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## Defending the Future Voices of Critical Race Feminism

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SMALL SCHOOL.  
BIG VALUE.

# Defending the Future Voices of Critical Race Feminism

*Margaret Montoya*<sup>1</sup>

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I want to acknowledge my collaborations with Drs. Valerie Romero-Leggott and Renee Ornelas, who have led the effort to include meaningful instruction on language and culture at the University of New Mexico Medical School; state Senator Bernadette Sanchez, who introduced legislation this past legislative session to require that educational programs for health providers include content on language and culture; Dr. Cecilia Navarette, an expert in the design and evaluation of educational programs for minority and at-risk students, who is taking ideas about culture, language, and race and beginning to infuse them into our proposal writing efforts; and Karen Sanchez Griego, the executive director of the ABQ ENLACE program, a pipeline program funded by the Kellogg Foundation, and an experienced teacher and HS principal, who early on recognized the importance of culture and race within educational reforms and thus endorsed the concept of "cultural competence" in a K-12 setting. I would also like to acknowledge Maria Hines, mother of four and a parent volunteer, who continually models for all of us what it means to speak truth to power, and Rosemarie Romero and Teresa Sierra, the staff at the research institute I direct, who have also been integral parts of designing and implementing these projects. I mention the names of these *mujeres* because, in my opinion, they too are doing the work of Critical Race Feminism.

## INTRODUCTION

*Buenas tardes. Que dicha estar aquí con ustedes en este symposio.* It is a significant privilege for me to be part of the conversation that has been sustained here today.<sup>1</sup> Critical Race Feminism (“CRF”) has been my intellectual and ideological sustenance for more than a decade, providing me with a justification and a rationale for working within the legal academy. CRF images, arguments, and theories have been the protective bathrobe that I wrapped myself in as I sat in faculty meetings, read student evaluations, or analyzed admissions statistics.<sup>2</sup> We are indebted to Professor Angela Onwuachi-Willig, Dean Rex Perschbacher, Dean Kevin Johnson, and their colleagues here at the UC Davis School of Law for creating this opportunity for us to share this space of exploration and to experience these representations that rearrange the narratives that express and expose our identities. *Sus ideas son la nutrición, la energía para nuestro trabajo de concientización.* Your ideas energize our ongoing work of remaking a collective conscience.

I. HIGHER EDUCATION ACCESS IN NEW MEXICO: *GRUTTER* PLUS  
NEW STRATEGIES

A conference about the future of CRF is a chance to examine educational access at several levels. As many of you know, for many years I have been involved with the issue of affirmative action, specifically with the *Grutter v. Bollinger* case and the ongoing implementation of the decision.<sup>3</sup> In *Grutter*, the Supreme Court concluded in a 5-4 decision that diversity in student bodies in publicly funded colleges and universities is a “compelling state interest” that can

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<sup>1</sup> Professor Margaret Montoya, Address entitled “Defending the Future Voices of Critical Race Feminism,” at the U.C. Davis Law Review Symposium: The Future of Critical Race Feminism (Apr. 1, 2005).

<sup>2</sup> This bathrobe reference is an allusion to a well-known passage from a Patricia Williams book in which she writes:

[T]his is one of those mornings when I refuse to compose myself properly; you should know you are dealing with someone who is writing this in an old terry bathrobe with a little fringe of blue and white tassles dangling from the hem, trying to decide if she is stupid or crazy.

PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A MAD PROFESSOR* (1991). Professor Williams is reading an 1835 Louisiana decision analyzing the contractual claims available to a purchaser arising from a slave’s craziness. *Id.* at 3-4.

