

# Amor y Esperanza: A Latina Lesbian Becomes a Law Professor

Elvia Rosales Arriola

## Reflecciones

Writing about my presence in the legal academy is about identifying the act of resistance in simply being myself as a Latina lesbian who was trying to develop as a feminist legal theorist when I thought about law teaching as a career in the late 1980s. Now recently retired, I can be grateful that I became a law professor at a time when fairly serious efforts were being made to diversify law faculties with the hiring of more women and racial and ethnic minorities. But in 1991, when I entered the academy as an assistant professor, not many law professors were openly gay or lesbian and writing about LGBT issues. In the same way that I didn't apply to law school thinking, "I'm going to be a law professor," I didn't think about the implications for my entering the academy as not only an out-of-the-closet *marimacha* (colloquial Spanish for lesbian), but also as someone proud to be Latina-Mexicana and committed to research and writing as a feminist scholar. At my first law teaching job as an assistant professor, I was especially unprepared for the rejection I experienced of many facets of my non-white-not-male personal and professional identity. Therefore writing this essay feels like another act of resistance and courage to again embrace my personal identity. It's an opportunity not only to reflect on the journey that allowed me a career as a feminist Latina lesbian teacher and scholar, but also to express gratitude for those who supported my journey, including the AALS Section on Sexual Orientation and Gender Identity Issues. The legal academy was being challenged to diversify its faculties in the early 1990s, and I benefited from that felt pressure among faculties at large and small universities by being one of four women hired at the same time at a large southwestern law school. Feeling some kind of support to be both openly lesbian and a woman of color as a professor was critical to my eventually having a fulfilling career despite my also having to overcome being the target of implicit and explicit bias during my early years in law teaching.<sup>1</sup>

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1. The questions surrounding the how and why of my resigning from the tenure track in 1994 were first raised in Elvia Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicity of Self*, 2 HARV. LATINO L. REV. 397 (1997). A more recent writing reflects on the process of healing from traumatic institutional rejection. Elvia R. Arriola, "No Hay Mal Que Por Bien No Venga": *A Journey to Healing as a Latina, Lesbian Law Professor*, in PRESUMED

Critical to understanding my path to law teaching is appreciating some of my roots as the daughter of Mexican immigrant parents who worked hard doing the best they could to feed, clothe, and educate us. I had an uneven trajectory toward getting a law degree, and I was incredibly fortunate that when I was ready to pursue a legal education, UC Berkeley was committed to affirmative action and actively recruiting smart, qualified women and minorities to enroll at Boalt Hall. I had no one expecting me to do anything in particular with my college education, and certainly no one in my family expected I would go to law school. After all, my family hardly expected me to attend college. As first-generation Mexican-Americans, my siblings and I have had very successful careers in business, education, and entertainment because we inherited smart genes and we worked as hard as our parents did. College was not an expected goal for us. If we wanted a college education we'd have to work for it.

### Memorias

I got to UC Berkeley in 1980 at the age of 29, separated from a husband and definitely unclear that I might be lesbian. The political culture of the 1970s, that period when I was coming into my own as a young working-class woman, married to my college boyfriend and working to support us both as a legal secretary, is historically marked by the rise of feminist gender and sexual politics and a series of important Supreme Court cases that would reframe ideas of sex equality and privacy under the Fourteenth Amendment.<sup>2</sup> It's also the decade following the 1969 New York City Stonewall Riots, when all over the U.S. gays and lesbians began to demand the right to love openly and to be rid of the public harassment and discrimination virtually licensed because of criminal sodomy laws.<sup>3</sup>

Ahhh, the 1970s—an important historical period of a nation grappling with questions about gender and sexuality and male power in the home, in education, and in the workplace! But that wasn't the case for me personally during the 1970s. I was clueless about the cultural wars being played out in civil rights cases over the status of women and racial, ethnic, or sexual minorities.<sup>4</sup> Occasionally, an assignment in one of my college night courses enlivened the gender reform battles moving through the courts, although not enough to turn me then into a feminist activist. I was too busy trying to make rent and

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INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS IN ACADEMIA 372 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012).

2. See, e.g., *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971); *Reed v. Reed*, 404 U.S. 71 (1971); *Roe v. Wade*, 410 U.S. 113 (1973); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Craig v. Boren*, 429 U.S. 190 (1976).
3. Elvia R. Arriola, *Faeries, Marimachas, Queens, and Lezzies: The Construction of Homosexuality Before the 1969 Stonewall Riots*, 5 COLUM. J. GENDER & L. 33 (1995).
4. See, e.g., *Baker v. Nelson*, 191 N.W.2d 185 (Minn. 1971), *cert. denied*, 409 U.S. 810 (1972) as one of the first attempts by a gay couple to claim discrimination in the denial of a marriage license.

pay bills by holding down a job as a secretary in downtown L.A., working first for a labor union, then for law firms as a legal secretary.

