to continue to support CCR and did not want to hurt its efforts. Jessica Herrera ’95, La Alianza’s communications director explained, “Many of our members will remain active in CCR as individuals . . . [b]ut La Alianza is a very diverse group that isn’t exclusively political. Some of our members might not agree with CCR or with its tactics.”381 Herrera’s comments revealed a split among La Alianza’s membership that stemmed deeper than its communications with CCR.382

La Alianza’s decision to withdraw from CCR was a direct reflection of the fear and apathy that plagued Harvard Law School students. The 1992 threats of expulsion and other disciplinary action affected student activism. Although students continued to express concern over faculty diversity, their protests were fewer and quieter.383 Protests became cele-

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Holds Discussion with Rudenstine, HARV. L. REC., Nov. 20, 1992); Mark Bousian, Harvard Law Students Urge Faculty Diversity, HARV. L. REC., Nov. 25, 1992) (reporting that CCR distributed literature on the problem with faculty diversity at a conference on minority recruitment).

378 Id.
379 Id.
380 Id.
381 Id.
382 Id. at 4 (reporting that the decision to withdraw from CCR was by only one vote on the second round of voting).
383 See Matthew Huggins & Johanna David, CCR Changes, Faculty Diversity Issues Remain, HARV. L. REC., Oct. 15, 1993, at 1 (reporting that CCR refocused its energy to more educational efforts).
brations, and Strike Day marches were transformed into faculty and student mixers. The call for faculty diversity went from a central issue of concern to a debate issue that questioned the merits of such a critique. In 1995, CCR could only muster thirty students to talk to professors about faculty diversity. The Record reported that "six months into the school year ... no major controversies over hiring" arose and "much of the urgency and antagonism ... disappeared." In a letter to the editor, two CCR leaders wrote: "[t]he Student Task Force on diversity, which published a long article in the Record two weeks ago, has no substantive role in the appointments process. This task force is another in a line of committees set up by the Administration to appease students and make us believe that we have some say in the quality of our education." They also said the administration was avoiding controversy by "just not doing anything dumb." Students as well as faculty had become disengaged in the discussion over faculty diversity. Both groups were tired of feuding and some were satisfied with the progress made. Between March 1992 and March 1995, the Law School extended six permanent offers to white women so the Women's Law Association did not have the same sense of urgency. The sense of urgency also diminished for the Black Law Students Association, after Professors Wilkins and Ogletree were granted tenure in 1992 and 1993, respectively. Furthermore, Lani Guinier was invited to visit in 1995. Without the enthusiasm of the two largest constituency groups and La Alianza, CCR did not have the necessary energy to mobilize students. A Record reporter described the new campus environment when

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384 Id. (CCR's first activity in the 1993-94 academic year was a celebration of the faculty vote to grant Ogletree's tenure).
385 See Victoria Kuohung, CCR Lobbies Profs for More Diversity, HARV. L. REC., Mar. 4, 1994, at 13 (CCR organized "Lobby Days" to "engage faculty members in a productive discussion about diversity issues" and set up appointments in order not to be intrusive").
386 See Victoria Kuohung, Strike Day Questions Diversity of HLS Faculty, HARV. L. REC., Apr. 29, 1994 (reporting "Strike Day" activities).
387 See April Rockstead, LSC President Proposes Forum on Diversity, HARV. L. REC., Oct. 21, 1994, at 2 (the Law School Council president proposed a forum on diversity to debate the issue of faculty diversity).
389 Id.
390 See Kiya Kato & Sameer Ashar, HLS Must Take Steps to Diversity, HARV. L. REC., Feb. 24, 1995, at 6. Law Student Council President Willie Epps '95, created the Student Task Force on Diversity at the request of Dean of Students Suzanne Richardson in the fall of 1994. The purpose of the task force was threefold: (1) to meet with Clark and Appointments Committee members regularly to discuss the appointments process; (2) to re-educate the students on the appointment process; and (3) to solicit faculty diversity concerns from students and relay them to Clark and the faculty. See Willie Epps, Student Task Force Working for Faculty Diversity, HARV. L. REC., Feb. 10, 1995, at 7.
391 Id. at 11.
393 Also, Professor Scott Brewer was appointed as an assistant professor in 1991.
she wrote, "Faculty hiring . . . is no longer fought out openly in faculty meetings but debated in internal memoranda and in closed offices. Students don't picket the halls anymore, instead they submit petitions and meet privately with the dean."394 Student and faculty disengagement was further exacerbated by Clark's Capital Campaign fundraising drive. Clark spent a lot of time on the road soliciting funds from alumni and as a result, the faculty met less frequently.395 By the 1998-99 school year, the only thing left of CCR was its archives and office space. Today, Harvard Law School does not have a student group like the TWC or CCR on its roster of organizations.

Although multicultural student efforts did not bring about the desired results, the fruits of past activism did produce a several concrete changes. Two post-graduate fellowships were created to promote faculty diversity. The first was established in the name of Charles Hamilton Houston in the spring of 1992.396 The primarily goal of the Houston Fellowship is to "attract candidates with genuine teaching potential who will bring underrepresented perspectives" to Harvard Law School.397 As originally conceived, the Houston Fellowship awarded an amount to cover tuition for an LL.M. program and a $25,000 stipend per year.398 The Houston fellow works with faculty members in preparation of a substantial piece of scholarship and develops his/her skills as a teacher and scholar.399 A similar fellowship was established months later under the name of Reginald F. Lewis, who contributed $3 million to "help the School expand and accelerate its efforts in faculty diversity and other areas.400 The launch of the fellowships was a sign that the Law School was finally making a real commitment to increasing the pool of minority candidates.

394 See Hope Yen, Faculty Meeting to Offer Glimpse of Future HLS, HARV. L. REC., Sept. 29, 1995, at 1.
395 See id.
396 Charles Hamilton Houston received his LL.B. degree from Harvard Law School in 1922 and his S.J.D. degree in 1923. Houston was the first African American to serve on the Harvard Law Review, served as vice-dean of Howard Law School for about six years, and was the first African American General Counsel of the NAACP. See Johanna Davis, New Fellowship Will Promote Faculty Diversity, HARV. L. REC., Apr. 10, 1992, at 2.
397 Id.
398 Id.
399 Id. The first Houston Fellow, Michelle Anglade '92, was selected in the fall of 1992. See Houston Fellowship Promotes Faculty Diversity at HLS, HARV. L. REC., Nov. 20, 1992, at H6. In 1994, the Houston Fellowship was restructured as a one-year fellowship not leading to an LL.M. and the Lewis Committee, which Randall Kennedy chaired, administered it. See Randall Kennedy, Houston Fellowship, Not De-funded, HARV. L. REC., Mar. 10, 1995, at 6.
400 Reginald Lewis '68, was then chairman and CEO of TLC Beatrice International Holdings, Inc., the largest African American--owned company in the United States. At the time of his contribution, Lewis was a member of the Law School Visiting Committee and the Executive Committee for The Campaign for Harvard Law School. See Kurt Copenhagen, HLS Gets a Little TLC, HARV. L. REC., Sept. 18, 1992, at 3.
Instead of spending time organizing protests that have proven to bring only limited results, recent and current Latino students at Harvard Law School have tried to create and nurture the support that Harvard Law School refuses to extend. One example of students being proactive about their education is their insistence on creating a space for legal scholarship that has an impact on their communities. In 1994, despite the moratorium on journals, students on the Harvard Latino Law Review Committee held a symposium where legal scholarship on "Latinos and the Criminal Justice System" was presented and later published in the first issue of the Harvard Latino Law Review. 401 The student leaders of the Harvard Latino Law Review struggled for many years to develop a strong infrastructure, but it was difficult to do without any funding. Although, the first issue was published in 1994, in 2002 the journal will only have published its fifth volume. 402 For years students paid out of their own pocket for copying and printing expenses related to the journal. One of the products of the lack of financial and institutional support is that current editors face some difficulty in attracting students and authors to become more involved in the journal. 403 Some students are afraid to commit to the Harvard Latino Law Review because they do not have enough structure. Many authors who have published or attempted to publish with the journal will think twice about submitting something because the delays in going to print have been such a problem in the past.

The Harvard Latino Law Review is not a result of support from Harvard Law School; it is the end product of many years of hard work by a handful of committed students. In 1995, after almost seven years of lobbying, Harvard Law School finally agreed to allow the Latino Law Review to use the Harvard name. 404 The Law School agreed to let the journal include the Harvard name, but the institution made no financial com-


403 Journal circulation is limited. The organization has a contract with Westlaw and Lexis-Nexis to have their articles appear in the electronic databases but only obtained this contract in the last year.

mitment to the publication.\textsuperscript{405} Despite the uphill struggle for Harvard's recognition and support of the \textit{Harvard Latino Law Review}, in 1998 a Law School spokesperson claimed that the Law School founded the journal.\textsuperscript{406} It was not until the fall of 1999 that Harvard Law School considered revisiting the moratorium policy on journals. After heavy lobbying by students and alumni, the \textit{Harvard Latino Law Review} finally received funding and technical support in 2001.

