

# RASCUACHE LAWYERING: A CHICANA/O VISION OF REBELLIOUS LAW PRACTICE, PEDAGOGY, AND CLIENTS

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*This essay uses storytelling and the narrative method of Critical Race Theory to address current issues in progressive law practice. Specifically, it seeks to expand on Gerald López's vision of *Rebellious Lawyering* by applying the Mexican concept of *rascuache* or *rascuachismo*, a bottom up have not aesthetic and sensibility. By focusing on *rascuachismo*, I seek to shift attention from lawyers to clients and their impact on pedagogy and practice. Two narrative case studies, based on the experiences of *rascuache* clients, are used to demonstrate the unique ways that *rascuache* clients respond to subordination. While *rascuachismo* represents a distinct *mexicano* aesthetic and sensibility that is humorous, satirical, and playful, I propose that it is also a form of resistance to cultural control and economic and political oppression. The *movidas rascuaches* or hustles, described in this article and the rich folkloric stories surrounding their successful implementation, rather than being a sign of weaknesses, inferiority, or subordination, are weapons of the weak. They are resourceful and creative strategies that immigrants, minorities, and members of subaltern classes use to survive and to thrive in an otherwise hostile environment.*

## I. INTRODUCTION

When *Rebellious Lawyering*<sup>1</sup> first appeared in 1992, I was in my second year at Stanford Law School and enrolled in Jerry López's "Teaching Self-Help and Lay Lawyering" class. We read his book and a number of other works that centered on the rebellious vision of progressive law practice. Jerry's classes and the Lawyering for Social Change (LSC) curriculum were like a breath of fresh air and a welcome reprieve from the traditional law school curriculum and the regnant, hierarchical view of law and lawyering.

During that second year, I was also introduced to Critical Legal Studies (CLS) and Critical Race Theory (CRT) in a History of Mod-

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<sup>1</sup> GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

ern Legal Thought class taught by Thomas C. Grey, a prominent legal theorist at Stanford, and an expert on legal pragmatism. It was here that I first encountered the writings of people like the late Derrick Bell<sup>2</sup> and Richard Delgado and Critical Feminist scholars like Mari Matsuda, Kimberlé Crenshaw, Patricia Williams, and Angela Harris.<sup>3</sup> Intrigued by these progressive critiques of law, and surprised that these works were largely ignored in the LSC curriculum, in the second semester I enrolled in a directed studies course with Professor Grey where I wrote a paper on CRT and Delgado. The paper was subsequently published in a special issue of the *Harvard Latino Law Review*<sup>4</sup> devoted to Delgado's *Rodrigo Chronicles*.

One of my goals in this essay is to link López's vision of rebellious law practice with existing CRT and LatCrit scholarship. Despite the significance and impact of *Rebellious Lawyering* on clinicians and practitioners, López's vision of law and progressive law practice has largely failed to be incorporated into CRT and LatCrit scholarship. These theoretical paradigms, in turn, have done little to advance our understanding of law practice or the rebellious vision of lawyering for social change. López's rebellious lawyering principles and pedagogy have also not been incorporated into undergraduate and graduate university curricula outside of law schools.

Over the past twenty-five years or so, I have sought to implement the rebellious vision of law and law practice in my pedagogy, scholarship, and law practice. For example, in my undergraduate teaching I have developed an innovative undergraduate class, "Law and Subordination," where students are trained to be lay lawyers, to teach self-help, and to work in community placements as advocates for, with, and on behalf of people at the bottom of the social hierarchy. In other words, to work with people who normally do not have access to law or to lawyers. I have also sought to implement rebellious lawyering principles in my graduate seminars. I have, for example, developed a graduate seminar in Sociology, Law, Race, Class, Gender, and Cul-

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<sup>2</sup> DERRICK A. BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR SOCIAL JUSTICE* (1987).

<sup>3</sup> *Id.*; Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Richard Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 PENN L. REV. 561 (1984); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581. *Law Review* (1990); Mari Matsuda, *Looking at the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987); Charles R. Lawrence, III, *Race and Affirmative Action: A Critical Race Perspective*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 312 (David Kairys ed., 1998) [hereinafter *THE POLITICS OF LAW*].

<sup>4</sup> Alfredo Mirandé, "Revenge of the Nerds," or Postmodern "Colored Folk"?—A Critique of Critical Race Theory and the *Chronicles of Rodrigo*, 4 HARV. LAT. L. REV. 153 (2000).

ture, which seeks to incorporate law and subordination and Critical Race Theory principles into Sociology. Finally, I have sought to implement rebellious lawyering principles in my small, largely pro bono law practice.

This essay continues the tradition and method introduced by Bell, Delgado, Williams and other members of the legal storytelling movement by using narrative as a technique to address current issues in CRT and LatCrit and in rebellious law practice. My intent here is to extend and expand on the ideas contained in *Rebellious Lawyering* to CRT and LatCrit, and to examine the interrelationship and synergy between critical theories of race in law and social science conceptions of rebellious practice. Specifically, by sharing two case studies from my rascuache law practice, my goal is to apply López's vision of rebellious lawyering to the Chicana/o experience through the concept of *rascuache*<sup>5</sup> or "*rascuachismo*."

I seek to expand on the twin concepts of rascuache and rascuachismo and to apply a rascuache sensibility not only to Gerald López's vision of rebellious practice but also to larger political forces, political mobilization, and social movements for social change in the society at large. While my previous work, like *Rebellious Lawyering*, focused on the rascuache lawyer and lawyering, here I turn my attention to rascuache clients. I address how a fuller understanding of rascuache clients can advance our vision of rebellious law practice.

In a classic commentary and critique of CLS, a movement led largely by progressive White men teaching at elite law schools,<sup>6</sup> Bob Gordon commented on the divide among people attending CLS conferences between theorists and practitioners.<sup>7</sup> While theorists generally eschew and devalue practice, practitioners hunger for theory. Gordon adds that despite differences among members of the CLS movement, an amazing amount of convergence characterizes their work. The prototypical Crit was a progressive who first started thinking about law as a student in the late 1960s, or progressive lawyers who tried to use the system against the system.

Harold Dalton has observed that people of Color<sup>8</sup> hold the po-

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<sup>5</sup> The word is also spelled rasquache with a "q" instead of a "c." I prefer the latter usage because I believe it is perhaps more rascuache.

<sup>6</sup> Roberto Mangabeira Unger, *The Critical Legal Studies Movement*, in *CRITICAL LEGAL STUDIES* 323 (Allan C. Hutchinson ed., 1989); Peter Gabel & Jay M. Feinman, *Contract Law as Ideology*, in *THE POLITICS OF LAW*, *supra* note 3, at 497; Robert W. Gordon, *Some Critical Theories of Law and Their Critics*, in *THE POLITICS OF LAW*, *supra* note 3, at 641.

<sup>7</sup> Gordon, *supra* note 6.

<sup>8</sup> I have opted to capitalize "Color" in people of Color as well as "Black" and "White" in the text because the terms are used to refer to groups of people and not to color per se.

tential for bridging the schism between theorists and practitioners because they are “practitioners” almost by definition in the sense that the consequences of racism have direct, practical, inescapable, and immediate relevance for them.<sup>9</sup> In other words, even if people of Color are not all technically “practitioners,” we cannot simply “walk away” from race issues the way White progressives can. Following Dalton’s lead, I propose that the terms *rascuache* and *rascuachismo* can be used to link Chicana/o practitioners to the experiences of our subaltern clients, specifically to working class Mexicano/Chicano clients.

Having introduced the topic, Part II develops the Mexican concept of *rascuachismo*, a working class aesthetic and sensibility. In Part III, I extend the discussion of *rascuachismo* from a working class aesthetic and sensibility to an active and creative form of resistance to oppression and subordination both in the United States and transnationally. Part IV discusses how *Rebellious Lawyering* and Critical Race Theory have impacted my pedagogy. It also seeks to narrow the gap between Critical Race Theory and LatCrit scholarship and rebellious lawyering by merging the former’s narrative, storytelling tradition with the use of fictional characters in *Rebellious Lawyering*. It is here that I introduce my fictional character, friend, and protagonist, Fermina Gabriel, a brilliant and rebellious, *rascuache* lawyer. In part V, I use my *Letters to Fermina* as a vehicle for further developing and integrating *rascuachismo*, rebellious lawyering, and pedagogy. Part VI presents two case studies of *rascuache* clients and their experiences with the legal and judicial system—Juan Carlos, a young Mexican immigrant wrongly accused of auto-theft, and María y José, a Mexican couple whose pursuit of the American dream was shattered by the untimely death of their infant son. The essay concludes by comparing and contrasting rebellious and *rascuache* lawyering and affirming Gerald López’s observation that despite vast power differentials in contemporary society, no group is ever completely powerless. I conclude that the spontaneous *movidas rascuaches* described in this essay, rather than being a sign of weaknesses or inferiority are, in fact, resourceful and creative strategies that immigrants and members of subaltern classes use not only to survive but also to thrive in an otherwise hostile environment.

