

6-25-2015

Whose Meanings: Constructing Environmental Justice

Sofia L. Martinez

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WHOSE MEANINGS?
CONSTRUCTING ENVIRONMENTAL JUSTICE

By

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DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

Doctor of Philosophy
Language, Literacy, and Sociocultural Studies

The University of New Mexico
Albuquerque, New Mexico

May, 2015

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Dedication

To Lupita Aragon Maestas-Martinez and Jose Roque Martinez

Acknowledgements

I want to thank my family and my *compañero* for their love and support. I also want to thank all my *comadres*, *carnalas*, and *herman@s* for all their prayers, gifts of love and labor. This work is for all of you and the larger community who made it possible. I am particularly indebted to my Committee Members; Dr. Glenabah Martinez. Dr. Rebecca Blum Martinez, and Dr. Devon Pena. Special thanks to Kathy Cordova, Lydia Hernandez, Susan Guojon, Louisa Maestas, Lily Martinez, Miriam Martinez and Dr. Alvin Korte, . *Si se puede!*

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ABSTRACT

This study interprets language use and meaning with regard to race in a state regulatory process before the New Mexico Environmental Improvement Board (EIB). The document researched is the legal transcript of the EIB Hearing in 2006. The hearing was held to revise the New Mexico Solid Waste Regulations and to consider environmental justice provisions. The study analyzes language and the construction of meaning and discourses in this formal rule-making site; and how these discourses serve as a site for resistance as well as where the State creates and maintains its hegemony. The implication for educators is to consider the cumulative and disparate impacts that our students come with to school, including high levels of toxicity and exposure to chemical disaster where they live, play, pray and go to school.

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Chapter One

Introduction

Purpose of Study

This research analyzes language use and meaning with regard to race in a legal transcript. The legal proceeding took place in 2006 before the Environmental Improvement Board (EIB) of the State of New Mexico. The goal of the EIB meeting was to update and revise the New Mexico Solid Waste Regulations and to consider environmental justice (EJ) provisions. The purpose of this study is to uncover language and discursive practices with respect to race in a rule-making site. It is an insider, grassroots, rural, land-based, *mestiza* perspective that seeks to privilege the knowledge and documents of those who rarely receive credit for their knowledge because they do not publish. The study is a critical race analysis of how the construction of discourses in these sites contributes to the capitalist, raced, classed and gendered lives of regulation and resistance that we live every day. The focus on environmental justice promotes an understanding of the evolution of this movement, particularly in light of my findings on racialization in discursive practices authorized and sanctioned by the state. The research questions that guided this study were:

- How do language and race work to create meaning around environmental racism, injustice, and justice issues in a legal setting?
- How does environmental justice come to be defined?
- Whose knowledge, is valued, listened to, privileged and given authority?
- How do people position themselves to engage in discussions dealing with race?

The study will attempt to answer these questions as well as uncover how government institutions and communities negotiate meaning and how power, albeit disparately, is exercised and constructed.

The 2006 four-day hearing came before the New Mexico Environmental Improvement Board (EIB); a seven member Governor appointed board that hears and approves environmental regulation. Nine ‘parties’ (so-called by the EIB) became formally involved in the process including six industry and business groups, two environmental justice groups and the New Mexico Solid Waste Bureau. Each party presented testimony for their group on proposed changes to the existing regulations. Environmental justice advocates sought enhanced public notice and participation, stronger environmental regulations and protections for poor and people of color. Industry, business and government representatives sought to protect their financial interests and perspectives about race and environment.

This research will analyze language use by the participants to discover how conflicting interests materialize, how meanings are constructed and specifically how environmental justice comes to be defined. It is a critical study investigating race, language, knowledge, hegemony and how these are constructed discursively. I utilize Gramsci’s definition of hegemony in that capitalism maintains its power not just politically and through force (police, armies, and prisons) but also ideologically and culturally through schools and other cultural institutions. The study is informed by Foucault’s (1972) “Discourse on Language” which looks at how language itself is regulated and constructed structurally.

The transcript, to be analyzed, is the legal record of the process to revise the New Mexico Solid Waste Regulations to comply with EPA Solid Waste Regulations and consider environmental justice (EJ) provisions that would strength community participation, voice and

protection. The Solid Waste Bureau (SWB) is one of the programs under the New Mexico Environment Department (NMED). The results of this study provide us with insights on the racialization of language practices and discourses used and constructed by participants in the formulation and interpretation of a significant legal text. The study reveals how this discursive ‘games of truth’ to borrow a phrase from Foucault (1972), maintain environmental racism and injustice, white privilege and power through, in this case, regulation. I am interested in the negotiation of meaning around environmental justice (EJ) testimony by the parties involved in this process and how this impacts rule-making and ultimately governance. How does discourse involve the creation of expertise or what Michael Apple (2001) has called “official knowledge.” This has important implications for understanding the resulting subjectivities and differential assertion of power relations. The study expands EJ discourse by presenting an insider, grassroots, and rural, land-based, *mestiza* perspective.

Another goal of this project is to grant epistemic privilege to grassroots, community-based knowledge, which is an ethical value with a long history as seen in the founding documents and oral traditions of the Environmental Justice Movement (EJ Movement), oral and written. Academics and intellectuals are not the only ones who create knowledge or social movements even if they are often the ones that gain cultural capital from such work, much as a result of publications and research grants. Intellectuals write theory, create models, and describe cultural, economic, political and social trend and questions based on observation and study of phenomena created by subjects, the subaltern, the other. The subjects and their performance, whatever it be, is reported on, analyzed, critiqued, and theories are developed. Once published, the scholarly author, becomes the creator and the owner of words and ideas – this is the privatization of knowledge. The reader comes to believe that the author is the

creator and cultural capital is enhanced for those that publish. Herein also lie some of the indigenous and aboriginal challenges to intellectual property rights.

New Mexico EJ Working Group Policy Campaign

The Southwest Network for Environmental and Economic Justice (SNEEJ) was one of the four EJ Networks that played a leadership role helping to launch the EJ Movement nationally with the convening of the First People of Color Leadership Summit.¹ The Summit was held in Washington D.C. in 2001 and was hosted by the Commission for Racial Justice of the United Church of Christ.

SNEEJ, represented over 60 organizations throughout the southwest and the northern states of Mexico that border the US. Of the original four networks that were involved in leadership of the EJ Movement nationally, SNEEJ was the only bi-national and multi-racial EJ national network at the time. In 2000 SNEEJ convened the New Mexico Environmental Justice Working Group (NMEJWG) with the intention of bringing EJ to New Mexico. The NMEJWG was composed of the five New Mexico organizations affiliated to SNEEJ and technical consultants.² The organizations represented Chicano and Indigenous organizations from throughout the state; technical consultants were lawyers and media folks whose work focused on EJ.

¹ The four networks that were instrumental in the direction and launching of the Environmental Justice Movement nationally were: APEN (Asian Pacific Environmental Network) based in the Bay Area, the Indigenous Environmental Network (IEN) based in Minnesota, the Southwest Network for Environmental and Economic Justice (SNEEJ) in Albuquerque, NM, and the Southern Organizing Committee (SOC) based in Atlanta, GA.

² The member organizations of SNEEJ and NMEJWG were: the Concerned Citizens of Wagon Mound and Mora County (CCWMMC), the Colonias Development Council (CDC), Sage Council, and Kalpulli Izcalli. The Southwest Organizing Project (SWOP) affiliated with the SNEEJ, before the Hearing choose to enter the proceeding with the Albuquerque's South Valley Coalition of Neighborhood Associations as a separate party to the process.

One of the NMEJWG's first activities was to meet with the New Mexico Secretary of the Environment to request Environmental Justice training for mid-level management in the New Mexico Environment Department (NMED). Nationally, as a result of EJ requests, an EJ curriculum had been developed and used by some regions of the Environmental Protection Agency (EPA) for internal, as well as for community trainings. Although there were many issues with the curriculum some national groups saw it as a benefit that they could use strategically. Several community EJ trainers throughout the country partnered with EPA officials to do these trainings.

The NMED Secretary at the time, Peter Maggiore, had agreed to EJ training for NMED mid-level management staff. Trainers from Region 6 of the EPA office in Dallas included Shirley Augerson and Mary Wilson; Jose Bravo, a community EJ organizer from California and myself. We were to do the training in Albuquerque on September 11, 2001. That morning, we all gathered at one of the NMED offices in Albuquerque for the training. Everyone had heard or seen the news of the first planes crashing into the twin towers in New York City and the subsequent air attacks. The training was canceled.

In 2002, New Mexicans elected Bill Richardson as Governor of New Mexico. The Richardson Administration appointed Ron Curry as Secretary of the New Mexico Environment Department (NMED). Curry had served as Assistant Secretary under Judith Espinosa, who had served as the first NMED Secretary in 1994. She had been and continues to be an EJ ally. Derrith Watchman-Moore was named Assistant Secretary of the Environment by Governor Richardson and was the first Native American woman to serve in an administrative capacity in the NMED.

With this new liberal administration, the NMEJWG with the leadership of SNEEJ saw the possibility of conducting a proactive environmental justice educational and policy campaign in New Mexico under a liberal Governor and an EJ friendly NMED Secretary. For eight years, the NMEJWG actively pushed, educated and promoted environmental justice activities and policy through administrative, regulatory and legislative processes.

One outcome of this work was a series of four Environmental Justice Listening Sessions held throughout the state in 2004. The Listening Sessions were proposed to NMED Secretary Curry by the NMEJWG and were subsequently sponsored by the NMED with support from the Region 6, EPA office in Dallas, Texas. A diverse EJ Planning Committee was created by the NMED composed of community-based organizations, industry and business, municipalities, non-profits, consultants, and individuals who were urged to plan how the process would work. The EJ Listening Sessions were held in Las Vegas, Deming, the Acoma Nation and Albuquerque. Recommendations from these four Listening Sessions were compiled into "*A Report of Environmental Justice in New Mexico*" (NMED, 2004), which is available on the NMED website.

Other EJ successes resulting from the Listening Sessions were: Governor Richardson's Executive Order on Environmental Justice 2005-056, the creation of an EJ staff position in the department, a department EJ Advisory Committee of stakeholders, and a state level Environmental Justice Task Force: composed of different state agencies to look at EJ concerns in their programs, as well as, the opportunity to revise the New Mexico Solid Waste Regulations.

The NMED had already recognized the need to revise some sections of the regulations, which had initially come into effect in 1993. The NMEJWG saw the opportunity

to include environmental justice protections into the regulations. The NMED, as directed by Secretary Ron Curry, initiated a year-long process with stakeholders and petitioned, the Environmental Improvement Board (EIB) in 2006 to hear testimony on the proposed new regulations. Many of the general revisions or new language were discussed during the year-long stakeholder process; those sections on which the stakeholders did not agree were debated by the different parties during the EIB Hearing. It was however, the NMED legal staff that decided what would be included into a draft set of regulations from which the EIB and the parties worked.

Issues of public notice, early and meaningful participation and involvement, cumulative and disparate environmental, health, social, and economic impacts, enforcement, structural legal barriers impacted by race and class were some of the issues raised by members of the NMEJWG. With every new political opportunity we took advantage of during this period, we were usually the only community members or impacted individuals at the table with state and industry. And for the NMEJWG, it was often myself, who attended, because as a student, I had greater flexibility. When companies and government have lawyers, technical assistants and multiple other staff to represent their interests, the community, the masses, the “subjects,” the othered and their perspectives and life experiences are at a disadvantage. Poor and People of Color do not get time off from work, pay, cultural capital, or per diem to attend. Community organizations and their staffs, whether paid or unpaid, work long hard hours for little compensation. Usually only costs are reimbursed. The reality is that the perspectives of poor, working class, and people of color are almost non-existent in rule-making sites. At best, there may be some underpaid

advocates. When communities are lucky enough to have strong organization and guide their technicians well, better results are garnered by those communities.

Legislative initiatives by the NMEJWG to pass environmental justice law were less successful with the exception of an EJ Memorial. State legislatures and Congress are the institutions that maintain state hegemony; they are the legal and social regulators. The goal of educating legislators and the public on environmental justice however was successful. Through our work at the legislature and our media campaigns we were able, along with others, to stop negative industry bills and push through others that strengthened environmental, as well as, social justice in New Mexico. SNEEJ coordinated three EJ Days at the State Capitol during the five years we did legislative work. Community members were brought to the capitol, many for the first time; they met with their elected officials letting them know that we were watching and expected certain support. This activity also provided an opportunity for members of the state organizations affiliated with SNEEJ to meet, network and further our policy efforts. Although there were many successes, policy work is expensive and exclusive, and opportunities for communities to speak for themselves are rare.

The active and strategic participation in these processes by the NMEJWG had brought a strong grassroots presence to state public meetings with stakeholders. In state, as in federal law-making, those with the deepest pockets for lobbyists and lobbying, lawyers and consultants are primarily the players. It is only when strong grassroots organizations insert themselves in these processes that these interests are represented. These sites of regulation have traditionally included industry, government, quasi-government agencies, and at best well-funded non-profits and advocates. At times, poorly funded grassroots community groups can have a serious impact on “business as usual” sites depending on their organizing

ability including the use of media and other resources. Policy changes, although necessary, are long and expensive efforts. These structural barriers exclude impacted communities from speaking for themselves. And because government officials, staff, business, technical and scientific interests are those traditionally and historically at the table; they are often uncomfortable with community presence (Estrella-Luna, 2010; Gauna, 2003). This is a major area of concern and focus in attaining environmental justice.

Environmental Justice Context of the Study

The history of the Environmental Justice Movement in this country is basic to understanding this research. Where does the historical timeline of EJ begin? Do we begin with early European colonization, the theft of land, the killing of the buffalo, and the near genocide of Native Peoples and nations? Do we begin with the importation of firearms, non-indigenous flora and fauna, the diversion and pollution of our waterways, our air, and our places of labor, learning and prayer? Maybe we begin with those geographic regions to which we have historically been restricted, whether by state force or by planners and developers and/or by poverty (Martinez, 2008). Do we begin with the first GAO Report of 1983 acknowledging that racial discrimination adversely affects the quality of their environments? This report was pushed by the protests in Warren County, North Carolina against a PCB dump located in a poor African American community. Some may say that we start with the struggle against a sewer plant in Albuquerque, New Mexico's South Valley or rather "Perfume Alley" as some of the local folks called it in the 1970's. Maybe, EJ began with Robert Bullard's, *Dumping on Dixie* (1990). Some have called Dr. Bullard the father of the EJ Movement. Although, Dr. Bullard has clearly been a part of the development of the EJ Movement and is one of its most prolific scholars, I doubt that he would agree that he is the

father of the EJ Movement. And who is its mother? Hazel Johnson, Dana Alston, Rose Agustin, Jeanne Gauna, Peggy Saika, Pam Tau Lee, Nilak Butler, Gail Small or Winona La Duke? Four of these women have passed. Where do we begin? Who? What was first? Who said and did what and who published it? How do we participate in this activity or is this an exercise in the commodification of history and knowledge?

What we do know is that in 1989 the US environmental movement's conception of the environment and environmentalism changed forever. "We Speak for Ourselves" (Alston, 1989) became the mantra of this new, multiracial, multicultural, multi-class, and multi-generational national movement. The EJ Movement brought together social justice and environmentalism (Bullard, 1990; Cole, & Foster, 2001; Riechtschaffen & Gauna, 2003, Tolentino Garland, 2007). Many of the leaders of the EJ Movement at this time had come out of the Black Civil Rights Movement, the American Indian Movement, the Chicano and other People of Color Civil Rights and Liberation Movement activities.

In 1991 the United Church of Christ's Commission for Racial Justice sponsored the First People of Color Leadership Summit (UCC, 1991). This was the meeting that helped coalesce the different groups and launched the EJ Movement nationally. Environmental justice networks, grassroots and farmworker organizations, and a cadre of experienced organizers, progressive technical assistants, scholars, and national political leaders shaped and drove the national movement. Liberal foundations and organizations provided resources. There were many meetings of a diverse national EJ leadership and the United Church of Christ's Commission for Racial Justice regarding: Who would be the honorary chairs of the summit? Who would be the consultants? Who would speak? Who should the conference serve? And what would be the message?

The EJ Networks pushed a grassroots agenda of accountability.³ The organizers and participants charged US environmental groups and the EPA with environmental racism and demanded environmental justice.⁴ The conceptualization of the environment as a project of preservation, conservation and recreation was forever challenged by the collective voices of the participants and their leadership.

The Environmental Justice Movement (EJ Movement) collectively defined the environment as where we live, work, play, pray and go to school.⁵ The victories were social, political, economic, ideological and grassroots. The EJ Movement became the most organized, multiracial, multiclass, and radical mass movement in a time of consolidating right-wing white ideologies, neo-liberalism and corporate globalization. In a leaked confidential memo circulated within the Reilly Administration of the EPA under the second Bush Administration; the Environmental Justice Movement was described, as a dangerous movement which needed to be neutralized.

Today, the EJ Movement has largely become the domain of academics, lawyers and technocrats. The reasons are varied, complicated, and evolving but ultimately have to do with resources, power, hegemonic discourses, abstract liberalism, who defines knowledge and expertise, and who benefits and who bear the burdens of unbridled, neoliberal capitalism and its accompanying social and environmental degradation. The intransigence of hegemony whether neo-liberal or conservative and obstacles and challenges in our own communities

³ Although many EJ networks have been formed since then; four national networks: the Asian Pacific Environmental Network (APEN), the Indigenous Environmental Network (IEN), the Southern Organizing Committee (SOC), and the Southwest Network for Environmental and Economic Justice (SNEEJ) had major influence in helping steer the focus of the movement nationally.

⁴ Benjamin Chaves is credited with the coining of the phrase *environmental racism*. He later directed the National NAACP and the Hip-Hop Summit Action Network.

⁵ This re-defining of the environment forever changed the concept of environmentalism as restricted to conservation, preservation and outdoor recreation.

that have to do with our historical “othered” status, contribute to this reality. Like DNA white supremacy mutates to rise to the political, historical moment in order to survive.

The EJ Movement today does not have the strong original EJ Networks, grassroots leadership, energy, direction, and weekly national communication that drove and created the movement. The discourses have changed as many of the national leadership have passed, as funding has shrunk or been re-directed. Environmental and conservation groups can now produce faces that feign “diversity.” Although today there may be many EJ non-profits and networks there is little national communication, organizing, and direction on EJ from the grassroots; communities continue in their struggles alone or given direction by 501 (c) (3)’s, technical assistants and lawyers. The EJ discourse has been appropriated by the liberal narrative of climate change; climate justice, for those that continue the good fight against racism and its actualization in our communities and sites of work.

The victories of the EJ Movement have been and continue to be significant. If one does a search for environmental justice and sets date limits on the research ending in 1990 one will find that at the time of the First People of Color Leadership Summit there were no writings with the words environmental racism, or environmental justice; today the literature has grown exponentially. However, it is the primary texts of the Movement that are its essence.

In 1987 The United Church of Christ’s (UCC) Commission for Racial Justice under the directorship of Rev. Benjamin Chaves authorized the report, “Toxic Waste and Race in the United States: A National Report on the Racial and Social-Economic Characteristics of Hazardous Waste Sites.” Charles Lee, also with the UCC, authored the report which found

that polluting facilities were disproportionately located in poor and communities of color.⁶ The study found race, to be the primary indicator in the siting of dirty and polluting industry and wastes. These results affirmed findings by the 1983 Government Accountability Office (GAO) Report. This report was the result of a community struggle in Warren County, Alabama, where an African American community fought a PCB landfill. It is from this community struggle that Ben Chavis is credited with coining the phrase, “environmental racism.” In 1990 Dr. Bob Bullard’s, *Dumping on Dixie; Race, Class and Environmental Quality* was published. His research documented years of research he had done in Houston, Texas on landfills and incinerators and their concentration in poor and communities of color (1983, 1986, 1987).

In 1990 University of Michigan scholars Bunyan Bryant and Paul Mohai held a gathering of academics and technical consultants that resulted in the book, *Race and the Incidence of Environmental Hazards: A Time for Discourse* (1992). Some environmental justice activists attended this conference while others chose not to attend. Some were critical that the group included few community folks. This as well as other critiques from grassroots leadership created a sense of accountability to the Movement and its cautionary mantra, “we speak for ourselves.” This encouraged liberal allies, academics and consultants to check in and form collective strategies with grassroots leadership rather than create and carry out paternalistic, individualistic, self-serving liberal agendas.

The Letter to the Group of Ten (see Appendix A) in 1990 was a project that came out of the leadership of two EJ organizations that played a primary role in the early stages of the EJ Movement. Richard Moore, then director and co-founder of the SouthWest Organizing

⁶ Charles Lee later became the first Director of the Office of Environmental Justice in the Environmental Protection Agency (EPA).

Project (SWOP) and later Director of the Southwest Network for Environmental and Economic Justice (SNEEJ) and Pat Bryant of the Gulf Coasts Tenants Leadership Development Project worked to get national networks, and grassroots organizations to sign on to a letter that challenged the ten major environmental and conservation groups in the U.S. on their racism. At the time of the letter, of the approximately 100 plus staff and board members in these organizations, only one was a person of color (R. Moore, personal communication, April 2010). There were two other letters sent during this time; one to the EPA and another to white ally environmental organizations also addressing race. Some of these traditional environmental organizations created environmental justice programs. Groups, like Greenpeace, who had developed collaborations with IEN and other Networks, hired Jackie Warlito and Nilak Butler to work on indigenous environmental issues. Winona LaDuke was also nominated to their Board (Cole & Foster, 2001). The Sierra Club also formed an EJ Program. Although this might be considered positive moves oftentimes the folks hired were not from impacted communities and had little knowledge of the EJ Movement and subsequently made the groups look good but hardly addressed environmental injustice and impacted community concerns.

“The Principles of Environmental Justice” (1991) came out of the first People of Color Leadership Summit in Washington D.C. The Principles (see Appendix B) represent the ethics of the EJ Movement; a collective, multiracial, multicultural, multi-generational, political, primary document. It has no single author, it is no one person’s intellectual property; it is a peoples’ movement document. It is a grassroots expression of agency, power, knowledge, and an example of autonomous governance (Peña, 2005).

In September of 1992 the *National Law Journal* (NLJ) published the results of a study of every U.S. environmental lawsuit filed for seven years before 1992. The results of the study which looked at racial inequities found “that the racial imbalance occurred whether the community was rich or poor.” Looking at 1,177 superfund toxic waste sites the NLJ reported: that penalties under hazardous waste laws awarded in white communities were 500% higher in white communities, pollution penalties to other polluters were 46% higher in white communities. Abandoned hazardous waste sites in people of color areas took 20% longer to be put on priority action lists than white communities. In over half of the 10 US regions that nationally administer EPA programs it took them 12% - 42% longer to begin cleanup in communities of color. Additionally the journal reported that in poor and communities of color “containment” rather than “treatment” was chosen more often to remedy the contamination.

In 1996 the Jemez Principles for Democratic Organizing (See Appendix C) were written by 40 people attending the Working Group Meeting on Globalization and Trade. The second People of Color Leadership Summit in 2002 produced the “Principles of Working Together” (see Appendix D). This document again, was the collective thought of participants to the Summit. Final work on this document was done by Nilak Butler, a Native American activist and organizer, who passed during this time and Pam Tau Lee, from the Chinese Progressive Association affiliated with the Asian Pacific Environmental Network in the Bay Area.

The Second People of Color Leadership Summit marked a change in power of the grassroots and a transition into a more loosely identified movement and more presence and control by liberal non-profits and foundations. For reflections from this Summit refer to the

Journal, “Race, Poverty and the Environment: A Journal for Social and Environmental Justice” (2003). The journal dedicated the entire publication to reflections from the second summit.

In 2007 the United Church of Christ sponsored a twentieth anniversary follow-up report to their 1987 study. This study, “Toxic Waste and Race at Twenty: 1987-2007: Grassroots Struggles to Dismantle Environmental Racism in the United States,” (Bullard, Mohai, Saha, & Wright, 2007) found that race continued to be a primary and independent variable in the siting of polluting facilities in communities of color.

The idea of environmental justice has become part of the discourse of environmentalism. Many disciplines now address EJ from different perspectives however, many know little of its genesis. Some focused on documenting the history of the movement and sharing EJ case studies on different environmental justice struggles, legal scholars studied civil rights law and created texts to educate lawyers on EJ. Other research focused on planning issues, an area where much environmental racism occurs. Feminists and scholars from all ethnic groups have produced a fair amount of the EJ literature. A majority of EJ scholars promote community based research theory and methods. Another huge area of the EJ literature is empirical and scientific studies, many focused on disparate and cumulative impact and race discrimination.

Efforts to use civil rights laws, the Equal Protection Clause from the Fourteenth Amendment and the application of Title VI to EJ cases soon proved to be challenges in addressing issues of EJ (Tolentino Garland, 2007). The legal discourse of race is boxed in by abstract neo liberal conceptualizations of colorblindness; the burden to prove intent of conscious or purposeful discrimination is almost impossible. Fairness mediated through

merit, and by the creation, by the courts, of legal barriers for relief from race-based takings (Bonilla-Silva, 2001, 2010; Cole & Foster, 2001) makes it difficult to realize environmental justice. These neo-liberal discourses dovetail beautifully with white supremacist discourse (Daniels, 1997) and epistemologies of ignorance (Sullivan & Tuana, 2007).

National organizations like the NAACP and LULAC have been slow and short in supporting the EJ Movement. However as institutional funding has become available more and more 501(c) (3)s have developed EJ related activities and research. Communities have had mixed results, with the general decline in charitable funding and a re-directing of funding priorities to civic engagement and policy. With the decline of funding for grass-roots organizing, the exponential rise of literature on EJ, and institutionally lead empirical research on EJ communities; local leadership is compromised and the dependency models kick in, which serve professionals but does little to empower communities to speak for themselves and less to relieve cumulative and disparate negative impacts across every social indicator for EJ communities. Policy cannot work effectively without grassroots efforts and direct action and grass-roots efforts need to be part of the narrative and present in policy initiatives.

Some of the successes of the EJ Movement are: President Clinton's Executive Order 12878 on Environmental Justice; The National Environmental Justice Advisory Committee (NEJAC), a Federal Advisory Committee that provides input on environmental justice issues to the EPA Administrator; the creation of the Office of Environmental Justice (OEJ) within the EPA, and the EJ Small Grants and technical assistance EPA grants. The EJ movement opened new fertile ground for research, gave life to continued social justice struggles and

more importantly brought a challenge to the dominant, hegemonic discourses of environmentalism – conservative, liberal, as well as honorary white⁷.

The Environmental Justice Movement was well represented in the United Nations Conference on the Environment and Development (UNCED) in Rio de Janeiro, Brazil. Our delegation met with Al Gore in Rio during the first Clinton/Gore presidential campaign in 2004, we pressed for an Executive Order on EJ for our support and challenged the white environmental narrative with stories of environmental racism.

We later attended the United Nations (UN) Conference on Women in Beijing. The UN Conference on Racism in South Africa, the climate change conference in Kyoto, this international work continues. Indigenous groups have begun to travel internationally in greater numbers and today there is representation and communication by EJ, indigenous, and aboriginal representative at all of these global forums. Activities of the EJ Movement spoke to international EJ issues such as debt-for-nature land swaps, *maquilas* (factories) on the US Mexico border and other parts of the world, environmental degradation, climate justice, etc. Although there continues to be a global presence, a lack of resources for all Indigenous, Aboriginal and People of Color make it difficult to have a strong unified international agenda. The Indigenous Environmental Network (IEN) has been successful in its work to create Indigenous and Aboriginal collaborations and alliances worldwide in pushing climate justice and a critique of carbon trading, a liberal agenda, on the global stage.

Once environmental justice became institutionalized through President Clinton's Executive Order 12878 on environmental justice the movement became susceptible to cooptation. Critical race theory tenets assist us in deconstructing and understanding the

⁷ Honorary Whites are people of color that pretend or believe that race is no longer an issue and take on the narratives of abstract liberalism i.e. colorblindness, etc.

successes and institutional barriers that the EJ Movement has encountered. *Critical Race Theory: The Key Writings That Formed the Movement*, (Crenshaw, Gotanda, Peller, & Thomas, 1995) compile some of the most prominent Critical Race Theory (CRT) scholars and their writings. They deconstruct the successes of the Civil Rights Movement and who benefitted from them and who continue to bear the burdens and risks. From these projects we learn to take a broader, more critical view of movements and their successes and challenges within a capitalist system of white supremacy. These processes are major dramas of told and untold narratives and data: raced, classed and gendered. The Environmental Justice Movement like the Civil Rights Movement became as successful only in as far as a hegemonic system of white supremacy was willing to give, in order to survive.

Significance of The Study

Because the site of the text was a formal rulemaking process the data will give insight into how laws are constructed, how regulation becomes institutionalized and how meaning about environmental justice is constructed and reconstructed in sites of state power, in whose interest, and in whose words. It will contribute to the research on race, critical discourse analysis, social movements, resistance, power and environmental justice.

The mantra of the EJ Movement, We Speak for Ourselves, affirms the idea of the “native talks back” and the “voice of color thesis” proposed by the critical race theorists or what others may call agency. How meaning is negotiated and constructed is important for educators and organizers. It is necessary to teach our students critical reading, thinking, and acting skills so they may better advocate, on their own behalf, in multiple sites.

Theoretical Framework

This qualitative study is informed by Critical Race Theory, Critical Discourse Analysis, Indigenous, Land-based, and Decolonial Theories and methods. Specifically, the work of Bonilla-Silva (2001, 2010), Delgado & Stefancic (2001), Bell (1992), Crenshaw, Gotanda, Peller, & Thomas, (1995), Van Dijk (1999, 2000, 2001), Wodak & Meyer (2001), Tuhiwai Smith (1999), Simonds & Christopher (2013), Martin-Alcoff (2007), Mills (1997, 2007), Maldonado-Torres (2011), Apple (2000, 2003), and Foucault (1972) are critical to the analysis of the data presented in this dissertation. As a participant in this legal process, as well as, a secondary participant and leader in the EJ Movement; elements of autobiography are also present.

The research design will implement a Critical Discourse Analysis (CDA) of the legal transcript using a race framework. “The study of narrative and discourse is concerned with the analysis of meanings in social life” (Morrow & Brown, 1994), the focus of this research. I will identify language and discursive events around race, ethnicity, culture, and EJ utilizing purposive sampling. Many qualitative researchers (Coyne, 1997; Patton, 1990) would agree that most of qualitative research utilizes some type of purposive or theoretical sampling and has been shown to be an effective means of sampling by qualitative and quantitative studies (Acharya, Prakash, Saxona, Nigam, 2013; Karmel & Jain, 2013; Mammen & Sano, 2012; Tongo, 2007).

Limitations of the Study

The limitations of this research are questions of time, resources, and human bias. This study will focus solely on a critical document/text analysis with broad references to power, state in particular, but power based on cultural and financial capital in particular, which

inform broader theories. There are many research directions that the EJ Movement has inspired. I will not attempt to identify, or trace these writings and research. Suffice it to say that EJ has created many jobs for consultants, much material and movement to analyze and from which to create and apply models, theories and new litigation and policy strategies. This study is intended to privilege some of the EJ Movement's grassroots genesis, documents, and knowledge creation from an insider retrospective analysis.

This study focuses specifically on language use and discourses constructed around race and environmental injustice/justice and how they impact law and meaning. The research looks specifically at one legal process dealing with how meaning around environmental injustice and race were negotiated and constructed. It will serve as a specific example of how language is manipulated to construct discourses of contested meanings and how we construct and are constructed in this particular legal site through the exercise of power and resistance. The results of this study are of import to educators and community as we work to teach a holistic concept of literacy, deconstruct race, gender, class, state hegemony and listen to what students and communities are saying as they speak for themselves.

Key Terms

Abstract Liberalism: “Political Ideology that holds that the purpose of government is to maximize liberty; in civil rights, the view that law should enforce formal equality in treatment” (Delgado & Stefancic, 2001, p. 150). “Abstract and decontextualized extensions of principles of liberalism to racial matters in ways that preserve racially unfair situations” (Bonilla-Silva, 2001, p. 142).

Disparate and cumulative impact: Concepts central to environmental justice addressing the fact that poor and communities of color are burdened by a wide variety of risks in addition to

pollution that have the effect of disparate and cumulative risks and negative impacts, specifically on health. Although they are different they are interrelated.

Economic blackmail: the reality that poor and people of color must often take dangerous and polluting jobs to survive.

Environment: The environment is where we live, work, pray, play and go to school. It comprises all our natural resources and the living species that depend on our wise choices for uses that are mutually beneficial and sustaining. Environmental justice advocates speak of the environment from the perspective of justice because their vision of the environment is not one solely of preservation and conservation, but rather, one that includes spiritual and cultural beliefs and ways of knowing that are interdependent and naturally reciprocal.

Environmental justice: Is the response to environmental racism and injustice. It has come to mean the whole field and its many original and new areas of inquiry.

Environmental racism: is the sighting of dirty and polluting industry and waste in communities of color through structural and institutional mechanisms; and the accompanying economic blackmail, and negative disparate and cumulative impact on their lived experience.

Globalization: the process by which corporations have come to govern the economies of the world through free trade agreements, support by the World Bank, the International Monetary Fund and self-promoting technocrats.

Hegemony: in the Gramscian sense of political, economic, ideological and cultural power by the dominant group over other groups.

Historical minorities: I use this to refer to Native American, African American and Mexicana/o Chicana/o, and Asians that have a colonial history with the United States, that is different from post WWII immigrants.

Neoliberal: A political philosophy that evolves from the definition of liberalism that the purpose of government is to maximize liberty; in civil rights, the view that law should enforce formal equality in treatment. It has evolved to mean colorblindness in law, privatization, austerity deregulation, free trade and a reduction in government spending.

Organizing: In communities this may look like what Paulo Freire has called *consciencitacion* but it springs from the community rather than an agency, intellectual or institution.

Progressive: I use progressive for folks that recognize coloniality, the role of race, class, and gender in society, and critically address and act on this knowledge in collective, reflective ways rather than non-reflexive, individualist behaviors.

White Supremacy: an ideology that whites are superior to other racial groups.

Chapter Two

Literature Review

Introduction

The research is qualitative applying critical race, and critical discourse analysis (CDA) theories and methodologies, and document analysis. The study is also informed by indigenous, land-based, and decolonial theories. These theories and methodologies will be used to analyze the transcript to uncover, classify, and interpret the discourses and meanings constructed in this particular legal context. This chapter will discuss western philosophies and other worldviews, race, language, power and the broad context for this study - environmental racism and injustice.

Research Implications

Anthropologists who have most evolved the qualitative method on many people of color, indigenous, and aboriginal communities do not have good reputations in these communities and have done questionable research (Deloria, 2004; 2010; Smith, 1999; Toulousi, personal communication, 2012). Many are still committed and loyal to western philosophies that give rise to their interpretations and constructions of the knowledge of others and always contrasted on what has been assumed as the norm – the European and privileged white US gaze.

The other or subaltern have been first, objects, than unthinking subjects of western scientific study. Although, Cartesian dualisms have been discredited such as the separation of mind and body and the idea that only the researcher is the thinking being; the philosophical and scientific gaze is still of western origins and it has been silent on many important contradictions, i.e. Kant's favoring of whites over black, (Mills, 1997) Heidegger's

association with Nazism (Chomsky, 1967; Mills, 1997; Zimmerman, 1977) there has been almost a complete silence by most great white philosophers and thinkers since the 16th century on issues of coloniality and racism. Western science has made objects of humans and their bodies and those in power largely refuse to acknowledge historical, social and political injustices and crimes that impact on the creation of meaning and reality beyond and within the specific site of research. And as these phenomenon construct us, so too do we construct them. This is especially true when it comes to issues of race, gender and other “prohibitions” (Foucault, 1972).

Pascale (2011) writes “There are two broad issues at stake in ontological and epistemological assumptions: One is the reproduction of hegemonic scientific discourse; the other is the production of knowledge about the social world” (p.5). Researchers of color need to know and articulate those hegemonic, scientific and philosophical discourses, the “master narratives,” that have had and have an impact on research, knowledge, laws and the lives of people in our communities. There are empirical assumptions, eugenics for instance, that have been vigorously challenged and lost their prestige however; this does not mean that these assumptions have disappeared (Leys Stepan, 1991). They have merely mutated. As researchers of color we must be courageous in privileging our knowledge and the knowledge of those whom we now study from different vantage points.

Maori scholar, Linda Tuhiwai Smith (1999) writes, “From the vantage point of the colonized a position from which I write, and choose to privilege, the term ‘research ‘ is inextricably linked to European imperialism and colonialism. The word itself, research, is probably one of the dirtiest words in the indigenous world’s vocabulary.... It is a history that still offends the deepest sense of our humanity” (p.1). As a researcher of color I find the

sentiment of Smith familiar and am inspired by her and other indigenous, aboriginal and people of color researchers and researchers from the South whose work speaks, sustains and gives courage as we search for truths, knowledge, social, political and economic justice and the verification of our lived experiences.⁸

Because of the wounds that western science has inflicted and continues to inflict with its numerous side effects, or collateral damage, on indigenous, aboriginal, people of color and the poor in the United States, as well as, throughout the globe; research is a project fraught with many emotions and stories of unethical behavior as expressed by Smith and others (Hermes, 1999; Wilson & Yellow Bird, 2005; Mihesuah & Cavender Wilson, 2004; Tilousi, 2010. Mander & Tauli-Corpuz, 2005; Simonds & Christopher, 2013, Sykes, 1986).

Indigenous and aboriginal scholarship has offered new paradigms of being. In education the contributions have offered holistic ways of conceptualizing education and research (Mihesuah & Cavender Wilson, 2004; Cleary & Peacock, 1998; Spring, 2001; Smith, 1999) based in community contexts, including spiritual knowledge, revitalization and maintenance of native culture, languages and community as an essential aspect of curriculum; indigenous, aboriginal and land-based concepts of interdependence and reciprocity between beings and being in the world stand in opposition to models of capitalism and traditional western philosophy (LaDuke, 1999; Mander, & Tauli-Corpuz, 2005; Smith, 1999, Wilson, 2008). Smith suggests 25 Indigenous projects for research and offers Maori research as an example. Simonds and Christopher (2013) propose, adapting research to Indigenous ways of knowing.

⁸ South, is used, to denote third world or undeveloped countries, many of which are in the southern part of the world.

The idea of living in a way as to protect resources, taking only what one needs and being in the world in such a way that we preserve it for seven generations to come is an important concept when one considers that modernity has emphasized the exploitation and consumption of earth's resources for human consumption and comfort with no regard to their finite nature. The environmentalism born of privilege and entitlement sees the environment as a place of recreation and conservation that must be preserved at all costs. Self-righteous environmentalists might choose their pets or pet project over some humans. Global wars and the threat of sanction and war by the US specifically, but the G-8 countries as well, and the current distance between the haves and have-nots constructed by Wall Street, the Banks, the World Bank and the International Monetary fund illustrate our predator ability against our own species.

It is language and our cognition that separate human beings from other animals. We have the ability to construct ideas, philosophies and ideologies, construct a language of rights, democracy, justice and ethics. But, these are just words. Meanings are constructed and contested, they change over time and their realization is different for different segments of the population. Here power, specifically state power, is implicated. In this project we look at the role that race plays in constructing these discourses.

Research Theories and Methods That Inform This Study

Critical and Critical Race Theory

Critical theory, which informs this research, originates in Europe and is influenced by Marxism. These authors include some of the greatest critical thinkers from Europe, Africa, the Caribbean, the Middle East, Asia, South and North America, and the atolls. People of color and women are well represented in defining the field. Critical race theory (CRT)

emerges from the critical legal studies of US law by some of its first proponents, Derrick Bell and Alan Freeman (Delgado, 1995). CRT challenges the liberal legal construction of colorblind racism. Most race and critical scholars agree race, like gender, and class are social constructions.

Scholars of critical race theory privilege race, different feminisms, class positionality, and worldviews. Delgado (1995) brings together some of the leaders and their writings and the diverse foci of CRT: critique of liberalism, storytelling or the voice of color thesis that privilege lived experience as expertise, historical analysis and context, the idea that race is a social construction, normal and not aberrational, critical feminism, anti-essentialism and the intersections of gender, race, and class, structural determinism, the role of institutions in maintenance of racism, and critical whiteness studies. The principal tenets of critical race theory offer a way to perceive and interpret how race derives its meaning and plays out in our society. These tenets are helpful in deconstructing the EJ Movement as well as useful for this study. They lend themselves well to understanding the historical, social and political EJ context for this document analysis.

Decolonial Theories

Researchers of color are busy unveiling other paradigms that give voice to the unfinished project of “coloniality” and moving forward not to postmodernity but rather what the decolonial thinkers have labeled “transmodernity” (Dussel, 2002). Not the postmodernity of western thought that still fails to recognize coloniality and its past and present impact on meaning making and the reality of the majority of the world’s peoples. It is about “shifting the ground of reason or the “decolonial turn” as described by Torres Maldonado (2012). The

decolonial turn is influenced by the thought and writings of Enrique Dussel and Anibal Quijano (Maldonado Torres, 2012).

The Caribbean Philosophical Association on their website promotes the idea of “shifting the ground of reason” or the decolonial turn. This of course means shifting the ground of reason from Europe to the South, the colonized North America, South America, the East, the Pacific Islands and Africa. Decolonial thinking is distinguished from postcolonial studies and from the “typical” of the political left (Maldonado-Torres, 2012). The decolonial turn has its origins in liberation theory and liberation theology. They have imagined not a postmodern world that continues its silences, omissions, individualisms, and hierarchies of entitlement but rather a new historical epoch they term “transmodernity;” a challenge to postmodernity with its unfinished, much less articulated, project of coloniality. These decolonial projects challenge us to shift the gaze of interpretation and thought. Their work challenges grand philosophical narratives; some of its writers suggest a “suspension of methodology” (Maldonado-Torres, 2012).

Linda Martín Alcoff (2007) identifies five current areas of philosophical debate: knowledge and identity, epistemologies of ignorance, science, the myth of modernity, and re-constructing new ways of knowing and judging. She promotes “a political epistemology that among, other things is not afraid of considering identity and experience as key elements in what counts as knowledge. She proposes that those that promote grand theories and their methodologies without question might be guilty of epistemological ignorance.

Pascale (2011) elaborating on Martín-Alcoff’s “Epistemologies of Ignorance” states that ignorance is not “simply not knowing but of active misapprehension that systematically produces inaccurate information... an epistemology of ignorance is one that uses socially

acceptable but faulty systems of justification ...expanding the discourse of science is essential to developing analytical tools for effectively exploring routine relations of power and privilege, for examining porous relationships among social phenomena, for thinking about the nature of evidence differently, and for situating localized contexts in the broader cultural and historical context from which they emerged” (p 142).

In the publication *For Indigenous Eyes Only: A Decolonization Handbook*, the editors Waziyatawin Angela Wilson and Michael Yellow Bird (2005) begin with the sentence, “Congratulations! In opening this book you have engaged in an act of decolonization” (p.1); this is the first step, for educators, politicians, social researches, and others to open up, to see with different eyes, and to listen for understanding and meaning and begin there to construct a “different world” which is possible.

Language and Critical Discourse Analysis

Language is the one of the primary tools of meaning, love, desire, power, and hegemony (Fairclough, 1972, 1995; Foucault, 1972; Gramsci, 1988; van Dijk, 1992, Wodak & Meyer, 2001). Language, not communication, is the thing that most distinguishes us from other animals. We know that animals communicate and use tools, but it is humans that have the ability to manipulate the word and thereby our reality or realities. The word is powerful beyond imagination. Through the word, and daily-lived experiences, we construct meaningful actions/performances and discourses and these interactions are not just neutral exchanges but rather, they are thick with social, historical, political, gendered, classed, aesthetic, geographical, perceptual layers of meaning (Bonilla-Silva, 2001, 2010; Fairclough, (1995); van Dijk, 1984, 1992, 1999; Wodack & Meyer, (2001).

Foucault (1972) writes, “I am supposing that in every society the production of discourse is at once controlled, selected, organized and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality” (p. 216). Foucault speaks about the exclusions and prohibitions that “societies such as ours” impose, many of which we are conscious, others, not. “In appearance,” says Foucault, “speech may well be of little account, but the prohibitions surrounding it soon reveal its links with desire and power” (p. 216). Foucault identifies what he calls the three great systems of exclusion that govern discourse, these are: prohibited words, the divisions of madness, and the will to truth. He proceeds to identify what he considers the most serious prohibitions, sexuality and politics. I found it interesting that he did not identify race, which for people of color, and this study would be considered a prohibition. So, whether it is the conservatives, the liberals, the Marxists or the foucaultians race is just a phenomenon they choose to avoid or a prohibition Foucault failed to acknowledge.

Hegemonic discourses are reproduced and accompanied by pedagogy, the book-system (textbooks), publishing, libraries and the media (television, internet, print and radio). These are the dissemination systems of the state. Their institutional “thickness” of meaning construction and how these discourses are inter-woven between and through them is astounding. Texts, as described by Foucault and critical discourse analysts (Fairclough, 2010b, 1995; Van Dijk, 1999; Wolcott & Meyer, 2001), may be performance, print, dialog, oral history, testimony, media, texting, internet, tweeting, TV, etc. Storytelling, rap, open mike, and *corridos* are examples of counter-texts. The Internet offers much flexibility and access for the masses. These airwaves should be free and accessible to the public; however,

today more and more it is the corporations and the government that move to limit the internet from the masses. Today the television and news media are dominated by less than five corporations (Bagdikian, 2004; Bakers, 2007, McChesney, R., 2001). Clearly this cannot be freedom of the press.

As peoples who have survived coloniality, the barbaric destruction of indigenous texts and the misrepresentation and the mis-interpretations by hegemonic discourses of the few available indigenous texts for example: the 2012 misappropriation and misrepresentation of the Mayan Calendar's termination of a cycle, generated text for news and entertainment media about doomsday prophecies, and created profits for capitalism and these stories minimized and marginalized other cultural and scientific knowledge. Censorship continues in the US most recently with the "Boxed and Banned" book fiasco and closure of a successful high school Mexican American Studies Program scandal in a Tucson, Arizona school district. The Board of Education shut down the program and attempted to censor the 88 titles used in the program.

Orality arguably one of our most significant types of text, has little privilege. The oral traditions in our communities are not privileged. When black print on white paper is an indicator of expertise and/or cultural capital, the poor masses and people of color are at a disadvantage and open to knowledge harvesting and exploitation. Intellectual property rights has been utilized by corporations to privatize much knowledge that is created and oftentimes robbed from those that are not connected to hegemony's structures/institutions of ideological construction, dissemination and privatization. As scholars, writers and researchers we are complicit, and it is our responsibility to be reflective and to use our skills in the service of community rather than individual consumption.

Foucault identifies how language rules create hierarchies, power, fellowships of discourse and disciplines. This segregation of academic areas have the effect of creating “expertise”, exclusive and limit-setting discourses, i.e. orders of discourse, turn-taking the “appropriateness” (Fairclough, 1995) of language. This is the practice of using specific language in particular sites: work, boss, family, school, a priest etc. These are “texts” (Fairclough, 1995; van Dijk, 1999; Wodak & Meyer, 2001) or “speech” (Gee, 1999a, 2005b, 2011) events where power is expressing and exercising itself. Van Dijk (2001) speaks about the power dimension of discursive events and the minimizing of historical themes.

Critical discourse analysis (CDA) scholars do not consider themselves to have a specific philosophy or methodology (Fairclough, 1995, 2010b; Gee, 2011; Jäger, 2001; Scollon, 2001; Titscher, Meyer, Wodak & Vetter, 2000; van Dijk, 2001; Wodak & Meyer, 2001) although critical discourse analysis acknowledges hermeneutics and phenomenology as part of their genealogy (Wodak & Meyer, 2001). The only suggestion is that a primary point of research must be language, not necessarily a linguistic discourse analysis, but rather a critical, eclectic research approach is encouraged as may be appropriate to the discipline. CDA scholars encourage others to construct a CDA method that works for them.

Wodak and Meyer (2001) have edited a collection of prominent CDA scholars and the methods that they have used in their particular research. They write that with the exception of suggestions, “there is no typical CDA way of collecting data...no evidence can be found concerning data collection requirements in the contributions of Teun van Dijk and Norman Fairclough” (p. 24). Wodak proposes that CDA methodology is similar to grounded theory. Gee, (2011) offers two publications to guide the researcher; one offers an introduction to a theory and methodology of CDA and a second book (2011) a how to toolkit

that offers 27 tools for analyzing “text” or “speech” as he prefers to call all written and oral texts.

A majority of CDA scholars have links to linguistics but see traditional discourse analysis as too narrow, empirical, prescriptive and falling short in not taking into consideration social, political, ideological and historical phenomena in interpreting meaning. Many of the leading writers in the field are European. Of these, Teun van Dijk and Ruth Wodak have done research on discrimination, racism, and anti-Semitism and gender issues. In “Discourse and the Denial of Racism” (1992) van Dijk identifies language forms that whites use to deny racism. “Among these forms of denial are disclaimers, mitigation, euphemism, excuses, blaming the victim, reversal and other moves of defense, face-keeping, and positive self-presentation in negative discourse about minorities, immigrants and (other) anti-racists” (p.87). These language forms are similar to what Edward Bonilla-Silva calls “semantic moves” (2001).

Race and Racism

High in the tower, where I sit above the loud complaining of the human sea, I know many souls that toss and whirl and pass, but none there are that intrigue me more than the Souls of White Folk.