<sup>3</sup> *Grutter v. Bollinger*, 539 U.S. 306 (2003).

justify the consideration of race and ethnicity as one factor in an admissions program.<sup>4</sup> The Court went on to hold that deciding whether a particular program is “narrowly tailored” is a fact-specific determination.<sup>5</sup> The language of *Grutter* and *Gratz v. Bollinger* motivated many students and law professors to renew their efforts and advocate for affirmative action admissions programs that take race into account.<sup>6</sup>

Students from the University of New Mexico (“UNM”) School of Law enrolled in my equal protection seminar presented the state of New Mexico’s interests in the *Grutter* case. They did so by filing an amicus brief with the Supreme Court on behalf of the three New Mexico minority bar associations — Hispanic, Indian and black bar associations.<sup>7</sup> We argued that race is a compelling interest because, as a minority majority state with intractable rural poverty, profound health deficits, and a complex jurisdictional landscape, UNM’s law and medical schools must take race and ethnicity into account in student admissions to address justice and health disparities.<sup>8</sup>

Let me give you some data about New Mexico. The state is about 42% Latino, 45% White (non-Latino), 10% Native,<sup>9</sup> but only 2% African American and 1% Asian American.<sup>10</sup> Thus, its demographics are much different than those of the rest of the nation. New Mexico also has a complex intergovernmental arrangement with nineteen pueblos, the Navajo nation, and two Apache tribes; all twenty-two Indian sovereigns have individual governmental structures.<sup>11</sup> The school system reflects this diversity as well.

Once the affirmative action cases were decided, we analyzed their relevance to higher education in a racially diverse state such as New Mexico. In this analysis, we turned our attention to the fact that the poor

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<sup>4</sup> *Id.* at 325.

<sup>5</sup> *Id.* When the Court applied its narrow tailoring test to the University of Michigan law school’s admission program, the Court found that it was constitutional. *Id.*

<sup>6</sup> *Id.*; *Gratz v. Bollinger*, 539 U.S. 244 (2003). For more details on the mobilization by students and faculty, see generally Society of American Law Teachers, <http://www.saltlaw.org> (last visited Jan. 25, 2006).

<sup>7</sup> Brief for New Mexico Hispanic Bar Association, et al. as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241).

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

<sup>9</sup> Ethnic/racial labels are highly fluid as they evolve over time and place. Through my work I have discovered that some Indigenous/Indian/tribal people in New Mexico prefer the term “Native” to such terms as Native American or American Indian.

<sup>10</sup> U. S. Census Bureau, *New Mexico Quick Facts* (2000), <http://quickfacts.census.gov/qfd/states/35000.html>.

<sup>11</sup> N.M. Dep’t of Tourism, *Tribes & Pueblos* (2005), <http://www.newmexico.org/go/loc/nativeamerica/page/nativeamerica-pueblos.html>.

educational attainment rate of students of color in public schools is the most significant challenge when addressing access to higher education. Affirmative action in higher education is a patchwork quilt; it is needed in some schools and not in others. For example, there is little, if any, need to consider race and ethnicity at the undergraduate level in New Mexico's public college and universities. These undergraduate programs employ virtually open admissions policies so students with low standardized test scores and grade point averages are regularly admitted (but with poor retention rates). But that is not the case for UNM's professional or graduate programs, which must rely on the consideration of race and ethnicity to admit diverse student bodies. Working with Bill Kidder at the Equal Justice Society, I have just released a fifty-page analysis of New Mexico's educational pipeline leading to graduate schools and legal and medical degrees.<sup>12</sup>

My understanding of CRF has provided me with some insights about implementing *Grutter* in New Mexico, especially in the state's public graduate schools. Increasing the pool of law school applicants in a significant way will only happen when we address the unconscionable drop-out rates for Latina/o, Native, and African American students in middle and high schools.<sup>13</sup> Law professors of color have an important role to play in promoting educational access and attainment all along the educational continuum from pre-kindergarten to doctoral studies. The brilliant scholarship that has been produced by scholars of Critical Race Theory and Critical Race Feminism must find its way into the public schools.<sup>14</sup> We must hold open the doors of educational opportunity, but then we must transform the classroom experience. I believe we can help create race-conscious and culture-specific curricula and pedagogy that can keep students of color in school, engage their families in education and public policy debates, and improve their chances of navigating through the system. Scholars of Critical Race Theory, affectionately known as race-crits, with our knowledge of law, public policy, and process within a context of race, culture, and power, have a special

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<sup>12</sup> Margaret E. Montoya et al., *Southwest Hisp. Res. Inst., Expanding the Educational Pipeline: Increasing Opportunities for Underrepresented Groups in New Mexico to Leadership* (2005), <http://www.unm.edu/~shri>.