Another example of Latino students' commitment to bridge the gap between theory and practice is their undying commitment to, year after year, address the issue of hiring Latino faculty with the administration.\textsuperscript{407} And like their predecessors, students continue to invite Latino practitioners and professors to their conferences as an attempt to supplement Harvard's failure to provide mentors, role models and forums to discuss issues affecting Latinos.\textsuperscript{408} In 1996, the faculty extended a tenure-track position to Lani Guinier. Professor Guinier was reluctant to join a faculty where she would be the only woman of color. She finally agreed to join the faculty in 1998. Other groups have made some progress in getting the faculty to consider the relevant gaps in their education. The Native American Law Student Association worked with the administration to bring two Native American scholars to teach. While there is not yet a tenured Native American faculty member, the administration has pledged to bring in scholars who teach Indian law every year. At the end of the 1998-99 academic year, the Student Animal Legal Defense Fund announced that the Committee on Visitors and Lecturers approved a two credit course on animal law to be taught by Steven Wise, president of Wise & Slater-Wise, a Boston firm specializing in animal law, the following spring. While the author congratulates the students who successfully lobbied for such a class, it discourages her to see that Harvard

\textsuperscript{405} Id.  
\textsuperscript{407} One of the most recent efforts took place in 1997, when La Alianza assembled a booklet with lists of Latino candidates that were presented to the Dean and the chairs of the hiring committees. The research included a short list of preferred candidates, a long list of all Latino professors, a junior list of recent graduates who were clerking in federal courts and/or were on the law journals of Boalt Hall, the University of Chicago, Columbia, Georgetown, Harvard, Michigan, New York University, Pennsylvania, Stanford, UCLA, University of Texas, and Yale. See La Alianza, \textit{Preliminary Research on Latinos Faculty}, Apr. 1997 (on file with author).  
Law School gives a greater priority to a course dealing with animals than with Latinos.

There seems to be no indication that Harvard Law School will hire a Latino faculty member who is willing to address the needs that Latino students have expressed for over thirty years. In the Spring of 2001, Latino students, alumni, faculty, and even Dean Clark were surprised at the announcement that Professor Einer R. Elhauge identified as Latino. Professor Elhauge graduated from Harvard Law School in 1986, was a visiting professor in 1994, and was hired as a tenured professor in 1995. A letter sent to all Latino alumni by Juanita Hernández, chair of the Latino Alumni Committee, in which she reported the matters discussed at the December 2000 gathering of the Latino Alumni Committee prompted Elhauge’s proclamation. To no surprise to anyone other than Elhauge, one of the main matters of concern for students and alumni was that “there has never been a Latino professor at HLS.”

Although, a handful of students and alumni were aware of his Latin American ancestry, Professor Elhauge was never considered to fit the bill for what many Latino students were seeking—a connection between scholarship and issues affecting their communities. Elhauge claimed to be “getting rather tired of having [his] Latino heritage denied or denigrated,” yet the news came as a surprise to all students, alumni, professors, and administrators that have been publicly and adamantly advocating for the hiring of Latino faculty. In her response to Elhauge, Hernández assured him that “the Latino Alumni Committee was not trying to deny [his] Latino heritage or denigrate [him] personally. Rather . . . [they] and several others—including Law School entities and organizations—were simply unaware of [his] Latino background.”

Furthermore, the letter explained that while the Latino Alumni Committee had no litmus test for Latino faculty with respect to academic interests, political affiliation, their last name or specific Latin American ancestry, they did “strongly consider[ed] an individual’s willingness to demonstrate interest in and concern for traditional Latina/o community issues, as well as an individual’s willingness to reach out to the Latina/o students and alumni in considering whether [they] would support an individual’s candidacy for a tenure track appointment.” Although both Elhauge and Hernández agreed that “the fact that Harvard found one Latino worthy of appointment supports the notion that it could find others,” Hernández

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409 Wise is an adjunct professor at Vermont Law School. See Adviser, May 6, 1999.
410 See http://www.law.harvard.edu/faculty/directory.
411 Letter from Juanita Hernández to HLS Alumni dated February 2002 (on file with author).
412 E-mail from Einer Elhauge to Juanita Hernández and Donna Chiozzi dated Mar. 14, 2001 (on file with author).
413 Letter to Einer Elhauge from Juanita Hernández dated Apr. 6, 2002 (on file with author).
414 Id.
assured Elhauge that the Latino Alumni Committee would continue their campaign to have additional Latina/o faculty appointed who are interested in reaching out to the Latina/o students, and alumni, who are interested in researching and teaching about Latina/o issues.”

Students need to continue their advocacy in order get what they want from Harvard Law School. Dean Clark’s statement that Harvard Law School is “not now, and never will be, a trade school,” is not disputed.\textsuperscript{415} After all, every single student that graduates from Harvard is automatically invested in maintaining the reputation of the institution because it becomes an extension of his/her own. However, legal education “should prepare graduates for what they will actually do: scholarship should reflect problems that are important and insights that are consistent with empirical reality . . .”\textsuperscript{416} The melodies sung by Latino students in their advocacy to hire professors that are responsive to their intellectual pursuits and their psychological needs are as relevant to legal education as any consumer report. After all, melodies like stories, are used for “psychic self-preservation,” and group solidarity.\textsuperscript{417} The more the story is told, the more people will begin to understand it. Eventually, the Harvard Law School faculty will be forced to realize that hiring Latino faculty will enrich the intellectual discourse and curriculum at Harvard Law School and in the legal profession.

II. DEFINING STUDENTS’ NEEDS

Teachers and scholars make a difference in their instruction, their writing, their service, and their characterization of social issues. They serve as useful irritants, interpreters of society, and as role models for their students—both minority and majority.\textsuperscript{418}

—Professor Michael A. Olivas

Latino law students at Harvard Law School have played a role similar to that of the miner’s canary. Their repeated efforts to bring attention to the absence of Latino faculty are caused by the toxins of bias and exclusion that permeate the walls of Harvard Law School and exist in legal

\textsuperscript{415} Dean Clark’s Statement on HLS Long Range Planning, July 1999 (on file with author).

\textsuperscript{416} Id.

\textsuperscript{417} See Delgado supra note 6, at 2437 (“A member of an outgroup gains, first, psychic self-preservation. A principal cause of demoralization of marginalized groups is self-condemnation. They internalize the images that society thrusts on them—they believe that their lowly position is their own fault”). (“Storytelling emboldens the hearer, who may have had the same thoughts and experiences the storyteller describes, but hesitated to give them voice. Having heard another express them, he or she realizes, I am not alone”).

education generally. For years Latino law students have told Harvard Law School faculty and administrators that the education provided by one of the most prestigious academic institutions in the world was lacking a connection to reality. Recently, Harvard Law School commissioned a study that showed that many non-Latino students and alumni share this sentiment. If Harvard Law School has an interest in addressing the changing needs of American society, it needs to pay attention to the consistent messages delivered by Latino students over the past thirty years.

Students focus their story on three arguments. The first is that Latino professors are necessary role models for Latino students. Students claim Latino professors can fill the void of mentors and exemplars. The second argument is that Latino professors are necessary to bring a perspective different the ones already offered. Students maintain that the perspective Latino professors bring will help ignite legal discourse. Finally, the third prong of their argument focuses on representation. The argument is that Latino professors are needed on the faculty to reflect the interests and experiences of Latinos in our society. Although each of these arguments has merit, they are strictly articulated to serve only the needs of Latino students. Given the political reality of Harvard Law School, it is imperative to alter the story to argue that the presence of Latino faculty at Harvard will benefit both Latino and non-Latino students alike.

A. Latino Law Professors as Role Models, Mentors, and Exemplars

The most popular arguments advanced by Latino students are classified into what Professor Ian Haney-López refers to as the role model theory.\footnote{Haney-López, supra note 12, at 109} The role model theory states that Latino professors are important because they serve as symbols, exemplars, and mentors to Latino students.

1. Latino Professors as Symbols

First, the role model theory claims that students seek professors whose mere presence challenges the presumption of intellectual inferiority of Latinos. Like Blacks and other minorities, Latinos are deemed to be intellectually inferior to Whites.\footnote{Cf. Randall Kennedy, Racial Critiques of Legal Academia, 102 Harv. L. Rev. 1745, 1751–54 (1989) (arguing that a presumption of inferiority against blacks is rooted in the history of American race relations).} The best way to overcome this presumption of inferiority is to highlight Latinos who are intellectually gifted. Latino professors defy the traditional belief that Latinos are not qualified to teach at Harvard Law School. Having a Latino professor on campus forces students and faculty to interact with them and to question this presumption. This theory helps explain why Chicano students in the
1970s rejected the idea of having a non-Latino teach them. For a white professor to teach a research seminar on Chicano issues would reinforce the idea that Latinos are not intellectually capable to teach. Instead, Chicano students opted to create their own forums to tell their stories. One student explained how a Latino professor serves as a symbol when he wrote, "[t]he lack of Hispanic faculty sends an implicit message to the community that Hispanics somehow are not qualified to teach the law. Without Hispanic faculty, Harvard sets the expectation level of its Hispanic children at zero."421 In fact, the absence of Latino professors does reinforce the belief that Latinos are unfit to teach. Images are powerful. Haney-Lopez notes that the numerous portraits of white men that adorn the walls of Law School classrooms, libraries and hallways, reinforce the idea that only they are qualified to teach at Harvard.422 They communicate the preferences and prejudices of our society.423 Although symbolic figures are not sufficient for systemic change, they can help change perceptions about who contributes to legal education.

2. Latino Professors as Examples

The second basis for students' call for Latino role models is the need for people like them whom they can emulate.424 The presence of Latino professors not only helps break the stereotypes non-Latinos hold, it also encourages Latino students to envision themselves as academics and legal critics. A student said, "the lack of a diverse faculty is personally stigmatizing because it sends a false message to all students and to the entire law school community that... I could not teach at Harvard Law School simply because I am Latina."425 When Latino students do not see anyone like them in front of the classroom, it is less likely that they will imagine themselves in such a position. In a memorandum to the Harvard Law School faculty during the 1989-90 academic year, three Latino students wrote, "[t]he absence of Hispanic Law Professors sends a clear message to all students here that professorship is a goal to which His-

421 Anonymous notes on a possible position paper, Apr. 5, 1989 (on file with author).
424 Haney-López supra note 12, at 110.
425 Id. (quoting Margarita Prieto '91).
Some talented Latino students who could be legal scholars may never consider a career in teaching simply because they never thought it was within their reach. Latino professors help students imagine themselves in the legal academy because they share common experiences as Latinos. One student wrote about Professor López, “his presence at the law school, reminds us that a Chicano from Montebello can survive and succeed at an institution largely and traditionally dominated by white males of upper-class background.” When Latinos and other minorities are in professorial roles, all students begin to understand that cultural and ethnic identity, and perhaps even socioeconomic status, need not be an obstacle to academic success.