Of them I am singularly clairvoyant. I see in and through them. I view them from unusual points of vantage. Not as a foreigner do I come, for I am native, not foreign, bone of their thought and flesh of their language. Mine is not the knowledge of the traveler or the colonial composite of dear memories, words and wonder. Nor yet is my knowledge that which servants have of masters, or mass of class, or capitalist of artisan. Rather I see these souls

undressed and from the back and side. I see the working of their entrails. I know their thoughts and they know that I know. This knowledge makes them now embarrassed, now furious. They deny my right to live and be and call me mis-birth! My word is to them mere bitterness and my soul, pessimism. And yet as they preach and strut and shout and threaten, crouching as they clutch at rags of facts and fancies to hide their nakedness, they go twisting, flying by my tired eyes and I see them ever stripped, —ugly, human. The discovery of personal whiteness among the world's peoples is a very modern thing, a nineteenth and twentieth century matter, indeed. The ancient world would have laughed at such a distinction. The Middle Age regarded skin color with mild curiosity; and even up into the eighteenth century we were hammering our national manikins into one, great, Universal Man, with fine frenzy, which ignored color and race even more than birth. Today we have changed all that, and the world in a sudden, emotional conversion has discovered that it is white and by that token, wonderful!

This assumption that of all the hues of God whiteness alone is inherently and obviously better than brownness or tan leads to curious acts; even the sweeter souls of the dominant world as they discourse with me on weather, weal, and woe are continually playing above their actual words an obbligate of tune and tone, saying:

"My poor, un-white thing! Weep not nor rage. I know, too well, that the curse of God lies heavy on you. Why? That is not for me to say, but be

brave! Do your work in your lowly sphere, praying the good Lord that into heaven above, where all is love, you may, one day, be born—white!"

I do not laugh. I am quite straight-faced as I ask soberly:

"But what on earth is whiteness that one should so desire it?" Then always, somehow, some way, silently but clearly, I am given to understand that whiteness is the ownership of the earth forever and ever, Amen! (Du Bois, 1920)

Today in a period of globalization and postmodernist hegemony and a little over a hundred years after Du Bois penned this poem it still strikes at the ongoing contradictions of western thought, actions, assumptions, entitlement and the reality of the masses of U.S. citizens and residents. As raced peoples Du Bois' poem continues to speak to us and we comprehend completely all that his words describe. Our lived experience as raced others in a raced society bring 500-plus years of knowing to the words woven by De Bois as he puts the "flesh on bone" to words that describe people of color's thought and lived experience with racism. Racism permeates every single aspect of our daily lives from the personal to the public. It creates us as we create life under a system of white supremacy with its structural and human micro aggressions and the accompanying resistance. It shapes all our identities, and is enmeshed within all our institutions, and discourses, and it mutates to meet the political/social moment. And, we are complicit. There are, always the accompanying resistant "texts", whether published or not, and they too, shape reality. Considering differential power is key to texts and their dissemination. We already know that published texts have much more privilege than oral texts; access, resources, which texts are allowed,

and to what point, which ones are promoted, and why; are questions that should be part of our reflective process?

Most researchers of color, critical race theorists, and decolonial thinkers today like Du Bois, trace the genesis of racism to the European colonizing expeditions of the 15th and 16th centuries which led to the construction of white supremacy and the idea of the “other”; more specifically in this period called heathens, savages, cannibals, devil worshipers, chattel and mongrel races (Acuña, 1972; Cordova, 1985, 1994; Zinn, 1980). This othering served psychological and political agendas that justified or made light of the near genocide, theft, pillage and destruction of civilizations, arguably more civilized than their European colonizers. Today the racial legacy continues under neo-liberalism and neo-conservative global agendas. Marxists, like the postcolonial, postmodernist writers continue their deafening silence on the colonial legacy.

By devising a legal system and corresponding social institutions and structures through processes described by Charles Mills (1997) in the *Racial Contract*, a twist on Rousseau’s social contract and a challenge to western philosophy, the US legal system has been constructed and evolves to insure white supremacy. Mills writes, “white supremacy is the unnamed political system that has made the modern world what it is today” (p.1), and he suggests how this has come to be. Today the legal notion of colorblindness, equal rights, and other legal neo-liberal conceptualizations set the boundaries for discussions on race.

It is well accepted, except by those who continue to deny not only alternative discourses but also empirical research, that there is little biological evidence for the idea of race, which has led to practices of racism personal, institutional, and social. Phrenology and eugenics have long been discredited but their tentacles still survive (Leys Stepan, 1991).

Richard J. Herrnstein and Charles Murray authors of *The Bell Curve* (1994) as well as some of their allies current and past continue to cling to “epistemologies of ignorance” (Martin Alcoff, 2001; Mills, 2007) and to justify racist practices and ideologies. And these epistemologies of ignorance continue to shape public education and policy today. Special education, as all education, is complicit in the school to prison pipeline. It is interesting that a program that actually comes out of the Civil Rights Movement rarely credits its genesis and has been and continues to be a space where we must be constantly vigilant about our children of color. School is not a safe place for our students; this is a site where poor and children of color are sorted and separated based on capital and state need. And, yes we are all complicit to one degree or another. For this reason our practice is of such major import. As educators attempt to survive in what has turned to be an anti-intellectual environment guided by corporate and global principles and technology and as we begin to observe teachers and professors become overworked internet facilitators of already created classes; our solidarity with the poor working class will become obvious. The distribution of wealth in this country and the world has become so offensive it is bound to create social instability. We are seeing it, it will be devastating to the already devastated and mother nature’s capacity to help us bounce back has been compromised.

Carlos Hoyt, Jr. (2012) writes of racism, “Because it is a concept heavily freighted with multiple and conflicting interpretations and used in a wide variety of ways, the idea and action of racism is not easy to teach or learn in a simple and straightforward manner” (p. 225). Michael Omi and Howard Winant (1994) agree that there is no clear conception of race. They identify past race paradigms in the US as evolving around race, class, and nation. They promote the theory that the US is a system of racial formation with race as the

“fundamental axis of social organization” (p. 13). Richard Delgado and Jean Stefancic (2001) define racism as “Any program or practice of discrimination, segregation, persecution, or mistreatment based on membership in a race or ethnic group” (p.154). Race scholars (Alexander, 2010; Bonilla, 2001, 2010; Delgado & Stefancic, 2001; Mills, 1997; Omi & Winant, 1994) have identified the post-Civil Rights dominant racial ideology at work in the US and its legal system as “colorblind racism.” Michelle Alexander, Cornel West and others talk about the new Jim Crow. The liberal conceptualization of colorblindness is the result of the backlash in the 1970’s and 1980’s to the civil rights struggles of the Black, Indian, Chicano/a and Asian Movements. The affirmative action legal battles beginning with *Bakke v California Board of Regents* and continuing most recently with *Fisher v. University of Texas* help construct the abstract liberal discourse by the courts to position themselves to deny the idea of race and promote the ideology of colorblindness and universal rights through merit and set the legal remedies from racism by laying the burden of proof of intentional racism, on the victim; which is almost impossible to prove. The court costs of this type of action are prohibitive, only stellar cases that may have an impact on some aspect of U.S. law might be picked up by some social justice law firm with limited resources.

Like most critical race theorists Bonilla-Silva (2001, 2010) sees the United States as a racialized social system. “If societies are viewed as systems that articulate different structures (organizing principles on which sets of social relations are systematically patterned), it is possible to claim that race-as well as gender - has both individual and combined (interactive) effects in society” (p. 47). The discursive frames of colorblindness that Bonilla-Silva and others identify are: abstract liberalism, biologization of racism, naturalization of racism, denial of discrimination’s systemic nature, presumed market-driven inevitabilities, and merit.

Research has shown that Blacks differ significantly from whites in estimations of whether racism is an issue today (Bonilla-Silva, 2001, 2010; Hoyt, 2012). As people of color, especially physically distinct peoples, one knows that racism is a part of everyday life experienced through demographics and statistics but also the daily paternalisms, exclusions, invisibilities, looks and behaviors. Even those that are not felons, the working poor, have little bargaining power as labor has been under constant attack since the Reagan years. The majority of those at the margins continue to have hope and faith on their ability to survive the new liberals as well as the ever-evolving neo-conservatives. Those who dare disagree and question are accused of being reverse racists, lazy, wanting to have it all given to them, ill mannered, bitter, negative, and/or childish for bringing up these issues. Race facts and claims are highly contested (Bonilla-Silva, 2001).

Michelle Alexander's (2012) book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* focuses on the prison industrial complex which through law, policy, regulation, and its systems of knowledge dissemination has created a system of racial oppression that leaves African American males as powerless as they were after emancipation. And with the Supreme Court decision on the Voting rights Act, this summer, it would seem that we want every possible regulation in this country to insure that over 30% of African American males remain in prison, in jail or entangled within the judicial system. Once labeled as felons, in many states they may be denied the right to vote, to get financial aid (whether for school or any other enterprise), to get food stamps, housing, etc. So, in this society you don't need plantations anymore for Blacks and other people of color. As the result of today's second-class citizenship, and institutionalized racial oppression, people of color are disproportionately criminalized, and bear disproportionate burdens and risks from

social, political, economic, and environmental degradation and development, all driven by unbridled capitalism or the “market,” The poor have less life chances and of course their quality of life varies from extreme poverty and hopelessness to honorary white status for some. And, women and children suffer the most from these disparities.

In the introduction to her book Montgomery (2012) offers a short vignette of her political development. As a long time civil rights lawyer she had become oblivious, on a first hand basis, to the daily legal realities of the law she practiced. It was not until Obama’s first presidential victory, as she celebrated at one of the inaugural parties that she reflected. As the party ended and folks left the building, police had surrounded an African American male; handcuffed and kneeling in the gutter while police surrounded him laughing and talking, as the well-heeled left the party, “ignoring his human existence” (p.2), she reflected on what the presidency of Barack Obama meant to this man.

Alexander’s work is important in bringing attention to the shame of the US – the prison industrial complex (Abramsky, 2007; Davis, 2005). Prison research and activist work has been going on for decades by folks such as: The National Prison Project, Angela Davis’ writings and lecturing; community organizations such as the Coalition for Prisoners Rights in Santa Fe, New Mexico. Organizers and activists like, Dwight Duran, whose prisoner rights activism in New Mexico, *Duran v. Apodaca*, a class action suit filed in 1977 won the Duran Consent Decree, that addressed humane treatment and the rights of prisoners in New Mexico. The decree unfortunately had not been implemented before the infamous and horrific state prison riot on February 2, 1980. It is a positive for these issues when elite lawyers like Montgomery begin to reflect and use their skills and positionality for the crisis that must be challenged in our communities. This is the type of reflection and refocus that we need in our

communities, especially by elite people of color who in many cases have taken the mantle of “organizer” and “advocate” but end up being do-gooders, boot-strappers, or self-promoting technocrats merely looking to grow their resumes and become part of the consuming meritocracy; consciously or not.

The schools are clearly complicit in this process. The Prison Sentencing Project and The Equal Justice Center, as well as other research has found that African American children are far more likely than their white peers to be suspended, expelled or arrested for the same kind of conduct in schools. In 2003, African American youth made up 16% of the national overall juvenile population but accounted for 45% of juvenile arrests. Additionally, Students with special needs are disproportionately represented in the prison-to-school-pipeline despite protections for students with disabilities under the law.

The Presidency of Barack Obama, as many people of color might agree, has actually harmed not helped race relations in the US. His presidency has provided a narrative that supports the post-Civil Rights liberal narrative of color-blindness and serves as a justification for the new “New Jim Crow” (Alexander, 2010; Bonilla-Silva, 2010). The election of a Black man for President is a convenient excuse to the storyline of, “race as a thing of the past.” President Obama is not representative of historical African American males who have survived generations of United States white supremacy, oppression and exploitation. President Obama’s history in this country is that of an “honorary white” well educated “well-mannered”, “soft spoken”, “thoughtful” and “reasonable.” He is perfect for these liberal times. Ironically incidents of racism have actually risen under the Obama Administration (Stevenson, 2010), however, this is rarely reflected in the media. The new racism is a heightened covert and at times quite overt racism that most people of color live and of which

President Obama has surely been a target: although all Presidents have been made fun of and their positions challenged, the hateful, racist attacks against Obama have been disquieting. The list includes on-going attacks on his legal citizenship, racist caricatures, and unheard of presidential disrespect i.e. the now infamous Republican congressman, Joe Wilson, who shouted, “You lie” at the President during a presidential address to Congress. Newscasters were hard-pressed to find a similar act of disrespect to a sitting President. Add to this the production, by Palmetto State Armory, of a part for the AR-15 rifle on which they inscribed the words “You lie!” These are dangerous times.

The intransigence of the 2008-2012 Republican congressional delegation regardless of the consequences to say no to whatever a Black President might promote speak volumes to the retrenchment and transparency of the racial discourse of this country and the unbridled capitalism, racism, and soulless haves who have tired of humoring ideas of democracy and justice. The right wing and liberals continue the destruction of the social net weakening social, and educational programs and characterizing long fought and worked for health programs and social security defining these as entitlements. This is the greed of globalization that we are living as seen by big banks, Wall Street, and the 1% who continue to “make bank,” to use a youthful phrase. We also have to understand that within the 99% there is also a great diversity of social and economic rewards that continue to create divisions, which many struggle to deconstruct.

It is difficult to imagine what impact this handsome, intelligent, well-spoken, reserved, reasonable President will have on the mass numbers of children and women in poverty today, the heinous incarceration rates of Black and other men of color and the disenfranchisement from this society of great numbers of people. In Alabama over 30 % of

African American males do not have the right to vote because of felonies. The voting rights act, except for its symbolic value seems a betrayal to all that have fought for civil rights and voting rights in this country.

As felons you cannot get financial aid, housing and food stamps in some states. What happens to the families of these men? Who is to blame for these segments of society being pushed further and further into the margins and into drugs, areas of environmental degradation, and pollution, and stuck in urban areas where fresh vegetables and fruits are not available or accessible or rural areas far from any support systems? And, what happens to their families? Even those that are not felons and struggling against poverty, the working poor, have little bargaining power, as labor has been weakened and wields little political power. Rural communities suffer considerable assaults to quality of life because of the lack of jobs, much less good paying jobs. This is a life of cumulative and disparate impacts. Those at the margins continue to have hope and faith on their ability to survive the new liberals as well as the neo conservatives. Those who dare disagree are accused of being reverse racists at worst; complaining minorities, bleeding hearts, and idealists at best. Race facts and claims are highly contested (Bonilla-Silva, 2001) and much money is spent on this type of research. So what are educators doing about this? Clearly it walks into our/your classrooms every day. Native Americans have a 69.1 graduation rate (NCES, 2013). Chicanos, the continuing invisible minority has become even more invisible with the increasing numbers of Latino immigrants, dropping out of school and undergraduate programs at the rate of 40%. Most Chicano, Latino men are concentrated in construction, low wage rural work, struggling artists, service jobs, dealing drugs and in prisons; the only place where we are well

represented in relation to our population. Studies that look at the impact of this, on women, have only recently begun (Wun, 2012).

Today in the US thousands of people of color and poor are serving life sentences for drug dealing crimes. Yet white collar financial theft goes unpunished, you can provoke and kill a young Black teenager in your neighborhood (Trayvon Martin) and kill your wife if you're a police man (New Mexico), commit rape and incest and never serve more than five years in prison. Yet the jails and prisons of the US are filled with Black, Mexican/Chicano, and Indian males with the numbers of female incarceration also climbing for economic crimes.

During the Obama administration we have seen the further development of a Clintonian-style liberal agenda. We need to understand how liberals, like Clinton and Obama, have contributed to the destruction of the social net with Welfare to Work programs and policies in education that started the content standards and benchmarks discourse, which was so effectively used by the Bush administration's education program, No Child Left Behind (NCLB). The results of NCLB have been devastating to youth of color. These programs have hardly improved under the Obama administration. Testing is one of those, eugenic essences, that ties test scores to excellence, merit, superiority – value in our society. Never mind that test scores are just that-scores on a test developed by some publishing company, they are not the sole definition of a person's knowledge and intelligence; and, still today highly based on the English language and culture. Graduation rates for students of color in this country continue to lag behind white students and although reports vary it is safe to say that between 30% - 40% of Chicanos, Latinos and Native Americans drop out of high

school (NCES, 2013; Huffington Post, 2012; U.S. Census, 2010). Students of color who make it to a four-year institution drop out at similar rates before graduating.

More land and sea have been opened for gas and oil drilling, more undocumented immigrants have been deported and inhumanely incarcerated in the Obama Administration than under any other administration Republican or Democrat. No one has questioned the assassination of a head of state and other assassinations by the United States on the soil of other sovereign countries. It appears that we have no morale conscious, and no societal accountability. What this country decides as being in our interest is defined and bullied about as business as usual, and those that disagree are warned, in the best of cases, or devastated by war, sanctions, and other sorts of “collateral damage”.

The distance between the “haves” and the “have-nots” is the greatest it has ever been. Millions are used to bail out the shameless, irresponsible behavior of Wall Street and the banks, while thousands are left homeless, hungry and incarcerated (Moyers, 2010). Those of us that can vote, do, not because we have hope in liberal agendas but because we know we need to vote for the lesser of two evils, trite as that may sound, and for some relief.

The Media and Technology

Foucault, critical discourse analysts, and critical race scholars have written about the role of publishing, libraries, media and technology as ways that power and hegemony maintain their status and disseminate their discourses. Don Heider (2000) studied television news stations in Honolulu, Hawaii and Albuquerque, New Mexico. He chose these two markets to challenge the Black/White binary in US discussions of racism. In his findings, Heider (2000) writes, “Coverage is denied to no one.” Yet, for some, it is difficult to obtain.” Decision-making continues to be in the hands of a few white men and although poor and

people of color are in the news they are often “framed by culturally-frozen norms” or they are associated with crime (p. 32). Bonilla-Silva (2001, 2010) has done research that shows that more airtime is given to white victims of crime including white children gone missing than black children if, they are even reported at all.

The media as the principal disseminator of hegemony’s message is powerful in constructing realities (Bonilla-Silva, 2001, 2010; Heider, 2000). A majority of our children and youth spend more time watching and interacting with social media per day than with their parents or other nurturing adults in their lives. The social Darwinism on television these days is frightening. It is about elimination and disregard for the “loser” it is about identifying the best and outing the rest. The bad guy is usually killed now in stark contrast to programs when I was a child. News has become entertainment and television and movie stars and children of the rich are the icons of social mores, behavior and ethics and fashion, spending

In the United States today less than five corporations own all the major media (Bagdikian, 2004; Bakers, 2007; Media Reform Information Center, 2014). Clearly the concept of objectivity can be challenged. There is little difference anymore between news and entertainment. Fox news and other conservative media programs present ever right-wing, irresponsible, inaccurate and extremely racist discourses while MSNBC, the liberal channel takes equally sensational, arrogant, liberal and one-sided discourses that drip of sarcasm and irony becoming tiresome and annoying. On weekends MSNBC becomes a crime station with one crime or prison show after another. Oftentimes New Mexico is the featured state weaving discourses of deviance and violence, gang members in streets and prisons and jails and the supporting media narrative of constructing New Mexican men of color as criminals.

We continue, “breaking bad”, characterized by “Tonto”, still today played by a white actor, with the blessing of the sovereign government of the Navajo Nation. For some these television programs and movies have entertaining story lines, acting and cinematography, I guess; in New Mexico, for extras, stage labor, and temporary employment it is putting food on the table and paying the rent, and some may even be “discovered” but, we also have to put the same old tired story-line of white supremacy on the table.

During a recent Sunday morning news talk program with a light skinned, smart, beautiful, Black woman host on MSNBC I was struck by the boundaries of the conversation on Martin Luther King Jr.’s Birthday and the second inauguration of President Obama. In the program, with mostly Black leaders, the discussion touched on the marginalization of these famous Black leaders (Martin Luther King, Medgar Evers, etc.) and how their “voices” and “knowledge” was minimized, sidelined and marginalized. You could see/feel the pride that they felt, like most Blacks; other people of color, like me, as well as some Whites too, felt a sense of pride, some sense of victory with Barack Obama’s reelection. However, what was striking in the program was that no one brought up Malcolm X, the Student Non-violent Coordinating Committee (SNCC) leaders, Angela Davis, etc. As Bonilla-Silva suggests it are now elite people of color that do the “dirty work” to maintain the status quo.

The impacts of 9/11 also have had much to do with the new racial discourse and the added dimension of fear and heightened regulation and policing. We saw a rise in Muslim and Arab hate crime and at the same time more exotic-looking newscasters and commentators. You cannot be warring in the world, committing state assassinations without accessorizing the media with “the good exotics” that represent those victimized by this global aggression or “bullying” and verifying that what we do around the world is welcomed.

This serves to construct and disseminate confusion, xenophobia and “ignorance” (Mills, 2007; Martin-Alcoff, 2007) in society.

Hieder (2000) writes that white people are not meeting on how they can deny coverage or discuss how to stereotype communities of color, this happens unconsciously - whites are just oblivious to it. Whites do not recognize their entitlement as white folks so it may take a study, or some convincing narrative to understand. Peggy McIntosh’s (1988) “Unpacking the Backpack of Privilege,” is a valuable tool to help whites understand their privilege and began to uncover abstract liberalism and denial of race and its import to daily life in the US and their complicity. I am not sure that whiteness studies will result in this type of reflective work. It may be that these groups, individuals will just create another layer of white privilege in the discourse of racism. It is many times White folks that are making the huge consulting fees on race work, while people of color professionals are expected to do it for free or lesser pay and, more often than not, not selected for the job. Teachers and professors of color are oftentimes rated harshly by white students when we address issues of race in our classes yet white professors seem to be able to present the same material with less negative response. Some suggest that we must consider whiteness studies in order to more holistically talk about race and racism I would question why we must fully understand race through whiteness.

Discussions of race are almost impossible today or only under certain conditions in which some elite blacks, and I would add elite Latinos/as and other “honorary whites” and exotic elites now do the “dirty work” of policing to maintain hegemony and the boundaries of race discussions (Alexander, 2010; Bonilla-Silva, 2001, 2010). How this impacts the U.S. black and white binary’s historical narrative of racism and the context under which race

discussions take place needs to continually be deconstructed. Even as critical scholars write they still, maybe for expediency, space, or some other reason elect to leave out Chicanos/as, Native Americans, and Asians as part of the race question. In demographic data including census data, it is difficult to find statistics on Native Americans. What does this say statistically insignificant, no justice; or as a colleague often states, “no data, no problem!”

We Speak for Ourselves

Speaking for one’s self is the voice of color thesis that the Critical Race Theorists write about (Bell, 1992; Delgado & Stefancic, 2001). It demonstrates self-determination, autonomy, and sovereignty with all their corresponding possibilities and contradictions. The knowledge of community and the concerns of marginalized community members is a voice that is often not heard and when it is heard it is often not listened to or taken seriously. Often it serves to reinforce stereotypes.

Foucault calls this knowledge “subjugated” and it exists in many forms. Hartman (1992) writing in *Social Work* gives as an example of Foucault’s “insurrection of subjugated knowledge” in which privileged truths as a hegemony of global unitary knowledge involved the invisibility of “women and of people of color in the social sciences, constructed by white males with a few and generally marginalized and quieted alternative voices” (p. 24). She cites examples where the privileged voice has been challenged by other voices. For example, the woman’s movement encouraged women to break their silences and tell their stories and challenge the notion that incest memories were fantasy, the civil rights movement and the literature of African American, Indigenous and Chicana/o and other marginalized literatures and oral stories and performance, gay and lesbian pride generated by the Stonewall resistance, the official depathologization of homosexuality, and families of relatives with

mental illness have led to a new discourse of better treatment. In all these examples, says Hartman (1992) “oppressed and marginalized people whose experience had been described, defined and categorized by powerful experts rose up to tell their stories, bearing witness to their experience and to define themselves” (p. 25). This speaks to the power of the CRT tool of storytelling as a legal counter-narrative to build the case of race. Foucault (1980) says: “We must entertain the claims to attention of local, discontinuous disqualified, illegitimate knowledges against the claims of a unitary body of theory which would filter, hierarchize, and order them in the name of some true knowledge and some arbitrary idea of what constitutes a science and its objects (p. 83).”

The questions become: How is an unquestioned common sense arrived at? How is the expert and the technical constructed in western thought and the law: How do we identify and perceive our expertise? How do we privilege our knowledge and expertise? And how do we break down the new Jim Crow or the U.S. legal discourse of color-blindness

Environmental Justice in New Mexico

Many New Mexicans involved in the formation and evolution of the Environmental Justice Movement in this country have spoken of New Mexico as a national sacrifice state. Environmental racism, like institutionalized racism, internalized racist oppression; classism, sexism, homophobia, and xenophobia continue to thrive in this country and in New Mexico. This is how the political social status quo is maintained. Political discourses and institutions mutate to respond to the constantly changing conditions and in New Mexico a sort of neo-colony; being a majority/minority state offers many contradictions and realities for study. We have a Hispanic Governor, the first in the state and in the nation, that should mean

something, but it does not. Governor Martinez was elected with large financial contributions from out of state. One of her biggest funders was the leader of the “Swift Boat Campaign” fame in the Kerry presidential campaign as well as the infamous Koch brothers. Her actions and policies around environment, education, immigration, etc. have fallen short of the needs of the people she should be representing. She has pushed back on almost all type of programs that would be good for her ethnic constituency she, similar to Obama, except she as a conservative republican, is “doing the dirty work” of hegemony in this state. She has pushed back environmental protections, a business model of education based on high stakes testing tied to teacher evaluations and merit pay further marginalizing our youth through conservative educational programs. Her tough on crime and anti-immigrants policies just mean more of our people in jail. Where she has failed legislatively, she has gone to the courts and regulatory boards (i.e. The EIB) to undo environmentally and human friendly initiatives. It is a white conservative agenda that she promotes. Marco Rubio, Ted Martinez, and Susana Martinez are the brown face of white conservatism, much like Clarence Thomas and Bobby Jindal are for their cultural groups.

Of course, in New Mexico, there are the usual liberals young and old, most bright folks, most privileged, technocrats that come to New Mexico; and in the last few years the “parachute organizers.” Many national organizations now send organizers to New Mexico opening offices in Santa Fe and Albuquerque. They have well-paying jobs and are making policy and other decisions to “protect” New Mexicans, white liberals are the decision-makers in all that is about social, environmental, sustainability and organic with the accompanying expensive dress, accessories and documents, as well as the cotton, hemp, and organic type. These folks do not have connections to community nor do they try to look for knowledgeable

folks. They come in all colors and in all trades, academic, nonprofit, literary, art, indigenous healing activities gone wild, capitalist, and all sort of cultural imperialisms. These are the things that construct us and which we construct in creating meaning. Those that represent our state many times are not even from our state. Former Lt. Governor Roberto Mondragon's musical lament, "*Hasta Cuando Nuevo Mexico*," strikes a dissonant tune with people of color, divided, and kept under control by the historical atrocities that have created wounds that will take lifetimes to heal.

In the meantime the division in our communities and the disparate and cumulative effects of poverty continue in the colony accompanied by police brutality exemplified by the Albuquerque Police Department (APD) who finally, after years of demands from community members and families, is being investigated by the U.S. Department of Justice (DOJ). The Albuquerque Police Department (APD) kills more citizens a year than cities like New York City, which have ten times the population. As Jewel Hall, a long time African American activist in Albuquerque and mother of a son with disabilities also killed by police stated, "if you have a problem with a family member, don't call APD, unless you want that person dead." Poverty, crime and safety the result of state neglect, are a festering crisis. In July of 2013, New Mexico finally beat out Mississippi and Alabama for the poorest child welfare in the country (Kids Count Data Center, 2013). All these factors contribute to what in EJ is identified as disparate impact. To impacted communities it means all those things social, economic, political, raced and gendered that impact all aspects of our lives, specifically affecting our health and welfare. Public welfare or disparate impacts and burdens include poor: housing, nutrition, nurturing, health, education, environment, economics, political, legal representation, information dissemination, accessibility to technology, etc.

Environmental racism in New Mexico is intertwined with the colonial legacy of this country; it seeps through all our daily experiences constructing itself and us silently, osmotically and almost without a trace. More specifically, we can begin in the 20st century with the mining of uranium on the Navajo and Pueblo Nations that began in the 1930's along the uranium belt. Native Americans from many nations and poor *nuevomexicanos* (New Mexicans, poor Mexicans and Chicanos) were exposed to uranium poisoning through the mining, milling and processing of uranium ore, taking the dust home to their families on their clothes and bodies. New mesas on the horizon created with the resulting mounds of uranium mine tailings waste, which to the unknowing eye now look like natural geographic formations. These mesas continue to contaminate the air, water, and soil, where Native peoples pray, play, work and go to school. The ultimate result, people and families left to deal with lung and other cancers, respiratory, and kidney diseases with little in the way of compensation, much less responsibility and accountability. Today hundreds of abandoned uranium mines (AUMs) lie unmarked and untested with few, including government, stepping up to take responsibility. With the rise in uranium prices over the last decade new mining claims have been filed to mine uranium in and around Mount Taylor, a sacred site to many indigenous nations, and other sites in the "checkerboard" area of the Navajo Nation. These cases are in litigation today. Nuclear consultants promoting a clean energy source peddle uranium, some of them are not white, but they are all corporate. The lived experience of indigenous peoples in this area holds thousands of stories of disease, suffering, death and grief, as well as survival (Eichstaedt 1994; Grinde, Johansen & Zinn, 1995; NMED, 2005; SRIC, 2007).

The contamination left behind by the nuclear cycle, which begins and ends in New Mexico continues to impact the majority of its residents and our natural resources. Economic blackmail keeps our state and congressional officials tied to maintaining the nuclear cycle and arsenal of the United States; Sandia Labs and Los Alamos where the creation of these always newer nuclear weapons and their testing have impacted the environment throughout the state with irresponsible disposal of toxins, and hazardous waste materials into arroyos; unlined mixed waste landfills, polluting our water, soils, air, plant life, our environmental and human health.

We are still the only country in the world known to have used Weapons of Mass Destruction (WMS) making a sham of our government's protests against middle-eastern and eastern countries and their efforts to become nukes, as well as, global nuclear non-proliferation efforts and treaties. Yet, no one talks about the real nuclear threat in the middle east – Israel, who also receives the largest amount of aid from the US. The culture of xenophobic fear that has been constructed in the US and Europe against Muslims leaves us unable to understand these contradictions so we drink the Kool-Aid.

In Albuquerque's South Valley, the Rio Grande which already carries contaminants from Los Alamos, borders the Mountain View Community, a majority *mejicano*/Chicano community which is host to 31 EPA regulated sites, an oil and gas farm, over 40 used auto parts yards, a feedlot, a chicken farm and numerous other industries (Dominguez, J.; Moore, R, in EIB, 2006). My children attended elementary school in the neighborhood. In 1989 a child almost died from drinking formula, which had been prepared with, well water from the Grandmother's house. The child was nearly killed by the high level of nitrates in the water. A

water truck was parked on the school premises for our children and community until the county, after community pressure, laid water and sewer lines to the community.

During this time neighborhood residents were advised in the media that we must stop drinking and showering with the water, but slowly, as the water had been found to have nitroglycerin in it. We organized a community group, The Mountain View Advisory Committee (MAC) that brought together community and Sandia Labs and Kirtland Airforce officials into a committee to address issues of contamination. Including a plume of contaminated water, originating from these sites and drifting south of the community from the Tijeras Arroyo.⁹ The *arroyo* or dry wash that went through Sandia Labs and Kirtland Air Force Base and into which toxins had been dumped since the 1930's goes through the Mountain View community, in front of Mt. View Elementary, before it empties into the Rio Grande. The river then flows south to Isleta Pueblo.

The Mountain View community had become host to Albuquerque and Rio Ranchos' municipal sewer system and municipal waste transfer station but ironically was not served by either at the time, much less municipal water. Technically we were and are located in the county not the city limits - when it comes to benefits.

In 2008 the 47th Air Quality Permit was approved in the community for a gravel company, which would have been located across from the only neighborhood community center. Gravel companies create particulate matter, minute particles of dust that are very damaging to the lungs, especially young lungs. There would also have been an increase of 80 gravel trucks a day going through the area. In spite of massive community opposition, the Albuquerque Bernalillo County Air Quality Board, led by a Chicano, approved this permit

⁹ Sandia National Labs in terms of US weapons research is second only to Livermore labs in California.

citing zoning laws, that they interpreted as not allowing them to protect children. The gravel yard never opened however problems persist in this area south of Albuquerque. The presence of an unlined mixed-waste landfill at Sandia Labs continues to raise further water contamination issues.

In the four corners area of New Mexico where the Navajo Nation operates the second largest fossil-fuel energy station; an ever-present haze lies over the once pristine horizon and is now regulated by EPA. Respiratory health issues and cancers plague surrounding communities, and are further impacted by the oil and gas drilling that goes on in that region. Ironically the energy produced in the four corners area benefits neither Navajo Nation members or New Mexico residents.

In southeastern New Mexico, the Department of Health (2014) reports high rates of asthma and visits to emergency rooms compared to other parts of New Mexico, here the oil and gas industry is concentrated. Our work as community grassroots organizations has been on these very issues including landfills, sawmills, sewer systems, oil and gas drilling, mining, and the nuclear cycle that begins and ends here in New Mexico where the only hazardous nuclear waste dump in the country is located. The Waste Isolation Pilot Project has been closed since Valentine's Day 2014, where a nuclear leak closed the repository which may not be open until 2016. The Department of Energy and Los Alamos Labs have been cited by the NMED for poor practices that lead to the problem. Under the present administration it is only because of the gravity of the situation and the national media attention that they have been cited. These practices are examples of environmental racism.

Many times the work that we are doing, as people and communities of color can coincide – the right people, the right time and be mutually supportive; and we can come

together to give greater visibility to our issues. At the time that some of the work in the Mountain View community was advancing, Isleta Pueblo had elected its first woman Governor, Verna Williamson Teller, we worked together sharing knowledge, and information. Jesse Jackson visited the area during his second bid for president in 1988 and met with our organization and elected officials of Isleta Pueblo giving media attention to our issues and bringing together different communities. The Isleta Nation, under the governorship of Ms. Williamson Teller passed their own environmental water quality laws to protect the waters of the Rio Grande. This had the effect of making the city of Albuquerque clean up its act as they can deliver only so much contaminated water downstream to Isleta Pueblo.

Nationally environmental justice defines the discourse on environmental racism and injustices. Neo-liberal as well as conservative discourses attempt to define impacted communities. Environmental Justice is defined for “protection” as “vulnerable areas” (EIB, 2006) rather than people of color communities or Native American, Chicano, Black. The idea of race as a primary and independent predictor of environmental racism and injustice is contested, although much of the research continues to demonstrate that environmental injustice happens either directly or indirectly as the result of discriminatory practices. A second report commissioned by the UCC (Bullard, Mohai, Saha, Wright, 2011) 20 years after its first report, *Toxic Waste and Race in the United States* (Lee, 1987) found similar results updating and confirming the findings of the first report. Race continued to be and independent and primary predictor of environmental injustice.

These are questions of lived experience, of worldview, of power, ethics, politics and economics; questions of survival. We know that it is privilege that leads one to develop the

belief that animals must have the same rights as humans. As humans we do not have the right to destroy animals, habitats and environments. They are integrated spaces. However, there are naturally, occurring and mutating biological and survival behaviors that allow some degree of harmony in the plant, mineral and animal world. There is the predator/prey dance of life, seasonal reciprocal cycles of life and death systems, and occurrences, composting and - new life. There is a natural ethic here a power not based on race. And, as with climate change, human impact on these more natural systems and evolutions can have the devastating effects that we see today in our changing natural environments, weather occurrences, disease, etc. One cannot exploit one's body or home without consequences.

As a result of western thinking we have destroyed much life and knowledge and are now pushing our earth's carrying capacity. Winona LaDuke (1999) notes, "In the last 150 years we have seen a great holocaust. There have been more species lost in the past 150 years than since the Ice Age" (p.1). We have eliminated species and committed untold crimes against our own species as well. The question is how will we use our gift of thinking and talking beings to fashion ways maybe old maybe new or a mixture to live sustainably and in justice, taking only what we need, and understanding that all humans have the same needs: to be sheltered, clothed, to have food, to be loved and to have the time to develop our creativity making a different world entirely possible.

Implications for Education

Daria Roithmayr in the introduction to, *Race is...Race Isn't*, (Parker, Deyhle & Villenas, 1999) answers the question of what critical race theory has to offer education. "Much of the national dialogue on race relations takes place in the context of education – in continuing desegregation and affirmative action battles, in debates about bilingual education

programs, and in the controversy surrounding race and ethnic studies departments at colleges and universities. Critical race theory offers a way to understand how ostensibly race-neutral structures in education - knowledge, truth, merit, objectivity, and “good education” - are in fact ways of forming and policing the racial boundaries of white supremacy and racism (p. 4).

The Tucson Unified School District’s (TUSD) dissolution of a successful Mexican American High School Studies Program and the “boxing” and “banning” of the program’s books while the teachers and students were in the classroom made much internet media, but had little mainstream play. Jon Stewart’s Daily Show provided comic relief as we witnessed the depressing texts of white racism: when one hears Mr. Hicks, a member of the TUSD Board of Education, one need not wonder why education is failing our children. Or more precisely we might consider Joel Spring’s (2001) argument that schools are doing exactly what they were created to do, maintain the status quo.

The reality is that schools are a pipeline to prison for many of our student males of color. In public education black males are over represented in classes for students with Behavior Disorders, oftentimes their behavior is merely inconsistent with the teacher’s culture (Anderson, 1997; Artilles, 2000; Baca & Cervantes, 1989; Davis, 2005; Prison Sentencing Project, 2013; Townsend, B. 2000; Yesseldyke, 1990, Wun, 2012.). The Prison Sentencing Project (2013) found that African American children are far more likely than their white peers to be suspended, expelled, or arrested for the same kind of conduct in schools. In 2003, African American youth made up 16% of the national overall juvenile population but accounted for 45% of juvenile arrests. Students with special needs are

disproportionately represented in the “School-to-Prison Pipeline” despite protections for students with disabilities under the law

This chapter has offered a discussion on the theories and methods that inform this study. Additionally I have provided a political and social context that helps to understand how environmental racism and injustice happens and the risks associated with these realities and how these concerns must be considered by educators as well as politicians. The next chapter specifically address the methodology employed to gather and analyze the data.

Chapter Three

Methodology

Research Considerations and Standpoint

The focus of this qualitative study is the transcript of the New Mexico Environmental Improvement Board (EIB) 05-07 (R) Hearing in 2006. The methodology is informed by critical race theory, critical discourse analysis, indigenous, land-based and decolonial theories and methods. As a participant in this legal process, as well, as a participant and leader in the EJ Movement, elements of autobiography are also present. The research design will implement a critical discourse analysis of the legal transcript using a race framework. “The study of narrative and discourse is concerned with the analysis of meanings in social life” (Morrow & Brown, 1994). I identified language and discursive events around race, ethnicity, culture, EJ and income to understand how discourses and meaning about race are constructed.

As discussed in chapter two, research for some people of color, me included can be problematic. There is a sense of misfit, of cultural and experiential dissonance in identifying and deconstructing western models or in looking at research from some of these perspectives. LeCompte & Preissle (2007) acknowledge that... “there probably are as many approaches to anthropology, ethnography, and qualitative research in education as there are practitioners of the craft” (p. 1). For this reason, this project is eclectic (Bonilla-Silva, 2001, 2010; Lopez, 2003; Lincoln & Guba, 1985). I privilege the voice of color, the subaltern, the othered, the female, the community, the grass roots, orality, other worldviews and lived experiences. Few doctoral students have the power to decide to suspend methodology, as some decolonial thinkers (Maldonado-Torres, 2011) would suggest. Some of us are at least privileged in that

we may be in programs that allow for independence, creativity and eclecticism. Young scholars however must be strategic; if they plan careers in the academia.

Many scholars of color struggle daily with these realities and contradictions. When we lift grassroots knowledge, people's knowledge, the knowledge of the researched; we must turn away from what has been the norm, the rule. We seek other voices, not just texts and scholarly or scientific journals. We seek to honor, privilege, and give credit to the community/the researched, the other. We want to carry out this research side by side with those whose lived experience is no less or more important than the researchers and the data that emerges from this mutual journey of study and reflection belongs to both. In EJ communities, community-based participatory research has become the more acceptable model of research (Bacon, Vuoo-Power, Frampton, LoPresti & Pannu; Blalza & Morello-Frosch, 2013, Bustamante in EIB, 2006) although; here too, the researcher must work hard to deal with these contradictions.

In doing critical research it is already assumed that we are taking a position (Denzin & Lincoln, 2005; Smith, 1999; Pascale, 2010). The author is not of the opinion that racism is a historical artifact nor that we live in a colorblind society. We live in a raced, classed and gendered society and our responsibility as progressive intellectuals and educators should be focused on uncovering these relations of power and how they reveal themselves in our daily actions, work and lived experiences.

As a participant in this legal process questions of insider/outsider research are raised, I consider my being an insider, strength. Linda Tuhiwai Smith (1999) in *Decolonizing Methodologies* writes, "This book identifies research as a significant site of struggle between the interests and ways of knowing of the West and the interests and ways of resisting of the

Other” (p. 2). This research is critical. It is the lens of a working-class, land-based, rural Chicana feminist with a grassroots, global perspective. Simon Cassidy (2013) writes of acknowledging hubris in interpretive data analysis. “Hubris is presumption, pride, excessive self-confidence in personal convictions” (Oxford University Press, 2011). Because of my personal involvement in the process to be studied and my work on environmental justice I acknowledge that I may have some presumptions and beliefs that may have influenced my interpretations of the data. For these reasons I have built in reflexive strategies common to grounded theory and other qualitative methods to assist in minimizing bias.

I do not believe there is much difference between the researched and the researcher, other than power and how much of it we may have or are able to accumulate in specific points in time, influenced by the particular historical moment, as well as the intellectual and material resources available to us; and, the ability to manage these. The researcher has always depended on the “researched” and their/our presumed lack of power to be able to lay claims to knowledge.

I do not see insider research as more or less vulnerable to bias as any other research that is not done carefully and with good intent. My insider role in this research, as well as in the EJ Movement, means that as grassroots organizers we clearly have agency and of course, work our power strategically, as all people do, as the particular campaign, project, or phenomenon may require. Just as intellectuals do with the cyclical process of research, data collection, note taking, analysis, reflection and writing. That too is the practice of organizing; there is thought, knowledge of the landscape, discussion, analysis, action, reaction, evaluation and readjustment of strategy for continued resistance; and always, relationship building to build movement. But, it is rarely published. Therein lay some of the issues with

knowledge and who creates it or at least who is given credit for it as it becomes privatized.

This too is where oral cultures are robbed of their intellectual property and where orality, the most common behavior in sharing experience and knowledge is marginalized; and, where hegemony's courts give patents and protections as human beings to corporations made filthy rich by the extraction of minerals, all manner of resources, animal, plant, and oil from developing countries polluting their environments and bodies as they do to People of Color in the U.S. Today almost 50% of the world's resources are owned by just one percent of the world's population (Oxfam, 2014); this is unconscionable when we consider the major efforts that go into blocking a raise to the minimum wage. The authors of the report caution that this disparity in wealth will lead to social instability.

Purpose and Significance of the Study

The purpose of this study was to look at how meanings around environmental justice comes to be and how discourses are constructed and constricted in legal sites with respect to race. These contested language meanings and constructed discourses assist in shaping the common sense of state hegemony, regulation a la Foucault, and what the masses of humans will endure. How language creates us, and our realities, and is also created by us, is essential to understanding oppression, exploitation or other subjectivities and a valuable skill in understanding state, institutional, corporate and individual power. This study is also about how the other, the worker, the ruralite, the urbanite exercise power and autonomy. This research contributes to the literature on race and the role that race plays in environmental justice, law making and how official knowledge is constructed. How do similar institutional discourses play out in education, and how should this influence our practice as educators? How are discourses constructed and negotiated around discussions of race, ethnicity, and

culture? What “semantic moves” (Bonilla-Silva, 2010) what tropes, and story lines or lack thereof are put in place in discussions having to do with race?

The questions I sought answers to were the following:

- How do language and race work to create meaning around environmental racism, injustice, and justice in a legal setting.
- How does environmental justice come to be defined?
- Whose knowledge is valued, listened to, privileged and given authority?
- How do people position themselves to engage in discussions dealing with race?

This research has implications for educational practice, for literacy in the Friirian sense; or rather, how can we prepare our students to read the word as we learn from them, how they read and live their world, so together, we might construct a better world.

Context / Setting

The New Mexico Environmental Justice Working Group (NMEJWG) of SNEEJ developed a New Mexico EJ campaign that we put into practice as described in Chapter One. This work brought us to the revision of the New Mexico Solid Waste Regulations that is the subject of this study. The NMEJWG became legal parties in this process and presented testimony from different EJ communities, language, and research that dealt with issues of environmental racism and injustice. We collectively chose this as a site of struggle. The goals were to educate the community, public as well as government officials, and push for more protection for poor and people of color. Hegemonic discourses were challenged and counter discourses were advanced.

Our/my language use was studied and analyzed and interpreted the same as other speakers. I understand my responsibilities as a researcher of color as well as the risks. There

are always benefits and risks with most phenomena. As people of color it is not easy to “To expose oneself,” as Sarah James, Gwitch’in spokeswoman, for the protection of the Arctic National Wildlife Refuge (ANWR) stated in reference to tribal discussions at the initial gathering of the nation’s villages to take on the commitment to protect the Arctic National Wildlife Refuge (ANWR); ANWR is considered by the Gwitch’in as, “the place where life begins.” This is where the porcupine caribou herds migrate for hundreds of miles to their calving grounds in Alaska. The caribou provide the sustenance for the Gwitch’in peoples whose villages still today are 90% dependent on their environment for their survival. To expose one’s poverty, lack of particular western knowledge, lack of western experience, a lack of resources, etc. is to expose one’s vulnerabilities.

The EIB Hearing took place in Santa Fe in a room at the State Capitol, in the evenings; it reconvened in the Wendell Chino Building. Santa Fe is the capital of New Mexico. It is the second largest city in the state and has the second highest level of income, after Los Alamos. As the capitol of the state this is where policy is debated, negotiated and comes to be law. And, more often than not, those with cultural and financial capital are the major players. And, in New Mexico these players are not all White; we are a majority/minority state however this does not necessarily translate into justice or major power.

Today Santa Fe is home to the million dollar properties of socialites, artists, scientists, entrepreneurs, and actors. When one drives through Santa Fe the number of properties owned by Sotheby’s is astounding and gives a native New Mexican *Brave New World* shivers. Canyon road, which was lined with working class Chicano/a homes before the 1960’s today, is world renowned for its art galleries. Maybe one or two owned by Native Americans or

Chicanos/as. Outsiders may feel they are immersed in culture as they order tapas, to flamenco, classical guitar or Native flute on Canyon Road. However, a narrative of mesmerizing cultural imperialism is the subtext. One has only to leaf through publications in Santa Fe to see how the narratives of white, wealthy, entitled whites construct and claim, New Mexican peoples, culture, language and art.

The Environmental Improvement Board

The Hearing took place before the Environmental Improvement Board (EIB). The EIB is a government appointed board that creates and approves environmental regulations. The board is made up of seven members that are appointed by the governor with the advice and consent of the State Senate. Appointments have overlapping terms for no more than five years. No political party can appoint more than four members and a majority of the members must be representative of public interest. The members of the board at the time of the hearing are available in Appendix D. The Board is:

Responsible for the promulgation of rules and standards in (1) food protection; (2) water supply, including a capacity development program to assist water systems in acquiring and maintaining technical, managerial and financial capacity in accordance with § 1420 of the federal Safe Drinking Water Act and rules authorizing imposition of administrative penalties for enforcement; (3) liquid waste, including exclusive authority to establish on-site liquid waste system fees and to implement and administer an inspection and permitting programs for on-site liquid waste system fees and to implement and administer an inspection and permitting program for on-site liquid waste systems; (4) air quality management as provided in the state Air

Quality Control Act [§§ 74-3-1 to 74-3-1 to 74-3-16 NMSA 1978]; (10) sanitation of public swimming pools and public baths; (11) plumbing, drainage, ventilation and sanitation of public buildings in the interest of public health; (12) medical radiation, health and safety certification and standards for radiologic technologists as provided in the Medical Radiation Health and Safety Act [§§ 61 -14E 1 to 61 – 14E- 12 NMSA 1978]; (13) hazardous wastes and petroleum storage tanks as provided in the Hazardous Waste Act [§§ 74-4-1 to 74-4-14 NMSA 1978]; and (14) solid waste as provided in the Solid Waste Act [§§ 74-9-1 to 74-9-43 NMSA 1978].

(<http://www.nmenv.state.nm.us/eib/members.html>, 2013)

Nine parties formally entered the legal process and presented technical testimony before the EIB. The NMED represented the state. Public comment was also scheduled on a daily basis into the agenda at times that would accommodate the public, near lunchtime and after 5:00 PM. The word, party, “means the Petitioner, the Applicant, the Division, or a person who files an Entry of Appearance on or before the deadline set forth in the Notice of Hearing” (20.1.1 NMAC). The parties represented: the New Mexico Environment Department (NMED), non-profits, community organizations, private governmental associations, industry, and their advocates, experts and legal representatives. The parties were allowed an opening and then presented testimony from different experts, community or constituents. Once a party had testified the other parties were allowed to cross-examine each of the witnesses. Once there were no more questions or re-direct or re-cross the next party presented their position and the process repeated itself until the Hearing was finally adjourned on Friday evening at 11:40 PM.

A lawyer usually leads most parties, but a regular citizen can also take this role. Although the regulatory process allows for citizen participation, one must know this and be able to access the regulations in order to learn about the procedures for filing of the appropriate paperwork, and deadlines for participation and responses. Not to mention having some knowledge of the way the process is managed. I only learned of the process as a participant in the NMEJWG from our legal consultants. I learned the role of being a lead for a party by listening to the H.O.'s instructions, doing and seeing what others did. This is something we do not learn in schools in the general social studies curriculum.

Certain times during the day were reserved for members of the public who might have an interest and had come to make public comment. These public comments traditionally have not weigh as heavily as testimony or “appearances” by the formal “parties” to the process. The process to become a party is exclusive in that it requires considerable research, paperwork, and deadlines as discussed above. It is in these sites that injustice is created by inaccessibility. The Environmental Improvement Board (EIB) - Rulemaking Procedures (20 NMAC 1.1) specify the procedures and timelines for becoming a “party.” Although these processes are open to the public, knowledge about these regulatory procedures is not easily accessible; it takes time, support and a willingness to attempt the project as well as resources. These requirements make it inaccessible and prohibitive for communities of color, the poor, and for small grassroots community organizations.