<sup>13</sup> Nat'l Ctr. for Educ. Statistics, *Public High School Dropout and Completers from the Common Core of Data: School Year 2000-01*, [http://nces.ed.gov/pubs2004/dropout00-01/table\\_3.asp](http://nces.ed.gov/pubs2004/dropout00-01/table_3.asp) (last visited Jan. 25, 2006) (finding that in New Mexico, 6.7% Hispanic students, 5.9% American Indian students, and 5.3% African-American students dropped out of high school).

<sup>14</sup> For representative articles on the topic, see generally *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 2d ed. 2003).

expertise. The truncated debates going on about education and social transformation need that expertise.

In New Mexico, *Grutter* has provided the UNM faculty of color with the opportunity to focus on several issues relating to educational access, such as enrollment rates in the graduate and professional schools, diversity among tenured faculty, and linkages with the public schools. We have been working to coordinate strategies to achieve both access and structural and institutional transformation. Currently, we are concentrating our efforts in four areas.

First, faculty, mostly women, of color in the law and medical school are working closely with students and community activists on admissions, curricular collaborations, grant writing, and K-16 partnerships. Second, students of color, under the leadership of Denise Chanez the MALSA president, and progressive white law students like Tim Atler have organized law students on the issue of law school admissions and have become involved with the public schools in retention, mentoring, and academic enrichment projects. Third, my seminar students have developed service learning projects that transform learning spaces, deliver services to needy populations, and move theory, especially race-based theories, into projects that address specific legal needs in communities of color. This semester students are working on an exchange with faculty and students from Ciudad Juarez, Mexico, on issues relating to the labor rights of maquila workers, health care in the colonias, and living conditions of immigrants in the Albuquerque area. Another group of students is working with Navajo women coal miners who are heavy machine operators in the Four Corners area to organize a conference on women's employment rights. Finally, women of color in the university, the legislature, and the public schools have been using the concept of "linguistic and cultural competence" as the conceptual frame for grant writing, curricular innovation, teacher training, policy initiatives<sup>15</sup>, and cross-border exchanges.

Defining the voices of CRF means forming allies in the task of dismantling the barriers of race and gender and having those allies take CRF concepts and use them so that they mean something real for women

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<sup>15</sup> During the time that this article was written, i.e., as the symposium was held and then as the editing process continued, we, the group of women acknowledged in this article, were involved in organizing a Latino Health Summit. For a description of the program, see Univ. of N.M. Health Sci. Center, Hispano/Latino Health Summit, <http://hsc.unm.edu/cme/2005Web/HispanoHealth/HispanoLatinoHealthSummitIndex.shtml> (last visited Oct. 30, 2005).

of color themselves, our local communities, and future generations. The fact that our collaboration involves women of color is not lost on us. As we engage in our day to day activities, we have become sounding boards for one another for the instances of ethnic and gender-based micro-aggressions that we experience. For example, this symposium became an opportunity for our informal group to converse about race and CRF. Their spirit, *su ánimo*, is here with me today.

## II. INCREASING EDUCATIONAL ACCESS, DECREASING SOCIAL DISPARITIES

Implementing *Grutter* means more than just holding the doors of higher education open for a diverse group of students; it means using higher education to address the oppressive economic and social conditions in which Latinos, African Americans, Asian Americans, and Natives endure. Our purpose in New Mexico has been to use the Supreme Court's decision in *Grutter* to generate a more *Bakke*-like discussion about expanding the number of doctors, lawyers, teachers, and other professionals who are being educated to deliver services to underserved communities.<sup>16</sup>