## II. RASCUACHISMO: A MEXICANO WORKING CLASS AESTHETIC

I should begin by providing some background on the *rascuache* sensibility and world view. *Rascuache* is a vernacular term with uniquely *mexicano* meanings and connotations. In fact, according to

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<sup>9</sup> Harold Dalton, *The Clouded Prism*, 22 HARV. C.R.-C.L. L. REV. 435 (1987).

literary theorist and critic, Ilan Stavans, “rascuache is a Mexican colloquialism not found in the venerated *Diccionario de la Real Academia Española* that has no English cognate and “is used in Mexico to describe a cultural item of inferior quality and proletarian origin,” such as “The Pachuco fashion style in Los Angeles,”<sup>10</sup> or Cantinflas’ uniquely Mexican, proletariat comedic style and dress. A random list of rascuachismos would surely include José Montoya and the members of the fictional Royal Chicano Air Force, the early *actos* of El Teatro Campesino, José Guadalupe Posada’s *calaveras* (skulls), and the movie *Born in East L.A.*<sup>11</sup>

Tomás Ybarra Frausto notes that ironically, “One is never rascuache,” and that “it is always someone else, someone of a lower status, who is judged to be outside the demarcators of approved taste and decorum.”<sup>12</sup> However, like other terms and concepts, especially the word Chicano itself which traditionally had a negative sense, the term has been turned on its head.<sup>13</sup> “Chicano art that is rascuache usually reflects an underdog have-not sensibility that is also resourceful and adaptable and makes use of simple materials including found ones such as Luján’s cardboard, glue, and loose sand.”<sup>14</sup> Rascuachismo is also linked to Chicano structures of thinking, feeling, and aesthetic choices.<sup>15</sup> Ybarra-Frausto observes,

Rascuachismo is a sensibility that is not elevated and serious, but playful and elemental. It finds delight and refinement in what many consider banal and projects an alternative aesthetic—a sort of good taste of bad taste.<sup>16</sup>

I have similarly applied the concept to law. In *Rascuache Lawyer*,<sup>17</sup> I proposed and developed a rebellious rascuache vision of law practice, which is not serious, elevated, or pretentious, but playful, accessible, resourceful, utilizing simple materials, resources, and cultural and social capital that are readily available in the Chicana/o community. One important resource, for example, is the exchange of legal services for services that could be readily provided by clients such as

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<sup>10</sup> ILAN STAVANS, *THE ESSENTIAL ILAN STAVANS* (2000).

<sup>11</sup> Tomás Ybarra-Frausto, *Rascuachismo: A Chicano Sensibility*, in *CHICANO ART: RESISTANCE AND AFFIRMATION, 1965-1985* 155 (Richard Griswold Del Castillo, Teresa Mckenna, & Yvonne Yarbro-Bejarano eds., 1991).

<sup>12</sup> *Id.* at 155.

<sup>13</sup> *Id.*

<sup>14</sup> Rascuache, *Hisp. Res. Ctr. (Ariz. St. U. 1991)*, <http://mati.eas.asu.edu/chicanarte/unit2/rascuache.html>.

<sup>15</sup> Ybarra-Frausto, *supra* note 11, at 155.

<sup>16</sup> *Id.*

<sup>17</sup> ALFREDO MIRANDÉ, *RASCUACHE LAWYER: A THEORY OF ORDINARY LITIGATION* (2011); see Alfredo Mirandé, “*Light But Not White*”: *A Race/Plus Model of Latina/o Subordination*, 12 *SEAT. J. FOR SOC. JUST.* 947 (2014).

car repair, carpentry, and home painting. Two of my clients, for example, were mechanics, and I established patterns of exchange where I provided legal services in a variety of different venues and contexts, while my clients, in turn, provided valuable mechanical services for my rascuache cars. Another two clients I represented, Xavier and Rodrigo,<sup>18</sup> were house painters by trade and I similarly developed a quid pro quo exchange with them for my legal services.

Rascuaschismo is an underdog perspective that presupposes the worldview of the have-nots but it is also a quality found in objects and places such as a rascuache car or restaurant and in social comportment, as in a person who acts rasquache,<sup>19</sup> or, in my case, a rascuache lawyer. “To be rasquache is to be down, but not out (fregado pero no jodido)”<sup>20</sup> and responding to the material level of subsistence and existence is what instills a rasquache attitude of survival and inventiveness.<sup>21</sup> According to Ybarra-Frausto, “As a way of being in the world, rascuaschismo assumes a vantage point from the bottom up. It proclaims itself from the margins and borders of the culture.”<sup>22</sup>

The rascuache sensibility I propose and have used as a lawyer and teacher is a “bottom up” view of law, lawyering, teaching, and law practice. It is a conception of law, lawyering and teaching, in other words, for and on behalf of *los de abajo*; people at the bottom or margins of the social hierarchy who are outside the parameters of the legal establishment. I propose that perhaps what is needed is the development of a tentative paradigm of ordinary rascuache litigation that incorporates not only existing theories in critical race theory, Lat-Crit theory, but also López’s vision of rebellious law practice.

Rascuaschismo is generally described as a vantage point that is humorous, playful, and ironic and not confrontational or hard-edged,<sup>23</sup> and has been linked to artistic expressions, which reflect a distinct *mexicano* aesthetic and sensibility. It is important to note, however, that the term is not limited to aesthetics but is also associated with resistance to cultural control and economic and political oppression and subordination. It is a have-not posture and sensibility that is not only resourceful and adaptable but a response and adaptation to the harassment and control of external authorities like the police, the Border Patrol, and other entities that impinge on the Mexicano/Chicano community.<sup>24</sup>

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<sup>18</sup> I use pseudonyms here and when referring to them and other clients.

<sup>19</sup> Ybarra-Frausto, *supra* note 11, at 156.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 160.

<sup>23</sup> Rascuache, *supra* note 14.

<sup>24</sup> *Id.*

### III. RASCUACHISMO AS RESPONSE AND RESISTANCE TO SUBORDINATION

#### A. *Rascuache Cyclists: Transcending the Urban Landscape*

In a recent essay, Raymond L. Williams and I<sup>25</sup> propose a “bottom up” view of bicycle justice and apply rascuachismo to cycling in urban areas. They contend that attempts to regulate cycling by the state are, in fact, extensions of a movement in society to regulate space by law and to marginalize the poor, youth, racial minorities, and undocumented persons by removing them from the urban landscape.<sup>26</sup>

The social-economic strata of cyclists in southern California begins with what Mirandé and Williams term Rascuache Cyclists. This group are the typically unhelmeted and uniformless cyclists who out of necessity generally rely on the bicycle as a means of transportation, often to and from work.<sup>27</sup> Many rascuache bicycle owners are commuters who travel in the most direct line they know to and from work and school, sometimes ignoring or simply unaware of bicycle routes.

Mirandé and Williams compare rascuache cyclists with the lifestyle of the *Catrín*, or respectable cyclists; professional and elite cyclists who use bicycles not out of necessity but largely for sport and/or recreation.<sup>28</sup> There is a third hybrid group of Lowrider, or Low-Bike, Cyclists<sup>29</sup> who turn to cycling neither out of necessity nor for sport/recreation but as an alternative, rascuache aesthetic and art form that is an expression of their ethnic and political identity.<sup>30</sup> The Rascuache and Lowrider cyclists each illustrate a different kind of rascuache adaptation, with the latter demonstrating a more self-consciously elaborate aesthetic and critical art form.

Rascuache bike owners usually purchase heavy steel two-wheelers ranging in value from \$50 to \$300. They are generally economically challenged and unable to own and operate automobiles, although other non-economic factors may also preclude automobile

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<sup>25</sup> Alfredo Mirandé & Raymond L. Williams, *Rascuache cycling justice*, in *BIKING FOR ALL: BICYCLE JUSTICE AND URBAN TRANSPORTATION* 130 (Aaron Golub, Melody Hoffman, Adonia Lugo, & Gerardo Sandoval eds., 2016).

<sup>26</sup> *Id.* at 131; MITCHELL DUNEIER, *SIDEWALK* (1999); Don Mitchell, *The Annihilation of Space by Law: The Roots and Implications of Anti-Homeless Laws in the United States*, 29 *ANTIPODE* 303 (1997).

<sup>27</sup> Mirandé & Williams, *supra* note 25, at 134.

<sup>28</sup> *Id.* at 137.

<sup>29</sup> *Id.* at 137; Kyle S. McQuilkin, *Culture of Lowrider Bicycles in West Texas: Participant Observation through the Lens of a White, Middle-Class Male, Artist/Educator* (2009) (unpublished Ph.D. dissertation, Texas Tech University) (on file with author).

<sup>30</sup> Lowrider bicycles first appeared in the 1960s with the introduction of the 1963 Schwinn Sting-Ray bicycle. While the Sting-Ray continues to be extremely popular among Chicano urban youth, the low-slung Latino lowrider bicycle is the antithesis of the Sting-Ray's Chopper Design. PAIGE PENLAND, *LOWRIDER HISTORY, PRIDE, CULTURE* (2003).

ownership, such as the inability to secure a driver's license because of age, undocumented status, cost, lack of insurance, or legal constraints. Homeless camping cyclists similarly construct makeshift, rascuache "bike shops" with haphazard sets of extra wheels, parts and tools for maintaining their bikes. Most rascuache cyclists would be unable to maintain their bikes at regular bike shops.<sup>31</sup>

Both the criminal justice and transportation systems in many urban areas, particularly in automobile-dominated southern California, are not receptive to rascuache cyclists. Much of the legislation aimed at regulating cycling targets the rascuache.<sup>32</sup> A proposed bicycle helmet law, SB192, was presented to the California State Legislature in 2015 by state Senator Carol Liu, D-La Cañada Flintridge (Los Angeles County). The bill, SB192 would require adult cyclists to wear helmets or pay a \$25 fine. Although the proposed legislation is facially neutral, it would have an adverse impact on low-income cyclists.<sup>33</sup> California would become the first state to require helmets for riders over the age 18. The bill also requires cyclists riding at night to wear reflective clothing for greater visibility, although in California they are already mandated to have front and rear lights on their bicycles.