Technical testimony which can only be presented by parties, was defined in the Solid Waste Regulations, as “...scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing” (20.1.4 NMAC).

Although, the regulations allow for “other specialized testimony” these processes traditionally have not privileged testimony other than scientific, legal, or engineering testimony. The Rhino Decision in New Mexico a State Supreme Court decision won by the *Colonias* Development Council (CDC) against a landfill in southern New Mexico in 1999 created a legal precedent in a decision that ordered other social issues to be taken into account in the final decision-making on that permit. Dr. Devon Peña’s testimony in advocating for consideration of social issues was critical in this decision as well as the excellent organizing of the community and support of the *Colonias* Development Council (CDC) under the directorship of Dr. Diana Bustamante.

The EIB Hearing (2006) to amend part of the New Mexico Solid Waste Regulations was a four-day legal process that went into the evening several times including the last night when the hearing adjourned at 11:40 PM. All of the leads for the parties represented were there throughout the proceeding. Members of the EIB were absent at times, one member was absent for the majority of the hearing and only two Board members remained the last day, when the Hearing adjourned at 11:40 PM. Once a hearing is completed, the record may be kept open for submittal of other information based on the H.O.’s or the Board’s request; although not always the case, as a decision can be made by the EIB at the end of a hearing. The H.O., in this case, did write a report, which was sent to all parties and Board members. The parties were given a set number of days to respond or comment on the report, usually 30 days. If the Board does not make a decision at the end of the hearing, “The board shall reach its decision on the proposed regulatory change within sixty days following the close of the record or the date the hearing officer’s report is filed, whichever is later” (NMAC, 20.1.1.406 C).

I have outlined this process to give the reader an idea of how time consuming and demanding it is, and although accessible to the public, is almost prohibitive if you are not part of an organization or you do not have legal representation. Although not all EIB members were present for the duration of the hearing they all voted on the final revisions that were adopted into the revised New Mexico Solid Waste Regulations. Whether those EIB members that missed testimony actually read the Hearing transcripts before making their decisions on the changes that were adopted into law is anyone's guess, but instructive. By law, of course they should, they are given copies of the proposed changes and know the issues on which there was no consensus by the parties involved. When the H.O. writes the report, she/he, summarizes the process, the arguments made and offers recommendations to the Board, which should be representative of the arguments however, the H.O. offers summary recommendations. These can also be challenged as per the process, which ultimately NMED facilitates. The Board can either accept or amend portions of the report. Once the final version is accepted, the H.O. writes a final report and recommendations from the EIB, it is then sent to the NMED Director for their final approval before becoming law. The Governor, other groups, or the public can challenge these legally, which obviously, means that you must have the resources, cultural, as well as financial.

Governor Susana Martinez, as other Governors, has used this regulatory process, the legislature, executive orders, and the courts to push back many environmental protections during her tenure. Just as we, the NMEJWG used them to promote EJ. So, yes in the postmodern sense we all have power however, not to recognize differential power relations suggests a continued silence and resistance to acknowledging, racism and its persistent legacy, honorary status, class and gendered privilege, white supremacy, and state hegemony.

Research Design

Eduardo Bonilla-Silva's (2001) Central Frames of Color-Blind Racism and selected critical race theory tenets, not identified in Bonilla-Silva's frames provided the social and legal context to deconstruct the selected discourses. The research of Critical Discourse Analysis scholars, in particular Tuen van Dijk and Ruth Wodack was used to identify eleven "semantic moves" that were utilized to identify the discourses constructed by those that testified and were cross-examined specifically when dealing with race, ethnicity, culture, income and EJ. The tenets of CRT outlined by Delgado and Stefancic (2001) are useful in assisting interpretation. Many of these tenets align well with the color-blind frames that Bonilla-Silva identifies. There are three tenets that are not duplicative of Bonilla-Silva's frames, and are useful to this project they are: **differentialized racialization**, **intersectionality and anti-essentialism**, and **the voice of color thesis**.

Differentialized racialization is the privileging or targeting of one group of color over another for a specific interest or moment. An example may be the targeting of immigrants in times of financial stress or the lifting up of Native American philosophies by liberal environmentalists, to illustrate diversity in their programs or to connect symbolically with those who are considered the guardians of Mother Earth, without necessarily taking leadership or direction from these communities. Intersectionality and Anti-essentialism is the idea that no one person or culture is just that which is associated with the person's culture/ethnicity, gender, etc.; human beings of all cultures experience life differently because of race, class, gender, sexual orientation, rural, urban, survivor, cognitive ability, chance, opportunity, power, etc. in the larger society as well as within cultural groups and family. Stereotypes continue to dominate our thinking as reflected through our social,

political, and economic realities. These are understood through the discourses we create with one of the most powerful tools we have available to us, language.

The **voice of color thesis** holds that people of color by their lived experience can speak from a position of authority and expertise about that with which they have intimate knowledge and experience (Bell, 1972; Delgado & Stefancic, 2001). One of those experiences is racism. Derrick Bell and the critical race theorists suggest legal storytelling to build the record of racism. This idea can also be extended to the female voice of lived experience and thereby expertise. Storytelling has become one of the methods used by critical race theorists. Impacted community members shared testimony in the EIB process as stories of lived experience. Impacted communities are experts on their lived experiences, their health and geopolitical spaces; not necessarily those that make decisions for them.

Tuen van Dijk's (1992) research on race has identified discursive strategies of denial, as well as the cognitive and social functions of such, and other forms of denial in different genres of text and talk about ethnic or racial affairs" (p. 87). This research is useful in attempting to deconstruct the selected texts. Language moves identified by van Dijk (1992), and Bonilla-Silva (2001) include:

- Denial
- Disclaimers,
- Mitigation,
- Euphemism,
- Excuses,
- Blaming the Victim,
- Reversal

- Moves of Defense,
- Face-Keeping
- Transfers
- Positive Self-Presentation

These eleven language moves helped identify the more common tropes in race talk.

“Discourse plays a prominent role in the reproduction of racism. It expresses, persuasively conveys, and legitimates ethnic or racial stereotypes and prejudices among White group members, and this forms or confirms the social cognitions of the whole” (van Dijk, 1992)

Bonilla-Silva’s (2001) research too, has identified discourses used in public settings that illustrate how power operates in disseminating ideology through public and private discourses that construct, over time, in different historical periods, discourses that become the “common sense” or “official knowledge.” Bonilla-Silva’s research is useful to this project in looking at the dominant discourse themes that he has identified. He has identified four central themes, which he calls Central Frames of Color-Blind Racism. Table 1 lays out Bonilla-Silva’s Framework.

Table 1

Central Frames of Color-Blind Racism and Contemporary Alternative Racial Ideologies

Dominant Racial Ideology (Color-Blind Ideology)	Critical Alternative Racial Ideologies (Cultural pluralism, Nationalism, and Others)
1. Abstract liberalism: Abstract and decontextualized extension of principles of liberalism to racial matters in ways that preserve racially unfair situations (e.g., “race should not be a factor when judging people”)	Concrete and contextualized notion of political liberalism or more egalitarian views on how social goods ought to be distributed
2. Biologization of culture: Cultural rationale for explaining blacks’ status in society (e.g., “Black are lazy” or “Black lack the proper work ethic”)	Political rationale for explaining the status of racial subjects in society (e.g., “Black have been left behind by the system”)
3. Naturalization of racial Matters: naturalization of racial Matters: Naturalization of matters that reflect the effects of the racial order (e.g., explaining segregation or low levels of interracial marriage as natural outcomes.	Explanations of race-related issues with race-related argument (e.g., segregation as the product of the racialized actions of the state, realtors, and individual whites).
4. Minimization of racism: Denial of structural character of discrimination viewed as limited, sporadic, and declining in significance.	Understanding racism as societal, with recognition of new forms of racism.

Note: Table reproduced from Bonilla-Silva (2001).

As the analysis and categorization evolved other categories and semantic or language moves emerged, these new categories were added. Some of these Frames appeared in samples more often, than others, some were rare.

Data Collection and Access

The data for this project is contained within the 1,665 page legal transcript, which is the legal record of the Environmental Improvement Board's (EIB, 2006) Hearing on the revisions to the New Mexico Solid Waste Regulations. It is the transcript or text of this legal process that provided the data that was analyzed to answer the research questions.

The transcript is on file at the New Mexico Environment Department (NMED) archive and can be accessed by contacting NMED or going on to their website and filling out an Inspection of Public Records Act form. CDs of the transcripts are available at times and hard copies can be duplicated for a cost. Hearing exhibits and transcripts are available by making arrangements, so they may be brought to the NMED offices from their archive. The transcripts, plus exhibits and any other material are considered the "Administrative Record" of the process and are public documents. I worked with a copy of the transcript obtained from the NMED and made arrangements to spend a day studying the exhibits and other documents that accompanied the testimonies of the different parties. These materials helped give more context to some of the transcript narratives.

Language or discourse samples that dealt with race, ethnicity and culture were purposefully pulled out of the transcript for analysis and categorization. Many qualitative researchers (Coyne, 1997; Patton, 1990) would agree that most of qualitative research utilizes some type of purposive or theoretical sampling. This type of sampling lends itself well for qualitative research. "The underlying principle that is common to all these strategies is

selecting information-rich cases, that is, cases that are selected purposefully to fit the study” (Coyne, 1997, p. 627). Purposive sampling is a type of non-probability sampling, which according to some may increase bias and results may have limited generalization to the greater population. Qualitative researchers have developed methods that minimize bias (Glaser & Strauss, 1969) and certainly some generalizations can be arrived at through theoretical analysis. When done carefully and ethically the results can add new, deeper understandings and knowledge about the thing being studied whether the research is qualitative or quantitative. (Acharya, Prakash, Saxona, Nigam, 2013; Coyne, 1997; Denzin & Lincoln, 2005; Karmel & Jain, 2013; Mammen & Sano, 2012; Patton, 1990; Tongo, 2007). This type of research provides “intensive” rather than “extensive” research designs (Morrow & Brown, 1994).

Denzin and Lincoln (2005) referring to the work of Patton, (1990), Vaughan, (1992), and Yin, (1989), write that “Achieving the greatest understanding of the critical phenomenon depends on choosing the case well” (p. 450). This EIB case was selected because of its emphasis on EJ. As an EJ organizer and scholar I understand the role that race plays in EJ and felt that this would be a good case for a study on race, as race was central to our participation in this proceeding. Denzin and Lincoln also argue that cases are expected to represent some population of cases. I believe I have chosen a good case to study and the results should be instructive to other similar EJ situations. It is a US legal process, representing individuals that may have similar lived experiences and interests around the state as well as across the country; it is possible to suggest some generalizations.

Data Analysis

The first order of work was to convert the legal transcript file to a Microsoft Word document. The transcription program cannot be easily manipulated using, search functions, pagination, etc. that are available through Microsoft Word or other word processing programs. There were some slight pagination problems and errors in the transcript; however they did not impact the research.

In reading through the transcript I selected discourse or language segments where issues of racism, ethnicity, culture, or environmental justice were discussed. I pulled out and categorized sections of the transcript that related to race to analyze them with regard to language moves utilized by the participants to enter and/or negotiate in these discussions with respect to race.

There were certain sections where discussions with respect to race and ethnicity were quite significant. In other sections, issues of race, and social inequality were alluded to vaguely but not directly mentioned. For example, in opening comments to the EIB members, parties, and participants in the hearing, Secretary of the Environment, Ron Curry (EIB, 2006), stated “...the issues that were discussed during this process by all the parties were given in good faith, they were heartfelt, and you will hear some of them...I want to complement everyone who sat around the table a number of times, and the times that I had the opportunity to sit with them; with the effort that they made” (pp. 12-14). He never mentioned the issues directly other than to say that “they” were given in “good faith” and that they were “heartfelt.” But, what was given in good faith and heartfelt? What will be better for all New Mexicans?

In another part of his comments the Secretary stated, “One of the most interesting items that you will be making history with is the provision that relates to environmental justice, and as relates to the Governor’s Executive Order...and how it is implemented...I urge you to listen closely, I urge you to listen to a lot of different points of view. And I ask you to make a decision based upon, obviously, what you hear” (p. 14). Here the Secretary uses the phrase “making history” to indicate the importance of the work before the board; he urges them to “listen closely” and to make decisions on what they “hear.”

As an ally of EJ he is asking the Board to listen to other points of view, to take on a historical moment, to listen differently and to make decisions based on that listening, not merely what they have experienced or scientific and legal technicalities. By not mentioning environmental injustices there has been a **minimization of race** and injustice (Bonilla-Silva, 2010). There is a proposed **interest-convergence** (Delgado & Stefancic, 2001) in that this will be for the “betterment of all New Mexicans.” In his choice of the phrase “in good faith” and “heartfelt,” it would appear that the Secretary is **mitigating** (Van Dijk, 1992). However we still don’t know what is being talked about directly. Issues of environmental justice are present by their very absence in the discourse. One could say that the Secretary’s comments illustrate positive self-presentation (van Dijk, 1992). However the Secretary was an ally and helped facilitate much of the EJ work we did during his tenure; his statements are best described, in my analysis as **positive presentation** as he is letting parties know that he cares about these regulations and that they reflect some forward thinking. His presence and comments lend support for the issues that will be considered. His comments and his decision not to use certain words are politically strategic. It became clear that the NMED legal counsel was adamantly opposed to the use of race in the regulations. This is instructive in that the

incoming or sitting Governor appoints the NMED Secretary, however, they supervise a staff of over 300 state career employees that remain regardless of who is appointed Secretary.

As the language/discourse samples were identified and collected I created a table that identified the page where the language sample could be found (see Appendix E), the actual language sample, the actor, and a final column that identified the Central Frames of Color-Blind Racism that fit and a description that identified the type of language move used to deal with the topic of race, ethnicity, culture, income, and EJ. The language samples were analyzed per the Central Frames of Color-Blind Racism categories and the CRT tenets and by the critical discourse language moves identified and discussed above. I continued to analyze the use of language for meaning and how discourses were created, negotiated, controlled, and constricted and how they moved forward to “regulation”.

Although the EIB Hearing is a public process, and it was not necessary to have an IRB, I did feel it was important to provide some measure of privacy for the actors. I have included in the Appendix a list of the participants is available and those who testified for the reader, this is publically available information. In this chapter the actors are identified by their initials, I do provide some ethnic information, as this was crucial to the research.

As the study proceeded I continued to attend EJ meetings, participate in EJ conference calls, monitor news and to read EJ and race literature. The proposed final draft was circulated among individual members of the New Mexico Environmental Justice Working Group for their input and comments. The continued reading, note-taking, and reflection is a method of “bracketing knowledge” employed by many qualitative researchers (Glaser & Strauss, 1969; Korte, 2012, Sisneros, 2000; Zentella, 2006) to control for bias or “making the familiar strange” (Erickson, 1973).

Once all the samples were categorized, analyzed and interpreted. I began to see what was surfacing from the data and how the questions posed in this research might be answered. The writing process is another challenge for the researcher and always for many researchers of color. For the author a self-proclaimed progressive, experienced educator, organizer and feminist of color from a poor working-class rural, land-based, global perspective my writing is influenced from a position of experience and identity. And, as Linda Martin-Alcoff (2007) and Linda Tuhiwai Smith (1999) suggest, these may be strengths rather than weaknesses.

Charmaz in Denzin and Lincoln (2005) state, “All analysis comes from particular standpoints, including those emerging in the research process” (p. 510). An interest in social justice means attentiveness to ideas, words, and actions. This chapter has described the theories that informed this research and the methodology utilized as a frame of analysis for the legal text that is the object of this study. My positionality is clear as a woman of color, a political insider, as well as, a scholar and organizer with a clearly stated commitment to social, economic, and environmental justice. I believe that the proposed research design provides for a robust study that may be duplicated. Additionally, it will result in data upon which generalizations may be drawn to similar context.

Chapter Four

Summary of Data

This chapter presents the data selected from the legal transcript of an Environmental Improvement Board (EIB) Hearing in 2006 to revise the New Mexico Solid Waste Regulations. Using purposive sampling discussed in Chapter Three, I reviewed the document several times extracting those texts that dealt with race, ethnicity, culture and EJ. The discourses were typed into a table with the transcript page number, person speaking, the text sample, and a final column in which the semantic moves were analyzed, using van Dijk's (1984, 1991, 1992, 1993) work. The data table is included in the Appendices as Appendix F. It is important to note that I analyze very little of the EJ advocates language other than to give context. Their discourses promote acknowledgement of race and attention to environmental injustice and racism. This analysis gives voice to the lived experience of racism and it's consequences. Environmental Justice texts stand in opposition to the discourses of government and industry that serve to deny racism and maintain power.

Although this is the public record of a public hearing, I decided to provide some level of privacy to the parties and their witnesses. I refer to them by their initials and in a few cases by titles to assist the reader by providing a reference. I also identify the people of color so that we may reflect on their discourses in contrast to white male and female identified discourses. Gender, was marked by Mr. or Ms. Except for Dr. MT, a White male consultant and Dr. DB, a woman of color, Director of the Colonias Development Council. A copy of the Parties legally involved in the EIB Hearing and their initials as used in this Chapter Four and Five is available in Appendix F. Forty-four people provided testimony at the Hearing including the leads for the nine parties and their witnesses as well as people that came in to

do public testimony. The Hearing Officer, who facilitated the Hearing, was the 45th person providing text. The Hearing took a total of four days going into the evening all but the first evening.

The EIB Board (Board) is a state rule-making body. The Board, appointed by the Governor, consisted of seven members: three were women, one was Hispanic, one member was a Navajo male and the remaining Board members were White men. I would say that five of the board members might be defined as liberal while the other two may have been more conservative.

Nine groups became parties in the legal process before the state EIB.¹⁰ The NMED lead counsel represented the state, there were two EJ parties, the Municipal League and the New Mexico Association of Counties combined forces as a party, the remaining parties represented landfills, waste companies, and consulting firms that work on landfills and other regulated industry. Lawyers or technical consultants that had worked in the field for over 20 years represented all of the parties except ours, the NMEJWG. In the case of the NMEJWG I was an educator, a media advocate, and community organizer. I was the only woman “lead” for the parties represented and it was the first time I had participated in this type of process. I was a graduate student at the time; it would have been nearly impossible to participate while I was teaching.

van Dijk (1992) writes, “Racism, defined as a system of racial and ethnic inequality, can survive only when it is daily reproduced through multiple acts of exclusion, inferiorisation or marginalization. Such acts need to be sustained by an ideological system and by a set of attitudes that legitimate differences and dominance. Discourse is the principal

¹⁰ The parties are identified in the appendices for the reader, Appendix F.

means for the construction and reproduction of this socio-cognitive framework” (p.192). In denying racism White speakers utilize the semantic moves identified by van Dijk (1992) to maintain dominance and cast the ‘other’ in a negative light. “Besides the elementary recourse to force to directly control action (as in police violence against demonstrators, or male violence against women), modern and often more effective power is mostly cognitive, and enacted by persuasion, dissimulation or manipulation, among other strategic ways to change the mind of others in ones own interests” (van Dijk, 1993, p.254).

As this was a legal government site facilitated by a contracted Hearing Officer (H.O.) one can safely say that power resided with the government. The H.O. in her role acted to regulate the discourses of the EJ parties and to protect the interests of government. Typically, at the end of a permit hearing the H.O. summarizes the process and submits a report with recommendations to the Secretary of the NMED for final approval or denial. This report is totally in the hands of the H.O. although at times the parties may be able to respond to the final report; ultimately it is the H.O. that has the final word. Hearing officers are outside contractors to the NMED and may work for decades in this capacity with the NMED. Some of the lawyers, scientists, engineers, and other technical consultants may work with industry, as well as government throughout their careers. This circle of elites that come to know each other and develop amicable relationships has a negative impact on community participation and ultimate decisions (Gauna, 1998; Estrella-Luna, 2010). In keeping with van Dijk’s (1984, 1999) framework, environmental justice advocates, organizers and impacted community members are constructed as oppositional this serves to maintain the status quo and white supremacy.

Positive Self-Presentation, Face Keeping, Moves of Defense, Mitigation, Euphemisms, as well as justifications and Excuses, Blaming the Victim and Transfers were the semantic moves that were identified in analyzing the samples studied; all of these were discourse strategies that have been identified (van Dijk, 1984, 1992, 1993a, 1999) as moves to deny racism.

Positive Self-Presentation

Positive Self-Presentation is a strategy employed to deal with the contradictions of inequality and denial of racism but it also serves to construct the other as negative, while maintaining the ‘self’ in a positive light (van Dijk, 1992). The Hearing was opened by the H.O. giving instructions as to the agenda for the next days and order of testimony. The Secretary of the Environment had come to give testimony to initiate the proceeding. It is not customary for the Secretary to attend EIB hearings however the Secretary was an EJ ally. In opening comments to the EIB members, parties, and participants in the hearing, The NMED Secretary stated:

I think it is important to say that the issues that were discussed during this process by all the parties were given in good faith, they were heartfelt, and you will hear some of them. ... I want to complement everyone who sat around the table a number of times, and the times that I had the opportunity to sit with them with the effort that they made, because they were making it for the betterment of the State of New Mexico and for all the citizens (EIB, 2006, p. 13).

In another part of his comments, the Secretary stated, “One of the most interesting items that you will be making history with is the provision that relates to environmental justice, and as relates to the Governor’s Executive Order...I urge you to listen to a lot of different points of

view. And I ask you to make a decision based upon, ...what you hear” (EIB, 2006 p. 14).

Here the Secretary used the phrase “making history” to indicate the importance of the work before the board; he urged them to “listen closely to different points of view” and to make decisions on what they “hear.” As an ally of EJ it would appear that he is letting the Board know that he sees these EJ provisions as important and appears open to making history. By not mentioning environmental injustices, there exists a denial of race and injustices.

However, by referring to the Governors Executive Order, which does mention race, it may be that the Secretary was being politically strategic in how he positions himself. The Secretary was practicing Positive Self-Presentation without the accompanying Negative Other-Presentation (van Dijk, 1992). Once he left the hearing, the Positive Self-Presentation by the NMED staff demonstrated a different type of discourse one that was often associated with portraying the other in Negative Other-Presentation. The Secretary’s staff, career employees, who stay in the Department regardless of who is appointed Secretary by the Governor, did not share his optimism for taking on a historical moment. The NMED party was first to present at the hearing. Their panel began with lead counsel CN’s opening statement to the EIB stating:

The Department worked very hard in preparing these regulations....And with respect to the EJ provisions, we have met many, many, times with many parties, and we believe we’ve come up with something -- while not a consensus entirely, we believe we’ve come up with something that’s very balanced and fair (EIB, 2006, p.21).

Mr. CN uses Positive Self-Representation to document the efforts of the NMED staff in bringing together the different parties. The “many” meetings with “many parties” became themes of NMED as well as industry. This Positive Self-Presentation also serve as Face

Keeping strategies for the individual as well as the Environment Department. The use of these semantic moves was in response to community claims of poor notice and the lack of early and meaningful participation. Concepts of abstract liberalism “balance” and “fairness” guided much of Mr. CN’s questions and cross-examination throughout the hearing. What is critical to this hearing was CN’s legal interpretation that affirmative action Supreme Court cases prohibited the use of race in the regulations. By contrasting the “many meetings and many parties” to the legal interpretation that race could not be a factor in these hearings. CN was not only presenting Positive-Self Representation, but at the same time Denying (van Dijk, 1999) the issue of race in the hearings. Below are some other examples of Positive Self-Presentation

The Bureau has undertaken a significant public outreach effort” (Ms. AAM, EIB, 2006, p.25). She continued by quantifying the “1000 announcements” that had been mailed, the “100 e-mails...sent to Solid Waste Bureau ...contacts... government officials, business persons and operators of facilities, professional and community groups, engineers, nonprofit organizations and interested individuals” (p. 25).

Ms. AAM’s texts provide Positive Self-Presentation and Face Keeping for herself and the department in response to claims by community members of a lack of communication and access to by state officials and negated their claims. “We also would like to incorporate, and it is with pleasure that we incorporate environmental justice provisions to ensure greater community participation and consideration of community impacts during solid waste facility siting and permitting processes” (EIB, 2006, p. 32). This “pleasure,” however, did not translate into advocacy or any real protection for communities, or acknowledgement of racial, ethnic, or cultural community characteristics. These Face-Keeping and Positive Self-

Promotion semantic moves were an attempt to place these discourses on the record; verifying for the legal record the Department's efforts to deal with community demands. The remainder of the SWB Chief's testimony addressed only technical issues. Other than this comment the SWB Chief appears to hide behind the technical issues and gives little support to move EJ provisions forward.

Industry, like government, also constructed semantic moves of denial utilizing Positive Self-Presentation. Mr. WF, CEO of the Municipal League that had joined forces with the New Mexico Association of Counties for the Hearing states, "I am happy to tell you we're in support of the regulations as they are being proposed to you. The Department has worked with us, and I think we're able to come up with some major areas of agreement" (EIB, 2006, p. 141). It is important to note that the draft proposal that the NMED counsel had presented at the Hearing for the Board and Parties to work from had totally eliminated any references to race or ethnicity as well as other EJ provisions that we had promoted in the months prior to the hearing. By denying the issue of race beforehand, no real discussion of race could be had, as became evident through the hearing.; euphemisms to deny race, culture and People of Color were strategically performed. Mr. WF continued:

So for us and our cities, all 102 cities, we have an opportunity to go through at least six public hearing processes before we make a decision on approving a special use permit so that they can see that we fulfill the requirement of the environmental justice issues. The health, safety and welfare issues, as well as the technical issues of the land use itself. So I think that's a significant way of handling the process rather than just a community impact assessment" (EIB, 2006, p.143).

In this move of Positive Self-Representation Mr. WF looks to zoning and planning as an area in which EJ concern might be addressed, regardless of the fact that the EJ literature (Cole & Foster, 2001; Riechtschaffen & Gauna, 2002) identifies that it is precisely at this level that environmental injustice takes pace. This also denies that fact that only 2/3 of the cities he mentions have zoning and planning boards, which he affirms on cross-examination, "...as far as cities go, two-thirds of the 102 have zoning in place. ...some of our smaller ones do not" (EIB, 2006, p.177). Testimony from Ms. SH (EIB, 2006) a witness for one of the EJ parties shared her experience that these boards were highly politicized and often, "don't even follow their own rules" (p. 1143).

Mr. VV another lawyer testifying on behalf of the Municipal League and the Association of Counties stated, "If an entity has a web site, that they're required to post notice on that website. ...So there is significant notice out there, inviting people to attend these hearings" (EIB, p.1296). Again, Positive-Self Representation would imply that websites are significant notice, ignoring the fact that many communities would have to be on the NMED or other agency websites on at least a weekly basis to keep track of hearings. The implication here is also that communities have adequate access to computers and the internet regardless of Census data that shows that 75% of Hispanics in New Mexico do not have access to a computer, while 50% have only intermittent access to the internet. There were not figures for Native Americans at the time that I was looking through this data. Mr.VV later continues"...there has been historic racial animus associated with some of the zoning decisions... But I don't agree that it is historically flawed" (EIB, p.1309). Positive Self-Presentation and Reversal were significant strategies used by industry in the hearing.

Moves of Defense, Blaming the Victim and Mitigation were used frequently to deny race coupled with Positive Self-Presentation. During cross examination by Mr. DM, lawyer for the SWOP/Coalition Party, of Mr. WF, CEO of the Municipal League about alleged additional costs to “those who we most wanted to protect” by siting landfills further away from communities, the following interaction occurred. Mr. DM stated: “In a way, however, encroachment on the landfill solves your first problem of the landfill being too far away from people doesn’t it, at least as to the people who are encroaching? Presumably, if they have to drive their waste to the landfill, they’re not going to be faced with the same problem - I think you use the example of driving 140 miles” (EIB, 2006, p. 171). Mr. WF responded,

Mr. [DM], I wish it were that simple...you know, and it really isn’t...and it’s not just landfills. Its airports, it’s wastewater treatment plants...its public facilities that when they grow up to it, all of a sudden there’s an airplane going over that makes noise, my gosh, there’s noise there. If you encroach out to where the landfill is, gosh, there is a landfill out there. We didn’t purposefully want you to have a problem, but to the effect that there might be a problem, it would be caused by the encroachment on that facility itself (EIB, p.171).

In this example, Mr. WF first uses the euphemism of “those we most want to protect” for communities of color, and then goes on to insinuate that the problem (Blaming the Victim) lies with those communities who purposely move to where there are landfills, and airports.

In another instance EIB member Mr. HT, a Navajo man, is cross examining the State EJ Liaison, Ms. MD (who happens to be Indigenous, not from New Mexico) about who had been in attendance at the meetings: “...My Question is, what was the composition of the

people that attended? Was there discernible percentage that – that you could tell us about” (EIB, p. 279)?

Ms. MD, EJ Liaison responds, “I would say it was cross-sector. We had people from the waste industry, we had citizens, we had folks that were interested in particular segments of the solid waste regs. So it was across the board” (EIB, 2006, p. 279).

Mr. HT presses, “Were there members of the minorities there?”

Mr. MD, “We did have people that were interested in the environmental justice segment of the regulations,”

Mr. HT, Okay, any idea of a percentage?”

Mr. GS, “No sir.”

Mr. HT, ...were members of the Navajo tribe attendant – in attendance at these hearings or meetings?

Ms. MD, “ I believe it was primarily comprised of industry...”(EIB, 2006, p.304). In this example, we can see that Mr. HT is at first asking indirectly who had attended the meetings. As Ms MD continues to utilize euphemisms, Mr. HT becomes increasingly direct until he asks about Navajo attendance. Ms. MD however, continues to utilize euphemisms, “it was comprised of industry” refusing to use the words Navajo, minority or indigenous.

Moves of Defense

The regulations were also used as Defensive Moves to hide behind and they were often coupled with Positive Self-Presentation and Excuses as the following discourses illustrate. In a cross-examination between Mr. EH, of the NMED and myself; I was attempting to question why some of our proposals had not been included in the draft regulation, namely that newspaper notice increase from just the one advertisement, and that

landfills have buffer zones of ten miles around them, rather than the four proposed by NMED and supported by the rest of the parties. In one of my cross-examinations I asked, "...I'm wondering why these recommendations were not taken into account and what was the rationale by the Department in -- in using those differential mile radius" (Author, EIB, p. 317). Mr. EH, NMED staff: "I -- I can answer it to some extent. For the most part, what you see here is specified in the Solid Waste Act, and the Solid waste Act specifies that 10 miles for notifying all municipalities and countries, Indian tribe or pueblo. So we started with the Solid Waste Act and expanded that somewhat, on -- in -- in 201 -- Section 201, subsection G, paragraph (2), on page 26 of the formatted version" (EIB, p. 317). We continue going back and forth, as there is a misunderstanding about what I am asking.

The SWB, Chief Mr. AAM, then stepped in another Defensive Move: "In section 74-9-22.B, it says -- in regarding to the public notification requirement, it states, 'Provided by certified mail to all municipalities and countries in which the facility is be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary or the territory of the county, municipality Indian tribe or pueblo is within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed,' end quote. The other question I believe Ms. Martinez is asking is how was the four-mile radius determined on the -- or the vulnerability area assessment. Is that correct" (EIB, p 321)?

I answer, "Yes, so our participation in all the meetings with NMED over the last year...and asking the Department to look at that section that talks about the ... 10-mile radius and applying that to the EJ provision and other provisions that would deal with notice" (EIB, p. 321).

In another Defensive Move, the H.O. joins the conversations by restating, “So her question really is why did you choose four miles for the community impact assessment rather than 10.

“So my question is ...” (EIB, Author 321)

Now Ms. MD the EJ Liaison steps in, “I think we need to remember – and, Ms. Martinez, you can help me with this – is that, yes, you did submit, you know, the comment that you wanted the 10 mile radius to be the radius for the community impact assessments, and under the definition as we’ve defined community, we set forth the four mile radius. We have received many, many, many comments that didn’t want – didn’t want an assessment at all, didn’t want any radius. Some proposed a one-mile. I saw some previous drafts; we had three miles and negotiated to the four miles. The Department believes that the four-mile radius is – is a fair radius for us to be able to use. Ten miles really to the Department is unreasonable when we’re talking about a solid waste facility and the community’s impact for that. ...But -- we did take to heart your 10-mile radius that you proposed and shared with... all the stakeholders, ...we were meeting with everybody. And we – and as hard as the Department tried, we couldn’t get farther than the four miles, to where we are today” (EIB, p. 322).

What can be seen in this interaction is that both the NMED Staff person and the H.O. move in defensively to interrupt the cross-examination and to provide the appearance that the author cannot ask her questions in a manner they can be understood. As Ms. MD responds, she continues to present NMED in Positive Self-Representation, by discussing the many people the NMED conferred with who did not wish to have the 10 mile radius. It is interesting that these “other parties” are never named.

I follow up with another question for Ms. MD, "...would you say that the environmental justice communities and native tribes have had the same access to giving you their ideas...in terms of facilities that we have had the same amount or quantitative voice into the NMED than maybe industry and municipalities and county association have had?

Ms. MD, responds, "I think you've had every opportunity that everyone else has had" (EIB, 2006, p. 323) In this instance in a Defensive Move, Ms. MD focuses her remarks on the author personally, and denies the representation of EJ communities and tribes.

In another one of my cross-examination questions of the State EJ Liaison, Ms. MD, I was shut down by the H.O. when I asked, "...what was the rationale behind developing the definition for vulnerable communities, and why was any mention of ethnicity or race left out from the definition" (EIB, p. 336). The H.O. steps in before Ms. MD can answer and stops me, "I believe that was answered yesterday" (EIB, p. 336).

By refusing to speak directly about the Navajos, tribes, EJ communities, the powers that be maintain control. By their Moves of Defense, the author is not able to speak for herself, and by repeating the many times that the NMED has met with communities and sent out notices they are able to Positively-Self Present and Maintain their Face.

Mr. DM (EIB, 2006) counsel for the SWOP/Coalition in cross-examination of the NMED panel also asks about the elimination of race from the draft regulation, "There's been some discussion about the absence of the proposed regulation of race and ethnicity as a consideration in determining whether an area is a vulnerable area. You're familiar are you not, with the – Environmental Justice Executive Order that was signed by Governor Richardson in November of last year? ...And I believe it has been admitted" (EIB, p. 351).

Lead counsel for the NMED, Mr. CN steps in, “Madam Hearing Officer, I’m going to object to this line of questioning if its purpose is to try and make the case that race should have a factor in governmental decision-making for purposes of these regulations. As Ms. MD has testified, that factor was removed on the advice of counsel, and I believe it’s a legal issue as to whether that can be included or not...I don’t think it is appropriate for Ms. MD to have to answer these questions” (EIB, p. 352).

“All right. Well – Mr. DM”, (H.O., EIB, 2006, p. 352.)

Mr. DM continues, “Ms. MD has testified on a number of occasions that - in response to questions from various people, that the proposed Department amendments to the regulations are consistent with the executive order. In fact, they are not. And this line of questioning is intended to demonstrate that they are not. ...because the Executive Order specifically talks about race and ethnicity’ (EIB, 2006, p. 353).

The H.O. Moves to Defend: “Okay ...if you read in the exhibits you have, you do see the words “race” and “color” and “ethnicity” ... And that’s not an objectionable question in and of itself. Obviously, the exhibits been admitted. Having said that, it seems that Mr. CN has accurately predicted where you’re going with these questions, and I would say that I would agree with him that it is a legal question and that it would be preferable to brief that as a legal question rather than to pursue that through the cross-examination of a non-legal witness.

Mr. DM presses, “...but there’s a second point, which is that the Department’s proposal is not consistent with the executive order...because the executive order specifically discusses race, color and ethnicity” (EIB p. 354).

The H.O. responds, “Right, And I trust that you’re going to make that argument, and it’s a legal argument...”

Mr. DM counters with, “I think it is a factual question. That is, the Department has alleged that its proposal is consistent with the Executive order. It’s our position that it’s not” (EIB, p. 354).

These Moves of Defense, by government and industry, have the effect of denying race and ethnicity. They also begin to shape our social cognition (van Dijk, 1984, 1999). As their narratives grow by sheer quantity listeners begin to adopt their words, and assimilate these discourses our thinking begins to be constructed, and over time, we begin to take up, and to believe the same narratives almost osmotically. When this happens we become complicit in our own erasure and the narratives of domination continue to be maintained daily in every sphere of our lives.

Face Keeping

Dr. MT, an industry consultant who took up the majority of the time and pages during the hearing along with Mr. PD, Jr. lead the industry defense for all their parties. They both teamed up to aggressively cross-and re-cross the EJ witnesses. Regarding the exclusion of race and ethnicity from the draft regulations, Dr. MT stated,

I’m surprised that race and ethnicity came out of the - the rule, and that the rule went to socioeconomic status as a primary index. I’m not able to comment on whether I’m for it or against, it, but I will tell you that in my own experience with Title VI application to facilities... that race and ethnicity has always been a consideration.... In a state like New Mexico, you have to develop a slightly more refined analytic

profile that require you to – in some cases, you just assume race and ethnicity are predominantly historically disadvantaged people of color” (EIB, p. 1244).

In this Face-Keeping comment, Mr. MT uses the terms race and ethnicity, but then employs a semantic move of transfer “I am not being able to comment.” He finishes off by promoting that people of color, in New Mexico are their incomes, a complete denial of race.

Mr. CW, a lawyer testifying for the Municipal League and the New Mexico Association of Counties used Face Keeping moves:

And we certainly would like to find a process that would work that would bring other people to the table to help address the concerns of the EJ community. We would like to find that process. That is why we have been so active with the NEJAC level at the federal government, and we try to be active in the state of New Mexico. We’re active in California to try to try to find a comprehensive approach that will work to address legitimate concerns of people of color or of low income” (EIB, 2006, p.558).

The State EJ Liaison often used Positive Self-Presentation, Face Keeping and transfer moves deferring to NMED Counsel when she felt uncomfortable. We can see this in the response to a question from Ms. DH the only woman of color on the EIB and a resident of an EJ community.

“...in some prior drafts of the regulations the Department included race, R-A-C-E, race, as a factor to be used for vulnerable areas on the advice of counsel. We have removed – that means the Department removed – race as a factor. And the Department does not believe that the regulations will suffer as a result of pulling R-A-C-E, race, out of the regulation. Is that right (EIB, 2006, pp. 191-192)?

Ms. MD replies in the affirmative, when asked to give a rationale as to why this was done, she answers that “legal counsel may have to assist me in answering this, but...” (p. 192). In response to another question about whether the draft regulations addressed EJ, she answered, then asked NMED counsel, “is that all right” (EIB, 2006, p. 123)? The semantic moves serve as Face Keeping for the EJ Liaison, as well as transferring intention to NMED counsel.

It is also interesting to note how EIB member Ms. DH asked the question about the exclusion of race. Before asking, her question, she characterizes it as “controversial” (EIB, 2006, p. 191). But she indicated by spelling race out, that it was a prohibited word, by describing it as controversial she intimated that it has already been discussed and deemed to be inappropriate. She too, used transfer to place blame to NMED counsel.

Mitigation

Mitigation was used to blur the real issues, to minimize and lessen their importance or force. In discussing the Community Impact Assessment (CIA), I asked, “In terms of the Community Impact Assessment, we’ve raised a lot of issues about the costs of that. And in terms of the definition of what makes up a vulnerable community, is not that information pretty much easily accessible through the census data, the Internet and GIS mapping and those kinds of database’s” (EIB, p. 185)?

Mr. WF, CEO of the Municipal League responded, “to complete a community impact assessment, there’s been estimates that I’ve heard at the meetings I’ve attended, from as low as \$30,000 to as high as hundreds of thousands of dollars. ... They would be charged to do that by the consulting firm. And that’s where the costs come in, because not every local government has a technical staff necessary to do that” (EIB, p. 185). By raising the issue of cost, and naming explicitly the lowest cost, but referring to the highest cost as ‘hundreds of

thousands of dollars”, Mr. WF once again mitigated the factual costs referred to by the author and inserts costs he’s heard about as the facts.

In talking about the denial of environmental racism and injustice, EIB member Ms. DH, asks Mr. RS, a Hispanic lawyer and former Secretary of the Environment and consultant for the Municipal League and the New Mexico Association of County Governments: “...but had they not been – the poor, and the people of color been disenfranchised and shared the disproportionate amount of pollution and contamination, maybe if better planning would have been done, maybe we wouldn’t be talking about ...well the [Governor] wouldn’t have written this order” (EIB, 2006, p. 469).

Mr. RS, mitigated, “Well, certainly any communities that ...irregardless of economic status and culture or race that exists around industrial parks or where facilities have been set up are affected in this fashion. It’s not just one segment of – of the citizens of the state” (EIB, p. 472). This mitigating, by a person of color for the State is an extraordinary denial of race that works beautifully to minimize race claims.

In another move of mitigation, Mr. CN in cross-examining Mr. RS asked, “Are you aware of any evidence that during your tenure with the Environmental Department, that landfills were intentionally placed in certain communities due to a particular ethnic or racial makeup of the community” (EIB, 2006, p. 510)? Mr. RS responded, “...I’m only aware of one instance and it doesn’t really even fit specifically that it was being placed there, because, of their racial make-up. Now, clearly the makeup of Sunland Park and the issue of colonias was affected by the facility that ultimately went in there, and that was back when we had a registration programs and really didn’t have the authority to deny a registration” (EIB, p.

511). Mitigation is used to deny not only contamination of a community, but also as an excuse or justification “didn’t have the authority.”

Government and industry folks mitigated and used Face Keeping semantic moves regardless of their race or ethnicity. Ms. MS, a government and industry consultant and a woman of color who does not identify as such publicly stated, “ as I attend those meeting in New Mexico, and for the past 16 years, the most pressing concerns that these vulnerable communities - all communities, but the vulnerable communities especially have is -- are not solid waste issues, they are health care, daycare, unemployment, fuel prices. ... and they are going to have to compensate somewhere for increased disposal and hauling costs’ (EIB, p. 982).

In response to a question I had asked about public participation Dr. MT, the industry White male that was elevated as the expert by the Board during the four days of his aggressive cross-examination and long-winded vignettes sharing his history and experience in the “permitting of over half of New Mexico’s regulated facilities,” he responded, “I don’t know. I – the unobtrusive evidence is that you’re there. Mr. DM is there, others equally articulate proponents of the environmental justice issues have been participating in the development of the ‘Solid waste Management plan EJ sections’” (EIB, 2006 p. 1320). In a follow-up question, I asked, “You talked about landfills and how they’ve improved and how much better they’ve gotten, which I would definitely agree with you, but do you - ... in your estimation, do you believe that the EJ community doesn’t agree with you on those issues’ (EIB, 2006 p. 1324). Mr. MT replies, I think certain communities that are in close proximity to landfills may have individuals in those communities who view those facilities as an imposition on the landscape their community” (EIB, p. 1324). This comment uses “certain

communities” as a euphemism for people of color and then totally denies claims of environmental injustice as “landscape” concerns.

In the lengthy testimony and cross-examination of Dr. MT by the Board the term minority came up along with a discussion of New Mexico’s status in being a majority/minority state. Board Chair, Ms. GD asked,

In that definition, using minority versus people of color, the way I would interpret it, is now we’re protecting the White population, because they’re the minority, both on a statewide level and generally when you break it down into the smaller communities. the state or by the community that’s being affected, in terms of determining minority (EIB, 2006, p. 1345)?

Dr. MT responds, “...whenever there is a term of art like this, minority populations or Hispanic or Latino or American Indian or whatever, person of color, use the census definition, so that we’re all talking about the same definition. ...and that clears up the issue for the state, so that nobody’s confused, that Hispanic or Latino populations are the primary concerns. American Indian populations are experiencing a different kind of issue, ...” (EIB, p.1345). Here Dr. MT continues to mitigate and speak for communities with regard to what is their lived experience. Ethnicity and race are “terms of art” best defined by the government through the census. He is also participating in differentialized racialization implying that environmental justice, is not a concern for American Indians and that Hispanics and Latinos are the “primary concerns.”

Euphemisms

Euphemisms were also commonly used especially when talking about EJ communities, “those people”, “they”, were fairly common. However, vulnerable area was the

term that most stood out when it came to euphemisms in this particular hearing. The NMED and industry fought against the inclusion of race or ethnicity in the regulations. In the end the phrase “vulnerable area” was pushed and adopted in the regulations (see Appendix G).

Vulnerability denotes weakness and open to domination and attack, physically and emotionally. This definition was the principal point of disagreement between the EJ parties, industry and government. The term, vulnerable has come into common usage to talk about EJ communities and some in the EJ community probably participated in its evolution to: “vulnerable communities” or “vulnerable populations. This phrase already marginalizes communities, but to push for vulnerable area totally denies human bodies and of course, race. Because language is so powerful in creating the imagination, the common sense, the way we construct and are constructed it is a clear and present challenge for those that work for human and environmental rights as well as educators to give this more time in our teaching, organizing, and advocacy. How does the constant use of the these words, phrases the “othered” the “subaltern” even as I have used it in this project construct us through the cognitive/social dimension of human discourse?

In response to a question by NMED counsel Mr. CN about how the proposed regulations addressed EJ generally, The State EJ Liaison, Ms. MD replied, “Generally speaking, they give the agency and the communities, local government, all of us greater capacity to asses and evaluate how the siting of a facility in a community may impact all of us” (EIB, 2006, p. 123). Here “the communities” and “all of us” are euphemisms for people of color and communities in which they live. The reality is that “all of us” are not historically impacted communities.

As can be seen by the analyses of some of the data in this chapter, the Government, Industry and their allies were able to utilize particular semantic moves that allowed them to deny race and ethnicity, as well as responsibility through Euphemisms, Blaming the Victim, and Mitigation, while maintaining control and power through: Positive-Self Preservation, Face-Keeping and Moves of Defense. These moves allow us to discern the ways in which language is used to construct and maintain racist structures and frames as discussed by Bonilla-Silva, which will be discussed in Chapter five.

Chapter Five

Summary of Findings

How do language and race work to create meaning around environmental racism, injustice, and justice issues in a legal setting? How does environmental justice come to be defined? Whose knowledge is valued, listened to, privileged and given authority? How is language utilized as we engage in discussions of race? And, how do we position ourselves discursively to engage in discussions dealing with race? The data that surfaced indicated that there are hegemonic, State-driven discourses that stand against the discourses and lived experiences of People of Color. The State had control over the dominant narrative of abstract liberalism lead by NMED counsel; this set the boundaries for the EIB Hearing. The transcript documents the reluctance and refusal of NMED and industry to address issues of race. This reluctance was consistent among the majority of the White males and the few White women that had some position of power in the hearing, including the Hearing Officer. Who had a significant history with the department and was the H.O. in the *Colonia's Development Council v. Rhino Environmental Services* State Supreme Court decision and in one of the New Mexico Court of Appeals cases won by the CCWMMC against the Northeastern New Mexico Regional Landfill.

The Hearing Officer, a White woman (H.O.) and the State EJ Liaison (an indigenous woman) felt they could diminish my participation as the only woman and a person of color lead of one of the parties. It was a forum dominated by White men literally and figuratively. The White men that lent their support to environmental justice were also treated dismissively, as in the case of Mr. DM, counsel for the SWOP/Coalition Party. Even though at times they also gave him knowledge credit for the history of EJ in New Mexico and in a vignette by Dr.

MT, an industry consultant, he names a street in his name, “Doug Drive” (EIB, 2006, p. 1230) This serves to maintain knowledge and expertise within White men.

The testimony of the primary EJ witness for the SWOP/Coalition party, Mr. LC, who had left after his testimony and cross-examination, was minimized and sabotaged by Dr. MT an industry consultant who played lead offense for industry and government. He described Mr. LC’s testimony as negative and conspiratorial. The venue was a legal site where state hegemony is created and maintained institutionally and structurally. Here the values of abstract liberalism were prominent. It was through our discursive performances that the EJ parties attempted to privilege our lived experience and agendas to give voice to environmental racism and injustice and enhanced protection for our natural resources, poor, and People of Color. Industry, government and consultants on the other hand sought to protect their profits and budgets and maintain the status quo.

Those semantic moves identified in the methodology were all present as discussed in Chapter Four. Patronizing and condescending discourses and just plain old challenges and attacks to credibility, knowledge, and the claims of lived experiences as raced peoples, were common. Bonilla-Silva’s (2001) Central Frames of Color-Blind Racism and the critical race theory tenets framed many of the semantic moves. Abstract liberalism’s concept of colorblindness and fairness framed the NMED’s lawyer’s narrative and was the justification for eliminating race from the regulations. All people of color were essentialized as poor and disadvantaged denying the rich cultural and linguistic ways of being of people of color from New Mexico. Differentialized racialization, which is privileging one race or ethnic group over the other, was most identifiable with regard to language issues and labeling, where Spanish, a colonizing culture and language was privileged above Indigenous languages.

Positive Self-Presentation along with Excuses and Euphemism were all employed in addressing why Indigenous languages had been left out of the regulations by the EJ Liaison, who herself was Indigenous but not from New Mexico: “And also recognizing that a lot of the indigenous populations that are here are primarily oral speaking. And so -- and then we would have to – if we were looking at Navajo, we would have to also address the fact that there are actually two different spelling versions...consider vowels and consonants... (EIB, 2006, pp. 207-208). She finally Face Keeps by Transfer: “In discussing this with internal staff, the Department felt that we would – we would move forward with this in English and Spanish, and then as we have greater communication with the tribes and pueblos...” (EIB, 2006, p. 208).