In the mid-1970s in *Bakke*, the University of California defended its admission policy at its UC Davis Medical School by asserting that it promoted a better healthcare delivery system for deprived citizens.<sup>17</sup> However the empirical data establishing that doctors of color are more likely to provide healthcare to communities of color than are white doctors had not been compiled.<sup>18</sup> Thus, Justice Powell rejected this justification for the preferential racial classification for evidentiary reasons. The policy debate as a result of this decision should be linked to the social problem that is being addressed, namely the health disparities that afflict communities of color. However, the national discussion about *Grutter* focused the doctrinal and policy discussions almost exclusively on student diversity and the effects of admissions decisions on *law schools* rather than on communities of color. The focus should be where it had been during the *Bakke* litigation, namely, on the effects of increasing the number of doctors of color with the propensity to practice in communities of color. The difference is that one debate focuses the

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<sup>16</sup> *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 310 (1978). The Court held that diversity in the student body is a sufficiently compelling state interest to justify the consideration of race as one factor in a student admissions program in a publicly funded college or university. *Id.* However, the Court required the process for taking race into account to be narrowly tailored. *Id.*

<sup>17</sup> *Id.* at 310-11.

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

policy on people of color — people without power and privilege — and the other focuses on law students and administration — people with excessive power and privilege.

A. *Introducing Race and Culture into Public School Curricula*

I believe that New Mexico offers an educational environment that is suited for pedagogy that is race-sensitive and culturally explicit. Overwhelmingly, my experience suggests that teachers are almost totally unaware of the new scholarship on race and many still aspire to colorblindness. The K-12 school-age population in New Mexico is 52% Latino and 11% Native; therefore, the composite face of the public school student is a “brown” face.<sup>19</sup> However, the culture of New Mexico’s schools is still “white.” Many, and often most, teachers are white women, as is true in the rest of the country.<sup>20</sup> The school curricula are incoherent and only slowly changing to reflect the multiple cultures of the state. I have chosen to use color (“brown” and “white”) to highlight cultural differences with roots in a racialized social order. However, such color designations can be inaccurate, given the great variability in physical appearance within any category.

In making the claim that curricula are incoherent, I am borrowing the notion of coherence and, by extension, incoherence, from an article called *Shame in the Schools* in the April 7, 2005 issue of the *New York Review of Books*. In this article, Roger Shattuck described the disconnect between state “standards,” a list of what students *should* know at a given level of school and the curriculum in the Vermont schools.<sup>21</sup> I mention this because I’ve had the occasion to interact with some teachers in the public schools, and the issue of curriculum has been part of our change agenda. The alternative for many schools concerned about this incoherence is to adopt a prescribed curriculum.<sup>22</sup> One of the most popular is called the “Core Knowledge Sequence,” which 480 schools have adopted, and another 400 are considering.<sup>23</sup> “One goal of the Core Knowledge Foundation,” as described on the website, “is to provide all children,

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<sup>19</sup> N.M. Pub. Educ. Dep’t, *Percent of Student Enrollment Ethnic Category by District School Year 2003-2004*, <http://www.ped.state.nm.us/div/ais/data/fs/13/03.04.ethnic.pdf> (last visited Jan. 25, 2006).

<sup>20</sup> N.M. Pub. Educ. Dep’t, *Personnel by Ethnicity & Gender 2003-2004*, <http://www.ped.state.nm.us/div/ais/data/fs/23/03.04.pers.eth.gen.pdf> (last visited Jan. 25, 2006).

<sup>21</sup> Roger Shattuck, *The Shame of the Schools*, N.Y. REVIEW OF BOOKS, Apr. 7, 2005, at 66.

<sup>22</sup> *Id.* at 69.

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



regardless of background, with the shared knowledge they need to be included in our national literate culture."<sup>24</sup>

Ed Hirsch created the Core Knowledge Sequence and is a problematic character. Hirsch came to fame as a result of his 1987 book, *Cultural Literacy: What Every American Needs to Know*.<sup>25</sup> He is active in an area associated with progressives, but he has been a visiting fellow at the ultra-conservative Hoover Institute.<sup>26</sup> Hirsch's methods have been challenged for several reasons, including his undervaluing of the importance of pedagogy and lack of emphasis on the need for a racially diverse teaching profession.<sup>27</sup> His book was ridiculed when it came out because it was only minimally multicultural, so a more diverse, updated version was subsequently issued. Anyone interested in the state of U.S. education should keep an eye on this idea of Core Knowledge. It focuses on curriculum content but fails to recognize that a teacher's ethnicity and racial sensitivity may be crucial to the success or failure of students, especially low income students of color.