The proposed mandatory helmet law would have an especially adverse effect on rascuache cyclists, as this is a group that typically does not wear helmets, primarily for economic reasons.<sup>34</sup> A high quality helmet might cost as much, or more, than their inexpensive bikes. Moreover, by creating this law, the California legislature set up a scenario to further criminalize, harass, and control the youth, homeless, undocumented, and economically disadvantaged cyclists.

A number of observers have commented on the prevalence of racial profiling by law enforcement and the problem of driving, walking, or riding while Black or Brown. One of the most notorious cases related to the criminalization of the rascuache cyclist took place in Gardena, California on June 2, 2013. A Mexican cyclist rode a bike to a CVS store in Gardena in search of a stolen bike that a family member had just lost. A video subsequently showed the police shooting and killing the unarmed cyclist who raised and lowered his arms several times before he was shot. Because the loss of the bicycle had the potential of becoming a major loss for the family, it made sense for a

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<sup>31</sup> Many college students similarly deal with the high cost of bike maintenance by creating de facto student cooperative bike shops like those found at UC-Davis and UC-Santa Barbara. Mirandé & Williams, *supra* note 25, at 135.

<sup>32</sup> *Id.* at 135-136.

<sup>33</sup> *Id.*; S. 192, Reg. Sess. (Cal. 2015), [http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB192](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB192).

<sup>34</sup> Mirandé & Williams, *supra* note 25, at 136-137.



member of the family to attempt to recover the stolen bike.<sup>35</sup>

The case came to light and gained national attention recently when a Federal District Judge rejected the Gardena and police department's privacy claims in seeking to block release of the taped shooting.<sup>36</sup> While police did not say what caused officers to fire their weapons, the incident apparently stemmed from a report of a bike theft at a CVS pharmacy.<sup>37</sup>

In this essay, I argue that despite the harassment of rascuache cyclists, the bicycle is an object that enables youth, racial minorities, the poor, and unauthorized immigrants to potentially transcend geographical, psychological, social, economic, cultural, racial, or spiritual borders.<sup>38</sup> The noted Tijuana writer, Federico Campbell, portrays a classic rascuache character who vividly describes his losses as an adolescent growing up on the border in the 1950s and early 1960s.<sup>39</sup> From the dominant U.S. perspective, Tijuana, with its velvet paintings, oversized Mexican sombreros, striped ceramic donkeys, cheap curios, and bawdy bars represents the ultimate Mexican rascuache.<sup>40</sup>

Throughout the novella "Everything About Seals," in the volume *Tijuana: Stories from the Border*, the narrator-protagonist vacillates between being "down and out" and what Ybarra-Frausto calls "down but not out," and the latter is the character's condition in the end. Of particular interest for this essay is the presence of the all-important bicycle belonging to the narrator-protagonist.

At the outset of the story, the bicycle provides the only means in the entire story for the protagonist's "happiness." His bicycle trip near the airport is described as "a fascinating spectacle that took me outside myself and made me forget the passage of time."<sup>41</sup> In another key passage, at age 14, he writes that "the bicycle was the only means I had to defend myself against the homey world of women and the gangs that terrorized the neighborhood."<sup>42</sup> At this point in the text, the narrator-protagonist has established the seminal importance of the bicycle not only as a means of transportation, but as something central

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<sup>35</sup> *Id.*

<sup>36</sup> Richard Winton & Doug Smith, *Video of Gardena shooting a rare view of police tactics under stress*, L.A. TIMES (July 15, 2015, 7:14 PM), <http://www.latimes.com/local/crime/la-me-gardena-shooting-video-20150716-story.html>.

<sup>37</sup> Michelle Valles & Jason Kandel, *1 Killed, 1 Wounded in Gardena Shooting*, NBCLA NEWS (June 2, 2013), <http://www.nbclosangeles.com/news/local/23-Year-old-Man-Fatally-Shot-Police-Gardena-209858851.html>.

<sup>38</sup> Mirandé & Williams, *supra* note 25, at 132-134.

<sup>39</sup> FEDERICO CAMPBELL, *TIJUANA: STORIES ON THE BORDER* 7 (Debra A. Castillo trans., 1995).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 29-30.

<sup>42</sup> *Id.* at 58-59.

to his very existence and identity: it is his happiness, his refuge from his dysfunctional family and from the gangs in his tough Tijuana neighborhood.

This story underlines not only the special kind of importance bicycles have for marginalized owners, but the bicycle as an extension of the self. In the end, unlike most other objects we possess, the bicycle, for many riders, becomes an extension of the rider's body and, consequently, an intimate part of oneself. Just as a cane or a wheelchair provides assistance for the elderly and disabled, the bicycle is a form of assistance to movement for humans in a variety of less advantaged economic and physical states. For the disabled, the cane or wheelchair provides them with literal mobility, for the rascuache cyclists the sense of mobility is more symbolic and figurative.<sup>43</sup>

In *Creating Aztlán*, Dylan Miner<sup>44</sup> discusses how he rode across Turtle Island, The Americas, with a group of Xicanos and youth who had built low-riding bicycles not only as an indigenous art form but as a counter-narrative to colonialism. Lowriding, in other words, was seen as a way of reclaiming space and place for Xicano and indigenous communities; a way of recreating "Aztlán," the spiritual homeland of the Aztecs.

Growing up in Michigan surrounded by Mexican and Chicano migrant workers, Miner first became involved with lowrider bicycles as a youth. He returned to create the Lowriding project after speaking to a Canadian curator who suggested that he participate in an exhibition and focus on the lowrider bicycle as a medium for artistic expression. From the beginning, Miner saw the lowrider bicycle as an expression of anti-colonial resistance related to sustainable transportation.

According to Miner, lowriding takes something that is ordinary, a car or bike, claims it, and transforms it into a cultural symbol and art form. Using lowriding as a Xicano and indigenous way of being, Miner re-examines the concept of Aztlán and contends that Aztlán as visualized by youth and Chicano artists is a form of indigenous sovereignty and resistance to colonial control.<sup>45</sup>

In the next section, I turn from an examination of the bicycle as a mechanism for the rascuache to transcend physical, social, and economic borders in urban spaces to a discussion of how undocumented

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<sup>43</sup> Bicycles are also an important object in several works of acclaimed Chicano poet and writer Gary Soto's short stories about the lives of Chicana working-class children growing up in California. In "The Bike," Soto describes his experiences with his first bicycle as a five-year-old who defies his mother's orders not to leave the confines of his yard and stay off the forbidden Sarah Street. GARY SOTO, *SUMMER ON WHEELS* 234 (1995).

<sup>44</sup> DYLAN MINER, *CREATING AZTLÁN: CHICANO ART, INDIGENOUS SOVEREIGNTY, AND LOWRIDING ACROSS TURTLE ISLAND* (2d ed. 2014).

<sup>45</sup> *Id.*

immigrants use various *movidas rascuaches* as survival strategies to traverse transnational borders.

*B. Movidas Rascuaches: Transnational Survival Strategies of Undocumented Immigrants*

In a recent article in the journal *Aztlán*, David Spener notes that in the field of Chicana/o arts and letters, the term *rascuache* is used to describe the sensibility of *los de abajo*, reflecting an underdog mentality and an ethic of survival which enables people to stitch together the tools necessary for survival in a hostile environment.<sup>46</sup> More specifically, Spener uses the concept of *rascuachismo* to interpret the various illicit, and underground strategies that Mexican migrants use to resist the efforts of the U.S. Government to police their movements.<sup>47</sup> Drawing from the theories of French sociologist Pierre Bourdieu, he contends that the *rascuache* sensibility forms a key component of the *habitus* of Mexican migrants that inspires the wide range of border-crossing *movidas rascuaches* that migrants engage in.<sup>48</sup>

“*Movida*” is a Mexican slang term that refers to a hustle, scam, trick, or maneuver that someone uses to describe a strategy or strategies used to overcome an obstacle or impediment. A *movida rascuache* would include hustles or scams carried forth by members of the underclass or at the bottom of the social hierarchy, as a proactive response to subordination and an attempt to get an advantage against the dominant order. *The Urban Dictionary* gives the top meaning of *movida* as a “Mexican-American slang term used to describe the transportation of illegal narcotics from one city or town to another for the purpose of distribution,”<sup>49</sup> and specifically a large quantity of marijuana.

Spener places his ethnographic study of unauthorized Mexican migration to the United States within a global context that sees autonomous migration as a type of resistance to global apartheid, which divides the world into high-wage and low wage regions, regulating the movement of workers between the regions, and rendering low-wage workers to be used as global capital on an as-needed basis within each region.<sup>50</sup> Unauthorized, autonomous migration across national boundaries, unsanctioned by state policies, is thus a form of resistance by low-wage workers to their confinement as a cheap, reserve labor

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<sup>46</sup> David Spener, *Movidas Rascuaches: Strategies of Migrant Resistance at the Mexico-U.S. Border*, 35 *AZTLAN: J. OF CHICANO STUD.* 9 (2010).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Movida*, *The Urban Dictionary* (July 20, 2010), <http://www.urbandictionary.com/define.php?term=movida>.