People of Color also positioned themselves semantically to promote their lived experience with racism, classism, and injustice. In general, People of Color advocates, much less than industry, either downplayed their credentials and at times didn’t even make mention of them. Board Member, a Navajo man, Mr. HT spoke un-aggressively and even apologetically, “just a question” (p. 768) “with that Madam Hearing Officer – oh, one more question, I apologize.” With respect to epistemologies of ignorance; Dr. DB from the Colinas Development Council and myself characterized our surveys and community based research as “not scientific” playing into the discourse of industry and technicians in hiding behind the science and technology and illustrating how we assimilate the discourses of colonialism and racism that have been constructed about science. The positioning of People of Color; those that work with government, with industry, those that work with advocacy organizations as opposed to community organizers and organizations, technical consultants and academics also performed a variety of discursive moves in contrast to industry and the

State. Some positioning could be said to evolve from economic need (economic blackmail), some it could be said aspired to honorary white status, other moves were to establish and reinforce expertise and knowledge and others un-apologetically contributed storytelling of their toxic lived experiences. The positioning of People of Color as we deal with the daily micro-aggressions of racism, classism and sexism demand further study.

White supremacy too needs to continually be deconstructed here is where Whiteness Studies can contribute and focus their research. The work of Jessie Daniels (1997) is helpful in understanding how white supremacist ideology and literature can be seen as underlying current liberal ideology and discourses maintaining White male supremacy, classism, and heterosexuality. As People of Color we must be attentive to Whiteness Studies that it does not become another way for Whites to control the narrative of racism in this country. Racism work, by White people, is best done in their communities rather than becoming the experts on race for our students and communities. Both Whiteness scholars and students of color need to reflect on this.

How do language and race work to create meaning around environmental racism, injustice, and justice?

The interconnectedness of language and thought continue to be debated publicly but most linguists recognize that cognition is a complex of many systems and structures within the genealogy of the human being that we have developed over time. Language is one of these systems. Language is not independent of cognition but evolves from cognition in such a way that they become mutually dependent, reinforcing and evolving through genealogical, historical, social, cultural, and political contexts (Bakhtin, 1988; Chomsky, 1983; Fromkin, Rodman, & Hyams, 2007; Vygotsky, 1978). Much like structural racism works within

institutions. Using the literary analogy that words are the “flesh on bone” of how we construct and are constructed by our genealogy, our environment and social hegemonies. The word is at once the weakest and most powerful tool or weapon at our disposal and needs to be constantly deconstructed.

How then does thought and knowledge evolve in and through language constructed by words through the ages, historically, socially, politically, and economically? How does race first get imagined, articulated, and performed into realities? How are racial stereotypes constructed over time and how are they assimilated cognitively and discursively into our being and become common sense? Looking specifically at the data from this research we gather insight into the construction of state power and White male privilege, which are accepted and unquestioned truths.

People of color in a variety of ways contest this social construction, others are silenced, and others choose to be psychologically and materially white. And, there are daily discursive performances that we deconstruct as we gain experience and develop our critique. People of Color in industry, private consulting, and government employ seemed conflicted; either giving up their authority to the NMED counsel on issues of race and culture, minimizing and denying racial issues, and promoting ideas of abstract liberalism and the accompanying trope of individual merit. Industry consultants of color did not support race claims, however they might claim a cultural marker to justify or provide some type of cultural authenticity. Calling oneself, a New Mexican, is a trope utilized at times by those that prefer not to call themselves Hispanic, Mexican-American, Chicana/o, or Latina/o. This choice is layered with historical, social, political and class significations.

Because the document analyzed was from a legal setting, notions of abstract liberalism were easily identifiable and that ideology dominated the Hearing. Bonilla-Silva's (2001) *Frames of Color Blind Racism* and the critical race theory tenets provided a broad political context and the language moves identified by van Dijk (1999) that were integral to the methodology used in this project were observable and performed over and over. The minimization and naturalization of racism and racial matters was performed through all the semantic moves identified in the methodology. The EJ parties performed opposing discourses that matched each of the language moves and race frames identified in the methodology. The language moves by EJ organizers and advocates created opposing discourses and texts that stood against the dominant narratives,

The EJ parties endeavored to have race acknowledged as a historical and current lived experience. The two board members of color supported and requested ethnic and cultural inclusion in the regulations. The EJ parties pushed provisions to protect the health of people and the environment and to provide enhanced and equitable notice and meaningful and just participation.

Although industry and government had agreed with the NMED's proposed final draft, from which the parties worked during the Hearing; they consistently spoke against the increased regulation of polluting facilities and promoted the cost of enhanced protections as excuses justifying how it would hurt those "we" must wanted to protect. This Positive Self-Presentation and then Reversal was a common semantic moves from industry and a narrative the EIB, Chairwoman took up.

Some environmental lawyers and consultants have built careers working in both government and industry or as private consultants in service to business and government.

These long careers in industry and government serve to build relationships over time that work against communities. Organizers know that relationship building, the first step to movement building, takes time, and so too does industry, and this also contributes to the maintenance of White supremacy.

The NMED counsel represented, coached and directed their staff including the State EJ Liaison as well as the EIB on his ideological opposition to the inclusion race, ethnicity or culture in the regulations. The transcript reveals that the Board accepted the leadership of counsel, although reluctantly at times (DH in EIB, 2006 p. 192). The questions and discourses that surfaced throughout the transcript from industry and NMED were that race was a thing of the past that it was a “legal matter” that could not be addressed in the regulations or in the Hearing. The minimization and denial of race was consistent, and performances to avoid it were strategic and planned. Claiming that race is a legal matter constructs race and racism as an illegal discourse, something beyond the realm of reason or dialog, an anomaly, which it is not. The construction of this narrative by NMED counsel is interesting contrasted to the comments delivered by the Secretary of the Environment at the beginning of the Hearing. Either the Secretary was Face Keeping for what he knew was inevitable or he was genuinely sincere in his discourse of wanting the EIB to listen differently to different perspectives and take on a historic moment.

White liberals on the Board at times demonstrated confusion in some discussions of race and often asked the white consultant rather than NMED or the EJ Groups for answers to their questions. It was almost as if the EJ parties were not to be trusted with their own stories, truths and lived experience.

Discourses that served to marginalize and dismiss me illustrated the multiple micro-aggressions women of color face on a daily basis. As the only woman, of color, whose experience was educator not lawyer, or scientist, I was stopped, told to shorten my comments and to get to my questions often by the H.O. However, Dr. MT, was not regulated in that way and ultimately took the largest amount of airtime throughout the four-day hearing, far surpassing the length of anyone else's testimony and time taken in cross and re-cross examinations.

The EJ Liaison, a woman of color, performed discursive moves that like government and industry demonstrated power from an elite positioning of the State. She participated in positive self-presentation, face keeping, moves of defense; mitigation and she herself often used euphemisms rather than people of color or references to race. She often deferred to NMED counsel or sought his approval. This also served to transfer culpability to the White male. Mr. DM, the White lawyer for the other EJ party, like myself was regulated and dismissed by both the EJ Liaison and the Hearing Officer in their roles as state employees and as shown in Chapter Four. This was not the case for the rest of the all White male leads including those that went into lengthy vignettes as revealed by the data in Chapter four.

The realities of People of Color are not imagined or taken seriously. One strategy of EJ organizers is to bring decision-makers to our communities so they can feel, smell, breathe, and perceive injustice to understand cognitively and perceptually that which can be easily denied or written off as oppositional or approved without context for those impacted. Denial, the discourse of market demands, poverty, and colorblindness, all consistent with abstract liberalism, were present throughout the Hearing. Encroachment was a way of blaming the

victim for living or moving near these facilities was an industry and institutional theme that surfaced often in this hearing.

White expertise, like the denial of race, was almost blindly accepted especially from industry consultant Dr. MT, even to the exclusion of NMED staff expertise. Experience in waste seemed to trump race research and experience of community members, organizers, and advocates. It was Dr. MT, the waste consultant that was asked a majority of questions by White board members on race. His claims to truth, common sense, and good ol' boy vignettes, as well as, the liberal Board members who privileged him by the number of inquiries they directed at him served to establish his expertise and experience and destabilized EJ claims. Advocates and EJ community witnesses were asked fewer questions by the Board although cross-examination by industry of the first EJ party witnesses was especially aggressive and lengthy. How does EJ come to be defined?

Environmental justice comes to be defined by government and industry primarily but not without resistance. United States laws and institutions were created by white landed men to protect white landed men and their interests continue to be protected legally through ideologies of abstract liberalism, its discourses and outright corporate greed, protected by hegemony's courts (Mills, 1997; Zinn, 1999). The U.S. Supreme Court promotes corporations as citizens with rights, weakens the Voting Right Act, continues to rule against affirmative action, but offers the right to same sex marriage. This demonstrates differentialized rights based on race, class, and sexuality. The meaning of democracy is always a moving target defined through hegemony's structures and institutions and like DNA, the structures and institutions mutate, constantly evolving to meet the new challenges to White supremacy.

Most people, for a variety of reasons, are uncomfortable using the words racism, environmental racism and few want to talk about or be associated with injustice (van Dijk, 1999). The realm of discourse begins to be constructed. White liberals do not want to see themselves as racist or unjust and prefer not to interrogate their entitlement, or the legacy of racism, which affords them privilege and offers silence to People of Color. Denial works well with issues of race, class, gender, and sexuality. People of color who resist, are silenced, marginalized or become the honorary whites that today do the dirty work of the racists (Bonilla-Silva, 2001) as exemplified by Mr. RS, a lawyer of color in Chapter Four, as well as the State EJ Liaison and industry supported people of color. And, slowly, osmotically, in spite of our resistance, we begin to use the allowed words: diversity, vulnerable area, the poor, vulnerable communities, and environmental justice even when we are talking about an injustice as demonstrated in the data. Decolonizing and deconstructing is not an easy project; we are all constructed historically and through the complex structures and institutions of the state as well as discursive narratives by the State and the privileged who have access to all that they need to create theirs and other's realities.

We begin to see how environmental justice become euphemisms for environmental racism and injustice. In some instances the use of environmental justice when describing injustice might be described, as a speech error, however its consistency speaks to a process of internalization. This surfaced in the data in almost all the testimonies including those of the EJ witnesses. The goal of exposing and finding strategies to address environmental racism and injustice is, environmental justice. However we cannot get to the goal if we do not recognize and name injustice. Government representatives and other elites want to talk about "vulnerable areas," "disadvantaged communities," "vulnerable communities," minimizing

the role of race, as well as agency. The discourse construction of “vulnerable areas” completely avoided bodies of whatever color; at the same time constructing weakness. Just as diversity has come to replace multiculturalism and racism work, so too, were these efforts moves to minimize and deny racism. Government, industry, and the haves control a huge amount of the discourse with their tremendous resources, control of institutions, societal structures, technology, media and publishing. The expressions of differentialized racialization also work well with the other isms and are distractions to building unity. Divide and conquer is a powerful strategy.

Other discourses that surfaced served offensive as well as defensive strategies to accomplish their discursive goals. Patronizing and condescending narratives demonstrated entitlement and were as common in the hearing as in our daily lives. Move of defense that attempted to set up contradictions or to undermine the narratives of environmental injustice were common and skillful. One consultant was particularly articulate and effective in upstaging others experience and knowledge.

Whose knowledge is valued, listened to, privileged and given authority?

It was not the organizers or witnesses of the EJ parties whose knowledge was valued, privileged or given authority. It was heard because as part of the process, our parties had the benefit of the time, if not the respect, that the proceeding allowed everyone. It was democratic in that way, however in terms of the resources and cultural capital necessary to participate in these type of forums much discussion and thought must take place to understand the amount of time that it devoted to this activity.

As the only women lead for the parties, a person of color, and an EJ advocate, my experience was as a teacher. I carried little cultural capital, was not a lawyer or scientist, and

testifying last in the hearing put our party at somewhat of a disadvantage. This level of disregard was directed primarily at me but on a few occasions toward the SWOP/Coalition Party Lawyer, Mr. DM. On the other hand, Dr. MT who led industry in terms of pushing industry ideology and sabotaging EJ experts privileges Mr. DM, giving him credit for the Sunland Park landfill becoming a state of the art landfill and for closing down an incinerator. Later he calls the EJ provisions Mr. DM's EJ provisions, which elicits a response from the woman of color board member and myself. This is particularly interesting as there was huge community opposition and organizing in the Sunland Park and the Chaparral Landfill struggles. The public numbers in the Chaparral Hearing were estimated at 300 people. The ultimate legal successes were very much driven by community opposition and direction of the legal resources by sophisticated community organizers. Dr. MT's linguistic performances illustrate that he cannot fathom people of color creating or being knowers. That can only be attributed to a White male lawyer, even if he is an opponent. This is a tactic that reinforces white men as the knowers in this society even when they are not of similar ideologies.

The EJ testimonies in general inspired fewer questions from the Board with the exception of the first EJ party. Their primary witnesses were cross-examined aggressively and extensively. The NMEJWG who had testified from 7:00 p.m. to 11:30 p.m. on the last day inspired few questions as only two Board members had returned on the last day after the dinner break. A request from industry of the H.O. after last party, ours, had testified at 11:00 p.m. seemed to confuse the H.O. "Can I ask for just a moment to kind of confer with people about cross-examination at this point" (EIB, 2006, p. 1624)? The H.O. asks, "to confer with people" (p. 1624)? Mr. MM explains, "Well, with some of the other parties that we're working with" (p. 1624). They wanted to caucus about who and what would be their final

cross-examination questions, Mr. PD, Jr. was the one who led the final cross-examination for industry.

In the end, we received some protections in the newly revised New Mexico Solid Waste Regulations. For rural communities the new regulations, which centered on the definition of a vulnerable area created little protection, although urban areas fared better with the same provision. Although, there were successes, the sheer power of White supremacy and how the institutional structures of the state maintain it, has been, and continues to be an uphill struggle for justice and human rights. The benefits of participating in policy for grassroots community organizations is important however how much time and energy is invested in this activity is open to debate. In her dissertation, *Deliberative Citizenship: Social Change Organizations and the Critical Discourse In and Beyond the Forum*, Jennifer Dodge (2009) offers insights in entering these spaces of White hegemony. The dissertation studies policy efforts by grassroots organizations. The work of SNEEJ and the NMEJWG in environmental justice policy are studied.

The voice of color thesis is a good strategy. This strategy helps to construct counter narratives that stand against hegemonies narratives as Chapter Four demonstrates. We need to build on these with testimony, publications, art, etc. Change, perceived and defined differently culturally is slow, but it does have an impact and resistance in multiple sites advances these small changes. Justice works much like drops of water on a time worn rock, but it is visible.

Implications For Environmental Justice

As discussed in previous chapters the Environmental Justice Movement has taken the course of all movements decentralizing and evolving in a variety of areas. The liberal

discourses of climate change, sustainability and food sovereignty have replaced discourses of environmental justice. Climate justice is the discourse promoted by EJ groups that fight the good fight. They do not support carbon trading as a response to climate change. This is just another way that “the art of negotiation” continues to compromise our communities. We are the pawns of negotiation for the racist capitalists as much as we are for the liberal knowers. For People of Color in Alaska and in the pacific islands climate change is a lived reality and it is about justice.

It takes a tremendous amount of creativity and work to organize and collectivize resources to perform and follow-through with counter-narratives whose aim was to push hegemonic boundaries with other knowledge and challenge power. Agency of poor and People of Color does not have to be established it has been demonstrated historically and stands in contrast to epistemologies of ignorance of many types.

Poor grassroots communities must use their resources wisely and this means a diverse set of relations with government, academe, and with white liberals and white liberal organizations and foundations as well as maintain their families and contribute to their communities. The EJ Movement in this country has demonstrated its brilliance, its ability and some of the lessons are the usual ones of social justice and liberation movements, and we are stronger together. The EJ Movement privileged grassroots leaders, women, a strong multi-generational culture and a strategy to have People of Color work with each other first before going into full coalition with White organizations and funders.

With the exception of Clinton’s Executive Order 12898 and the state orders that followed; there have been few environmental laws created that protect people of color. The Executive Orders are not laws. Civil rights law has been unsuccessful in covering claims of

environmental racism and injustice. The same egregious actions and inactions that came to light as a result of EJ struggles continue in communities of color across the country. As unbridled capitalism continues to devour and penetrate mother earth, all sectors of the population will ultimately be affected. The chemical incidents in the last several years affect fenceline communities, who are poor and primarily people of color. But ultimately no one is safe from pollution, like death, toxic contamination knows no color, sex, or class.

The environmental justice movement expanded the idea of environmentalism, however, it has not been able to sustain the radical, we speak for ourselves multiracial, multigenerational, and multiclass movement that was the EJ Movement at its peak. Like other social movements it became diasphoric, its weaknesses and setbacks, will ultimately become its strengths. White conservatives and liberals in the majority are not yet willing, to share the status of knower and namer in environmentalism or elsewhere with people of color in the United States.

Areas for Continued Organizing and Advocacy

What is needed to erase White supremacy is a recognition that expertise and knowledge does not reside in White. Until then, People of Color, will continue to resist and work with progressive whites and elite people of color that understand our mutual interest - justice. It is time for the liberal White privileged classes to give up the position of “knower” and put themselves in service to a peace with justice. Many have and do. People of color, women, the poor, youth and others will continue to resist being defined, named and marginalized. And those with power, who reap the benefits of White supremacy, and they are not all white, will continue their attempts to define, name, marginalize and dominate.

Some things in our communities have gotten better; we no longer have crucifixions and burnings on the cross. The last recorded lynching by the Ku Klux Klan of a young African American male was in 1981. The prison industrial complex, the drug culture, and the killing of young men of color by police are almost daily occurrences in poor communities of color. This coupled with food deserts, disease, poor health care, and the school to prison pipeline are daily testament to the fact that racism is not an anomaly.

On January 6, 2015 the NMED held the fourth public hearing in 15 years on a Special Waste Permit application by the Northeastern New Mexico Regional Landfill (NENMRL) to accept special wastes. The private landfill is located in Mora County one of the poorest counties in the state as well as the country. The Concerned Citizens of Wagon Mound and Mora County (CCWMMC) have fought efforts by the landfill to obtain a Special Waste Permit for 15 years; winning a legal victory in 2003 that rescinded a Special Waste Permit that had been given to the landfill in 2000. In 2005 the organization won another decision denying the landfill the special waste permit from then, Secretary of the Environment, Ron Curry. In 2011 the community won another Court of Appeals decision after the landfill sued the NMED then the permit. As I finish up my writing we also wait for this decision from the NMED.

On this same date in Santa Fe, the Public Regulation Committee was meeting to address the closing down of one portion of the four-corners fossil-fuel powered plant and incorporating a nuclear component to their process. The once picturesque landscape now has an EPA regulated permanent haze. A study by Kort, Frankenburg, Costigan, Lindenmaier, Dubey, Wunch (2014) in partnership with NASA looked at several years of data and satellite images of the U.S. The study identified an orange/red orb in the four corners area of

northwestern New Mexico. An anomalies glow the result of historical coal bed mining in the area. At the same time the Waste Isolation Pilot Project (WIPP) one of three deep geological repositories in the world remains closed with huge fines imposed, as more and more mistakes and mismanagement are uncovered about the handling of hazardous waste. Although we are assured by the Department of Energy (DOE) that it will open as soon as possible.

The newly elected conservative State Land Commissioner will remove the Brickhead Hope sculpture in front of the State Land Office to be replaced with an oil pump jack to honor the revenues the oil industry brings to the state and to educational funding. Rather than look for non-political and non-polluting revenues to support our children's education, we waste our children's future with the destruction of our environment and condemn many of them to a future of health and cognitive problems associated with industry processes and unregulated chemicals. There are safer solutions, and those that profit should be forced to pay for these alternative processes. We need to organize in the places where we live, work, play, pray and go to school and that means us.

A study by the Environmental Justice and Health Alliance for Chemical Policy Reform (2014) published a report titled, "Whose in Danger? Race, Poverty and Chemical Disasters." Their findings showed, that the percentage of Blacks in fenceline zones is 75% greater than for the U.S. as a whole, while the percentage of Latinos in fence line zones is 60% greater than the U.S. as a whole (Orum, Moore, Roberts & Sanchez. 2014). The hosts for these chemical facilities are poor and predominantly people of color communities.

In September 2014 another study by The Council for Effective Government found that three out of five children are living in danger of chemical exposures and incidents. It is

our children and students that have become the sacrificial lambs of contamination and poor educational policies. The majority of our students are held back, over tested with biased standardized exams, suspended, labeled as special, and limited English proficient and pipelined into the drug culture, poor health, and prison. While young White males become rich from sales of medical marijuana; marijuana offenses fill the prisons in New Mexico with brown and red bodies.

Implications and Recommendations for Educators

In the legislature a Hispanic woman Governor pushes to punish our children flunking them in third grade until they can learn to read white supremacy's discourse named Common Core formerly know as Content Standards and Benchmarks. The question persists, whose standards and whose commons? Teachers are set up against each other and demoralized by having their evaluations and pay tied to test scores. And it is the students that challenge epistemologies of ignorance by proclaiming, "We are not a test score." Hundreds of high school students in New Mexico walked out of schools taking a stand against the PARCC standardized test. We are proud of the students. It is imperative that educators and parents stand behind them and say no to these epistemologies of ignorance that rob our students of creative and critical curriculum, human interaction and communication. These same policies rob teachers of their intellectual freedom and all of us from a more humane future.

As educators, it is up to us, every single one of us; we cannot transfer that intellectual responsibility. It is not politicians that should decide what a good education is, and curriculums for our students. The students and their parents need the support of teachers, educators, professors, ally politicians and leaders to take risks to contextualize and support their claims. We need to insist on teaching critical thinking skills not test-taking skills and

promote multi-lingual, multi-cultural education and human rights for a globalized community, not robots, getting messages from techno toys, distracted by the culture of selfies, one of the new tools of individualism. We must continue to participate in the creative collaboration (Vera, Jon Steiner, 2000), that we see practiced in grassroots organizations and other spaces. It will make the profession and us stronger against the assaults of globalization which are distance learning and technology, state and industry scripted curriculum, the minimization of the teaching profession and the re-definition of education around business needs rather than a support system for the evolution of a creative, knowledgeable, and ethical being. Grassroots organizations can teach us much about collaboration this is precisely what has contributed to resilience of communities against a legacy of racism and exploitation.

Publishing is not enough that is allowed by state hegemony, it is putting our research to practice and action that is the challenge for our profession. As educators and academics we can contribute to a more just world by: privileging qualitative research and doing research in concert with communities; with an emphasis on their problem or question not just our interest. We must challenge the idea that racism is a thing of the past or an anomaly. We must question and keep accountable new areas such as Whiteness Studies so they do not become just another site for liberals to continue racially constructed positions of power and knower. As People of Color we must study Colorness and become articulate in this so that we may not become complicit once again in new discourses of race. We must do a better job of developing justice discourses in the sciences and support research and publishing on epistemologies of ignorance. The voice of color thesis offers us as teachers reinforcement of many of the strategies and tactics we already use in our teaching: oral history assignments,

community mapping projects, service learning, artistic and spoken word forums, interviews with community people, elders and public figures, focus groups, etc.

We must also advocate for our profession and it may mean taking risks, for our protection and to build power we must develop strategic relationships and collaborations which are not fostered in our institutions. This study encourages us to re-conceptualize language instruction; including critical discourse analysis in the classroom, bilingual, and special education sites as well. Know the community where you work, and the toxic dangers in your community. Be in service to communities not leadership.

Interrogate race discourses and present different forms of knowledge and ways of being. Encourage students to speak for themselves through creative curriculum, encourage and implement collaborative learning and develop more horizontal relationships with students. Reflect and speak out on differentialized racialization, racism, sexism, classism, ableism, and ageism. We can commit to learn and incorporate into our curriculum, teaching, learning and sharing about systems of oppression so we can slowly but surely unravel these narratives.

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Appendices

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Appendix A

Letter to the Group of Ten

SOUTHWEST ORGANIZING PROJECT
 HARWOOD TRAINING AND SERVICE CENTER
 1114 7TH STREET N.W. • ALBUQUERQUE, NEW MEXICO 87102 • (505) 247-8832

March 16, 1990

SAMPLE COPY - See pp. 4-11 for signatures and pg. 12 for list of recipients.

Board of Directors:
 Sandie Kalls Pretty Enemy Montoya
 Marjorie Williams
 Frances George
 Roberto Contreras
 Ruben Solis

Mr. Jay D. Hair, President
 National Wildlife Federation
 1400 Sixteenth Street NW
 Washington, D.C. 20036-2266

Staff:
 Richard Moore
 Jeanne Gauna
 Louis Head
 Michael Guerrero

Dear Mr. Hair:

We are writing this letter in the belief that through dialogue and mutual strategizing we can create a global environmental movement that protects us all.

We are artists, writers, academics, students, activists, representatives of churches, unions, and community organizations writing you to express our concerns about the role of your organization and other national environmental groups in communities of people of color in the Southwest.

For centuries, people of color in our region have been subjected to racist and genocidal practices including the theft of lands and water, the murder of innocent people, and the degradation of our environment. Mining companies extract minerals leaving economically depressed communities and poisoned soil and water. The U.S. military takes lands for weapons production, testing and storage, contaminating surrounding communities and placing minority workers in the most highly radioactive and toxic worksites. Industrial and municipal dumps are intentionally placed in communities of color, disrupting our cultural lifestyle and threatening our communities' futures. Workers in the fields are dying and babies are born disfigured as a result of pesticide spraying.

Although environmental organizations calling themselves the "Group of Ten" often claim to represent our interests, in observing your activities it has become clear to us that your organizations play an equal role in the disruption of our communities. There is a clear lack of accountability by the Group of Ten environmental organizations towards Third World communities in the Southwest, in the United States as a whole, and internationally.

Your organizations continue to support and promote policies which emphasize the clean-up and preservation of the environment on the backs of working people in general and people of color in particular. In the name of eliminating

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 2

environmental hazards at any cost, across the country industrial and other economic activities which employ us are being shut down, curtailed or prevented while our survival needs and cultures are ignored. We suffer from the end results of these actions, but are never full participants in the decision-making which leads to them.

These are a few examples which we have witnessed of the lack of accountability by the Group of Ten:

- * Legislation was passed in December, 1987 to annex lands to form El Malpais National Monument in New Mexico. 13,000 acres were considered to be the ancestral holdings of the Pueblo of Acoma. "Conservation" groups such as the Sierra Club and the Wilderness Society supported the bill in complete disregard for the cultural heritage of the Acoma people.
- * Legislation is also being proposed to form the Albuquerque Petroglyph National Monument; 6,500 acres of escarpment that would include rock drawings carved centuries ago by Indian and Chicano peoples. Part of the land is within the boundaries of the Atrisco Land Grant, owned by Chicano heirs. The Atrisco Land Rights Council, an advocacy group for the heirs is opposing complete sale of the lands and is trying to assure that the heirs rights are recognized and preserved. Opposing the interests of the heirs is the Friends of the Albuquerque Petroglyphs. Members of this group also work in conjunction with the Sierra Club. Recently, the Trust for Public Lands, another conservation group, has proposed to buy the lands for the monument.
- * The Nature Conservancy, National Audubon Society, and others are opposing the grazing of sheep on the Humphries and Sargent Wildlife areas by a local, highly successful economic development project run by Chicanos in Northern New Mexico, one of the most economically depressed areas in the United States. Due to the encroachment of major tourism development companies in the area and consequent loss of private pastoral land historically controlled by local Chicanos, this grazing is considered essential to the continued viability of the project. Despite the fact that this grazing is considered by many to be an ecologically sound practice, these environmental organizations have chosen to "shoot from the hip" in their response to this proposed activity and are opposing the reasoned alternative of those who have lived in the region for hundreds of years.
- * Organizations such as the National Wildlife Federation have been involved in exchanges where Third World countries will sign over lands (debt-for-nature swaps) to conservation groups in exchange for creditors agreeing to erase a portion of that country's debt. In other cases the debt is purchased at

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 3

reduced rates; the creditors can then write it off. This not only raises the specter of conservation groups now being "creditors" to Third World countries, but legitimizes the debt itself through the further expropriation of Third World Resources. The question arises whether such deals are in the long term economic interests of both the countries involved and of the people living on the land.

- * The lack of people of color in decision-making positions in your organizations such as executive staff and board positions is also reflective of your histories of racist and exclusionary practices. Racism is a root cause of your inaction around addressing environmental problems in our communities.
- * Group of Ten organizations are being supported by corporations such as ARCO, British Petroleum, Chemical Bank, GTE, General Electric, Dupont, Dow Chemical, Exxon, IBM, Coca Cola, and Waste Management, Incorporated. Several of these companies are known polluters whose disregard for the safety and well-being of workers has resulted in the deaths of many people of color. It is impossible for you to represent us in issues of our own survival when you are accountable to these interests. Such accountability leads you to pursue a corporate strategy towards the resolution of the environmental crisis, when what is needed is a people's strategy which fully involves those who have historically been without power in this society.

Comments have been made by representatives of major national environmental organizations to the effect that only in the recent past have people of color begun to realize the impacts of environmental contamination. We have been involved in environmental struggles for many years and we have not needed the Group of Ten environmental organizations to tell us that these problems have existed.

We again call upon you to cease operations in communities of color within 60 days, until you have hired leaders from those communities to the extent that they make up between 35-40 percent of your entire staff. We are asking that Third World leaders be hired at all levels of your operations.

Although some Group of Ten organizations have sent general information on the people of color within their staffs and Boards of Directors, the information has been insufficient. Again we request a comprehensive and specific listing of your staff of non-European descent, their tenure, salary ranges, and classification (clerical, administrative, professional, etc.). Also provide a list of communities of color with whom you provide services or Third World communities in which you have organizing drives or campaigns, and contacts in those communities.

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 4

Finally, we call upon your organization to cease fundraising operations in communities of color within 60 days until a meeting is held with you including representatives of our choice. Once your organization responds to these requests you will be invited to confer with other national leaders on the poisoning of United States Third World communities.

Please send all materials and information to:

Richard Moore, Co-Director
SouthWest Organizing Project
1114 7th Street NW
Albuquerque, NM 87102
Phone: (505) 247-8832

It is our sincere hope that we be able to have a frank and open dialogue with your organization and other national environmental organizations. It is our opinion that people of color in the United States and throughout the world are clearly endangered species. Issues of environmental destruction are issues of our immediate and long term survival. We hope that we can soon work with your organization in helping to assure the safety and well-being of all peoples.

Sincerely,



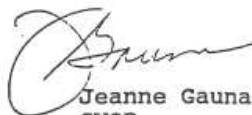
Richard Moore, Co-director
SWOP



Lila Bird, President
Graduate Student Association
University of New Mexico
Member, SW Indian Student Coalition
Albuquerque, New Mexico



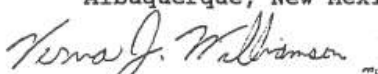
The Rev. Wallace Ford
New Mexico Conference of Churches
Albuquerque, New Mexico



Jeanne Gauna, Co-director
SWOP



The Rev. Minerva Garza Carcaño,
District Superintendent
Western District
Rio Grande Conference
United Methodist Church
Albuquerque, New Mexico



Verna J. Williamson, Governor
Isleta Pueblo
Isleta, New Mexico

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 5

Eduardo Quintana gmm

Eduardo Quintana,
Community Activist
Tucson, Arizona

Lorraine Granado gmm

Lorraine Granado
* Neighbors for a Toxic
Free Community
Denver, Colorado

Fr. Jack Risley gmm

Fr. Jack Risley
Aquinas Newman Center
Albuquerque, New Mexico

The Rev. Canon Paul Saunders gmm

The Rev. Canon Paul Saunders
Albuquerque, New Mexico

Juan Gonzalez gmm

Juan Gonzalez, Attorney at Law
Albuquerque, New Mexico

Antonio Carrasco gmm

Antonio Carrasco
Centro de Salud Familiar La Fe
El Paso, Texas
Albuquerque, New Mexico

Dorie Bunting gmm

Dorie Bunting, Peace Activist
Albuquerque, New Mexico

Evangeline Quintana gmm

Evangeline Quintana,
Program Specialist
Albuquerque, New Mexico

Roberto Contreras gmm

Roberto Contreras,
Community Activist
Albuquerque, New Mexico

Fr. Luis R. Pena gmm

Fr. Luis R. Pena, Pastor
San Jose Parish
Albuquerque, New Mexico

Cristy Brito gmm

Cristy Brito
Community Activist
Roswell, New Mexico

Ruth Marie Contreras gmm

Ruth Marie Contreras
Labor Activist
Albuquerque, New Mexico

David Lujan gmm

David Lujan, Director
Tonantzin Land Institute
Albuquerque, New Mexico

Rev. Julie Avery gmm

Rev. Julie Avery, Pastora
Iglesia Segunda
Congregacional, UCC

Wm. Paul Robinson gmm

Wm. Paul Robinson
Albuquerque, New Mexico

Jaime Chavez gmm

Jaime Chavez, Director
Atrisco Land Rights Council
Albuquerque, New Mexico

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 6

Rabbi Lynn Gottlieb

Rabbi Lynn Gottlieb
Nahal at Shalom
Albuquerque, New Mexico

Claudia Isaac

Claudia Isaac, Assistant Professor
Community and Regional Planning
University of New Mexico
Albuquerque, New Mexico

Lynn Carrillo

Lynn Carrillo, Executive Director
Quote...Unquote, Inc.
Albuquerque, New Mexico

Ninfa Gonzalez

Ninfa Gonzalez
Austin Area Association
for Bilingual Education
Austin, Texas

Tobias Duran

Tobias Duran
Center for Regional Studies
University of New Mexico
Albuquerque, New Mexico

Henrietta C'de Baca

Henrietta C'de Baca, Church Activist
Albuquerque, New Mexico

Ruben Solis

Ruben Solis, President
Board of Directors
SW Public Workers Union
San Antonio, Texas

Rev. W F Fortune

The Rev. W. F. Fortune
Grant Chapel AME Church
Albuquerque, New Mexico

Jesse Johnson

Jesse Johnson
Austin Latino Lesbian and
Gay Organization
Austin, Texas

Maria Elena Martinez

Maria Elena Martinez,
Community Activist
Austin, Texas

Joe Sanchez

Joe Sanchez
Native American Community
Activist
Reno, Nevada

Antonio Diaz

Antonio Diaz
* Texas Center for
Policy Studies
Austin, Texas

Jessie Deer In Water

Jessie Deer In Water
Native American Activist
Vian, Oklahoma

Vicky McCallaugh

Vicky McCallaugh
Native Americans for A
Clean Environment
Tahlequah, Oklahoma

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 7

Graciela I. Sanchez

Graciela I. Sanchez
* Esperanza Peace and Justice
Center
Austin, Texas

Chavel Lopez

Chavel Lopez, Organizing Director
SW Public Workers Union
Hondo, Texas

Charlie Morrissey

Charlie Morrissey,
Mission and Welfare Chair
Grant Chapel AME Church
Albuquerque, New Mexico

John Schoeppner

John Schoeppner, Esq.
Albuquerque, New Mexico

Rudy Acuna

Dr. Rudy Acuna, Professor
Chicano Studies
Cal State, Northridge
Northridge, California

Tupac Enrique

Tupac Enrique
National Chicano Human Rights
Council, Tonatierra Chapter
Phoenix, Arizona

Gustavo Gutierrez

Gustavo Gutierrez
National Chicano Human Rights
Council, Tonatierra Chapter
Phoenix, Arizona

Charles Castillo

Charles Castillo, President
Mexican American Law
Students Association
University of New Mexico
Albuquerque, New Mexico

Bill Sanchez

The Rev. Bill Sanchez
Archdiocese of Santa Fe
Legislative Review Board
Villanueva, New Mexico

Steve Goldin

Steve Goldin, President
Institute for Regional
Education
Santa Fe, New Mexico

Cynthia Hamilton

Cynthia Hamilton, Ph.D.
Cal State, Los Angeles
Los Angeles, California

Mel King

Mel King, Professor
M. I. T.
Boston Rainbow Coalition
Boston, Massachusetts

Manuel Vasquez

Manuel Vasquez
White Eagle Aztec Dancers
Phoenix, Arizona

Francisca Cavazos

Francisca Cavazos
Maricopa County Organizing
Project
Phoenix, Arizona

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 8

Penny Newman

Penny J. Newman
 * Citizens Clearinghouse for
 Hazardous Waste
 Riverside, California

John C. Moyer

John C. Moyer
 * Northern California Ecumenical
 Council
 San Francisco, California

Jorge L. Morales

The Rev. Dr. Jorge L. Morales, Pres.,
 * Centro Para Desarrollo Comunitario
 y Liderato
 Chicago, Illinois

John Boenstra

John Boenstra, Executive Minister
 * Washington Association of Churches
 Seattle, Washington

Jose Rodriguez

The Rev. Dr. Jose P. Rodriguez,
 Associate Director
 * McCormick/Lutheran School of
 Theology at Chicago Joint
 Hispanic Ministry Program
 Chicago, Illinois

Marilyn Clement

Marilyn Clement
 * 100 % Vote, Human Serve
 New York, New York

The Rev. Daniel A. Buford

The Rev. Daniel A. Buford,
 Trainer,
 * People's Institute for
 Survival and Beyond
 Berkeley, California

Leah Wise

Leah Wise, Exec. Director
 * Southerners for Economic
 Justice
 Durham, North Carolina

Andrea Carmen

Andrea Carmen
 * International Indian
 Treaty Council
 San Francisco, California

Young Shin

Young Shin
 * Asian Immigrant Women
 Advocates
 Oakland, California

Ken W. Jefferson

Ken W. Jefferson,
 Executive Secretary
 * Office of Urban
 Ministries, The United
 Methodist Church
 New York, New York

Alice Hoppes

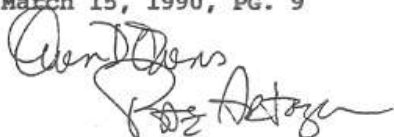
Alice Hoppes, President
 Albuquerque Chapter NAACP
 Albuquerque, New Mexico

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 9



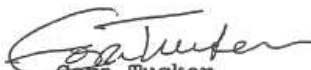
World Council of Churches
US/Urban Rural Mission Contact Group
by Marilyn Clement, Contact Person
New York, New York



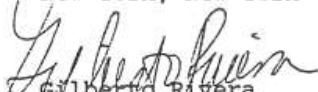
National Council of Churches
Eco-Justice Working Group
Owen. D. Owens, Co-Chair
Paz Artaza, Co-Chair
New York, New York



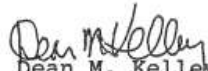
Charles Lee
Commission for Racial Justice
United Church of Christ
New York, New York



Cora Tucker
* Citizens for a Better
America
Halifax, Virginia



Gilberto Rivera
Chicanos Against Military Intervention
in Latin America (CAMILA)
Austin, Texas



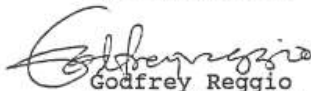
Dean M. Kelley
* National Council of Churches
New York, New York



Kaye Kiker
Alabama Citizen Activist
Emele, Alabama



Richard Regan
Center for Community Action
Lumberton, North Carolina



Godfrey Reggio
Independent Film Maker
Santa Fe, New Mexico




Eugene R. Hill, Chairman
American G.I. Forum
Albuquerque Chapter #1
Albuquerque, New Mexico



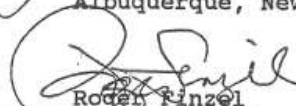
Mary Molina
Las Mujeres de LULAC
Albuquerque, New Mexico



Juan Jose Pena,
Past National President
La Raza Unida Party
Albuquerque, New Mexico



Jose A. Rivera, Ph.D., Director
Southwest Hispanic Research Institute
University of New Mexico
Albuquerque, New Mexico



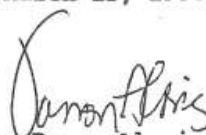
Roger Finzel
Attorney at Law
Albuquerque, New Mexico

* = Organization listed for identification purposes only

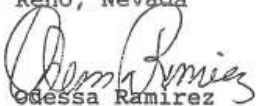
SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 10



Paul Rodarte, Director
Citizen Alert Native American
Project
Reno, Nevada



Ramon Alaniz, Exec. Director
Latin American Concilio
Reno, Nevada



Odessa Ramirez
Rural Alliance for Military
Accountability
Carson City, Nevada



Elizabeth (Betita) Martinez
Journalist, Lecturer
San Francisco, California



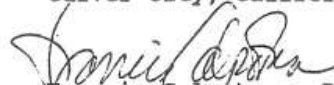
Sylvia Castillo
Pediatric Nurse
Los Angeles, California




Barbara Hoenig
* National Lawyers Guild
Culver City, California



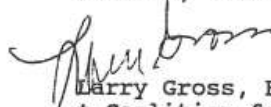
Ernest Witt
West County Toxics Coalition
Richmond, California



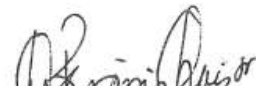
Francis Calpotura, Director
Campaign for Accessible
Healthcare
Oakland, California



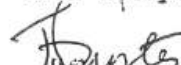
Phil Hutchings
San Francisco, California



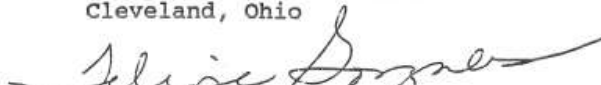
Harry Gross, Executive Director
* Coalition for Economic
Survival
West Hollywood, California



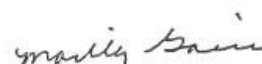
Dr. Benjamin Chavis, Jr.
Commission for Racial Justice
United Church of Christ
Cleveland, Ohio



Juan Fuentes, Arts Instructor
San Francisco, California



Felipe Gonzales, Assistant Professor
Sociology Department
University of New Mexico
Albuquerque, New Mexico



Marilyn Garcia,
Community Organizer
Oklahoma City, Oklahoma

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 11

Sam W. D. Johnson

Sam W. D. Johnson
* New Mexico NAACP College Division
University of New Mexico
Albuquerque, New Mexico

Josie Ojeda

Josie Ojeda
Centro Adelante Campesino
Sunshine, Arizona

Rose Augustine

Rose Augustine, President
* Tucsonians for a Clean Environment
Tucson, Arizona

Maria Limon

Maria Limon
Informe-SIDA
Austin, Texas

Jose Armas

Jose Armas, Director
De Colores, Inc.
Albuquerque, New Mexico

Eric Mann

Eric Mann, Director
Community/Labor Organizer
Los Angeles, California

Cheryl Mann

Cheryl Mann
National Indian Youth Council
Albuquerque, New Mexico

Sulaiman Mahdi

Sulaiman Mahdi
African American Environmental
Service Project
Atlanta, Georgia

Gilbert Ortiz

Gilbert Ortiz
Acoma Pueblo (New Mexico)

Ana Garcia-Ashley

Ana Garcia-Ashley,
Church-based Organizer
Denver, Colorado

Sofia Martinez

Sofia Martinez
Southwest Media Productions
Albuquerque, New Mexico

Roberto Roibal

Roberto Roibal
El Taller Media, Inc.
Albuquerque, New Mexico

David Harrison

David Harrison, Officer
Chickaloon Village
Fish & Game Conservation Council
Director, Alaska Right Consultants
Tribal Organization
Chickaloon, Alaska

* = Organization listed for identification purposes only

SOUTHWEST ORGANIZING PROJECT LETTER - March 15, 1990, PG. 12

cc: Michael L. Fischer, Executive Director, Sierra Club
 Tina Arapkiles, SW Representative, SC
 Beth Johnson, Southern Plains Representative, SC
 Bob Hattoy, Southern California Representative, SC
 Barbara Boyle, Northern California - Nevada Representative, SC
 SC Chapters: Angeles Cascade Grand Canyon
 Lone Star Mother Lode Oklahoma
 Oregon Redwood Rio Grande
 Rocky Mountain San Diego San Francisco Bay
 San Geronio Santa Lucia Tehipite
 Toiyabe Ventana Utah

Frederic P. Sutherland, President, Sierra Club Legal Defense Fund
 Rocky Mountain Office, SCLDF

Peter A. A. Berle, President, National Audubon Society
 David Henderson, New Mexico Representative, NAS
 Robert Turner, Vice-President, Rocky Mountain Field Office, NAS
 Dede Armentrout, Vice-President, Southwest Field Office, NAS
 Ron Klataske, Vice-President, West Central Field Office, NAS
 Glen Olson, Vice-President, Western Field Office, NAS

Jay D. Hair, Executive Director, National Wildlife Federation
 Tom Warren, Region 10, NWF
 Gene G. Stout, Region 8, NWF

Frederic D. Krupp, Executive Director, Environmental Defense Fund

Mike Clark, Chief Executive Officer, Environmental Policy
 Institute/Friends of the Earth

Jack Lorenz, Executive Director, Izaak Walton League
 Helen Stammen, Regional Governor, IWL, Colorado Springs, CO
 Dyas Rawlings, Regional Governor, IWL, Portland, OR

George T. Frampton, Jr., President, The Wilderness Society
 Patricia Schifferle, California/Nevada Field Representative, WS
 Darryl Knuffle, Colorado/Utah Field Representative, WS
 James Norton, Arizona/New Mexico/West Texas Field Representative,
 WS

Paul C. Pritchard, President, National Parks and Conservation
 Association
 Terri Martin, Rocky Mountain Field Office, NPCA
 Russell Butcher, Southwest California Field Office, NPCA

John H. Adams, Executive Director, Natural Resources Defense
 Council
 James Thornton, Los Angeles Office, NRDC
 San Francisco Office, NRDC

Appendix B

Principles of Environmental Justice

WE, THE PEOPLE OF COLOR, gathered together at this multinational People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and land and the genocide of our peoples, do affirm and adopt these Principles of Environmental Justice:

The Principles of Environmental Justice (EJ)

- 1) **Environmental Justice** affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
- 2) **Environmental Justice** demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
- 3) **Environmental Justice** mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
- 4) **Environmental Justice** calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons and nuclear testing that threaten the fundamental right to clean air, land, water, and food.
- 5) **Environmental Justice** affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.
- 6) **Environmental Justice** demands the cessation of the production of all toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
- 7) **Environmental Justice** demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation.
- 8) **Environmental Justice** affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
- 9) **Environmental Justice** protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.
- 10) **Environmental Justice** considers governmental acts of environmental injustice a violation of international law, the Universal Declaration On Human Rights, and the United Nations Convention on Genocide.
- 11) **Environmental Justice** must recognize a special legal and natural relationship of Native Peoples to the U.S. government through treaties, agreements, compacts, and covenants affirming sovereignty and self-determination.
- 12) **Environmental Justice** affirms the need for urban and rural ecological policies to clean up and rebuild our cities and rural areas in balance with nature, honoring the cultural integrity of all our communities, and provided fair access for all to the full range of resources.
- 13) **Environmental Justice** calls for the strict enforcement of principles of informed consent, and a halt to the testing of experimental reproductive and medical procedures and vaccinations on people of color.
- 14) **Environmental Justice** opposes the destructive operations of multi-national corporations.
- 15) **Environmental Justice** opposes military occupation, repression and exploitation of lands, peoples and cultures, and other life forms.
- 16) **Environmental Justice** calls for the education of present and future generations which emphasizes social and environmental issues, based on our experience and an appreciation of our diverse cultural perspectives.
- 17) **Environmental Justice** requires that we, as individuals, make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and make the conscious decision to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations.

More info on environmental justice and environmental racism can be found online at www.ejnet.org/ej/

Delegates to the First National People of Color Environmental Leadership Summit held on October 24-27, 1991, in Washington DC, drafted and adopted these 17 principles of Environmental Justice. Since then, the Principles have served as a defining document for the growing grassroots movement for environmental justice.

Appendix C

Jemez Principles

Jemez Principles for Democratic Organizing

Meeting hosted by Southwest Network for Environmental and Economic Justice (SNEEJ), Jemez, New Mexico, Dec. 1996

Activists meet on Globalization

On December 6-8, 1996, forty people of color and European-American representatives met in Jemez, New Mexico, for the "Working Group Meeting on Globalization and Trade." The Jemez meeting was hosted by the Southwest Network for Environmental and Economic Justice with the intention of hammering out common understandings between participants from different cultures, politics and organizations. The following "**Jemez Principles**" for democratic organizing were adopted by the participants.

#1 Be Inclusive

If we hope to achieve just societies that include all people in decision-making and assure that all people have an equitable share of the wealth and the work of this world, then we must work to build that kind of inclusiveness into our own movement in order to develop alternative policies and institutions to the treaties policies under neo-liberalism.

This requires more than tokenism, it cannot be achieved without diversity at the planning table, in staffing, and in coordination. It may delay achievement of other important goals, it will require discussion, hard work, patience, and advance planning. It may involve conflict, but through this conflict, we can learn better ways of working together. It's about building alternative institutions, movement building, and not compromising out in order to be accepted into the anti-globalization club.

#2 Emphasis on Bottom-Up Organizing

To succeed, it is important to reach out into new constituencies, and to reach within all levels of leadership and membership base of the organizations that are already involved in our networks. We must be continually building and strengthening a base which provides our credibility, our strategies, mobilizations, leadership development, and the energy for the work we must do daily.

#3 Let People Speak for Themselves

We must be sure that relevant voices of people directly affected are heard. Ways must be provided for spokespersons to represent and be responsible to the affected constituencies. It is important for organizations to clarify their roles, and who they represent, and to assure accountability within our structures.

#4 Work Together In Solidarity and Mutuality

Groups working on similar issues with compatible visions should consciously act in solidarity, mutuality and support each other's work. In the long run, a more significant step is to incorporate the goals and values of other groups with your own work, in order to build strong relationships. For instance, in the long run, it is more important that labor unions and community economic development projects include the issue of environmental sustainability in their own strategies, rather than just lending support to the environmental organizations. So communications, strategies and resource sharing is critical, to help us see our connections and build on these.

#5 Build Just Relationships Among Ourselves

We need to treat each other with justice and respect, both on an individual and an organizational level, in this country and across borders. Defining and developing "just relationships" will be a process that won't happen overnight. It must include clarity about decision-making, sharing strategies, and resource distribution. There are clearly many skills necessary to succeed, and we need to determine the ways for those with different skills to coordinate and be accountable to one another.