Unfortunately, racially conservative forces, as represented by the work of E.D. Hirsch, have made inroads into public school curricula in a way that race-conscious theories have not. Those who work in the area of CRF have contributions to make in the area of educational reform in terms of who is admitted to study, what is taught, and how. In admissions programs, race-crits can have a voice by promoting affirmative action, and in pedagogy and curricular questions we can make our scholarship available and accessible to teachers and students in the public school systems. We can, indeed, we must increase the numbers of lawyers of color by implementing the *Grutter* decision and by improving educational outcomes at the elementary and secondary school levels.

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<sup>24</sup> Core Knowledge Foundation Homepage, <http://www.coreknowledge.org> (last visited Oct. 28, 2005).

<sup>25</sup> E.D. HIRSCH, JR., *CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO KNOW* (1987).

<sup>26</sup> The Hoover Inst., E. Donald Hirsch Jr. Fellow Page, <http://www.hoover.org/bios/hirsch.html> (last visited Jan. 25, 2006). The Hoover Institution's mission and history show a clear commitment to individual rights and private enterprise manifested in its support of policies that will bring an end to the welfare state and the promotion of the flat tax. See HOOVER INST., AN INTRODUCTION, available at <http://www-hoover.stanford.edu/main/brochure/hooverintro.pdf> (describing mission).

<sup>27</sup> Walter Feinberg, *The Influential E.D. Hirsch*, 13 RETHINKING SCHOOLS, Spring 1999, at 11, 13, available at [http://www.rethinkingschools.org/archive/13\\_03/hirsch.shtml](http://www.rethinkingschools.org/archive/13_03/hirsch.shtml).

### B. *Preparing Culturally Competent Doctors and Lawyers*

New ideas about race and culture are taking hold in law schools. However, moving CRF into the mainstream curricula and pedagogy of medical schools has proven to be difficult. By developing partnerships with medical schools, we can create openings for the movement of Critical Race Theory into more areas of professional education. The fusion of CRF from law schools with linguistic and cultural competence from medical schools is an idea worth pursuing. One rationale for promoting this type of cross-disciplinary work is the synergy that develops from the cross-pollination of ideas.

Medical schools and federally funded hospitals are engaged in a national conversation about racial and ethnic difference that fits under the rubric of "linguistic and cultural competence."<sup>28</sup> Healthcare institutions are making a coordinated and comprehensive effort to educate healthcare providers about linguistic and cultural competence, which emphasizes the importance of understanding culture and language in providing quality care to minorities. Medical schools are busy developing courses and materials that address this competence requirement.<sup>29</sup>

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<sup>28</sup> The National Center for Cultural Competence maintains a website with a set of materials that include self-assessments and best practice guides. National Center for Cultural Competence Homepage, <http://guchd.georgetown.edu/nccc> (last visited Jan. 25, 2006).

<sup>29</sup> *Id.* The National Center for Cultural Competence offers these definitions:

Cultural competence requires that organizations: 1) have a defined set of values and principles, and demonstrate behaviors, attitudes, policies and structures that enable them to work effectively cross-culturally; 2) have the capacity to (a) value diversity, (b) conduct self-assessment, (c) manage the dynamics of difference, (d) acquire and institutionalize cultural knowledge and (e) adapt to diversity and the cultural contexts of the communities they serve; and 3) incorporate the above in all aspects of policy making, administration, practice, service delivery and involve systematically consumers, key stakeholders and communities.