<sup>50</sup> Spener, *supra* note 46, at 10.

force, which can be expanded or contracted as needed by the global economy.<sup>51</sup>

Autonomous migration is not necessarily a politically conscious form of resistance to global apartheid, but a survival strategy employed by millions of workers and their families in the absence of effective political movements seeking to bring about structural social change in the world economy.<sup>52</sup> Such resistance is consistent with James C. Scott's discussion of the "everyday forms of resistance" employed by subaltern classes that utilize social and cultural resources that he identifies as "weapons of the weak."<sup>53</sup>

Mexican autonomous migration to the United States can be viewed not only as a weapon of the weak on a transnational level but as an example of everyday resistance to global apartheid, which he terms *resistencia hormiga*, or *hormigera*; literally "ant-like resistance."<sup>54</sup> To be effective, *resistencia homigera* is dependent on migrants accessing resources through their social networks such as money, referrals to reliable guides, knowledge of border-crossing routes, food, and tactics for avoiding apprehension.<sup>55</sup> Such resources "enable them to undertake cross-border journeys, successfully penetrate the defenses of the apartheid police (the U.S. Border Patrol), and arrive safe and sound at their destinations in the interior of the United States."<sup>56</sup>

Spener illustrates how in mobilizing resources for their clandestine trips to the United States, migrants employ a number of *movidas rascuaches*.<sup>57</sup> The author relates how he first across the word *rascuache* serendipitously, while conducting an interview with a Mexican man named Rigo who was originally from La Cancha, Nuevo León and was now living in the Lower Rio Grande Valley.<sup>58</sup> In the initial interview, Rigo shared how people from La Cancha organized their border-crossing trips utilizing the services of local coyotes. It was here that he first used the term *rascuache* in referring to the coyotes who

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<sup>51</sup> *Id.* at 11.

<sup>52</sup> *Id.*

<sup>53</sup> JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* (1985).

<sup>54</sup> Spener, *supra* note 46, at 11.

<sup>55</sup> Audrey Singer & Douglas S. Massey, *The Social Process of Undocumented Border Crossing Among Mexican Migrants*, 32 INT'L MIG. REV. 561 (1998); DAVID SPENER, *CLANDESTINE CROSSINGS: MIGRANTS AND COYOTES ON THE TEXAS/MEXICO BORDER* (2009).

<sup>56</sup> SPENER, *supra* note 55, at 11. Spener notes that although women and girls now constitute nearly half the Mexican-born population residing in the United States, the type of clandestine border crossing discussed in his essay are overwhelmingly male practices, and that 85 percent or more of those crossing the border at a given time are men. *Id.* at 12.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

worked in and around his hometown, whom he distinguished from professional coyotes.<sup>59</sup>

A lot of people don't go with coyotes at the border. They avail themselves of little coyotes. And they get those coyotes over there in the *ranchos*, in my experience. Let's say, for example, that someone tells you, "I know that Rigoberto has crossed over a bunch of times. Why don't you go look him up on the *rancho*?" And so you go to see him and you ask him, "How does it work?" And he says, "Well, you have to walk for three days." And then you say, "Take me, man! Take me over there to my sister or to my cousin. I'll sell the cow!" And if I'm the coyote, I know if they've got siblings over there, because I'm from the same region. If they've got siblings or friends [*camaradas*], they'll get the money from there. If they don't, they've got to sell the cow! And so I say, "I'm going to charge you cash up front . . . I'm a coyote *rascuachón*. Like we call them on the *rancho*. *Rascuaches*. Not the ones that charge \$1,500, but we'll go with \$500. But you're going to give me the money *now*. I put you on the [freight] train in Harlingen and drop you off in Sarita and I head back. . . ."<sup>60</sup>

Rigo used *rascuache* in a sense that was at once pejorative and affectionate and endearing<sup>61</sup> to emphasize that while these were not fancy or highly professional coyotes, they were more accessible and a lot cheaper than the regular ones. They were sort of "seat-of-the-pants,<sup>62</sup> or a poor man's, coyote. At same time, it was clear that local *rascuache* coyotes were more highly regarded, reliable, and trustworthy than the professional, commercial coyotes based at the border.

Spener found that many of the border crossings and epic journeys that he analyzed in the course of his research contained the basic elements of *rascuachismo*.<sup>63</sup> "These included making use of the scarce resources people had at hand, cobbling together each stage of the trip so that it became a compendium of *movidas*, coming up with imaginative solutions to unforeseen problems encountered on the trail, and facing hardships with a resistant and resilient attitude of perseverance in the face of incredible adversity."<sup>64</sup>

All of these *movidas rascuaches* were part of the migrants' struggle for survival, as they sought to successfully traverse a heavily policed international boundary and in direct defiance of those who forbade their passage.<sup>65</sup> Migrants engage in *movidas rascuaches* from

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<sup>59</sup> *Id.* at 13.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 20.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

the outset of their trip, as they prepare for the border crossing by raising funds for their journey from family and friends, especially if they plan to hire a coyote, which can cost as much as \$2,000.<sup>66</sup> At the border, the migrants will buy some simple rations for the crossing, including cans of beans and tuna, tortillas, and several gallon jugs of water, and *pinole*, which is easily stored and rich in sugar and carbohydrates.<sup>67</sup> The migrants will also often find a *vulcanizadora*, or rascuache tire repair shop near the border crossing that will sell them inner tubes, which are used to paddle across the river.<sup>68</sup>

One of the most interesting examples of rascuache Mexican ingenuity came from a story told by a thirty-nine-year-old man named Fernando, originally from Dolores Hidalgo, Guanajuato who was living in San Antonio and undocumented.<sup>69</sup> Fernando had made numerous trips across the border. On his second trip, he and a friend decided that rather than walking through the brush to avoid immigration checkpoints, they would bring bicycles and ride around the checkpoints.<sup>70</sup> They took their bikes on a bus in Dolores Hidalgo to Nuevo Laredo. At the border they unloaded the bikes and looked for a *patero* (boatman) to help them cross the river. The boatmen at the river were amazed to see Fernando and his friend arrive with bicycles. One of these *pateros* told them,

“¡Chihuahua! You know, I’ve crossed marijuana, cocaine, women, children, but I’ve never taken a bicycle across before!” “Well,” Fernando replied, “Now you’ve got something else to add to your list.”<sup>71</sup>

#### IV. REBELLIOUS PEDAGOGY: *REBELLIOUS LAWYERING* AND CRITICAL RACE THEORY

Before addressing the relevance of rascuachismo for rebellious lawyering and law practice, I would like to briefly discuss how I have sought to integrate *Rebellious Lawyering* and Critical Race Theory by utilizing storytelling as a pedagogical devise that informs my teaching and scholarship. I use the narrative, storytelling format, a method employed by CRT and LatCrit to infuse the voices of racial minorities and other subordinated groups into law and law scholarship.

Derrick Bell<sup>72</sup> in his famous *Harvard Law Review* Foreword *The*

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 21.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 23.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> BELL, *supra* note 2.

*Civil Rights Chronicles* where he introduced his fictional protagonist, Geneva Crenshaw, utilized fiction and narrative brilliantly.<sup>73</sup> Richard Delgado, in turn, created Rodrigo Crenshaw, Geneva's fictive half-brother, in his famous *Rodrigo Chronicles*.<sup>74</sup> In a series of articles and the book, *Rascuache Lawyer*, I also wrote letters to my fictional friend and alter ego, Fermina Gabriel.

Although Gerald López presents a theory of practice focusing on lawyering on behalf of and in solidarity with subordinated groups, like the respective chronicles of Geneva and Rodrigo Crenshaw, the characters and stories in *Rebellious Lawyering* are also fictional. López remarked that some observers might question the wisdom of creating fictional case studies, but he points to the value of using ideal types or prototypes that enable us to manipulate reality. Although obviously drawing from his own observations and experience, they do not limit López.

Everything I describe is fictional. But I do draw on my observations of and my work with a wide range of people. Yet I don't limit myself only to what I have seen and heard. Instead, by using imagined characters and storylines, I try to extend the boundaries of, nearly as much as I try to report, all that I so much admire. . . . I'd like to believe what I have to say challenges even the best activists about what they do and don't do in practice.<sup>75</sup>

Although my friend and alter ego, Fermina, is also fictional, like the characters in *Rebellious Lawyering*, she is also a composite of a number of very real women I have known. Despite her brilliance and years of formal education, at her core she remains a lot like my mother and her sisters (Márgara and Licho), my sister (Silvia) and daughters, former students and friends, and ordinary persons in the community. Although an accomplished lawyer, scholar, and singer—a “super-Chicana”—Fermina remains rooted in her community and culture. Born and raised on Washington Lane in the barrio of South Colton, California, her father was a *bracero* who first worked for the Southern Pacific Railroad, then became an orange picker and migrant farm laborer, and eventually got a permanent *jale*, as he put it, at Colton Portland Cement Plant. Although walking up a ladder to a silo, lifting hundred-pound cement bags was backbreaking work; it was a secure union job with health insurance for him and his family. His wife, Doña Rosauero (Chayo) also worked a variety of jobs, including waiting tables at a local café and processing chickens at a local factory.

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<sup>73</sup> Derrick Bell, *The Supreme Court, 1984 Term-Foreword: The Civil Rights Chronicles*, 99 HARV. L. REV. 4 (1985).

<sup>74</sup> Delgado, *supra* note 3.

<sup>75</sup> LÓPEZ, *supra* note 1, at 8.

The oldest of ten, Fermina graduated second in her Colton High School class, attended Valley Community College in San Bernardino and the University of California, Santa Cruz, and eventually received joint Ph.D. and *Juris Doctorate* degrees from Stanford. After graduation, Fermina considered going into law teaching and had several attractive job offers at elite law schools, but she decided instead to pursue public interest law, teaching and writing on the side. Fermina went to work for the United Farmworkers of America for a while and is now a staff attorney at the MILAGRO Immigration Clinic in Watsonville. She has held adjunct teaching positions at the University of California, Santa Cruz; California State University, Monterey Bay; and the University of Santa Clara College of Law. She has by now published two novels and a collection of poems and short stories, as well as several law review articles and a book based on her practice.

