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## Getting Comfortable with Discomfort, Diversity & Repair

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# GETTING COMFORTABLE WITH DISCOMFORT, DIVERSITY & REPAIR

Luz Herrera<sup>1</sup>

The topic of this year's conference, diversity, pluralism, and repair, gives us so much to talk about, that for me, it was hard to know where we were to begin. Dean Angela Onwuachi-Willig focused on judicial appointments and the importance of a diverse bench for the legal profession, and in our society.<sup>2</sup> She also discussed becoming comfortable with discomfort and I wanted to pick up on that thread. When I think about discomfort, I think about my own journey in the legal profession.

I was born about 20 miles south of where Thomas Jefferson School of Law is located, in Tijuana, Baja, California, Mexico. My parents already lived in Los Angeles County when I was born, and I never lived in Mexico. I had the fortune of learning to speak Spanish as my first language. My parents, permanent residents in the U.S., reinforced that it was important for me to speak their native language by making frequent trips to Mexico when I was growing up. The language, which I acknowledge is a marker of the colonization in my own family history, was nonetheless what I identified most with culturally as a Chicana and daughter of Mexican immigrants in the United States.

Speaking Spanish was normalized for me until I changed schools at the age of 8. My parents moved a few miles east to a neighborhood whose corresponding school district seemed similar on paper but that I experienced as remarkably different. Demographically, the neighborhood and the school were similar. At both places, a vast majority of my classmates had Spanish surnames, like Dominguez, Martinez, and Sanchez. The difference was that most kids in my new school did not speak Spanish, nor did they seem to view knowing a second language

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1. Luz E. Herrera is a Professor of Law and Associate Dean for Experiential Education at Texas A&M School of Law.

2. Cross-reference to Dean Angela Onwuachi-Willig's comments. Angela Onwuachi-Willig, *Keep Passing the Baton: Reflections on the Legacy of Ruth Bader Ginsburg*, transcript from *20th Annual Women and the Law Conference* (Apr. 2, 2021) T.JEFFERSON L. REV. (forthcoming 2022).

as an asset. Those who spoke primarily Spanish but had enough English literacy, including me, limited our engagement with the language to the family home. Students who did not, ended up enrolled in courses we then referred to as ESL<sup>3</sup> – a cohort that my peers did not deem as a favorable one to belong to.

I grew up in an unincorporated part of Los Angeles County on property adjacent to the cities of Pico Rivera and Whittier. The City of Pico Rivera had a population where a significant group traced its roots to Spanish land grants. The city's name, in part, was a tribute to the last Mexican governor of California – Pio de Jesus Pico<sup>4</sup> - and the name of the captain of one of the two expeditions responsible for settling the City of Los Angeles.<sup>5</sup> Whittier was founded by Quakers and later became known as former President Richard Nixon's hometown.<sup>6</sup> As a second grader, the details of this history eluded me. As I grew up, the only mention of this history was by my classmate, Stacy Pico – the great, great, great granddaughter of former Governor Pico. Without the socioeconomic or historical context, I struggled to affirm my place and identity in these lands as a daughter of Mexican immigrants.

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3. Lily Rothman, *The Complicated History Behind California's Vote on Bilingual Education*, TIME (Sept. 2, 2016), <https://time.com/4041224/history-california-bilingual-education/> (ESL stands for English as a Second Language. Today ESL is more commonly known in California as English Learning development (ELD) and the students enrolled in those programs are English language learners. For a popular reference to the history of English language instruction to immigrant children in California).

4. *Pio Pico*, WHITTIER MUSEUM, <https://whittiermuseum.org/research/pio-pico/> (Last visited Dec. 12, 2021) (Mr. Pico was of mixed-race heritage who was a citizen of Spain, Mexico, and the United States given the transitions in California. His parents were amongst the handful of families that were part of Mexican expeditions that founded Los Angeles in 1781. Mr. Pio Pico was one of the wealthiest men in California. At one point, he owned more than a quarter million acres. There are a variety of accounts for the loss of his estate which include gambling, bad business practices, and fraud. He was involved in more than 100 lawsuits related to his business and land disputes. Twenty of those cases went before the California Supreme Court. For a more complete account, see Carlos Manuel Salomon, *Pio Pico: The Last Governor of Mexican California* 2010).