#6 Commitment to Self-Transformation

As we change societies, we must change from operating on the mode of individualism to community-centeredness. We must "walk our talk." We must be the values that we say we're struggling for and we must be justice, be peace, be community.

This and other environmental justice documents can be downloaded from: www.ejnet.org/ej/

Appendix D

Principles of Working Together

People of Color Environmental Justice “Principles of Working Together”

PREAMBLE

“WE, THE PEOPLE OF COLOR, gathered together at this multinational [, multiethnic] People of Color Environmental Leadership Summit, to begin to build a national and international movement of all peoples of color to fight the destruction and taking of our lands and communities, do hereby re-establish our spiritual interdependence to the sacredness of our Mother Earth; to respect and celebrate each of our cultures, languages and beliefs about the natural world and our roles in healing ourselves; to ensure environmental justice; to promote economic alternatives [and to support traditional cultural economics] which would contribute to the development of environmentally safe livelihoods; and, to secure our political, economic and cultural liberation that has been denied for over 500 years of colonization and oppression, resulting in the poisoning of our communities and [, water, air,] land and the genocide of our peoples, to affirm and adopt these *Principles of Environmental Justice*.”

Principles of Environmental Justice
October 27, 1991
First People of Color Leadership Summit
Washington D.C.

PRINCIPLE ONE: PURPOSE

- 1. A The Principles of Working Together uphold the Principles of Environmental Justice and to eradicate environmental racism in our communities.
- 1. B The Principles of Working Together require local and regional empowered partnerships, inclusive of all.
- 1. C The Principles of Working Together call for continued influence on public policy to protect and sustain Mother Earth and our communities and also honor past promises and make amends for past injustices.

PRINCIPLE TWO: CORE VALUES

- 2. A The Principles of Working Together commit us to working from the ground up, beginning with all grassroots workers, organizers and activists. We do not want to forget the struggle of the grassroots workers. This begins with all grassroots workers, organizers and activists.
- 2. B The Principles of Working Together recognize traditional knowledge and uphold the intellectual property rights of all peoples of color and Indigenous peoples.
- 2. C The Principles of Working Together reaffirm that as people of color we speak for ourselves. We have not chosen our struggle, we work together to overcome our common barriers, and resist our common foes.
- 2. D The Principles of Working Together bridge the gap among various levels of the movement through effective communication and strategic networking.

- 2. E The Principles of Working Together affirm the youth as full members in the environmental justice movement. As such, we commit resources to train and educate young people to sustain the groups and the movement into the future.

PRINCIPLE THREE: BUILDING RELATIONSHIPS

- 3. A The Principles of Working Together recognize that we need each other and we are stronger with each other. This Principle requires participation at every level without barriers and that the power of the movement is shared at every level.
- 3. B The Principles of Working Together require members to cooperate with harmony, respect and trust—it must be genuine and sustained relationship-building. This demands cultural and language sensitivity.
- 3. C The Principles of Working Together demand grassroots workers, organizers and activists set their own priorities when working with other professionals and institutions.
- 3. D The Principles of Working Together recognize that community organizations have expertise and knowledge. Community organizations should seek out opportunities to work in partnerships with academic institutions, other grassroots organizations and environmental justice lawyers to build capacity through the resources of these entities.

PRINCIPLE FOUR: ADDRESSING DIFFERENCES

- 4. A The Principles of Working Together require affirmation of the value in diversity and the rejection of any form of racism, discrimination and oppression. To support each other completely, we must learn

about our different cultural and political histories so that we can completely support each other in our movement inclusive of ages, classes, immigrants, indigenous peoples, undocumented workers, farm workers, genders, sexual orientations and education differences.

4. C The Principles of Working Together require respect, cultural sensitivity, patience, time and a willingness to understand each other and a mutual sharing of knowledge.
4. B The Principles of Working Together affirm the value in our diversity. If English is not the primary language, there must be effective translation for all participants.

PRINCIPLE FIVE: LEADERSHIP

5. A The Principles of Working Together demand shared power, community service, cooperation, and open and honest communication.
5. C The Principles of Working Together demand that people from the outside should not come in and think that there is no leadership in the grassroots community. The people in the community should lead their own community and create legacy by teaching young people to be leaders.
5. D The Principles of Working Together demand that people from grassroots organizations should lead the environmental justice movement.
5. B The Principles of Working Together demand accountability to the people, responsibility to complete required work, maintain healthy partnerships with all groups.

PRINCIPLE SIX: PARTICIPATION

6. A The Principles of Working Together demand cultural sensitivity. This requires patience and time for each group to express their concerns and their concerns should be heard.
6. B The Principles of Working Together require a culturally appropriate process.
6. C The Principles of Working Together have a commitment to changing the process when the process is not meeting the needs of the people. The changes should be informed by the people's timely feedback and evaluation.

PRINCIPLE SEVEN: RESOLVING CONFLICTS

7. A The Principles of Working Together encourage respectful discussion of our differences, willingness to understand, and the exploration of best possible solutions.

7. B The Principles of Working Together require that we learn and strengthen our cross-cultural communication skills so that we can develop effective and creative problem-solving skills. This Principle promotes respectful listening and dialogue.
7. C The Principles of Working Together affirm the value in learning strengthening mediation skills in diverse socio-economic and multicultural settings.

PRINCIPLE EIGHT: FUNDRAISING

8. A The Principles of Working Together recognize the need for expanding sustainable community based avenues for raising funds, such as building a donor base, membership dues, etc.
8. B The Principles of Working Together oppose funding from any organization impacting people of color and indigenous communities. In addition, the Principles oppose funding from any organization that is the current target of active boycotts, or other campaign activity generated by our allies.
8. C The Principles of Working Together encourage larger environmental justice organizations to help smaller, emerging environmental justice organizations gain access to funding resources. We encourage the sharing of funding resources and information with other organizations in need.

PRINCIPLE NINE: ACCOUNTABILITY

9. A The Principles of Working Together encourage all partners to abide by the shared agreements, including, but not limited to, oral and written agreements. Any changes or developments to agreements/actions need to be communicated to all who are affected and agreed upon.
9. B The Principles of Working Together encourage periodic evaluation and review of process to ensure accountability among all partners. Any violation of these agreements or any unprincipled actions that violate the EJ principles, either:
1. Must attempt to be resolved among the partners
 2. Will end the partnership if not resolved
 - AND
 3. Will be raised to the larger EJ community

Respectfully submitted by the Principles of Working Together Working Group
October 26, 2002

"Principles of Working Together"

Adopted at the
Second People of Color Environmental Leadership Summit
Washington, D.C.
October 26, 2002

**This and other environmental justice documents can be
downloaded from: www.ejnet.org/ej/**

Appendix E

Discourse Data Table

Environmental Improvement Board
No. EIB 05-07 (R)
Discourse Samples

Page	Actor/s	Text	Analysis
NMED testimony begins			
13	Ad. Ron Curry, NMED	"But I think it is important to say that the issues that were discussed during this process by all the parties were given in good faith, they are heartfelt."	Positive-Presentation
13	Ad. Ron Curry	"But I want to compliment everyone who sat around the table a number of times and the times that I had the opportunity to sit with them with the efforts that they made, because they were making it for the betterment of the state of NM for all the citizens."	Positive-Presentation
13	Ad. Ron Curry	"One of the most interesting items that you will be making history with is the provision that relates to environmental justice, and it relates to the governor's executive order which was signed in November of last year in Las Cruces, New Mexico."	Making history – provision of EJ and related to Governor's EO
14	Ad. Ron Curry	"This is historical for the state of NM, and it's historical for the Environmental Department, and I think what you all do through your deliberations will send a message and set the tone for what many other state agencies do."	Historical for state and NMED
14	Ad. Ron Curry	"But I urge you to Listen closely, I urge you to listen to a lot of different points of view. And I ask you to make a decision based upon, obviously, what you hear."	Positive Self-Presentation: Urge you to listen closely, to different points of view, make a decision on what you hear
21	Mr. CN, NMED	"And I do want to say that the Department worked very hard in preparing these regulations. We believe that they're technically sound. And with respect to the environmental justice provisions, we have met many times with many parties, and we believe we've come up with something—while not a consensus entirely, we believe we've come up with something that's very balanced and fair."	Excuses, moves of defense, positive self-representation, self-censorship "Balanced and Fair" (Abstract Liberalism)

		I hate to use those words, fair and balanced, in a state agency."	
25	Ms. AAM, SWB	Explains process: "The Bureau has undertaken a significant public outreach effort, starting with the release of the draft in June.... mailed out 1000 announcements...100 e-mails..." Lists who was contacted: "local and governed officials, business persons, operators of facilities including landfills, transfer stations and recycling facilities, professional associations, community groups, engineers, nonprofit organizations and interested individuals."	Positive Self-Presentation, moves of defense Very scripted between Ms. AAM and H.O. Probably first time they had sent out too many announcements. Refers to first attempt at revision in 2002 – 3 meetings (Las Cruces, SF, Roswell). In summer of 2005 held 4 hearings in (Alb., SF, Las Cruces & Artesia). 5 th one at request of Secretary (Curry). Talks about all the numerous meetings that have been held with stakeholders in this process. Precisely because of community involvement and an empathetic Secretary. Community groups almost at end of list.
30-32	Ms. AAM	Gives reasons for revisions and states that EPA has no problems with what they have proposed. "The revisions as proposed seem reasonable and appear to render the rules no less stringent than the federal requirements..." List of reasons: need for consistency with new federal regulations, technological advances in engineering and products, alternative landfill design, incentives for new points of entry.	Mostly technical, scientific and legal Denial Positive Self-Presentation Face-Keeping
32	Ms. AAM	"We also would like to incorporate, and it is with pleasure that we incorporate, environmental justice provisions to ensure greater community participation and consideration of community impacts during solid waste facility siting and permitting processes."	Positive Self-Presentation
46	Ms. AAM	"Landfills cannot be sited in a 100-year floodplain, within a historical or culturally important site or a critical habitat area for endangered species."	
53	Mr. CN	"I would like to reserve the right to call Ms. Ashley-Marx back to discuss some maps that we may discuss during the EJ – environmental justice testimony. ..."	
77	Mr. GA, NMED	"This section differs from the current regulation in that the proposed length of time that the special waste may be in storage prior to disposal or treatment has been increased from 45-90 days, in part due to a request from the regulated community."	Naturalization of entitlement Special waste may be in storage 45-60 days before being treated
78	Mr. GA	"I would point out that Subsection F includes the requirement to have warning labels on all containers of regulated asbestos waste	Positive Self-Presentation

		and that such labels must be printed in both English and Spanish.”	
79	Mr. GA	“In response to a request from the regulated community, I respectfully request that the Board allow a change to Subsection J, paragraph (2), on page 81, in which the second sentence is replaced and shall now read “the sign shall read as follows in English and other languages as approved by the department.”	Moves of Defense, Mitigation English and other languages as approved We wanted “appropriate languages of region” Differentialized Racialization
79	Mr. CN	“Actually that was a request by the environmental justice community; is that correct?”	Mitigation, Reversal
79	Mr. GA	“I believe it was. Yes, sir.”	Positive Self-Presentation
85	Mr. EH, NMED	“Some modifications require only NMED approval, however, industry could not appeal: “A landfill operator can come in now and say, “We want to use a tarp,” and the Department can approve such a thing under the regulations. However, if we deny it, there’s no appeal process --this new proposed language would allow for an appeal process.”	Another concession to industry.
85	Mr. EH	Addresses small landfills who are allowed more leeway: “Under this section, small landfills, that is that accept less than 20 tons of municipal waste per day, are not required to have a liner. This is consistent with the federal regulations.”	
87	Mr. EH,	Addresses how NMED picks up half the costs of the permitting: “We also added a provision in this section stating that the permit applicant must pay one half of the cost for court reporting services, one half of the cost for any translation or interpretation services, one half of the cost of attaining a venue for a permit hearing. The Department believes that one half of all of these costs should be borne by the applicant for a solid waste facility permit.”	Positive Self-Presentation
120	Ms. MD	Introduction: “...I’m the environmental justice liaison.”	
120	Mr. CN	“In reference to pre-filed testimony “And that testimony has attached to it the environmental justice excerpts from the Solid Waste Regulations; is that correct?”	EJ
120	Ms. MD	“Yes, it does.”	
121	Ms. MD	...My position is a new position with the department. It’s Department-wide, and it’s housed in the office of the Secretary, and I’m responsible for all aspects of environmental justice, from serving	

		<p>as resource for the different various bureaus to developing and implementing an environmental justice program as the Department move forward.”</p> <p>(After being asked “What was your involvement with the Solid Waste Regulations?”): “I’ve been working on the Solid Waste Regulations, and in particular the EJ provisions that are before you now, since I began my work with the Department on July 25th, 2005.”</p>	
122	Ms. MD	<p>“...In particular there’s four areas that my work was concentrated in. The first is the many, many months of meetings with all of the many different stakeholders. Two was assessing and reviewing all the the many comments that the Department received. And three, researching those comments to try and get greater information as to why there were presenting those comments and how we could or could not consider them. And finally, in the drafting and redrafting of the provisions to what is now before you.</p>	<p>NMED Goals with respect to EJ</p> <p>Early and Meaningful Participation “many months of meeting with all the many different stakeholders.”</p> <p>Positive Self-Presentation</p> <p>Defensive moves</p> <p>Euphemism: all of the many different stakeholders</p>
122	Mr. CN	Ms. Day, what are the goals of the Department with respect to Environmental Justice?	
122-123	Ms. MD	<p>“...the first one was to address EJ in a thoughtful manner. We really did try to balance all the many diverse stakeholders’ comments that were before us, whether verbally in a meeting or in written comment form. And we really tried to reach consensus. And then secondly, we tried to make provisions that really engage the – everyone from the state ‘Environment Department to the local government people to the citizenry in general, so that we could actually collaborate and have a process so everyone could actually communicate, participate in a meaningful way.”</p>	Positive Self-Presentation
123	Mr. CN	“Ms. Day, how do the proposed provisions in the Solid Waste Regulations address environmental justice generally?”	
123	Ms. MD	“Generally speaking, they give the agency and the communities, local governments, all of us greater capacity to assess and evaluate how the siting of a facility in a community may impact all of us.”	Positive Self-Presentation

123	Mr. CN	"Okay."	
123	Ms. MD	"Is that all right?"	Insecurity; transfer
123	Mr. CN	"Yeah. Okay. I'd like to refer the Board to the exhibit behind her testimony there in tab G, and that shows what ... excerpts from the regulations where those provisions that relate primarily to environmental justice."	
124	Ms. MD	"Yes. The first thing the applicant actually needs to do is to determine if they're in a vulnerable area."	VA
124	Mr. CN	"And can you tell us how vulnerable area is defined?"	Definition
124	Ms. MD	"Yes. If you refer to my excerpt behind tab G, we actually have several definitions that will help you with that. And you asked for the definition of a vulnerable area, sir?"	
124	Mr. CN	"Vulnerable area."	VA
124-125	Ms. MD	"Okay. There's actually three criterion ... The first criterion is the area, the area of study, which is actually a four-mile radius... the area has to have a percentage of economically stressed households greater than the state percentage based upon the most actual recent US census data within a one square mile or within that four-mile radius surrounding the facility or proposed facility... The next criteria...excuse me...actually relates to population and density. It say that the area must have a population density of 50 people or more within the... any square mile within that four-mile radius. And then (c), the last criterion, says that the area must have within it three or more regulated facilities."	Definition of Vulnerable Area Denial Erasure
125	Mr. CN	"...a four-mile radius encompasses 50 square miles? ...if a proposed facility is in a vulnerable area, what does the applicant have to do?"	

125-126	Ms. MD	"If the applicant is in a vulnerable area, there is actually a provision that then asks was there a local government quasi-judicial process."	
126	Mr. CN	"And that would be again...it would have to prepare community impact assessment unless it meets one of two exceptions?"	
126	Ms. MD	"If...if there...well, there...yes. There's actually two exceptions to this, and I just shared with you the first one."	Doesn't answer
126	Mr. CN	"Okay. So if it's within a vulnerable area...I just want to clarify for the Board... the applicant would have to prepare a community impact assessment unless it meets one of two exceptions; is that right?"	Clarifies for Board as well as Mary Day
126	Ms. MD	"Correct. If you're not in a vulnerable area, you don't need to prepare a community impact assessment at all."	
126	Mr. CN	"All right. Thank you."	
126	Mr. CN	"Can you describe the first exceptions, please?"	
126-127	Ms. MD	"Yes. The first exception is the local government quasi-judicial process. And we have a definition that may help in this. It's a term that was negotiated amongst many of the stakeholders who will testify later, and it's a term that describes the local government process. That includes a public hearing. That allows for notice to be reasonably calculated to reach, you know, the people interested in the subject matter. It affords that all people with significant interest in the proceeding or parties have an opportunity to present their views, as well as to cross-examine other parties, and other interested individuals also have the opportunity to state their views at that time. Testimony is oftentimes taken under oath or affirmation and will be included in the record of the proceedings by that local government."	

127	Mr. CN	"So just to make sure I understand it correctly and the Board understands correctly, if the solid waste facility applicant has undergone a local land use zoning procedure that uses a quasi-judicial proceeding, that would be one of the exceptions under which it would not have to prepare community impact assessment."	
127-128	Ms. MD	"Correct." ...And it reads, "The proceeding must consider whether...whether the facility at issue would result in a disproportionate effect on the health or environment of a particular socioeconomic group or in an unreasonable concentration of regulated facilities."	Leaves out race
128	Mr. CN	"And the purpose of that is to make sure that if a landfill qualifies for the exception, that the local government actually considered environmental justice issues in the proceeding."	Abstract liberalism; Minimization of Racial Matters; Positive Self-Presentation; Mitigation; Excuses; Denial
128	Ms. MD	"Yes." "Would that be right?"	Asks for affirmation a second time Transfer
129	Mr. CN	(Nods head.) "Okay. ...How would the second exception work?"	
129	Ms. MD	"The second exception actually calls for a community meeting. At the community meeting, the applicant ...if ...if the applicant first has been determined that they're in a vulnerable area and that, no, they have not...the community has not gone through a quasi-judicial process, then the applicant needs to hold a community meeting. And at the community meeting, the question is asked to the community members there if there is significant opposition to the siting of the landfill."	Scoping meetings
129	Mr. CN	"...And they are given 30 days to file any opposition?"	
129	Ms. MD	"Yes. And after that meeting is over, then the community actually has 30 days in which time they can make their...their opposition known."	Positive Self-Presentation

129	Mr. CN	"So if nobody...if, as a result of that meeting and subsequent comments, it's determined that there's no significant public opposition by the Secretary, then that landfill applicant would no longer have to go through the community impact assessment?"	
130	Ms. MD	"That's correct. They do not have to."	
130	Mr. CN	"Now, assuming the landfill applicant does not meet either of those two exceptions, and it's in a vulnerable area, what's the next step that it has to take? ... Assuming that it does not meet either of the two exceptions and there is significant public opposition, because there is significant public opposition..."	
130	Ms. MD	"...then there is a provision in here that says that the Secretary shall require a community impact assessment."	
130	Mr. CN	"Okay. And can you describe that process, please?"	
130-131	Ms. MD	"Yes. The community impact assessment really is the bulk of these EJ provisions. And one of the first things, again, is to hold a meeting with the community. And we're calling that meeting a "scoping meeting." At that meeting, the applicant set forth the items that you have as a part of that assessment...there's nine broad areas...and list them out, ask the community member if there are items within what we've asked for the assessment to be, if there should be something that should be elaborated on, or if there's something that's missing from what we have there, and they would like something else in addition to what we've already asked be assessed, to also be included in this assessment. "...So after this first scoping meeting with the community occurs and the applicant gathers all of the information, the concerns, additional things that should be addressed, or elaborated on, they actually go back and start to prepare that community impact assessment, they draft it out. And when the draft assessment is near completion, they'll take that draft document back to the community again. We're calling it a	

		preassessment meeting just because it's still prior to the finalization of the document."	
132	Ms. MD	<p>"And the applicant shares that draft document with the community, goes over those nine broad areas, and asks again are there additional concerns that we need to address, the applicant needs to address, have we addressed what you raised in that first scoping meeting sufficiently, or do we need to do further work. So it's another opportunity again to engage, you know, the applicant with the community and take...the applicant then takes those comments again from that second meeting, incorporates what they can and what they feel is valid into that draft document. After 30 days...again, the public can comment during that 30 days, but after the 30 days, the draft document becomes a final document, and all of those community comments from the very beginning through that pre-assessment meeting are summarized in that last broad area, summary of comments. And at that time, it's submitted to the Department."</p>	<p>Positive Self-Presentation; Mitigation</p> <p>This is a new thing that we did not fight. That is another pitfall for communities. If they don't show a "significant interest" than this can be assumed that everything is fine and the permitting process is approved as per regulations. This is important as industry and government both support Sec. discretion to approve but resist regulations to deny.</p>
132-133	Ms. MD	"Well, the purpose is it gives the decision-makers valuable information that we previously didn't have, such as being able to really assess what the community cares about, what impacts there may be. It discusses the mitigation measures. It talks about the cumulative impacts. And again, it provides a place for all the comments to come into one document."	Notice only went out to those who had had an interest in the past.
133	Mr. CN	"...What demonstrations under 201 E must the applicant in a vulnerable area make?"	
133	Ms. MD	"There are actually two demonstrations that the applicant needs to make. They actually have the burden to demonstrate that the landfill will not have a disproportionate effect on the health and environment of a particular socioeconomic group in the vulnerable area, and that , two, the siting of the facility will not result in an unreasonable concentration of regulated facilities in that vulnerable area."	
134	Mr. CN	"Can you describe what notice is required of the landfill applicant?"	
134-	Ms. MD	"Sure. The—and I'd like to say that these noticing requirements	

135		<p>apply to all applicants. Beginning with G. (1), they need to be provided by certified mail to owners of record. And within a certain distance of the facility, depending on the type of county that it's – that it's in, or proposed to be in. They need to go—be provided to all parties and interested participants of record of a permit modification or renewal...</p> <p>They need to be provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of that territory of the county, municipality and Indian tribe or pueblo is within 10 miles of the property in which the facility is proposed to be constructed, operated or closed. To be provided to all parties and interested participants of record. To be published once in a newspaper of general circulation within each county where the facility is proposed to be...and this notice needs to appear in either a classified or legal advertisement section of the newspaper and at least one other place in the newspaper calculated to give general interest—the general public the most effective noticing.</p> <p>And that it also shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members in each community, and where printed shall be printed in both English and Spanish."</p>	<p>Language (Spanish, English)</p> <p>Euphemism</p>
136	Mr. CN	"It also has to be posted?"	
136	Ms. MD	<p>"Yes. It has to be posted in at least four publicly accessible and conspicuous places. It needs to include the name, address, telephone number of the applicant and contact person, the anticipated start-up date of the facility or modification and planned hours of operation...It needs to include the anticipated origin of the waste. And it needs to have a statement that public comments regarding the application should be provided to the applicant and to the Department."</p>	Positive Self-Presentation
136	Mr. CN	"If a landfill is in a vulnerable area and must prepare a community impact assessment, how will the Secretary take all this information	

		in consideration?"	
136-137	Ms. MD	<p>"The Secretary will consider all the information in the community impact assessment and any demonstrations made pursuant to Subsection F actually of 20.9.1.201 NMAC together with any information in the record and any decision to issue, to issue with conditions or to deny the permit."</p> <p>Again, even if it's not in a vulnerable area, the Secretary will consider any of the evidence brought forth about impacts on a community and will assure that the public health and welfare and environment are appropriately protected. And this is actually the Secretary's obligation under Colonias Development Council v. Rhino Development Services, a New Mexico Supreme Court case decided in 2005."</p>	<p>Secretary can still take into consideration other concerns such as the Rhino Decision orders</p> <p>Training for EJ managers and certified operators takes place once every 2 years.</p>
137	Mr. CN	"Are there any environmental justice provisions in the training regulations under these regulations?"	Positive Self-Presentation
137	Ms. MD	<p>"Yes. There's actually two separate provision, Section 601A and 602B.</p> <p>Section 601A requires that facilities require the managers to attend at least once every two years any training programs offered by the Department on the subject of environmental justice, and Section 601B requires environmental justice to also be a subject of training for certified operators."</p>	
138	Ms. MD	<p>"Yes. I'd actually like to ask the Board to please keep in mind that these environmental justice provisions that I just shared with you don't correct the environmental injustices that do exist here in the state, but what they really do is provide greater than ever opportunities for public participation and dialogue and engagement between the different entities, and they provide a clear, delineated process for addressing environmental justice within the regulatory framework here. I'd also like to say that these provisions provide the Secretary with greater, more pertinent information, valuable information, in any decisions to issue, issue with condition or to deny the permit. And finally, these provisions establish a precedent for state, for local governments, from elected officials to the citizenry, to include environmental justice planning principles when they do their planning and zoning efforts, and hopefully thus prevent some of the injustices from occurring in the future."</p>	<p>Positive Self-Presentation</p> <p>Excuses for past injustice</p> <p>Mitigation</p> <p>Face Keeping</p>

Interruption of NMED for testimony by the Municipal League & the New Mexico Association of Counties			
140	Mr. WF	"I'd like to start by saying that this is my fourth or fifth set of Solid Waste Regulations that I've dealt with.."	Positive Self-Presentation
141	Mr. WF	"I'm happy to tell you we're in support of the regulations as they are being proposed to you. The Department has worked with us, as well as other stakeholders have worked with us, and I think we're able to come up with some major areas of agreement."	In support Positive Self-Presentation
142-143	Mr. WF	"But this actually pinpoints it more and says in addition to the health, safety and welfare, focus a little bit on the environmental justice issues. We agree with that. So we think that process alone affords more –more opportunities for the community to be involved and more decision points in this whole process, rather than the community impact assessment process, which doesn't have as many opportunities for public hearing as the land use zoning system that's in place in our cities."	Positive Self-Presentation Face Keeping
143	Mr. WF	"So for us and our cities, all 102 cities, we have an opportunity to go through at least six public hearing processes before we make a decision on approving a special use permit so they can see that we fulfilled the requirements of the environmental justice issues, the health, safety and welfare issues, as well as the technical issues in the land use itself. So I think that's a significant way of handling the process rather than just a community impact assessment."	Positive Self-Presentation – Even though zoning is where injustice takes place.
144	Mr. WF	"...when a set...a rule or regulation is passed that imposes an additional service requirement or a new service requirement on a local government, that rule or regulation is not effective until the funding or means of funding those increases are given to those local governments. I raise it to you....to this Board because that's significant, because it's a possibility when we think things might become effective, the Constitution may say not effective yet, because there's funding requirements that may...may be necessary. We would like the Board to consider adopting a policy that talks about an economic and fiscal impact assessment..."	Funding for mandate
145	Mr. WF	"So we went to the—we went to the –well, first we filed suit, obviously, with the Department, because we had to get an injunction to stop it. Then we went to the legislature and said, "Here's your constitutional amendment. Help us here, because we need to implement these	Suit Constitutional amendment threat Moves of Defense

		<p>rules and regulations.”</p> <p>And they gave us an environmental services gross receipts tax that went specifically to landfills to implement those. ...</p> <p>If we could short-stop the court side of that issue, and if you could have a... if you could have the analysis done as you’re developing the regulations, I think we could see the impact on our local governments, and we could see if the impact is so great that somehow we need to propose some way of funding those.”</p>	
146-147	Mr. WF	<p>“...I also wanted to know if you had a copy of the Governor’s Environmental Justice Executive Order...</p> <p>We were actively involved as an organization in the development of the environmental justice provisions. We helped set up the initial hearings around the state. We served on the policy committee for environmental justice, fully supportive of the process.</p> <p>We think, you know, that these proposed sets of regulations you have in front of you implement the Governor’s executive order as it pertains to environmental justice. It defines vulnerable areas so we know where –we know where the populations are. It gives access and hearing access that is unprecedented before.</p> <p>We think when you look at the executive order, compare the rules that you have in front of you, you’ll find that those two do not match. And that’s an important thing for us, because we</p> <p>We spent a number of—years or so working on those hearings on environmental justice... Positive Self Representation</p> <p>...we’d like you to adopt a policy for economic, fiscal impact in your regulations....</p> <p>I think, also, you may want to consider a template on the environmental justice process itself. We can foresee a number of sets of regulations coming forward that will contain environmental justice provisions.”</p>	<p>Excuses</p> <p>Face Keeping</p> <p>Positive Self Representation</p> <p>Moves of Defense</p>
148	Mr. WF	<p>“It would be good if we could develop a general template that you all can apply across a number of sets of regulations, and that way you could say these are common provisions that apply to wastewater or solid waste or—and the regulatory issues before you. Those are common...</p> <p>I’d like to return briefly to the zoning issues.</p> <p>The reason we support the land use zoning issue as opposed to just</p>	<p>Less protection template</p>

		the community impact assessment, as I stated earlier, gives more access to the community in general for public hearings, and more opportunity to comment, but it also does not duplicate work.”	
149-150	Mr. WF	<p>“...And I think that’s an important distinction, is to use the systems that are in place today and beef them up as we have with the quasi-judicial hearing process to consider disproportionate effect and all the environmental justice issues. We think that’s a very important thing to do...</p> <p>The proposal before you has a limitation of 250 feet, I believe, as a setback requirement, but it also maintains the ability of a local government to affirmatively act and offer something different that that if – if – if the information is brought forward and it an justify it. So it sort of balances both.</p> <p>But 250 feet is an arbitrary number, needs some kind of balance, because if it’s 245 feet, if it’s 247 feet, there might be – there may be geographical considerations such as land – land contours that may be affected, And things have to be taken into account.”</p>	
150	Mr. WF	<p>“...we had—I think it was over 200 landfills at the time. It was---most communities had their own...</p> <p>And a decision was we need o regionalize for – you know, to save money, to take the benefit of a larger scale operation, to professionalize the operation of those. And that was done. Now we’re down to somewhere around 60 landfills.”</p>	

151-153	Mr. WF	<p>"Some of the decisions you're going to make here as to what a vulnerable area is and –and what the distances are may again push out the landfill further. And when you do that, you increase the transportation costs. When you increase the transportation costs, you may increase the fees. The fees may increase the illegal dumping.</p> <p>We're really concerned about that. Because it's difficult for folks to put the stuff in their pickup truck and drive 140 miles and deposit it and pay an increased fee to do it. So we have to be careful with that. The other – the other issue you have with that – that goes along with distances is the encroachment issue...A lot of our landfills were sited a good distance from any community. And when we did that, we thought, wow, that's pretty far from any group – population group. What happens with that, though, is we develop transportation routes to that landfill. Now you have electricity and the stuff that you would think for infrastructure. When you do that, development tends to occur along these routes....</p> <p>...And when it does, who does it impact mostly? It impacts the same communities we're trying to help, those who don't have the economic means necessarily to bear the increased costs or the increased distances..."</p>	<p>Threats</p> <p>Excuses</p> <p>Mitigation</p>
156-157	Ms. GD	<p>"I really appreciated your testimony, giving us an overview, and I also believe it's a good idea to ask for that fiscal impact report to be done. And if you wouldn't mind, in a summary form, stepping us through the economics of your field What I understand, and it may be wrong, the generators generally, whether it's an individual at home or a business or – or somebody running a big greenhouse that has a bunch of, you know – a lot of material, it's almost gree. They have a tipping charge. But what – first, please summarize for me the economics of this system and where the costs are currently borne."</p>	<p>Positive Self-Presentation</p> <p>cost</p>
160	Mr. KM	<p>"Would – in case – in the illustration that you used there about going up on the – increasing the fees because of the distance to the regional landfills, is that a –can that be construed maybe as an environmental justice? Does that get into that realm somewhere? Because if you're increasing the costs to the –to the people that you've got—like you alluded to that really can't afford to do that,</p>	<p>Same people</p> <p>Euphemisms</p> <p>"People you alluded to..."</p>

		besides increasing it in the illegal dumping, then maybe you're going to have some—maybe that is an environmental justice thing. Did that come up in any of these discussions about the environmental justice things?"	Mitigation
161	Mr. WF	"...you know, the same people we're trying to help and have access to the system and not give a disproportionate effect on them are directly impacted if we increase the costs... those very same groups would be affected if we increased the costs whether it's for transportation or whatever it is. Yes. They would be—they would be affected by it and it had come up in many hearings with us."	The same people we are trying to help "Those very same groups" Euphemism
161	Mr. KM	"...And is it—is this quasi-judicial process—is this part of the normal zoning process, too?"	
162	Mr. WF	"That's a very good question. It is not. This is a new addition to the zoning process. When—when a special permit is applied for, we would—we would have and conduct a quasi-judicial hearing process specifically to address the hearing issues, plus environmental justice issues to be a new hearing that's not been done before. It's an additional hearing, gives us...gives everybody any opportunity to get more on the record, and especially if it's—especially if the zoning decisions were made five years ago, and they said, "Well, I can site a landfill over there," and then say, "Okay, come in and get a special use permit, you'll have a hearing." But the way these are being proposed to be amended, it allows—it says we must consider the environmental justice at the hearing. And that's new, and we support that."	Positive Self-Promotion
163	Mr. WF	"So rather than do it twice, we recommended to the Department that if there is a zoning process in place, use that, collect the information that's necessary, make the judgment call when the permit is filed. "	
163	Mr. KM	"In your opinion, does the proposed regulations that are out here today follow the Governor's Executive order on environmental justice?"	Face-keeping Move of Defense

163	Mr. WF	<p>"Thank you. I had an opportunity to review the executive order this morning, as a matter of fact, to make sure that my understanding of the rules and the executive order -- I understood both sides of those, and in my opinion, it does.</p> <p>It does fulfill the Governor's executive order on taking into account effects on communities of color, socioeconomic effects and the designation of vulnerable areas. Both those --all that together are taken care of in the regs."</p>	<p>Minimizaion of Racial Matters</p> <p>Denial</p> <p>Postive Self-Representation</p>
164	Mr. WF	<p>"...like the first time, where we're consolidating and building regional fills and the cost was well over \$50 million, there was no way to raise enough fees that wouldn't cause the problem we talked about as a consequence of illegal dumping.</p> <p>So we asked the legislature for a tax, a special tax to spread that among the entire community and pay for it that way."</p>	Move of Defense
165	Mr. WF	<p>"We think that—what we can see right now, from a –without a – without a fiscal impact statement being developed by a third party, which it hasn't been, we think that the cost most likely will be able to be borne either through cost savings in the landfill or increases in fees, but not to the point where they would cause the problem we talked about.</p> <p>If our experts come back and say "Wait a minute," we would then tell you—we'd come back and tell you all that we have a problem and we will be filing with the legislature to take care of this."</p>	
166	Ms. GD	<p>"The only comment I have...is this fine line or area between— increasing fees, you say, can also increase illegal dumping.</p> <p>And also, I believe that true costs do need to be borne as we learn more and that it can also encourage less waste generation either at the individual or business level and entrepreneurial solutions to waste, because I understand through the earlier testimony we only reuse and recycle 10 percent of our waste, which is below the national average."</p>	Misrepresentation
166	Mr. WF	<p>"We haven't done as well as we thought we were going to do when we passed the act."</p>	
167	Mr. WF	<p>"...In Europe, I believe, they're putting new taxes on all of the environmental issues, taking it off of income tax, as a way of – as a way of giving relief....</p> <p>--to transfer some of the taxing systems to that to encourage the</p>	

		waste stream not to be as large as it is. I wish we could have met the initial goals of the Solid Waste Act, which we haven't. But I don't know how to get there easily, either."	
169	Mr. DM	"It's nice to hear your version of what happened with the Solid Waste Act. I remember that."	Challenge to mis-information
169	Mr. WF	"[Mr. DM], that's correct as far as the household mandatory fee structure. But where you have the voluntary tipping fee, where people use their own vehicles to take stuff to the solid waste facility, if the fees got too high for that, they would discourage that, not all of those are household pickups."	
170	Mr. DM	"Fine. Also, in connection with the same issue, you mentioned on the one hand possible problems from solid waste facilities being located at large distances from urban centers, but then you also mentioned a problem about encroachment on those facilities. Don't those two things contradict each other?"	
170	Mr. WF	"[Mr. DM], I don't think so. I think they're compatible, as a matter of fact. We generally locate facilities at a pretty good distance from that. WE are not back in the 1950s, when everybody had one close to them, and we used to call them dumps back then, but we're not there anymore. So when we regionalized, we moved away from the population centers. All you have to do is look around the state and watch the population grow. And as they grow out, that—that could be considered encroachment on that landfill. So that's what we meant by encroachment."	Positive Self-Presentation
170-171	Mr. DM	"I understand. In a way, however, encroachment on the landfill solves your first problem of the landfill being too far away from people doesn't it, at least as to the people who are encroaching? Presumably, if they have to drive their waste to the landfill, they're not going to be faced with the same problem of—I think you used the example of driving it 140 miles."	
171	Mr. WF	[Mr. DM], I wish it were that simple. ...You know, and it really isn't.And it's not just the landfills. It's airports, it's wastewater treatment plants, it's...it's public facilities that when they grow up to it, all of a sudden there's an airplane going over that makes noise,	Patronizing and condescending Move of Defense Mitigation

		<p>my gosh, there's noise there.</p> <p>If you encroach out to where the landfill is, gosh, there's a landfill out there.</p> <p>We didn't purposefully want you to have a problem, but to the effect that there might be a problem, it would be caused by the encroachment on that facility itself."</p>	
172	Mr. DM	<p>"...It seemed to me –I thought I heard you say that you did not anticipate having to go to the legislature for additional funding such as the funding that was required after the enactment of the 1993 regulations in order to address these regulations.</p> <p>Did I hear that correctly?"</p>	
172	Mr. WF	<p>"Yes. Let me probably state it a little clearer, if I didn't state it clear enough the first time. I thought I was saying we were not invoking the constitutional provision on this set of regulations and, therefore, having to go to the legislature to do it.</p> <p>I did not say that I would not go to the legislature and ask for funding for local governments to take care of a problem, but I would not be invoking the constitutional provision to do that."</p>	
172	Mr. DM	<p>"I would never ask you not to go to the legislature to obtain funding for local governments."</p>	
173	Mr. CN	<p>"[Mr. WF], regarding the setback for transfer stations. I believe that's found at Section 305B in the regulations.</p> <p>Could you look at that section please?"</p>	
173-174	Mr. WF	<p>"Certainly. It says, "Within 250 feet of a permanent residence, institution, school, church, or hospital, that existed at the time the transfer station Permit application was submitted, unless the applicant demonstrates that a shorter distance has been affirmatively approved by the local government."</p>	
174	Mr. CN	<p>"...Are you opposed to that language, or can you...live with that language?"</p>	
174	Mr. WF	<p>"[Mr. CN], not at all. I think that gives us some flexibility to be less than 250. I just always—when we put arbitrary numbers in—in statutes or rules that are difficult to change. So the way it is today, I believe it's currently set by local government without a numerical figure. And all I was saying was perhaps that's the best solution. But this does give us a way of getting around the 250 and siting it at</p>	<p>Positive Self-Presentation</p> <p>Face Keeping</p> <p>Moves of Defense</p>

		245 or 200 if we need to. So we would support that the way that's – that is worded."	
174	Mr. CN	"And with regard to the constitutional issue you raised, did the Department prepare a cost estimate for you and the Association of Counties?"	
175	Mr. WF	"Madam Hearing Officer, Madam Chair, yes. You did have an internal document prepared that showed the estimate cost, both pluses and minuses, and it was an excellent document, done very well in a very late request, and we appreciated that."	
175-176	Author	"No. Definitely not about your delivery although I would just like to say that in terms of the constituencies that I represent, many times because of the resources and the fact that many times we have not been at the table, we can't talk about a long, illustrious history in terms of experience with solid waste regs. And that's not a very sexy issue anyway, right? Solid waste regs. I'm a teacher, and when I tell people I'm working on solid waste, everybody just kind of looks at me...."	Legacy of experience and friends
176	Author	"...Do you know how many counties or municipalities in the state have zoning?"	
176	Mr. WF	"...as far as cities go, two-thirds of the 102 have zoning in place. They're – some of our smallest ones do not."	
177	Mr. WF	"...in order to have zoning in place, you must have a comprehensive plan. That requires public hearings, as well. Then you have to have a land use plan to – in order to zone your community. That has public hearings, as well. And then you have a special use permit if you're going to go apply specifically for a landfill application. That would have a hearing, as well. The quasi-judicial one that's in this set of proposed regs is in addition to all of that. This is another hearing on top of that to make sure that we consider the community's impact and, as it's being proposed today, consider the environmental justice issues."	Positive Self-Presentation Mitigation
178	Author	"....the quasi-judicial hearing would be the only alternative available to them? And would that be ---that would be directed by the State, by the regulated facility or by the County then?"	
178	Mr. WF	"Okay. What triggers it in the area of solid waste is you – you need to get a permit from the local government. And if that local	Positive Self-Presentation

		government has zooming in place, which would designate areas of the community for certain specific uses - if it has it in place, and a landfill is permitted under, say, industrial commercial, and they apply for land use, then they have to apply for a special permit. That requires a normal hearing. But on top of that, the, that would trigger the quasi-judicial hearing, as well, to consider the environmental justice impacts."	
178	Author	"Well, what would happen in a situation where there's a problem with the local zoning situation?..."	
178-179	Mr. WF	"The quasi-judicial hearing process set forth in these regulations applies to the - to the expansion of the landfill or the permitting of a new landfill. As to whether or not there are problems with zoning in general in a local government, you would have to petition that local government for a hearing."	
179	Author	"Madam Hearing Officer, I—Author, I think what would happen if they didn't conduct one and they were required to conduct it, when they submitted—the applicant submitted the permit application to the Department, the Department would look for that as part of the checklist and say, "Where's your hearing?" And kick it back for them to conduct a hearing."	Felicia explains for the Municipal League
181	Author	"...In terms of the Constitution and the issues that you were bringing up, is this enforced 100 percent? Does the legislature usually make sure that the Constitution is followed on—in most acts that is passes?"	
181	Mr. WF	"...I would like to say yes, but probably the answer is no...They would then file a lawsuit and say, "Stop the regulations, it's not effective until funding is being provided."	Face Keeping
182	Author	Contrasting the above with her experiences with unfunded mandates as an educator: "...many times we have unfunded mandates, and especially with ... no child left behind and the testing situations in the State of New Mexico. I was wondering what the percentage of times that this issue or constitutional point gets raised, because I—as a teacher, I would definitely like for people to raise it when it comes to education."	

183	Mr. WF	<p>"It's a very specific written constitutional provision for cities and counties. And it does not apply to legislative acts. It only applies to a rule or regulation adopted by an agency, but not a law passed by the State, unfortunately. I wish it did apply to all the laws, too.</p> <p>...I suspect some of it goes by the wayside. If the costs are very small, and costs are not big enough to – to go through a lawsuit and then legislative session to do that, they may not invoke it.</p> <p>But I think it gets invoked when the costs are extensive. And each time it's been expensive, we've actually invoked. We've only done it once."</p>	
184	Mr. WF	<p>"...the issue of encroachment...what specifically comes to mind is airports...when the airport was established, it probably wasn't close to downtown. But after a number of years, people have moved out there, and then the plans are still landing, and it gets noisy, so they then file a complaint with the local government and say we need to do something about the noise. Well, that was not an issue when they built the airport, and it became an issue as people moved out towards the facility. And I suspect landfills are in that same category."</p>	
184	Author	<p>"...and looking at unintended consequences, again, my experience as a teacher, I used to teach at Rio Grande High School, and when the flight patterns of Albuquerque air – airport were rerouted, they were routed over the South Valley area of Mountain View, which just adds to the cumulative impact..."</p>	
185	Author	<p>"...In terms of the community impact assessment, we've raised a lot of issues about the costs of that.</p> <p>And in terms of the definition of what makes up a vulnerable community, is not that information pretty much easily accessible through the census data in the internet and GIS mapping and those kinds of databases?"</p>	CIA Costs
185	Mr. WF	<p>"...to complete a community impact assessment, there's been estimates that I've heard, in the meetings I've attended, from as low as \$30,000 to as high as hundreds of thousands of dollars.</p> <p>....They would be charged to do that by the consulting firm.</p> <p>And that's where the costs come in, because not every local government has a technical staff necessary to do that."</p>	Mitigation

190	Mr. PD	"And you understand there's proposals to substantially change the definition of vulnerable area that will be presented to this Board, correct?"	Vulnerable area
190	Mr. WF	"...if that definition is changed, and it changes substantially and increases the costs to local governments, then I would then o back to this and say we may have to go to the legislature and do this." So it's based right now on the definition of vulnerable area, not on expansion of that definition."	reversal
192	Ms. DH	"In the testimony and in this transcript, it says that in some of the prior drafts of the regulations the Department included race, R-A-C-E, race, as factor to be used for vulnerable areas on the advice of legal counsel. We have removed – that means the Department removed—race as a factor. And the Department does not believe that the regulation will suffer as a result of pulling R-A-C-E, race, out of the regulation. Is that right?"	Removal of R-A-C-E Minimization of Race -
192	Ms. MD	"Yes. That's correct."	
192	Ms. DH	"...Could you give me rationale as to why?"	
	Ms. MD	"Legal counsel may have to assist me in answering this, but there's actually two United States Supreme Court decisions that legal counsel researched in making that determination. And originally, the Environmental Protection Agency also included race as a factor, and it was, probably just at the very end of 2005, decided to exclude –to exclude race as a factor also based on those two United States Supreme Court decisions. So our legal counsel researched that, as well, and made that determination."	Asks for help of Counsel Positive Self-Presentation Cites Supreme Court Cases and EPA after 2005 which is not true Face Keeping Abstract Liberalism
193	Ms. DH	"...And then we've got handed the Governor's executive order, and it was different than an executive order that I read a long time ago, that talked about people and minority communities and disenfranchised communities and that they wouldn't incur a disproportionate share of the problems and so –okay. I understand."	Lawyer made decision not EJ Director EO have race and minority, etc.
206-207	Ms. KB	"At the last meeting – the last two meetings ago, there was a discussion about Spanish and English...and I notice today that some of these say like the placard had to be in English and Spanish, the	Language Mitigation

		publication in newspapers, which is a good thing...but we also talk about other languages. Is there - has there been some attempt made on this new regulation that all notices to the public be made in English and Spanish?"	Differential Racialization - Language
207	Ms. MD	"The executive order that you have before you says in English and Spanish and another appropriate - pertinent language. But I think in moving forward in this, we recognized that a majority - we actually are a majority minority state, where a majority of the population here is comprised of a minority, the Hispanic people, the American Indian people, primarily. And also recognizing that a lot of the indigenous populations that are here are primarily oral speaking. And so -- and then we would have to also address the fact that there are actually two different spelling versions - two different spelling "	Euphemism Mitigation Positive Self-Presentation
207	Mr. SP	"Dialects?"	
208	Ms. MD	"Kind of a new way - a new way for - to consider vowels and consonants versus kind of an old phonetic way of sounding it out." In discussing this with internal staff, the Department felt that we would - we would move forward with this in English and Spanish, and then as we have greater communication with the tribes and pueblos, and if they deem that it's appropriate to have a notice in their language, then we will certainly do that."	
208	Ms. KB	"So the Department feels pretty comfortable that the new regulation meets the language barrier problems that we've been seeing?"	Face Keeping
208	Ms. MD	"I hope so, yes."	
208	Ms. KB	"Not just Spanish and English, but all of the -"	
208-209	Ms. MD	"One of the things that the Solid Waste Bureau did in the siting of a facility - I think it was in Grants and ...one over by McKinley County ...the notice - not the entire notice itself, but the word "Notice" up at the top, we actually underneath that put the Navajo word, and it might have been several words, that actually said "Take notice," and that was something that our previous Deputy Secretary, who's Navajo, helped the Department with So that's something that as we move forward, you know, we'll try to be as inclusionary as possible."	