In her spare time, Fermina participates in a *folklórico* dance group and occasionally sings at El Sombrero Restaurant and Night Club in Watsonville. She is extremely proud of her *mexicano* heritage and religiously follows *El Tri*, the *mexicano* national soccer team (or as she calls it, “*La Selección*”), and on game day, she always wears the Mexican colors. Her mother is from Aguascalientes and her dad is from Jalos, a town in Los Altos de Jalisco (the Highlands of Jalisco), so she is also an avid fan of Mexico’s most popular soccer team, *Las Chivas de Guadalajara*. Fermina is a dual *mexicana* and United States citizen, and a member of the Mexican Olympic Equestrian Team. She has a black belt in karate. Nonetheless, she is proudly “Brown,” identifies closely with her Indian heritage, and is in no way racially indeterminate, or Mediterranean-looking, like her counterpart Rodrigo Crenshaw.

Over the past few years, I have used my *cartas* (letters) to Fermina as a vehicle for addressing a variety of theoretical and practical legal issues. They differ from Bell and Delgado’s work and most CRT and LatCrit scholarship in that they are based on real cases and real people from my law practice. In other words, while Fermina is fictional, and the names of the parties have been changed, the cases I draw from are real.

#### V. RASCUACHISMO AND REBELLIOUS LAWYERING: LETTERS TO FERMINA

##### ***Fermina Field Report #1, March 30***

*Querida Amiga:*

*I want to apologize for being out of touch for such a long time. I can’t honestly remember when we last communicated by mail but it was*



*great seeing you last year at the UC Santa Cruz Alumni Weekend and at the Rascuache Film Festival in Pasadena. I am teaching Law & Subordination again, a joint listed Sociology and Ethnic Studies undergraduate course, modeled after Jerry López's Lawyering for Social Change classes, and wanted to share what was going on with the class. We had our first meeting this past Monday. I always feel like there is so much to cover, and so little time on the first day of this course since we are on the quarter system, but I believe the first meeting went well. The class is all Latina/o, mostly Chicana/o, although it's open to anyone with the pre-requisite or permission of the Instructor. I believe I have five men and six women. As you know, I limit enrollment and handpick the people who are in the class because of the prerequisites.*

*I gave them the usual admonition or disclaimer for the class. It sounds sort of like when you go on a dangerous ride at an amusement park, ski diving, or bungee jumping. I rejected some students because it seemed like they were taking too many classes or had long commutes, or because they simply wanted the class to fill a graduation requirement. I warned them that this class is not for everyone. It takes a lot of time commitment, perseverance, and willingness to step outside one's comfort zone. The class has a placement but as you know, it's not the typical placement where you go and pass out brochures, help feed the homeless at a soup kitchen on Thanksgiving, or clean up trash on the Freeway. No, it's a class where you have to essentially create your own project working with a subordinated group.*

*Prior to the start of the Quarter, I gave students a choice of placements; asking them to rank order them. All, except one, ranked the Youth Advocacy Program (YAP) as number 1. This is pretty typical. For some reason, students want to work with youth, perhaps because a number of students are interested in teaching as a possible career. It's also, because being in the classroom is something that is more familiar to the students, and more structured and predictable than working with the Homeless or Day Laborers but certainly no less challenging.*

*Working with the Day Laborers requires that you be fluent in Spanish, bicultural, and are able to relate to the workers who are working class, largely undocumented, fairly young, and mexicano or guatemalteco.*

*Law & Subordination is a great class not only for people interested in teaching and law but also for those who wish to pursue careers in social work, law enforcement, probation, social services, and other professions. As you know, a number of students who took the class in the past are now successful practicing attorneys and went to schools like Stanford, Syracuse, Loyola Marymount, Hastings, Rutgers, and University of San Diego. Others went on to get Ph.D.'s, are teaching, or*

*working in social services.*

*We covered a number of important readings this first week and I am looking forward to discussing them with the class. One of them was Kairys' discussion of the doctrine of Stare Decisis and the Shopping Center cases.<sup>76</sup> The second is Duncan Kennedy's Law School as "Training for Hierarchy."<sup>77</sup> I am hoping that the students see some continuity or themes across the readings. The first two should give them a sense of the traditional vision of law that is perpetuated in law schools, particularly in the first year curriculum; the second two by López and Mirandé represent alternative visions of law, lawyering, and law practice. Jerry López's conception of *Rebellious Lawyering* provides much of the foundation for the class but the application of these readings to the placements is not direct or necessarily obvious. It's going to be up to the students to make the connections. It's not the kind of thing where there is one right answer, or one wrong answer. Each person will make different connections; as *cada cabeza es un mundo*.*

*The students know they are expected to meet and start planning the various placement activities. The homeless feeding at First Congregational Church is tonight. Because the class meets on Monday and Wednesday, they should be able to work in the placements during the rest of the week, although I believe the YAP will be going on Tuesday and Thursday.*

*Well, amiga, I am going to have to go now but I want to urge you to write back and tell me how things are going with your practice, teaching, and your singing. Are you still singing at El Sombrero in Watsonville on the Weekends? How is your political organizing going? My best to your Dad and your family. I can't believe that your grandpa turned 98 in November. They say that Mexican men, and African-American men, who live to be 65, have a higher life expectancy than Anglo men. I'm hoping it's true.*

*Con cariño,  
Alfredo*

### ***Fermina Field Report #2, April 5***

*Querida Amiga:*

*It was great hearing from you, seeing you on Skype, and learning that your family is doing well. I am glad that you are still biking and staying in shape. Before talking about the class I wanted to tell you about the *Rebellious Lawyering Symposium*, which will be at the American Association of Law Schools (AALS) Clinical Law Confer-*

<sup>76</sup> David Kairys, *Legal Reasoning*, in *THE POLITICS OF LAW*, *supra* note 3, at 11.

<sup>77</sup> Duncan Kennedy, *Legal Education as Training for Hierarchy*, in *THE POLITICS OF LAW*, *supra* note 3, at 54.

ence on May 1. I don't know if you are planning on going this year but there is a group that is organizing several events to commemorate the 25th anniversary of the publication of Gerald P. López's *Rebellious Lawyering* book.<sup>78</sup> As you know the book was published in 1992 a year after you graduated from Stanford Law School, and my second year at SLS, and had just come out when I took Jerry's *Teaching Self-Help and Lay Lawyering*. I am glad that they are honoring Jerry and the book. He has been an important role model for me and hundreds of others and certainly deserves all of the praise and recognition but in my essay, rather than praising Jerry López and lauding his work, I hope to extend his writings and apply them to rascuache lawyering and clients. Knowing Jerry, I'd like to believe that he would want those of us who have been influenced by the rebellious vision of law practice to focus on clients and the work and its implications, rather than on the person.

I had a number of ideas for my presentation. One idea was to talk about how López's vision of rebellious law practice has influenced my pedagogy. As you know, what I have been able to do over the past 25 years or so is to develop an innovative course, *Law & Subordination*, that essentially extends the rebellious idea of lawyering and advocacy to undergraduate students. I realize that *Rebellious Lawyering* has had a substantial impact on clinical teaching and practice but my class may be unique in extending the pedagogy to undergraduates. This might sound immodest, but I told the students in the first meeting last week that they might only get a class like this at a fancy law school, if at all, and that they are fortunate to be exposed to these ideas in an undergraduate *Sociology and Ethnic Studies* class.

Instead of focusing on pedagogy, I decided to use my essay as a mechanism for extending the principles of *Rebellious Lawyering* to the mexicano/Chicano experience via the concepts of rascuache and rascuachismo. These terms, as you know, are uniquely mexicano and connote an item of inferior quality that has working-class or proletarian origins. Like the word *Chicano* itself, it was often used derisively to describe an item or person of inferior quality. Things, and persons, that are rascuache, are lowbrow, low-life, or "ghetto," but they are also resourceful, resistant, and rebellious.

We read and excerpt from the first chapter of *Rascuache Lawyer*<sup>79</sup> this past week. What I would like to do in the Symposium piece is to focus my discussion not so much on lawyers or advocates as much as on rascuache clients and the various *movidas rascuaches* that they use to survive and navigate not only the legal and judicial system but also

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<sup>78</sup> LÓPEZ, *supra* note 1.

<sup>79</sup> MIRANDÉ, *supra* note 17.

their lives. One of the students, *Ándres* picked up on the fact that *López* sees law as problem solving or getting others in a compelling way to do something that they don't have to do, or want to do.<sup>80</sup> *Mayeli* pointed to the importance of storytelling in law, while *William*, made reference to how *López*, noted that lawyers have to be bicultural and bilingual and translate in two different directions.<sup>81</sup>

The Role Playing on Monday was good. Each group got to do a role play. The Youth Advocacy Program (YAP) seemed most ready, the Day Laborer Group (DLG) least, with the Homeless Group (HAP) somewhere in between. The YAP went all out and had a formal PowerPoint presentation. It was good but *Laura* and *Mayra* read. I think the PowerPoint needs to be for the students, not the presenters. *Ciel* remarked that they needed to change their language to be less elevated. I agreed. The DLG was a bit formal in their pitch and seemed to take a defeatist approach. I think it was *Victor* who said that they quit before they started by saying that, "We don't want to promise too much, so they didn't promise anything." *Laura* pointed to a number of specific things that they could do to help the workers. The HAP was fairly informal but it was not clear that they were connecting, especially with *William* and *Andres*, who played homeless folks.