5. The Spanish expedition of 1781, led by Captain Fernando Rivera y Mocada, is credited with establishing the city of Los Angeles. See Marion Parks, *Instructions for the Recruitment of Soldiers and Settlers for California – Expedition of 1781*, 15 SOUTHERN CALIFORNIA QUARTERLY 189, 189-203 (1931). See generally, Thomas Workman Temple II, *Soldiers and Settlers of the Expedition of 1781*, 15 SOUTHERN CALIFORNIA QUARTERLY 99 (1931).

6. Richard M. Nixon moved to Whittier at the age of 9, graduated from Whittier High School and Whittier College. He also began his career as a lawyer there. See *Richard Milhous Nixon*, WHITTIER MUSEUM, <https://whittiermuseum.org/research/richard-milhous-nixon/> (Last visited Dec 12, 2021).

At an early age, I learned to become fully functional and even comfortable with the discomfort that came with navigating spaces that were not created with my life experience in mind. At home, we spoke, watched television and listened to radio in Spanish. In school, my instruction and my social interactions were in English. I did not often understand my peers' pop culture references so I found my way to contemporary film, television, and music that had few representations of individuals who looked like me. Social pressure lured me to assimilate to mainstream culture, and it is that aspect of my upbringing that has helped me navigate the legal profession.

I came of age when diversity mainly meant incorporating individuals from different backgrounds in educational institutions. That push for diversity opened the door to opportunities for women and people of color, but institutions were not yet well-versed on the necessity of inclusion as a key component of the work that needed to be done. Institutions understood that they needed more diversity and representation in their ranks, however, most did not fully embrace that increasing diversity also meant possibly having long-established practices challenged. Learning how to participate in these spaces took some time but I learned that to really belong I needed to also be comfortable with myself even when my mere presence made others uncomfortable. The accusations of not belonging or not being good enough to participate in institutions of higher learning if not for affirmative action came along with my acceptance letter to Stanford University. I learned to function in that discomfort because I knew that any stigma that I had to fight was worth the promise of economic and social success that college promised. In college, I found others who also struggled with the discomfort and together we found ways not just to get by, but to thrive within an undergraduate environment.

My legal education was a bit more challenging. The discomfort that I experienced as one of 33 Latino/Hispanic students in my class of approximately 550 students at Harvard Law School was unlike anything I had previously experienced.<sup>7</sup> I traded the confidence that my undergraduate institution helped foster with insecurity and fear.<sup>8</sup> I felt

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7. See *ABA Standard 509 Disclosure*, A.B.A., [abarequireddisclosures.org](http://abarequireddisclosures.org) (Harvard Law School has large first year classes. In 2011, it reported a class size of 564 and in 2020, it reported a class size of 465).

8. I was fortunate to attend Stanford University which had a variety of support services, programming, and organizations that supported traditionally underrepresented and first-generation students.

like a fish out of water in law school, and I was unable to find my voice in the large classes of my first year. My undergraduate GPA, test scores, and letters of recommendation affirmed my belief that I earned my way there, but I had a difficult time feeling like I really belonged. I spent my first summer finding refuge in public interest organizations, but by my second summer I was so accustomed to my discomfort that I accepted a summer job at a corporate law firm in San Francisco. I ended up accepting a job offer at that law firm and spent my brief time there trying to figure out how to become comfortable in an environment that felt so foreign.