My pre-law professor years were about being driven—to learn, to better myself, to do something that I felt passionate about. Undoubtedly, all of my career moves after law school, such as the Marvin Karparkin Fellowship at the national ACLU in New York, the writing instructor post at NYU, the assistant attorney general post in the New York State Civil Rights Bureau, and finally, in 1991, my first job as an assistant professor, were about satisfying a hunger to grow professionally and intellectually; but they were also about simply getting work. I know I often said, “I want to combine my talents with doing something good for others.” That was the Catholic school girl talking.

I had years of private schooling in the U.S. and in a Mexican boarding school, and I do owe some of my commitment to social-justice activism to aspects of a moral education that inspired compassion in action. But otherwise, my pre-higher education years were influenced by the strict gendered rules of the church for girls and women. From age 14 to 18, in a Catholic boarding school in Guadalajara, I was often reminded by the Salesian nuns, “Your education is preparing you to become an ‘angel of peace’ in your home, a pious, joyful, subservient wife and mother.” “Whoa!” uttered some inner voice on behalf of my teenager’s feelings that had no words. Beginning at least at age 12, I had had feelings I couldn’t talk about and painful crushes on girls and on my female teachers. But talk about these feelings? Impossible in the 1960s in a convent school for girls in Mexico! I smile now at the irony of June 1969 being the year of the Stonewall Riots, as it is the same month and year I graduated from *escuela secundaria* (high school). I still have a Kodak Instamatic photo of the event taken by my dad. There I am, the budding and clueless gender rebel, head bowed beneath a beautiful lace *mantilla*, at a ceremonial mass in downtown Guadalajara, defiantly wearing my uniform just a little too high (for the nuns), above the knee.

It was in the workplace and in my first marriage that I personally felt the effects of white male power. Of course, because I needed to work while I took night courses at CSULA,<sup>5</sup> I didn’t have time for political activism on campus. I was living out the life of “compulsory heterosexuality” richly identified by feminist author Adrienne Rich,<sup>6</sup> clueless that some of what just didn’t ever feel right in my relationship with the boyfriend-turned-husband might have been connected to my suppressing my real sexual orientation. My husband and I certainly talked about progressive issues; he often affirmed that “women’s lib” was great; we enjoyed discussions of the racial and sexual politics of the era

5. California State University at Los Angeles.

6. Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 *SIGNS* 631 (1980).

marked by cases like *Roe v. Wade*<sup>7</sup> and *Bakke v. UC Davis*,<sup>8</sup> and of course we voted. But it was not until I got to law school full time in 1980 that I met people who had been involved in groups like MECHA<sup>9</sup> or La Raza,<sup>10</sup> or in women's rights activism as undergraduate students. Before that I'd only known working and going to school for about ten years, moving to different jobs for better pay, earning good grades, working for lawyers, and quite often tolerating sexually offensive male behavior.

Stinging memories of workplace incidents that would later have a name in the legal culture as "sexual harassment" certainly served me well when I did come into my gender and feminist consciousness. Take my very last job just before I moved from Los Angeles to the San Francisco Bay area for law school: There I was typing away by day—complaints, motions for summary judgment and briefs—for all white men in a small corporate law firm owned by a wannabe politician. All of the young staff attorneys had attended Stanford. I can still remember the day we, the all-female secretaries, saw a young woman being interviewed for an attorney position. When she left, Mr. Wannabe Politician marched out of his office complaining loudly, "Why the hell did she refuse to answer whether she's planning on having kids?" Surprising? Not really. This same man had a standard phrase every time a new secretary, always female, was hired. The day he met me as the newest secretary he remarked, "You didn't tell me she was so pretty." A few weeks later someone quit and the next new hire got the same line.

When I look back at Mr. Wannabe Politician's comments, I see them now as relatively harmless compared with those at an earlier job, where one of the attorneys had a regular habit of grabbing my waist every time he came through the copy room and saw me standing at the Xerox machine. And the time a drunken senior male at an office party gushed over the size of a female co-worker's breasts while praising us both for joining the guys in the drinking because our doing so "pleased the boss." Or the time one of my bosses asked me if I'd fly up to spend a weekend with him in San Francisco at a conference, knowing I was married. There was one boss, however, who, though equally guilty of sexual harassing conduct, also appreciated that I was smart and

7. *Roe v. Wade*, 410 U.S. 113 (1973).