In class on Wednesday, we started off by discussing *Margaret Montoya's Mascaras, Trenzas, y Greñas*,<sup>82</sup> which I think is an important, timeless read. It is interesting to see how we wear masks in society, particularly those of us who really are bilingual and bicultural, and if *López* is correct in noting that lawyers, are necessarily bilingual and bicultural in translating simultaneously in both directions, then *Chicanas/os* are necessarily quadracultural or at a minimum, we have to do a lot more to translate than White attorneys with middle class English-speaking clients. An important case that *Montoya* highlights focuses on *Josephine Chavez*, a *pachuca* and the defendant in a manslaughter prosecution who was charged after giving birth over a toilet in her mother's home. She cut the umbilical cord, wrapped the baby in newspaper, and hid it under the bathtub.<sup>83</sup> The legal issue was whether the baby had been born alive and was, therefore, subject to being killed under California's manslaughter statute. *Josephine's* experience and the experience of other *cholas*, or *pachucas*, represent a bottom up *rascuache* view of society, with unplanned, unexpected, and unwanted

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<sup>80</sup> LÓPEZ, *supra* note 1, at 39.

<sup>81</sup> *Id.* at 44.

<sup>82</sup> Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 15 CHIC-LAT. L. REV. 1 (1994).

<sup>83</sup> *Id.* at 18.

*pregnancies, and termination of those pregnancies.*<sup>84</sup>

*Amiga, I have gone on much too long and much more than I intended. Please write back and let me know if you have any suggestions for the class and my paper on rascuachismo and Rebellious Lawyering. Con cariño,  
Alfredo*

### ***Fermina Field Report #3, April 7***

*Querida Amiga,*

*This past week we talked about Law & Subordination in class and one of the students remarked that subordinated people are “inferior.” I noted that they are not inferior but that they have been economically, socially, and culturally subordinated. Although they are not inferior, their culture is generally viewed as inferior and devalued by the dominant society. The concept of rascuache is potentially important because it turns dominant hierarchies on their head, and sees people and aesthetics that are rascuache, not as cheap, inferior, or dependent, but as resourceful, resilient, and rebellious. Rascuaschismo assumes a bottom-up rebellious view of society and recognizes and values Mexican resistance to subordination.*

*I hope in my presentation at the Clinical Law Conference and my essay for the special issue on Rebellious Lawyering to discuss rascuache clients and show how the concept of rascuachismo can be used to advance our understanding of rebellious law practice. Attached are two cases of rascuache clients and their respective experiences with the legal and judicial system that I will be discussing at the conference and in my essay for the special issue on Rebellious Lawyering of the Clinical Law Journal, which I hope to use to demonstrate the unique ways that subaltern clients respond to subordination. I would appreciate your input, response, and suggestions.*

*Con cariño,  
Alfredo*

## VI. RASCUACHE CLIENTS: TWO CASE STUDIES

### ***Juan Carlos: El Fiador and the Red Camaro***

In this part of the essay, I turn from my *Letters to Fermina* to a discussion of the first of two case studies based on rascuache clients that I have encountered in my practice. One of my first criminal law cases involved a young man from San Julián, a dairy town, near Jalostotitlán in Los Altos de Jalisco. I met Juan Carlos in the hallway of the Superior Court after he stopped me and asked politely in Spanish

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<sup>84</sup> *Id.* at 20.

whether I was a lawyer, for it was not uncommon for people to stop me in court and ask for my help because I was a mexicano wearing a suit and dressed like a lawyer.

Juan Carlos was in his late twenties. He had worked in the dairy industry in México, and although American dairies are much more automated, he had a number of skills and social capital, which he was able to transfer to the United States. Juan Carlos worked in one of the dairies in Ontario, California as a *fiador*, or person who fed and otherwise cared for the cows. He and his brother worked at the same dairy, had an excellent relationship with their *patrón*, or boss who admired their resourcefulness, ambition, and strong work ethic, and they were doing very well. Juan Carlos had no criminal record and shared that he had been charged with auto theft. He was scared but confident that the charges would be dropped once the police learned the truth after speaking with the person who had sold him the car.

Juan Carlos assured me that the car was not stolen. He said that he had bought a red Camaro from a *curandero* (natural health healer) who sold organic medicine and folk remedies in a *Botanica* in downtown Riverside, California. The car “*era muy padre*” (was awesome) and he had gotten a great deal on it. Unfortunately, the car broke down as he drove it home after ‘purchasing it but that was the least of Juan Carlos’ problems at the time. Apparently, he had inadvertently purchased a stolen vehicle and was charged with auto theft. Juan Carlos didn’t have papers for himself or the car, but he also did not have a criminal record and had never been in trouble with the law.

I took the case and during my first court appearance related Juan Carlos’ story to the Assistant District Attorney assigned to the case. She wasn’t buying the story and asked for a bill of sale or some proof that my client had indeed purchased and not stolen the car. At a subsequent court appearance, I suggested to the Assistant DA that she send an investigator to the Botanica to confirm that the owner had sold the car to my client but she refused, saying that they didn’t have the resources to do this sort of investigation. After several unsuccessful pre-trial conferences and appearances and after failing in my attempts at having the charges dismissed or reduced, I decided to hire a private investigator, since Juan Carlos was presumed guilty and the burden was on us to prove that he did not knowingly purchase a stolen vehicle. Because I didn’t have a lot of money, I had to hire a an inexpensive investigator in order to show that Juan Carlos had purchased the car. The person was a *rascuache* investigator in the sense that he drove a late model American car, dressed like a working-class Chicano, was fluent in Spanish, was cheaper than the going hourly rate, and insisted on cash payment. Nonetheless, the PI appeared to have a

good reputation in the community. I believe that the fact that he was Chicano and rascuache enabled him to blend in and to be less obtrusive when he went to the *Botanica* to talk to the owner.

The investigator was successful in going to the Botanica, speaking to the proprietor, and getting him to admit that he had recently purchased and then sold a red Camaro to my client. At the next court hearing, I presented a declaration and sworn affidavit, signed by the investigator under penalty of perjury under the laws of the state of California, declaring that he had gone to the *Botanica* on a specified date, spoken to the proprietor of the shop who admitted that he had sold a red Camaro to my client. I presented the declaration to the Assistant DA and the charges were subsequently dropped and Juan Carlos went home.

I refused payment for my services and only charged Juan Carlos a couple of hundred dollars to cover the cost of the investigator. In appreciation of my services, my client took me out to breakfast at a Mexican restaurant in a rural area near the dairies that was very small and intimate. It was like eating in someone's home. The food was great but the restaurant was literally located in a converted garage and appropriately, *my rascuache*.

There are several important lessons I took away from this experience. First, perhaps the overriding lesson is that in the case of Juan Carlos, using a rascuache defense strategy proved to be successful and the charges were dismissed. The second is that clients may seek out rascuache lawyers rather than vice versa. Our meeting was fortuitous rather than planned and my client had found me, rather than the other way around. In addition, because of my background and experience, I had the requisite background and cultural capital that allowed me to understand, appreciate, and most importantly, to believe Juan Carlos' story. The third lesson I learned is that a rascuache network existed. Through requisite contacts I was able to hire a rascuache investigator who successfully obtained the information I needed to dismiss the charges. Finally, the circumstances surrounding the event were important. The Assistant DA had difficulty believing that someone would actually buy a car from a person who ran a *Botanica*, rather than a legitimate dealer, that one would know that the price was too good to be true, but primarily, that a reasonable person would buy a car without getting a receipt or bill of sale.

Yet, from a rascuache perspective, I saw Juan Carlos as acting like the mythical reasonable rascuache person in law. From his perspective, as a mexicano undocumented person, he saw himself as pulling a movida in getting a great deal on a car that he could not normally afford. Undocumented persons have a rascuache lifestyle

that is imposed by their need to survive in a society where they have no legitimate standing or social or cultural capital. Juan Carlos after all was forced to survive in a world of fake documents, which included social security cards, driver's licenses, and other documents. In a rascuache world, buying a car, paying cash, and not getting a receipt was not only normal and reasonable but smart, a *movida*, or way of beating the system.

### ***María y José: Young Immigrant Parents***

In the second case study concerning my rascuache clients, I want to share a story that deals with death, a topic most people would rather avoid. One of my more difficult cases involved a young Mexican couple, María and José, typical hard-working immigrants who were not rich but appeared to be doing well in the United States and living the Mexican version of the American Dream. You could say, in fact, that they were living the American dream until the untimely death of their baby son, Jesús, turned the dream into a horrible nightmare and reality. On the surface, the case appeared to be yet another instance of sudden infant death syndrome (SIDS) until the parents were charged with murder and criminal negligence after an autopsy revealed that the infant had cracked ribs and a possible fracture to his right leg.

José Martínez was thirty-two years old and was born in the historic town of La Barca, Jalisco near the Jalisco-Michoacán border, and migrated to the United State at age twenty. María, thirty, was born in Xaripu, a small village on the outskirts of Morelia, and came to the United States at the age of sixteen. María graduated from El Rancho Grande High School in Upland, California. At the time of the incident, José worked in a warehouse in Pomona, California, and María cleaned industrial buildings in the evenings in Rancho Cucamonga. Both parents were undocumented.

The young couple had been married for about five years and had two children—Victor, nearly three, and little Jesús, who was six months old at the time of his tragic death. While Victor was a very active, healthy, normal toddler, little Jesús had suffered a number of physical ailments and had been sickly since birth. Before going into the details of the case, I should state that I served as María's attorney, and that an older, very experienced court appointed attorney represented her husband, José, and that the husband faced the more serious charge.