Early on in my formation as a lawyer, I convinced myself that I would not litigate. This decision was based on my fear that oral arguments would expose my accent. Two years after graduating from law school, I found myself helping an attorney gather evidence and prepare a Spanish-speaking client to defend a commercial eviction. During a lunch break at the trial that I had only planned to observe, the attorney asked me to present our client's testimony. I was not prepared nor comfortable taking on such role, but I found myself standing before the judge leading the direct examination of the client. A few seconds into my questions, I heard the attorney laugh. I looked back at the counsel table and saw him stand up and say, "Judge, I apologize. Spanish is also my first language, and when we get nervous, we often revert to our first language." Confused, I looked at him and he explained, "Luz, you're speaking in Spanish." The judge then said, "Counsel, the interpreter is for the client, not for me." That experience helped me face my worst fear and helped me embrace my discomfort. I realized that I had internalized the idea that knowing Spanish was not an asset and that regardless of my degrees, I did not belong.

Shortly thereafter, I opened a law office where at least 70 percent of my client base spoke Spanish. Becoming comfortable with my discomfort revealed great opportunity that included addressing a need for both my legal and cultural skills. As a lawyer, I was able to use my knowledge of law and legal institutions to help people address a variety of personal legal matters. It was in that role that I finally began to see how the experiences that made me feel out of place led me to a setting where I finally felt I belonged. It was in that role that I realized that my language skills and my cultural heritage were defining in the contribution I was to make to the legal profession. It was as a solo practitioner in Compton, California, that I found my identity as a lawyer. It was then that I understood that the discomfort I had experienced was necessary to grow into the lawyer that I was meant to be. After a few years,

I had the opportunity to take this newfound comfort into academia to share with other first-generation students who also navigate their legal education in discomfort.

Each one of us has a personal history to contend with. Some must deal with historical discrimination and structural barriers, and others must deal with internal demons that make us get in our own way. Becoming comfortable with discomfort requires many of us to invest in reconciling who we are and how we mesh that with the professional spaces we occupy. Sometimes the work we must do involves pushing for institutional changes, and other times it requires that we seek opportunities in new places and spaces. Regardless, to get to a place of comfort in our roles as lawyers, faculty members, caregivers, business leaders, or judges, we must engage in personal work that can also be quite uncomfortable. One of my most beloved mentors, Cecilia Burciaga, would say that the most radical acts we could engage in as women of color was to ensure our self-preservation. Affirming and preserving ourselves requires becoming comfortable with our own discomfort. It requires we engage in some degree of self-repair.

Personal and collective histories are important to understand as we forge a path forward in the legal profession. It is important because so much of our formative education in the United States, has only told part of our collective story. Our understanding of today's headlines cannot be understood without the context of history and what it has taken to affirm our right to vote, our right to earn a living wage, and the right to live after a routine traffic stop. Our country's history is filled with constant threads and inherent tensions in our society that betrays our rhetoric of democracy. We struggle to understand ourselves through a historic lens that is primarily male and white. With few exceptions, our history makes women invisible, or places us in the shadows. It is therefore our role to insist that the history we are making is not only recorded but also celebrated. This means that our discomfort must sometimes be public.

The possibility of dealing with discomfort publicly is frightening but it also means that women are no longer invisible. We refuse to be. Recently, our country celebrated the one-hundredth anniversary of the 19<sup>th</sup> Amendment's extension of the right to vote for U.S. citizen women.<sup>9</sup> In cities across the United States, the "me too" movement has shed light on the sexual harassment and exploitation of women that

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9. *The 19<sup>th</sup> Amendment*, NAT'L ARCHIVES, <https://www.archives.gov/exhibits/featured-documents/amendment-19>.