8. *Regents of the Univ. of Cal., Davis v. Bakke*, 438 U.S. 265 (1978).

9. MECHA (Movimiento Estudiantil Chicano de Aztlán) provided Chicana/o students with opportunities to advocate for empowerment.

10. La Raza Unida Party emerged in 1970 as part of the movement for empowerment of Chicana/os in the Southwest. See *Raza Unida Party*, TEX. ST. HIST. ASS'N, <https://tshaonline.org/handbook/online/articles/war01> [<https://perma.cc/2PUV-XXTC>] (last updated Mar. 25, 2016). The National Council of La Raza exists as a national organization today continuing to advocate on behalf of Latinas/os in the U.S. The term "raza" means "the people." *Questions and Answers about NCLR*, NAT'L COUNCIL OF LA RAZA, <http://www.nclr.org/about-us/faqs/> [<https://perma.cc/XJQ4-G95A>] (last visited Nov. 14, 2016). The *La Raza Law Journal* was founded at UC Berkeley in 1981. *About This Journal*, BERKELEY LA RAZA L. J., <http://scholarship.law.berkeley.edu/blrlj/about.html> [<https://perma.cc/2MTR-4UCZ>] (last visited Nov. 14, 2016).

that, given the opportunity, I might go far. When I told him that I “might go to paralegal school,” he said, “Don’t! You’re too smart. It’s just a glorified secretary’s job.” I heard him. I remember fondly the fatherly remarks of my bearded, pipe-smoking undergraduate advisor who reacted with enthusiasm at my asking, “Do you think I can go to law school?” In a booming voice, the late Edward Goldberg responded, “Of course you can go to law school! You’re one of our top students, day or night. Do it. Apply. We will support your application.”

I divorced my husband in the middle of my second year of law school. It was the beginning of my committed gender rebellion against the moral teachings of my youth—to refuse to be married unhappily to a man for the remainder of my life, and to give myself permission simply to ask, “Am I gay?” By the time I graduated in 1983 and moved to New York as an ACLU Marvin Karparkin Fellow, I had placed on my personal agenda answering yes or no to the question, “Are you a lesbian?” In a sense I left Berkeley with a renewed sense of personal freedom to explore and to question the gender and sexuality rules to live by that I had now reframed as “Opinions of Men With Power Who Don’t Like Women.”

My education, my amazing work experiences as an ACLU lawyer, the volunteer opportunities I found in New York amid the growing AIDS crisis—all fed the series of career moves that led me to law teaching. The national ACLU offices were in a building it owned off Broadway in Manhattan, and in 1984 one of its new tenants, in a tiny corner office, was a project calling itself Lambda Legal Defense and Education Fund, which had a mission to fulfill: to fight against all forms of discrimination against lesbians and gays, including taking the fight all the way to the Supreme Court by challenging the constitutionality of sodomy laws, which provided a bedrock foundation for homophobic attitudes and public policy. So I was living and breathing civil rights litigation just as the country was being hit with the AIDS epidemic and the consequent culture of fear. I simply could not escape the politics of gender and sexuality in the news and in public conversations everywhere. To me it’s not coincidental that just as I was coming out as a lesbian I was also becoming passionate about civil rights law and about the growing AIDS-related forms of homophobia, and that I took that energy into the ideas for my first law review article exploring an identity-based theory of gay civil rights.<sup>11</sup> I look back and see a very impassioned me believing I had found my true self, and if there was nothing wrong with me, then it was the rules, the prejudice and the law that must be wrong, not others like me.

11. Elvia Rosales Arriola, *Sexual Identity and the Constitution: Homosexual Persons as a Discrete and Insular Minority*, 10 WOMEN’S RTS. L. REP. 143 (1986). Although the arguments in this article reflected the passion of a young lawyer and budding scholar, its theme of group identity and discrimination can be found in the reasoning of the Court in *Romer v. Evans*, 517 U.S. 620 (1996).