Nat'l Ctr. for Cultural Competence, *Definition and Conceptual Framework of Cultural Competence*, <http://guchd.georgetown.edu/nccc/framework.html#lc> (last visited Jan 25, 2006). Cultural competence is a developmental process that evolves over an extended period. Both individuals and organizations are at various levels of awareness, knowledge and skills along the cultural competence continuum. *Id.* Linguistic competence is defined as the capacity of an organization and its personnel to communicate effectively, and convey information in a manner that is easily understood by diverse audiences, including persons of limited English proficiency, those who have low literacy skills or are not literate, and individuals with disabilities. *Id.* Linguistic competency requires organizational and provider capacity to respond effectively to the health literacy needs of populations served. *Id.* The organization must have policy, structures, practices, procedures and dedicated resources to support this capacity. *Id.*

This concept of linguistic and cultural competence has been codified into regulations that apply to federally funded hospitals and into medical school guidelines that have led to curricular changes.<sup>30</sup> At the UNM School of Medicine, the guideline has been implemented as a mandatory set of two or three classes for each of the first-, second-, and third-year students. The classes began with a self-assessment<sup>31</sup> of cultural competence, followed by information about culture and its importance to communicating with patients and understanding their beliefs about illness, disease, and treatment options. This past year the classes were taught by teams of faculty from the law school, the Southwest Hispanic Research Institute, and the medical school.

Programs teaching cultural competence in medical schools can be quite innovative. For example, on February 27, 2005, *NPR's Weekend Edition Sunday* featured a story by Margot Adler called *Tailoring Medical School to Cultural Difference*. Adler described residents at Columbia University Medical Center in New York learning about their surrounding community of Dominicans and other Latinos by visiting patients' homes, *bodegas*, and *botanicas*.<sup>32</sup> The Columbia program is distinctive because it has formed a partnership with a community organization.<sup>33</sup> Other medical schools have made similar strides.

Stanford University for Biomedical Ethics has produced a set of four videos with a Facilitator's Guide developed by physician experts in the field of cross-cultural medicine.<sup>34</sup> One of the videos involves an African American patient by the name of Robert Phillips who is suffering from renal failure, on dialysis, and waiting for a kidney transplant. The Facilitator's Guide for this video identifies four issues for discussion: (1) disease and illness; (2) discrimination and racial ethnic disparities in health care; (3) stereotyping and clinical decision-making; and (4) mistrust and communication style.<sup>35</sup> Though identifying these issues is a

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<sup>30</sup> OFF. OF MINORITY HEALTH, ASSURING CULTURAL COMPETENCE IN HEALTH CARE, <http://www.omhrc.gov/clas/finalcultural1a.htm> (last visited Oct. 28, 2005).

<sup>31</sup> Kathleen A. Culhane-Pera et al., *A Curriculum for Multi-Cultural Education in Family Medicine*, 29 *FAM. MEDICINE* 719-23 (1997).

<sup>32</sup> *Weekend Edition: Tailoring Medical School to Cultural Difference* (National Public Radio broadcast Feb. 27, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4515302>.

<sup>33</sup> Columbia Univ. Med. Ctr., Community Connections, <http://www.cumc.columbia.edu/dept/gc/connectionsguide/cover.html> (last visited Jan. 25, 2006).

<sup>34</sup> Videotape: *Worlds Apart: A Four-Part Series on Cross-Cultural Healthcare* (Stanford University Center for Biomedical Ethics 2003) (on file with author).

<sup>35</sup> Alexander Green et al., *WORLDS APART: A FOUR-PART SERIES ON CROSS-CULTURAL*

good first step, an analysis of the issues discussed in these videos illustrates a missed opportunity to fuse CRF with linguistic and cultural competence.

The Facilitator's Guide would have been enhanced by Critical Race Theory. For example, in explaining the distrust that many African Americans have of doctors and the health profession, the narrator, Robert Phillips, makes a passing reference to the Tuskegee experiments.<sup>36</sup> There is then a one sentence slide that purports to explain to the Stanford medical students what the Tuskegee experiments were.<sup>37</sup> In my opinion, had there been collaboration with CRF scholars in the making and analysis of this video, the video educators might have paid more attention to the legal and historical context and the contemporary consequences of the Tuskegee syphilis debacle. Failure to do so is, in my opinion, an example of the very "cultural" insensitivity that Mr. Phillips refers to in the video. Bringing the insights of CRF into this work being done in medical schools would enrich the discussion and provide medical students with the ideological, historical, and legal context that they lack. The goal should be to help future doctors make connections between their own racial identities (and that of their patients) and the issues being discussed in these videos.