3. Latino Professors as Mentors

A third explanation that the role model theory offers is that Latino professors serve as mentors for Latino students. Latino law students seek someone to talk to who understands the issues they face as law students, lawyers and members of an ethnic minority. A Latino law professor is a good mentor for these students because such a professor has been a law student and understands the legal culture that students are living in. Faculty mentors are especially important because the majority of Latino law students do not have a tradition of lawyers in their families. Most law schools did not see groups of Latino law students on their campus until the early 1970s. The children of that first generation of law school graduates are just now coming to an age to attend law school.

Although any professor can be a role model regardless of ethnic background, students find it easier to approach professors who are similar to them. One student at Harvard described why Latinos need a Latino professor to serve as a role model:

What we feel is a needless denial of an important educational opportunity to enjoy a student-teacher relationship here at Harvard Law School that possesses the unique dimension of sameness of ethnic and cultural heritage. Our proposition is that through the experience of studying under one who shares im-

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426 Memo to HLS faculty from Margarita Prieto, Lisa Otero, Juan Zuñiga in 1989-90 school year (on file with author).
428 Haney-López supra note 12, at 111.
mutable characteristics the educational experience for us will be enriched.\(^{430}\)

The need for exemplars is important not only for Latinos, but for any student who has no previous exposure to law concepts such as the Socratic method, moot court, clerkships or legal scholarship. The law school experience can be alienating for many students, especially all of those who come from underprivileged backgrounds.

Having a mentor enriches the educational experience for all students, not only psychologically but also practically. A good relationship with a professor helps ensure good recommendations for clerkships, fellowships and other career opportunities. In a memorandum to Dean Vorenberg and members of the Quality of Life Committee, Luke Cole, a white student explained this that [i]ncreasing the diversity of the faculty would not only create a different dynamic in the classroom, but provide minority and women students with natural allies in taking on the rigors of law school, would be useful counselors and help these students 'network' for jobs and clerkships.'\(^{431}\) Although Latino students can and do establish good relationships with non-Latino professors, it is more probable that a student will forge a better relationship with someone who understands his/her experience. A non-Latino professor may make himself/herself available to direct research on Latino issues but if he/she does not have a thorough understanding of the subject matter, he/she will not be able to properly advise the student. While the intentions and efforts of non-Latino faculty are appreciated, there is no substitute for common experience and expertise. When asked in an interview what advice he would give to students entering the legal profession, López said, "They should try very hard to hold on to and give life to all the values in Chicano culture. They should not be convinced that to be successful means to regularly or blindly abandon all that they are."\(^{432}\) Non-Latino professors may not understand the value many minority students place on cultural issues and identity or the special difficulties they face.\(^{433}\) The absence of role

\(^{430}\) On the Congruence of Diversity, Quality and Greatness, 1989 (on file with author).

\(^{431}\) Memorandum to Dean Vorenberg and Members of the Quality of Life Committee from Luke Cole, Re: Addendum to Discrimination Memorandum, May 17, 1988


\(^{433}\) In a meeting with Dean Clark and faculty members on the hiring committee during the 1997-98 academic year, a professor pointed out that “Chicanos were the largest growing minority group in Massachusetts.” Although she was trying to help bolster the students’ arguments about the importance of Latino faculty, her comment indicated that she knew little about Latinos. Chicanos are Mexican Americans and there are very few in Massachusetts. The Latino communities in Massachusetts are mainly Puerto Rican, Dominican, Cuban and Central American. Most of the Latinos in Massachusetts would not identify themselves as Chicanos. Cf. Kenji Yoshino, Suspect Symbols: The Literary Argument for Heightened Scrutiny for Gays, 96 COLUM. L. REV. 1753 (1996) (explaining that a judge who had recently considered a controversial case involving gay people did not know what the word “queer” meant or what the pink triangle used in the gay rights movement sym-
models and mentors for Latino students at Harvard Law School raises questions about whether Harvard provides the best legal education not only to Latinos but to all students.434

Latino professors can bring a different perspective and a different experience to a law school that benefits non-Latino students who crave a more diverse perspective and life experience. Year after year, Harvard admits a class of 550 students, all very accomplished individuals but each with a different passion or persuasion for going to law school. Latino students are not the only students who yearn for practice instead of theory and who benefit from having non-traditional faculty. More and more, non-Latino attorneys need a greater understanding of Latino experiences to better serve their clients. Latino professors as role models serve to dispel any myths and misconceptions that non-Latinos carry with them about Latinos who will undoubtedly be a part of their clientele.

4. Addressing Criticisms of the Role Model Theory

Although the role model theory teaches us a lot about what students want, it has several problems that need addressing. The role model theory predicts that a Latino professor will contribute to Latino students’ academic environment as a symbol, an exemplar and a mentor, but sometimes a Latino professor is neither willing nor able to fit any of those roles.

When the search for a role model is based on finding someone with similar ethnic characteristics, there is no guarantee that the person chosen will be willing to meet students’ expectations. There may be Latino professors who reject the responsibility of mentoring students. In a memorandum to an accreditation committee, a student leader of La Alianza explained that Latino students “do not consider Latin American professors to fall within the definition of ‘U.S. Latino’ . . . ‘Latino’ in our definition is a person of Latin American descent who is raised in the United States. While Latin Americans have some similarities with Latinos, they do not share the life experience of being and self identifies as, a minority in this country.”435 When Latino students at Harvard advocate for a Latino professor they are advocating for a Latino who shares the cultural and political experiences of being a minority in the United States. Students need to articulate the position that the role models and mentors they seek are defined by a common experience, not just a com-

434 See Memo to HLS faculty from Margarita Prieto, Lisa Otero, Juan Zufiiga in 1989-90 academic year. (“The lack of effective role models and empathetic mentors forces us [to] question Harvard’s commitment, and even ability to provide the “best” legal education available”).

435 Memorandum to Visiting Committee from Ana Henderson ’98, Apr. 4, 1997 (n file with author).
mon heritage. A Latino spokesperson without accountability to Latino students may serve as a symbol but not a role model or mentor that students want. Instead of simply asking Harvard to hire a Latino law professor, students must ask for a Latino law professor whose ties to Latino issues are strong enough to be capable of playing the roles of mentor, scholar, and innovator that students have defined. Perhaps asking for a professor with particular academic interests or work experience that demonstrates an active intellectual interest in Latino issues is the best way for students to get what they want. On the other hand, the academic pursuits of a particular candidate may not be appealing to students but perhaps the individual’s commitment to mentoring students through their legal education can be a strong draw. In any event, the focus of Latino student advocacy should be meeting the curricular and professional needs of students. If students want a Latino professor who can be a good mentor, they must clearly state their expectations.

The role model arguments also assume that a Latino professor will be able to meet students’ expectations. Yet a Latino professor could decline to be a mentor or role model because it demands great time and commitment. The expectations students place on Latino faculty are sometimes beyond what he/she can meet. Professor Rachel Moran explains that “[s]ome students and faculty will expect the minority or woman professor to serve as a representative of all minorities and women expectations. These expectations will manifest themselves in demands for compliance with an impossible standard of performance.” Latino professors are often overburdened because they have to meet the same academic obligations as other faculty members; and in addition, they are also expected to be counselors and friends to their students. Moran reminds us that “[a]n impossible standard of performance is a sure fire formula for disappointment and failure.” Latino professors, like others, are expected to publish legal scholarship and there are times when stu-

437 See Richard Delgado and Derrick Bell, Minority Law Professors’ Lives: The Bell-Delgado Survey, 24 HARY. C.R.-C.L. L. REV. 349, 355–56 (1989) (reporting that seventy-four percent of the minority professors who responded to their survey felt their time pressure was high or nearly intolerable). One professor was said to tell “his acting dean that he was feeling highly pressured because of too many committee assignments, too much student counseling and too many demands to speak to minority groups and serve on panels.” Id. at 356.
438 A Latino professor may be especially reluctant to mentor students when he/she is up for tenure and is concerned more about what his/her peers think than what students need.
440 Memorandum to Dean Vorenberg and Members of the Quality of Life Committee from Luke Cole, Re: Addendum to Discrimination Memorandum, May 17, 1988 (“Now, the few women and blacks on the faculty must do the jobs of ten people: counsel students, teach, serve on committees, be involved in the community and still produce scholarship”).
441 See Moran, supra note 439.
Challenging a Tradition of Exclusion

Student concerns must take a second seat if they want to advance in their career. It is difficult to do both, especially when the Law School rewards one (scholarship) but not the other (mentoring). Regardless of a faculty member's intent or commitment, there are times when students' expectations will not be met. Students need to be realistic about the expectations they place on a single faculty member. Latino students must hold non-Latino professors to similar expectations to which they would hold Latino professors, or at least begin to challenge the current "metric" that gives faculty no incentives and little time to mentor. In fact, all students need to expect that their professors serve as mentors, role models and exemplars, and keep them accountable to that responsibility. Placing those expectations solely on minority and women faculty does a disservice to students and legal education in general.

Regardless of the deficits of the role model argument, role models and mentors are important to all students. The role model theory must be carefully employed so that it does not discredit the contributions of Latino professors. By emphasizing a professor's identity, students sometimes forget to articulate the importance of the individual's academic contributions. By not explicitly discussing how Latino professors add to legal discourse, their qualifications are devalued. When students advocate for Latino professors only as role models, these professors' contributions as scholars are diminished. The value of the perspectives and scholarship that a diverse faculty contributes to change the dialogue and pedagogy at the institution is ignored if the role model theory stands as the lone argument for the inclusion of Latino faculty. Students must evaluate what is missing at the institution and formulate their advocacy in terms of what Latino faculty can bring to fill the institution's needs.

