

# JUSTICE REYNOSO’S LEGACY IN CONTEXT<sup>1</sup>

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## ABOUT THE AUTHOR

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Good morning and welcome to UCLA!

It is wonderful to see your faces here today! One of the qualities a great university has is the power to convene. We have gathered hundreds of you here today—and watching virtually—to collectively remember Justice Reynoso’s remarkable life. We have assembled three panels of incredible speakers. We are joined by Reynoso’s son Len ReidReynoso—Len, please give a wave.

I am so grateful to the team of students who have volunteered their time and creativity to put together this day of events! In addition to the *Chicanx-Latinx Law Review (CLLR)* co-editors-in-chief Jessica Del

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<sup>1</sup> This speech was delivered as welcoming remarks at the 2022 CLLR Symposium marking Justice Cruz Reynoso’s career. See HONORING THE LIFE AND LEGACY OF JUSTICE CRUZ REYNOSO (1931–2021) (2022), [<https://perma.cc/MCA9-NUTT>]. The speech has been edited and adapted to our readership.

Castillo and John Cagan, whom you have already met, I want to give a big shout-out to *CLLR* Symposium Editor Melissa Segarra for her dedication and hard work! Could all current students who are *CLLR* board members and staff please stand to be recognized?

Today's gathering sprang from a conversation I had with Jessica Del Castillo about six months ago. We had a wide-ranging conversation about Jessica's law school experience. Eventually, our talk turned to Latinx student politics and struggles in a law school climate in which students of color remain simultaneously invisible and hyper-visible. Invisible because, even today, the number of Latinx students remains a tiny fraction of the overall student body, and certainly of any large 1L or bar course. Hyper-visible because students of color often report their classmates and teachers single them out as if they represent all members of their racial group when they are asked about a particular case or controversy.

Toward the end of our conversation, I broached an idea that I had been thinking about since learning of Reynoso's death in May 2021. Would the *CLLR* students be interested in working with me to organize a symposium in his honor? Mind you, Jessica hadn't heard of Reynoso until that moment. But as I began to fill her in about Reynoso's tireless work for justice, she was persuaded to take the idea back to her fellow students. The rest, as they say, is history as is evident by this gathering.

### 50TH ANNIVERSARY OF THE CLLR

Before I offer comments to contextualize today's conversation, I want to say a few words about *CLLR*. I encourage you to read the one-page history of *CLLR* on page two of the program.<sup>2</sup> The journal was founded 50 years ago as the *Chicano Law Review*. It was the first law journal in the country dedicated to issues affecting the Mexican American community; Berkeley's *La Raza Law Journal* came nine years later.

There's no doubt that the *Chicano Law Review* would not have existed without UCLA Law's affirmative action program. That pioneering program has been chronicled by Judge Miguel Espinoza in his book *The Integration of the UCLA School of Law, 1966–1978*.<sup>3</sup>

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<sup>2</sup> See HONORING THE LIFE AND LEGACY, *supra* note 1, at 2.

<sup>3</sup> See generally Miguel Espinoza, THE INTEGRATION OF THE UCLA SCHOOL OF LAW, 1966–1978: ARCHITECTS OF AFFIRMATIVE ACTION (2017).

After just a few years of robust affirmative action at law schools across the country, the number of minority<sup>4</sup> law students in the United States increased by 89 percent.<sup>5</sup> At UCLA, 15 percent of students who began their studies in 1969 were Black and Mexican American students admitted via the law school's Legal Education Opportunity Program.<sup>6</sup> Two years later, that proportion had increased to 22 percent.<sup>7</sup> Members of the UCLA School of Law Class of 1974, who started law school in Fall 1971, included thirty-one African Americans thirty-one Chicanos, six Asian Americans, and two Native Americans.<sup>8</sup> For perspective, that is more Mexican American and African American students than we have ever had in a UCLA Law graduating class during any year of the 21<sup>st</sup> century.

This remarkable group of students of color went on to found both the *Black Law Journal* in 1971 and the *Chicano Law Review* in 1972. Because we rarely have the opportunity to recognize them, I want to name the founders of the *Chicano Law Review*:

- Loretta Sifuentes, from Gardena, one of two women of color in her law school class;
- Charles Nabarette, from Pomona, who was legally blind;
- Leo Salazar, the *Chicano Law Review*'s first editor-in-chief;
- Peter Barbosa, from Van Nuys, a Vietnam veteran, who was the first managing editor; and
- Stephen Yslas.<sup>9</sup>

If you were a pre-1975 member of the staff of the *Chicano Law Review*, please stand and be recognized!