Cross examination of NMED continues			
232-234	Ms. AM, Mr. GG, Mr. KM, Ms. MD, Ms. GD, H.O.	Discussion about Environmental Justice regarding the proposed Community Impact Assessment and Definitions.	
275	Mr.GG	(Environmental Justice process) About setback distance from transfer facility: "So just 51 percent of the city council would have to say they want less than 250, so it wouldn't go through the EJ process, it wouldn't go through the public hearing process, so the citizens couldn't say, "No, we really wanted it 250 feet," except by calling their councilor?"	
275	Mr EH, NMED	"Well, it wouldn't go through the formal EJ process that we have outlined in these proposed regulations, although it would be a specific approval from a governing body. So in that would it would be public.	
275	Mr. KM	"Would the 250-foot setback, if it was approved by, say, the city council – would the Department automatically honor that, or ... could the Department refuse to honor that."	
275-276	Mr. EH	"If it were less than 25 feet, then – and presented that in their permit application, the Department would honor it in the – at the extent that it would be part of their permit application. And in the permit application, we have to go to public hearing. At that time, anyone could present reasons why it should be 250 or 300 or more, and the Department may honor that additional information that's presented at the public hearing for their permit application for the transfer station.	
276	Mr. KM	"...Ms. MD, is it – in your opinion, do the proposed regulations comply with the Governor's executive order on environmental justice?"	Face Keeping Transfer
276	Ms. MD	"Yes, sir, they do."	
278	Mr. HT	Mr. HT, Indigenous Board member asking about attendance by indigenous peoples in the meetings and hearings conducted throughout the state: "My question is, what was the composition of the people that attended? Was there discernible percentage that –	

		that you could tell us about?"	
278-279	Mr. MD	"I would say it was cross-sector. We had people from the waste industry, we had citizens, we had folks that were interested in particular segments of the solid waste regs. So it was across the board."	Mitigation
278	Mr. HT	"Were there members of the minorities there?"	Forced to mention Minorities
279	Mr. GS	"Yes. Yes"	
279	Mr. HT	"What type of members? I mean not type, but what –"	
279	Mr. GS	"We did have people that were interested in the environmental justice segment of the regulations."	Moves of Defense; Denial; Euphemism
279	Mr. HT	"Okay. Any idea of percentage?"	
279	Mr. GS	"No, sir."	
303	Mr. HT	"...were members of the Navajo tribe attendant –in attendance at these hearing or meetings?"	Navajo?
304	Ms. MD	"I believe it was primarily comprised of industry..."	Move of Defense
304	Mr. HT	"...Were telephone communications made with them? Do you know? ...Either to talk about the EJ stuff or to visit the offices there?"	
304	Ms. MN	"No. No, sir. I do not believe there were any formal communications that way." As a side note, we—the Departments, also is moving forward in its Solid Waste Management Plan, and for that, there has been a representative from the Navajo nation attending those meetings."	No outreach Excuses Positive Self Presentation
305	Ms. GD	"I might add something. Derrith Watchman-Moore, who was the Deputy Secretary, I think, was in charge of those outreach meetings, so we can almost assume that she did get outreach to the Navajo Nation, but you could always follow up with her. "	Transfer
305	Mr. T	"...but I would like to—I would like to recommend the inclusion of the words "Indian tribe or pueblo" somewhere in there, in both sections. And then, I would also like to push or press or recommend that "English, Spanish and Indian tribe or pueblo" be included there. Now, I'm sorry for people that just came off the board from Germany or Poland or Italy, but I guess you could – you could include those somewhere too. But at any rate, I would recommend that, not only to you, but to the Board when we consider finalizing the regulations."	Differentialized racialization Inclusion of Indian tribes and Pueblos

315	Author	About listening sessions held two years ago: “We made sure that listening sessions ... were held in different sections of the state, so that people of color communities could have appropriate access to the listening sessions because of the rural nature of New Mexico.”	
316	Author	“...Also in Section 200, where it talks about providing notice to municipalities, tribal entities, et cetera, that particular – I think its Section D recommends a 10-mile radius.”	
317	Mr. EH	“...For the most part, what you see here is specified in the Solid Waste Act, and the Solid Waste Act, and the Solid Waste Act specifies the 10 miles for notifying all municipalities and counties, Indian tribe or pueblo.”	
320-321	Ms. AAM	<p>“In Section 74-9-22.B, it says – in regarding to the public notification requirement, it states, “Provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of the territory of the county, municipality, Indian tribe or pueblo is within a ten mile radius of the property which the facility is proposed to be constructed, operated, or close,” end quote.</p> <p>..The other question I believe Author is asking is how was the four-mile radius determined on the – for the vulnerability area assessment.</p> <p>Is that correct?</p>	Moves of Defense
321	Author	<p>“Yes.</p> <p>So our participation in all the meetings of EJ groups or individuals...we continually raised the issue of having a broader radius, and – and asking the Department to look at the section that talks about the 10-mile – 10 mile radius and applying that to the EJ provisions and other provisions that would deal with notice.”</p>	
321-322	Ms. MD	<p>“...I think what we need to remember – and, Author, you can help me with this – is that, yes, you did submit, you know, the comment that you wanted the 10-mile radius for these community impact assessments, and under the definition as we’ve defined community, we set forth the four-mile radius.</p> <p>We also received many, many, many comments that didn’t want – didn’t want an assessment at all, didn’t want any radius. Some proposed a one-mile. In some previous drafts, we had three miles</p>	<p>Positive Self-Presentation</p> <p>Excuses</p> <p>Moves of Defense</p>

		<p>and negotiated to the four miles.</p> <p>The Department believes that the four-mile radius is – is a fair radius for us to be able to use. 10 miles really to the Department is unreasonable when we’re talking about a solid waste facility and the community’s impact for that.</p> <p>But – but we did take to heart your 10-miles radius that you proposed and shared with that – that with all of the stakeholders you know, as we were meeting with everybody What we were doing is negotiating and trying to bring a consensus and balance to this. And we – ad as hard as the Department tried, we couldn’t get farther than the four miles, to where we are today.”</p>	
322-323	Author	<p>“Okay. To that I will just question again that – would you say that the environmental justice communities and native tribes have had the same access to giving out her ideas about what the mileage – in terms of facilities that we have, had the same amount or quantitative voice into the NMED that maybe industry and municipalities and county associations have had?”</p>	
323	Ms. MD	<p>“I think you’ve had every opportunity that everyone else has had.”</p>	Move of Defense
323	Author	<p>“Okay. And we will address opportunity in our – in our testimony. Also, in terms of the publishing of notice in the newspapers, that was another recommendation in which the... environmental justice communities and from the recommendations from the listening sessions also talked about this. That has not changed, unless I’m incorrect here...”</p>	
323-324	Ms. MD	<p>“It actually has changed ..It’s actually in the noticing ...in particular, Author, in Section 201G, number (4), we added in, at the request of the environmental justice community, to also be amended to read and “shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members of each community, and where printed shall be printed in both English and Spanish...”</p>	Moves of Defense
324-325	Author	<p>“That still doesn’t address - it’s basically still the same, only one time, and I think some of the testimony that came from the listening sessions looked at rural communities where – such as one community that I represent</p>	

		where this – "	
325	H.O.	"Ms. Martinez, is this a question?"	regulates
325	Author	"Yes, it is. It leads into this question again."	
325	H.O.	"Okay."	
325	Author	"Is 306 – a population of 366, ad only 43 people get the local newspaper, or that's in the bigger municipality from there. That was definitely a request, that it be more than once since only 43 people in this small community get a secondary newspaper, and even less get the Albuquerque Journal, the Albuquerque Journal North." How does this help us with meaningful participation if the – basically you only have to publish once?"	
325	Ms. MD	"There's actually a huge section here that talks about noticing, so it isn't just once. You know, that was just one provision that I read to you a minute ago. And the first – one of the methods is it has to be provided by certified mail to all the owners of record."	Face Keeping Moves of Defense
326	Author	"Yes. Irregardless of those, because we know that, obviously, that's good, adjoining landowners, all of that, in terms of using radio television, newspapers, regional newspapers, which are sometimes only published once every two weeks or once a week – how does publishing only once or announcing only once help this communities in terms of EJ?"	
326-327	Ms. MD	"The publishing has to be once in a newspaper of general circulation in each county. So that's the language. In the county - ...where the facility is proposed to be constructed, operated or closed. It says the notice has to appear in the classified on legal It also has to appear in another place of the paper. And it has to be posted publicly in four different places, conspicuous, accessible places, and it has to be also posted on the property, and it has to contain all this other information. So – so you know, you can recommend in your direct testimony additional provisions for the Board to consider. I don't – I don't recall having a specific comment that – a noticing that we didn't address. We tried to address noticing as broadly as possible and to include every opportunity for the public to know what was happening."	
336	Author	"...what was the rationale behind developing the definition for	

		vulnerable communities, and why was any mention of ethnicity or race left out from that definition?"	
336	H.O.	"I believe that was asked and answered yesterday."	Regulates – Move of Defense
351-352	Mr. DM	"There's been some discussion about the absence from the proposed regulations of race and ethnicity as a consideration in determining whether an area is a vulnerable area. You're familiar, are you not, with the – the Environmental Justice Executive Order that was signed by Governor Richardson in November of last year? ...And I believe that's been admitted."	Moves of Defense
352	Mr. CN	"Madam Hearing Officer, I'm going to object to this line of questioning if its purpose is to try and make the case that race should be a factor in governmental decision-making for purposes of these regulations. As Ms. Day has testified, that factor was removed on the advice of counsel, and I believe it's a legal issue as to whether that can be included or not. And the Department would be more than glad to brief this issue, but I don't think it's appropriate for Ms. Day to have to answer these questions."	Objection from NMED Lawyer in terms of being asked about the removal of race. Does not want to answer question. Moves of Defense Abstract liberalism Denial
352	H.O.	"All right. Well – Mr. DM."	Regulates again, moves of defense
353	Mr. DM	"[Ms. MD] has testified on a number of occasion that – in response to questions from questions from various people, that the proposed Department amendments to the regulations are consistent with the executive order. In fact, they are not. And this line of questioning is intended to demonstrate that they are not. ...Because the executive order specifically talks about race and ethnicity."	Mr. DM pushes
353	H.O.	"Okay...if you read in the exhibits you have, you do see the words "race" and "color" and "ethnicity" ... And that's not an objectionable question in and of itself. Obviously, the exhibit's been admitted. Having said that, it seems that Mr. CN has accurately predicted where you're going with these questions, and I would say that I would agree with him that it is a legal question and that it would be preferable to brief that as a legal question rather than to pursue that through the cross-examination of a non-legal witness..."	Defends and covers Mitigation Positive Self-Presentation

354	Mr. DM	"...but there's a second point, which is that the Department's proposal is not consistent with the executive order ...Because the executive order specifically discusses race, color and ethnicity."	
354	H.O	"Right. And I trust that you're going to make that argument, and it's a legal argument..."	Moves of Defense Face Keeping
354	Mr. DM	"...I think it's a factual question. That is, the Department has alleged that its proposal is consistent with the executive order. It's our position that it's not."	
373	Ms. MD	"...It reads, 'Also shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members of each community, and where printed shall be printed in both English and Spanish.'"	Face Keeping
Public Testimony for the New Mexico Farm and Livestock Bureau begins			
383-384	Ms. CA	"...and it would be good for the Department to develop one template of environmental justice and how they are going to address it. ...but basically what President Clinton said was federal agencies are mandated to look at their actions and how they ---the federal actions impact minorities and low-income populations.and you need to look at government's actions and policies and regulations that may be an environmental justice to the people of color or low income and their way of living..."	
Resumed testimony for the Municipal League and New Mexico Association of Counties			
395	Mr. GG	Following several pages of back-and-forth argument about whether Environmental Justice should be included in the list of items to be considered in the Environmental Impact Assessment: "I'd like it spelled out. So that's just my - my stance, that it should be added to that list."	
395-396	Ms. AAM	"And the act is codified in 212A. (2). It clearly states in the act and these regulations that failure of the applicant in the application or	

		during the permit issuance process to disclose fully all material facts would be grounds to deny or revoke the – in this case, deny the permit. And that would certainly include examples that have been brought forward here today, if the applicant didn't do a full EJ process during their quasi – judicial process or – and/or during their permit application process.”	
396	Ms. DH	“I agree. I mean, it wouldn't hurt to put it in there, what Mr. GG's saying.”	
396	H.O.	“Okay.”	
396	Ms. DH	“I think it would be great.”	
396	H.O.	“Okay.”	
469	Ms. DH	“...you can agree or not agree, that the people of color and the poor maybe if they would have some unintended consequences and what was the other one? Unfunded mandates? ...but had they not been - the poor and the people of color been disenfranchised and shared the disproportionate amount of pollution and contamination, maybe of better planning would have been done, maybe we wouldn't be talking about... well, the Secretary wouldn't have written this order.”	Denial Minimization of racial matters
472	Mr. RS	“Well, certainly any communities that...irregardless of economic status and culture or race that exists around industrial parks or where facilities have been set up are affected in this fashion. It's not just one segment of –of the citizens of the state.”	Mitigation Face keeping
488-489	Mr. PD	“Now, there's been a lot of discussion about the difficulty in these negotiations and the balance, but I want to focus you on one issue and try to have you explain what the difficulty and what – where the balance is. And that is in the regulations, the Department's proposed environmental justice regulations, they talk about one of the criteria for a vulnerable area is three regulated facilities in a 50-square-mile area, or four-mile radius.”	
489	Mr. RS	“As – and I'm presuming that since the EJ section in the Solid Waste Regulations is the first of successive regulations, that right now all other regulated facilities are protected from solid waste facilities and not vice versa as the regulations are proposed today.”	
510	Mr. CN	“Are you aware of any evidence that during your tenure with the	Evidence of intentionality in siting on based on the

		Environmental Department, that landfills were intentionally placed in certain communities due to a particular ethnic or racial makeup of the community?"	communities' racial or ethnic makeup? Minimization of racism
510-511	Mr. RS	<p>"I'm -I'm only aware of one instance, and it doesn't really even fit specifically that it was being placed there because of their racial makeup.</p> <p>....I never specifically heard a governing body or anyone I work with state that this facility was being placed there because, one, there was an ethnic group there, or racial minority there.</p> <p>Now, clearly the makeup of Sunland Park and the issue of colonias was affected by the facility that ultimately went in there, and that was back when we had a registration program and really didn't have the authority to deny a registration.</p> <p>Although we held a public hearing, took comments and tried to guide that facility, until the '89 regs we didn't have the actual authority to say no you cannot put a facility there or there, unless you didn't meet, quote, unquote, the 20-foot to groundwater limit."</p>	Mitigation Face Keeping
517-521	Mr. CW	<p>"We've also been very active in the environmental justice area here in New Mexico... [M] has participated in a number of environmental justice listening sessions that have been scheduled over the past several months. And [M] is on the Environmental Justice Working Group for the New Mexico Solid Waste Plan.</p> <p>...We had hearings in January that we noticed in Spanish to surrounding community members. And we did as much community outreach as we possibly could, and as far as I'm aware, there have been no environmental justice concerns raised within - for the permitting of that revised permitting of that facility.</p> <p>...So we are doing everything we can to reach out to the communities that we serve</p> <p>Waste Management agrees with environmental justice advocates. There are communities of color and low-income communities across the United States that bear a disproportionate burden of pollution and environmental impacts. These impacts may come from a variety of sources, including transportation corridors, industrial facilities, chemical plants, agricultural operations, and, yes, waste facilities.</p> <p>However, we believe that if waste facilities are operated in</p>	Lang

		<p>accordance with minimum standards, adopted by – in regulation by federal, state, local agencies, they pose a minimum threat to human health and environment.</p> <p>As a company, we have sought opportunities to work with community groups, regulators and other businesses to address environmental justice issues constructively with an eye toward cooperation and resolution of disagreements.</p> <p>At times, however, we believe there's the waste facility been a disproportionate emphasis on waste facilities and their operations. ..All too often...the waste facility permitting process is targeted as a means of addressing wider community environmental justice concerns.</p> <p>...Indeed, if there is a disproportionate burden on an environmental justice community, should not all sources of that burden, not just waste disposal facilities, contribute proportionately to reduce the overall impact?</p> <p>...waste management strongly supported that to raise the bar for landfill operations. We believe that should be extended to all operations.</p> <p>So we wish to minimize the impacts on any surrounding community, whether or not it be a low-income community or a community or a community of color."</p>	<p>Defense</p> <p>Positive Self-Presentation</p>
523-525	Mr. CW	<p>"...and we wish to commend the Department for the time and deliberation that has gone into the development of the community impact assessment process set out in proposed Section 201 of the proposed [regulations]..</p> <p>...With respect to landfills and transformation facilities, the language addressing environment justice concerns as currently proposed has several important provisions.</p> <p>One is with respect to local land use zoning and planning. It clearly recognizes and it emphasizes the importance of proper land use planning and zoning and addressing environmental justice concerns. And for those counties that have robust process decisions made at an early stage in the siting of facilities and surrounding land uses is of paramount importance in addressing and avoiding environmental justice concerns.</p> <p>Equal treatment. The proposed regulations clearly recognize that all solid waste facilities, regardless of ownership, should be treated</p>	<p>Positive Self-Presentation</p>

		<p>equally under the regulations. Both publicly owned and privately owned landfills are subject to the same standards for addressing environmental justice concerns. And we support that.</p> <p>Solid waste permitting as a backstop. The proposed regulations still provide for a comprehensive process to address environmental justice concerns if the initial land use zoning process did not provide for an inclusive quasi-judicial public hearing with a clear opportunity for public comment.</p> <p>If the initial land use zoning process does not meet these standards, the solid waste facility permitting process is structured to address environmental justice concerns by a number of important ways.</p> <p>The proposed regulations will provide community information and requiring action to mitigate potential adverse environmental impacts in communities of color and low-income communities.”</p>	Positive Self Representation
537-538	Mr. CW	<p>“The regulations rely on a local land use process as the primary mechanism to addressing environment concerns. However, should that process not be adequate, the regulations allow solid waste facilities to be assessed through the solid waste facility permitting process.</p> <p>As current proposed, such an assessment does impose a process that is not required of other facilities that could impose a burden on communities of concern.</p> <p>...Waste Management stands committed to working cooperatively with impacted communities...</p> <p>...We believe a true progress in environmental justice can be achieved by working together than by separating us.”</p>	Abstract liberalism; denial Mitigation Moves of Defense
539	Mr. CW	<p>“...we certainly try to meet the intent by reaching out to any member of a surrounding community to hear what their concerns are, to see if can mitigate those concerns, can we change our practices, can we adjust our practices, is there something we can do for the community that will assuage their fears or concerns about a particular facility.”</p>	Positive Self-Representation
558	Mr. CW	<p>“...And we certainly would like to find a process that would work that would bring other people to the table to help address the concerns of EJ community. We would like to find that process. That’s why we’ve been so active with the NEJAC level at the federal government, and we try to be active in the State of New Mexico.</p>	NEJAC Positive Self-Presentation Face Keeping

		We're active in California to try to find a comprehensive approach that will work to address legitimate concerns of people of color or of low income."	
562	Mr. CW	"Well, the core concept is that –from our standpoint, is that there are communities of color or low-income communities that are subject to a disproportionate pollution burden. And that should be our primary concern as public health advocates, is to try to figure out how we can reduce that burden..."	Positive Self-Presentation
Testimony for the National Solid Waste Management Association and Daniel B Stephens and Associates begins			
605-606	Ms. DH	"...But do you believe that there might be a couple of people, maybe 10 or 20, that, because they're working two jobs or three jobs, because they're from a –people of color, a poor community, where they might not be able to attend that meeting, and they might not have heard about it, they hear about it later, so they wouldn't have a chance – "	Inability to attend meetings
606	Mr. MM	"Well, I—I think the record of the Department is that they try to hold meetings in places and at times when they do get a good representative public input. The rule does allow both written comments and input at the meeting, so anyone who wasn't able to attend the meeting at least would have the opportunity to provide written comment, as well. ...That seems to be a pretty satisfactory outreach."	Speaking in favor of the Department Positive Self-Presentation Moves of Defense Written comments
666	Ms. RW	"And there's a document that I'm familiar with called the Illegal Dumping Prevention Guidebook produced by the EPA. And it's available on their web site. And it says communities subject to illegal dumping are typically areas with limited access to convenient, affordable waste disposal facilities or services and recycling programs. In lower-income areas, residents may have difficulty affording trash pickup and disposal fees."	Blaming the Victim
Testimony for the Southwest Organizing Project and the Coalition for South Valley Neighborhood begins			
692	Ms. CB	"One of the maps is displaying the per capita income across New Mexico; and the other one, Robby wanted to call it the percent people of color and that is—I used the census file that included Hispanic and Latino populations, and I basically subtracted the	SWOP POC Map of NM Only looked at file that included Latino or Hispanic populations

		white-only population from the total population and determined the rest was the population of color.”	
710-711	Mr. CN	About identifying locations where concentrations of populations of color are: “And the same is true for the percent population of color, there could be concentrations of a population of color in one place that then gets averaged out, and so you don’t really know where those particular places are using these maps; would that be correct?”	Moves of Defense
711	Mr. GG	“As I look at the map, and as I count off landfills on the per capita income, half the landfills are in lower income and half are in high income. Is that correct?”	
712	Ms. CB	“Oh, on a general glance at this, that appears to be so, and I haven’t—I haven’t looked at them and counted ---tallied it.”	
713	Mr. RR	“...Our mission is to empower the disenfranchised in New Mexico to realize racial and gender equality and social economic justice. We work to build leadership in poor, working class and communities of color, so that they would be part of the decisions that affect their lives.”	Maps
714	Mr. RR	“...So our characterization of environmental justice is that it’s actually a response to a condition called environmental racism; and environmental racism is defined as the intentional or unintentional siting of environmental hazards in low income and communities of color. This takes place by private industry, government, military, and also relates to the higher-than-ordinary exposure of these same communities to those types of environmental hazards.”	
715	Mr. RR	...My personal experience is that there has been a situation in Carlsbad, New Mexico, where we - where members of these communities that we work in - so these are defined as low-income, working-class communities, predominantly communities of color, in Carlsbad, New Mexico, to require the Environmental Department to enforce existing regulations on a cement batch facility that was spewing dust into the community...”	
722	Mr. DM	“Moving on, you’ve recommended including in the regulations a definition of population of color. Would you explain that, please?”	Definition of “People of Color”

722	Mr. RR	"Yes. It means a nonwhite population, including but not limited to white or Hispanic or Latino origin as used in the most recent United States census data."	
723	Mr. DM	"Mr. Rodriguez, does the Executive Order discuss or address populations of color? "	
723-724	Mr. RR	<p>"Yes it does.</p> <p>...In the first whereas paragraph, it says, "Whereas, the State of New Mexico is committed to affording all of its residents, including communities of color and low-income communities"; and then it continues, and it says, "Regulations and policies regardless of race, color, ethnicity," in the second whereas.</p> <p>The last line refers to especially in people of color and low-income communities."</p> <p>In another paragraph: "It says all cabinet-level departments and boards and commissions that are involved in decisions that may affect environmental quality and public health shall provide meaningful opportunities for involvement to all people regardless of race, color, ethnicity, religion, income or education level and it further states, "Implementation and dissemination of information meet the needs of low income communities of color."</p>	Executive Order mentions communities of color and low income communities
728	Mr. DM	<p>"There is also a proposed change in item (d), including the criterion of "A total population of color in a percentage that is larger than the state percentage.</p> <p>Would you explain that proposal, please?"</p>	
728	Mr. RR	<p>"...What we're trying to determine... or achieve through these provisions is to limit or stop the targeting of communities of color as one set from these types of facilities, and so we need a basis to be able to determine whether that's - whether the targeting - whether it's intentional or unintentional - is taking place.</p> <p>So we need to be able to compare the baseline community with the overall percentages in the state to figure out if that's what's happening or not.</p> <p>"So we're proposing that "a total population of color in a percentage that is larger than the state percentage for the total population of color."</p>	
737-	Mr. RR	"So, first of all I'd like to say that poor and communities of color for	

738		<p>too long have shouldered the burden of environmental hazards in their community, and through these changes, we seek to do three things.</p> <p>One is to stop the intentional or unintentional targeting of poor and communities of color for solid waste facilities. We believe this is a practice that has taken place. We believe that the maps demonstrate that, and we think that it's the job of the Improvement Board, in adopting these changes, to stop that behavior from taking place in the future.</p> <p>Second, to limit the over concentration of regulated facilities and solid waste facilities in these same communities – in any community really. It's not fair unless there is an overwhelming set of circumstances that make for a good- that it's a good idea to concentrate these facilities in a particular area. Most of the time, it's not; and most of the time, there is people living around there. They bear an unreasonable burden of these negative soft of facilities in their neighborhoods.</p> <p>...Lastly, to give the Secretary and the Department the tools and the authority to deny a solid waste facility permit, if it chose to do either of the aforementioned.</p> <p>So just as the laws currently state that the Secretary must grant a permit, if certain things are done, we want the regulations to give clear direction to the Secretary that if – that if there is evidence of targeting, those facilities – and resulting in a disproportionate impact in these communities, that the Secretary has to deny it.”</p>	
742	Ms. KB	<p>“...what I’m showing, adding up the landfills that are on this, is that 19 of the landfills are located in the population of less than 49 percent people of color; 18 landfills would be the 49. 1 percent to 99.9 percent...</p> <p>So I think, unless we had a larger map, or the database behind it – but based on that, how does your group believe that people of color have been discriminated against as far as landfills? Can you explain that to me?”</p>	Moves of Defense
743	Mr. RR	<p>“...we know where some of these areas are – our reading of this map is that even when it's – it looks to be on the boundary [of the] percent margin, that what that actually represents is that we want to get the landfill closest to...say, a white population, so that it's not too inconvenient for them to go out and dump, but it's going to be</p>	

		<p>even closer to the minority population.</p> <p>...in other cases, it's wholly within the community of color, and most likely because that's the community that's using it.</p> <p>But when we have the other example of where maybe it's two communities, two different types of communities benefiting from that landfill, it's going to be pushed closest to the community of color or the low-income community."</p>	
745	Ms. KB	"Okay. So you're not looking at the total number spread throughout the state that—more specifically, the communities where it is showing higher population of people of color—population of color?"	
746	Ms. KB	<p>"...from what I'm hearing, it sounds like any...geographic area of the state that is predominantly a population of color...</p> <p>- that you would prefer there be no solid waste landfill in those areas, the darkest areas, the 69 percent to 99 percent?"</p>	Moves of Defense
746	Mr. RR	<p>"We understand that...solid waste facilities are a necessary evil. What we would like to prevent, and certainly where communities of color - if there is wholly communities of color, and they are the ones that are using it, clearly, it's going to be in an area, and it may be 80, it may be 99, or it may be 100 percent people of color. That, we understand it to be true, especially in a state like New Mexico."</p>	
747	Ms. KB	"Okay. And do you have any concern that if landfills are located many miles from any area of population, whatever the percent of population of color, it would increase costs to the consumers that live in those, and especially in the lower -income areas, that that might become overly burdensome to them? Because I think, despite other testimony, I think we all know those are pass-through costs to the consumer."	Moved of Defense
747	Mr. RR	"In our experience with those communities, they would rather drive out than have it in their neighborhood."	Mitigates
748	Ms. KB	"Would they prefer the increase in cost over—"	
748	Mr. RR	"Over having the dump in their neighborhood, yes. "	
749	Mr. GG	<p>"...and maybe it's my ethnic background, but I was—it looked like Anglos were being targeted for landfills.</p> <p>...So we probably should figure out a way to make sure that this represents accurate information and represents it in a way that gets at what you were talking about, because your clarification really helped me afterwards, that the ones that are right on the border</p>	Minimization of racial matters; Face-Keeping; Positive Self Representation

		might be, you know, this community using it, but then they pushed it just into the border- ...of a lower income or of people- of -color area.”	
755	Ms. GD	“My first question is, under your definition of people of color, what percentage of the state would you say is people of color?”	Move of Defense
755	Mr. RR	“I believe it is around 52 percent.”	
755	Ms. GD	“Okay. And then of Spanish-speaking language only, do you know what that percentage is?”	
755	Mr. RR	“I do not.”	
756	Ms. GD	<p>“...we know that people of color have been suffering over the totality of landfills—I mean the totality of facilities, regulated facilities, not just landfills.</p> <p>I do see landfills different than – somewhat different than other facilities, in that we do create garbage, and we have to put it somewhere, and so they are managing our garbage, as opposed to coal power plants, or the other things that can come into a community and really not have perhaps the benefit to the local community.</p> <p>So until we know what those increased costs are in moving these facilities away from these populations, I believe that that unintended consequence might be tough for these populations to handle in terms of the increase in costs. So because we don’t know exactly what that is, there is unintended consequence.”</p>	<p>People of Color</p> <p>“unintended consequences”</p> <p>excuses</p>
760-761	Mr. HT	<p>“...”Population of color’ means a nonwhite population including but not limited to white of Hispanic or Latino origin as used in the most recent United States census data.”</p> <p>I gather that the only people of color that this is referring to is the Hispanic or Latino origin peoples, but there appear to be Native Americans in this state that welcomed your forefathers as they came north from Mexico, and there are also people of color who came with the padres that were a great source of wonder and amazement to the native peoples as to how can a person be of such a dark, dark color.</p> <p>So I’m curious why you didn’t include in their Native American peoples or black peoples. So could you elucidate on that, please?”</p>	Differentialized racialization
761	Mr. RR	“Yes. I agree with you completely, and the only reason why we named specifically Hispanic or Latino is because, in the census data, they are usually considered as a race white.	Positive Self Representation

		So in order to get a true reading of all people of color, which includes Native Americans, African-Americans, Asian-Americans et cetera, we needed to also state that white of Hispanic or Latino origin should be included in the calculation."	
761-762	Mr. HT	<p>"The other part of that is I find this whole subject of people of color distasteful, to be honest, and it perhaps has to be said, but I find it distasteful.</p> <p>We all have five fingers, and we all have one heart, two eyes and two ears. Some may not operate as well as they used to, but we still have them. But it – it bothers me to be required to use the terminology "population of color." Maybe it needs to be used to carry the point, but I find – but I'm just a little uncomfortable with this.</p> <p>But at any rate, I want to – the other part of my question here is, it says "limited to white of Hispanic or Latino origin."</p> <p>Are you referring here to perhaps a white mother and a Hispanic father, or vice versa?"</p>	
762	Mr. RR	<p>"No sir. Only to the fact that in the census data that the – the white race also includes Hispanics and Latinos.</p> <p>So this is where we get to - in the Executive Order, where Governor Richardson talks about race, color, ethnicity, it get to the ethnicity aspect of that."</p>	
762	Mr. HT	"I see."	
762	Mr. RR	"This notion of race perplexes me, as well, and I also wish that we didn't have to deal with it."	Face Keeping
763-764	Mr. HT	<p>"...page seven of your testimony... where the proposed change says, "All notices shall be provided, all meetings shall be conducted, and both the draft and the final community impact assessment shall be written in English and in Spanish and in plain language," et cetera, and then the concluding sentence of that proposed change says, "Translation shall also be provided of documents and at meetings into any language that is used by a significant percentage of the residents of the community considered in the community impact assessment."</p> <p>Is there a little inconsistency there? You say "Spanish and English," and then a couple line later you say "any language."</p> <p>Should that—"</p>	<p>Language - inconsistency</p> <p>Differencialized racialization</p>
764	Mr. RR	Yes, I agree that is an inconsistency.	
764	Mr. HT	"...I would propose to you to include "English, Spanish, Indian tribe	

		or pueblo, and any other appropriate language,” in case we have a community of Muslims or Buddhists, you know, that prefer to have their language.”	
765-766	Ms. GD	<p>“I had a follow-up question in regards to the language. The more I think about these unintended consequences, and even litter, I would like if you could find out, either during the hearing or in the posthearing submittals, the percentage of Spanish speaking only in the state, because what I’m concerned about now, also on page seven, is that by demanding – by requiring English, Spanish, tribal, at the get-go, including not only the notices, but the final community impact assessment, this is adding a lot of cost to the municipalities, that would then also get transferred eventually down to the people that we’re trying to protect that don’t have the money to begin with, not to mention all the extra paper we’re throwing in the landfill.</p> <p>So later on, where it says, “Translation shall also be provided of documents and at meeting into any language that is used by a significant percentage of the residents of the community considered in the community impact statement,” I find that if we add – or we, rather, define what significant percentage is, I would rather do that, because I think that’s more prudent than to just try to cover every language and consequently increase costs and resources dramatically.”</p>	<p>Move of Defense</p> <p>Excuses</p> <p>Cost</p> <p>Differentialized racialization</p>
766-767	Mr. RR	<p>“...I think that...it’s an inherent right for – in New Mexico, in particular, the official languages of the state are English and Spanish.</p> <p>So I think with – in that particular case, it is important to do both. I think that as – I don’t think it’s too hard to determine, at least currently in this state, what types of languages we need to translate these notices into. I wouldn’t go so far as to say that it’s common sense, but I think, with a little bit of investigation, it could easily be determined, “Well, this should also be translated into Navajo,” for example, or some other indigenous language if it’s very close to a pueblo.</p> <p>So I think that – I don’t think it would be that burdensome, actually.”</p>	
767	Ms. GD	“Could we perhaps say “if requested,” and then – in any language, it could be then both translated and provided?”	mitigating
767	Mr. RR	“I would feel more comfortable with the Department staff	

		performing due diligence to – it’s not too hard to look up census data, find out who lives there, think to yourself, “Should this be translated into something other than English and Spanish?” and then do it.”	
767	Ms. GD	“Okay. And in your opinion, what would that significant percentage be?”	Moves of Defense
768	Mr. RR	“I think maybe ten percent – five or ten percent is pretty significant in terms of another language that is – that people only speak.”	
768	Ms. GD	“Okay. Thank you.”	
768	Mr. HT	“...Just a comment I was the environmental director for the Navajo Tribe for – opened the office and left it eight years later, but in the course of doing community information meetings, I found that using a translator to preset the proposal in the people’s language to them carried a lot more weight than it did if it was mouthed in English, and there was more consideration given to the proposal than if it was presented totally in English. So I thank you for proposing the use of a translator during a community meeting, and it does buy you a little favor as far as getting considered – the proposal considered well.”	
772-773	Ms. DH	“...I think Governor Richardson, by asking me to sit on this Board, people know it’s not a secret that environmental justice is sitting on this board, but everybody also knows that I’m very fair.” ...I do want to ask--so, Robby, thank you very much, and everybody that’s here—I recognize a lot of people that are here today, and I appreciate your time, because I know community people don’t have as much money and the wherewithal to come and do these things. In some of these disenfranchised communities that you’ve worked in, and you talk about environmental justice, are there other socioeconomic or economic problems, such as like high crime rates, drugs, low employment, low test scores, dropouts? Are they suffering from those same kind of problems?” ... And so a lot of times, in those communities, do you have, maybe, some paper plants that litter and maybe Superfunds and different kinds of other problems?”	Addresses challenges of people of color and communities of color in getting to these meetings.
774	Ms. DH	“...I know, because I’m from the South Valley, you know, we’ve been there 750 years, my family – I know we don’t look that old, but are people so poor that they would put no paying, you know, a rate	

		hike, or do they care more about like their health exposures and the problems that kids could have, their children could have being exposed to all of this unhealthiness?"	
774	Mr. RR	"Our experience is that, when given a choice, people would prefer to protect their health, even at the added expense."	
774	Ms. DH	"Okay. And so do you believe that, had there not been environmental racism or environmental injustice, that the President wouldn't have issued an Executive Order 128-98, or that the Governor wouldn't have done the work that he has done?"	
777	Author	"...I just wanted to ask you a question about – in terms of the people of color, I know that's a very controversial label for many people of color even, as well as your American people. Usually, the term "people of color" has come into use, would you say, because in many situations like New Mexico, we're a minority/majority state and people found the use of minority basically not valid anymore?"	
777	Mr. RR	"That's correct."	
779	Author	"Okay. All right. Because the question is actually what languages are spoken, because in Mora County, it refers to 68 percent of the population or respondents identify Spanish as the language of home use.Also, would you think that the 52 percent of people-of-color population in the state would be accurate in terms of the census? ...Okay. Because there are many groups that recognize that people-of-color communities are very often undercounted in the census."	Language Population of NM Undercounted in the census
783-784	Mr. PD	"And so we would take a proposed facility, or an existing facility that is going to do a modification that involves a lateral or vertical expansion, and we would then see, with respect to that facility, if there is a population of 50 or more people in any square mile within a four mile status. That's your Criteria A? ...Then we would look to see if there are three or more regulated facilities within that four-mile radius or two or more regulated facilities within a two-mile radius? ...And then we would...look to see, as a third criteria for a vulnerable area, if either of the next two criteria exists? Is that how this works?" ...So then you look to see either if you have a percentage of economically stressed households greater than the state percentage	

		<p>within either one square mile within that four-mile radius, or when it says "or within the four-mile radius," so that would be the average within the entire radius?"</p> <p>So you'd be looking for one square mile, or you could look for the entire – at the entire 50 square miles?</p> <p>...so...then...or we would look at whether, within a one square mile, or within 50 square miles, there is a total population of color in a percentage that is larger than the state percentage?</p> <p>....So that's the---that's the set of criteria that would be used to define a vulnerable area?"</p>	
787	Mr. PD	"Okay. Well, if you could look at this and give me a case where someone could meet the vulnerable area definition and not be denied under your proposal."	Moves of Defense
787	Mr. RR	"I can't at this time."	
787	Mr. PD	"Okay. That seems to be one of the areas of the difference between SWOP and the proposal of NMED, is that SWOP wants an automatic denial if there are three regulated facilities within a four-mile radius, or two within a two-mile radius."	
788	Mr. RR	"To make your assessment complete, you would include the first two criteria you mentioned and one or both of the others, economically stressed household and total population of color. So it's the concentration and one or two of these others."	
788	Mr. PD	<p>"Make a facility within a vulnerable area?</p> <p>...Now, I didn't have a chance to look at your resume, but are you familiar with the term or the concept risk assessment, environmental risk assessment?</p> <p>...Because it sounded like your proposal and the way you treat concentrations of facilities is opposite or disagrees with a concept that I think is also arising at the same time concurrent with environmental justice, which is assessing relative risk from projects. As I understood your testimony, you don't think it's appropriate for environmental justice purposes to do any relative risk assessment for facilities?"</p>	<p>Moves of Defense</p> <p>Positive Self Presentation</p>
793	Dr. MT	<p>"In your testimony, you asserted certain factors should be used in definition of vulnerable areas, and you suggested 150 percent of the federal standard for a family of three at the poverty level, which you indicated, I think, was \$16,000 in 2005.</p> <p>What's the basis for 150 percent?"</p>	Moves of Defense

793	Mr. RR	<p>"The basis of extending it beyond just the poverty level is to capture what the census describes as the near poor.</p> <p>The poor are only – according to the US Government, the poor are only those at the threshold of the poverty level. That's the only – those are the only people that the government considers poor.</p> <p>It's our experience that there are others who are functioning in poverty that have household incomes greater than the poverty level."</p>	
793	Mr. MT	"Why 150 percent?..."	
794	Mr. RR	"A number of programs, financial assistance programs, social welfare programs, welfare to work programs, use that number, 150 percent, for qualifications."	
794	Mr. MT	"In your discussions with these other groups, is there research that's been done? Is there sizable study? Are there peer-reviewed articles that recommend this number?"	Moves of Defense
813	Mr. MM	<p>"...you've proposed to delete language under item two that would provide for the Secretary to make a determination following an initial community meeting and an opportunity for submittal of comments from the community in writing, for the community to make a determination of whether or not there is significant community opposition to the landfill.</p> <p>Are you aware that the Department has gone through a number of landfill permitting processes and held public hearings as part of those permitting processes and there was no community interest or involvement or opposition?</p> <p>...Well, I can tell you that there have been a number of those public hearings.</p> <p>"All right. [Mr. MM], limit your questions to questions."</p>	
813	Mr. DM	"We object to [Mr. MM] testifying. He testified in two different capacities last night."	
813	H.O.	"All right. [Mr. MM], limit your questions to questions."	regulates
820	Mr. RV	"...So the governing body in Las Vegas, is it a primary Hispanic governing body?"	
820	Mr. RR	"I don't know for sure."	

820-821	Mr. RV	"...Presuming that it is, that their council and their Mayor are Hispanic - ...although there may be non-Hispanic members on that council, do you feel that they do not provide justice to their residents?"	Differentialized racialization
821	Mr. RR	"I would not assume that their race or ethnicity would automatically determine a fair evaluation of environmental justice."	
821	Mr. RV	"So you – but you wouldn't necessarily characterize that their decision making is necessarily racist to their own people."	
821	Mr. RR	"Yes, I would."	
821	Mr. RV	"So you do believe that Hispanics can be racist to Hispanics?"	Can Hispanics be racist to Hispanics? Moves of Defense
821	Mr. RR	"I believe that the consequences of their actions can have racist implications."	
841	Mr. CN	"Did you attend the public meetings – or any of the public meetings that the Department held last year regarding these regulations? ...Do you recall at that time all the regulated facilities and their representatives were adamantly opposed to having EJ provisions within these regulations?"	Face Keeping
841	Mr. RR	"I can recall a general sense of wariness to including these things."	
842	Mr. CN	"A weariness?" ...What, they were tired of it?"	
842	Mr. DM	"May I interrupt? Did you mean weariness, as in being tired, or wariness, as in being wary of it?"	
842	Mr. RR	"The latter."	
842	Mr. CN	"Are you aware now that all these regulated facilities are supporting the environmental justice provisions in these regulations?"	Positive Self Presentation Move of Defense
843	Mr. CN	"Do you agree that there ought to be a fair treatment and meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies, regardless of race, color, ethnicity, religion, income, or education level?Earlier, you said that there was an intentional or unintentional siting of landfills in low-income areas and areas with a large population of color. Is that an accurate representation of your testimony?"	Mitigates
844-	Mr. CN	"So from that data, you can't tell what the distribution of low-	Destabilize person as knower

845		income population is or population of color is within each census block group shown on your maps, can you? ...And so based on that map, you can't tell whether one of those landfills is sited near a population of color or low-income population, can you?Can you tell me, then, for example, whether there is a population of color around this particular landfill? ...And the same is true for both income and population of color? I'm going to talk to you about the poverty level for a minute. Are you aware that the Census Bureau uses the federal Health and Human Services Department poverty level for its definitions?"	Moves of Defense
847	Mr. CN	"Are all landfills based—were they sited based on ethnicity or income levels, in your opinion?"	Moves of Defense
847	Mr. RR	"In my opinion, I think that the data supports that there is a targeting, whether intentional or unintentional."	
852	Mr. RR	"Yes. The purpose of creating and presenting these maps was to show general trends of Department or government decisions—siting decisions with regard to landfills-- ...needed to count race and income."	Push for Race
854	Mr. DM	"Thank you. And just to clarify, the definition of population of color includes all populations of color, is that right?"	People of color
854	Mr. RR	"That's correct."	
854	Mr. DM	"Not just Hispanic or Latino?"	
854	Mr. RR	"That's correct."	
857-858	Mr. PD	"But there is no historical data on those maps. Those are both snapshots of current populations of color and current per capita income, correct?"	Moves of Defense
858	Mr. RR	"That's correct."	
858	Mr. PD	"They don't show anything about what was the condition when the landfill was sited that you're drawing your conclusions on, correct?"	
858	Mr. RR	"That's true."	
858	Mr. PD	"And the last question, I think you were testifying to [Mr. DM] that you might revise that part (e) of your definition of a vulnerable – of a regulated facility."	
858	Mr. DM	"My understanding from the Hearing Officer was that, based upon the evidence presented at the hearing, parties would have an	

		opportunity to revise their proposals, and if we believe that it's appropriate to revise that definition, then, yes, we would submit a new proposed definition."	
861	Mr. LC	"I'm the executive director of the Center on Race, Poverty & the Environment in San Francisco, California."	
861	Mr. DM	"What is the center on Race, Poverty & the Environment?"	Moves of Defense
861-869	Mr. LC	<p>"The Center on Race, Poverty & the Environment is an environmental justice litigation shop. We're a law firm that ...represents low-income communities and communities of color throughout the United States that are involved in environmental justice disputes.</p> <p>...I've been retained by the SouthWest Organizing Project, or SWOP, and the South Valley Coalition of Neighborhood Associations, which I'll call the Coalition, to present expert testimony on several different issues, including environmental justice issues; the disparate impact of environmental hazards on the basis of race and income and ethnicity; the response of jurisdictions at the local, state and federal level to that disparate impact; legal issues presented by permitting and enforcement and other regulatory processes; the siting of facilities that require permits; the issues of enforcement of environmental regulation and laws addressing discrimination.</p> <p>...What I'd like to do is briefly offer my qualifications, talk a little bit about definitions of environmental justice, then go into a survey of the existing literature on the distribution of environmental hazards in the United States, looking at it in two different ways, and then I'll discuss some of the legal issues involved in permitting of these facilities and some of the responses that different jurisdictions have taken around the country to respond to environmental justice impacts, and then, finally, I'll concentrate specifically on the regulations before you.</p> <p>[The following are some excerpts from Mr. LC's expanse of qualifications and experience, extending into p. 869]</p> <p>For my qualifications, briefly, I received my bachelor's degree in political science with honors from Stanford University and my law degree cum laude from Harvard Law Center.</p> <p>I've worked at the Center on Race, Poverty & the Environment since</p>	

		<p>co-founding it in 1989, and I became it's executive director in 1997.</p> <p>....I rely on state and federal environmental and civil rights laws, land use laws, and specifically the enforcement aspect of those various laws.</p> <p>I've spent a considerable time using these laws on behalf of local community groups all around the country, including work before city council and county boards of supervisors, regional and state agencies and boards, such as this Board, state trial courts and courts of appeals, and federal trial courts and courts of appeal.</p> <p>...I'm a member of the California Bar, and I'm admitted to practice in all of the Federal Districts of California, as well as the Third Circuit Court of Appeals and the Ninth Circuit Court of Appeals and the United States Supreme Court.</p> <p>...I've also had extensive experience using civil rights law in the environmental context; and over the past 16 years have represented clients in California, Arizona, Texas, Alabama, New Jersey and New York in civil rights matters before the United States Environmental Protection Agency, the US Department of Energy, the Department of Interior and the Department of Transportation, as well as in State and Federal Courts. This work has involed both constitutional claims and claims under statutes, such as Title VI of the Civil Rights Act of 1964 and Title VIII of the Fair Housing Act of 1968.</p> <p>My work has long involved research into the distribution of environmental hazards It has also involved drafting regulations, statutes and policies for local, state and federal government agencies</p> <p>My public service includes being appointed to the United States Environmental Protection Agency's National Environmental Justice Advisory Council, or NEJAC, on which I served from 1996 through 2000, and had the privilege of serving with [Ms. DH] on the National Environmental Justice Advisory Council.</p> <p>....Administrator Browner also appointed me to the National Advisory Council for Environmental Policy and Technologies Title VI Civil Rights Implementation Subcommittee, and also as an alternate member to EPA's Federal Advisory Council on Food Safety.</p> <p>...I've taught courses on environmental justice at Stanford Law</p>	
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		<p>School, the University of California, Berkeley...Hastings College of the Law, where I'm currently a visiting professor of law.</p> <p>My publications on environmental justice include one book, three book chapters, some 20 law review articles, and eight other articles in popular publications, such as USA Today...</p> <p>...In my 2001 book "From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement," there is an annotated bibliography of 70-plus studies of the disparate impact of environmental hazards.</p> <p>My 1999 Ecology Law Quarterly article critically examined California state law regarding the siting of hazardous waste facilities...my 1992 Ecology Law Quarterly article summarized the then extent of the literature on the distribution of environmental hazards...</p> <p>My 1995 Environmental Law Journal and Clearinghouse Review articles focused on public participation mechanisms in different environmental statutes.</p> <p>I have also lectured extensively on these issues around the United States.</p> <p>I have served as an expert witness on two previous occasions in administrative fora...</p> <p>I've also presented invited testimony to a variety of local, state and federal agencies...</p> <p>I had the opportunity yesterday to hear from a number of the NM Environmental Department witnesses, which was informative, and I've been here all day today, so I've heard the testimony of...</p> <p>...[Ms. CB] and also [Mr. RR], and I also understand from the witness list that you'll have the pleasure of hearing from Professor [EG] in this proceeding, and Professor [EG] is a nationally known expert on environmental justice and civil rights issues, and is someone that I have personally learned a great deal from in the 15 years that I've known her."</p>	
870-871	Mr. LC	<p>"....The State of New Mexico, in Governor Richardson's Executive Order on environmental justice, which, I believe....is League Exhibit D, states that "The State of New Mexico is committed to affording all of its residents, including communities of color and low-income communities, fair treatment and meaningful involvement in the development, implementation and enforcement of environmental</p>	

		<p>laws, regulations, and policies regardless of race, color, ethnicity, religion, income or education level.”</p> <p>The theme that I’m sure you can see here is fairness. Both equal participation on the front end, that’s the procedural fairness piece of it, and also kind of equal treatment – or equal outcome on the back end. That’s the distributional fairness piece that I was talking about.</p> <p>Not, that equal distribution, unfortunately, has not always been the case in the United States, as I’d like to explain.”</p>	
873-874	Mr. LC	<p>Uniform conclusions from studies about environmental hazards:</p> <p>“First, these environmental hazards are unequally distributed on the basis of income.</p> <p>Second, these environmental hazards are unequally distributed on the basis of race and ethnicity.</p> <p>Third, for those studies that examine both income and race and ethnicity, race and ethnicity is a stronger predictor and an independent predictor of exposure to environmental hazards.</p> <p>...Now, you may have noticed that I said these studies almost uniformly reached these conclusions. There are a handful of studies that do not show disparate impact on the basis of income or race, in particular context, and I’ll go over those, too, as I go through the findings.</p> <p>I have reviewed 99 different published papers on the distribution of environmental hazards published between 1968 and 2005.</p> <p>There are a couple different ways to describe the findings of these 99 studies.</p> <p>First, one can look at them in terms of scope...that is, what’s the geographic area that the study is looking at.</p> <p>The second one is that one can look at them in terms of media. What is the particular hazard that’s being looked at by the study.”</p>	
874			
874-876	Mr. LC	<p>“I’m going to use the terms relationship, variable and predictor, and I wanted to explain what I mean by these.</p> <p>The academics, government agencies, press outlets, that have conducted these studies generally have done statistical analyses of the results to see if there is a relationship between different variables. Variables are the things they are measuring or</p>	