The referral was from an ex-student and friend who was María's teacher in high school, and a friend of the family. The family could not understand why José and María had been detained and arrested. The couple worked different shifts in their respective jobs so that they



could take turns caring for the children and save money on childcare. José had recently been laid off from his regular job and was now working the night shift at a local warehouse, and he got home early in the morning. María generally went to work around four in the afternoon and worked until about 11 p.m. The couple had one car, and José usually drove María to and from work. It was also not uncommon for José to take lunch or dinner to María or for the couple and the children to eat together at her job.

José and María by all appearances had a happy marriage and were proud parents of two young and very active little boys. In fact, neighbors described the Martínez family as close-knit, almost idyllic. There was certainly no history of alcoholism or domestic violence, and neither had ever been arrested or charged with a crime. The neighbors in the small apartment complex where they lived spoke highly of the Martínez family. José was not stereotypically macho and would spend a lot of time playing with and watching the children.

On the night of the death, José had taken María to work and returned to the apartment. He then fed the baby and put him down for a nap and went out into the cul-de-sac to play with little Victor. After about an hour, he came back into the apartment to check on the baby and was shocked to discover that he was not breathing. The neighbors called 911. The paramedics tried unsuccessfully to resuscitate the baby, and he was pronounced dead on arrival at La Loma University Hospital.

Jesus had appeared to be fine when María left for work that day, although he had been sick in the past few weeks and they had taken him to the doctor in Tijuana just a few days before he died. Days before the death, María had noticed that the baby was fussy and that his right leg was swollen and red. The parents took the baby to an orthopedic surgeon in Tijuana, Dr. Jaime Ibáñez-Ortiz, who took x-rays and reported an inflammation of the arms and leg. The Tijuana doctor also noted that the baby was wearing a brace on his right leg, indicating that he had obtained treatment for the swelling. He diagnosed the baby as having osteomyelitis, a rare disease associated with brittle bones that causes infection and inflammation of the bones. In his medical report, Dr. Ibáñez-Ortiz wrote that the baby appeared to be “well cared for” and that there was absolutely no sign of child abuse. The doctor said the x-rays showed no broken bones, but he noted “separation” in the bones caused by the infection. Since birth, little Jesús had suffered various physical ailments and had a history of apnea, viral meningitis, and respiratory infections. He was hospitalized for ten days when he was approximately three weeks old because of poor feeding, fussiness, and difficulty in breathing. He also had a

spinal tap at that time because the doctors suspected that he had meningitis.

The Tijuana doctor prescribed some medication for Jesús, which the parents had diligently given the baby. María said that José would not have done anything to harm the baby. None of the neighbors said that they saw or heard anything that was unusual until José came out of his residence screaming that the baby was not breathing and they called 911.

About a week elapsed between the baby's death and José and María's arrest. José was charged with violation of Penal Code § 273d (a), inflicting injury upon a child, and María with violation of Penal Code § 273a, willful cruelty to a child, resulting in possible injury or death.<sup>85</sup> Despite the fact that there was no external trauma to Jesús Martínez and that the autopsy report was inconclusive as to the cause of his death, at the conclusion of the preliminary hearing the parents were held to answer and were arraigned in July.

We were on the brink of trial and had appeared for a pretrial readiness conference in November, when the prosecution made a plea offer that was ultimately accepted by both defendants. As per the plea agreement, because José had been in custody for approximately nine months he would have credit for one year served if he remained in custody for another month and plead guilty. The charges against María, in turn, would be dropped. Although José had proclaimed his innocence from the start and was extremely reluctant to plead guilty, the decision in the end was ultimately a “no-brainer,” since the alternative was for José to remain in custody, to have a trial, and for both defendants to face the possibility of a substantial prison sentences.

### ***Mother's Worst Nightmare***

I want to take a moment from this narrative to reflect on death. My mother used to say that there is nothing more difficult in life for a parent, especially a mother, than to have to bury a child. I thought about the anguish that my mother felt after my two older brothers passed away. My oldest brother Alex died many years ago at the age of thirty-eight in a tragic car accident that also killed two of his three children, Alejandro (fourteen) and Gabriela (ten). His middle son Armando (twelve), who was in the back seat behind the passenger seat, miraculously survived. Later, my middle brother Héctor (or “Gordo,” as we nicknamed him)—an emergency room doctor in Chicago—died from a sudden and unexpected brain aneurysm. Héctor had been suffering from intense headaches and in desperation had checked himself into the hospital where he worked. The doctors had

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<sup>85</sup> Child Abuse, Cal. Pen. Code § 273 (2014).

given him an angiogram to see if his arteries were blocked when he suddenly had a massive brain hemorrhage and went into a coma. The doctors said he was virtually brain-dead and recommended turning off the life support, to which we reluctantly assented. My mother suffered a great deal in being forced to bury two sons and two grandchildren.

María Martínez's burden was perhaps even more difficult than my mother's because not only were she and her husband accused of killing her baby, but shortly after the baby's death, the State moved immediately to take away her second child. As I explained previously, unlike his brother Jesús, Victor was a normal, healthy three-year-old toddler.

### ***The Child Dependency Proceedings***

The primary mission of California Child Protective Services and the Juvenile Dependency Court is to intervene in cases of suspected child abuse to protect children from harm. While CPS normally intervenes to protect children who are suspected victims of child abuse, in this case there was no indication that Victor Martínez had been abused or neglected in any way. In fact, what triggered the intervention by CPS were the allegations that the parents had inflicted serious bodily harm resulting in death to Victor's little brother.

I represented María in both the criminal and the California dependency court proceedings, and while the criminal representation was difficult, it was not nearly as demanding or challenging as the dependency court proceedings. The standard of proof in dependency proceedings is essentially the same as in a civil case, which is the preponderance of the evidence, or the "more likely to be true than not" standard. This is obviously a much lower threshold than the "beyond a reasonable doubt" standard employed in criminal proceedings or the "clear and convincing proof" standard in deportation proceedings. The "beyond a reasonable doubt" standard is used in criminal cases in order to reduce the likelihood of convicting an innocent person. An additional obstacle encountered by defense lawyers in dependency proceedings is that, unlike the criminal court, there is no presumption of innocence in the child dependency court because the primary concern is protecting the child from possible harm rather than protecting the due process rights of parents suspected of child abuse. There is, therefore, a virtual de facto presumption of guilt.

Although the dependency court utilizes a "preponderance of the evidence" standard in deciding whether to terminate the parental rights of parents, in investigating possible child abuse, CPS uses a much lower standard such as a substantial evidence, credible evidence, or probable cause that abuse may have occurred. CPS is obviously

willing to risk making a false positive identification in having an innocent person falsely accused, rather than risking that potential child abuse will go undetected and result in death or serious harm to the child.

The dependency court lasted for a period that spanned more than two years. One of the most frustrating facets of this representation was that CPS and the child dependency court assumed to be true all of the police reports and unsubstantiated evidence and allegations contained in them. A major obstacle I faced as a defense lawyer was that once the parents were arrested for suspected child abuse, CPS took immediate custody of Victor after assuming that all of the allegations against the parents were true—or at a minimum, believing that they could not risk the possibility that they could be true. While María was allowed weekly visitations with the child, the visitations were supervised. She was not ever allowed to be alone with her son. At the “Order to Show Cause” (OSC) hearing as to why the child dependency court should not have jurisdiction over the child, I argued vigorously but unsuccessfully against the motion that the court assume jurisdiction over Victor. While the outcome was inevitable, we were eventually successful in at least prevailing on a ruling that María’s parents would have the right to have temporary custody of Victor. I should also note that CPS and the child dependency court had assumed jurisdiction even before the death of Jesús—the previous December, after it was discovered that the baby had what appeared to be broken ribs.

One of the things that helped in the child dependency proceedings was that María’s parents had done an excellent job of raising seven grown children and were very involved with their adult children and their grandchildren. Florencio and Mercedes Mendoza were a warm and caring couple in their mid-fifties. Mr. Mendoza had worked first as a landscaper and then for a local nursery and had recently retired. His wife, Mercedes, had been a stay-at-home mom who was very involved in the lives of her children and a dozen or so grandchildren. The Mendozas lived in the high desert, had been very close to little Victor, and were eager to assume temporary custody of the child. Neither of María’s parents had ever been arrested or charged with any crime and had no history of child abuse or neglect. This, along with the fact that the court prefers to have children in dependency court placed with relatives, made them an ideal couple for assuming temporary custody of Victor.

The termination of the criminal case further complicated the child dependency court proceedings. The decision to enter the plea agreement in the criminal case was a no-brainer for the parents, since it meant that José would not face additional time beyond the time he

had already served and the charges against María would be dropped. But it created enormous problems for the couple in the dependency proceedings. José, after all, was now a convicted felon who had pled guilty to the child abuse charges. Although the charges against María had been dropped, she was now in a double bind in which she virtually had to choose between being with her husband and being with her child. The court, in other words, was not inclined to allow Victor to have unsupervised contact with a convicted child abuser. This meant that the only way the mother could regain custody of her son was by ensuring that he would not have contact with her husband. This obviously created a serious dilemma for María and a great deal of tension in the marriage.