### **CRUZ REYNOSO IN THREE MOMENTS**

I want to set the stage for today by briefly talking about three moments in Cruz Reynoso's illustrious career. It is folly to isolate just three instances that bring to life his career for those who didn't know him and, for those who did, that capture his personality and commitment to justice.

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<sup>4</sup> *Id.* at xix (defining "minority" students as non-White individuals).

<sup>5</sup> *Id.* at 202.

<sup>6</sup> *See id.* at 186–87, 293.

<sup>7</sup> *Id.* at 200–01.

<sup>8</sup> *Id.* at 200.

<sup>9</sup> *Id.* at 190–92, 214–15.

Instead, my objective is to jumpstart our conversation by focusing on three examples, each corresponding to the three roundtable panels we have throughout the day: on Cruz Reynoso's legacy for social justice; on Justice Reynoso's legacy as a jurist; and on Professor Reynoso's legacy for legal education.

For each moment, I draw on Reynoso's own words to tell the story, drawing from some of dozens of articles and speeches he published over the years.

### MOMENT #1—THE CRLA YEARS

As the program notes, Reynoso—with colleague Michael Bennett—authored the very first article in the very first issue of the very first volume of the *Chicano Law Review*.<sup>10</sup> From 1968 to 1972, first as deputy director and then as executive director, Reynoso skillfully shepherded California Rural Legal Assistance (“CRLA”) against attacks by the administrations of Gov. Reagan and Pres. Nixon. CRLA—sometimes jokingly known back in the day as Chicano Rural Legal Assistance—was a so-called poverty law outfit seeking to break the mold.

As Reynoso and Bennett put it:

CRLA was not intended as an extension of traditional legal aid wherein attorneys see as many clients as they can, never go to court except in a defensive posture, rarely use discovery, file appeals, or represent groups. CRLA intended to offer its indigent clients the same economic, political, and social bargaining power that large private law firms offered their affluent clients.<sup>11</sup>

CRLA was, they said, little known outside the rural communities it served until it filed lawsuits against the state of California and the U.S. Department of Labor. CRLA filed the state suit in August 1967 and succeeded by November in blocking Reagan from making cuts to state Medi-Cal.<sup>12</sup> In the federal suit, CRLA obtained a temporary injunction to block the renewal of the notorious Bracero Program.<sup>13</sup> During his 1966 gubernatorial campaign, Reagan had promised agribusiness he would

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<sup>10</sup> See Michael Bennett & Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 CHICANO L. REV. 1 (1972).

<sup>11</sup> *Id.* at 3.

<sup>12</sup> See *id.* at 7.

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

persuade federal officials to send in braceros to harvest the 1967 crops on an emergency basis.<sup>14</sup> With its legal victory, CRLA drew Reagan's ire, which, in turn, generated national publicity for CRLA—including write-ups in *Time* magazine and *The New Yorker*, and mentions in speeches by Vice President Hubert Humphrey and Senator Ted Kennedy.<sup>15</sup>

From Summer 1969 to Summer 1970, one news clipping service—and here I must stop to explain: you young people will not believe this, but we used to have to pay people to compile all press articles on a given topic; we couldn't just press a few buttons on our phone! So the news clipping service reported that CRLA was the third most mentioned private organization in the California press after Bank of America and Union Oil.<sup>16</sup>

Reagan's attacks against CRLA continued into 1971 with a concerted campaign to end legal aid funding for CRLA. Reynoso and Bennett explained it this way: "First, he was ideologically opposed to allowing the poor full access to the courts. Second, we were too successful. The governor had lost [each of our major lawsuits]. Third, [he] was doing the bidding of large California growers upon whose financial backing he heavily relied."<sup>17</sup>

Because Reagan represented the most populous state with the largest number of delegates, he had Nixon's attention, and the attack against CRLA went all the way up to the Oval Office. On January 29, 1971, Nixon "instructed John Ehrlichman to compromise the CRLA issue in such a way that [CRLA] would be saved and [that] Reagan would be precluded from [blaming Nixon]."<sup>18</sup> Ehrlichman's solution was to kick the funding decision down the road: a decision on funding CRLA would be delayed until a "commission" could investigate and make a recommendation.<sup>19</sup>

Due to public and media pressure—largely orchestrated and managed by Reynoso and his staff—the commission held 15 hearings across California in Spring 1971. In June of that year, the commission recommended, and CRLA received a 17-month extension of funding. In short, Reagan had failed in his effort to destroy CRLA.

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<sup>14</sup> *See id.*, at 10.