B. Latino Faculty Members Bring a Unique Perspective

The second set of arguments for hiring Latino professors is the perspective theory. The perspective theory is based on the belief that the

442 See Memo to the Third World Coalition from Gloria-Valencia-Webber, '86 regarding "Ideas on HLS Professional for Diversified or Special Programs," Undated document ("Ethnic faculty risk that that the time spent on the special concerns of ethnic students will damage their retention or professional advancement. Ethnic faculty are already too rare at HLS; it is especially unethical to endanger their professional development and future at HLS by unofficially imposing or allowing duties which rightfully should be done by other professionals") (on file with author).

443 See GUINIER, supra note 436, at 90–94. The Spring 1990 edition of the Berkeley Women's Law Journal is entirely dedicated to providing critiques on black women professors as role models for their black female students.

444 Anita L. Allen, On Being a Role Model, 6 BERKELEY WOMEN'S L.J. 22, 38 (1990) ("Unassisted by other arguments, the role model argument leaves intact the presumption that black women have third-rate intellectuals. The argument makes it possible to assume that black women can be more competent than whites only insofar as they are better role models").
professor's work will be influenced in a positive way by his/her ties to
the Latino community.445 Students claim that Harvard fails to recognize
issues of importance to Latinos446 and that the few portrayals that exist
are generally negative. One student explained to an inquiring Visiting
Committee:

"The representation of Latino/as in the HLS curriculum is thor-
oughly depressing . . . the only significant portrayal of Latino/as in the
curriculum is overwhelmingly negative. These negative portrayals are not
counteracted by positive portrayals or even by discussion of Latino legal
issues . . . . Latino/as have been involved in ground-breaking legal bat-
tles, particularly civil rights cases, but these are almost always excluded
from class discussion and study . . . . The representation of Latino/as in
classes must be corrected to reflect the reality of our history in the United
States legal system, lest HLS students graduate with a misguided, inaccur-
ate, and damaging view of Latino/as and their legal history and is-
issues."447

Students expect that a professor's ties to their community will mean
that issues of importance to the Latino community will be addressed in
the curriculum and in legal scholarship. They also expect that Latino pro-
fessors will provide greater sensitivity to issues of race and ethnicity.448

445 Haney-López supra note 12, at 109. See generally Mari Matsuda, Looking to the
(arguing that scholars of color offer a unique voice to legal scholarship). But cf. Kennedy
supra note 420, at 1778-87 (scholars of color have failed to prove that they speak with a
unique or privileged voice with respect to certain race-related issues).
446 "A Statement by the Third World Coalition of Harvard Law School Expressing Dis-
satisfaction with Law School Policies and Issuing Proposals to Change those Policies,"
presented at student/faculty forum on Feb. 22, 1984 ("Courses which focus on the legal
concern of Third World people are not a permanent part of the curriculum. Only when
certain professors are invited to teach temporarily at the Law School can students take
courses essential to a non-mainstream legal practice . . . . The student wishing to explore
Third World legal issues has no means of devising a meaningful program of study since the
necessary courses are not offered predictably or consistently"); KEVIN R. JOHNSON, at 25,
("I cannot name one legal issue of special significance to the Latino community discussed
during my three years of study at Harvard. Bilingual education and English-only laws
simply never came up. At the time, the Harvard curriculum lacked a class in immigration
law, which logically would have required study of the long history of Mexican migration to
the United States. Not coincidentally, the Harvard faculty failed to include a single Latino
professor"). See also Letter from James Vigil, Yvonne Campos, and Ana Maria Salazar
during the 1987-88 academic year to the administration explaining that "there is a
significant lack of attention to Latino issues in the classroom and in course offerings." The
letter continued, "Harvard Law School courses fail to recognize and develop the contribu-
tions of Latinos. For example, first-year property courses do not acknowledge the legacy of
Spanish and Mexican law in the Western United States. A similar gap exists in legal his-
tory courses. Moreover, civil rights courses taught at Harvard Law School are specifically
and expressly geared toward focusing on the black experience exclusively." (on file with
author).
447 Memorandum to Members of the Visiting Committee from Ana Henderson '98, La
Alianza co-chair, Apr. 4, 1997 (on file with author).
448 Alex M. Johnson, Jr., Racial Critiques of Legal Academia: A Reply in Favor of
Context, 43 STAN. L. REV. 137, 152 (1990) ("when I was called upon in Criminal Proce-
Students argue that a Latino professor's viewpoint will enhance the curriculum by addressing topics not traditionally discussed in legal scholarship. Those who support the hiring of Latino faculty say that their unique perspective enhances Latino students' educational experience because it allows students greater opportunity to explore legal issues that are important to them. A Latino law professor who has some knowledge of issues important to Latino students is more likely to engage in a conversation about the topic or will refer the student to another colleague who has more expertise in the area.

The perspective theory also argues that Latino professors will introduce innovative teaching methodologies. Some assert that Latino professors are more sensitive to minority issues and minority students' sense of alienation in the classroom. The alienation that so many Latino students experience in law school is further aggravated by their own silence. Professor Margaret Montoya '78, describes her alienation and silence in the classroom as a "longing" she felt throughout her time at Harvard Law School. She explains that "[a]t the bottom of that longing was a desire to be recognized, a need to feel some reciprocity." Other Latinos at Harvard understand Montoya's need for reciprocity when they feel their experiences are on the fringes of classroom discussions. Latino students sometimes feel they do not have something to contribute to a class discussion where their personal experiences are deemed irrelevant to legal discourse. Latino and other minority students claim that issues of race, gender and ethnicity are not addressed in the typical class discussion. Montoya further explains:

For two days I sat mute, transfixed while the professor and the students debated the issue. Finally, on the third day, I timidly raised my hand. I heard myself blurt out: What about the other facts? What about her youth, her poverty, her fear over the preg-

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449 The increasing number of minorities have contributed a different perspective to legal scholarship, creating new schools of legal thought called critical race theory. See Haney-López supra note 12, at 113. Latino professors have also created another school of thought called LatCrit, which is Latino Critical Theory. See generally Frank Valdes, Latino/Hispanic Critical Race Theory, and Post-Identity Politics in Postmodern Legal Culture: From Practices to Possibilities, 9 L.A. RAZA L.J. 1 (1996); Jean Stefancic, Latino and Latina Critical Theory: An Annotated Bibliography, 85 CALIF. L. REV. 1509 (1997).


452 Id. at 205–06.
nancy, her delivery in silence? I spoke for perhaps two minutes, and when I finished, my voice was high-pitched and anxious . . . . I sat there after class had ended, in seat number one on day number three, wondering why it had been so hard to speak. Only later would I begin to wonder whether I would ever develop the mental acuity, the logical clarity to be able to sort out the legally relevant facts from what others deemed sociological factoids.453

Students and alumni insist that stereotypes are often propagated and personal experiences relevant to the discussion are frequently dismissed.454 "Once you sense a classroom is inhospitable to your viewpoint, you shut yourself off from the environment, which creates a vicious cycle," explained a Latina student during a forum where minority students' talked with faculty members about their sense of alienation in the classroom.455 This feeling of alienation that often leads to self-exclusion456 is something that students believe would decrease if a Latino professor leads a class discussion.457 In 1999, Harvard Law School commissioned a survey that found Latino students were not the only ones craving a more inclusive and friendly approach in the classroom. There is statistical evidence that feelings of self-exclusion are not only a Latino psychological phenomena.458

One of the problems with the perspective theory is that it assumes that all Latino professors are interested in issues affecting Latinos. The perspective theory asserts that to be deemed worthy of advocacy by Latino students, Latino professors should teach legal subjects where ethnicity and culture play a large role. This idea unfairly pigeonholes Latino professors into a certain type of scholarship. For example, Professor Elhauge is a Latino professor who specializes in contracts, corporate law, antitrust and health law. Does that make Professor Elhauge less Latino? A Latino faculty member who is not interested in making his/her living writing and teaching about issues important to Latinos can be an asset to Latino students if the faculty member shares the Latino experience in the United States. If a Latin American background is not enough and students are advocating for someone who will meet certain curricular needs,

453 Id.
454 Teri Silvers, Students Tell Faculty About Silencing Concerns, HARV. L. REC., Apr. 28, 1989, at 1.
455 Id.
456 See id. at 16 (Loretta Martinez ’92, explains that she never voluntarily spoke in class).
458 Harvard Law School prohibits the Survey Data from being reproduced, quoted, or circulated without prior written approval from Harvard Law School.
they need to be clear. Latinos, just as any other group, should teach topics of interest to them. If Harvard Law School will only hire one Latino professor, it is not unreasonable for students to request a professor whose academic interests are on issues affecting Latinos or who will be supportive of Latino students.

Students should not be intimidated by critiques that suggest they are limiting the roles of Latino professors by asking for what they need. For years, Latino students have felt a void in their legal education at Harvard due to the narrow perspectives offered in the Law School’s curriculum. When they advocate for a Latino professor, it is reasonable and valid to request the Law School fill a curricular vacuum. Latino professors can and should teach any and every subject matter. For example, a Latino professor can teach corporations, bankruptcy, tax, contracts, and trusts and estates and still meet the curricular needs of Latino students by focusing at least a portion of classroom instruction to how knowledge of this areas can further community economic development in low income communities. Once institutions like Harvard Law School understand that subject matter affecting big corporations can also be manipulated to serve the needs of communities of color, legal education will improve dramatically. It is this alternative perspective that a diverse faculty can provide and it is crucial for students to evaluate the curricular needs of Harvard Law School when they develop arguments for hiring Latino faculty. Without such assessment the arguments for Latino faculty are deemed unimportant. Like the role model theory, the perspective theory is helpful when presented in conjunction with curriculum-based reasons to hire Latino faculty.