Scholarly work connecting race, culture, health, and legal theory and pedagogy has already been done by some feminists and critical race feminists. Sue Bryant (CUNY) working with Professor Jean Koh-Peters (Yale) has applied cultural competence to clinical teaching and lawyering.<sup>38</sup> Professor Vernellia Randall is also well-known for her ground-breaking work on race, health, and law,<sup>39</sup> and Professor Lisa Ikemoto has also written about the race-based health disparities.<sup>40</sup> The work we are doing in New Mexico is built on these foundations, most particularly on the extensive work done within the health sciences.

As I have been working in this area of "cultural competence" and becoming familiar with its websites<sup>41</sup> and teaching materials, I have

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HEALTHCARE, FACILITATOR'S GUIDE 21-24 (2003).

<sup>36</sup> *Id.*

<sup>37</sup> See generally JAMES H. JONES, *BAD BLOOD: THE TUSKEGEE SYPHILIS EXPERIMENTS* (1981).

<sup>38</sup> Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33 *passim* (2001).

<sup>39</sup> Vernellia Randall, *Race, Health Care and the Law: Speaking Truth to Power!* (2005), <http://academic.udayton.edu/health>.

<sup>40</sup> See generally Lisa C. Ikemoto, *Racial Disparities in Health Care and Cultural Competency*, 48 *ST. LOUIS U. L.J.* 75 (2003).

<sup>41</sup> The Center for Effective Collaboration and Practice illustrates the type of

found it very interesting that there is little understanding of “race” as we critics would use the word.<sup>42</sup> The analysis is done almost exclusively in terms of culture, and culture becomes coded to mean something different and more comfortable than “race.” Nevertheless, what is really being talked about — the identities that are socially constructed based on physical differences and the social inequalities that emerge from discrimination based on those differences — is rarely named or analyzed.<sup>43</sup> For example, the materials being developed by medical schools have almost nothing on these issues that are now subsumed under the rubric of Critical Race Theory or CRF:

- The role that science has played and continues to play in constructing racial identities, and the concepts we understand as “race” or “racialized ethnicities.”<sup>44</sup>
- How law has created and sustained white supremacy.<sup>45</sup>
- How law creates and maintains race-based power imbalances.<sup>46</sup>
- How law intersects with the collective racial histories of the respective racialized groups in the U.S.<sup>47</sup>
- Why social burdens or benefits accrue because of race.<sup>48</sup>
- Why narratives are used to express and examine racial identities.<sup>49</sup>

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information available on the internet. Ctr. for Effective Collaboration and Practice, <http://cecp.air.org/cultural/default.htm> (last visited Oct. 28, 2005).

<sup>42</sup> See generally RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2001).

<sup>43</sup> See Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 *UNIV. MICH. J. L. REFORM* 263 (2000) (arguing that silence is mechanism used within legal profession to support racial control and hegemony).

<sup>44</sup> See generally PBS, *Race: Power of an Illusion*, [http://www.pbs.org/race/007\\_Resources/007\\_01-search.php](http://www.pbs.org/race/007_Resources/007_01-search.php) (last visited Jan. 25, 2006) (discussing race in society, science and history). For a recent attack on the scientific basis for racial classifications, see Joseph L. Graves, Jr. *THE EMPEROR’S NEW CLOTHES: BIOLOGICAL THEORIES OF RACE AT THE MILLENNIUM* (2001); for information on the human genome project and genetic lineages, see Human Genome Center at Howard University, <http://www.genomecenter.howard.edu> (last visited Jan. 25, 2006).

<sup>45</sup> See generally Margaret E. Montoya, *Of “Subtle Prejudices,” White Supremacy and Affirmative Action: A Reply to Paul Butler*, 68 *U. COLO. L. REV.* 891 (1997).