		<p>manipulating in their research. Say, is there a relationship between income and the proximity of waste facilities or race and ethnicity in the proximity of waste facilities? There income and facilities are the variables.</p> <p>Using regression analyses and other statistical tools, the studies have also been able to determine if there is a statistically significant relationship between such factors, and that's what I'll...mean when I'm talking about relationships...</p> <p>... For example, the presence of African-Americans may be a good predictor for the presence of waste facilities, or vice versa, This is what I mean by "predictor."</p> <p>If one has several variables—say race, ethnicity, income, and facilities – then there are other statistical analyses that can be performed to see if the variables are related or if they have independent significance."</p>	
876-881	Mr. LC	<p>"In general, in this literature, the question is, is there a relationship between income and exposure to a hazard, or is there a relationship between race and exposure to a hazard, and almost uniformly the answer is yes.</p> <p>...The greatest number of studies, 35 studies, have looked at the national distribution of environmental hazards. Of those 35 articles, 14 reported disparity by income on a national level for the following environmental hazards: air pollution...hazardous waste incinerators, hazardous waste sites....pesticides exposure, potential Superfund sites and toxic waste studies, none of these studies reported looking at income and finding that it was not related to exposure to the hazard, and so the poorer you are, the more likely you are to be exposed to these environmental hazards, 25 articles reported a disparity by race and ethnicity....</p> <p>Now three articles, all by the same research group, found that there was not a disparity by race and ethnicity on a national level in the siting of hazardous waste facilities, and I should note that these three studies were by a group of academics, who were largely based on the same data and were funded by the world's largest waste-handling company, Waste Management, Inc., and they suffered from some methodological irregularities, such as excluding rural areas from their analysis.</p> <p>Now, a number of studies have looked at both race and ethnicity</p>	

		and income, but only two report looking at the relationship of race and ethnicity and income.”	
878	Mr. LC	“...Thirteen articles have looked at the distribution of environmental hazards on a state level. Six of these found hazards to be inequitably distributed by income, polluting facilities, hazardous waste landfills, industrial facilities, Superfund sites, toxic waste sites. Of the 13 articles, all 13 found a disparity on the basis of race and ethnicity in a variety of different settings...	
879		...I am not aware of any studies that have been done in New Mexico, but given the distribution of environmental hazards in other states, I see no reason why New Mexico would be different. Four studies have looked at regional impacts, either interstate or intrastate. One study of 13 major metropolitan areas found air pollution inequitably distributed by both race and ethnicity and income. One study of 13 major metropolitan areas found air pollution inequitable distributed by both race and ethnicity and income. One study of South Texas found more pesticide residues in persons of Mexican descent than in Anglos Two studies of the Southeastern United States found a disparity in the siting of hazardous waste facilities on both income and race.	
880		...33 of the studies have looked at impacts on the local level, primarily studying cities such as Chicago, Detroit, St. Louis, Houston, Los Angeles. Of these, 22 found disparate impact on the basis of income, and 25 found disparity on the basis of race and ethnicity. Of the studies that looked at race and ethnicity and income and their relationship, all five found that race and ethnicity was an independent factor of income – that is, these results did not happen because the people of color were poor people and that’s why they were being exposed more. Race and ethnicity was an independent predictor of exposure to these hazards. There was a racial thing going on in this exposure pattern. Four found that race and ethnicity was a stronger predictor of exposure to the particular environmental hazard. ...In summary, of the 99 studies of the spatial and demographic distribution of the environmental hazards of the United States, 55 found disparity on the basis of income, while 86 found disparity on	

881		<p>the basis of race and ethnicity.</p> <p>...the message I'm trying to give you here today is that race plays a factor in exposure to environmental hazards."</p>	
882-883	Mr. LC	<p>"In Houston, Robert Bullard's studies found that although African-Americans make up only 28 percent of the population of that city, six of Houston's eight incinerators, and 15 of its 17 landfills, or 88 percent of its landfills, are in African-American communities, and 100 percent of the city-owned landfills, five out of five landfills, were in African-American communities, although African-Americans make up only 28 percent of the population there. Similar studies in Wake County documented that solid waste landfills are inequitably distributed by race and by income; and in Chicago, solid waste sites are also inequitably distributed by income and race and ethnicity."</p>	
883-884	Mr. LC	<p>"...The disparate impact came about as a result of government action or inaction. The government was involved.</p> <p>First, in many of these situations, the government was running the facilities, government agencies, whether it was counties running landfills, states running toxic waste facilities, so the government was actively involved in siting the facilities that have the disparate impact.</p> <p>Second, even if the government wasn't actually involved in owning or running the facility, the government agencies were actively giving out permits to these facilities. The facilities could not operate but for the permit that they got from the agency. In the legal community, we call that but for causation. The impact could not have happened but for the permit. If they didn't have the permit, they would not be having the disparate impact. So the government agencies had a role in causing that disparate impact.</p> <p>Finally, the disparate impact that we see in these studies is exacerbated by an underenforcement in communities of color and low-income communities, and there have been studies at the national level of EPA's enforcement by the National Law Journal, and at the state level in New Jersey and in Virginia, showing that environmental fines and environmental remediation are less in low-income communities and in communities of color.</p> <p>For example, remediation in communities-of-color contaminated sites are much more likely to be capped in place, whereas, in white</p>	

		communities, the contaminated soil is much more likely to be excavated and taken off site.”	
886	Mr. LC	<p>“A key point is that the Executive Order applied both to people of color and to low-income people. Because both are vulnerable populations to adequately address environmental justice issues, one must focus on people of color, the race piece, as well as low-income people...the income piece.</p> <p>At the state level, which I want to focus at...different states have taken a variety of different approaches that generally fall into four basic categories.</p> <p>The first category is measures that can—that are not specific to environmental justice, but that can be used to address environmental justice issues.</p> <p>The second category is public participation and information-forcing measures.</p> <p>The third are measures to consider environmental justice in decision making, and the fourth are restrictions on siting.”</p>	
891	Mr. LC	<p>“The New York model sounds very similar to what you’re doing here, except, as I mentioned before, it explicitly incorporates race. The Indiana Department of Environmental Management has mapped potential areas of environmental concerns using factors such as income and race. Again, it differs from the regulation that you’re considering in that it explicitly recognizes race in the mapping.”</p>	
893	Mr. LC	<p>“...The Arkansas law also differs from the New Mexico regulation, as it currently stands, in that the legislators there explicitly considered race.”</p>	
894-896	Mr. LC	<p>“It’s my understanding, from the testimony of Mary E. Day, that is was on the advice of counsel that race was taken out of this regulation in the definition of vulnerable area.</p> <p>From my professional experience, and in my professional judgment, the state not only can, but in this situation really must, use race as an indicator to ensure that people of color do not bear the disparate impact of environmental hazards in New Mexico.”</p> <p>The use of race, as suggested by SWOP and the Coalition, is a narrowly drawn, necessary means of advancing the compelling governmental interests of avoiding disparate impacts from solid waste facilities. It’s based on significant evidence of both national</p>	

		<p>and local disparate impact and past siting decisions, and it's a necessary means for advancing the compelling state interest, which is fully in accord with the US Supreme Court's jurisprudence on this point.</p> <p>The use of race in this narrowly tainted way is completely appropriate, and in my reading, is compelled by federal regulation. ...I'm relying here on Title VI of the Civil Rights Act of 1964...</p> <p>As the Supreme Court ruled in Alexander versus Choate, Title VI delegated to the agencies, in the first instance, the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently social problems and were readily enough remediable to warrant altering the practices of federal grantees that had produced those impacts. EPA answered that question for us in promulgating its own disparate impact regulations..</p> <p>Now, Title VI of the Civil Right Act prohibits discrimination by entities that receive federal financial assistance.</p> <p>...If you get money from the federal government, you are not allowed to discriminate on the basis of race, color or national origin...</p> <p>...The EPA's regulations prohibit disparate impact discrimination by recipients of federal financial assistance. And I point out, as I'm sure all of you know, that NMED is a large recipient of federal financial assistance from the US Environmental Protection Agency."</p>	
897-900	Mr. LC	<p>"Thus, as a recipient of federal financial assistance from the EPA, the Environment Department is under an affirmative obligation to make sure that its actions don't have a disparate impact on the basis of race, that its criteria and methods of administering its programs do not have the effect of discriminating. NMED cannot legally take solid waste permitting actions that have a disparate impact.</p> <p>Thus, to guard against that, the Environment Department has to have, in one of the things it's looking at, race, so that it will know when it's making these decisions, it's not making racially disparate decisions. This is to avoid what I call the passive permitting aspect of disparate impact, the state merely ratifying decision of other entities...</p> <p>The second way that EPA has addressed disparate impact is in the next provision, 7.35.C, which bars disparate impact in the active location of facilities. That section reads, "A recipient shall not</p>	

		<p>choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting to the discrimination under any program to which this part applies on the grounds of race, color, national origin, or sex, or with the purpose of effect or defeating or substantially impairing the accomplishments of this subpart.</p> <p>The Environmental Department does not own landfills and it doesn't choose the locations of landfills. That doesn't mean that it's...not on the hook under these regulations, because if the Department, taking federal money, gives it to a county which is locating a facility, then that county is still obligated under these regulations not to make decisions –siting decision, location decisions, that have a disparate impact on the basis of race, color or national origin...</p> <p>It's important to include race here. The New Mexico Environmental Justice Executive Order includes race. It expressly mentions race in its first directed paragraph. It states, in part, "Programs and policies to protect and promote protection of human health and the environment shall be reviewed annually to ensure that program implementation and dissemination of information meets the needs of low income and communities of color, and seek to address disproportionate exposure to environmental hazards and risks... This program, this regulation, must be implemented to meet the needs of low-income communities and communities of color and to address disproportionate impact.</p> <p>If you're not including race in the regulation, how can you achieve this mandate under the Executive Order, which explicitly mentions race? It explicitly directs you to consider communities of color in such decisions."</p>	
900-901	Mr. LC	<p>"Now other states have explicitly recognized race in their own environmental justice policies.</p> <p>Connecticut's environmental equity policies require, in part, that, quote, "No segment of the population, because of its racial or economic make-up, bear a disproportionate share of risks or consequences of environmental pollution or be denied equal access to environmental benefits.</p> <p>....New York's environmental justice policy uses races as one of its triggers for expanded scrutiny, just like you would be using it as a</p>	

		<p>trigger here.</p> <p>The Arkansas Legislature used race explicitly in setting up a 12-mile buffer zone between solid waste facilities.</p> <p>In Indiana, they used race in mapping potential areas of environmental concern. In using race, the appropriate definitions would be those probably drawn by the United States census Bureau, who are the national experts on demographic data and taxonomy."</p>	
901-902	Mr. LC	<p>"It would probably be appropriate to tie whatever number you choose to something that was indexed, like the percentage of people of color...</p> <p>To conclude on the uses ---the use of race, in my professional opinion, the use of race in this section of the regulation is well within the boundaries Of Supreme Court jurisprudence. It's narrowly tailored, it's a necessary means of achieving a compelling state interest which is avoiding the disparate impact of environmental hazards, it's legal under strict---the Supreme Court strict scrutiny standards. I think that without the use of race in this regulation, you'll be missing a golden opportunity to actually concretely address environmental justice hazards."</p>	
902	Mr. LC	<p>"...I was speaking about race in that context [of race and ethnicity], I meant race and ethnicity throughout that conversation.</p> <p>...[Considering] the studies which looked at race and ethnicity--under the Census Bureau definition, we have to consider both race and ethnicity because Hispanics or Latinos are considered the white race, you have to look at non - -- you have to look at non-Hispanic whites as your white population and everybody else as your population of color."</p>	Differentialized racialization
904-905	Mr. LC	<p>"Now, my third suggestion in that in using income as a variable in the definition of vulnerable communities, it's very important that you use an indexed figure, a figure that is tied to some figure that's going to move over time.</p> <p>...You have to choose some number that's going to move with inflation, otherwise, your law every year is going to become less and less protective of the public. A static figure simply isn't protective, it's got to be an indexed figure."</p>	
906	Mr. LC	<p>"A fourth suggestion is that the term "unreasonable concentration" must be defined. Without a definition of the term "unreasonable concentration" in the regulation, the regulation creates uncertainty</p>	

		and, undoubtedly, creates litigation.”	
907-908	Mr. LC	<p>“The regulation should require a demonstration that the issuance of the permit won’t result in an unreasonable concentration of regulated facilities. That burden should be on the facility proponent, and this is central to achieving environmental justice.</p> <p>In a directly related point, there has to be language ensuring that the Secretary denies a permit that does have disparate impact or that does create an unreasonable concentration.”</p> <p>The language should be something like, “The Secretary shall deny the permit if issuance of the permit would have a disproportionate effect on the human health or environment of a minority or low-income group.”</p>	
908	Mr. LC	<p>“...you have to address both the procedural fairness, but also the distributional fairness piece of environmental justice. Just simply having a process is not enough if there isn’t some result that achieves environmental justice at the end of the day.</p> <p>...Legally, if there is going to be a disparate impact, the state cannot grant the permit So that’s under the EPA’s regulations, you want to have the state regulation mirror the EPA’s regulations.”</p>	
909-910	Mr. LC	<p>“Now, in my 17 years of doing this work, there are a series of factors that come into play in the final permitting decision. Many of those factors are no environmental factors at all; they are political factors, they are economic factors, they are social factors, like jobs. There are lots of factors, that weigh as heavily, or more heavily, than environmental concerns, and sometimes it’s appropriate that those factors come into account.</p> <p>....Related to this, there has to be a mechanism that automatically denies the permits if the required findings aren’t made</p> <p>Procedurally, I understand from Mary E. Day’s testimony that there is no real sanction to the project proponent if they make a good-faith effort at complying with this statute, even if they don’t comply with it.</p> <p>....right now all there is in the statute is Section 212.J that says that you do get the permit. We have to have a provision in there that says that if you haven’t completed your application correctly, you don’t get a permit. It’s not a good-faith subjective wish-washy thing. It’s “Here are the concrete steps you have to take; otherwise, you</p>	

		don't get the permit."	
910	Mr. LC	"The definition of facilities should include concentrated animal feeding operations, and also transit corridors, like highways, because they have a significant impact on the communities that are around them."	
911-913	Mr. LC	<p>"One of the findings of academics who have unpacked the reasons for disparate impacts is that zoning has played a central role in the creation of those disparate impacts.</p> <p>...the unequal distribution of facilities was facilitated by zoning, and zoning was actually a key vehicle in making it happen.</p> <p>Yale Rabin, who is an economist at MIT, and the University of Virginia, before he retired, has documented in a number of cities throughout the United States what he calls expulsive zoning. This is the use of zoning practices to create land use patterns that guarantee disparate environmental impact."</p> <p>...If you look at zoning maps for most American cities from the 1920's, 1940's, even the 1960's you will see on the zoning maps Negro Town, or this is where the Mexicans get to live, south of his line, or it's actually written into the zoning maps the legal segregation, and segregation is enforced by zoning. That's what zoning was, it was the way we effected segregation.</p> <p>More crucial to our inquiry, Rabin found that not only was zoning used to segregate communities, which was bad enough, but it was also used to distribute environmental benefits and environmental burdens. So the parks and open spaces were zoned into the white communities. The noxious facilities, the rendering plants, the landfills, the heavy industry, were zoned into the communities of color, into the Mexican, Latino, he Indian communities, African-American communities.</p> <p>...This is what Rabin calls expulsive zoning. It was the conscious use of zoning laws to target stable residential communities of color for environmental degradation."</p>	
914	Mr. LC	"That's why, unless you have the provision in there saying that the zoning and land use process has to have explicitly considered disproportionate impact, that provision of the regulation is not protective."	
915-	Mr. LC	"The final message I'd like to leave you with today is that, based on	

916		<p>the distribution of environmental hazards, both nationally and in new Mexico, there is a demonstrated need for environmental justice protections in your solid waste code.</p> <p>As currently proposed, the regulations do not fully protect low-income communities and communities of color.</p> <p>...The State of New Mexico is not way out in front of these regulations. The impact assessment mirrors things that have been done for 35 years in other jurisdictions</p> <p>It's not out front in addressing environmental justice. Many states have state laws addressing environmental justice.</p> <p>The State of New Mexico is playing catch-up here, but you have the opportunity to catch up in a really fine, protective, enforceable way, and I urge you to take that opportunity today."</p>	
Testimony by Mr. LC makes way for testimony by Mr. JD			
920	Mr. JD	"The elderly and youth population are the potentially vulnerable population. Mountain View has 8.4 – 8.2 percent of – I mean of vulnerable populations."	
921-923	Mr. JD	<p>"The language spoken at home in Mountain View, as you can see, 54.4 of Mountain View speaks Spanish or other language at home, other than English. If you compare it to other communities in the South Valley, it's 42 percent – or 43 percent in Pajarito Village. Bernalillo County speaks other language than English at home; and then the state is 36.5, a little bit higher than the County of Bernalillo."</p> <p>"This is an example of environmental justice. In the entire South Valley area, we have 36 EPA-regulated facilities, which means that those facilities are emitting contaminants into the air, the ground, and the water in the South Valley. Out of those 36, 31 are located in Mountain View.</p> <p>As you saw, Mountain View has one of the highest percentages of Hispanics, Hispanic population, one of the highest percentages of Spanish—or, I mean, other language spoken at home other than English."</p>	
929	Mr. DM	"From your point of view, as a resident of Mountain View, and as a member of the Mountain View Neighborhood Association, has that	

		zoning been adequate to protect the residents of Mountain View from environmental hazards?"	
929	Mr. PD	"It's doing the opposite. The zoning allows for more industry to move in, and it's history repeating itself, because that's the mechanisms set up so that more industry can move in, and residents don't have a voice against it, and we've been battling for ten years or more."	
929	Mr. DM	"As far as you know, does that zoning process including any consideration of environmental justice issues?"	
930	Mr. PD	"None."	
930	Mr. DM	"From the point of view of the residents who live near it, the wastewater treatment plant that you mentioned in the presentation, is that an important facility?" ...Does it affect those residents' lives?"	
930	Mr. PD	"It affects the – it does affect it in a negative way, because of the smell, property values, because of health concerns, and it gives – it causes a lot of stress in the community, but it also provides some of the sewer services, which they didn't have until some of the sewer services, which they didn't have until like ten years from now, even though the plants has been there of Mountain View – "	
930	Mr. DM	"So the plant was there for 15 years before people of Mountain View –"	
930	Mr. PD	"People had sewer, yes."	
Mr. LC resumes for SWOP/Coalition for South Valley Neighborhood Associations			
937	Mr. SP	"I was curious how these studies that you talked about, race and ethnicity, as well as income, take into account the need for these kind of facilities to have large tracts of land, conceivably at lower prices, as opposed to being bright and wealthy cities, and it seems, as well, that people of low income also are attracted to areas of lower land prices."	Broad question on race?
938	Mr. LC	"Because the decisions made to site these facilities had a racial animus behind them, or because they were based on zoning or other land use laws that had a racially discriminatory past, but what might be even being applied neutrally today in the way that I explained about the zoning."	

938	Mr. SP	"But not particularly not motivated? Just by default?"	mitigation
941	Ms. KB	"Okay. You mentioned the race and ethnicity in the document that SWOP—and I can't find that..."	
941	Mr. LC	"It's in the definition of vulnerable area, I believe."	
941	Ms. KB	"And if I may, Board Member Bearden, the critical definition is on page two. It's the definition of a population of color."	
941-942	Mr. DM	"And that definition is then used in the definition of a vulnerable area."	
943	Mr. LC	"[The concept of an unreasonable concentration] needs a definition. There is no definition at this point that I saw. ...and as I'm sure you know, there is a long history of using racial covenants to exclude different races, and so that's kind of private zoning. Zoning was a more public process."	
949	Mr. GG	"...I didn't have a problem with race, and as your testimony progressed, I find myself with [Mr. HT] now. Disproportionate – when you testified about disproportionate actions, the logical conclusion of that, so correct me where I'm wrong here, is that 52 percent of all landfills should be located in populations of color?"	Board trying to understand Excuses Face Keeping
949	Mr. LC	"I don't think that's what these regulations call for at all. I think what these regulations call for is a look at the demographics, and if it would be disparate, then you don't take that action."	
949	Mr. GG	"If we're basing it on race, then, again—"	Moves of Defense
950	Mr. LC	"It's not solely on race. It's just race is one factor that needs to be considered in the totality of all the other things that you're looking at, and it's glaring in its absence, because you're looking at all these other things, you know, you're looking at other facilities, you're looking at income, you're looking at impact, you're looking at everything else, but the 800-pound elephant that's there, that's the reason we should all be coming together to embrace these environmental justice guidelines."	
950	Mr. GG	"So low income doesn't pick that up?"	euphemism?
950	Mr. LC	"No. it can, but it doesn't necessarily, because, as I've mentioned, the studies show that race has an independent and stronger predictive	

		value, and so there is a racial component to what's going on in siting that it doesn't necessarily track with income."	
950-951	Mr. GG	"I understand that completely when it comes to, say, Houston, where it's 28 percent and then 100 percent, but in New Mexico, we're—52 percent are people of color, so I'm not....for sure it's actually, I guess, the correlation for the low income. ...I'm missing the correlation to race when it comes to New Mexico, I guess."	Mitigates
951	Mr. LC	"...it appears that about 60 percent of the facilities are in communities of color or in census block groups of color."	
955-6	Mr. LC	"We, I think, certainly, if I had to choose three, I would say you've got to include race. That's – you know, that's – although I share Mr. Tso and Mr. Green's discomfort and even distaste with it, it's something that you've got to look at. ...And if there is going to be a disparate impact or unreasonable concentration, I think you have to have a denial of the permit."	
957	Ms. DH	"...I also asked the question about race, and you said that today race and ethnicity kind of go hand in hand, did you not?"	Euphemism
957	Mr. LC	"Yes.When I say "race," I mean both race and ethnicity."	
962	Mr. LC	"In California, under the Dymally-Alatorre Bilingual Services Act, in any situation where five percent of the affected public or more is monolingual in a language other than English, state agencies are mandated to provide translation. ...[Ms. GD] also said, "How about having something in there that if it's requested by the community? The difficulty with that is that if it's not in a language that you understand, you never know whether to request it or not. If you get the – if you get the document, and it's in English, and you speak Mandarin, you're not going to request it being in Mandarin. If it's in Mandarin ad it says that you can request the document, then you might. But there has got to be something in your language..."	
Testimony for Waste Management of New Mexico begins			

964	Ms. MF	<p>"I guess I want to start with that I've been impressed and emotionalized today by some of the testimony.</p> <p>I move to New Mexico 33 years ago, and one of the great parts of the State of New Mexico is its tri-culture and the way the cultures blend and get along together, and I've just been impressed.</p> <p>I am concerned that with the various issues that are occurring right now, they are driving wedges through that."</p>	<p>NM the "tri-cultural state"</p> <p>Positive Self-Presentation</p> <p>Face Keeping</p> <p>Euphemism</p>
968-969	Ms. MF	<p>"...I was also asked about our proximity to Native American populations at landfills. San Juan, our closet Native American population is the Navajo Nation, but it is in excess of 20 miles from the Crouch Mesa Landfill. The other Native American neighbor is Jicarilla Apache Nation over in Dulce...might be the closest, other than those that are in Colorado.</p> <p>Valencia County, our neighbors are Laguna and Isleta, both within a ten-mile notice....area. It's somewhere around seven or eight And when we notice for permits, those Native American populations are noticed, along with our city and county governments.</p> <p>Rio Rancho has Santa Ana and Sandia as neighbors – well, not close neighbors like in San Juan, but certainly within that ten-mile radius, and they are noticed according to the current regulations.</p> <p>We also provide services to most of the pueblos that are in our area, and their wastes go into our landfills."</p>	<p>Positive Self Representation</p>
Testimony for Shoats and Weeks begins			
982	Ms. MS	<p>"... as I attend those meetings in New Mexico, and for the past 16 years, the most pressing concerns that these vulnerable communities – all communities, but the vulnerable communities especially have is -- are not solid waste issues, they are health care, daycare, unemployment, fuel prices. ... and they are going to have to compensate somewhere for increased disposal and hauling costs."</p>	<p>Mitigation</p> <p>Positive Self-Presentation</p>
984		Hearing recesses and returns to finish off cross-examination of Mr. LC.	
Mr. LC resumes for SWOP/Coalition for South Valley Neighborhood Associations			
987	Mr. PD	"Can you explain to me, if that's the intent of your testimony that	

		that we don't look at people of color, we don't look at economics, we look at a four-mile radius anywhere in the State of New Mexico, and if there is three facilities, we deny that permit, and if there is two within two miles, we deny it?"	
988-989	Mr. PD	"Basically, you're saying for that limited area, the same area everyone has been working on, the vulnerable area, you would never, ever be able to build a facility, there is no exception here, you don't even look at people of color, you don't look at economics. I don't understand, if there is a good-faith basis for presenting this, after everyone has worked on this, to why this suggestion, what I think at the last minute is to override all the work, all the proposals of everyone, and I'd ask you, [Mr. DM], if that's your intention."	Positive Self-Presentation Moves of Defense
992	Mr. PD	"Look at F.1. That's identical to only one element of the vulnerable community – that seems to be to be identical to in the vulnerable community definition at the top of page four."	
992	H.O.	"I've heard Mr. Domenici characterize it that way. I'm not sure that I've heard [Mr. LC]'s agreement."	
	Mr. LC	"...I think, as they are currently written in here, they are coterminous. They are both looking at three regulated facilities within four miles, and I think you're just going to have to decide where you want to draw the line in terms of vulnerable areas and where you want to draw the line in terms of no more concentration."	
1005	Mr. LC	"... based on that level of analysis, which, admitted, is a someone crude level the block group level is a very meta-level of analysis, and 22 out of 39 does on the map were in communities that were 49 or more percent of color, meaning roughly 60 percent of the facilities indicated on that map are in communities of color."	
1016	Mr. MT	"Do all these facilities that are not the same, that you assumed to have the same impact, have the same impact on all vulnerable areas? Are vulnerable areas the same?"	Move of Defense
1016	Mr. LC	"I am really having trouble understanding your double or triple flip of nonimpact, impact, but not described as impact."	
1016	Mr. MT	"Is a vulnerable area in Wagon Mound the same as a vulnerable area in Sunland Park, which is – again, is it the same as a vulnerable area in the South Valley of Bernalillo County?"	Mitigation
1016	Mr. LC	"No, but they all share certain characteristics, and what you're	

		trying to do is come up with, again, a simple, common-sense regulation that will be able to capture, at a rough degree of generality, all of these places and say, "These are vulnerable areas."	
1016	Mr. MT	"Does density come into play in the way these vulnerable areas would react to the placement of these facilities – population density?"	
1016	Mr. LC	"That could, sure."	
1019-1020	Mr. MT	"I guess what perplexes me a little bit about all of this discussion is that there is a sense that communities can't manage for themselves in terms of their own political self-determination, and it seems that you suggest that the best way to make sure that this disproportionate impact does not occur is that we apply this methodology, yet every community is different, as you have indicated, and the facilities are different, so help me one more time to understand....how do you accommodate all of these variations in community patterns, density, racial and ethnicity concentrations, socio and economic status, natural resource base, groundwater vulnerability, all of those – how do you square all of that with a count of facilities?"	Positive Self-Presentaion Mitigation Excuses
1020	Mr. MT	"You talked about 99 studies, and you talked about the fact that most of them have involved some kind of statistical analysis, and that you were looking at relationships between a couple of variables, you felt like there was a way to understand the attribution of behavior of these governments and the local operators that placed facilities in certain locations, and you felt that in the studies that race and ethnicity were more significant predictors than socioeconomic status in some cases."	excuses
1030-1031	Mr. LC	"I think that you have to have zoning, but at the same time that you're using zoning, you have to realize where it came from historically, and what people – what zoning decision makers did in the '20's and '50's and '70's in this country, and you have to build in safeguards to whatever your process is to make sure that those type of decisions aren't being made as neutral decisions based on actually decisions made with racial intent back in the '50s. So you may say, "Let's put it in heavy industrial zoning," and that may be the right answer, landfills should go in heavy industrial zoning, but then you have to look at where have we zoned heavy industrial and why we zoned t only next to Latino community in	

		<p>the South Valley and not next to the white community and what – you know why is this community zoned abutting heavy industrial, or even have residential within heavy industrial, how did that zoning happen, and if you unpack that, my sense is you’re going to find that there was some type of racial animus in the decision makers.</p> <p>The racial animus is gone, the zoning regulations are still there, unless they’ve been overhauled, which very few jurisdictions have done.”</p>	
1032	Mr. CN	<p>“And the demonstrations it’s talking about are up in E, and the demonstrations are that the permit modification will not result in a disproportionate effect on the health and environment of a particular socioeconomic group in a vulnerable area.</p> <p>...Right above that in Subsection E. “And will not result in a disproportionate effect on the health and environment of a particular socioeconomic group in a vulnerable area that is or may be impacted by issuance of the permit sought.”</p>	<p>Moves of Defense</p> <p>Positive Self-Presentation</p> <p>Face Keeping</p>
1034	Mr. CN	“And, in fact, it’s unlikely anybody will propose any facility in a vulnerable area under this regulation, isn’t it?”	Moves of Defense
1034	Mr. LC	“No, I wouldn’t say that.”	
1034	Mr. CN	“Well, what’s that based on?”	
1034	Mr. LC	“People have economic stakes in facilities that are currently located in particular areas that may be vulnerable, and they are going to want to continue the life of those facilities, they are going to want to expand them vertically or horizontally.”	
1034	Mr. CN	<p>“I understand that.</p> <p>But is it likely that new facilities will go into vulnerable areas?”</p>	Move of Defense
1035	Mr. LC	“I think, if you pass this, it is less likely that new facilities will go into vulnerable areas, which is the ambition of the regulation, as I understand it.”	
1035	Mr. CN	“Okay. So in any event, getting back to the Secretary’s discretion under this, have you read the Rhino case that people have talked about?”	Move of Defense
1035	Mr. LC	“No, but I’ve heard about it. I’ve never read about it.”	
1035	Mr. CN	“Okay. I guess I won’t ask you any questions about it. Have you done any studies to show any specific discriminatory landfill siting decisions in New Mexico?”	

1035	Mr. LC	"Have I personally done any studies? ...No."	
1035	Mr. CN	"Are you aware of any studies?"	Move of Defense
1035	Mr. LC	"Well, as I testified before, although this is at the most gross level, the block group level, the maps that have been introduced tend to show that these red dots are in communities of color 60 percent of the time and in other communities 40 percent of the time..."	
1038	Mr. CN	"...that you can tell me that 60 percent of the landfills are sited in areas where there is a greater than average distribution of a population of color or a greater than average low-income population. Can you tell me that from the map?"	Moves of Defense
1040	Mr. LC	"I would agree that more than 50 percent of the residents are considered people of color."	
1043	Mr. CN	"Is it correct that EPA has determined that it cannot use race as a decision-making factor in making decisions about permitting?"	
1044	Mr. LC	"In light of Supreme Court decisions, such as Adarand Contractors, Inc., versus Pena, 515 US 200 (1995) and Gutter versus Bollinger, 539 US 306 (2003), on the use of racial classifications in government decision-making, OECA and the EJSEAT methodology do not use race as a criterion for making decisions."	Moves of Defense
1044	Mr. CN	"Okay. Now, I believe you represented earlier that some legislature used race in passing a statute."	
1044	Mr. LC	"A number of legislatures have used race in passing statutes."	
1044	Mr. CN	"Well, in your testimony earlier, I think you mentioned that some other state used race as a criteria. ...Do you know whether the statute actually uses the term race or ethnicity?"	Moves of Defense Face Keeping
1044- 1045	Mr. LC	"Well, a number of different states have used race in different statutory constructions. ...I mean every state has civil rights laws, most of which mention race."	
1045	Mr. CN	"Where the applicant has to demonstrate that within the State of New Mexico granting a permit or permit medication will not result in a disproportionate effect on a particular socioeconomic group within a vulnerable area - ... - does that, to you, exclude race?"	Move of Defense Denial
1045	Mr. LC	"No, it does not."	

1045	Mr. CN	"So you think it could be taken into account under our proposal for purposes of deciding whether there is a disproportionate impact?"	
1045	Mr. LC	"Yes, it could."	
1051-1052	Ms. CA	"So the recommendations you presented to the Board in regard to environmental justice, we have an environmental justice working group pertaining to the Solid Waste Management Plan." ...Would you say that your recommendations on environmental justice, then, would be best to be put on hold so that the environmental justice working group could have a meaningful dialogue and look at your recommendations prior to being adopted into these regulations in order to have a fair and meaningful process with participants o the public and affected stakeholders?"	
1053	Mr. DM	"... <i>Adarand Constructors Versus Pena</i> and <i>Grutter versus Bollinger</i> . Have you read those cases?"	
1053	Mr. LC	"I have."	
1053	Mr. DM	"Did both of those cases deal with situations in which race had been used as a criteria – criterion for obtaining a government benefit?"	
1053	Mr. LC	"If you consider a university education a government benefit, then, yes. In <i>Adarand</i> , it was a subcontractor trying to make highway guardrails who didn't get the permit; and in the <i>Grutter versus Bollinger</i> , it was a challenge to affirmative action at the University of Michigan."	
1053	Mr. DM	"Would you consider those fact situations to be substantively different from a fact situation like this one in which the effort is to prevent discrimination?"	
1053-1054	Mr. LC	"Absolutely. And I would point out that in the <i>Grutter versus Bollinger</i> , the affirmative action program at the law school was upheld, and I think that this program that you're talking about here looks very much like that one, in that it's a flexible assessment, it's – the context of the decision really matters, it is not just the remedial context, but it's a forward looking thing....It's – there is a compelling state interest, and your remedy or your process is very narrowly tailored. So I think it would survive either of those cases. ... "However once EOCA" – which stands for the Office of	

		Enforcement and Compliance Assurance – “has made its decisions, OECA staff should analyze the decisions based on demographic (race and income) information to determine the extent to which the actions taken focus on minority and low-income populations located in areas with potential disproportionately high and adverse effects.”	
1055	Mr. DM	“On the basis of the three sentences of that document, or maybe it’s five sentences that you’ve read, in your professional opinion, is there anything in any of those sentences that indicates that the EPA position is that the State of New Mexico cannot use race or ethnic status as a criterion?”	
1055	Mr. LC	“Absolutely not.”	
1056	Mr. DM	“I have no further questions for [Mr. LC], but I did want to move for the admission of three exhibits, his resume...and then two exhibits that are on the CD.... The first is called “Environmental Justice for All, A Fifty-State Survey of Legislation, Policies, and Initiatives,”and the last one is an annotated list of studies from the book “From the Ground up: Environmental Racism and the Rise of the Environmental Justice Movement,” a book that [Mr. LC] co-authored...”	
1056	H.O.	“...Also, is this – is the Smart Enforcement Assessment Tool part of the record anywhere?”	Interrupts Move of Defense
1056	Mr. DM	“I’m not aware that it is.”	
1056	H.O.	“Should we include it in the record?”	
1056	Mr. DM	“We’ve not had the chance to read it, so if it is going to be included in the record, we would appreciate the opportunity to review it and comment on it.”	
1056	H.O.	“All right. It was just a question.”	
1059	Mr. LC	“I think that as a forward-looking thing – not necessarily in the remedial context, as a forward-looking thing, this is a perfectly appropriate tool to use race with it.”	
1059	Mr. CN	“...And didn’t we agree that our regulation that we’ve proposed actually allows that?”	
1059-1060	Mr. LC	“Allows, but doesn’t require. I think that’s a huge difference. Sure, your regulation says that the Secretary, in his discretion, can stop it if there is a disparate impact, but there is no requirement to	

		do that, and that's what I've been advising you all evening long that you should have is the requirement."	
1061	Mr. PD	"I think your testimony was that the use of race or ethnicity has to be narrowly tailored; correct? ...And are you familiar with Subpart (d) on this page four, as to how the proposal to use race or ethnicity has actually been set forth?"	
1062	Mr. PD	"So you're saying that in a circumstance where you have a 50-square-mile radius around a landfill, and you have one square mile out of that where there is over the state average of people of color, and all 49 other square miles are not over, you're saying that is narrowly tailored when 49 out of 50 would not, in fact, have any indication of some type – some level of people of color over the state average?"	
1065	Ms. JME	Ms. JME, was Director of the Alliance for Transportation Research (ATRI) Institute. She was also the first Secretary of the Environment in New Mexico and also had served as Secretary of Transportation. The ATRI had also been contracted to facilitate the NMED Environmental Justice Listening Sessions in 2004.	
1071	Ms. JME	"Referring to the Listening Sessions "I think it is important that the Department went out and did these listening sessions. It was the first Department in the western states, in this region, to actually take on what EPA headquarters had said that they –that states should do, and that is listen to people in communities of color and low income communities about their cumulative risk impacts to them about environmental pollution. ...people in communities of color and low-income communities. And I think the Office of environmental justice is using this as a model...Region Six has done it as well."	
1072	Ms. JME	Talks about the listening sessions as to the planning committee, outreach, attendance by different communities and the outcomes of the Listening Sessions: Reports, task forces, the Governor's Executive Order on Environmental Justice.	
1074	Mr. DM	In discussing the supreme court decision <i>Colonias Development Council v Rhino Environmental Services</i> . Mr. DM asked: "In your professional opinion and based on your work as the Environmental Department Secretary and in the Listening session, is there a need	

		for this Board to adopt environmental justice provision in the Solid Waste Management Regulations?"	
1074	Ms. JME	"Yes, I believe that the Board needs to do that. In fact, the Supreme Court almost called for that in the case."	
1076	Mr. DM	"Does the Executive Order address race and ethnicity as criteria to be used in determining what state agencies should do?"	
	Ms. JME	"Yes, it does, and it doesn't make any bones about it. And the Executive Order was one of the big recommendations that came out of the listening sessions."	
1077	Mr. DM	"Does you experience, both as the Secretary of the Department and on the NEJAC, support your view that race and ethnicity should be considered as criteria in determining siting and making siting decisions?"	
1077	Ms. JME	"Yes. ... I think that that is the basis of a lot of -- as [Mr. LC] said, in the past of what has happened in siting, both in New Mexico and continues to happen in New Mexico, I'm sorry to say. It's an uncomfortable position for people to go to , and it's not nice to think that that happens, but it does happen."	Storytelling
1078	Ms. JME	"I grew up in Albuquerque...my parents came from Silver City, and as my mother said, "all the Mexicans worked in the mine, but none of them were foremen...So I grew up understanding the disparity. Fortunately for me I grew up in a middle-class family, ...But I remember when we were young driving around Albuquerque, and we would come down south Broadway or down Second street, down south and you could smell this awful smell...'It's the sewer plant, ...it's the animal – Schwartzman's had a meat-packing place there..."	
1079	Ms. JME	"And when I was growing up,...everybody knew that the poor Mexicans and ...poor people lived in the South Valley, and everybody knew that all of the industry was in the South Valley, it wasn't in the North Valley, because that had been populated by the wealthy, who wanted to have big ranches and farms..."	
1081	Mr. DM	Asks if she is familiar with the following EPA documents: Framework for Cumulative Risk Assessment; Ensuring Risk Reduction in Communities with Multiple Stressors; and Effective Methods for Environmental Justice Assessment.	
1081	Ms. JME	Yes. "...it talks about doing community assessments, doing	Facts/experience

		community participatory research in order to look at risk factors in communities of colors and low-income communities that are impacted by multiple facilities.”	
1082	Ms. JME	“This is a framework that EPA uses to judge what are cumulative risks, particularly in low-income and communities of color, because many of these communities are sick, and as the beginning of our report quotes from one of the community members, ...”I am sick and tired of being sick and tired.” People have illnesses that they don’t know why, but they are living next to many, many polluting facilities.”	
1082	Mr. DM	“Do the documents that you’ve been referring to and that we included as exhibits, use race and ethnicity as criteria for, for example, evaluating whether a community is a vulnerable community or an at-risk community?”	
1082	Ms. JME	“Yes, that’s certainly a huge factor.”	
1084 - 1085	Ms. JME	Talks about different environmental racism and injustice issues using the example of transportation corridors and displacement of communities using the example of construction of I-25, which had gone through Martineztown in Albuquerque rather than through land owned by UNM.	
1085	Ms. JME	“And I think that’s one of the big problems here, is these communities – I always used to wonder, ‘Well, why don’t people just move?’ Well, people can’t move, because the value of their houses and the value of their property is not enough for them to move.”	
1086	Ms. JME	“...this happened as freeways were being built and transportation and infrastructure was being built around the country, they typically went through low-income and communities of color.”	
1086	Mr. DM	“On the basis of your experience with transportation corridors do you think it’s appropriate to include transportation corridors in that list?” (List of what is considered a regulated facility)	
1086	Ms. JME	“Oh, yes.”	
1087	Ms. JME & Mr. DM	She also agrees with giving Secretary “mandatory denial of applications that do not meet certain requirements” (Mr. DM)	
1089	Ms. JME	“I’m not sure what the difference is. If you’re mandating that the Secretary has to give a permit, if certain conditions are met, than I’m not sure what the outcry is, or what the problem is, in saying	

		that the Secretary should deny if there are certain conditions that are not met....As the Secretary, I, frankly, did not mind when it said, 'You must deny,' because...when the Governor's office called and when the community called and when the lawyer called and when Senator Domenici called and when then Congressman Bill Richardson called -- and, believe me, they all called...I could say, 'You know what, this has gone through a hearing process, I don't have the discretion.' And, frankly, it really does help."	
1090	Ms. JME	"With respect to the CIA, "This -- these -- deciding what is a vulnerable area and doing a community assessment, if that's what's needed, is just not that painful."	
1096	EIB: Ms. DH	"There has been racism and there has been injustice, and so, hopefully, with your testimony, I want to ask a question, or -- because I'll be in trouble. Thank you very much."	Race is present
1099	Ms. JME	"...I do not think that the Department has any legal problem with using race as a -- race meaning ethnicity. ...It is a criteria that is used in -- again, in the transportation arena, ..."	Legal interpretation
1100	MS. JME	"Again, I think that substituting economically stressed household for race, or something like that, probably will get you into more trouble legally than just saying it."	
1101	Mr. PD, Jr.	"Just so I'm clear, are you here as an advocate or as an ex-Secretary?"	Moves of Defense
1102	Ms. JME	"I was asked by the SouthWest Organizing Project, specifically, if I would be an expert witness for them on behalf of the environmental justice proposals that they were putting forth before the EIB."	
1102 – 1108	Mr. PD, Jr.	Mr. PD, Jr. continues to ask her questions about whether she is getting paid, and questioning the area of transportation, her support of a definition of unreasonable concentration of facilities and her position that the secretary be given guidance to deny a permit. She answers with confidence and strengthens her position.	
1109	Ms. JME	"Once you look at the vulnerable area, and you see that there is 36 contaminating or polluting facilities in that area, and in this community of color or this low-income community, then I would say, yes the Secretary needs to deny that permit and everybody goes home and you find another place to put your facility."	
1110	Mr. PD, Jr.	"You understand that there are landfills that have a substantial	

		history in the location they are already at they've invested substantial money in identifying site characteristics and they have plans for expansion?"	
1115	Mr. PD, Jr.	"...do you think this Department should be prepared to pay for that investment?"	Moves of Defense
1115	Mr. DM, Mr. PD, Jr, & H.O.	Mr. DM, objects to the question, Mr. PD, Jr. defends his question and the H.O. overrules Mr. DM's objection	H.O. regulates
1115	Ms. JME	"Well, you know, whether that's a taking or not, I think, is ...a decision that needs to be made by the court. I'm not sure if you're suggesting that the Department ...would have to pay...if you weren't allowed to expand...You're not allowed to -- no -- no permitted facility is just allowed to expand, expand, expand, or allowed to build however they want. If it's a polluting facility, you're permitted to process your waste, whatever that might be, or process your pollution, and that's what it is, is processing your pollution is a way within that permit."	
1123	Mr. RV	Mr. RV cross-examines after Mr. PD, Jr. focusing principally on "proportional response" (deferential impacts by different facilities). Which she agrees with generally.	Positive Self-Presentation
1130	Mr. CN	Mr. CN leads for the NMED. "You offered an opinion on whether and to what extent race could be used as a factor in governmental decision making...Have you read the cases that we discussed earlier, the U.S. Supreme Court cases, <i>Grutter v. Bollinger</i> and the <i>Adarand</i> case?"	Abstract Liberalism
1131	Ms. JME	She states that she has not done research on those cases, "I just know that EPA uses it, the ...Department of Transportation uses race, and ... I don't think it's anything to shy away from. And if the Board wanted to use it, in my opinion it would be perfectly fine for them to do so."	
1138	Ms. SH	Final witness for SWOP/Coalition Party – Ms. SH – She gives EJ stories of the South Valley and her experience with the zoning and planning committee there which she states was highly politicized and needed regulatory guidance. She addresses the set back from a transfer station proposed by NMED which had an exception of less than the proposed 250 foot set-back if approved by the local zoning authority. She also gave the history of the Southwest Landfill,	

		which she said, “despite the fact that the county planning staff had recommended denial, County Commissioners still approved the permit.”	
1142	Ms. SH	She also addressed encroachment and transportation costs of waste, “So, actually, our community is transporting the least amount of distance. It’s the Northeast Heights that is bearing the burden of the high cost, especially if they are transporting their own C & D waste to the Southwest Landfill.... So this idea that we’re concerned about the cost for these low-income communities, I think, from my shoes, is a bit of a red herring.”	
Testimony for Systems and Environmental Consulting			
1159	Dr. MT	“I am a consultant to several solid waste facilities in New Mexico and in several other states. ...I have participated in the management and production of work product and testimony in probably 120 different environmental permitting projects over that time. I have participated in permitting well over half of the total disposal capacity in the State of New Mexico since 1993. “	Dr.MT: Industry consultant Credentials - long history in NM Positive Self-Presentation
1160	Dr. MT	“...have seen the process in New Mexico go from an eight-page registration form in the late ‘80’s to a pretty detailed program for regulating the facilities in the current regulations. ...And then we’re going a little bit further down the road with the proposed regulations, ... I think there is some debate over the – the nature of the environmental justice language in general. ...I would like to tell you that in its current form, in all of its form, the proposed regulations that have been prepared by the NMED are regulations that my clients and I fully support, every last word of it.”	Experience in NM Positive Self-Presentation – agrees with the draft regulations Creates doubt / offensive move Mitigates Moves of Defense
1168	Dr. MT	“There is growing concern among some members of the interested parties that are testifying here that somehow the location of these facilities was based on, as [Mr. LC] testified, some form of racial animus, was his word of art. It took on a -- in his testimony, it took on a very conspiratorial tone.”	“Word of Art” Mitigation Sabotage Cole – race. Conspiratorial
1168	Dr. MT	“I have an old friend....senior geologist for the state of NM for years and years and years. In fact, he was so old when I became his friend that I think he actually saw the development of the Rio Grande rift. That is why he was such an expert on it. “	Vignettes – He is allowed to go on and on Years of experience Expertise and his association with expertise
1169	Dr. MT	“The proximity issue is really what the current EJ thrust in these	Encroachment / proximity is the real EJ thrust –

		rules is all about, how far how close, who lives close to them, who doesn't. In Sunland Park -- and just as one kind of case study in here, Sunland Park is 100 percent persons of color. It always has been. There isn't an enclave of white, Anglo-Saxon, protestant folks in Sunland Park. They're Hispanic, Latino or American Indian with one or two black people. But it's always been a community of persons of color. In many respects, it reflects an immigration pattern that was active 20 years ago, first and second generation immigrants. "	offensive move to try and tell us what is the real issue Face Keeping Blaming the victim
1170	Dr. MT	"And this community, which is made up of 100 percent persons of color, made a decision through its elected officials and it's appointed planning and zoning officials to allow that operation to continue under some very specific conditions. They wanted compliance with the regulations. However they evolved, whatever they became, they had to comply. They had to help with the community's solid waste disposal needs. And they had to minimize the impact on the community." (He is asked a question about who owns the landfill by the Board Chair Ms. GD which gives him the cue to keep on going with more detail, showing aerial photos, describing the landfill, etc.)	Positive Self Representation Blaming the victim All people of color the same Reversal
1177	Dr. MT	Gives a history of the incinerator, and finishes by saying, "But bottom line is he incinerator should not have never been there. And this community was one of these communities that had very low socioeconomic resources, was 100 percent persons of color, and the operators obviously had economic resources and were not persons of color. In fact, they weren't even from New Mexico. So you can't pick a worse set of facts in many respects than that."	Storytelling Reversal Positive Self Representation Moves of Defense Mitigation
1178	Dr. MT	"And I think [Mr. LC] articulated very well one particular perspective, that when you're evaluating the impacts of solid waste facilities he only wants to look at negative impacts. I view solid waste facilities as being much more of a mixed bag. I think they provided a very valuable service, and if they're done right, they provide a very valuable service in a very low-key fashion. Those officials representing the local community entered into negotiations with this facility's ownership to develop an expansion of the original zoning agreement. And the short version of that host	Marginalizing / sabotaging Implying advocacy, organizing is negative Positive Self Representation Talks of benefits but not risks Denial, Minimization Positive Self Representation

		agreement is that this facility provides \$1.3 million a year to the community of Sunland Park, including the largest single cash source of revenue to the general fund. Sunland Park disposes of all of its waste there free."	
1179	Mr. MT	"But I will tell you that in terms of encroachment issues, stand in terms of re-permitting this facility down the line, if I were confident that [Mr. DM]'s environmental justice provisions in the proposed regulations would be adopted, I would be building houses right there, just as close to the landfill as I could get them, because they would eventually by virtue of the type of encroachment, completely eliminate the possibility of re-permitting that facility, because sooner or later it will have to be modified."	Entitlement Moves of Defense Expertise to White men Hiding behind the technical
1180	Board: Ms. DH	Ms. DH goes into a series of questions, asking who Mr. DM is representing, making the point that Mr. DM works for his clients... The questions serve to question Dr. MT's assigning of intellectual property.	
1181	Author	I too questioned Dr. MT's characterization of "Mr. DM's EJ provisions," (p. 1179) clarifying that he did not represent the NMEJWG.	
1182	Dr. MT	"...anyway, this is one case study. Lower socioeconomic status, community with 100 percent persons of color, and yet encroachment is systematic toward the facility."	Mitigation Move of Defense
1185	Dr. MT	Continues to talk about how Sunland Park landfill has continued to improve and they do community impact assessments. He then asks one of the Engineers that is also a party if he has that community impact assessment. He also addresses public meetings.	Positive Self-Presentation
1186	Dr. MT	"One comment that is fairly well articulated is—and they did it well. It was written in Spanish. The comment said that it believed that the entire assessment should be written in Spanish to make it more accessible to the community, since in fact, Sunland Park is essentially a community of persons of color. We will probably do that. But I think that will be community specific."	They had court cases and organizing. Patronizing Positive Self Representation Essentializing Face Keeping
1189- 1190	Dr. MT	Goes into giving detail about a landfill in Sandoval County and talks about their owners, Waste Connections Inc. out of California. Doesn't have the problems of Sunland Park, a community of color.	Moves of Defense
1195	Dr. MT	"...But there are a lot of communities out in New Mexico that may	Positive Self Representation