C. Latino Faculty as Community Representatives

The last line of arguments students employ in their story is the representation theory. The story reasons that Latinos should be represented in the faculty because they comprise a significant presence in the United States. The 2000 U.S. Census revealed that Latinos are approximately 12.5% of the population in this country. There are more than 35 million Latinos who are affected by the legal system in the United States. Census figures anticipate that by the year 2005, Latinos will be the largest minority group in the United States, and by 2050 they will eventually outnumber Asian Americans, Native Americans, and Blacks combined.

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460 Id.
Latino students and alumni have argued that Harvard Law School cannot continue as a leader in legal education if Latinos and their issues are not represented by its faculty and in its classrooms. The lack of connection that classroom discussion provides to practical issues has been a concern for students since the 1970s. Gerald López explains, "Harvard Law School, my law school was absolutely not the place where future lawyers could come to learn about Chicanos. Or about those other Latinos, particularly Puertoriqueños, who for decades had enriched the northeastern United States . . ." Twenty-five years after López graduated, Harvard continues to ignore the contributions of Latinos to, and their role in, the legal system. Issues that are important to Latinos are almost entirely excluded from the Harvard Law School classroom. One professor admits, "the majority of the faculty does not understand the reality of our society."

As an example, the author's only discussion of English-only laws in her law school career was an hour lecture in an employment law course; a discussion on bilingual education was limited to two days on the syllabus of education and the law; and the three civil rights courses I enrolled in dealt almost exclusively with the African American experience. A classroom environment where so many of the legal and political realities are ignored, is not adequate for "any formal training or opportunity to learn and debate the specific and pressing legal needs of ... families, ... cultural communities, and many of the clients [students] will be serving." Including Latino faculty members is important because they are more likely to focus on issues relevant to Latinos and there is an implicit value in having a faculty that reflects the diversity of opinions in our legal system.

The elevation of Latino professors as representatives takes attention away from the toxins in the mine. If the canary can withstand the environmental hazard, the miners assume that there is nothing wrong with the air inside. Similarly, Harvard Law School can hire a Latino professor without any systemic change occurring at the institution. Tokenism is not enough to change an institution's culture. The presence of one Latino faculty member creates an illusion that the institution is functioning properly. One Latino professor will not be enough to meet all the expectations and needs of students. Harvard Law School has to move away from token appointments to more systemic changes that improve the legal education they sell to all students.

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463 Interview with Christopher Edley, Jr., supra note 95.
464 Christine Jolls taught the employment law course in the spring of 1999. Martha Mi-now's course on Law and Education in the spring of 1999 was a survey course so every issue was given cursory attention. The three civil rights courses offered were Race and the American Legal System by the late Judge Leon A. Higginbotham, Race Relations Law by Randall Kennedy, and Government Lawyer: Civil Rights by Deval Patrick.
465 Memo to HLS faculty from Margarita Prieto, Lisa Otero, Juan Zuñiga in the 1989-1990 school year.
D. Latino Professors for the Institution's Benefit

Despite Harvard Law School's historical standing and reputation, recent national surveys demonstrate that law school is a business and "those who have a fiduciary responsibility toward the [ ] institution must strive consciously to see its place in the large scheme of things and plan its future use of resources and talent so as to maximize achievement of its core mission." A law school that claims to "promote the common good by producing the best possible legal education and scholarship" cannot afford to continue to ignore the needs of its consumers.

The absence of Latino professors is detrimental to all students because all students would benefit from a diverse curriculum. The new perspectives and methodologies that Latino professors bring serve all students for whom the current format of legal education does not work. Professor Torres remembers that during his time at Harvard Law School, the students who sought him out most were the students from rural parts of the country who were interested in agricultural and environmental law. They expressed a feeling of alienation similar to that of Latino students. Furthermore, all students are hurt by the lack of exposure to Latino issues and role models. Given that Latinos are a significant population in the cities such as New York, Los Angeles, Chicago, Houston, Miami, San Francisco, where the majority of Harvard Law School graduates live after graduation, Harvard should find it imperative to hire Latino faculty members who understand legal issues important to Latinos. Some familiarity with the Latino community and the issues affecting them is important when dealing with Latino clients or projects in Latino communities. Students must tell their story in such a way that Harvard understands that Latino professors are relevant to improving every student's education. Students can use the absence of minority professors to highlight the deficiencies in the education at Harvard Law School. The story told must aim to change the culture of the institution to make room for different perspectives and pedagogy. Without systematic change, the results will only be temporarily.

III. REAFFIRMING THE STATUS QUO

Because faculty at the elite schools will be the most select, the profile of the "traditional" candidate at these law schools may be used to generalize about the profiles of all law school faculty. Law faculties are in fact filled with majority candidates who look on paper surprisingly like "unqualified" minority candi-
dates. The fact that most law faculty, minority and majority, do not have traditional credentials exposes the myth that a particular resume is necessary to be a quality law professor.468

—Leslie G. Espinoza ’77

The principal obstacle to hiring Latino faculty at Harvard Law School has been its faculty’s reluctance to validate the story. The Harvard Law School faculty has traditionally been a bastion of elite academics that place the highest value on experiences similar to their own.469 The Harvard Law School faculty is considered the cream of the crop of legal academia. They are former students who were academically successful in college, who scored well on standardized tests and were rewarded by their performance in law school. Most of them were highly driven students who secured themselves a position on a prestigious law journal, got to know prestigious professors who sent them with the highest recommendations to clerk with a prestigious judge on a prestigious court.470 For years Latino students have told their story to faculty members to push them to shift realities without avail. While the majority of faculty members have publicly agreed that the student’s goal is a laudable one, year after year they have failed to vote for a Latino faculty member behind their closed session meetings.

A. A Pool of Qualified Candidates

Harvard Law School also has a story about Latino faculty. Harvard Law School’s story says that there are no qualified Latino professors to teach at the institution. The only Latino professor that the Harvard Law School faculty has agreed is qualified to teach at Harvard is Gerald López. Einer Elhauge was also deemed qualified to teach at Harvard Law School but the faculty did not know he was Latino.471 The most recent numbers compiled by the Hispanic National Bar Association (HNBS) indicates that there will be 155 Latino faculty members nationwide in the Fall of 2002.472 In addition, in 1999 the HNBA reported that there were
approximately 1300 Latino judges.\textsuperscript{473} Three years and a number of Latino judicial appointments later, the pool of qualified Latino attorneys who could serve as professors has increased dramatically since 1985. In addition to law professors and judges, there are thousands of Latino attorneys practicing in the United States. The truth is that there are a number of Latino faculty members who can and should teach at Harvard Law School. Michael A. Olivas, Director of the Faculty Division of the HNBA compiled information on 117 of 125 Latino faculty members in the 1997-98 school year.\textsuperscript{474} According to his figures, over half of the pool of Latino candidates attended a top-ranking law school,\textsuperscript{475} 38\% of them have some type of graduate degree, 47\% were law review members and 31\% of them completed a clerkship. It seems odd that after almost thirty years, Harvard, whose reputation is based on attracting the best and the brightest, cannot find a single Latino faculty that addresses some of the needs expressed by students and alumni and is qualified to join the ranks of its faculty.

B. Harvard’s Process for Identifying Qualified Candidates

To understand what Harvard Law School wants in a faculty member, it is important to understand the process for identifying and hiring professors. The Dean and the chairpersons of the Appointments Committees are primarily responsible for identifying prospective minority candidates. There are two distinct committees assigned to hire tenured and tenure-track faculty: the Entry Level Appointments Committee and the Appointments Committee for Laterals.\textsuperscript{476}

Since Latinos are relative newcomers to teaching, the Entry Level Appointments Committee is the most relevant of the two committees for new appointments. The Entry Level Appointments Committee is in charge of recruiting assistant professors from a pool of recent graduates.

\textsuperscript{473} Information provided by Francisca Cota, Co-chair of the HNBA Judicial Council in an e-mail dated Mar. 4, 2002.
\textsuperscript{474} The National Hispanic Bar Association does not account for Latino law professors teaching at law schools in Puerto Rico. Information from conversation with Michael A. Olivas, Director of the HNBA's Faculty Division, on Apr. 6, 1999. Data on Latino Law professors compiled in the spring of 1998 (figures on file with author). From 1988 to 2001, the HNBNA published a “Dirty Dozen” list to publicly chastise schools that had not hired Latino professors. Every year, Harvard Law School made the list. See \textit{e.g.}, Ken Myers, Hispanic Bar Fires Annual Barb Over Lack of Latino Professors, Nat’l L.J., Oct. 25, 1993, at 4; Ronald Sal Panuco, Top Law Schools Still Rank Among Latino Dirty Dozen, Hispanic Link Wkly., Nov. 29, 1998.
\textsuperscript{475} There are 24 professors who graduated from Harvard, 13 from Yale, 9 from Boalt Hall, 5 from Stanford, 5 from Columbia, 4 from the University of Michigan, and 4 from New York University.
In consultation with faculty members at Harvard and other schools, the Entry Level Committee identifies recent graduates showing promise as professors and elicits written comments about them. Names of recent law graduates are also made available through self-identification, in the form of a published list or unsolicited applications for teaching positions. The Entry Level Committee creates a pool of candidates by gauging interest among Supreme Court and some Circuit Court clerks. More infrequently, committee members maintain contacts with alumni and law firms who help identify prospective candidates. The committee compiles the candidate’s academic record, reviews of the candidate’s scholarship and faculty recommendations. Candidates are then screened and the committee decides whether to simply track the candidate’s career or invite him/her to meet with faculty members. After more closely scrutinizing the candidate, the committee votes to recommend the candidate as an assistant professor. If the committee agrees to make the recommendation, the candidate’s file is made available to the entire faculty for comment. At a meeting of the full faculty, committee members present the candidate before the faculty votes on the recommendation. In order to approve the candidate, two-thirds of the faculty attending the meeting must approve the appointment. If the candidate receives the requisite votes, the Dean will then forward the decision and the candidate’s information to the University President who in turn decides whether to recommend the candidate to the Governing Board. The President and the Joint Committee on Appointments make the final decision. If the approval of the candidate is granted, the candidate is invited to join the faculty as an assistant professor for a term of approximately five years.