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

<sup>47</sup> See generally DOROTHY A. BROWN, *CRITICAL RACE THEORY: CASES, MATERIALS AND PROBLEMS* (2003); *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY* (Angela P. Harris, Jerome McCristal Culp & Francisco Valdes eds., 2002) [hereinafter *CROSSROADS*]; *RACE AND RACES: CASES AND RESOURCES FOR A MULTIRACIAL AMERICA* (Richard Delgado, Angela Harris, Juan Perea, & Stephanie Wildman eds., 1999) [hereinafter *RACE AND RACES*].

<sup>48</sup> See generally sources cited *supra* note 47.

<sup>49</sup> See generally sources cited *supra* note 47.

- Why legal discrimination needs the concept of intersectionality, (i.e., the interlocking oppressions affecting women, such as racism, sexism, heteropatriarchy, classism, agism, etc.).<sup>50</sup>

I don't want to leave you with the impression that no one is speaking in a sophisticated manner about race in the health sciences. For example, Professor Gilbert Gee from the University of Michigan's School of Public Health, who worked with the student interveners in the *Grutter* case, has an outstanding presentation on the "Social Construction of Race" that concludes with data on race-based health disparities.<sup>51</sup> More of this type of work needs to be done. Such work can be part of the solution to the educational crisis facing communities of color.

CRF has a tremendous contribution to make in this area of cultural and linguistic competence. The well-being of medically underserved communities depends on these types of cross-disciplinary interventions. Linguistic and cultural competence is recognized as a prominent and effective mechanism for addressing racial/ethnic disparities because the individual skills and organizational practices that fit within this concept can bring new depth and greater quality to the delivery of professional services. All professions would benefit by having students develop an understanding of language, culture, and race to enhance their ability to communicate with, form effective relationships with, and provide services to patients, clients and other stakeholders.

If you are in an institution with a medical school, I would encourage you to find out how cultural competence is being used. There are likely to be opportunities to let medical school faculty know about CRF. This concept of linguistic and cultural competence is directly connected to the arguments my students advanced in our *Grutter* amicus brief, namely that the medical school should take race into account because correcting racial ethnic health disparities should be a compelling state interest.<sup>52</sup> In fact, the Tenth Circuit has held that the University of New Mexico's School of Medicine's heavy weighing of state residency is lawful because of New Mexico's need to supply medical care to the underserved areas.<sup>53</sup>

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<sup>50</sup> See generally CRITICAL RACE FEMINISM: A READER, *supra* note 14; GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed. 2000).

<sup>51</sup> Univ. of Mich., Faculty Profile: Professor Gilbert Gee, <http://www3.sph.umich.edu/faculty/profile.cfm?unique=gilgee> (last visited Oct. 28, 2005).

<sup>52</sup> Brief for New Mexico Hispanic Bar Association, et al., *supra* note 7, at 3-5.

<sup>53</sup> *Buchwald v. Univ. of N.M. Sch. of Med.*, 159 F.3d 487, 498 (10th Cir. 1998).

## CONCLUSION

Our concerns in New Mexico are twofold: first, to increase the number of Hispanic, Native and African American professionals; second, to prepare those professionals to practice in communities where the people speak Spanish or indigenous languages and often do not share the cultural background of their service providers. My personal objective is to find ways to inject the core ideas and values of CRF into various aspects of educational reform from the earliest years to the doctoral level. This attempt to link scholarship on race and gendered race with pedagogy on language and culture provides us with an opening to find new applications for CRF.

I'll conclude with this thought: affirmative action and the related constitutional doctrines contained in the *Grutter* case are important issues for women of color because they allow race, and gendered race, to be considered in allocating scarce social resources, namely seats in law schools and medical schools. Implementing *Grutter* means continuing the fight for more students of color at the doctoral level. But that is not our ultimate goal. Implementing *Grutter* also means addressing illness and poverty and racism and sexism. These are the issues that have engaged our scholarly interests as critical race feminists. Our task is to look for ways to move our theory into other learning spaces: into middle schools, high schools and, as I have argued in this article, into medical schools. Finally, we seek to use our scholarship to become partners with our local communities to rescue the girls and boys who will be the future voices of CRF and share with us untold stories and as yet unimagined theories.

*Mil gracias.*