<sup>15</sup> *Id.* at 10, 13

<sup>16</sup> *Id.* at 19.

<sup>17</sup> *Id.* at 31.

<sup>18</sup> *Id.* at 50.

<sup>19</sup> *Id.* at 51.

I commend this article to anyone interested in politics and in the survival of grassroots organizations seeking radical change. It is a David and Goliath story, and David won because Cruz Reynoso was in his corner.

## **MOMENT #2—THE CALIFORNIA SUPREME COURT YEARS**

In 1976, Reynoso became the first Mexican American (and Latinx) appointed to California's Court of Appeals, serving there for six years. Reynoso wrote about rumors that he would be tapped for the Supreme Court—by all accounts, then the most influential state supreme court in the nation—saying he almost gave up on the idea because Governor Jerry Brown made four appointments to the high court, bypassing Reynoso each time.

Reynoso was finally called to a meeting with Governor Brown in 1982. Reynoso wrote:

[T]he governor turned to me and said, 'Cruz, I am appointing you to the bench, it's up to you to retain it.' In my naivete, I did not quite understand what he meant. I had already stood for confirmation as an appellate judge. There had been, it seemed to me, an unstated agreement between the Democrats and Republicans that judicial appointments would not [become part of] partisan political debates . . . . Governor Brown understood, as I did not, that the political reality was changing in California.<sup>20</sup>

Then, as now, of course, the governor's nominee had to be confirmed by a majority of a three-person committee consisting of the Chief Justice of the state's high court, the senior presiding justice of the court of appeals, and the state attorney general.<sup>21</sup> The Attorney General, George Deukmejian, had signaled he planned to run for governor. He had already begun to criticize—along with Republicans in the state legislature—the Supreme Court, especially Chief Justice Rose Bird, as too "soft" on crime and the death penalty.<sup>22</sup> Sure enough, Deukmajian voted against him, but Reynoso was confirmed with a 2 to 1 vote.<sup>23</sup> Reynoso promptly

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<sup>20</sup> Cruz Reynoso, *Brief Remembrances: My Appointment and Service on the California Court of Appeal and Supreme Court, 1976–1987*, 13 BERKELEY LA RAZA L.J. 15, 23 (2002).

<sup>21</sup> *Id.* at 23 n.9.

<sup>22</sup> *Id.* at 23.

<sup>23</sup> *Id.* at 24.

began commuting via Greyhound bus from his home near Sacramento to work at the Supreme Court in San Francisco.<sup>24</sup> Unfortunately, that was not the end of the story, as we know. Five years later, Reynoso and colleagues Chief Justice Bird and Associate Justice Joseph Grodin were ousted from the Supreme Court in the 1986 election.<sup>25</sup> It was the same election in which voters made Deukmajian Governor—giving him the chance to immediately appoint three new justices to the Supreme Court.

With characteristic humility, Reynoso did not wallow in the hardship of this moment for himself and his family. Instead, he reflected on the loss for the people of California: “Although I landed on my professional feet after leaving the court, it is the people of this state who have suffered because the confirmation process had been politicized.”<sup>26</sup>

### **MOMENT #3—PROFESSOR REYNOSO'S RESEARCH ON LATINX ATTORNEYS IN LOS ANGELES COUNTY AT THE TURN OF THE CENTURY**

In the mid-1990s when we were both on the UCLA faculty, Reynoso had the idea to launch an empirical research project about Latinx attorneys in Los Angeles County. He was frustrated by the lack of data about Latinx lawyers and, specifically, he wanted evidence to defend affirmative action law school admissions. Some of you in this room may have filled out the anonymous survey.

Reynoso published his analysis of the survey results in the *UC Davis Law Review*, where he identified his research questions as follows: “Have Latino lawyers materially assisted the bar in representing all segments of the population? Have they assisted the courts in the administration of justice? And, have they provided the community with educated professionals trained in leadership?”<sup>27</sup>

Having graduated from Berkeley Law in 1958, Reynoso knew that, at that time, there were only a few dozen Mexican American lawyers across all of California. A decade later in 1968, when he was hiring for CRLA, he joked that he hired 50 percent of all Mexican American

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<sup>24</sup> *Id.* at 25.

<sup>25</sup> Gerald F. Uelmen, Symposium, *California Judicial Retention Elections*, 28 SANTA CLARA L. REV. 333, 335 (1988)

<sup>26</sup> Reynoso, *supra* note 20, at 27.