The second relevant committee is the Appointments Committee for Laterals that reviews mainly assistant professors and some faculty members tenured at other schools. The three main criteria that the Appointments Committee for Laterals uses are: teaching ability, scholarly accomplishment and potential, and service to the school, if the candidate has visited at Harvard. Teaching is evaluated based on reports of student questionnaires, visits to the candidate’s classes and interviews of selected students. Every member of the appointments committee reviews the candidate’s scholarship, in addition to six outside readers who are experts in the candidate’s field. Based on their impressions and the evaluations of the outside readers, the committee decides whether the candidate’s work is “of high quality and demonstrates promise of excellence in future

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477 There is a strong preference for law clerks from the First and Second Circuit and for some clerks who work with certain Ninth Circuit judges.
478 If the candidate has been working, his/her employer recommendations will also be taken into consideration.
479 The Joint Committee on Appointments is composed of the Fellows of Harvard College (the “Harvard Corporation”) and members of the Board of Overseers.
If the candidate is a member of the Harvard faculty, consideration is also given to his/her participation on faculty committees, with student activities and alumni events. If the Appointments Committee for Laterals decides to recommend the candidate for a tenure position, he/she undergoes the same process of approval explained above, with a couple of exceptions. For decisions on tenure offers, only tenured faculty members vote and the President can decide to get feedback from a committee of outside scholars who are experts in the candidate’s area. The procedure to offer visiting professors tenure is virtually the same as those followed to grant tenure to assistant professors. The visitors teaching, scholarship achievement, and collegiality are fully evaluated. The evaluation for visiting professors is more comparable to the achievements of other academics in the field.481

C. Subjective Hiring Criteria

Some of the criteria used to evaluate candidates for professorships at Harvard Law School are based largely on subjective determinations.482 The Harvard Law School faculty tends to duplicate itself and its scholarship by seeking candidates with qualifications similar to theirs.483 Meritocracy is based mainly on selective criteria reflecting individual preferences and biases.484 Giving value to factors that are byproducts of ethnicity strays from what most on the faculty view as a significant contribution. Since law school is a professional school, one criterion that should be taken into consideration in hiring is relevant work experience. A professor’s relevant work experience is a good indicator that she/he will

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480 See Harvard Law School’s Appointments Process, supra note 476.
481 There is also a Lecturers Committee that recommends faculty as lecturers on law, who teach only on a temporary basis. Since the focus of this paper is tenured and tenure-track faculty, the process for identifying and hiring candidates for lecturers on law is not be discussed.
482 See Juan Zúñiga, Recent Events in the Search for Hispanic Faculty, Spring 1991 ("I later also meet with the entire appointments committee as a CCR representative . . . From this meeting three things became evident. One was that the faculty appointments process was not necessarily based on any formal or objective process. Rather it was a network system based on letters of recommendation, phone calls and reputation.” (on file with author).
483 “Our faculties tend to reproduce themselves; and in the process may by the continual inbreeding that is involved be producing even narrower law students than they were themselves.” SELIGMAN, supra note 9, at 122 (quoting Erwin Griswold). See Deborah Waire Post, Reflections on Identity, Diversity and Morality, 6 BERKELEY WOMEN’S L.J. 136, 146–49 (1990) (citing examples of how “objective” criteria is manipulated to grant or deny tenure).
484 Allen, supra note 444, at 26 (“History teaches that the seemingly sacred principle of meritocracy has often been applied selective, as a rule of convenience . . . Earlier in the century . . . Harvard defended quotas designed to exclude Jews on the ground that whatever superior intellectual accomplishment they had to offer over less intelligent white Christian students was not worth the affront to the ideal of the well-rounded character demanded by the American business and government”).
contribute an intellectual interest. The theoretical frame that a practitio-
ner can bring to legal scholarship would undoubtedly add a perspective
not currently offered in the curriculum. Experience practicing law is not
presently part of the formula guiding faculty selection. However, factors
such as academic performance, good relationships with professors, and
law review membership are deemed crucial indicators of academic po-
tential.

Since Law School grades are based solely on one exam performance
at the end of the semester, grades reflect a person’s ability to take tests
but they say nothing about his/her ability to teach, to captivate students
or to develop innovative legal theory. Placing high importance on grades
to determine who is capable of teaching is a subjective decision. Along
the way someone with high marks decided that grades were reflections of
ability and intelligence and they should be based on a single perform-
ance. This decision implicitly placed less value on innovative pedagogi-
cal styles, creativity and diversity of thought, than it did on memory, or-
derization and a good outline. Getting good marks in law school is a
greater indicator of familiarity with an educational process than of intel-
lectual capacity.485 When too much weight is given to top grades in law
school, previous excellence in teaching and law practice is diminished.
Furthermore, Latino candidates who struggled through an unfulfilling
law school experience but have succeeded after law school are disadvan-
taged.

Relationships with faculty members, crucial in the appointment pro-
cess, are also subjective. A candidate’s relationship with a professor may
be largely based on personality and common academic interests.486 Since
professors are likely to reproduce themselves, their recommendations
indicate compatibility of thought as much as promise of scholarly suc-
cess.487 Candidates who are fortunate to find a faculty member who
shares his/her legal interests and is willing to be an advocate for him/her
are at an advantage in the appointment process. For candidates who are
never able to forge relationship with professors, the results could have
devastating effects on their job prospects.488 For students who experience

485 Stephen L. Carter, The Best Black and Other Tales, 1 RECONSTRUCTION 6, 27
(1990) (“law faculties have increasingly come to doubt whether these traditional factors
are really very good predictors”).
486 Id. at 28 (“Lacking concrete evidence of scholarly ability, professors are forced to
fall back on such empty adjectives as “brilliant” and “thoughtful” and “perceptive,” all of
which translate roughly into, ‘Well, gee, I liked him’”).
487 Cf. David B. Wilkins & G. Mitu Gulati, Why Are There So Few Black Lawyers in
(citing to cross-racial studies of mentoring relationships in the workplace that demonstrate
white men are more comfortable in working relationships with other white men)
488 Professor Kevin R. Johnson, formerly a Latino student at Harvard who was a member
of the Harvard Law Review and later clerked for the Stephen Reinhart on the Ninth
Circuit writes: “I failed to get to know any professors particularly well, which ultimately
doomed any chance for a coveted clerkship with a Justice of the United States Supreme
alienation in the classroom, the possibility of engaging in an academic dialogue with a professor is intimidating and may seldom occur. Placing such importance on relationships with faculty members in the appointment process invokes the traditional "old boy system" which systematically excludes many nontraditional voices and scholarship.489

Clerkships have become another way to measure a candidate’s potential. If the candidate clerked for the Supreme Court or a select number of Circuit Courts, he/she has demonstrated academic promise. While it is true that working in a courtroom and writing legal opinions is wonderful training to teach and research at a law school, the faculty should recognize that meeting this criterion only perpetuates the same subjective system of evaluation. First of all, Harvard Law School does not value clerkships equally. The faculty places a high price on courts whose judges share their credentials. A clerkship experience varies according to the type of court it is but what clerks learn to do is similar whether they work for the Second Circuit or a Federal District Court in Arizona. By giving more weight to the experiences that some judges provide, Harvard fails to identify talent found elsewhere. Secondly, because judges base their selection of clerks on faculty recommendations, clerkships may simply reflect and extend the student-faculty relationships discussed above. Although judges exercise their discretion when choosing potential clerks, the fact that faculty members hand-pick both students and judges seems to indicate that the faculty pre-selects the candidates that will meet their criteria.490

Law review membership can be a reliable measure of academic potential to the extent that the candidate has been exposed to theoretical debates and probably has some writing experience. However, law review membership is not objective. Not everyone who has an interest in academia can be on a prestigious law journal. Most journals have some basis of selection for its members that is essentially based on grades or performance in a writing competition.491 The subjective valuation of the law

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489 See Kay, Commentary: The Need for Self Imposed Quotas in Academic Employment, 1979 WASH. U. L. Q. 137, 140 (1979) ("Many have voiced complaints about the 'Old Boy Network' but the institutional forces that maintain it are still present: The professors, judges and senior partners who know the candidates, and whose judgment is sought out and given credence by their counterparts in other institutions, are overwhelmingly white and male. The tendency to recognize intellectual power and unusual capacity for creative scholarship more easily in persons of one's own sex and race and in persons who can be viewed most comfortably as one's proteges is perfectly natural").

490 See Jones supra note 469, at B9.

491 Some journals such as the Harvard Law Review have an affirmative action policy to ensure that minority students and women are represented. The selection process is so secretive, however, that it is difficult to ascertain whether the student got on the Law Review by writing on, grading on, or with help from the affirmative action policy.
review criteria comes from limiting the search of candidates at the entry level to the top law review journals that produce a limited sample of scholarship. If members of the Appointment Committees are interested in identifying academic accomplishment and promise they need to extend their recruitment efforts beyond the most prestigious law reviews to find talent. By focusing on recruiting candidates from the top law reviews, Harvard misses out on individuals who may have much to contribute but for some reason did not get on law review. There may also be individuals who have a special interest in a certain area of law and who decide, before the main law review competition, to devote their time to a specialty journal. Law review membership, therefore, excludes many qualified candidates from the faculty’s radar by limiting the law reviews they consider.