### Llega la Marimacha Profesora

In 1991, after some years of civil rights law practice, more graduate education, and a second major article using gender, sexuality, race, and class perspectives for a social legal history of sexual harassment law,<sup>12</sup> I started a job as assistant law professor at a major university. Four women were hired at the law school, bringing the total female law professor presence to seven out of a faculty of eighty. I was the first woman of color, and at my first AALS gathering of Michael Olivas's Latino Law Professors Dinner in January 1992, I heard we now totaled twenty-one Latina/os in the entire legal academy. And although Kinsey's research had been saying for a while that at least ten percent of the American population was probably gay,<sup>13</sup> the presence of out LGBTs in the legal academy was virtually nil.<sup>14</sup> Curriculum changes had barely incorporated women, and the law courses and only a few major law schools were funding journals on women and the law. I would not meet another Latina/o queer until the 1994 Lavendar Law conference, where I met Francisco Valdes. He would later invite me to the first conference that became "LatCrit."<sup>15</sup>

One thing that is important to the history of my own presence in the legal academy as an openly lesbian Latina professor is that I had no appreciation whatsoever when I was hired for how vicious workplace politics can be in the legal academy. At times I still hesitate when I explain how it is that I started my career in 1991 and then had to start over again on a much shorter tenure track in 2001 at the university from which I have now officially retired. But looking back at the 1990s and my first time around as an assistant law professor I see myself as so naive about how the particular tenure politics of my own workplace were perfectly in sync with the emerging post-civil rights backlash of the 1990s. As I was moving along in the first years of my tenure, we saw the election of Bill Clinton, followed by a virulent and a misogynist campaign against Hillary Clinton's 1993 health care reform proposals; the emergence of high-profile Republican conservatives like House Minority Leader Newt Gingrich proposing a new contract with America;<sup>16</sup> the attacks

12. Elvia R. Arriola, "What's the Big Deal?" *Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985*, 22 COLUM. HUM. RTS. L. REV. 21 (1990).

13. HOMOSEXUAL BEHAVIOR: A MODERN REAPPRAISAL 6 (Judd Marmor ed. 1980) (referencing the Kinsey scale, which suggested a seven-point scale to describe all people as falling on a sexual continuum based on both inner psychological and overt experiential reactions).

14. Professor Arthur Leonard was openly gay and documenting anti-gay discrimination in his now widely cited *Lesbian/Gay Law Notes* beginning in 1982, when he joined the faculty at New York Law School. I would meet him as a fellow member of the Lambda Legal Committee in New York City. Before Leonard, Professor Rhonda Rivera published *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 30 HASTINGS L.J. 799 (1979), but not as an LGBT scholar. See Rhonda R. Rivera, *Our Straight-Laced Judges: Twenty Years Later*, 50 HASTINGS L.J. 1179, 1180-84 (1999) (describing how and why she wrote the article).

15. *Overview of LatCrit Conferences*, LATCRIT: LATINA & LATINO CRITICAL LEGAL THEORY, INC., <http://www.latcrit.org> (last visited Nov. 14, 2016).

16. Newt Gingrich, *Contract with America*, CNN, Sept. 27, 1994, available at <https://www.youtube.com/watch?v=fSmVYqCqzKI> (last visited Dec. 29, 2016).

on Anita Hill's testimony to the Senate Judiciary Committee that her former boss, Supreme Court nominee Clarence Thomas, had repeatedly sexually harassed her; and self-appointed defenders of "meritocracy" funding a new brand of "civil rights" lawsuits intended to demolish affirmative action in higher education admissions.<sup>17</sup> Only when I place my first derailment off the tenure track in a historical context do I see how my experiences of being "presumed incompetent" were part of a growing backlash of white men in power in the legal academy feeling unnecessarily threatened by affirmative action and feminism. "They don't even understand what they don't like about you," said a senior colleague to me when she saw my pain and confusion following the mean and public post-hire attacks on my credentials. "You've gotten here with proof of your scholarly abilities, so your very presence defies the stereotypes they have about you as a woman or a Latina. And that makes them uncomfortable."

But my being lesbian also made some of my colleagues uncomfortable. For example, just after I arrived at my new workplace in the fall of 1991, the dean of the law school invited all the new hires and their spouses to a Sunday brunch at an elegant hotel. Single at the time, I invited a female friend as my date. The look on his face said it all. He was . . . surprised? Miffed? Offended? At the extra cost? Unlikely, as he was dean of one of the richest law schools in the country. The shock that I used the word "date"? Probably. The stereotypes were still deeply embedded in the American psyche. Acknowledging that I dated women would be forcing him (and his guests) to deal with me as a person, in public, as an out-of-the-closet, i.e., not ashamed, lesbian. It was, after all, just a few years after *Bowers v. Hardwick*,<sup>18</sup> and the Supreme Court had upheld the right of the government to criminalize homosexuality. But the LGBT community was fighting back with agendas of not only getting more funding for AIDS-related medical research, but also of being seen as more than our sexuality, as "domestic partners" with families and sometimes children. LGBT advocacy groups were asking people to come out of the closet and show people "we are everywhere," we are your neighbor, your co-worker, your dentist, and your plumber, etc. Here I was being myself, having the *cojones* to present all of me, as Latina and lesbian *and* also one of the new assistant professors.