I won't go into the details of the child dependency court proceedings, except to say that we sought to regain custody for the mother and had a hearing in which we opposed the termination of her parental rights. We brought several character witnesses to the hearing, including a couple of María's neighbors who testified that María and José were excellent parents and that they had never seen them abuse or mistreat their children. I also subpoenaed the doctor from Tijuana, Dr. Ibáñez-Ortiz, who was prepared to testify that he saw baby Jesús shortly before his untimely death; that he did not suspect child abuse; and that his diagnosis was that the baby had been suffering from osteomyelitis, an infection that weakened the bones and made them more susceptible to breaks and fractures. Near the conclusion of our case in chief, just as our medical expert witness was about to testify, the government attorney suddenly called for a recess in the proceedings. S/he made an offer, which we considered and eventually accepted: the maternal parents would assume permanent custody of the child and María would have liberal visitation rights.

### ***Reflections on Rebellious Lawyering and Rascuache Clients***

As I reflect back on this case, it was clearly one of my most difficult and frustrating cases, but one in which I learned a great deal about the judicial system. I learned, for example, that effectively there is no presumption of innocence in the legal and judicial system, particularly for parents suspected of child abuse. I also learned that persons charged with abusing their children, and by implication, their lawyers, are despised and treated with disdain not only by the public at large but also by the various players in the legal and judicial system, including law enforcement officers, bailiffs, clerks, court reporters, and district attorneys. I also learned that there is a very low standard of proof in investigations of suspected child abuse by CPS and the child dependency court, and that all unfounded accusations and allegations against parents are presumed to be true. Finally, I learned

that parents charged with child abuse are presumed guilty whether they are in fact guilty or not. In this case, regardless of the merits of the charges, José was destined to be found guilty. Because his bail was set prohibitively high at five hundred thousand dollars, and because of the backlog in the courts, his case was delayed for nearly nine months while he was kept in custody. On the brink of trial, José was given the option of either pleading guilty—serving just one more month and having the charges against his wife dropped—or of having a jury trial and risk facing a long prison term. No reasonable person would have chosen the latter option.

Yet perhaps the most important lessons I learned were that race, national origin, language, culture, and immigration status play an important role in criminal proceedings and that there is definitely a strong bias against immigrant, Spanish-speaking defendants. As previously noted, María and José were an ideal couple who were living the American dream prior to the tragic death of their infant son. What I found strange, both during the course of the investigation and during the court proceedings, was that what the parents did as normal immigrants was skewed and made to appear deviant and pathological by law enforcement, the prosecution, CPS, and the courts.

During the preliminary hearing, for example, the fact that the police uncovered numerous prescriptions and carefully maintained medical records during a search of the Martínez apartment were introduced as exhibits and as being incriminating evidence by the prosecution. One detective testified that María kept meticulous medical records and that there were numerous prescriptions and x-rays in the house, as well as medicines in the refrigerator. Thus, what would appear to be exculpatory evidence was treated as incriminating. The detective also introduced an exhibit that appeared to be paperwork and forms for the WIC Program, a federally administered special supplemental nutrition program for women, infants, and children. This program helps safeguard the health of low-income women, infants, and children up to age five who are at nutritional risk by providing nutritious foods to supplement their diets, information on healthy eating, and referrals to health-care providers. The fact that the Martínez's participated in WIC, which *should* have shown them to be a health-conscious, responsible family was instead viewed as incriminating evidence because they had claimed that they did not have medical insurance and did not qualify for public assistance and that this is why they went to Tijuana for medical treatment. In the end, one of the most ostensibly incriminating pieces of evidence both in the criminal and in the dependency proceedings, was that the parents had taken the baby for treatment in Tijuana. It is widely known that people who abuse

children do not typically seek treatment for them, and if they do seek treatment, it is generally at various emergency rooms or urgent-care centers where they can remain relatively anonymous, rather than with private physicians or specialists. María and José frequently took the baby for emergency and regular medical care. Before he died, they had taken the baby to their primary care doctor who referred them to Dr. Ibáñez-Ortiz, an orthopedic surgeon in Tijuana.

From the standpoint of the dominant society and law enforcement, medical care in Tijuana was viewed with great suspicion and as somehow deviant, but from a rascuache perspective it was perfectly normal. Bringing a sick child to Tijuana is a better choice than seeing a U.S. doctor, since both medical care and prescription drugs are much more reasonably priced and accessible in Mexico. In addition, the medical care in Tijuana was provided in Spanish, the parents' native tongue, in a culturally familiar and sensitive environment, and at a reasonable price. However, in the context of the criminal charges and the child dependency court, "Tijuana" conjured up images of cheap, unsafe, unsanitary, and illicit abortion clinics. It was assumed, in other words, that the Martínez's sought treatment in Tijuana because they had something to hide, rather than because they could receive high-quality medical services and treatment at a modest cost and in their native language and culture. In the end, the most important lesson I learned in this case was that being a Mexican immigrant and a Spanish-speaker was itself tantamount to evidence of guilt.

## VII. CONCLUSION

In the Introduction to *Rebellious Lawyering*, Gerald López observes not only that lawyering involves effective storytelling but that "Contrary to popular belief, law is not a set of rules but a set of stories and storytelling practices that describe and prescribe social reality and a set of conventions for defining and resolving disputes."<sup>86</sup> And when we try to change things through persuasion, we engage in lawyering.<sup>87</sup> Although some people have guns and others rocks, power, or the ability to make things be the way we want, runs in both directions, so that no one, even the oppressed, is always completely powerless. "No person or group is ever *absolutely* powerless in any relationship, not battered women and not low income people of color."<sup>88</sup> In fact, the practical knowledge and problem solving strategies that we use to confront problems are simply part of the power strategies that we use

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<sup>86</sup> LÓPEZ, *supra* note 1, at 43.

<sup>87</sup> *Id.* at 39.

<sup>88</sup> *Id.* at 41.

in our daily lives.<sup>89</sup>

I submit that the *movidas rascuaches* described in this essay, and the rich folkloric stories surrounding their successful implementation, rather than being a sign of weaknesses, inferiority, or subordination, are weapons of the weak;<sup>90</sup> resourceful and creative strategies that immigrants, minorities, and members of subaltern classes use to survive and to thrive in an otherwise hostile environment. While there are obvious similarities and parallels between *Rebellious Lawyering* and *Rascuache Lawyering*, I would like to point out some possible differences between the two approaches. Whereas López's focus is on lawyers and lawyering, *rascuachismo* turns its attention to clients, larger social structures, patterns of domination, and the social and cultural characteristics of subaltern groups. Drawing on *Rebellious Lawyering* and Critical Race Theory, in this essay I sought to develop a *rascuache* approach, which challenges the traditional hierarchical view of law and lawyers. I also proposed a theoretical framework and vision of social justice and social change that sees lawyers as working with, and on behalf of, subordinated communities. Specifically, my primary goal in this essay was to apply López's vision of rebellious lawyering to the Chicano experience through the concept of "rascuache" or "rascuachismo," illustrated through two case studies from my *rascuache* law practice.

While the parallels between *Rebellious Lawyering* and *Rascuache Lawyering* may be self-evident, I would like to articulate how the *rascuache* approach is distinct from López's vision of *Rebellious Lawyering*. One obvious difference is that while López's focus is on *Rebellious Lawyering* and on challenging the prevailing regnant vision of law and lawyering, mine is on *rascuachismo* as a creative adaptation and response to subordination. My emphasis, therefore, is not so much on lawyering as it is on patterns of domination, Mexicano/Chicano culture, clients and the interface between clients, law, and lawyers. I propose, in other words, that if lawyers are to work effectively and rebelliously with subordinated immigrant communities, they must assume a *rascuache* sensibility that is grounded in the everyday experiences and worldview of *los de abajo*. They must develop a bottom up, irreverent sensibility that looks at the world from the margins of society; a sensibility that is not serious, elevated, or pretentious, but playful, accessible, resourceful, utilizing simple materials, resources, and cultural and social capital that are readily available in the Chicana/o community.

Like rebellious lawyering, *rascuachismo* seeks to supplant the

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<sup>89</sup> *Id.* at 43.

<sup>90</sup> SCOTT, *supra* note 53.



prevailing hierarchical regnant approach—which sees the lawyer as all-powerful and all-knowing and the client as subordinate, passive, and dependent. It is also consistent with López’s client-centered approach that aims to bring about community empowerment and to use lay-lawyering and teaching self-help to organize and empower clients.

Rascuache lawyering recognizes that while lawyers may have expertise in the law, they are not omniscient and lack expertise in other areas. The unequal relationship that exists between lawyers and clients can be obviated by the fact that rascuache lawyering acknowledges and values the expertise of the client. My exchange relations with clients worked well because they served as a vehicle for clients to pay for the legal services by plying their trade, and as a way to provide valuable services I needed. Clients were empowered by demonstrating their valued talents and skills, and were able to pull of *movidás rascuaches* by exchanging these skills for legal services. The proposed rascuache sensibility also reinforces the value of *respeto* or mutual respect, which is extremely important in mexicano culture. What is perhaps most interesting about this reciprocal exchange is that the attorney is at once a service provider and a client. By recognizing the skills and abilities of clients, rascuache lawyering values and respects human capital and human labor, demystifies law and lawyers, and creates a reciprocal exchange of services.

In closing, perhaps the most essential characteristic of rascuache sensibility relative to law, clients, and lawyering, is that it does not deal with sensationalized crimes and high-profile cases but with everyday people with ordinary legal problems. All too often, works on law and lawyering are concerned either with bizarre criminal cases, serial killings, celebrity clients like O. J. Simpson, or famous high-profile attorneys. Rascuachismo, like other forms of rebellious lawyering, entails lawyering for and on behalf of ordinary people who are members of subaltern classes. It is work that precisely for this reason is so necessary and compelling.