Subjective decision-making is easily manipulated so the decision-maker can put less of a premium on grades, law review membership and personal affinity to the candidate. In the alternative, the decision-maker can pay more attention to teaching and work experience, diversity of views, and innovative methodology. Not every faculty member at Harvard has the traditional criteria emphasized by the appointments committee yet that has not made them any less qualified to teach at Harvard.

D. Disguising Bias with Rhetoric of Excellence

If it is true that the criteria used to identify and hire faculty at Harvard is subjective, why is it used as an obstacle for hiring Latino faculty? For faculty members who view the established criteria as objective measures of achievement, considerations of immutable characteristics look like threats to the standards of excellence used to measure their own success. Perhaps the most subjective criterion of all is the evaluation of a candidate’s scholarship. The decision-maker evaluates the candidate’s scholarship on the basis of the ideas promoted and the presentation of the discussion, within an accepted framework of what constitutes excellent scholarship, determined by experts in the field.

The evaluation of scholarship has perhaps been the single most significant obstacle for Latino professor hiring at Harvard. Much of the scholarship produced by Latino candidates touches on critical race the-

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492 In addition to not making the selection, there are many reasons why a Latino student would not be on the Law Review. Some students may decide not to try to make it on the Review because they are overwhelmed in their first year and do not take the necessary steps to enter the Law Review competition. Other students may not have the time to do the competition because they have to work. Still others may not understand the correlation between Law Review membership because they have not had the proper counseling.

493 Three of Harvard Law School’s faculty members do not even have legal degrees. Alan A. Stone has a M.D. and both W. Kip Viscusi and Steven Shavell have a Ph.D. in Economics.
ory, a school of legal scholarship greatly scrutinized by many nonminority legal scholars. For example, Richard Delgado, one of the most prolific legal academics in the country, has appeared numerous times on the radar of the Appointments Committees, but the faculty has never issued Delgado an invitation to teach at Harvard. Delgado graduated from Boalt Hall, was an editor of the California Law Review, has written and edited over a half dozen books, has published in the most prestigious journals in the country, and is one of the foremost experts in critical race theory. Why has Harvard never invited him to teach? The faculty does not value nontraditional scholarship such as Critical Race Theory.

Scholarship was also a problem for Gerald Torres, who received high evaluations from students and colleagues but was not invited to join the faculty. When Torres visited, he had not published a single piece in any of the top law journals of the country, and that did not satisfy the Harvard's faculty. Although Torres had a couple of pieces on critical race theory, most of his work was published in specialty journals, some dealing with agricultural and environmental law. These writings did not help Torres because they were published in publications dealing with substantive legal matters that Harvard does not value. The legal scholarship is relevant and important. The fact that Harvard does not recognize it is completely subjective. Months after his visit, Torres was offered a tenured position at the University of Texas at Austin, who evaluated him on...

494 See Kimberlé Crenshaw, et al., Critical Race Theory: The Key Writings that Formed the Movement (1995), at xv–xxxii.


497 Crenshaw, supra note 449, at xxi.

498 In conversations with Charles Ogletree and Martha Minow, they have indicated that members of the Harvard Law School faculty identified Torres's scholarship as the roadblock to his appointment to the faculty.

499 There is currently no tenured faculty member teaching environmental law or agricultural law. Talk about visiting professors in environmental law and ELS efforts to bring those scholars to campus.
generally the same criteria Harvard uses. Torres is now the Vice-Provost and H.O. Head Centennial professor in Real Property Law in Texas. He has been a key leader in developing strategies to assure access to higher education for all Texans in the wake of the abolishing of affirmative action programs by the Fifth Circuit Court of Appeals. Torres is an exceptional scholar, who is at par with any academic at Harvard Law School.500

A further probe into Torres’s visit reveals that no one in the faculty took it upon himself/herself to lobby for Torres to garner enough support to hire him. At the time of Torres’s visit, the faculty was in the midst of a heated debate about appointments. When the faculty struck a deal to hire four white men, Torres was left out. Without a strong group of advocates, Torres did not have a viable opportunity to attain an offer of tenure.

The process and criteria that Harvard uses to hire its faculty has adversely impacted Latino candidates. To say that there are no qualified candidates is an insult to all Latino attorneys and scholar and is simply untrue. Students’ call to hire Latino professors does not mean they are lowering standards of excellence. They are simply pushing Harvard to place importance on the contributions that Latinos can bring to the Law School. A position paper written by La Alianza members explained:

We do not seek, nor will ever seek, the granting of a tenure-track position to a professor, Hispanic or otherwise, who is not qualified to teach and publish at the Harvard Law School. By pursuing the securement of a tenure-track Hispanic professor we aim to add to the quality of learning here not detract from it.501

The Harvard Law School faculty has deemed the majority of their Latino colleagues not qualified to teach at Harvard because they do not meet the criteria for membership. There is no well-supported reason to believe that a Latino professor would not perform as well as a non-Latino professor. The belief of inferiority that underlies the Law School’s gap of Latino professors is based on subjective criteria that could be challenged by a Latino professor’s performance in the classroom or as a student mentor or institutional citizen. By not inviting more Latinos to teach, Harvard disregards the talents and contributions of all Latino lawyers in the United States.502

500 The Harvard University Press published The Miner’s Canary in February 2002—a book Torres co-authored with Harvard Law School professor Lani Guinier in which the authors explore the concept of political race to understand issue of race and racism.

501 La Alianza, “On the Congruence of Diversity, Quality and Greatness” Spring 1989, Position Paper (on file with author). See also Letter to Dean Clark from La Alianza Board, Feb. 28, 1990 ("La Alianza and you are not far apart in our imaginations of what constitutes quality in terms of candidacy for appointment to the faculty. No less than any other party La Alianza has a vested interest in ensuring that any candidate for faculty appointment be one who is qualified") (on file with author).

502 The problem of Latino faculty hiring is not unique to Harvard Law School. Some
Given that the institution is a professional school, it is questionable whether Harvard Law School uses the correct criteria in hiring its faculty. However, let us assume that the current hiring criteria is proper. There are still steps Harvard Law School could take to hire Latino faculty. First of all, the faculty could expand the criteria used in evaluation of qualified professors. There is no doubt that legal theory and scholarship play an important role in legal education, however, a professional school has a greater responsibility to impart its students practical knowledge than a graduate theory-based program. Students attend professional school for practical training as well as a theoretical foundation. Since individuals attend law school to learn how to be lawyers, it makes sense that one of the criteria used to hire law school faculty should be experience in practice. By expanding the criteria to include practice, the Law School will satisfy the need of more of its students and would create opportunities for more perspectives and experiences.

Harvard Law School could also expand the list of candidates by mentoring Latino students to go into law teaching. Every year the Law School puts out a packet that gives students general tips about what to do if they want to pursue teaching law. The packet is distributed through the office of career services, usually during an information session on the topic. Emeriti Professor Clark Byse attends the information session and is available once a week for students have expressed an interest in law teaching. For the first time in 1999, two professors taught a seminar for
those students interested in teaching. Before this effort, there was no formal faculty involvement in encouraging students to consider law teaching. The mentoring programs that students formerly proposed during meetings with the dean and the faculty hiring committees still do not exist. If Harvard were truly committed to hiring Latino professors, it would invest in providing the necessary resources to ensure Latino students were adequately mentored to consider a career in law teaching. The faculty could put together a weekly speaker series where they would talk about issues relevant to the teaching market. Programs on how to write and publish an article or workshops encouraging students to apply teaching fellowship programs, are just the beginning. The Harvard Law School faculty must take a more active role in developing its future professors. Shifting the responsibility to over-burdened staff members at the Office of Career Services is simply not enough.

IV. STRENGTHENING THE GAME PLAN

La Alianza looks with renewed hope to the future of Harvard Law School . . . . The goal of attaining Hispanic professors is just as alive for La Alianza today as it was for the Chicano Law Students Association in 1970, but has been made even more urgent by the passage of twenty years. With the support and activism of the student body and alumni, La Alianza hopes to bring an end to Harvard Law School's most disturbing tradition.

—Rudy Rodriguez '89

508 Professors Martha Minow and Todd Rakoff taught a seminar in the spring of 1999 for students interested in law teaching. The class was limited to eighteen students and many students, particularly LL.M. students, were not able to get into the class. They hope to be able to expand the class to meet the demand for it. Interview with Martha Minow, supra note 372.

509 The Charles Hamilton Houston and Reginald Lewis Fellowships discussed in Part I.F, supra, are important first steps that Harvard has taken to encourage minority students to look at law teaching. However, there is still a problem with faculty mentoring. A recent Houston Fellow complained that few faculty members were willing to reach out and invest in helping him develop the type of relationships he needed. Interview with 1998-99 Houston Fellow Lino Mendiola '94, Cambridge, Mass. (Mar. 31, 1999).


Over the span of thirty years, students had the opportunity to tell their story in many different forms. To place the blame only on the faculty's resistance to change, however, only tells part of the story. Some of the responsibility for failed efforts lies within Latino students’ inability to focus coalition efforts on Latino faculty, avoid internal conflict and develop a long-term plan.

A. Lost Voice in Coalition Efforts

Coalition efforts have been central in bringing attention to faculty diversity issues but in most instances, the advocacy for Latino faculty has been buried under the call for black and women professors. When the Third World Coalition demanded that a minority professor teach Derrick Bell’s course, their call was for a black professor. When the Coalition for Civil Rights organized protests on behalf of faculty diversity, the focus was on black women faculty. In both cases, coalition members addressed the needs of Latinos; however, they were not central to the story. One reason is that black and women students have seized leadership of coalition movements, due in large measure to the size of the organizations they represent. The larger number of black and women students ensures that their messages will receive greater attention than those of Latino students.\textsuperscript{512} Despite the low-key position of Latinos in such efforts, coalitions are essential to a campaign for Latino faculty. There are too few Latino students to take on a campaign. Also, coalitions can affirm that the absence of Latino faculty affects everyone. Naturally, the efforts of those students who commit the most time and energy will set the tone of the story. If Latinos want coalition efforts to carry the banner for Latino faculty they must be aggressive in pushing their agenda and be ready to do the work.