Those of us who were among the first either openly gay or lesbian law professors of color would taste and feel the backlash and choose either to run back into The Closet, or move forward just being ourselves as an LGBT professor, claiming our right to be in the legal academy. The late critical thinker Gloria Anzaldúa understood well how "the overwhelming oppression is [for a queer, brown female] the collective fact that we do not

17. *See* Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996) (upholding claim of race discrimination in the use of affirmative action in admissions by rejected white applicant).
18. *Bowers v. Hardwick*, 478 U.S. 186 (1986) (upholding right of the state of Georgia to enforce criminal sodomy statute).

fit, and because we do not fit we are a threat.<sup>19</sup> She identified, however, the personal freedom from not having to answer the question, Am I first a woman? Lesbian? Chicana? Feminist? “I belong to myself and not to any one people,” concluded Anzaldúa.<sup>20</sup> Coming to a similar realization allowed me to thrive as a teacher and scholar and social-justice activist. Very likely my colleagues in this symposium came to similar conclusions, deciding to move on, to teach, write, and even organize on social-justice issues of importance to us as educators. For example, as a member of the Board of Governors of the Society of American Law Teachers, I would help organize and participate in a post-*Hopwood v. Texas*<sup>21</sup> march at the 1997 annual meeting of the AALS to reclaim and affirm our commitment to the principles of affirmative action. In the years following the terrorist bombing of the World Trade Center, and as the culture of fear affected public policy, law professors had the opportunity to speak up and defend the principles of equality and academic freedom.

I am proud to have been part of the organizing effort as part of the Executive Committee of the AALS Section on Sexual Orientation and Gender Identity Issues, and as a SALT Board member, to produce a panel on the impact of the Solomon Amendment on academic freedom at the 2003 AALS Annual Meeting.<sup>22</sup> Sometimes our mere presence on a law faculty as an outsider identity or a voice of dissent allowed us to become not only leaders and voices of rebellion, but also bridges of hope for those reading our articles, or hearing our lectures and becoming the next generation of outsider teachers and scholars. Therefore I end on a note of gratitude, *amor y esperanza*. I am grateful to appreciate how my early years in law teaching could be framed as a pioneer’s journey into an unknown tasting of bitterness and unfair rejection, presumed incompetence, major financial setbacks from starting over, and blatant examples of implicit and explicit bias at my first academic home just because I was law professor who was both a lesbian and a woman of color. And yet those experiences and my teaching career allowed me to flourish as a gender and sexuality law scholar and teacher. I met incredibly brilliant colleagues as a member of the Board of Governors for the Society of American Law Teachers and at LatCrit<sup>23</sup> conferences, where I was regularly inspired to think of new and better ways to integrate critical thinking into legal education and into research projects that could affirm the importance of the new, the different, or

19. Gloria Anzaldúa, *La Prieta*, in *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* 198, 209 (Cherríe Moraga & Gloria Anzaldúa eds., 1981).

20. *Id.*

21. 78 F.3d 932 (5th Cir. 1996).

22. The “Solomon Amendment” was actually a series of amendments to various congressional appropriations that were relied upon by the Department of Defense to strong-arm universities and law schools to allow military recruiters on campus under threat of losing federal funds at a time when the military’s Don’t Ask Don’t Tell policy prohibited the hiring of openly gay/lesbian students. See Elvia R. Arriola, *Democracy and Dissent: Challenging the Solomon Amendment as a Cultural Threat to Academic Freedom and Civil Rights*, 24 ST. LOUIS U. PUB. L. REV. 149, 151 (2005).

23. *Overview of LatCrit Conferences*, *supra* note 15.

the unheard.<sup>24</sup> The taste of discrimination at my first assistant professorship likely radicalized my thinking. I kept on researching and writing. The first LatCrit conference helped me begin to heal and believe that I might still have a law professor career somewhere, someday. A new academic home with early tenure provided support and opportunities to grow as a teacher, scholar, and mentor. And over the many years I have had the privilege and the honor to meet and engage with a number of brilliant young minds filled with love and hope, *amor y esperanza*, for combining their skills someday with defense of the weak and the powerless, and of the constitutional ideals of equality and justice for all.

24. Elvia Rosales Arriola, *Queer, Undocumented and Sitting in an Immigration Detention Center: A Post-Obergefell Reflection*, 84 UMKC L. REV. 617 (2016).