<sup>27</sup> Cruz Reynoso, *A Survey of Latino Lawyers in Los Angeles County - Their Professional Lives and Opinions*, 38 U.C. DAVIS L. REV. 1563, 1569 (2005).

graduates of accredited law schools in California; there were two and CRLA hired one.<sup>28</sup>

By the turn of the century, the ABA reported that 3.4 percent of all attorneys nationwide were Latinx.<sup>29</sup> But until Reynoso's study, we did not know precisely how many Latinx attorneys practiced in Los Angeles County, which remains a population and political mecca for Mexican Americans. From among 45,000 lawyers in the early 2000s, he estimated that fewer than 3,000 were Latinx, approximately 70 percent of them Mexican American.<sup>30</sup>

While in many respects Latinx lawyers look like other lawyers, in some ways they did not. Reynoso concluded (and I suspect this is still the case, two decades later) that “[c]ompared to national and California attorneys, the Latino lawyer from Los Angeles exhibits a more publicly oriented professional choice,” specifically they were more likely to work in government jobs and as public defenders and legal aid lawyers.<sup>31</sup> Certainly, we know that these law jobs don't pay as much as big law jobs, but we know that they pay dividends in terms of the opportunity to make a difference to the Latinx community. Nearly 88 percent of Latinx lawyers surveyed by Reynoso said community service was important to them in deciding where to work.<sup>32</sup>

As I previously noted, one of Reynoso's motivations for this study was to rebut those who opposed affirmative action. Reynoso had vocally defended affirmative action against attacks, including the 1970s cases of *DeFunis v. Odegaard*<sup>33</sup> and *Regents of the Univ. of Cal. v. Bakke*.<sup>34</sup> The movement to ban affirmative action came again to the University of California when the UC Regents voted in 1995 to end admissions practices that took race into account.<sup>35</sup> That success then led to a statewide

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<sup>28</sup> *Id.* at 1567.

<sup>29</sup> Am. Bar Ass'n, *ABA Lawyer Demographics* (2014), [https://cdn.ymaws.com/www.inbar.org/resource/resmgr/Conclave/new\\_Lawyer\\_Demographics\\_Tabl.pdf](https://cdn.ymaws.com/www.inbar.org/resource/resmgr/Conclave/new_Lawyer_Demographics_Tabl.pdf) [<https://perma.cc/PHD6-MWRZ>].

<sup>30</sup> Reynoso, *supra* note 27, at 1571, 1578.

<sup>31</sup> *Id.* at 1581.

<sup>32</sup> *Id.* at 1637.

<sup>33</sup> 416 U.S. 312 (1974).

<sup>34</sup> 438 U.S. 265 (1978).

<sup>35</sup> Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 UCLA L. REV. 1215, 1222–1223 (2002). On the post-Bakke history of affirmative action at UCLA Law, see Albert Y. Muratsuchi, *Race, Class and UCLA School of Law Admissions, 1967–1994*, 16 CHICANO-LATINO L. REV. 90, 106–107 (1995).

mobilization in the form of a voter referendum that proposed to amend the state constitution to end the consideration of race or gender in higher education admissions by state universities, state employment, and government contracts (“Proposition 209”).<sup>36</sup> I recollect that Reynoso actively campaigned against Prop. 209, speaking frequently to community organizations and voters across the state as well as at student-organized rallies at UCLA.

Unfortunately, we lost the battle.<sup>37</sup> The impact was immediate, as Professor Cheryl I. Harris has noted: “[c]ompared to the averages between 1990–1996, the class of 2000 (admitted in 1997) represented a 73 percent decline in African American enrollment, a 27 percent decline in Latina/o enrollment, and an 80 percent decrease in American Indian enrollment.”<sup>38</sup> Prior to 1995, Latinxs were 12.4 percent of all law students at the four UC law schools.<sup>39</sup> At UCLA Law, there was over a 42 percent decline in the average number of Latinx students enrolled in the four years prior to 1996 and the six years after 1996.<sup>40</sup>

Reynoso’s survey provides unique, important data, both descriptively and analytically, about Latinx attorneys and affirmative action. It is noteworthy that, when comparing the proportion of Los Angeles County Latinx attorneys to the entire population of California lawyers, there was only one cohort where Latinx lawyers made up a much greater proportion than California attorneys: among those admitted to the bar 20–29 years prior and, thus, who graduated during the initial era of affirmative action, 1972–1981.<sup>41</sup> Among those with 20–29 years of practice experience, Latinx attorneys in Los Angeles County were 22 percent, whereas California lawyers overall were 14 percent;<sup>42</sup> Reynoso concludes that, prior to the 1970s, Latinxs individuals were largely excluded from legal education (and higher education more generally).<sup>43</sup>

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<sup>36</sup> Harris, *supra* note 35, at 1222; *see also* Reynoso, *supra* note 27, at 1619 n.123.