		not have the financial resources to deal with all of these requirements."	Face Keeping
1205	Dr. MT	"Southern Dona Ana County, because it's mainly the North Chihuahuan Desert, is on the verge constantly of being a nonattainment area for dust, or large particle dust, PM10. ...But it's—Sunland Park suffers from its close proximity to Juarez and El Paso."	Excuses transfer
1206-1207		A back and forth discussion takes place as Dr. MT continues giving detail to a yes or no question Board Member, Ms. DH had asked. She appears irritated by him.	
1206	Dr. MT	"Let me answer it a little bit more. I've – that's my worst habit."	Continues to take up time with excessive detail that serves to position him as an expert.
1206	Ms. DH	"Oh, no."	
1209	Dr. MT	"...the people who are usually most affected by the operation of a facility usually hear about it at the last minute, usually don't have the technical expertise to show up and effectively counter the arguments that a very well prepared applicant is going to make and an equally prepared agency is going to make. So this guidance helps get out in front on that."	Excuses Positive Self-Presentation
1210	Brd. Member; Ms. DH	"....People that live, work, play and learn and do business in the community are all part of the holistic culture of that community, but the people that, you know, wake up in the community and fall asleep there at night have like a totalitarian existence of—you know, they have the ramifications and the pros and the cons of everything that happen. ... (Regarding all the information that Dr. MT claims that the landfills he works with gather, Ms. DH asks.) Do you pass it on the Health Department and pray that they do a good job? Or what do you do?"	
1214	Dr. MT	"We've coordinated activities in the past with the Agency for Toxic Substance and Disease Registry, the ATSDR...to come out and do public health reconnaissance in the community, at the landfill, looking for potential linkages. It was not an in-depth study, but it was – it was reconnaissance."	Positive Self-Presentation
1214		Board discussion about Dr. MT's long detailed stories.	
1215	Dr. MT	With regard to EJ, "It – it's a legitimate area of inquiry. It's not going to get settled once and for all in this round of regulations. It's an ongoing dialogue. And we're willing to participate and work on	Positive Self Representation This would be the place to address it – regulations. Mitigation

		that.”	Excuses Moves of Defense
1217	Dr. MT	Referring to the 250 ft. set back in urban areas from a transfer station: “...but I don’t think 250 feet is justified. And I don’t even know what the basis for 250 feet is.”	Moves of Defense
1222	Dr. MT	“...it really, by socioeconomic and ethnic status, probably could still be legitimately considered a <i>colonia</i> , but it’s got the best infrastructure of any <i>colonia</i> you’ll see along the US/Mexico border.”	Mitigation
1222	BM: Ms. KB	“There’s been a lot of testimony about the public involvement, the public hearings, the public meetings, and there seems to be a sense that because the public doesn’t always show up, that there should be some consideration by the Board to discard some of the public involvement mandates.”	Contrary to Environmental Justice Excuses Moves of Defense
1222-1224	Dr. MT	Goes into stories about public notice, participation, etc....	Positive Self-Presentation
1224-1225	Dr. MT	Referring to the ones that come to meetings: “But they’re seasoned veterans of the – of the process in discussing the landfill in Sunland Park, and so I think... its almost become an instance where some of these folks are neighborhood leaders, some of them are group leaders, some of them carry the message for a larger group of people that couldn’t—didn’t know to or wouldn’t show up.	Misrepresentation of community leaders Negative Other Presentation
1227	BM: Ms. KB	“...and I just wanted to get some clarification of what good reason would there be to not provide as much access for public involvement as is possible.”	
1228	Dr. MT	“There is no good reason not to provide more public assess, more public participation. ...I think a big part of the divide between some of the more strident and articulate spokespersons for the environmental justice movement, [Mr. LC] being the specific example -- he attributes siting decisions to racial animus...”	Mr. LC’s testimony – Negative Other Presentation Marginalizing Minimizing Denial
1239	BM: Mr. GG	“I guess along those lines, what I –what I’m getting at is what [Mr. LC] represented, that people of color and economic sensitivities tend to have more trouble with their landfills. And as I look at these three examples, that seems to be completely true.”	Face Keeping
1240	BM: Mr. GG	“Anglos have far less problems with the Rio Rancho and Santa Fe landfills than Hispanics or Latinos had with this one.”	Face Keeping Mitigation
1240	Dr. MT	“...I don’t think that’s an ethnic consideration, I think it’s a proximity	Denial of Race

		consideration.”	Euphemism
1241	Dr. MT	When asked about the income qualification in the definition of a vulnerable area Dr. MT hedged: “I’m not going to – I haven’t talked to my clients about it, and I know that my -- without saying anything in particular, my clients would not go for that.”	Mitigation Reversal Transfer
1243	BM: Mr. GG	“And moving through the document, the population of color, additional language, support, not support?”	Check-list
1244	Dr. MT	<p>“I’m surprised that race and ethnicity came out of the –the rule, and that the rule went to socioeconomic status as a primary index. I’m not able to comment on whether I’m for it or against it, but I will tell you that in my own experience with Title VI applications to facilities..., that race and ethnicity has always been a consideration.</p> <p>In state like New Mexico, you have to develop a slightly more refined analytic profile that requires you to – in some cases, you just assume race and ethnicity are predominantly historically disadvantaged people of color.”</p>	<p>Positive Self-presentation Mitigating Minimization Essentialism</p> <p>Implication that people are their income Euphemism</p>
1246	Dr. MT	“After a discussion among Board Members, Dr. MT offers: “Can I make a suggestion that will shorten your discussion on this? I am fully in support of the proposed regulations that the Department has brought forth with the two fudges that I make...and I’m not prepared to change that. So I’m not going to – I’m not going to agree to any of these changes.”	Reversals
1246	BM: Mr. GG	“ Mr. [MT], you just – you just agreed that the poverty level ought to be set at a stat --“	?
1246	Dr. MT	“Well, that’s not a substantial change, though. That’s a --”	mitigating
1246-1247	BM: Mr. GG	“Some of these aren’t substantial. ...And, I’ve got you here, and I’ve got your brain and your experience, so I do want to get your opinions on these.”	Expertise attributed to Dr. MT by Mr. GG
1247	Dr. MT	He continues to disagree with any other proposals not on the draft including changes to vulnerable area and place of worship in addition to churches. Even though he states several times that the federal and Title VI consider race and ethnicity (p. 1244).	Reversal after Reversal
1255	Brd. Chair: Ms. GD	“She thanks Mr. GG for asking questions she had (but also with regard to shortening up Dr. MT’s responses)”And thank you for your testimony, Dr. [MT]. I really appreciate your professional experience and history that you’ve brought to this. ...Who are you representing	Experience & Expertise

		here?"	
1251	Mr. MT	"Okay. Today I'm here on behalf of Camino Real Environmental Center, Eddy County Regional Landfill, Lea County Regional Landfill, Southwest Landfill, Sandoval County Landfill, and although it's not listed in the notice of intent, I have the practical effect of representing El Paso Disposal and Southwest Disposal, who are haulers primarily. And I have medical waste clients who are also interested in rule changes in New Mexico."	Positive Self-Presentation He was formerly signed in only representing his consulting company but now, is representing all these folks.
Public Testimony for South Valley Partners for Environmental Justice			
1260-1261	Mr. LS	Director of South Valley Partners for Environmental Justice: "In the past 30 years, during the development of the unincorporated areas of the Bernalillo County, many zoning decisions were made with little or no consideration of the consequences of those decisions on low-income and minority populations. ...we have found that it's difficult, if not impossible, to change the ongoing uses that were historically designated. A case in point is Mt. View..."	
1262	Mr. LS	"With these circumstances facing our community, RGDC, requests that the regulations require all applicants wishing to locate landfill facilities or expand existing facilities in vulnerable areas or areas zoned M-1 or M-2 to be subject to environmental justice provisions."	
1270	Mr. LS	"And so one of the problems that we have in Mountain View is a lack of enforcement, a lack of enforcement based also on the whole issue of lack of zoning."	
1270-1271	Mr. LS	"And under Federal Law, the Civil Rights Act, Section 6, there is, in fact an executive order that supports that, is the limited English Proficiency Clause. ...Anybody that gets federal dollars is required to provide that information...also the documents themselves need to be in the appropriate language for the at community..."	
1275	Mr. LS	"I would submit one more final [recommendation] to use an adequately – an adequate methodology for getting the work out and getting people to these meetings." Talks about what they do to encourage people to attend: food, childcare, educational activities."	

1278	Mr. LS	"Prior to the 1990's, there was little consideration of the environmental or health impacts of those heavy manufacturing facilities and what they – the effect that they may have on residents' health, particularly residents of color, who have historically shouldered the burden of emissions and discharges from noxious industries. In the case of Mountain View, predominantly Hispanic and low-income communities, much of the land is zoned heavy manufacturing. ..."	
1279	Mr. LS	"....currently in the special use permitting process, there is no consideration of the cumulative impacts or the disproportionate environmental burden that a landfill might have on our community....."	Impacts
1287	Mr. PD, Jr.	(Owners of Southwest landfill offer a tour of landfill to Mr. LS and group) "...if you want to contact Rafael, they'd like to give you a tour. And both Ted and Claudine speak Spanish, so if they—if they're interested, they'll let them know."	Move of Defense
		Recess 11:53am-1:11pm	
Testimony for Municipal League and Association of Counties			
1287-1291	Mr. VV	Gives his credentials, is a lawyer works for the Municipal League, in the past worked with the Attorney General's office advising the EIB. Has focused on municipal law the last 14 years. "And last year, the State Bar of New Mexico had made me the number one – the first board-certified specialist in local government law."	Positive Self-Presentation
1294	Mr. VV	"...the New Mexico courts have a longstanding tradition and holding that these types of hearings must comply with due process, ...that is notice and an opportunity to be heard. To satisfy procedural due process, people – interested people have to be notified of the proceedings, have to be noticed of the nature of the proceedings, then have to have a reasonable, meaningful opportunity to participate."	Positive Self-Presentation Moves of Defense
1296	Mr. VV	"...if an entity has a website, that they're required to post notice on that web site.So there is significant notice out there, inviting people to attend these hearings...."	Positive Self Representation Moves of Defense
1303	Mr. VV	"Well, they're supposed to base their decision on what's best for the -- to promote the health, safety, morals, welfare of the	Abstract liberalism Moves of Defense

		municipality or the county based upon substantial evidence in the record.”	
1308		Discussion among Board Members, as many of us do not have cross-examination questions but, Dr. MT does. As a matter of fact the Board Chair, Ms. GD tells him, “Just speak really quickly.”	She asks Dr. MT even more questions. The two more liberal board members continue to give him air time, thereby establishing his expertise.
1309	Mr. VV	Responds to a question by Dr. MT in cross-examination about his opinion on the racial bias of zoning laws: “...there has been historic racial animas associated with some of these zoning decisions....But I don’t agree that it is historically flawed. “	There has been racism – naturalization of race Reversal
1316	Mr. VV	...So that the very least, they would have to conduct a quasi-judicial hearing to consider whether the facility would result in disproportionate effect on the health, environment of a particular socioeconomic group.	Positive Self-Promotion Moves of Defense
1318		Dr. MT now is cross-examined by other parties on his testimony. More time...	
1320	Author	“Do you sincerely believe that the EJ community has had the kind of equitable representation and input in these meetings as industry, Municipal League, Association of County Governments, your clients?”	
1320	Dr. MT	“I don’t know. I – the unobtrusive evidence is that you’re there, [Mr. DM] is there, other equally articulate proponents of Environmental justice issues have been participating in the development of the Solid Waste Management Plan EJ section.”	Dismissive Excuses
1321	Author	“You mentioned that one of the landfills that you work with takes waste from Mexico. Could you explain to me what provisions allow for that...?”	
1322	Dr. MT	“It’s solid waste, but it’s also special waste because it’s industrial waste, and it comes from several of the maquila plants that are operated in Northern Chihuahua, in the frontier of Mexico. These plants are typically twin plants that have been operating for a long time. There are provisions now under NAFTA that allow the solid waste generated by those facilities to be disposed of in Mexico, but the plant environmental compliance managers have preferred to continue to send it to us.”	Moves of Defense Face-Keeping mitigates
1324	Author	You talked about landfills and how they’ve improved and how much better they’ve gotten, which I would definitely agree with you, but do you – ...in your estimation, do you believe that the EJ	

		community doesn't agree with you on those issues?"	
1324	DR. MT	"I think certain communities that are in close proximity to landfills may have individuals in those communities who view those facilities as an imposition on the landscape of their community."	Denial Minimization Euphemism
1325	Author	"I definitely have the same position that you do on having up-to-date and technologically sound landfills, but at the same time, we know that nothing is absolute right? Even though a liner can have, from the company that produces them or even studies that are done, a 300-year life, that's not – there's no guarantee."	
1325	Dr. MT	"300 years is hard for me to verify personally, although I'm gaining on it."	Moves of Defense Euphemism
1327-1328	Author	"And I was glad to hear you show strong support for public hearings...would you support our proposal when we testify later on that a notice should be in the public newspapers, posted, in television, on radio, et cetera... at least four times, and not just one, especially since you do support public hearings?"	
1328 - 1329	Dr. MT	"You always manage to do this to me, Sofia. My clients are situated at a point in time now where they're – they're comfortable with the notice process, ...So we are working in that direction, but I can't – I can't change my clients' position at this point in time with regard to the notice requirements that are in the proposed regulations."	Patronizing Transfers
1330	Author	"...I'm asking you as a person that has many years of experience in this area and expertise – and you've also demonstrated that in Chaparral you all have been trying to do that, so would you think that that's a – would be a good practice?"	
1330	H.O.	"[Ms. Martinez], he's not here with two hats the way [Mr. MM] was. He really is here representing the clients that he identified and that are set out on Attachment B. And I think he's already answered your question."	H.O.
1337	Mr. PD, Jr.	Referring to SWOP's maps, [Mr. PD, Jr.] asks, "Do you consider that information, and the way it was presented, to be evidence to – in support of the proposition that historical – or that landfills have been sited with a racist or ethnic animus, using the standard of a juried study – studies or that you would consider reliable evident in your practice?"	Denial of racial animus Denies Mr. LC's research on discriminatory practices. Uses SWOP map exhibits for his questions rather than a lawyer who presented over 99 studies. Moves of Defense

1337	Dr. MT	"No. ..."	
1340	Mr. PD, Jr.	Asks Dr. MT about a study included in one of his exhibits i.e. regarding discrimination in siting.	
1340-1342	Dr. MT	"1996, there was a study conducted by Hicks & Associates out of Austin, Texas, actually Hicks and Company. ...one of the statement in Chapter 6, page 48, the results of the study, discussing what's called a chi-square distribution – it's a statistical analysis that compares cases, and it say the test implies that there was not a pattern of discrimination at the state level."	One study from Texas paid for by industry. Moves of Defense Positive Self-Presentation
1345	BM: Ms. GD	"...Using minority versus people of color, the way I would interpret it, is now we're protecting the white population, because they're the minority, both on a statewide level and generally when you break it down into the smaller communities. So the question is do we define -- well, two questions. That, and, secondly, do we define by the state or by the community that's being affected, in terms of determining minority?"	Mitigation Moves of Defense
1345	Dr. MT	"...whenever there's a term of art like this, minority population or Hispanic or Latino or American Indian or whatever, person of color, use the census definition, so that we're all talking about the same definitionand that clears up the issue for the state, so that nobody's confused, that Hispanic or Latino populations are the primary concerns. American Indian populations are experiencing a different kind of issue, ..."	Term of Art Euphemism Minimization
1346		"It becomes very apparent to you that it has a much higher concentration of persons of color, for example, although you wouldn't need a table to know that, but it's also higher than Dona Ana County, which is the political subdivision in which it's situated. So those comparisons are just almost necessary to give you the right amount of perspective on any given issue, whether it's race, ethnicity, income, the ability to speak one language or another, and employment. All of those things are best shown in comparison to each other."	Positive Self-Presentation Mitigation Moves of Defense
1348	Dr. MT	In addressing vulnerable area definition regarding the concentration of 3 or more regulated facilities: "And Mr. [LC] and I had this exchange yesterday – that different kinds of facilities have different kinds of effects. I don't think it's unreasonable to characterize Mr. LC's view in his answer to one of my questions last night that he felt like they all had the same effect on the	Questions Mr. LC's expertise Negative Other-Presentation Moves of Defense

		community. And they were uniformly negative...though, he had not prepared environmental assessments before, and he had not prepared environmental impact statements before. And it led me to think that because of that fact, that he did not fully appreciate some of the nuances that come into establishing cumulative effects."	
1370	BM: Mr. GG	Referring to the Hicks study. "Did the study find environmental injustices in the State of New Mexico?"	
1370	Dr. MT	"It did."	Positive Self-Presentation, Face Keeping
1370	BM: Mr. GG	"Would you elaborate?"	
1370	BM: Ms. DH	"Oh, what a thing to ask. (Dr. MT has been talking for hours now.)	Addresses again the amount of time he has gotten
		Recess 2:59pm to 3:13pm	
1372	Dr. MT	"From the broader perspective of the environmental justice paradigm, the preceding investigation has concluded that the siting and proposed permit renewal of the Camino Real Landfill do not represent impermissible discrimination against minority or low income persons in the Sunland Park community. Based on proximity alone and without reference tothe landfill represents a disproportionate minority and low income effect on the community."	Moves of Defense Mitigation
1373	Dr. MT	"However, principles established in federal court cases involving alleged racial discrimination in facility siting make it clear that disproportionality of effect does not constitute discrimination unless, one, an attempt to discriminate can be proven or two, no legitimate nondiscriminatory reason for the landfill siting and permitting can be shown. In the present case, no evidence of intent to discriminate has been identified, and there are a number of legitimate nondiscriminatory reasons for the existence of the permitted landfill in its present location."	Migitages Face Keeping Moves of Defense
Testimony for Gordon Environmental Inc.			
1409	BM: Mr. GG	(Cross-examination of Mr. KG, Gordon Environmental Inc.) "Would they also agree to including populations of color in the definitions?" [his clients]	

	Mr. KG	"Not likely."	Denial, reversal, Move of Defense
	BM: Mr. GG	"Or race, as we had done before?"	
	Mr. KG	"No. They're ---quite frankly; the consensus on the current document is significant to them."	Transfers
1443-1447	Author, Mr. KG & H.O.	In my cross examination of Mr. KG, I asked him the basis on which he made statements in his testimony that there was abundant public notice and opportunity to attend NMED meetings leading to this hearing. This back and forth with him went on until page 1447, when once again the H.O. steps in, and stops me for "straying from the topic" and being "argumentative."	Regulating
1148	Mr. PD, Jr.	After a break, Mr. PD, Jr. calls Mr. MM to do a direct examination since he was the consultant to the Southwest Landfill, which Mr. PD, Jr. represents. He also gives his opening comments for the landfill as he had reserved this from their testimony earlier.	Positive Self-Presentation
1449	Mr. PD, Jr.	"...on behalf of Southwest [landfill], and also Ted and Claudine Martinez, Who are the Martinez family that own Southwest Landfill, and Rafael Valdepena, who operates it, thank everyone ...We think this is a better set of regulations than in December. We apologize for the extension, but I think maybe we are – in January, but we think actually the version has improved. ...we support and don't challenge the existence of environmental injustice and the need for environmental justice protocols, guidance, regulation, executive orders, to address that..."	Moves of Defense Face Keeping Mitigation
1449-1457	Mr. PD, Jr.	His direct testimony for Southwest Landfill, located on the <i>Pajarito Mesa</i> , in the South Valley of Albuquerque addressed issues about number of regulated facilities within the Vulnerable Area definition. He stated that his clients had no problem with including people of color, or the income qualification. However anything else brought up by the EJ parties must be based on evidence if it was to be included in the regulations. "And we think the department's position works for that. We think expanding it is very dangerous, and it's not supported" (p. 1457).	Hiding behind the science Mitigation Moves of Defense Industry & NMED agreement on how far they will go with regulations to provide protection to EJ communities. Epistemologies of ignorance Moves of defense Transfer Face Keeping
Testimony for Daniel B. Stephens & Associates, Inc.			

1458	Mr. PD, Jr. & Mr. MM	The final witness for the Southwest Landfill is presented Mr. MM, a hydrologist for Daniel B. Stephens & Associates, Inc.	
1462	BM: Mr. GG	"Why do your clients not want a definition of unreasonable concentration?"	
1463	Mr. PD, Jr.	"...there is nothing to support that concept in [Mr. LC]'s testimony, that—New Mexico would be way out in the front edge of taking unrelated facilities...There's no data, no evidence for unrelated facilities to arbitrarily, frankly, assume some cumulative impact."	Wanting the data before anything is to be done is an epistemology of ignorance national data do show increased levels of pollution with increased regulated facilities. Moves of Defense Epistemologies of Ignorance/ Hiding Behind the Science
Public Testimony for Southwest Network for Environmental and Economic Justice			
1466-1473	Mr. RM	Last public testimony – gives examples around New Mexico of environmental injustice and racism, his national and international experience with environmental justice.	Voice of Color
1474	Mr. RM	".... if there was not environmental injustice, then we would not be talking about environmental justice. If there wasn't environmental racism, then we wouldn't be talking about solutions to environmental justice. If there was not environmental discrimination, then we would not be discussing these issues today."	EJ
1475-1484	Mr. RM	Mr. RM gave his credentials and experience with environmental injustice and racism throughout the state including the community of Mt. View where he lived. "...solid waste is not one of the only issues that many of the environmental and economic justice organizations are working on. We founded clinics. We formed the first breakfast program in the history of Albuquerque, New Mexico, not the Albuquerque Public Schools. We opened up child care centers in the name of cultural centers...We had our eldest from our communities come in and talk about – in fact, talk about the history of our communities" (p. 1475).	
1477	Mr. RM	"...we're supposed to be understating of all these years, be patient, don't be – don't be so loud, don't be so boisterous, and don't be so emotional ... do you know in the community of Mountain View	

		that the reason – primary reason that on the -- the issues that peaked the environmental justice issue in the Mountain View community was almost the death of a child there from drinking contaminated water?"	
1481	Mr. RM	"...we were drinking contaminated water for over 25 years and the county, city, state and the federal government chose...to do nothing about it? Do you realize in some cases that – we're expendable people..."	
1485	Mr. RM	"We've said that we'd work together as people of color and others. We've said that race is a major factor in terms of siting facilities. And that class is, also, poor people, working people."	
1486	Mr. RM	"We have the opportunity here to do something different. Let's take advantage of the opportunity, and do something different."	
		Proceedings recessed at 5:49pm	
		Evening session 7:00pm	
1493	Author	I begin by acknowledging the process and the EJ work that had been done under Governor Richardson's administration and his appointed Secretary of the Environment, Ron Curry. "I think we've at least come to the point where we can at least listen to each other, if nothing else. ...we will be...utilizing a technique...of a counter-story of story-telling. ... we feel that that's a very effective tool or technique in really addressing issues that can't be quantified, such as racism. And we are going to be using the word 'racism,' and it's a word that many people find uncomfortable, but, unfortunately, it is the legacy of this country."	Voice of Color Knowledge / expertise
1494	Author	"... from our government to really talk about a colorblind society. Unfortunately, you hear very few people of color talking about that..."	
1495	Author	"Many times, we've had the experience that sometimes by the mainstream environmental movement, animals have been – taken a higher value than people of color and communities or as individuals."	
1496	Author	"Our interest to make sure the communities have the highest level of meaningful participation, and that we have impact on the decisions and regulatory -- on regulating polluting industry, where, unfortunately, we have not been before. We heard from Mr.	

		[LC] yesterday about the history of zoning. I think that we could say that about most – most agencies or processes that the governments have, whether it's at the national level or at the state level. Unfortunately, the community is not at the table."	
1497-1499	Author	I give a history of my family in northern New Mexico evolving as a mestiza woman: "Chicana is a political term that recognizes my indigenous ancestry, as well as my European ancestry..." (p. 1499)	
1500	Author	I talked about how I came to Albuquerque to attend UNM, how we had encouraged by parents to move to Albuquerque when they began to have more health issues. I spoke about how they had bought property in the Mt. View community because it was what they could afford. I spoke about how as a single mother I had applied for an FHA home. I had been offered a new home in the North Valley of Albuquerque, a very nice rural part of town. "I ended up buying a house in the Mountain View community. I had no idea what the Mountains View community was all about" (p. 1500). "I decided to take the Mountain View [location], because at that point I needed someone to help me with my children as a single mother. So these are some of the reasons people choose to live in certain communities."	
1500-1508	Author	I related how I went back to my community in northern New Mexico to work in the public schools directing their bilingual and special education programs. I spoke about how I became involved in a landfill struggle in the village and the experience of the village members that attended a hearing on the permit application. We felt we were treated rudely and disregarded. (We had the same HO in that hearing that facilitated this hearing and was the HO in the <i>Colonias Development Council v. Rhino Environmental Services</i> case, the State Supreme Court decision that ordered that NMED must take into account public comment and social concerns in permitting not just technical issues.) I spoke about how I had taken a day off from school along with some other community people and a grandmother and her granddaughter to meet with the NMED, SWB chief at the time. He too had listened and treated us dismissively. The next morning when I got to school, my Superintendent called me in to tell me the SWB Chief had called the landfill owner to tell him that I was there on a school day with	

		school children and he should call school officials. Which he did.	
1513-1541	Author	My storytelling continued, sharing some EJ history and continuing our story against the private landfill in our community. Our proposed provisions included: Publishing four times in newspapers, not just once, and increased radio, television notice and postings. Us of English along with the appropriate language of the impacted community including sign language. We questioned the process of meetings and hearings proposed in the draft regulations, we proposed that the secretary be given conditions on which to deny a permit, to have race be included in the definition of vulnerable area, 250 ft. setback for transfer stations and a 10 mile radius from a landfill rather than the proposed four mile radius, more time for community response after a hearing, inclusion of environmental justice language and stronger enforcement language among other recommendations. We asked for Community Impact Assessments (CIAs) to be standard practice. We also proposed a type of “three strikes and you’re out” rule so that communities like ours might not have to fight off effort after effort by the landfill to obtain special wastes.	
1537	Dr. DB	<p>The next witness for our party was Ms. DB, who had a Ph.D in sociology and was the Director of the Colonia’s Development Council.</p> <p>“We work in the area of human and civil rights. The trajectory of work that we have done in southern New Mexico, which includes now Dona Ana, Luna and Otero Counties, spans over 17 years.... I will work in areas of economic justice, environmental health, and immigration issues. We provide support to some of the work being done with farm workers that deal specifically with health and housing and labor issues.”</p>	Storytelling, voice of color thesis
1538	Dr. DB	“...we have taken...these areas of work...under the umbrella of the Universal Declaration of Human Rights.”	
1541	Dr. DB	“...this Board has a very important role in helping draft language in the Solid Waste Regulations that will, in fact – and I quote, you, ‘Assume the optimum health, safety, comfort, economic and social well-being of New Mexico inhabitants.’ ”	
1543	Dr. DB	“I think that one of the things that was mentioned by [Dr. MT] earlier, I don’t know if it was today or yesterday, was that a lot of	

		what is being discussed at this hearing has to do with proximity, and I differ with that view, because I think that the issue of what we're talking about is different standards of living for people of races and for people with different ethnicity, especially for people of different social class and access to other types of services."	
1545	Dr. DB	<p>"The issue of race and ethnicity, the community of color, we are in agreement.</p> <p>...we need to find an objective definition...that will clearly define unreasonable or disproportionate concentration of contaminating facilities,"</p>	
1546	Dr. DB	<p>She relates the story of the Chaparral Landfill that Dr. MT had explained in detail from his perspective. (Same H.O.)</p> <p>"...but during the time of the public hearing, they had – they were introducing studies on flora and fauna, the archeological studies, the geological, the hydrological studies, and when I mentioned the need for – I mentioned if, in fact, there was any study on social impact, I was cut off and told that that was not part of the requirements of the application....So here we are five years later with a Supreme Court ruling saying that, yes, in fact, social---social impact needs to be taken into consideration. "</p>	Voice of Color
1552-1553	Ms. SM	"...there was 370 households, about 1,400 persons. 60 percent of those are 18 year---you know, under. 90 percent are Hispanics, the Spanish speaking only. The majority are ---you know, we're below federal poverty level. ...In my community, ...there is zero infrastructure. We don't have any water, electricity, emergency services, no public roads, no postal services, no schools nearby, no police response. ...I was told that they – they don't like to put their car into the beat-up roads over there...so a lot of times we don't get no response from them."	Story telling – Voice of Color Thesis
1553	Ms. SM	"...no fire response...no water hydrant, ...So we use mainly sand to turn off like a mobile home if it's on fire. ...we try to put it out ourselves."	
1553 - 1554	Ms. SM	"The community groups working on, you know, Pajarito Mesa is the Mutual Domestic Water Consumers Association...we formed the association with the intention to do a community well right inside of our community, right in the center of our community, but	Voice of Color Knowledge / expertise

		because there were a lot of ...bureaucracy, ...we haven't been able to go into construction of that community well. ...So right now we're still going out of our community, up to 20, 26 miles, to get water..."	
1555	Ms. SM	"There is limited television...we consider something very good, because our kids have scored higher at the Los Padillas Elementary School, because they are not stuck on the TV or playing Nintendo."	
1564	Ms. SM	"So I feel that we have been very discriminated, because they always try to put laws or regulations on the low-income communities and the rich people gets away with everything. So I feel that's very unfair, very racist. And, also we're taxpayers, but our taxes doesn't, you know, represent us. We're not there – you know, we work very hard, and we feel that we deserve the same quality of life that anybody else does."	Voice of Color
1565-1566	Ms. SM	"I feel that just because we're 90 percent Mexicano, Chicano, Native American and African-American that we don't have to live in those conditions. I feel bad for my kids – for my grandkids, ... and they get teased about, you know, "You're very poor, you don't have no water, you can—you know, no electricity."...it's very hard for us to explain to them that because of our color or because of our economic situation, you know, we have to go through this."	Voice of Color thesis
1571	Mr. PR	"We do not need new statutory language or new executive orders for the Board to find it necessary to take action to protect public health, safety and welfare. Identifying public welfare requires an assessment. It is not an intuitive attribute of a community. And so the community impact assessments described so eloquently by so many...are essential methods for identifying the status of public health and welfare and also a means to protect that public health and welfare."	Counter technical perspectives Epistemologies of ignorance
1577	Mr. PR	Now, we have had presentations by some very eloquent speakers and represented by very experienced counsel, and the state is not limited to – is not able to restrict its permitting to eloquent and articulate applicants. It has to consider bad actors as well as good actors. It has to have a regulatory system that provides protection for the worst-case scenario in all cases and not be driven y those with the best of intentions."	
1583	Mr. PR	"There is a proposal to include a phrase "people of color"	

		<p>“populations of color,” in the proposed definition. ...I believe Mr. [MT] gave excellent reasons for that, but we have a poor definition that’s been provided by the proponent, because it identifies Hispanic and Latino people, but it does not identify Native Americans. Native Americans are a very important part of the New Mexico population, they are important to the population of the nation; they are often considered a people of color. The definition...could be expanded to include – or should be expanded to include Native American people as part of the populations of color.”</p>	
1588	Mr. PR	<p>“.... economically stressed populations---is that the term? -- should be set at \$20,000 versus 150 percent of the poverty level. I think the answer to that is obviously, one wants a floating figure, rather than one that’s tied to a certain value at an individual time.”</p>	
1594	Ms. EG	<p>“First of all, I want to thank Mr. HT. and Mr. GP for hanging in there. It’s really been a long day, ...”</p> <p>She informs the group that she will be dedicating her testimony to Dominic Smith, an EJ activist that died that day, she then proceeds to give her very impressive credentials.</p>	
1597	Ms. EG	<p>“...despite the best of intentions by everybody, systems just – systematically generate racial and income disparities.”</p>	Systems, Structures, Institutions.
1598 - 1599	Ms. EG	<p>“... I have to say I don’t understand it, this idea that there is not conclusive evidence of environmental justice in New Mexico, and so what are we even doing here...</p> <p>Generally, it’s a low threshold to look further. You don’t need conclusive evidence to look for evidence”this idea of concern with including race and ethnicity as a factor in this core screen analysis. That’s really what we are talking about.”</p>	
1600	Ms. EG	<p>“...there was this idea that we can’t consider race, you know, it is just impermissible. Under <i>Grutter</i> and <i>Adarand</i>, you have to have a narrowly tailored reason to consider race. And the EPA does not consider race anymore. In my experience, I don’t think that’s the case.”</p>	check
1601- 1602	Ms. EG	<p>“...the unfortunate irony of our country is, is that we have to consider race to get past race, and that has been, you know, expressed in a lot of, you know, judicial opinions, and in other</p>	

		ways. ...we shouldn't use race as a decision-making criteria unless we have a darn good reason to do so.....Now EPA is considering taking race out of the equation in the enforcement context because it has a lot of other information to rely upon."	
1602	Ms. EG	"...and so we'll do that, and we'll try to keep race out of the equation, but we'll back it up, and we'll look at racial demographics to make sure that, with this alternative route, we are not inadvertently generating racial inequities....And there has been evidence of that, in the enforcement context at the EPA, under the federal environmental laws, that they have been generating racial inequities. So they are trying to do it, I wish them the best of luck, I don't agree with that particular policy, but I can see in this limited context why they might take that approach."	Abstract liberalism
1603	Ms. EG	<p>"The second context has been in the -- I forget the precise name of it the -- strategic plan, and what they are saying is that we're going to take race out of the equation because -- again, it's this idea that they have a healthy body of data to rely on. They've already identified a lot of environmental justice communities; they've already identified the areas where there are racial disparities, high asthma rates, high blood lead levels, and other areas like that...</p> <p>Again I wish them all the luck, I don't agree with the policy. ... New Mexico doesn't have this large body of baseline data from which it can continue to make targeted rollbacks in exposures. So, in short, I think that there is a good reason to look at race in this particular case."</p>	Government efforts to minimize, deny race Epistemologies of ignorance
1604	Ms. EG	"The concept of risk and impact disproportionality is different from the concept of risk and impact aggregation, which is different from the concept of vulnerability, which is different from the concept of unequal playing field in environmental decision-making."	
1605	Ms. EG	"...So you have a community that's poor, that's people of color, and you - - and there the evidence is in that these particular communities are vulnerable, in the case of low income, you know, less access to medical care, poor health, poor diets, often high, high levels of pollutants, and occupational exposures, in addition to other exposures, these sorts of things."	
1606	Ms. EG	"...So there are reasons why these vulnerabilities cluster around	

		racial and ethnic groups.”	
1607-1608	Ms. EG	‘The idea that - - you know, that there is - you know there are - there may be increased costs, you know associated with these regulations, and I’m going to refer to what in the literature is often referred to as the problem of dwarfing soft variables, ... For example, ...industry will come up and they’ll do a cost run on what it’s going to cost industry...What happens, however, is on the other side, You have an awful lot of costs that can’t be monetized, and they aren’t captured in that same kind of economic analysis, so they tend to get obscured...For example, I have never seen an economic analysis of a toxic hot spot, ...I’ve never seen an economic analysis of a cancer cluster. I’ve never seen an economic analysis of a reduced quality of life, or high blood lead levels that reduce IQ, or the costs of a woman who has to take her kid to the hospital and doesn’t know if he’s going to survive an asthma attack.’	
1610	Ms. EG	...you don’t really study the demographics at the time of siting, so you don’t know which came first, the facility or the people of color or the low-income community.	
1614-1615	Ms. EG	(On public participation) “I did write an article... “The Environmental Justice Misfit: Public Participation and the Paradigm Paradox.” ...there are reasons why public participation avenues, as they are modeled now under the current regime, are inadequate; and those reasons go beyond just lack of resources, which is a significant reason, but there are structural reasons...the structure of environmental decision-making itself makes public participation problematic in this arena.”	
1616	Ms. EG	(with regard to Secretarial discretion in approving or denying a permit) “You find that, by and large, administrative agencies across the board tend to be very conservative in interpreting their own legal authorities, and when there are points of discretion they tend to make that discretion go against environmental justice protections;”	
1618	Ms. EG	“This idea, too, that because New Mexico is a majority/minority state, that if you have a disproportionate impact to a white privileged community, well, that’s actionable, just doesn’t make sense. I’m sorry. White privileged communities are not historically disadvantaged groups. They don’t have clusters of vulnerabilities.”	

1619	Ms. EG	"This idea that -- this characterization of [Mr. LC's] testimony as seeing racial animus in everything, I think [Mr. LC] was talking about historical discrimination in the land use context."	
1620	Ms. EG	There are -- there is the systematic generation of income and racial disparities in the environmental regulatory context, as well as in other regulatory contexts, that don't really have anything to do with, you know, 'I want to harm these people because they are Latinos and because they are black.' The project of environmental justice advocates is to address risk and impact disproportionality, risk and impact aggregation, public participation, a level playing field in environmental decision-making and vulnerable communities. That's the project of environmental justice."	
		Final cross-examination and re-cross	
1641	Mr. DM	Re-cross of Ms. DB: "...you talked about two communities, one Chaparral and the other Sunland Park. Is it correct that there is an operating landfill in Sunland Park?"	
1641	Dr. DB	"Yes, there is."	
1641	Mr. DM	"Could you give us a brief description of the demographics of the community of Sunland Park?"	
1641	Dr. DB	"Dr. MT referred to some of those demographics, but what I have known from census data, and also having three organizers working on the round, it is over 95 percent Mexican and Mexican-origin population. It's also first and second-generation immigrant...and low income. It is very low income."	Demographics differ from what was presented by Dr. MT the consultant to the Sunland Park and
1641	Mr. DM	"And Chaparral is the community in which Rhino Environmental Services proposed to put a landfill that was the subject of the Supreme Court decision what you discussed...What are the demographics of the community of Chaparral?"	Demographics differ from what was presented by Dr. MT the consultant to that landfill.
1642	Dr. DB	"...it is roughly about 72 percent Mexican origin.....it is low income."	
1644	Mr. PM, Jr.	"Felicia, I have to follow up, just to make sure the record is clear." (Re-cross of Ms. SM) "You're not disputing the information in the aerial photography from 1986 that show who was present near the landfill, are you?"	Addresses H.O. by her first name Moves of Defense
1644	Ms. SM	"No, I am not."	
1644	Mr. PD, Jr.	"Your testimony you just gave, is that consistent with what the	Moves of Defense

		aerial photograph shows?"	
1645	Ms. SM	"...it doesn't show like little camping - -you know, like camping trailers, and people do live in those things, or little shacks, or stuff like that. So it's not going to show like either a home - - you know, a little home or a mobile home... I can have statements of, you know, people, that they've been there for over 27 years."	
1645	Mr. PD, Jr.	"Actually, let me show you this. This is the 1986 Aerial photograph. Does that reflect the community you're talking about?"	Moves of Defense
1645-1646	Ms. SM	No, there is still more – all the way to the center. This only covers a certain part of Pajarito."	
Testimony for NMED			
1646-1654	NMED: Mr. CN and EH	Mr. CN calls NMED Staff Mr. EH to clarify other provisions have to do with compliance, etc.	
1654	Mr. CN	"...the determination as to whether there is a vulnerable area by the applicant, there has been some concern expressed that that decision should be made by the Department rather than the applicant. Is it your understanding...that the Department would review the determination by the applicant as to whether they are in a vulnerable area or not?"	Moves of Defense
1654	Mr. EH	"Yes, that's correct. That's common for all provisions within the permit application requirements."	Moves of Defense
1657	Mr. DM	"So it does say, 'upon request, the Department will confirm'; is that right?"	
1657	Mr. EH	"Yes."	
1657	Mr. DM	"Absent such a request, when would the Department decide whether the applicant's determination of whether or not is was a vulnerable area was correct?"	
1657	Mr. EH	"In all cases, we would definitely review the applicant's presumption."	Moves of Defense
1657	Mr. DM	"When you say 'we,' do you mean the Secretary, when the Secretary makes the final decision, or do you mean the Bureau..."	
1657	Mr. EH	"I would say that when the Bureau – before the Bureau deems it complete, yes."	Moves of Defense

1657 - 1664		Final instructions and steps are given by the HO for follow-up and the hearing is adjourned at 11:40 p.m.	
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Appendix F

State of New Mexico

Environmental Improvement Board Hearing 2006

No. EIB 05-07 (R)

IN THE MATTER OF

THE PETITION FOR PUBLIC HEARING

TO CONSIDER A PROPOSED REPLACEMENT

TO 20.9.1 NMAC, SOLID WASTE

MANAGEMENT REGULATIONS

APPEARANCES:

For the Environmental Improvement Board:

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GREGORY GREEN, Vice Chair
DOLORES HERRERA, Secretary
SOREN PETERS
HAROLD TSO
KEN MARSH
KATHY BEARDEN

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Mr. GG
Ms. DH
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Mr. HT
Mr. KM
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 Attorneys at Law

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By: PETE V. DOMENICI, JR.
LORRAINE HOLLINGSWORTH

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Vice President
Sisneros Environmental Corporation

For Los Alamos County:

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Solid Waste Division Manager
Los Alamos County
Post Office Box 30
Los Alamos, New Mexico 87544

For the National Solid Wastes Management Association,
the City of Raton, the City of Albuquerque, Sandoval
County, Waste Management of New Mexico, Inc., Southwest
Landfill and Gordon Environmental, Inc.;

KEITH GORDON Mr. KG
Principal
Gordon Environmental, Inc.
213 S. Camino del Pueblo

Bernalillo, New Mexico 87004

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Mr. RS & Ms. JE

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Mr. CW

For the Municipal League

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Mr. MM

For the National Solid Waste Management Association and Daniel B. Stephens and Associates

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For South Valley Partners for Environmental Justice Mr. LS

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RANDALL VAN VLECK

Mr. VV

For Municipal League and Association of Counties

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Mr. KG

For Gordon Environmental Inc.

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Appendix G

New Mexico Solid Waste Regulations

EJ Rules

20.9.3.8 Permit Application Requirements--Community Impact Assessment

D. Any person seeking an initial permit for a landfill or a transformation facility, or for a permit modification of a landfill resulting in a lateral or vertical expansion, excluding an on-site scrap tire monofill, shall first submit to the secretary the information that is necessary for the secretary to determine if the proposed site is in a vulnerable area. If the secretary determines that the site or the proposed site is in a vulnerable area, and the applicant is proposing to site the facility, or expand the facility, in an area that has not been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant shall follow the following procedures.

(1) Prior to filing the application, the applicant shall give notice to the public of its proposed plans, and of the procedures allowing residents to file comments on the proposal with the department. This notice shall contain the following.

(a) For a proposed new facility, the name and location of the proposed facility, a description of the proposed facility, a description of any transportation routes to be used to and from the proposed facility and expected hours of operation, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments on the proposal with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility, and for taking comments and questions. The meeting shall not be held less than 30 days following publication of the notice.

(b) For a proposed permit modification of a landfill resulting in a lateral or vertical expansion, the name and location of the facility, a description of the proposed modification, a description in any changes in operation resulting from the modification, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility. The community meeting shall not be held less than 30 days following publication of the notice.

(2) Community residents shall have 60 days following the community meeting to submit comments to the department. If the secretary determines that there is significant community opposition to the proposed landfill; transformation facility; or permit modification resulting in a lateral or vertical expansion, excluding on-site scrap tire monofill, then the secretary shall require that the applicant prepare a community impact assessment. If a community impact assessment is required, the applicant shall give notice of a scoping meeting, pre-assessment meeting and opportunity for comment on the resulting community impact assessment. The applicant can either provide combined notice or separate notices of each event. At the scoping meeting, the public shall be given the opportunity to identify specific concerns regarding the proposed facility or modification, and the applicant will advise the public that the issues listed below will be addressed in a community impact assessment. The public will be asked if additional issues should be included in the scope of the assessment, if existing issues need additional consideration, and if the community impact assessment should be produced in a language in addition to English. The secretary may order that the assessment be produced in a language in addition to English based on, but not limited to expressions of interest at the scoping meeting. After the applicant incorporates public input from the scoping meeting, the applicant shall hold a pre-assessment meeting to describe the final scope of the study to

the public. The public shall be given opportunities to make comments and raise questions at this meeting. Before completion of the community impact assessment, a draft assessment shall be issued and made available to the public for comment. The public shall be allowed to submit comments on the assessment to the applicant for a period of 30 days following the issuance of the draft assessment. The applicant shall consider the comments and modify the community impact assessment as appropriate. The applicant shall file the community impact assessment, all written comments, and the applicant's resolution of the comments with its application. The community impact assessment shall contain an executive summary that is in English and, if appropriate, in any other predominant language of the community, and in plain language so it can be understood by the residents of the community. At a minimum the community impact assessment will address, to the extent New Mexico residents are affected, the following issues in the four mile radius around the proposed facility or existing facility that is proposing a horizontal or vertical expansion:

- (a) description of:
 - (i) purpose and need for the project;
 - (ii) site location and description;
 - (iii) land use;
 - (iv) known existing and documented proposed regulated facilities within the vulnerable area;
 - (v) other existing development and documented planned development in the vulnerable area;
 - (vi) historic and cultural resources;
 - (vii) visual and scenic resources; and
 - (viii) climatology, meteorology, and air quality, including odors and dust;
- (b) socioeconomic profile and environmental justice:
 - (i) population, demographic profile, education, age and language; and
 - (ii) occupational profile and household income;
- (c) noise;
- (d) litter;
- (e) transportation;
 - (i) local roads and highways;
 - (ii) railroads;
 - (iii) other transportation issues;
 - (iv) access to facility;
 - (v) air quality, including odors and dust;
 - (vi) noise; and
 - (viii) traffic;
- (f) public and occupational health and safety issues;
- (g) positive and negative socioeconomic impacts:
 - (i) local employment;
 - (ii) community services;
 - (iii) revenue to local funds;
 - (iv) property values;
 - (v) property taxes;
 - (vi) cost effective disposal of community solid waste; and
 - (vii) other quality of life concerns raised at public meetings;
- (h) cumulative and individual impacts of the proposed facility, other existing development and other planned development submitted to a local government within the vulnerable area, to:
 - (i) land use in the area;

- (ii) historical and cultural resources;
- (iii) visual and scenic resources;
- (iv) air quality, including odors and dust;
- (v) socioeconomic and environmental justice, including population, demographic profile, education, age, language, occupational profile and household income;
- (vi) transportation;
- (vii) unavoidable adverse environmental impacts; and
- (viii) analysis of short-term, intermediate term and long term effects of the proposed facility;
- (i) summary of reasonable mitigation measures proposed to address the facility's contribution to any expected adverse impacts; these measures may include but are not limited to:

- (i) historical and cultural resources impact mitigation measures; (ii) visual and scenic resource impact mitigation measures;
- (ii) visual and scenic resource impact mitigation measures;
- (iii) air quality impact mitigation measures, including for odors and dust;
- (iv) socioeconomic and environmental justice impacts mitigation measures;
- (v) noise impact mitigation measures;
- (vi) transportation impact mitigation measures; and
- (vii) public and occupational health impacts mitigation measures; and
- (j) consultation, coordination and public involvement:
 - (i) agencies and local governments consulted;
 - (ii) public involvement;
 - (iii) responsive summary; and
 - (iv) comments.

E. If the proposed landfill, transformation facility or landfill modification resulting in a lateral or vertical expansion is proposed in a vulnerable area, or is not sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity of public participation, the applicant shall demonstrate that, within the state of New Mexico, granting the permit or permit modification will not result in a disproportionate effect on the health and environment of a particular socioeconomic group in the vulnerable area.

F. If the proposed initial landfill or transformation facility permit, or landfill modification resulting in a lateral or vertical expansion is not in a vulnerable area, or is sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant is not required to prepare a community impact assessment.

G. Each permit application filed with the secretary shall include proof that the applicant has provided notice of the filing of the application and any community impact assessment scoping meetings, pre-assessment meetings or other notifications required by 20.9.2 - 20.9.10 NMAC, and unless otherwise specified by 20.9.2 - 20.9.10 NMAC, to the public and other affected individuals and entities. The notice shall:

(1) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule, and tax exempt entities of record, of all properties:

- (a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or class H county or a municipality with a population of more than two thousand five hundred (2,500) persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a class B county or municipality with a population of 2,500 or less;

(2) be provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of the territory of the county, municipality, Indian tribe or pueblo is within ten miles of the property on which the facility is proposed to be constructed, operated or closed;

(3) be provided to all parties and interested participants of record for a permit modification or renewal;

(4) be published once in a newspaper of general circulation in each county where the facility is proposed to be constructed, operated or closed; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice; notice also shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members of each community, and where printed shall be printed in both English and Spanish;

(5) be posted in at least eight publicly accessible and conspicuous places, including the proposed or existing entrance to the property on which the facility is or is proposed to be located; and

(6) include the following:

(a) name, address, and telephone number of the applicant and contact person;

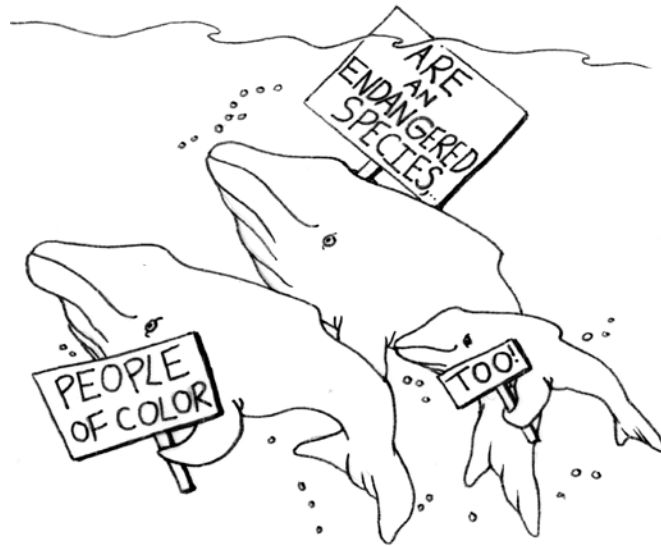
(b) the anticipated start-up date of the facility or modification, and planned hours of operation;

(c) a description of the facility, including the general process, location, size, quantity, rate, and type of waste to be handled and a description of any proposed modification;

(d) the anticipated origin of the waste; and

(e) a statement that comments regarding the application should be provided to the applicant and the department.

H. Notices shall be submitted to the department for approval prior to publication, service and posting. The applicant shall submit a certificate from an American translators association certified translator showing that English versions have been accurately translated into Spanish.



By Artist Jay Gonzales.