Another factor that contributes to the weak position of Latinos in coalition efforts is that most of the campus is not familiar with Latinos’ history of discrimination. The world that the majority of students and faculty at Harvard live in mirrors the status of Latinos in New England.\textsuperscript{513} Despite the long history of Latinos in the territory that is now the United

\textsuperscript{512}The messages of black and women students are further amplified by the support of black and women faculty and administrators, who lend credibility to their efforts. For example Walter J. Leonard, Derrick Bell, and Elizabeth Owens in the 1970s; Christopher Edley, Jr., Clyde Ferguson, Randall Kennedy, Elizabeth Bartholet, Martha Field, Mary Ann Glendon, and Kathleen Sullivan in the 1980s; and David Wilkins, Charles Ogletree, Elizabeth Warren, and Martha Minow in the 1990s.

\textsuperscript{513}New England includes the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Almost all the faculty at Harvard Law have lived in New England for years. See Harvard Law School Faculty, 1998-99, Harvard Law School Publications Center, 1998 (on file with author). Over fifty percent of the student body at Harvard come from New England, New York, or other areas where Latinos are not a politically viable group (records on file with the Office of Admissions).
States, Latinos are still seen by main as foreigners who are less entitled to claim inclusion and equality. Although 6.8% of the population in Massachusetts is Latino,514 Latinos are still largely invisible.515 The continuing shift in demographics will eventually force even the Harvard faculty to recognize the importance of including Latinos in their discussions and institutions.516 Until then, students need to recognize that the weak political status of Latinos in the Northeast contributes to the importance given to Latinos and their interests. The context of Latinos in the Northeast needs to play a role in shaping the story of Latino student campaigns. Students need to educate their peers and the faculty about Latino issues through awareness campaigns such as those undertaken in the spring of 1989. Printing articles and letters in the Harvard Law Record, and hosting symposiums, conferences and speakers are good education vehicles.517 The more Harvard and the surrounding community are exposed to Latinos as national players, the more likely they will begin to include them.518

517 La Alianza needs to demand that Latinos be included in the programs that the Law School sponsors. For example, during the 1997-98 academic year, students asked Clark to include Latino alumni in his Distinguished Alumni speaker series. Since then, Dan Morales ’81, formerly State Attorney General in Texas, and Mario Baeza ’74, have participated. The same year, La Alianza worked with the Office of Public Interest Advising to bring Joaquin Avila as a Wasserstein Fellow for three days to advise students interested in voting rights litigation. Professor Ogletree’s Saturday School program has also brought Latinos to Harvard such as Professor Gerald P. López in April 1997 and Professor Kevin R. Johnson in March 1999. With the help of alumni, Latino students should lobby the administration to devote funds for a speaker series to invite Latino faculty to lecture. Even if it is just a once a year event, students need to get the administration to commit its resources to Latino issues. Once the lecture is institutionalized, students can work on getting the appointments committees to go hear the candidates.
518 Conferences provide a good opportunity for students to develop relationships with “role models, mentors, and exemplars” in the local community and nationally. Sometimes when students leave their communities, they forget that they are only transplanted in new communities with similar problems and gifts. Relationships with local lawyers and com-
In addition to the external factors that shape the discourse on faculty diversity, there are internal organizational problems that Latino students must resolve. For as long as Latino students have expressed a need for Latino faculty, there has been disagreement about what is the best strategy to follow.\textsuperscript{519} Latino students at Harvard come from many different places and backgrounds. Traditionally the largest groups of students involved in Latino organizations have been Mexican Americans and Cuban Americans, but there are also Puerto Ricans, Central Americans and South Americans students who are part of these organizations. Within the group, there are different biases and traditions that shape the path the organizations follow.\textsuperscript{520} There has been a long-standing debate about how much of the organization’s resources should be devoted to political causes versus social activities. Members see La Alianza mainly as a support system and a vehicle for social and cultural interaction. History shows that Latino students can set aside differences and agree to follow a political agenda. However, problems arise when politics dominate the direction of the group. Even when the organization decides to spend most of its energy lobbying for Latino faculty, members have different ideas about how to address the issue.

An effective campaign for Latino faculty requires the participation of as many students as possible. Those students who want more student activism in La Alianza must take into account the preferences and concerns of the entire organization when designing a strategy. The views of the more apprehensive and conservative Latino students are sometimes the most informative about what will be effective at a place like Harvard. Law students, especially those at Ivy League institutions, are generally risk adverse. Like the faculty, most Harvard Law School students owe their academic success to their ability to live by traditional institutional rules. Questioning and defying the same system responsible for their success is often too risky. Even the more liberal students will hesitate to act, especially if they know the history of past efforts. At Harvard Law School and elsewhere, activism brings the possibility of suspension, ex-
pulsion, or negative recommendations.\textsuperscript{521} The most enduring and effective campaign should have a number of components so that many people will participate. While it is crucial not to lose the focus of Latino faculty, Latino students must find ways to make the issue relevant to all students by engaging the Law School community in a discussion about what is missing in their curriculum.

\section*{C. Lack of Long-Term Planning}

Perhaps the biggest problem in advocating for Latino faculty at Harvard has been the absence of long-term planning. Student tenure is short. Years of exclusion cannot be changed in three years or even five. The problem of continuity is further exacerbated by the absence of institutional memory. Since Derrick Bell left, there has not a single faculty member at Harvard Law School who has played the role of historian and aggravorator. The only way students find out about past efforts is by digging through reels of \textit{Harvard Law Record} microfiche and asking the right questions. By the time students can piece it all together, summer arrives and enthusiasm is lost. If students are able to articulate their arguments, their impact begins to take effect just as they are graduating. The fact that every three years, there is a new set of students helps the faculty and administration string students along until the new batch comes in.\textsuperscript{522} To help combat this problem students need to record their activities and find a way to pass that information to the next group of students with similar concerns. In the long run, it may be more useful to develop a five-year plan than a five-month plan.

The key to developing a long-term plan is alumni. Alumni are probably the most influential individuals at Harvard Law School. Clark’s successful tenure as dean has been driven exclusively by the financial contributions of alumni to the Capital Campaign. Students need to contact Latino alumni, especially those who promoted the Latino faculty issue, for support in their efforts. Since the Harvard Law School Alumni Association makes students jump through hoops to get alumni contact information, students should concentrate on compiling the e-mails of

\textsuperscript{521} See Letter from Clark to Griswold Nine Students, Apr. 23, 1991 (“I am writing to put you on the clearest possible notice that future disruptions like this one, or other violations of Law School or University rules, will be immediately subject to disciplinary action. In the event of such violations, information concerning them and concerning your conduct on April 10, will be reported to the appropriate disciplinary authorities at once . . . . The likely sanctions for such violations include suspension and expulsion. It should be noted that the Law School is required to report disciplinary actions in connection with application to state bars”)

\textsuperscript{522} “By the time student arguments really begin to have an impact on the faculty, the students are already heading out the door . . . . It is easy for the faculty to just keep stringing students along for three years until they are out the door.” E-mail correspondence of Jorge Ramirez ’90 (Mar. 26, 1999) (on file with author).
alumni in order to open lines of communication that presently do not exist.\textsuperscript{523} Hiring Latino faculty is not a priority at Harvard Law School and it is unlikely that the faculty will think much about the issue unless they are pressured. With the support and presence of alumni, students should continue to lobby the dean and the faculty about hiring Latinos. Latino alumni can also be instrumental in recruiting more Latino students to the Law School\textsuperscript{524} and as recent efforts have shown, solidifying the infrastructure of the \textit{Harvard Latino Law Review}.\textsuperscript{525} Building relationships with alumni can also foster mentoring relationships and job opportunities that students seek. The plan that students and alumni formulate should consider the necessary means to address the immediate needs of Latino students and lay the foundation for systemic change.

\textbf{CONCLUSION}

There are many issues that this Article raises but does not attempt to resolve. It is an ongoing project that originated as an attempt of self-preservation while I was a student at Harvard Law School. My interest in writing this Article grew out of my frustration with an institution that did not seem to have an interest in what was missing from my legal education. The arrogant attitude that "Harvard is Harvard and if you don't like it, there are many others waiting to take your place" underwrote ninety-percent of my interactions with faculty and administrators. At times I felt that maybe I was making something out of nothing. No one said that being a Chicana at Harvard would be easy. In fact, most Latino alumni with whom I spoke talked about how challenging the experience had been, both academically and personally. I could not grasp the message of their stories until I lived them.

After talking to many students and alumni, I am convinced that I was not the only student who believed she was going insane. The isolation and alienation that students experience at Harvard Law School reaches farther than Latino students. It is a common feeling, especially among students who do not share a background of racial and economic privilege. By telling the story of Latino students at Harvard Law School, I hope to encourage others to tell theirs and in some way, effect a change for a new

\textsuperscript{523} The Latino Alumni Committee should also ask the Harvard Alumni Association to publish an alumni-student newsletter and help sponsor Latino alumni conferences as it has in the past. The e-mail list is still important to set up, however, because there is often a delay in getting the Alumni Association to send mailings out, and in the past, materials have edited critiques of the administration.

\textsuperscript{524} One way to get alumni involved in recruiting efforts and in mentoring current students is by working with them to sponsor summer receptions. Latino alumni from Harvard are concentrated in cities where students go for summer jobs.

\textsuperscript{525} The executive board of the \textit{Harvard Latino Law Review} includes many alumni who have not been called upon to help in several years. Students need to consider getting those alumni involved.
generation of Harvard educated lawyers. More importantly, I pray that this Article will initiate a process of healing for all those individuals who felt silenced by a sense of privilege and entitlement that taints Harvard Law School classrooms.