<sup>37</sup> Prop. 209 states: “(a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” CAL. PROP. 209 (1996). Prop. 209 was voted into law on November 5, 1996. *See* CAL. CONST. art. I, § 31.

<sup>38</sup> Harris, *supra* note 35, at 1224.

<sup>39</sup> Reynoso, *supra* note 27, at 1618 n.122.

<sup>40</sup> *Id.* at 1620.

<sup>41</sup> *Id.* at 1616 fig.19.

<sup>42</sup> *Id.* at 1616

<sup>43</sup> *Id.* at 1617.

Reynoso's research also sheds light on Latinx lawyers' views about affirmative action policies and whether they believed they had personally benefited from affirmative action. Overall, 88.2 percent considered themselves beneficiaries of affirmative action, but the number varied depending on when they attended law school, reflecting, I contend, the changes in affirmative action policies noted above.<sup>44</sup> Returning to those Latinx lawyers who graduated in the 1970s, Reynoso points out that 20.7 percent considered themselves beneficiaries of affirmative action.<sup>45</sup> During this time period, law schools either had nascent or nonexistent affirmative action programs. In contrast, by the 1980s, most law schools had robust affirmative action programs, and Reynoso's data reflects this. The proportion of Latinx attorney respondents who graduated in the 1980s and say they benefitted from affirmative action was almost double than for those who graduated in the 1970s (37 percent).<sup>46</sup>

Yet among Latinx lawyers who graduated in the 1990s, only 21.2 percent believed they benefited from affirmative action, although this was during and after Prop. 209's passage (keep in mind that many who responded to the survey graduated from private law schools in California not subject to the ban on affirmative action or from public or private law schools outside the state).<sup>47</sup> According to the latest U.S. Census results, Latinx people are 18.9 percent of the U.S.<sup>48</sup>, 40.2 percent of California<sup>49</sup>, and nearly half of Los Angeles County.<sup>50</sup> Yet, given the impact of Prop. 209 combined with the retirements of Latinx attorneys who graduated from law school in the 1980s, it is likely that the share of Latinx attorneys has decreased from the 6 percent Reynoso estimated in the early 2000s.

In this regard, Reynoso's gloomy conclusion is prescient indeed:

The underrepresentation of Latinos in law schools raises serious political concerns. There is no indication that the percentage of Latino lawyers will increase in Los Angeles or in

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<sup>44</sup> *Id.* at 1622.

<sup>45</sup> *Id.* at 1617 fig.20.

<sup>46</sup> *Id.*

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

<sup>48</sup> *Quick Facts: United States*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/US> [<https://perma.cc/FR9K-S4BX>] (last visited Mar. 4, 2023).

<sup>49</sup> *Quick Facts: California*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/CA> [<https://perma.cc/TU8U-58ME>] (last visited Mar. 4, 2023).

<sup>50</sup> *Quick Facts: Los Angeles city, California*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/losangelescitycalifornia> [<https://perma.cc/8YDV-24LL>] (last visited Mar. 4, 2023).

California. Meanwhile, the Latino population and its political power in California and across the nation is increasing. The relative lack of Latino judges and public attorneys has been noted by Latino legislators. And the expenditure of public resources on institutions of higher education, which are not serving the Latino population, has been the subject of legislative hearings . . . . [O]nly if diversity is accepted as one of the highest priorities will the demographics of the bar change.<sup>51</sup>

### CONCLUSION

On this Saturday, two days after Cesar Chavez Day (a state holiday in California), I end my remarks by quoting from Reynoso's published commentary on Chavez's death in 1993. Reynoso wrote about being among the 35,000 people who attended Chavez's funeral. He asked, "What drove Cesar?"<sup>52</sup> And then went on to answer the question this way: "Gentleness should never be confused with moral softness. The injustices he had seen and lived—in school, in politics, in the workplace—drove Cesar. But he would not have been driven without a faith that changes for the better could become a reality."<sup>53</sup> Reynoso's description of Chavez is a fitting way to describe Reynoso as we begin this special day of remembrance and celebration of our friend Cruz Reynoso.

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<sup>51</sup> Reynoso, *supra* note 27, at 1632.

<sup>52</sup> Cruz Reynoso, *Remembering Cesar Chavez, From the Grassroots Up*, 50 GUILD PRAC. 97 (1993).

<sup>53</sup> *Id.*