occurs in the workplace.<sup>10</sup> Women today make up 23.6 percent of Congressional representatives - the highest number in US history but still far away from parity.<sup>11</sup> For the first time in our country's history, we have a vice president who is a woman.<sup>12</sup> Still, our increased visibility at the highest levels of government cannot overstate our accomplishments. For example, we have not successfully passed an equal rights amendment.<sup>13</sup> Our U.S. soccer team has shed greater light on the fact that some of the most talented members of our society are not receiving equal pay.<sup>14</sup> The Center for American Progress tells us that in 2018, women of all races earn 82 cents for every dollar.<sup>15</sup> The situation is bleaker for women of color. Asian American women earn 90 cents to the dollar, Black women earn 62 cents per dollar. Native women earn 57 cents per dollar, and Latinas earn 54 cents for every dollar a man earns.<sup>16</sup> In the legal profession, the disparities between men and women also exist. While women comprise just over 50 percent of the U.S. population,<sup>17</sup> in 2020 we were only 37 percent of lawyers.<sup>18</sup> Women law students are strongly represented,<sup>19</sup> but all women of color are underrepresented in both law school and the profession.<sup>20</sup>

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("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.").

10. Tarana Burke, *History and Inception*, ME TOO., <https://metoomvmt.org/get-to-know-us/history-inception/>.

11. *Women in the U.S. Congress 2020*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/women-us-congress-2020>.

12. Elizabeth Wagmeister, *Kamala Harris Becomes First Female Vice President In American History*, VARIETY (Jan. 20, 2021), <https://variety.com/2021/biz/news/kamala-harris-woman-vice-president-inauguration-1234888228/>.

13. EQUAL RIGHTS AMENDMENT, <https://www.equalrightsamendment.org>.

14. Andrew Das, *U.S. Women's Team Clears Hurdle to Reviving Equal Pay Fight*, THE N.Y. TIMES (Apr. 12, 2021), <https://www.nytimes.com/2021/04/12/sports/soccer/us-womens-soccer-equal-pay.html>.

15. Jocelyn Frye, *Centering Equity in the Future-of-Work Conversation Is Critical for Women's Progress*, CTR. FOR AM. PROGRESS (July 24, 2020), <https://www.americanprogress.org/issues/women/reports/2020/07/24/488047/centering-equity-future-work-conversation-critical-womens-progress/>.

16. *Id.*

17. UNITED STATES DEMOGRAPHIC STATISTICS, Infoplease, [https://www.infoplease.com/us/census/demographic-statistics#:~:text=United%20States%20%20%20%20%20,%20%2050.9%20%2058%20more%20rows%20](https://www.infoplease.com/us/census/demographic-statistics#:~:text=United%20States%20%20%20%20%20%20,%20%2050.9%20%2058%20more%20rows%20).

18. ABA 2021 Profile of the Legal Profession 12, Profile of the Legal Profession Report (americanbar.org)

19. *Id.* at 55 and 84 (In 2020, 54.1% of all law students enrolled in ABA law schools were women).

20. *Id.* at 83.

Many point to the last few years as a time of unprecedented partisan and personal divides that have been destructive to our democracy. It has indeed felt like a difficult time for our country, but history teaches that internal adversity is not new. Our experiment in democracy requires that individuals be passionate about their beliefs and values. Our country has experienced great trials that it eventually resolves sufficiently to make some progress. Change and acceptance of new ways of living take time to accept. We may never get it right, but it is important to keep striving to be better, more inclusive, and fairer. I like to think of today's era as a necessary episode in our country's path and one that precedes the dismantling or weakening of regimes embedded in white supremacy and toxic masculinity. Our country is no longer changing. Our country has changed. We are the most diverse country in the world, and we have the privilege of finding so many pockets of the globe right in our neighborhoods. Our diversity is our strength. Our society will continue to evolve, change, grow, and be influenced by waves of new Americans. That is what makes us unique and what has allowed our country to be such a sought-after home. What today is a source of discomfort – grappling with our differences – will tomorrow be our strength.

As women leaders and public servant leaders, many of us continue to walk uncharted territory, to highlight our histories, and to help our country fulfill its promise of justice and equality. As we do that, let us prioritize doing the work that is needed to accept our own discomfort. That may require that we repair – or at least come to terms with – personal, professional, and sometimes societal dissonance. Lawyer leaders such as Justice Ginsburg grappled with discomfort to advance women's rights in this country. She did her part. It is our turn to do ours.